

1 specific requirement not to impede the political process.
2 Under the Nevada Constitution the people have reserved unto
3 themselves the ability to file such an initiative petition
4 that we are presenting here.

5 The description of effect requirement is
6 constitutional and valid only insofar as it doesn't
7 absolutely prevent or preclude the proponents of this
8 petition from proceeding in the political arena. So there
9 must be some 200-word description of effect out there that
10 matches the petition and that makes it a valid exercise of
11 the people's initiative power.

12 That said, we have proposed five alternatives,
13 and as you rightly inquired, none of them seem to be
14 acceptable to other side. If we were to amend this petition
15 and refile, another word can be challenged or random word
16 could be attacked for having multiple dictionary definitions,
17 and that's not the point of this entire exercise.

18 So we presented alternatives that directly
19 correspond and under NRS Chapter 295, all of their complaints
20 and objections to our description of the fact, including in
21 the affidavits or documents in support thereof must be
22 included in their initial complaint. So that's what they are
23 limited to in terms of arguing against the petition today.

24 THE COURT: What about the 2023 argument that if

1 the legislature or the Court, whoever does it in 2021 then
2 you're immediately redoing that again, redistricting two
3 years later. Does that make sense?

4 MR. HOSMER-HENNER: It does because in order to
5 qualify for this ballot, in order to effect the amendment,
6 this initiative will have to go to the voters in both the
7 2020 election and the 2022 -- and the 2022 election. If it
8 were possible in an ideal world to establish those maps so
9 the legislature does haven't to redraw them once and then
10 redistrict again, of course that would make sense to
11 everyone.

12 But I'll offer two things. One, is the
13 proponents of this petition hopeful that the legislature
14 takes into consideration the requirements against
15 gerrymandering that are present in this petition knowing full
16 well that if they introduce such a map it could be overturned
17 in two years.

18 Second, there's nothing in the petition that
19 requires the commission or stops them from adopting the map
20 adopted by the legislature so long as the legislature doesn't
21 engage in partisan or racial gerrymandering and
22 disenfranchising voters through the gerrymandering process.
23 Those maps ideally should comply with the constitutional
24 amendment as drafted. So it really is up to the legislature

1 whether they want to draw invalid maps that the voters will
2 disapprove that the voters through this petition have
3 effectively preemptively disapproved of.

4 And, again, because the people have reserved the
5 power to conduct this initiative position -- petition process
6 themselves they don't have to wait until 2031, 2033 in order
7 to change the redistricting process. If they believe that it
8 is such an importance to the Nevada's democracy to begin that
9 process now, changing requiring midyear, midcycle
10 redistricting for the next decade is a small price, if any
11 additional price to pay, for ensuring that the voters' rights
12 are protected for supposedly, unless thus amendments further
13 change for all of the succeeding decades.

14 THE COURT: The funding comes from the State of
15 Nevada obviously; is that correct?

16 MR. HOSMER-HENNER: Correct. Just like the
17 commission for Judicial Discipline's funding comes from the
18 State of Nevada as that is a constitutional body that doesn't
19 specify the nature of its funding or have a specific
20 appropriation for that.

21 And, Your Honor, I may further say that the word
22 independent is often used to refer to our federal judiciary
23 and yet that is also a body that draws its funding from
24 congress and is appointed by the President with the consent

1 of congress. So we're arguing over this word of independent
2 and forgetting that in our National Constitution and in the
3 national way that we appoint our federal judiciary, that word
4 is used to describe a process that is awfully similar to what
5 were proposed in this current petition.

6 THE COURT: What about his argument about the
7 veto power that there's, by the minority. I mean, the way
8 it's structured there's --

9 MR. HOSMER-HENNER: First, that's nothing more
10 than a policy argument, Your Honor. That's a criticism of
11 what our petition intends to do. It is not something that
12 he's objecting to it on the basis of policy.

13 And second, we'll defend that because we believe
14 that that consensus requirement ensures that our commission
15 is a bipartisan commission that allows people who are
16 appointed, and the commission will be made up of essentially
17 two republicans and two democrats assuming those are the
18 majority of minority parties in the Nevada Legislature and
19 three nonpartisan or independents by requiring the members of
20 the commission to participate together and have someone
21 represented from each potential factor.

22 THE COURT: But they are the ones that picked the
23 three members, right?

24 MR. HOSMER-HENNER: Correct. Just as if

1 arbitrators would pick a neutral chairperson. We believe
2 that this process can and will work.

3 And the one thing I would ask at this point is
4 for Your Honor disregard all references to other states
5 processes. It's simply not true that every other state from
6 an independent commission is different than this --

7 THE COURT: How many states have adopted
8 commissions, do you know?

9 MR. HOSMER-HENNER: Probably eight or nine that
10 have adopted a fully empowered commission, and then I believe
11 about five or six more that have an advisor commission where
12 the commission recommends a plan and the legislature can veto
13 with some certain portion and then redistricting back to
14 that.

15 But for instance, Hawaii, Montana, New Jersey and
16 Washington all have a partially appointed commission made up
17 of appointments from the legislative branch and then some
18 additional number of additional commissioners. So those
19 statements concern what the majority of other redistricting
20 commissions are not only not on the record but they are
21 misleading and they are inaccurate, and more important they
22 have no relevance to what we have chosen to do here in
23 Nevada.

24 The second broad point I would like to offer,

1 Your Honor, is that there's a -- what we're determining in
2 some part is whether this is a political challenge to our --
3 to our specific petition that has merit because they -- the
4 plaintiff actually believes that the description of effect
5 does not fully inform the voters about what the initiative
6 process does or whether it's a dilatory tactic designed to
7 prevent this petition from getting to the voters.

8 And there's an acid test to determine which of
9 those is the case, and we perform that test by providing five
10 alternatives that gave them the relief that they were
11 seeking. They complained about the word independent. We
12 excised the word independent. Complained about the words
13 fair and competitive. We excised the words fair and
14 competitive without conceding that those are inaccurate
15 descriptions of what our petition is actually trying to do.
16 Those words can be removed.

17 They complained about the cost of the commission
18 which is an absolutely hypothetical cost given that the
19 statements used to support that cost argument are that there
20 will be more litigation as a result of this commission
21 process even though there was just litigation in the prior
22 cycle under legislative process. There's no way for this
23 Court to quantify the exact costs of redistricting under this
24 commission process or under the legislative process.

1 But even putting that aside, it would be awfully
2 difficult for this Court to make a factual finding that the
3 cost of redistricting will increase. Even if you duplicate
4 them by having commission to do it again after the
5 legislature does, we have managed to remedy that within the
6 200-word limit by including statements that the costs may go
7 up.

8 We believe the costs will go down because this
9 will reduce partisan gerrymandering and reduce the incentive
10 to have litigation over the partisan maps, and hopefully
11 everyone will learn to accept the bipartisan maps that this
12 commission will generate, but that's a hypothetical and
13 speculative effect. Even then our language solves and moots
14 the concerns of plaintiff in terms of informing the voters
15 about what the effect of this petition is.

16 And the third and final broad point I would like
17 to offer, Your Honor, is the statement about what the remedy
18 is for this. And plaintiff's counsel is simply incorrect
19 about the status of the law and the way that these procedures
20 go and the court process.

21 It is not enough for this Court to invalidate
22 this petition in the abstract. Send us back to the drawing
23 board with no guidance, file a new petition which then could
24 be challenged. Not only should plaintiff's counsel be aware

1 of this, it was cited in his brief and that was Sanctuary
2 Cities case that this Court heard I believe last cycle. And
3 in that Supreme Court decision, the Nevada Supreme Court
4 specifically held that it was error for this Court not to
5 give factual findings in order to guide the process for
6 initiative proponent to amend their description of effect in
7 compliance with the Court's factual findings and instructed
8 this Court to make those factual findings so that the
9 initiative proponent wasn't simply shooting in the dark.

10 That's what we're asking here for today is a way
11 to minimize litigation, prevent delay and actually allow this
12 substantive piece of good policy to get to the voters. We
13 can accept their factual, not their factual statements, but
14 their complaints about our description of effects and moot
15 and cure all of them today by removing the words that are
16 objectionable and increase and include in the sentence about
17 costs. That moots and mitigates all of their concerns.

18 This Court can make those factual findings. We
19 can amend the description of effects in compliance with this
20 Court's factual findings, and we need not go in a
21 merry-go-round of constantly circulating an amended
22 description of effect only to have that be substantively
23 challenged by some other dictionary or Thesaurus.

24 So for all of these reasons we strongly believe

1 our description of effect is valid but if this Court feels in
2 any way it isn't, the proper most efficient remedy is to
3 amend our description of effect so that this political
4 process can go forward.

5 THE COURT: Thank you.

6 Mr. Benson?

7 MR. BENSON: Thank you, Your Honor. So with
8 regard to the point about the Court's -- this Court's role in
9 the process, I actually agree with opposing counsel that we
10 are also asking this Court to make factual findings and give
11 direction about how this description effect is invalid and
12 that that does guide the process. We're not arguing
13 otherwise.

14 Our position is that it's not the goal of this
15 Court nor as we as an advocate to secure in court in realtime
16 and redraft a description of effect, but we are asking this
17 Court to make factual findings about how and why this
18 description of effect is not valid so that they can go and
19 refile it. And, of course, if they do refile it in
20 compliance with those findings the statute bars it from being
21 challenged again. So I don't think that that is really that
22 big of a point of contention.

23 The other thing about this issue about debating
24 policy versus the description of effect, in each one of these

1 cases, it's necessarily that the Court look at what the
2 petition actually does. And so you need to look at what the
3 policy is that it's being proposed. We're not going to
4 debate whether that's wise policy or unwise policy, but it's
5 necessarily required to look at what it proposes because you
6 can't propose policy A and tell voters that you're actually
7 proposing policy B in your description of effect. That's --
8 that defeats the entire purpose of the description of effect.

9 And, you know, an example of that is the RIP
10 Commerce case. That was referendum petition that would
11 repeal the congress tax and that was the stated purpose of
12 the petition. That's what it said in the description of
13 effect that this would appeal congress tax, and the Nevada
14 Supreme Court nevertheless struck down the description of
15 effect because it didn't describe what the actual effect
16 would be which would be that it would unbalance the state
17 budget.

18 And we're not just doing this in a vacuum. The
19 Court has to look at what the policy is that's being proposed
20 and determine whether or not that policy is being accurately
21 described to the voters in the description with it. That's
22 really the touchstone of what that requirement is for, and so
23 this petition with respect to taking into account what other
24 states have done. So there's about eight or nine other

1 states that have not necessarily independent redistricting
2 commissions but what the national counsel of state
3 legislatures refers to as primary authority or primary
4 responsibility committees, those are commissions that they
5 draft the maps and the plans themselves and the legislature
6 has limited or no ability to approve or veto those maps or
7 anything of that sort. Other states have a different system
8 of another commission drafts it and then sends it to the
9 legislature. It's up to the legislature whether to adopt or
10 approve the plan.

11 Now, of those eight or nine states that have
12 these primary responsibility commissions not all of them are
13 independent, and there's only about four of those that are
14 independent and that's Arizona, California, Colorado and
15 Michigan, and they are independent because of these
16 differences that are put into the, and most of those are
17 constitutional initiatives in order to insulate the
18 commissioners from this political pressure. That's what
19 makes its independent. They are not under the control of or
20 subject to the influences of the legislature or these other
21 political process, and that's why each of those states has a
22 process involved to take applications or to insulate the
23 commissioners from that pressure.

24 And so it's absolutely critical I think that the

1 Court look at what those other states do because that
2 determines, you know, what a voter is going to expect. For
3 example, a voter who is being told that this is an
4 independent commission probably expects it's going to look
5 something like an independent commission in Arizona or in
6 California or Colorado, but this commission bears no
7 reasonableness whatsoever to those commission and so to call
8 it independent when it has no reasonableness to those other
9 states is very misleading.

10 So with respect to the funding requirement,
11 counsel made the argument that, you know, everybody gets
12 their funding from the legislature, all of the branches of
13 the government do and, therefore, we consider, you know, them
14 to be independent. So this is just as independent. As the
15 Nevada Supreme Court recognized in the Danes case, State
16 versus Danes case, an independent branch of government can't
17 function without funding, and that's just the practical
18 reality.

19 And given that it was, the issue is if the
20 legislature withholds funding it could essentially subvert
21 the Separation of Powers Doctrine by disallowing a separate
22 branch of government from doing its job, and that is the case
23 with respect to all of the branches. And so to say that it's
24 independent just because of that is I think a very

1 constrained and unusual definition of what is independent.

2 And here we have a whole different issue because
3 obviously our Separation of Powers Doctrine expressly says
4 that the executive judiciary and the legislative are separate
5 branches and coequal branches of government. Here the
6 petition says that the commission is part of the legislative
7 branch.

8 And as part of the legislative branch the
9 question becomes, well, what if the legislature doesn't fund
10 it? Wouldn't it then be a separation of powers problem for
11 the Courts to step in and order the legislature to fund it or
12 to fund it in any particular way? That's a whole different
13 problem, and so it's not independent like these other
14 branches where there's a clear constitutional mandate that
15 they are independent from the legislature.

16 So with respect to the alternatives, we do take
17 issue with their alternatives for various different reasons.
18 I mean, the first one for example, it characterizes it as a
19 citizen commission which, again, we disagree with because
20 like independent, this is really not the citizen commission.
21 There's no application process. It's not open to people to
22 express interest. It's you're only going to get appointed to
23 this if you have political connections. It's not a citizen
24 commission.

1 This also, the first description also as we
2 discussed fails to, all of these alternatives fail to
3 disclose that it's going to undo the redistricting and have
4 mid decade redistricting that's going to undo what was done
5 in 2021 and that that, it's going to increase the cost as a
6 result of that because clearly that's going to require some
7 additional expense.

8 Again, it doesn't provide any of the disclosures
9 regarding the (inaudible) required by the parties. It's
10 going to be distributed in such a way that it's going to give
11 an absolute veto authority to a very small minority of the
12 commission.

13 The second alternative that Your Honor
14 referenced, unless I missed something that looks identical to
15 the first one, except they took out the word citizen. It's
16 probably --

17 THE COURT: Well, they took out the word
18 independent and just focused on a redistricting commission.
19 They additionally took out the words fear and competitive the
20 way I was reading it, and so they neutralized that argument,
21 so to speak, to some extent.

22 And then you get down to the end and, again, I
23 think they want redistricting beginning in 2023. I guess if
24 you didn't start in 2023 you have to start in 2031 is when it

1 would roll around again. That would be the next time they
2 did it in respect to that.

3 MR. BENSON: And that would be a typical
4 redistricting cycle.

5 THE COURT: Right.

6 MR. BENSON: And that's why it's by omitting that
7 that's going to redo what was just done. That is the
8 misleading part of this. And so, like I said, all of the
9 proposed alternatives do not include that, and so that's one
10 of the reasons that none of them we feel are truly
11 representative of what this petition is actually proposing.

12 And so with alternative three, again, they add
13 back in the use of citizen. And as I just discussed --

14 THE COURT: Well, you don't have to go through
15 three and four or five. I didn't care for either of those
16 particularly. What I kind of focused on was two because I
17 thought that was the most clear and distinct that there was
18 if I could somehow fix that to some extent.

19 Again, I think Mr. Benson is correct from the
20 standpoint it's up to me to make determinations in regard to
21 where we go in regards to determining the facts, the aspect
22 from it to a certain extent. So you don't have to go on to
23 those, Mr. Benson. Thank you.

24 MR. BENSON: Thank you, Your Honor. We would ask

1 that you do make some findings in this case that the
2 description effect is not valid for those reasons that we
3 discussed in the opening brief.

4 THE COURT: Okay.

5 MR. BENSON: And in its argument today.

6 THE COURT: Thank you. Well, again, and what I'm
7 inclined to do today, and again, I think there's a
8 significant amount of time in regards to fixing this or
9 before the election, so to speak, and everything. I like
10 alternative number two with the following change. If I make
11 any finding, I don't like the word independent. I'm removing
12 that. I think you're correct, Mr. Benson. I think it
13 creates issues that don't have to be argued about. I also
14 like the fact that remove the fear and competitive because we
15 don't know how these districts are going to come about, where
16 they're going to end up in respect to that.

17 The balance of that number two I like except the
18 end of it. This amendment will require redistricting
19 beginning in 2023. I can't do much about that. I mean,
20 that's an issue that you can argue about and each federal
21 census. And then I like the language rather than your
22 language begin which will result in expenditures or state
23 funds to fund the committee. It's -- it's just the
24 commission, excuse me. It's going to cost money no matter

1 what. It's just this is going to be a process that costs
2 money and when you do do it and go about it with respect to
3 that. So, again, that's kind of where I am to a certain
4 extent.

5 Mr. Zunino, anything that the Secretary of State
6 wants to offer? I mean, you always sit in silence on the
7 initiative and I enjoy the opportunity to poke the knife in
8 you and ask where is the Secretary of State on these.

9 MR. ZUNINO: Well, I think --

10 THE COURT: Huh?

11 MR. ZUNINO: -- the Secretary of State has no
12 position on this matter, Your Honor.

13 THE COURT: Now, is that a surprise? No. I'm
14 just kidding.

15 Anyway, why don't you both prepare orders for the
16 Court and provide them to me within ten days or something
17 like that. Again, I kind of modified number two a little bit
18 because I think that's the one that I would kind of go with.

19 I think you're absolutely correct, Mr. Benson, on
20 independent and fair and competitive. I don't like that
21 language at all. I think it is misleading. I think it
22 causes problems, but I think number two with some corrections
23 may fit and may handle the situation. So if that helps
24 anybody, that's kind of where I am.

1 MR. BENSON: Okay. Thank you, Your Honor. I
2 just want to clarify. So you are not requiring that it
3 include the language that it's going to undo what was done in
4 2021; is that correct?

5 THE COURT: No. It's going to say -- I don't
6 know how you fix that. 2023 is going to be what it is, and
7 they can do whatever they do at that time, so.

8 MR. HOSMER-HENNER: Your Honor, on that point we
9 could, unless you're ordering us not to, we could include a
10 statement that it would require redistricting in 2023 which
11 we could replace the legislative maps in 2021.

12 THE COURT: You could add that if you want. That
13 clarifies it. I think that helps Mr. Benson out.

14 MR. HOSMER-HENNER: Thank you.

15 THE COURT: That doesn't bother me either.

16 Okay. Again, you know, I went back. This is
17 great because I went back to the original order that I did in
18 redistricting back in 2011, and I kind of was going through
19 because there's some -- there's some preconditions that have
20 to be met, and there's a standard that you go through and
21 different things in respect to that. We spent considerable
22 time coming up with this order. So it was kind of fun to go
23 back and read it. I thought, wow, we didn't do a bad job
24 back then. So, anyway, thank you.

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Court will be in recess.

MR. BENSON: Thank you, Your Honor.

MR. HOSMER-HENNER: Thank you.

1 STATE OF NEVADA,)
)
2 CARSON CITY.)

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I, KATHY JACKSON, do hereby certify:

That on December 23, 2019, a hearing was held in
the within-entitled matter in the Carson City, Nevada
District Court, Department No. 1;

That said trial was recorded on JAVS, and said
JAVS was delivered to me for transcription;

That the foregoing transcript, consisting of
pages 1 through 46 is a full, true and correct transcript of
said recorded JAVS performed to the best of my ability.

Dated at Carson City, Nevada, this 24th day of
March, 2020.

KATHY JACKSON, CCR

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

6
7
8 REV. LEONARD JACKSON,

9 Plaintiff,

10 v.

11 FAIR MAPS NEVADA PAC, and
12 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,

13 Defendants.
14
15

Case No.: 19 OC 00209 1B

Dept. No.: I

**ORDER GRANTING
DECLARATORY AND INJUNCTIVE
RELIEF**

16 The Court, having reviewed the Parties' briefs and considered arguments of counsel, finds that
17 good cause exists to grant declaratory and injunctive relief in favor of the Plaintiff, Rev. Leonard
18 Jackson.

19 **I. BACKGROUND**

20 On November 4, 2019 Defendant Fair Maps Nevada PAC filed a constitutional initiative
21 petition designated as #C-02-2019 by the Secretary of State. The initiative petition seeks to amend
22 the Nevada Constitution to require that redistricting be performed by a commission rather than by the
23 Legislature ("the Petition").

24 The Petition would create the "Independent Redistricting Commission" ("Commission")
25 within the legislative branch of state government. Petition, Section 5A(1). The Commission would
26 consist of seven members. Petition, Section 5A(2). The Senate Majority Leader, Senate Minority
27 Leader, Speaker of the Assembly, and Assembly Minority Leader each appoint one commissioner. *Id.*
28 These four commissioners appoint three additional commissioners, each of whom has not been

1 registered or affiliated with either of the two largest political parties in the State within the last four
2 years, and is not registered or affiliated with the same political party as another commissioner. *Id.*
3 The Commission shall adopt a redistricting plan not later than July 1, 2023, and thereafter not later
4 than 180 days from the release of the decennial census. Petition, Section 5B(2).

5 The Commission must draw districts according to certain criteria, and must apply those criteria
6 in the order listed in the Petition. Petition, Section 5B(1). These criteria include ensuring that, on a
7 statewide basis, the districts “do not unduly advantage or disadvantage a political party.” *Id.* The last
8 criteria that the Commission may consider is the number of politically competitive districts. *Id.*

9 The Description of Effect of the Petition states in full:

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

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

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

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

23 Petition, p. 3, Description of Effect.
24

25 On November 26, 2019, Plaintiff Reverend Leonard Jackson filed a timely complaint and
26 opening brief pursuant to NRS 295.061, challenging the Description of Effect as misleading and
27 inaccurate. Defendant Fair Maps filed an answer and an answering brief, to which Plaintiff
28 Jackson replied. The Court heard argument on the matter on December 23, 2019.

II. ANALYSIS

A. Legal Standard for the Description of Effect.

NRS 295.009(1)(b) requires that every initiative “[s]et forth, in not more than 200 words, a description of the effect of the initiative or referendum if the initiative or referendum is approved by the voters.” The purpose of the description of effect is to “prevent voter confusion and promote informed decisions.” *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006).

The description of effect must appear on every signature page. NRS 295.009(1)(b). Thus “[t]he importance of the description of effect cannot be minimized, as it is what the voters see when deciding whether to even sign a petition.” *Coal. for Nev.’s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS 153, at *5 (May 11, 2016) (unpublished decision – NRAP 36(c), citing *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013) and *Las Vegas Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 177, 208 P.3d 429, 437 (2009)).

For that reason, the description of effect “must be a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve.” *Educ. Initiative*, 129 Nev. at 37, 293 P.3d at 876. The district court must also analyze “whether the information contained in the description is correct and does not misrepresent what the initiative will accomplish and how it intends to achieve those goals.” *Id.*, 129 Nev. at 35. 293 P.3d at 883.

B. The Description of Effect inaccurately states that the Commission would be “independent,” and therefore is misleading.

The first sentence of the Petition’s description of effect states in relevant part: “This measure will amend the Nevada Constitution to establish an **Independent** Redistricting Commission.” (Emphasis added.) The Court finds that the Description of Effect’s characterization of the Commission as “independent” is inaccurate and materially misleading.

Specifically, the Court makes the following findings of fact:

1. A majority of the Commission would be directly appointed by legislative leadership of the two largest political parties;
2. The remaining three members of the Commission would be appointed by those appointees;

3. The Petition does not contain any mechanism to prevent commissioners from running for office immediately after performing redistricting, and thus no mechanism to prevent commissioners from acting in their personal self-interest;
4. The Petition does not contain any requirement that the Legislature fund the commission, nor set forth any dedicated funding to ensure that the Commission can carry out its duties;
5. The Commission as proposed in this Petition differs substantially from “independent” commissions in other states, which use an application and selection process for commissioners that is not under legislative control and which provide for independent funding for the commission;
6. The Commission proposed in this Petition is not “independent” of the Legislature, nor “independent” from political influences.

Based on these findings of facts, the Court makes the following conclusions of law:

1. The Description of Effect is inaccurate because it describes the Commission as “independent,” which it is not;
2. The Description of Effect is materially misleading because the creation of a truly independent redistricting commission is very different policy than what is actually being proposed in the Petition;
3. Voters would be deceived and misled by the current Description of Effect into expecting the Commission to function independently;
4. Accordingly, the Description of Effect’s characterization of the Commission as “independent” is inaccurate and misleading, and the Description of Effect therefore violates NRS 295.009(1)(b).

C. The Description of Effect inaccurately states that the Commission will create “fair and competitive” districts.

The Petition’s Description of Effect represents that it will end partisan gerrymandering in Nevada by creating “fair and competitive electoral districts.” The Court finds that the Description of Effect is materially misleading because in fact the Petition requires neither fairness nor competitiveness.

Specifically, the Court makes the following findings of fact:

1. The U.S. Supreme Court recently reaffirmed its prior holdings that partisan gerrymandering is a political question and is thus an issue that cannot be redressed in federal court;
2. The Petition states that the Commission should ensure that districts “do not unduly advantage or disadvantage a political party” (Petition, 5B(1)),
3. The Petition does not require “fairness” between the parties, but only states that one should not be “unduly” advantaged or disadvantaged;
4. The Petition contains no criteria for its members to ensure that commissioners are representative of the racial, language, or geographic diversity of Nevada;
5. The Petition states that the Commission should, to the extent practicable, and only after considering all other redistricting criteria, consider making the districts politically competitive, *id.*;
6. The Petition does not require any districts to be politically competitive, *id.*;
7. The Petition requires a supermajority of five out of the seven commissioners to adopt a redistricting plan. Additionally, the Petition requires at least one vote to come from a representative of each major party, and one from a non-major party member. The Petition therefore allows a small minority of the Commission to veto any redistricting plan.

Based on these conclusions of fact, the Court makes the following conclusions of law:

1. The Description of Effect is inaccurate because it represents to voters that the Commission will create “fair and competitive” maps when in fact the Petition does not require the maps to be either fair or competitive;
2. The Description of Effect is materially misleading because voters reading it would be deceived and misled into believing that the Petition will stop partisan gerrymandering when it is designed to tolerate unfairness between the parties;
3. The Description of Effect is materially misleading because voters reading it would expect that the Petition would require the Commission to draw politically competitive districts, but it does not;

- 1 4. The Description of Effect fails to adequately inform voters that the Petition would give
2 disproportionate power to a small and non-representative minority of the Commission to
3 veto any redistricting plan;
- 4 5. Accordingly, the Description of Effect's assertion that the Commission would create "fair
5 and competitive" districts is inaccurate and misleading, and the Description of Effect
6 therefore violates NRS 295.009(1)(b).

7 **D. The Description of Effect is Invalid Because it Fails to Inform Voters of the Cost of**
8 **the Commission.**

9 The Description of Effect is invalid because it fails to adequately inform voters of the practical
10 consequences of the Petition. *Coal. for Nev.'s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016
11 Nev. Unpub. LEXIS 153, at *5 (May 11, 2016). Specifically, the Court makes the following findings
12 of fact:

- 13 1. The Legislature will perform redistricting in 2021;
- 14 2. The Petition would require the Commission to perform redistricting again in 2023;
- 15 3. The Petition would have the effect of replacing the redistricting plan that the Legislature
16 adopts in 2021;
- 17 4. The Petition would have the effect of increasing the costs of redistricting by requiring mid-
18 decade redistricting in 2023;
- 19 5. The Petition would increase the cost of redistricting due to litigation because of the
20 Petition's lack of guidelines concerning partisan gerrymandering and lack of provisions to
21 deal with contingencies such as vacancies, lack of a quorum, lack of funding, and so forth;

22 Based on these conclusions of fact, the Court makes the following conclusions of law:

- 23 1. The Description of Effect fails to adequately disclose the true effects of the Petition;
- 24 2. The Petition will require additional state spending on redistricting because it requires mid-
25 decade redistricting in 2023;
- 26 3. The Description of Effect fails to adequately inform voters that the 2023 maps created by
27 the Commission would replace the 2021 maps drawn by the Legislature;

1 4. The Description of Effect fails to adequately inform voters that it will increase costs due to
2 litigation;

3 5. The Description of Effect does not inform voters of material practical consequences of the
4 Petition and therefore violates NRS 295.009.

5 **III. ORDER**

6 For the reasons set forth above, IT IS HEREBY ORDERED that:

7 1. The Court finds and declares that the Description of Effect is invalid because it is
8 inaccurate and materially misleading and does not comply with NRS 295.009; and,

9 2. The Secretary of State is enjoined from taking any further action to process the Petition in
10 its current form, including without limitation, placing it on any ballot.

11
12 Dated: _____.

13
14 _____
15 DISTRICT COURT JUDGE
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28

Adam Hosmer-Henner, Esq. (NSBN 12779)
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*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED

2020 JAN -2 PM 12:15

AUBREY ROWLATT
CLERK

BY  DEPUTY

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

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

ORDER

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

//

//

PROCEDURAL BACKGROUND

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

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

The Commission will consist of seven Nevada voters, four who will be appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.

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

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

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he 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,

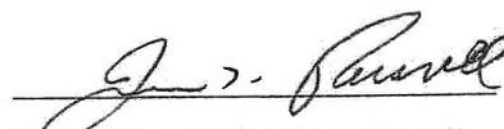
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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 ~~December~~ ^{January}, 2020.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:

24 McDONALD CARANO LLP

25 By: /s/ Adam Hosmer-Henner
26 Adam Hosmer-Henner, Esq. (NSBN 12779)
27 Lucas Foletta, Esq. (NSBN 12154)
28 McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
Attorneys for Defendant Fair Maps PAC


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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701


Chloe McClintick, Esq.
Law Clerk, Dept. 1

Adam Hosmer-Henner, Esq. (NSBN 12779)
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lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

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

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I


NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on January 2, 2020, the above-entitled Court entered its
Order. A true and correct copy of that Order is attached hereto.

Dated: January 6, 2020

MCDONALD CARANO LLP

By:


Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Defendant Fair Maps PAC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on January 6, 2020, I served the foregoing on the parties in said case by placing a true copy thereof in the United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501 addressed as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

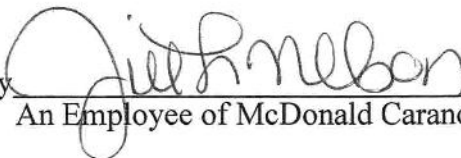
Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Barbara Cegasvke, Nevada Secretary of State
202 N. Carson Street
Carson City, NV 89701

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed to the parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2020 at Reno, Nevada.

By 
An Employee of McDonald Carano LLP

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Lucas Foletta, Esq. (NSBN 12154)
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lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED

2020 JAN -2 PM 12:15

AUBREY ROWLATT
CLERK

BY  DEPUTY

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

REV. LEONARD JACKSON,

Plaintiff,

vs.

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capacity as Nevada Secretary of State,

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Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

ORDER

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//

//

PROCEDURAL BACKGROUND

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

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

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

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he 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.

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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
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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
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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:

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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
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27 The Commission will have seven members, four who will be appointed by the leadership
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be appointed by the other four commissioners. Commissioners may not be partisan candidates,

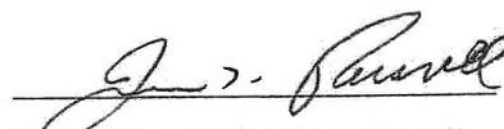
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2 public who shall have opportunities to participate in hearings.

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
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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 ~~December~~ ^{January}, 2020.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:

24 McDONALD CARANO LLP

25 By: /s/ Adam Hosmer-Henner
26 Adam Hosmer-Henner, Esq. (NSBN 12779)
27 Lucas Foletta, Esq. (NSBN 12154)
28 McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
Attorneys for Defendant Fair Maps PAC

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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
MCDONALD CARANO
100 West Liberty Street, 10th Floor
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Chloe McClintick, Esq.
Law Clerk, Dept. 1

1 KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
2 BENSON LAW, LLC.
123 W. Nye Lane, Suite #487
3 Carson City, NV 89706
4 Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com
5 *Attorneys for Plaintiff*

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2020 FEB -5 PM 2:40
AUBREY ROWLATT
CLERK
BY C. COOPER
DEPUTY

6
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 v.

Case No.: 19 OC 00209 1B

Dept. No.: I

13 FAIR MAPS NEVADA PAC, and
14 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,
15 Defendants.
16

NOTICE OF APPEAL

17 Plaintiff Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of Benson Law
18 Nevada, hereby appeals the Order entered by the District Court on January 2, 2020 and served on
19 January 6, 2020.

20 Dated this 5th day of February, 2020.

21
22 BENSON LAW, LLC

23
24 By: 
25 KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
26 123 W. Nye Lane, Suite #487
Carson City, NV 89706
27 Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com
28

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of Benson Law, LLC, and that on this date, I caused the foregoing Notice of Appeal to be served to all parties to this action by:


- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada
- ☐ Hand-delivery - via Reno/Carson Messenger Service
- ☐ Facsimile
- ☒ E-Mail (courtesy copy)
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
- ☐ E-filing through the federal courts' CM / ECF filing and service system.

fully addressed as follows:

Adam Hosmer-Henner
Lucas Folletta
McDONALD CARANO
100 West Liberty Street, Tenth Floor
Reno, Nevada 89501
Attorneys for Defendant Fair Maps

Greg Zunino
Office of the Attorney General
100 N. Carson Street
Carson City, Nevada 89701
Attorneys for Defendant Secretary of State

Dated: 2/5/20


An employee of Benson Law, LLC

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
(775) 788-2000
ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED
2020 FEB 18 PM 4:49
AUDREY ROWLATT
Clerk
Electronically Filed
Feb 21 2020 03:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

NOTICE OF CROSS-APPEAL

On February 5, 2020, Plaintiff Rev. Leonard Jackson filed a Notice of Appeal regarding the First Judicial District Court's Order filed January 2, 2020. Defendant Fair Maps Nevada PAC, a registered Nevada political action committee ("Fair Maps"), by and through its attorneys Adam Hosmer-Henner, Esq. and Lucas Foletta, Esq. of MCDONALD CARANO LLP, hereby provide notice that it cross-appeals to the Nevada Supreme Court from the District Court regarding the following order attached as Exhibit 1:

(1) Order filed January 2, 2020.

//

//

//

//

AFFIRMATION

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

Dated: February 18, 2020

MCDONALD CARANO LLP

By: 

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Defendant Fair Maps PAC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on February 18, 2020, I served the foregoing on the parties in said case by placing a true copy of the foregoing **NOTICE OF CROSS-APPEAL** in the United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501 addressed as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed to the parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2020 at Reno, Nevada.

By 
An Employee of McDonald Carano LLP

INDEX OF EXHIBITS

EXHIBIT #	DESCRIPTION	NUMBER OF PAGES
1	Order	6

Exhibit 1

Exhibit 1

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
(775) 788-2000
ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED

2020 JAN -2 PM 12:15

AUBREY ROWLATT
CLERK

DEPUTY

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

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

ORDER

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

//

//

PROCEDURAL BACKGROUND

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

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

The Commission will consist of seven Nevada voters, four who will be appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.

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

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

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he 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,

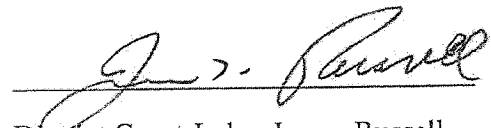
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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
21 ~~December, 2019.~~

22 
23 District Court Judge James Russell

24 Respectfully submitted by:

25 MCDONALD CARANO LLP

26 By: /s/ Adam Hosmer-Henner
27 Adam Hosmer-Henner, Esq. (NSBN 12779)
28 Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
Attorneys for Defendant Fair Maps PAC

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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

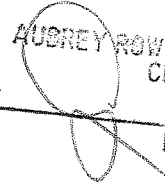
Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701



Chloe McClintick, Esq.
Law Clerk, Dept. 1

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED
2020 FEB 18 PM 4:49
AUDREY ROWLATT
CLERK
BY  DEPUTY

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

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

CASE APPEAL STATEMENT

Defendant Fair Maps Nevada PAC submits the following Case Appeal Statement pursuant to Nevada Rule of Appellate Procedure 3(f):

1. Name of appellants filing this case appeal statement:

Fair Maps Nevada PAC

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable James T. Russell, Jr., Department 1, First Judicial District Court, Carson City, Nevada.

//

//

//

//

3. Identify each appellant and the name and address of counsel for each appellant:

Respondent/Cross-Appellant

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
(775) 788-2000
ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Appellant/Cross-Respondent:
Rev. Leonard Jackson

Appellant/Cross-Respondent's Counsel:
Kevin Benson
Benson Law Nevada
123 W. Nye Lane, Suite 487, Carson City NV 89706

Additional Party Below:
BARBARA CEGAVSKE

GREG ZUNINO, ESQ.
Chief Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

Not applicable.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained.

1 7. Indicate whether appellant is represented by appointed or retained counsel on
2 appeal:

3 Retained.

4 8. Indicate whether appellant was granted leave to proceed in forma pauperis and the
5 date of entry of the district court order granting such leave:

6 Not applicable.

7 9. Indicate the date the proceedings commenced in the district court:

8 Appellant/Cross-Respondent filed his Complaint on November 26, 2019.

9 10. Provide a brief description of the nature of the action and result in the district court,
10 including the type of judgment or order being appealed and the relief granted by the
11 district court:

12 This cross-appeal, involving a ballot question under NRS 295.009, is from the District
13 Court's Order granting full relief in favor of Appellant/Cross-Respondent's challenge to
14 the description of effect of the petition in question.

15 11. Indicate whether the case has previously been the subject of an appeal to or original
16 writ proceedings in the Supreme Court and, if so, the caption and Supreme Court
17 docket number of the prior proceeding:

18 Not applicable.

19 12. Indicate whether this appeal involves child custody or visitation:

20 Not applicable.

21 13. If this is a civil case, indicate whether this appeal involves the possibility of
22 settlement:

23 This appeal has already been exempted from the Supreme Court settlement program and
24 should be placed on an expedited briefing schedule. Respondent/Cross-Appellant has
25 attempted to amicably resolve this litigation with Appellant/Cross-Respondent, who has
26 failed to respond to each inquiry.

27 //

28 //

AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239B.030, that the preceding document does not contain the social security number of any person.

Dated: February 18, 2020

McDONALD CARANO LLP

By: 

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
(775) 788-2000
ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on February 18, 2020, I served the foregoing on the parties in said case by placing a true copy of the foregoing **CASE APPEAL STATEMENT** in the United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501 addressed as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed to the parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2020 at Reno, Nevada.

By 
An Employee of McDonald Carano LLP

Judge: RUSSELL, JUDGE JAMES
TODD

Case No. 19 OC 00209 1B

Ticket No.
CTN:

JACKSON, REV LEONARD

By:

CEGAVSKE, BARBARA

DRSPND

-vs-

By: ATTORNEY GENERAL OFFICE
HEROE'S MEMORIAL BLDG.
CAPITOL COMPLEX
CARSON CITY, NV 89710Dob:
Lic:
FAIR MAPS NEVADA PACSex:
Sid:
DRSPND

By:

Dob:
Lic:
Sex:
Sid:Plate#:
Make:
Year: Accident:
Type:
Venue:
Location:

JACKSON, REV LEONARD

PLNTPET

Bond:
Type:Set:
Posted:

Charges:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	02/19/20	RECEIPT	1BCCOOPER	0.00	0.00
2	02/19/20	APPEAL BOND DEPOSIT Receipt: 64243 Date: 02/19/2020	1BCCOOPER	500.00	0.00
3	02/18/20	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
4	02/18/20	NOTICE OF CROSS-APPEAL Receipt: 64243 Date: 02/19/2020	1BCCOOPER	24.00	0.00
5	02/05/20	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
6	02/05/20	NOTICE OF APPEAL Receipt: 64083 Date: 02/05/2020	1BCCOOPER	24.00	0.00
7	01/07/20	SUMMARY JUDGMENT	1BSBARAJAS	0.00	0.00
8	01/06/20	NOTICE OF ENTRY OF ORDER	1BSBARAJAS	0.00	0.00
9	01/06/20	STIPULATED DISMISSAL	1BSBARAJAS	0.00	0.00
10	01/02/20	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BSBARAJAS	0.00	0.00
11	01/02/20	ORDER	1BSBARAJAS	0.00	0.00
12	12/23/19	HEARING HELD: The following event: PETITION HEARING scheduled for 12/23/2019 at 2:30 pm has been resulted as follows: Result: HEARING HELD Judge: RUSSELL, JUDGE JAMES TODD Location: DEPT I	1BJHIGGINS	0.00	0.00
13	12/20/19	REQUEST FOR SUBMISSION	1BJHIGGINS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
14	12/20/19	REPLY BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY RELIEF	1BJHIGGINS	0.00	0.00
15	12/20/19	WAIVER OF SERVICE	1BJHIGGINS	0.00	0.00
16	12/20/19	NOTICE OF APPEARANCE AS COUNSEL OF RECORD	1BJHIGGINS	0.00	0.00
17	12/18/19	DEFENDANT FAIR MAPS NEVADA PAC'S ANSWERING BRIEF IN RESPONSE TO PLAINTIFF'S OPENING BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	1BJULIEH	0.00	0.00
18	12/16/19	ORDER SETTING HEARING	1BVANESSA	0.00	0.00
19	12/13/19	ANSWER TO COMPLAINT FOR DECLARATORY RELIEF	DATA2	0.00	0.00
20	12/13/19	ACCEPTANCE AND WAIVER OF SERVICE	DATA2	0.00	0.00
21	12/10/19	ORDER TO SET FOR HEARING	1BJULIEH	0.00	0.00
22	12/06/19	RECEIPT	1BJULIEH	0.00	0.00
23	12/05/19	NOTICE OF ASSIGNMENT BY CLERK	1BCCOOPER	0.00	0.00
24	12/04/19	PEREMPTORY CHALLENGE OF JUDGE	1BCCOOPER	0.00	0.00
25	12/04/19	NOTICE OF APPEARANCE Receipt: 63163 Date: 12/05/2019	1BCCOOPER	218.00	0.00
26	12/02/19	ISSUING SUMMONS & ADD'L SUMMONS	1BCCOOPER	0.00	0.00
27	11/26/19	OPENING BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	1BCCOOPER	0.00	0.00
28	11/26/19	COMPLAINT FOR DECLARATORY RELIEF Receipt: 63081 Date: 11/27/2019	1BCCOOPER	265.00	0.00
Total:				1,031.00	0.00
Totals By: COST				531.00	0.00
HOLDING				500.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
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lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED ✓

2020 JAN -2 PM 12: 15

AUBREY ROWLATT
CLERK

DEPUTY

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

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

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BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

ORDER

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

//

//

PROCEDURAL BACKGROUND

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

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

The Commission will consist of seven Nevada voters, four who will be appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.

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

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

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he 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,

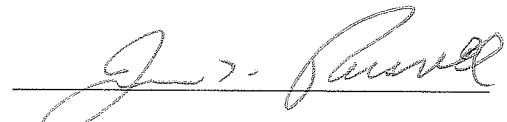
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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 ~~December~~ ^{January}, 2020.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:

24 MCDONALD CARANO LLP

25 By: _____/s/ Adam Hosmer-Henner
26 Adam Hosmer-Henner, Esq. (NSBN 12779)
27 Lucas Foletta, Esq. (NSBN 12154)
28 MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
Attorneys for Defendant Fair Maps PAC

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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701



Chloe McClintick, Esq.
Law Clerk, Dept. 1

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
(775) 788-2000
ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED ✓
2020 JAN -6 PM 3:25
AUBREY ROWLATT
CLERK
BY *[Signature]*
DEPUTY

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

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on January 2, 2020, the above-entitled Court entered its
Order. A true and correct copy of that Order is attached hereto.

Dated: January 6, 2020

MCDONALD CARANO LLP

By:

[Signature]
Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Defendant Fair Maps PAC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on January 6, 2020, I served the foregoing on the parties in said case by placing a true copy thereof in the United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501 addressed as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

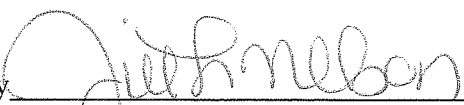
Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Barbara Cegasvke, Nevada Secretary of State
202 N. Carson Street
Carson City, NV 89701

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed to the parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2020 at Reno, Nevada.

By 
An Employee of McDonald Carano LLP

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
McDONALD CARANO
100 West Liberty Street, 10th Floor
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(775) 788-2000
ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED

2020 JAN -2 PM 12: 15

AUBREY ROWLATT
CLERK

BY  DEPUTY

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

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

ORDER

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

//

//

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

The Commission will consist of seven Nevada voters, four who will be appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.

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

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

170

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

LEGAL STANDARDS

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

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

In reviewing a description of effect, "it is inappropriate to parse the meanings of the 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,

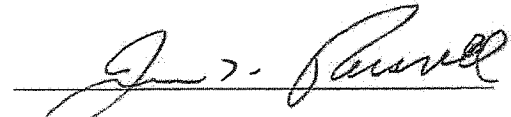
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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} ~~December~~, 2020.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:

24 McDONALD CARANO LLP

25 By: /s/ Adam Hosmer-Henner
26 Adam Hosmer-Henner, Esq. (NSBN 12779)
27 Lucas Foletta, Esq. (NSBN 12154)
28 McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
Attorneys for Defendant Fair Maps PAC

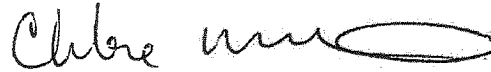
CERTIFICATE OF MAILING

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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701



Chloe McClintick, Esq.
Law Clerk, Dept. 1

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 19 OC 00209 1B

TITLE: REV. LEONARD JACKSON VS FAIR
MAPS NEVADA PAC, AND BARBARA
CEGAVSKE, IN HER OFFICIAL
CAPACITY AS NEVADA SECRETARY
OF STATE

12/23/19 – DEPT. I – HONORABLE JAMES T. RUSSELL
J. Higgins, Clerk – Not Reported

PETITION FOR DECLARATORY RELIEF

Present: Kevin Benson, counsel for Petitioner; Adam Hosmer-Henner, counsel for Fair Maps;
Gregory Zunino, Deputy A.G.

Statements were made by Court.

Benson and Hosmer-Henner present arguments.

Statements were made by Court.

COURT ORDERED: It likes alternative number two with the following change. It doesn't like the word "independent", it is removing that. It also likes the fact to remove "fair and competitive" because it doesn't know how these districts are going to come about and where they are going to end up. The balance of number two it likes except the end of it "this amendment will require redistricting beginning in 2023", it can't do much about that. It likes the language "which will result in the expenses of state funds to fund the commission".

Statements were made by Court and Zunino.

COURT ORDERED: Benson and Hosmer-Henner to prepare Orders for the Court and provide them to the Court within 10 days.

Statements were made by Court and Benson who clarified that the Court is not requiring that it include the language that it is going to undo what was done in 2021.

COURT ORDERED: No, it doesn't know how they are going to fix that, 2023 is going to be what it is.

Hosmer-Henner indicated they could include a statement that it would require a redistricting in 2023 which could replace the legislative maps in 2021.

COURT ORDERED: You can add that if you want, that clarifies it.

Statements were made by Court.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

DISTRICT COURT CIVIL COVER SHEET

Carson City County, Nevada

Case No. 19DC0030913
(Assigned by Clerk's Office)

REC'D & FILED

2019 NOV 26 PM 3:43

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Rev. Leonard Jackson</div>	Defendant(s) (name/address/phone): <div style="text-align: center;"> Fair Maps Nevada PO Box 751271 Las Vegas, NV 89136 </div>
Attorney (name/address/phone): <div style="text-align: center;"> Kevin Benson - 123 W. Nye Lane, #487 Carson City, NV 89706 (775) 884-0838 </div>	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Foreclosure Mediation Assistance <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-\$20,000 <input type="checkbox"/> \$2,500 or less	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

11/26/2019

Date



Signature of initiating party or representative

See other side for family-related case filings.

1 the description of effect's characterization of the commission as independent and the districts it
2 will be asked to generate as fair and competitive is improper. Op. Br. 8-10.

3 **A. Describing the Redistricting Commission as Independent is Neither**
4 **Deceptive nor Misleading.**

5 Plaintiff asserts that the redistricting commission described in the Petition is not
6 independent because a majority of its members will be appointed by legislative leadership and
7 because the Legislature will determine whether and to what extent to fund the commission. Op.
8 Br. 4-9. Plaintiff asserts that the Petition would allow the Legislature "to exercise substantial, if
9 not total, control over the Commission by determining whom to appoint and how or whether to
10 fund the Commission." *Id.* at 9. Plaintiff then contends that because the commission does not
11 meet his definition of independent, the description of effect's reference to the creation of an
12 "independent redistricting commission" is misleading and deceptive because the commission
13 will not be immune from the political influence of the Legislature. *Id.* at 8-9.

14 The Nevada Supreme Court has held that in reviewing a description of effect, the court
15 "must take a holistic approach to determine whether the description is a straightforward,
16 succinct, and nonargumentative summary of an initiative's purpose and how that purpose is
17 achieved." *Educ. Initiative PAC*, 129 Nev. at 48, 293 P.3d at 883. This is the opposite of
18 Plaintiff's textual approach that turns on differing definitions of the word independent. Plaintiff
19 asks the Court to do exactly what the Nevada Supreme Court has said it cannot do—parse the
20 meanings of words or phrases in the Petition. *See id.*

21 The description of effect states clearly the purpose of the Petition: to amend the Nevada
22 Constitution to establish an independent redistricting commission to oversee the mapping of fair
23 and competitive electoral districts in Nevada. Ex. 1. It states with equal clarity how that purpose
24 will be achieved: (1) by ensuring that the commission is composed of a bipartisan group of
25 Nevada voters; (2) by requiring transparency in the mapping process; and (3) by providing
26 specific criteria for the commission to employ in drawing electoral districts. *Id.*

27 Contrary to Plaintiff's assertions, the characterization of the redistricting commission as
28 independent is not only accurate but entirely consistent with the purpose of the Petition. In the

1 context of the Petition, independence connotes the fact that the decisions of the commission will
2 not be subject to substantive control, oversight, or review of the Legislature. Toward this end,
3 the Petition explicitly removes the mapping responsibility from the Legislature, stating that
4 “[t]he powers granted to the Commission are legislative functions not subject to *the control or*
5 *approval of the Legislature and are exclusively reserved to the Commission.*” Ex. 1 (emphasis
6 added). Thus, the Legislature has no authority to review, modify or amend those decisions,
7 rendering the acts of the commission independent of the Legislature’s control. That the
8 Legislature will appoint four of the seven members of the commission and have some control
9 over its funding level does not change this fact.

10 Plaintiff’s citation to *Las Vegas Taxpayer Accountability Committee v. City Council of*
11 *Las Vegas*, 125 Nev. 165, 208 P.3d 429 (2009), is unpersuasive. While Plaintiff correctly points
12 out that in that case the Nevada Supreme Court found the description of effect at issue to be
13 misleading and deceptive, it did so because “the description of effect materially fails to
14 accurately identify the consequences of the referendum’s passage.” *Id.* at 184, 208 P.3d at 441.
15 The material failure identified by the court was that the petition at issue would have affected all
16 redevelopment plans, not just new redevelopment plans as stated by the description of effect. *Id.*
17 In this case, the characterization of the commission as independent cannot reasonably be
18 construed to be a material failure to identify a consequence of the passage of the Petition.
19 Independent is merely an adjective used to describe the nature of the commission. Plaintiff may
20 disagree with the characterization, but the characterization in no way supports the conclusion
21 that an effect of the Petition is not included.

22 Even if Plaintiff could persuade the Court that the term independent was misleading, the
23 description of effect can be amended to incorporate this finding by modifying or excising the
24 term.

25 **B. The Petition Promotes Fair and Competitive Electoral Districts.**

26 Plaintiff opposes the Petition and argues that it will not result in fair and competitive
27 electoral districts. Op. Br. 9. Plaintiff’s argument is not tied to the test that this Court must
28 employ in evaluating the description of effect. As the Nevada Supreme Court has held, the

description of effect “need not be the best possible statement of a proposed measure’s intent,” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 889, 141 P.3d 1224, 1232 (2006), but “must be a straightforward, succinct, and nonargumentative statement of what the initiative will accomplish and how it will achieve those goals,” *Educ. Initiative PAC*, 129 Nev. at 38, 293 P.3d at 876. In this case, the description informs the reader about the purpose of the Petition as the establishment of an independent redistricting commission to oversee the adoption of fair and competitive electoral maps. Ex. 1. And, it further specifies how the commission will do that. *Id.* While Plaintiff is entitled to his opinion about whether the process contemplated will, in fact, result in fair and competitive maps, the ultimate result is not relevant to whether the description of effect accurately states the Petition’s purpose and how it intends to achieve it. Plaintiff does not call into question the accuracy of the description of effect as a summary of the purpose of the Petition, but instead registers disagreement with the likelihood that the structure of the Petition will bring that purpose to fruition. That is not the legal test as it is a decision for the voters.

Plaintiff’s attempt to support his argument by claiming that the Petition invites or allows various types of unfairness—in particular, partisan bias—is unavailing. Op. Br. 10. Plaintiff’s argument turns on his assertion that various types of unfairness *could* affect the commission’s processes such that the electoral maps it draws do not meet his definition of fair and competitive. Here, again, Plaintiff’s argument fails because it is a critique of the Petition and not the description of effect.

Even if Plaintiff could persuade the Court that the description of effect is invalid as related to the definitions of fair and competitive, the description of effect can be amended to incorporate the Court’s findings.

C. Any Financial Impact of the Petition Is Hypothetical, Arguable, and Not a Significant Aspect of the Petition.

Plaintiff cannot do any more than guess as to whether the Petition will increase or decrease the costs of redistricting in Nevada. The Nevada Constitution currently imposes a “mandatory duty” upon the Nevada Legislature “at its first session after the taking of the decennial census” to apportion the “number of Senators and Assemblymen . . . among legislative

1 districts which may be established by law, according to the number of inhabitants in them.” Nev.
2 Const. art. 4, § 5. Plaintiff does not provide the Court with any facts that could be determined
3 with certainty as to how the administrative costs of redistricting would be affected by the
4 Petition. Thus, these arguments should be reserved for the committees preparing the “pros and
5 cons for the ballot.” *Educ. Initiative PAC*, 129 Nev. at 45, 293 P.3d at 881.

6 A description of effect “does not necessarily need to explain every effect, or hypothetical
7 effects, but it does need to accurately set forth the main consequences of the referendum's
8 passage.” *No Solar Tax PAC v. Citizens for Solar & Energy Fairness*, No. 70146, 2016 WL
9 4182739, at *2 (Nev. Aug. 4, 2016). Plaintiff challenges the description of effect as failing to
10 inform voters of certain costs allegedly associated with the commission. Op. Br. 10. Plaintiff
11 claims redistricting is expensive but that the Petition fails to identify and describe these costs,
12 and he further claims the process contemplated by the Petition will result in additional litigation
13 costs. *Id.* at 10-11. He also claims that the Petition fails to note that the commission “will ‘undo’
14 whatever maps are drawn by the Legislature in 2021,” which will result in additional costs. *Id.*
15 Because these are all hypothetical effects based on Plaintiff’s unfounded speculation, they need
16 not be included in the description of effect.

17 Plaintiff’s argument regarding costs is based solely on his unsupported assertion that
18 certain hypothetical effects should be referenced in the description of effect. Op. Br. 12 (listing a
19 practical consequence as “potentially doubling the cost of redistricting for the 2020 census”).
20 First, there is no certainty that the proposed amendment would increase the costs of redistricting
21 and it is equally or more probable that the costs of redistricting would be reduced. The Petition
22 establishes a single redistricting process for each census cycle, while the Legislature can
23 currently re-draw the lines as many times as the Legislature deems appropriate. Moreover, the
24 cost of legislative redistricting can be very high for taxpayers, especially if the Legislature is
25 required to work in a special session. Second, there is no requirement that the Commission
26 “undo” any maps drawn by the Legislature in 2021. Op. Br. 11. The Commission has the option
27 to adopt the same maps drawn by the Legislature if the maps comply with the proposed
28 amendment. What the Legislature and Commission may choose to do in the future is not an

1 effect that can be definitively conveyed to voters. Finally, Plaintiff's assertion that there will be
2 more litigation because of the standard imposed by the Petition is pure speculation. Legislative
3 redistricting regularly draws legal challenges both in Nevada and nationally.

4 The administrative costs of redistricting are not part of the primary purpose of the
5 Petition, nor do they represent a significant effect of the Petition. In *Coalition for Nevada's*
6 *Future v. RIP Commerce Tax, Inc., PAC*, the Nevada Supreme Court found that the referendum
7 would "unbalance the state budget," No. 69501, 2016 WL 2842925, at *4 (Nev. May 11, 2016),
8 and in *Prevent Sanctuary Cities v. Haley*, the Nevada Supreme Court found that the initiative
9 would "limit the power of local governments to address matters of local concern by impinging
10 on their ability . . . to implement and carry out city programs and functions for the effective
11 operation of local governments, such as policies regarding public health and safety." No. 74966,
12 2018 WL 2272955, at *4 (Nev. May 16, 2018) (quotation marks omitted). The hypothetical and
13 arguable administrative costs of the Petition are not of the same scope, import, or certainty as the
14 above cases.

15 Even if Plaintiff could persuade the Court that the description of effect is invalid as
16 related to the costs of redistricting, the description of effect can be amended to incorporate the
17 Court's findings.

18 **D. The Court Can Amend the Description of Effect to Address Plaintiff's**
19 **Concerns.**

20 The proponent of an initiative is afforded the opportunity to amend a description of
21 effect to resolve any inadequacies identified by the Court. NRS 295.061(3). While the
22 description of effect contained within the Petition is legally sufficient and holistically sound, in
23 order to reach an amicable resolution and expedite the proceedings, Fair Maps has proactively
24 drafted five alternative descriptions of effect for the Court's consideration. Ex. 2. Should the
25 Court determine that the Petition's description of effect requires amendment, Fair Maps requests
26 that the Court consider one of the alternative descriptions of effect or further revise the
27 description of effect in accordance with the Court's findings.
28

1 In no event is Plaintiff entitled to the requested relief of prohibiting the Petition from
2 appearing on the ballot. Such a result would deny the people's right to propose amendments to
3 their principal governing document.

4 **V. CONCLUSION**

5 For all of the above reasons, the Court should deny Plaintiff's attempt to keep the
6 Petition off the ballot.

7 Dated this 17th day of December, 2019.

8 **AFFIRMATION**

9 The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding
10 document does not contain the social security number of any person.

11
12 MCDONALD CARANO LLP

13 By: 

14 Adam Hosmer-Henner, Esq. (NSBN 12779)
15 Lucas Foletta, Esq. (NSBN 12154)
16 MCDONALD CARANO
17 100 West Liberty Street, 10th Floor
18 Reno, NV 89501

19 *Attorneys for Defendant Fair Maps PAC*
20
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25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on December 17, 2019, I served the foregoing on the parties in said case by placing a true copy thereof in the United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501 addressed as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Barbara Cegasvke, Nevada Secretary of State
202 N. Carson Street
Carson City, NV 89701

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed to the parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2019 at Reno, Nevada.

By 
An Employee of McDonald Carano LLP

INDEX OF EXHIBITS

EXHIBIT #	DESCRIPTION	NUMBER OF PAGES
1	Petition	6
2	Proposed Alternative Descriptions	5

MCDONALD  **CARANO**

100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

State of Nevada - Initiative Petition – Constitutional Amendment

C-02-2019

FILED.NV.SOS
2019 NOV 4 PM4:16

EXPLANATION: Matter in ***bolded italics*** is new language to be added to the Nevada Constitution by this Amendment. Matter in ~~strikethrough~~ is existing language in the Nevada Constitution to be deleted by this Amendment.

The People of the State of Nevada do enact as follows:

Section 1: Article 4, Section 5 of the Nevada Constitution is hereby amended to read as follows:

Section 5. Number of Senators and members of Assembly; ~~apportionment~~. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third nor more than one-half of that of the members of the Assembly.

It shall be the mandatory duty of the Legislature at its first session after the taking of the decennial census of the United States in the year 1950, and after each subsequent decennial census, to fix by law the number of Senators and Assemblymen, ~~and apportion them among the several counties of the State, or among legislative districts which may be established by law, according to the number of inhabitants in them, respectively.~~

Section 2: Article 4 of the Nevada Constitution is hereby amended by adding thereto new sections to be designated as Sections 5A, 5B and 5C, to read as follows:

Section 5A. Apportionment; Creation of Independent Redistricting Commission.

1. *There is created within the legislative branch of state government the Independent Redistricting Commission. It shall be the duty of the Commission in the year 2023, and after each subsequent decennial census of the United States, to apportion the number of Senators and Assemblymen among legislative districts established by the Commission and to apportion the number of representatives in the United States House of Representatives among districts established by the Commission.*
2. *The Commission shall be composed of seven members who are registered and eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3. The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader shall each appoint one Commissioner. The four Commissioners appointed in this manner shall appoint three additional Commissioners, each of whom, for at least four years immediately preceding their appointment, has not been registered or affiliated with the largest political party or the second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.*
3. *Within four years preceding appointment and during their term, no Commissioner may be a registered lobbyist; a candidate for a federal, state, or partisan local office; an elected official to a federal, state, or partisan local office; an officer or member of the governing body of a national, state, or local political party; a paid consultant or employee of a federal, state, or partisan local elected official or candidate, or of a political action committee, or of a committee sponsored by a political party, or of a committee that seeks to influence elections to federal, state, or partisan local offices; an employee of the Legislature; an employee of the State of Nevada, except for employees in the judicial branch, the armed forces, or a state institution of higher education; or related within the third degree of consanguinity or affinity to any individual disqualified under this subsection.*
4. *The term of office of each Commissioner shall expire once the Commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete and shall expire no later than the release of the following decennial census of the United States.*

5. All meetings of the Commission shall be open to the public. The Commission shall ensure that the public has opportunities to view, present testimony, and participate in hearings before the Commission. All Commission materials shall be public records.
6. The Commission shall adopt rules to govern its administration and operation.
7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

Section 5B. Criteria for Determination of Districts; Approval of Final Plans.

1. In adopting a redistricting plan, the Independent Redistricting Commission shall use the following criteria, in the order listed, to draw districts: Ensure that districts comply with the United States Constitution and applicable federal law; Ensure that districts have an approximately equal number of inhabitants; Ensure that districts are geographically contiguous; Ensure that districts are not drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or elect representatives of their choice, whether by themselves or voting in concert with other persons; Ensure that districts, when considered on a statewide basis, do not unduly advantage or disadvantage a political party; Ensure that districts reflect, to the extent possible, county, city, and township boundaries; Minimize, to the extent practicable, the division of communities of interest, meaning an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities, but not including common relationships with political parties or political candidates; Ensure that districts are reasonably compact; and to the extent practicable, after complying with the requirements above, consider the number of politically competitive districts, measured by creating a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses.
2. Not later than July 1, 2023, and thereafter not later than 180 days from the release of the decennial census of the United States, the Commission shall approve a redistricting plan for the Nevada State Senate, the Nevada State Assembly, and Nevada's Congressional Districts, after providing public notice of each proposed final plan and allowing sufficient time for public review and comment. A final plan may be approved by the Commission only upon at least five affirmative votes, including at least one Commissioner registered with the largest political party, one Commissioner registered with the second largest political party, and one Commissioner not registered or affiliated with the largest or second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year.

Section 5C. Severability.

Should any part of this Amendment be declared invalid, or the application thereof to any person, thing, or circumstance be held invalid, such invalidity shall not affect the remaining provisions or application of this Amendment which can be given effect without the invalid provision or application, and to this end the provisions of this Amendment are declared to be severable. This Section shall be construed broadly to preserve and effectuate the purpose of this Amendment.

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

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

The Commission will consist of seven Nevada voters, four who will be appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.

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

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

County of _____ (Only registered voters of this county may sign below)
 Petition District _____ (Only registered voters of this petition district may sign below)

This Space For
Office Use Only

1	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE ____/____/____		CITY _____ COUNTY _____		
2	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE ____/____/____		CITY _____ COUNTY _____		
3	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE ____/____/____		CITY _____ COUNTY _____		
4	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE ____/____/____		CITY _____ COUNTY _____		
5	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE ____/____/____		CITY _____ COUNTY _____		

DESCRIPTION OF EFFECT

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

The Commission will consist of seven Nevada voters, four who will be appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.

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

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

County of _____
Petition District _____

(Only registered voters of this county may sign below)

(Only registered voters of this petition district may sign below)

This Space For
Office Use Only

6	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY	COUNTY
7	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY	COUNTY

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)

COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____
(print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this
_____ day of _____, _____ by _____.

Notary Public or person authorized to administer oath

**NOTICE OF INTENT TO CIRCULATE
STATEWIDE INITIATIVE OR
REFERENDUM PETITION**

FILED NV.SOS
2019 NOV 4 PM 4:14

State of Nevada



Secretary of State Barbara K. Cegavske

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Sondra Cosgrove

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

- 1.
- 2.
- 3.

Sondra Cosgrove

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (If none, leave blank)

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X

Signature of Petition Filer

Date

11/4/2019

Exhibit 2 – Proposed Alternative Descriptions of Effect

Alternative 1

A. Redline Version

This measure will amend the Nevada Constitution to establish an ~~Independent Redistricting Commission~~ a citizen redistricting commission to oversee the mapping of fair and competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will ~~have consist of seven Nevada voters~~ members, four who will be appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public ~~who shall have opportunities to participate in hearings before the Commission.~~

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

This amendment will require redistricting by the Commission beginning in 2023 and ~~thereafter following each federal census and~~ may, but is not certain to, result in the expenditure of state funds that would not have otherwise been spent.

B. Clean Version

This measure will amend the Nevada Constitution to establish a citizen redistricting commission to oversee the mapping of electoral districts for the Nevada Senate, Assembly, and U.S. House of Representatives.

The Commission will have seven members, four appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public. The Commission will ensure, to the extent possible, that the districts comply with the U.S. Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language minorities to participate in the political process, respect areas with recognized similarities of interests, including racial, ethnic, economic, social, cultural, geographic, or historic identities, do not unduly advantage or disadvantage a political party, and are politically competitive.

This amendment will require redistricting by the Commission beginning in 2023 and following each federal census and may, but is not certain to, result in the expenditure of state funds that would not have otherwise been spent.

Alternative 2

A. Redline Version

This measure will amend the Nevada Constitution to establish an Independent Redistricting Commission—a redistricting commission—to oversee the mapping of fair and competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will ~~consist of~~ have seven members Nevada voters, four who will be appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. ~~All~~ Meetings of the Commission shall be open to the public—who shall have opportunities to participate in hearings ~~before the Commission~~.

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

This amendment will require redistricting ~~by the Commission~~ beginning in 2023 and ~~thereafter following~~ after each federal census and may, but is not certain to, increase the cost of redistricting in the short term.

B. Clean Version

This measure will amend the Nevada Constitution to establish a redistricting commission to oversee the mapping of electoral districts for the Nevada Senate, Assembly, and U.S. House of Representatives.

The Commission will have seven members, four who will be appointed by the leadership 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, lobbyists, or certain relatives of such individuals. Meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings.

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

This amendment will require redistricting beginning in 2023 and after each federal census and may, but is not certain to, increase the cost of redistricting in the short term.

Alternative 3

A. Redline Version

This measure will amend the Nevada Constitution to establish ~~an Independent Redistricting Commission~~ a citizen redistricting commission to oversee the mapping of fair and competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will ~~consist of~~ have seven Nevada voters ~~members~~, four who will be appointed by a bipartisan group of Nevada legislators ~~the leadership of the Nevada Legislature,~~ and three who ~~will be~~ are unaffiliated with the two largest political parties who will be appointed ~~appointed by the other four commissioners.~~ The legislator appointed commissioners are prohibited from appointing commissioners that are affiliated with the two largest political parties. Commissioners may not be partisan candidates, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.

The mapping of electoral districts by the commission will ensure to the extent practicable against the influence of partisan politics in the creation of electoral districts. The Commission will be legally bound to

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

~~This amendment will require redistricting by the Commission beginning in 2023 and thereafter following each federal census may, but is not certain to, require the expenditure of additional state funds on redistricting.~~

B. Clean Version

This measure will amend the Nevada Constitution to establish a citizen redistricting commission to oversee the mapping of electoral districts for the Nevada Senate, Assembly, and U.S. House of Representatives.

The Commission will have seven members, four who will be appointed by a bipartisan group of Nevada legislators and three who will be appointed by the other four commissioners. The legislator appointed commissioners are prohibited from appointing commissioners that are affiliated with the two largest political parties. Commissioners may not be partisan candidates, lobbyists, or certain relatives of such individuals.

The mapping of electoral districts by the commission will ensure to the extent practicable against the influence of partisan politics in the creation of electoral districts. The Commission will be legally bound to ensure, to the extent possible and among other things, that the electoral districts comply with the United States Constitution, provide equal opportunities for racial and language minorities to participate in the political process, respect areas with recognized similarities of interests, including racial, ethnic, economic, social, cultural, geographic, or historic identities, and are politically competitive.

This amendment will require redistricting beginning in 2023 and may, but is not certain to, require the expenditure of additional state funds on redistricting.

Alternative 4

A. Redline Version

This measure will amend the Nevada Constitution to establish an Independent Redistricting Commission ~~a commission that will to oversee the mapping of fair and competitive~~ draw the electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will consist of seven Nevada voters, four who will be appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by the other four commissioners ~~those four~~. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals ~~partisan candidates, lobbyists, or certain relatives of such individuals~~. The Commission will require funding by the legislature to perform its duties. All meetings of the Commission ~~meetings shall~~ will be open to the public, ~~who and the public will~~ shall have opportunities to participate in hearings before the Commission ~~hearings~~.

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

This amendment will require the redrawing of districts in 2023 and after each federal census, ~~redistricting by the Commission beginning in 2023 and thereafter following each federal census~~.

B. Clean Version

This measure will amend the Nevada Constitution to establish a commission that will draw the electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will consist of seven Nevada voters, four who are appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by those four. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals. The Commission will require funding by the legislature to perform its duties. Commission meetings will be open to the public, and the public will have opportunities to participate in Commission hearings.

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

This amendment will require the redrawing of districts in 2023 and after each federal census.

Alternative 5

A. Redline Version

This measure will amend the Nevada Constitution to establish an ~~Independent Redistricting Commission~~ a commission to oversee the mapping of fair and competitive ~~draw the~~ electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will consist of seven Nevada voters, four who ~~will be~~ are appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by the ~~other four commissioners~~ those four. Commissioners may not be ~~elected officials, candidates, lobbyists, or certain relatives of such individuals~~ partisan candidates, lobbyists, or certain relatives of such individuals. The Commission will require funding by the legislature to perform its duties. All meetings of the Commission meetings shall ~~will be~~ open to the public ~~who shall have opportunities to~~ who may participate in hearings before the Commission hearings.

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

This amendment ~~will require~~ requires the redrawing of districts in 2023 and after each federal census. ~~redistricting by the Commission beginning in 2023 and thereafter following each federal census, and may require expending additional state funds on redistricting.~~

B. Clean Version

This measure will amend the Nevada Constitution to establish a commission to draw the electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will consist of seven Nevada voters, four who are appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by those four. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals. The Commission will require funding by the legislature to perform its duties. Commission meetings will be open to the public who may participate in Commission hearings.

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

This amendment requires the redrawing of districts in 2023 and after each federal census and may require expending additional state funds on redistricting.

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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**

10 REV. LEONARD JACKSON,

11 Plaintiff,

12 v.

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

15 Defendants.

Case No.: 19 OC 00209 1B

Dept. No.: II

WAIVER OF SERVICE

17 On behalf of Defendant Barbara Cegavske, in her official capacity as Nevada Secretary of
18 State, the undersigned counsel hereby acknowledges that said defendant has received a copy of the
19 Complaint for Declaratory Relief and the Opening Brief in this matter, and hereby waives service of
20 the summons and complaint.

21 Dated: 12/2/2019


(Signature of party or attorney)

23 Gregory L. Zuniga (4805)
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C. COOPER CLERK
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6
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 v.

Case No.: 19 OC 00209 1B

Dept. No.: I

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

**REPLY BRIEF IN SUPPORT OF
COMPLAINT FOR
DECLARATORY RELIEF**

16
17 Plaintiff, Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of BENSON
18 LAW, LLC, hereby replies to Defendant's Answering Brief and requests that the Court order that the
19 Petition #C-02-2019 does not comply with the requirements of state law and therefore cannot appear
20 on the general election ballot for 2020.

21 **I. INTRODUCTION**

22 The core purpose of the description of effect is to accurately summarize what the petition will
23 do, in order to "prevent voter confusion and promote informed decisions." *Nevadans for Nev. v.*
24 *Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006). This challenge is not a debate about the wisdom
25 of the policy that the Petition proposes. Instead, this challenge was brought to prevent Defendant
26 from misleading voters by telling them its Petition will do something that it will not do.

27 As described in the Opening Brief, other states have created independent redistricting
28 commissions. The commission that this Petition would create bears no resemblance whatsoever to

1 those independent commissions. If Defendant wants to pursue a policy of creating a non-independent
2 additional arm of the Legislature to perform redistricting, it is free to do so. But it cannot tell voters
3 that it is creating an independent commission, and that the commission will create fair and
4 competitive maps, when it will not.

5 6 II. ARGUMENT

7 A. The Description of Effect is Misleading Because the Commission Would Not be 8 Independent.

9 Defendant argues that the Description of Effect is not misleading because the Commission
10 would be "independent" in the sense that it is not entirely controlled by the Legislature. *See*
11 Answering Brief, pp. 6-7. Defendant points to Section 5A (7) of the Petition, which states: "The
12 powers granted to the Commission are legislative functions not subject to the control or approval of
13 the Legislature and are exclusively reserved to the Commission." Answering Brief, p. 7.

14 Essentially, Defendant is arguing that the Commission is "independent" simply because the
15 Legislature does not directly approve or reject the Commission's plan. That is a very unusual and
16 constrained definition of "independent," and certainly not one that the typical voter would
17 understand. "Independent" is defined as "[f]ree from outside control; not depending on another's
18 authority." Oxford English Dictionary, <https://www.lexico.com/en/definition/independent> Voters
19 expect that an "independent" institution is one which is, in practical terms, insulated from political
20 influences and pressures.

21 On that point, Defendant concedes that the Legislature would directly appoint a majority of the
22 commissioners and that the Legislature would have "some control" over its funding.¹ Answering
23 Brief, p. 7. Nor does Defendant contest the fact that this Commission is not in any way similar to
24 independent commissions in other states. For example, Defendant does not contest that there is no
25 mechanism for ensuring actual independence of the commissioners, the Petition allows politically-

26
27 ¹ Defendant does not explain how the Legislature has only "some" control, rather than total control of
28 the Commission's funding, as discussed in the Opening Brief, pp. 6-8.

1 connected and ambitious people to serve on the commission, and that it does not prevent
2 commissioners from immediately running for a district that they just drew.

3 Instead, Defendant argues that “independent” is “merely an adjective” and that characterizing
4 this Commission as “independent” is not material, and that it is improper for this Court to “parse”
5 such words in the Description of Effect. *See* Answering Brief, p. 7. This argument must be rejected.

6 It is apparent that the Defendant itself does not treat “independent” as merely an adjective.
7 Instead, the Petition states that it would create the “Independent Redistricting Commission.” It uses
8 “independent” as part of a proper noun, the very title of the Commission, in both the description of
9 effect and the proposed language.² As discussed in the Opening Brief, there is a clear and substantial
10 difference in policy between creating an actually independent commission, as other states have done,
11 versus what is proposed here, which is essentially an additional arm of the legislative branch that is
12 subject to legislative control and political influences. Thus the Defendant’s mischaracterization of the
13 nature of the Commission is material.

14 If Defendant wants to pursue the policy of creating a non-independent additional arm of the
15 Legislature to perform redistricting, it is of course free to do so. Whether that is good policy or bad
16 policy is not this issue here. The issue here is that Defendant cannot tell voters that it is creating an
17 independent commission when it is not.

18 Contrary to Defendant’s argument, this case is very similar to *Las Vegas Taxpayer*
19 *Accountability Comm. v. City Council*, 125 Nev. 165, 183-84, 208 P.3d 429 (2009). There, the
20 description of effect stated that the referendum would only apply to new redevelopment plans, when
21 it would actually apply to all redevelopment plans. The description was therefore simply wrong.
22 Here, the Description of Effect is also simply wrong because the Commission is not independent, and
23 Defendant does not seriously contend otherwise. Instead, it attempts to convince the Court to allow it
24 to redefine the concept of “independent” in an implausible and misleading way. That violates the

25
26 ² Surely it would have also put “independent” in the title of the Petition, but the Secretary of State no
27 longer allows petition proponents to assign their own titles to initiatives, and instead assigns it a
28 misleading title.

1 very purpose of the description of effect, which is to “prevent voter confusion and promote informed
2 decisions.” *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006).

3 In this case, it is the Defendant who is trying to “parse” the meaning of the word, rather than
4 taking a “holistic” approach to determine whether the Description of Effect is “a straightforward,
5 succinct, and non-argumentative summary” that “is correct and does not misrepresent what the
6 initiative will accomplish.” *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 48, 293
7 P.3d 874, 883 (2013).

8 **B. The Description of Effect would mislead voters into believing that the Commission**
9 **will create fair and competitive electoral districts.**

10 1. Partisan fairness and political competitiveness.

11 With respect to partisan fairness and competitive electoral districts, Defendant again does not
12 really dispute that the Commission is *not* required to create fair and competitive districts, as discussed
13 in the Opening Brief, pp. 9-10. Instead, Defendant asserts that that doesn’t matter because Nevada
14 law requires that a description of effect only describe the *purpose* of the petition, not its effect. *See*
15 Answering Brief, p. 8. Defendant goes so far as to argue that “...the ultimate result is not relevant to
16 whether the description of effect accurately states the Petition’s purpose and how it intends to achieve
17 it.” Answering Brief, p. 8, ll. 9-10.

18 This is backwards of course. Defendant has, intentionally or not, substituted the word
19 “purpose” for “effect.” Nevada law is clear that the “ultimate result” (i.e., the effect) is exactly what
20 the description of **effect** must describe. *See e.g., Education Initiative*, 129 Nev. at 48 (the description
21 of effect must describe “what the initiative will accomplish,” not what its purpose is); *Las Vegas*
22 *Taxpayer*, 125 Nev. at 183-84, 208 P.3d at 441 (striking down description of effect that did not
23 accurately describe the petition’s “true effect”).

24 In *Coal. for Nev.’s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS
25 153, at *10 (May 11, 2016) (unpublished decision – NRAP 36(c)), the purpose of the petition was to
26 repeal the commerce tax, and the description of effect stated that the effect of the petition would be a
27 repeal of the tax. Nevertheless, the Nevada Supreme Court struck down the description of effect
28

1 because it did not disclose the actual, practical effect: that the repeal would unbalance the state
2 budget. *Id.*

3 Thus, contrary to Defendant's argument, the "purpose" behind a petition is immaterial. The
4 best intentions or the noblest purpose are not an excuse for drafting an inaccurate and misleading
5 description of effect.

6 To the extent that Defendant is arguing that it is merely hypothetical that the Commission's
7 maps would not be fair or competitive, that argument again misses the mark and misapprehends the
8 Plaintiff's argument. *See* Answering Brief, p. 8, ll. 14-22. As discussed in the Opening Brief, pp. 9-
9 10, the Petition is invalid because it tells voters that it will create a Commission that will draw fair
10 and competitive maps, when the Petition actually contains no requirements that the Commission do
11 so. This is not a critique of the policy set forth in the Petition. It is a critique of the Description of
12 Effect for misrepresenting *what* policy the Petition would enact.

13 Again, if Defendant wishes pursue the policy of creating a Commission that is not required to
14 deal with partisan gerrymandering, that is its prerogative. But it cannot tell voters that the
15 Commission will adopt politically fair maps when it is not actually required to do so.

16 2. The Commission's composition does not fairly represent Nevada's demographics.

17 As discussed in the Opening Brief, p. 10, the Petition contains no requirements that the
18 Commission must be fairly representative of Nevada's demographics. This is true both in terms of
19 racial, language, and geographic demographics, and also in political or partisan demographics.

20 With respect to partisan demographics, the Petition would enshrine in the Nevada Constitution
21 power over the majority of the Commission to the two major parties. The three remaining
22 commissioners must either be members of minor parties, or nonpartisan. All minor party voters,
23 combined, comprise 6.5% of Nevada voters.³ The percentage of voters registered as Democrats is
24 38% and the percentage of Republicans is 32%. Voters registered as nonpartisan make up almost
25

26
27 ³ Nevada Voter Registration Statistics, November 2019, available at:
28 <https://www.nvsos.gov/sos/home/showdocument?id=8166>

23% of all voters, and that percentage has been steadily rising.⁴ If this trend continues, nonpartisan voters will be a full third (or more) of all registered voters by 2021. Yet there is no requirement that nonpartisans be represented at all on the Commission, and minor parties could be greatly overrepresented.

Finally, the Petition requires five votes to approve a redistricting plan, and those votes must be distributed by party affiliation. This means that a small minority of commissioners can veto any map, and thus hold disproportionate power over the redistricting process. Petition, Section 5B(2). Clearly, this is not “fair” to the majority of Nevadans. The Petition requires at least one vote from each major party and one vote from a minor party or nonpartisan commissioner. Consequently, even if a supermajority of five commissioners (all three non-major party commissioners and both commissioners of one major party) agree to a map, if the two other major party commissioners vote no, the plan will fail. Given this composition, the practical effect of this Petition is that the Commission will never approve any plan, let alone a fair and competitive one. It is set up to fail.⁵

C. The financial impact of the Petition is concrete and substantial and therefore must be disclosed to voters in the Description of Effect.

Defendant next argues that it is entirely hypothetical and speculative whether the Petition will increase the costs of redistricting, and therefore this effect need not be described in the Description of Effect. *See* Answering Brief, pp. 8-10. The exact *amount* of the increase in cost cannot be accurately determined at this time⁶, but it cannot be reasonably disputed that the Petition will increase costs.

⁴ Compare November 2019 voter registration statistics to January 2010, when nonpartisans were only 15.7% of all registered voters. <https://www.nvsos.gov/sos/elections/voters/voter-registration-statistics/2010-statistics/voter-registration-statistics-jan-2010-total>

⁵ This unfairness will only get worse over time, because the Petition would enshrine in the Constitution a grant of disproportionate power to the major political parties, which continue to lose ground to nonpartisans. This will create the same issues that other constitutional amendments have, such as the Minimum Wage Amendment, which have made it extremely difficult to adapt to changing circumstances.

⁶ See Legislative Counsel Bureau Statement of Financial Impact, stating that it is unable, in the short time period since the Petition was filed, to determine its financial impacts. Available at: <https://www.nvsos.gov/sos/home/showdocument?id=8130>

1 Neither voters nor the Court should check their common sense at the door when considering an
2 initiative petition. Several aspects of the Petition make it certain that it will increase costs of
3 redistricting.

4 First, Defendant argues that the Petition would reduce costs by “establishing a single
5 redistricting process for each census cycle, while the Legislature can currently re-draw the lines as
6 many times as the Legislature deems appropriate.” Answering Brief, p. 9. Nevada has not been
7 plagued by the type of racial or partisan gerrymandering that has occurred in other states, including
8 some where the legislature attempts to redistrict whenever partisan control changes. Except for 1965,
9 when the Legislature was forced to redistrict to comply with the Supreme Court’s rulings establishing
10 the one-person-one-vote doctrine, counsel for Plaintiff has been unable to find another instance where
11 the Legislature has redistricted more than once in a decade. Thus Defendant’s argument is not just
12 theoretical, but is contrary to history.

13 Second, and ironically in light of Defendant’s first argument, the Petition itself requires mid-
14 decade redistricting for the 2020 Census. Petition, Section 5B(2). It provides that the Commission
15 “shall” approve a redistricting plan not later than July 1, 2023. *Id.* This will obviously increase the
16 cost of redistricting by having a “do over” only two years after the Legislature will redistrict in 2021.
17 There is nothing speculative about that. Defendant first attempts to understate this effect by claiming
18 that such “administrative” costs are either hypothetical or do not matter because costs are not a main
19 “purpose” of the initiative. *See* Answering Brief, p. 9. As discussed above, whether the increase in
20 costs is a “purpose” of the initiative is irrelevant. Defendant next argues that the increase in costs is
21 hypothetical because it is possible that the Commission could just accept the Legislature’s 2021 plan.
22 Answering Brief, p. 9. While that is indeed theoretically possible, it is not at all probable, given that
23 the Commission will be subject to different political influences. In any event, the Commission would
24 incur costs to be organized and to hold public hearings, which would be needless expenditures in the
25 unlikely event it did simply adopt the Legislature’s 2021 maps.

26 Furthermore, this effect is not just about costs, but about informing voters that the Commission
27 will immediately re-do the maps, as opposed to beginning after the next census. That is a significant
28 departure from Nevada’s history of redistricting only once per decade, and is not something that

1 voters would expect. Therefore the Description of Effect must inform voters that the Petition will
2 undo the redistricting plan that the Legislature will have just adopted in 2021.

3 Finally, the Petition will result in additional costs due to litigation. As to Defendant's argument
4 that litigation costs are hypothetical, again, reviewing the Petition itself makes it plain that these costs
5 are certain to occur. One example is the Petition's directive that neither political party should be
6 "unduly" disadvantaged, yet it lacks guidelines for determining when a map "unduly" disadvantages
7 a political party. Such vague language is sure to invite litigation by whichever party feels it was
8 slighted. That party has nothing to lose and everything to gain by going to court, so it would be
9 surprising if such lawsuits did *not* routinely occur.

10 The Petition is rife with other problems that are certain to generate litigation. For example, it
11 would have two Democrats and two Republicans choose the three other members. Given that there is
12 an even party split, it is likely that these four commissioners would be unable to agree on who to
13 appoint to the remaining seats. What happens if then? The Petition contains no provisions for this
14 contingency, nor even for dealing with vacancies generally. The Petition requires five votes to
15 approve a plan, and the votes must be distributed amongst the members by party affiliation. As
16 discussed above, this gives a small minority an absolute veto power over any map. What happens
17 when the Commission fails to adopt a map within its 180-day window? These are but a few
18 examples.

19 As the Court is well-aware, a map can be challenged for non-compliance with constitutional
20 requirements or for violation of the Voting Rights Act. But this Petition would create numerous
21 additional avenues for litigation that have nothing to do with typical redistricting lawsuits. The
22 Petition invites litigation that will be focused on procedural problems rather than voters'
23 constitutional rights. This Petition would therefore substantially increase the costs of redistricting
24 caused by repeated, expensive, and wasteful litigation.

25 **D. Legal Standard for the Description of Effect and the Role of the Court.**

26 Lastly, Defendant asserts that the Court has no authority to order that the Petition cannot
27 appear on the 2020, and instead that the Court's role is to amend the Description of Effect. This
28 argument is incorrect on both counts.

1 First, the role of the Court is not to redraft or amend the description of effect itself. The role of
2 the Court is to determine whether the description of effect as presented by the petition proponents is
3 valid or not. NRS 295.061(1), (3). If the Court finds it to be invalid, it is the obligation of the petition
4 proponent to draft an accurate and non-misleading description of effect. *See id.* Amendment of the
5 description of effect is accomplished by refiling the petition with the new description. *See Beers*, 122
6 Nev. at 940, 142 P.3d at 346 (petition proponents must refile the petition with the amended
7 description of effect with the Secretary of State before circulating).

8 Nor is it the obligation of the opponents of the petition to assist the proponents in redrafting the
9 description of effect. Furthermore, it would be a violation of the opponents' First Amendment rights
10 to require them to do so. *See Video Software Dealers Ass'n v. Schwarzenegger*, 556 F.3d 950, 953
11 (9th Cir. 2009) (compelled speech violates the First Amendment).

12 Accordingly, the first step in the process is for the Court to determine the validity of the
13 description of effect. If the Court finds that it is invalid, then the next step is for the proponent to
14 amend by filing a new version with the Secretary of State.

15 Second, the Court plainly has the authority, and the obligation, to prohibit a initiative from
16 appearing on the ballot if its description of effect is invalid. The description of effect is an integral
17 and required part of the petition. NRS 295.009(1)(b); *Nevadans for Nev. v. Beers*, 122 Nev. 930, 940,
18 142 P.3d 339, 346 (2006). The description of effect is the "descriptive language is what appears
19 directly above the signature lines, as registered voters decide the threshold issue of whether they even
20 want the initiative placed on the ballot." *Id.*

21 An initiative that contains an inaccurate or misleading description of effect obviously has no
22 place on any ballot. That is why NRS 295.015(2) provides that any signatures obtained before the
23 misleading description of effect is amended are invalid and that is why such petitions have been
24 invalidated by the courts on numerous occasions. *See Beers*, 122 Nev. at 940, 142 P.3d at 346
25 (invalidating petition due to inaccurate description of effect); *Las Vegas Taxpayer Accountability*
26 *Comm. v. City Council*, 125 Nev. 165, 177, 208 P.3d 429, 437 (2009)) (same); *Educ. Initiative PAC*
27 *v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013) (same); *Coal. for Nev.'s*
28 *Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS 153, at *5 (May 11, 2016)

1 (unpublished decision – NRAP 36(c)) (same). A ruling that the description of effect is inaccurate or
2 misleading is therefore a ruling that the petition, in that form, cannot appear on the ballot. As
3 demonstrated by the case law, it is clear that the Court has such authority.

4 III. CONCLUSION

5 Defendant is attempting to sell the voters a bill of goods. It states that it will amend the Nevada
6 Constitution to create the “Independent Redistricting Commission,” which will be free from the
7 Legislature’s influence and that will create fair and politically competitive maps. The problem is that
8 none of that is true. Furthermore, the Petition’s description of effect fails to disclose material effects
9 that it will cause, including undoing the Legislature’s 2021 redistricting plan, increasing the costs of
10 redistricting, increasing litigation, and granting disproportionate power to a small minority of the
11 commission.

12 For these reasons, Plaintiff respectfully requests that the Court enter the following relief:

13 1. Declare that the Description of Effect is inaccurate and materially misleading because:

- 14 a. it misrepresents the nature of the Commission because the Commission is not
15 independent;
- 16 b. it misrepresents the effect of the Petition because the Commission is not required to
17 prevent or avoid partisan gerrymandering;
- 18 c. it fails to disclose that, if the Petition passes, it will increase the cost of redistricting
19 due to litigation over when a party is “unduly” disadvantaged;
- 20 d. it misrepresents the effect of the Petition because the Commission is not required to
21 create politically competitive districts;
- 22 e. it fails to disclose that, if the Petition passes, a small minority of commissioners will
23 hold disproportionate power over the redistricting process;
- 24 f. it fails to disclose that the Commission would re-draw maps in 2023, just two years
25 after the Legislature will have performed redistricting in 2021 and that this will
26 increase costs of redistricting;
- 27
- 28

- 1 g. it fails to disclose that, if the Petition passes, it will increase the cost of redistricting
2 because of the strong likelihood that the Commission will deadlock and fail to approve
3 any redistricting plan, leading to litigation;
4 2. Order that the Secretary of State take no further action to process the Petition in its current
5 form, including, without limitation, placing it on any ballot; and,
6 3. Order any other relief the Court deems just.

7
8 Dated this 20th day of December, 2019.

9
10 BENSON LAW, LLC

11
12 By: 

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of Benson Law, LLC,
and that on this date, I caused the foregoing Reply Brief to be served to all parties to this action by:


- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States
Mail in Carson City, Nevada
- ☐ Hand-delivery - via Reno/Carson Messenger Service
- ☐ Facsimile
- ☒ E-Mail
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
- ☐ E-filing through the federal courts' CM / ECF filing and service system.

fully addressed as follows:

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Dated: 12/20/19


An employee of Benson Law, LLC

1 CASE NO. 19-OC-00209

2 DEPT. NO. 1

3 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR CARSON CITY

5 BEFORE THE HONORABLE DISTRICT COURT JUDGE, JAMES T. RUSSELL

6
7 REV. LEONARD JACKSON,

8 Plaintiff,

9 vs.

10 FAIR MAPS NEVADA PAC, and
11 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,

12 Defendants.
13 _____/

14
15 JAVS TRANSCRIPT OF PROCEEDINGS

16 PETITION HEARING

17 DECEMBER 23, 2019
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24 Transcribed By:

Kathy Jackson CSR

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A P P E A R A N C E S

For the Plaintiff:	KEVIN BENSON Attorney at Law 123 W. Nye Lane, Suite 487 Carson City, NV. 89706
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For the Secretary of State:	GREG ZUNINO Deputy Attorney General 100 N. Carson Street Carson City, NV. 89701

1 DECEMBER 23, 2019, CARSON CITY, NEVADA

2 -oOo-

3 THE COURT: For the record this is Case Number
4 19CO009, Leonard Jackson versus Fair Maps Nevada PAC and
5 Barbara Cegavske. Show the appearance of Kevin Benson on
6 behalf of Reverend Leonard Jackson. Show the appearance of
7 Adam, please state your name for the record.

8 MR. HOSMER-HENNER: Adam Hosmer-Henner from
9 McDonald Carano.

10 THE COURT: And you are Greg Zunino.

11 MR. ZUNINO: Your Honor, Greg Zunino. We're here
12 on behalf of the Secretary of State.

13 THE COURT: Thank you.

14 This is the time set for a hearing in regards to
15 the petition that was filed. It's an initiative petition in
16 respect to this particular matter.

17 Mr. Benson, are you ready to proceed?

18 MR. BENSON: Yes, I am, Your Honor.

19 THE COURT: Go ahead, Mr. Benson.

20 MR. BENSON: Thank you, Your Honor. So we are
21 here on a constitutional initiative petition that proposes to
22 amend the Nevada Constitution to create a redistricting
23 commission instead of having the legislature perform
24 redistricting.

1 And as the Court is aware, we're not here to
2 debate the policy or the wisdom of that policy, whether
3 that's good or bad or wise or unwise. It's clear that
4 anybody can propose whatever policy they like, whatever
5 changes they like through the initiative process in Nevada.
6 However, under Nevada law what you can't do is you can't
7 propose one policy in your petition and tell voters in your
8 description in effect you are doing something else, and
9 that's the crux of the challenge here is that the description
10 of effect is materially inaccurate and misleading.

11 So as you're aware, Your Honor, the standard for
12 description of effect is that it must be a straight forward
13 succinct non-argumentative summary of what the initiative
14 will do. And the role of this Court, the district court is
15 to analyze whether the information, quote contained in the
16 description is correct and does not misrepresent what the
17 initiative will accomplish and how it intends to achieve
18 those goals, end quote. That's the Education Initiative PAC
19 case.

20 And so in this case there's several problems with
21 the description of effect, and I'll start with the name of
22 the commission which is they call it the Independent
23 Redistricting Commission. And it states on the very first
24 sentence of the description of effect that it will create an

1 independent redistricting commission, and this is simply not
2 accurate because the commission is not independent. It's not
3 independent for a couple of reasons.

4 The first is its composition. It's composed by
5 direct appointment of a majority of the commissioners by the
6 legislative leadership and then those appointees directly
7 appoint the remaining three members minority of the
8 commission. And so as a result of this process, what you
9 have are only people who are well politically connected that
10 are going to get appointed to this commission. There's no
11 insulation from the politics or from the political pressures
12 or the legislature in this appointment process.

13 And there's nothing also in this petition that
14 prevents the commissioners themselves from acting in their
15 own self-interest. For example, you would be perfectly free
16 to sit on the commission, to draw these plans and these maps
17 and then immediately thereafter in the next election run for
18 the district that you just drew. And this is in stark
19 contrast to the independent redistricting commissions that
20 have been formed in other states.

21 These other states, they involve some kind of
22 process to avoid this direct appointment issue, and they
23 generally do that through some third party mechanism or a
24 third party, neutral third party, not the legislature, not

1 the party leadership creates, either does the appointments
2 directly or creates pools from which the appointees are made.

3 And these other states also, most of them use an
4 application process. So that somebody who's interested in
5 serving on a commission but who does not necessarily have the
6 political connections to get appointed can make an
7 application and somebody will review that application, see if
8 they are qualified and, again, either appointments depending
9 on the state made from a pool or they are made -- or they are
10 made directly from that third party. And in states they are
11 also done randomly.

12 So the point is there's this application process
13 that opens it up to other citizens, people who are not
14 necessarily politically connected, and that gives an
15 opportunity for them to show their interest and a real
16 possibility to actually be selected to serve on this
17 commission.

18 Other states also generally have some period of
19 time after which commission owners are barred from being
20 elected to or appointed to an office. And that, again,
21 depends on the state but it's anywhere from two years to in
22 some cases in certain offices in California it's ten years.
23 But the point is to, again, remove that incentive, one, to
24 actually personal interest that I'm going to draw myself a

1 district essentially and run for that district but also to
2 remove some of the political pressure where, you know, if you
3 do what we ask you to do on this commission, we're going to
4 support your campaign in this next year. Well, if we barter
5 for money for the next two or four or six years or whatever
6 the case may be that will remove some of that pressure and
7 criticism insulation from that political process.

8 So another major issue with the independence or
9 the lack thereof in this petition is the funding mechanism
10 or, again, I should say the lack of a funding mechanism.
11 There's no provision in this petition that provides any
12 funding for the commission nor is there any mandate that the
13 legislature fund the commission at all or any particular
14 amount or in any particular way.

15 Of course, the legislature is the branch of
16 government that controls the purse strings. And so by giving
17 the legislature essentially complete discretion and control
18 over how to fund the commission, what to appropriate the
19 money for, what it can be spent on or whether to fund it at
20 all, that gives the legislature substantial control over the
21 commission. And, again, this is in contrast to other states
22 that have set up independent commissions where those states
23 mandate that the legislature fund the commission either in a
24 particular dollar amount we're using some kind of formula to

1 figure out how much that should be.

2 And Arizona has even gone one step further and it
3 has expressly given authority to the commission and authority
4 and standing to sue in court to challenge the adequacy of its
5 funding. And that gives it further independence from the
6 legislature so that it's not beholding to what the
7 legislature deems it can spend money on or cannot spend money
8 on.

9 So for these reasons the commission that is
10 proposed in this case contrary to what is stated in the
11 description of effect and in the language of the petition
12 itself is not an independent commission. It essentially
13 bears no reasonableness whatsoever to these independent
14 commissions that have been enacted in other states.

15 And because of that the description of effect is
16 not just inaccurate but it is seriously misleading to members
17 because the general plain language or plain meaning of the
18 term independent is that it's free from control or that it's
19 free from the influence of another person or another body,
20 and that is just simply not the case in this case. This
21 commission is very much subject to political pressures. It's
22 very much subject to political control from the legislature.

23 THE COURT: Let me ask you a question because
24 obviously the census is going to be done in 2020 again; is

1 that correct?

2 MR. BENSON: Correct.

3 THE COURT: And then as it was in 2010 and then
4 we get to 2023 is when this would go in effect, is there
5 going to have to be another census or another, some kind of
6 further action taken because I would presume after the 2020
7 census there's going to have to be a redistricting done.

8 MR. BENSON: Correct.

9 THE COURT: So then would you turn around and
10 redo it again in two years or a year or whatever it was?

11 MR. BENSON: It would redo it again in two years
12 and that's another problem with description of effect in this
13 case is --

14 THE COURT: Does that make sense to anybody? I
15 don't know. You do it and turn around and do it again in
16 another year and a half. I don't know. I'm just thinking
17 out loud.

18 MR. BENSON: It doesn't make sense to me, Your
19 Honor, but again that's -- they're free to enact that policy
20 if that's what they want to pursue, but they have to tell
21 voters that's what they are doing because as I stated in my
22 reply brief, at least as far as I could find as far as 1965,
23 Nevada has not had any mid district -- mid decade
24 redistricting. So you're right. There's one census that

1 will happen in 2020. The legislature will redistrict 2021
2 and then this will -- this petition mandates that the
3 commission redistrict again in 2023. So it's going to undo
4 whatever the legislature just did. It's going to mid decade
5 redistricting what we haven't done at least in recent history
6 and it's going to also increase the cost of redistricting
7 because we're essentially going to have a do-over in just a
8 year or two after the legislature has already done.

9 THE COURT: The last redistricting cost the State
10 of Nevada approximately 35 to \$38,000 and that was based upon
11 the three masters that we paid out of this court in order to
12 sit down and do it on an independent basis. So, again, that
13 is as very reasonable I think from if you look around the
14 United States. It was very very reasonable.

15 MR. BENSON: And I think that that was an unusual
16 circumstance, Your Honor, in for redistricting a commission
17 like this to go through the entire process and it's going to
18 need to have some kind of staff. It's going to have to hold
19 all of these public hearings and so forth and so on. And I
20 -- correct me if I'm wrong, but as I recall the commissioners
21 in that case were not paid a salary but were essentially
22 volunteers.

23 THE COURT: No. They were all -- every one,
24 every master was paid \$100 an hour. That's where the \$3,800

1 came from.

2 MR. BENSON: I thought it was a per diem, Your
3 Honor. My apologies.

4 THE COURT: No. Basically the staff as it
5 existed up there and the people from the legislature, and so
6 they provided the staff in regards to that, but and they had
7 a hearing in the north and in the south. So, again, that was
8 an unusual situation.

9 MR. BENSON: It was an unusual situation and I'm
10 glad you mentioned the staff because that's another issue
11 with the independence of this commission is, again, there's
12 no provision for its funding. There's no provision for
13 staff. So if it's going to be using its own staff that's a
14 question we don't know or if it's going to be using the
15 legislative staff, like the masters did the last time around,
16 if that's what ends up doing then that is yet another
17 influence from the legislature in control potentially that it
18 can exert over this commission.

19 And so in this case, even if the costs are not
20 substantial, which I think if they are going to hold these
21 public meetings and do all of this and get computer software
22 and all that they need, especially if they are going to do it
23 independent of the legislative staff, even if that cost is
24 not that substantial I think what is substantial is what you

1 mentioned earlier which is that we're going to have
2 redistricting just like normal, but then we're going to
3 completely undo all of that just two years later, and I think
4 that's material to a lot of voters, and that is not disclosed
5 anywhere in the description of effect in this case.

6 THE COURT: Does it -- it kind of implies that
7 there will be two selected from the original four, if I'm not
8 mistaken, basically by the legislative majority, minority
9 from both houses in respect to that. What if they are all
10 democrats and republicans? What about the independent voter
11 out there? What about, does he ever get a shot at being on
12 this commission?

13 MR. BENSON: Well, that's kind of the interesting
14 thing about this commission is it doesn't guarantee a
15 nonpartisan or independent voter any seat on this commission.
16 It only requires that those three other commissioners not be
17 affiliated with a major party. So they could be affiliated
18 with a minor party.

19 And given that there's going to be, you know,
20 partisan majority of the commission, it's reasonable to
21 expect that those commissioners are going to want to appoint
22 somebody who aligns more or less with their party. So you
23 could have republicans selecting a libertarian for example or
24 democrats selecting a green party. And so one of the other

1 issues with this petition and the fairness aspect of it is
2 that there's no guarantee that nonpartisans are going to have
3 any seat on this either, even though as we stand now
4 nonpartisans are almost 25 percent of our registered voters.

5 And if that has -- that number has been
6 increasing rapidly, and so I expect that by 2031, and there's
7 a typo in my brief, I said 2021, I mean 2031, I expect that
8 nonpartisan voters will be a full third or more, but yet
9 there's no guarantee that they're going to have any seats on
10 this commission at all.

11 In fact, what this commission is going to do is
12 or excuse me, this petition, is it's going to enshrine in the
13 constitution a majority control of the commission in the two
14 major parties, both of which are rapidly losing ground to
15 nonpartisans. Meanwhile, the minor parties at least for now
16 represent about six and a half percent of all registered
17 voters. So they may be substantially over-represented on
18 this commission, while nonpartisans have no guarantee of
19 their representation at all.

20 And so that is -- that goes to the fairness
21 aspect of the description of effect which to answer that,
22 that's one of the second major issues with the description of
23 this, of effect in this case is it tells voters that it's
24 going to adopt fair and politically competitive maps. And

1 one of several problems with that, one I just discussed.
2 Another is that there's really no guarantee that this is
3 going to do anything to fix partisan gerrymandering.

4 As I discussed in the brief, the U.S. Supreme
5 Court recently reaffirmed its position that partisans
6 gerrymandering is a political question and because of that
7 the federal courts really have no jurisdiction over that, and
8 so they are going to have to do something on the state level
9 in order to address partisan gerrymandering.

10 But in this petition what it requires the
11 commission to do is not to fix gerrymandering. It just says
12 that it should ensure no parties go unduly disadvantaged. So
13 it doesn't give any guidelines or any definitions about what
14 that means to be unduly disadvantaged.

15 And so what it does is it actually contemplates
16 that there's going to be at least some unfairness between the
17 parties because it contemplates by using the term unduly that
18 there's going to be some disadvantage to one party or the
19 other. How much we don't know because there's no guidelines
20 and there's no definition.

21 And so I think one thing that we do know because
22 of that is that there's going to be lots of litigation
23 because whichever party feels like it was slighted has
24 absolutely nothing to lose and everything to gain by going to

1 court and arguing that it's being unduly disadvantaged.

2 And so this petition is not going to fix partisan
3 gerrymandering. It doesn't have a mandate that it makes
4 these maps fair between the parties. It just says you can't
5 unduly disadvantage one. So, again, the description of
6 effect is inaccurate and it's misleading because a voter
7 reading this is going to think, oh, well, this is going to do
8 away with partisan gerrymandering, but it's really not
9 required to do that at all.

10 THE COURT: Let me ask you is the Court required,
11 and I think you made this point in your brief, it says the
12 Court is not required to rewrite the description of effect.
13 Is that true?

14 MR. BENSON: That is correct, Your Honor. It is
15 the obligation of the proponents of the petition to amend
16 their description of effect and to refile that with the
17 Secretary of State. When you refile it that's how the
18 amendment is accomplished.

19 THE COURT: I tried to find that in the case you
20 cited, the Beers case. Is it in that case?

21 MR. BENSON: The Beers case is the description of
22 effect is an integral part of -- what they had argued in that
23 case was that the petition that they filed is different from
24 the description of effect that they circulated. So they

1 said, oh, but we filed the petition with the Secretary of
2 State and, therefore, everything is okay. And the Court said
3 no, no, they are one in the same. They are part of the same
4 document, and you have to file the one that you're going to
5 circulate before you circulate it.

6 And the other thing that that case said is that
7 once you file it, that is the version that you have to
8 circulate. So in effect with the description of effect is
9 invalid, you can't circulate that petition unless you refile
10 it, and so that's how the amendment is done is you change the
11 description of effect and you refile the entire thing with
12 the Secretary of State.

13 THE COURT: Did you look at all of the
14 alternative of descriptions of effect that they provided?

15 MR. BENSON: I did.

16 THE COURT: Any of them meet your approval?

17 MR. BENSON: Unfortunately no.

18 THE COURT: Well, I knew you were going to say
19 that. I don't know why, but I kind of figured that was the
20 case. None of them come close, huh?

21 MR. BENSON: I'm not --

22 THE COURT: I'm putting you on the spot.

23 MR. BENSON: We had issues with all of them. I
24 think the last one, the fifth one starts to make a good start

1 but I think that there's issues with all of them. And I --
2 if you would like, we'll address each of those now, but I
3 meant to do so a little later but I can certainly do so if
4 you would like, Your Honor.

5 THE COURT: Well, I was looking at them and I was
6 looking like, well, you know, I was looking at the second --
7 the one that basically calls it the, gets rid of all of the
8 language and calls it just establishing a redistricting
9 commission. I mean, it takes all of the nuances out of it
10 and just says we're going to create a redistricting
11 commission in respect to that.

12 And that kind of seemed fine to oversee the
13 mapping of electoral districts. It takes out the fair and
14 competitive language that bothers you as well. Then you get
15 down to the end and -- and part of it, this amendment will
16 require redistricting beginning in 2023 and each federal
17 census. And then the language after that wasn't exciting to
18 me but it may be some language which will result in
19 expenditures of state funds to fund the commission. I mean,
20 there's no doubt that you're going to have to -- funds are
21 going to have to be expended to fund this commission. What
22 that amount is or not nobody will know, they really won't
23 until you get down to the end. So I kind of looked at that
24 one kind of better than the others to be honest with you.

1 I thought the second one kind of has some merit,
2 so to speak, but tell me what is wrong with the second one.
3 You don't have to go beyond the second one.

4 MR. BENSON: So there's a couple of things. One
5 is what we just discussed earlier is that it does say it's
6 going to be redistricted in 2023.

7 THE COURT: Well, I know that's a problem.

8 MR. BENSON: Right. It doesn't say what's really
9 important about that which it's going to undo what the
10 legislature just did in 2021, and so that's the part, that
11 omission makes it inaccurate and misleading.

12 THE COURT: What if you take out beginning in
13 2023 and leave that out?

14 MR. BENSON: And this --

15 THE COURT: I know that doesn't help everybody
16 but I'm just --

17 MR. BENSON: Correct, Your Honor. It's material
18 that they disclose to voters that it's going to essentially
19 just do -- have a do-over what the legislature just did, and
20 so that's the point of my argument before that you just asked
21 me about is I can't ethically represent my client and come
22 into court and help them draft their initiative, you know, in
23 real time.

24 THE COURT: Well, I noticed you pointed that out

1 in your brief too. It's not my job to rewrite it for them.

2 MR. BENSON: Right. And so what we're asking the
3 Court to do is to look at the petition as it's drafted and to
4 make a ruling on whether the description of effect as it
5 stands now is valid or not, and then it will be up to the
6 petitioners, to the proponents to redraft and refile their
7 description of effect in order to amend it.

8 THE COURT: Is there any case law that says the
9 Court is required to help or, again, I'm back to that
10 question, help or assist them in that regard?

11 MR. BENSON: Not that I'm aware of, Your Honor.
12 There is, of course, the statute that says if they amend it
13 by refiling it with the Secretary of State in a way that
14 complies with the Court orders then it can no longer be
15 challenged. And so that -- but there's nothing that I am
16 aware of that requires that the district court do that for
17 them, and I would submit that that's not the role of the
18 district court. The role of the district court is simply to
19 determine as its filed now whether or not it is a valid
20 description of effect.

21 So going on to fairness and the competitiveness
22 issues. So we have discussed the fairness in a couple of
23 different respects. Another issue under fairness on this
24 commission is there's no requirement that the commissioners

1 themselves represent voters either in terms of partisan
2 breakdown or in terms of any other aspect of diversity of the
3 state, not geographic, not racial, not language, not anything
4 else.

5 So as I point out in the brief, it's perfectly
6 possible you could have the entire commission made up of old
7 rich guys from Las Vegas and they are drawing the maps for
8 the entire state.

9 And another issue with respect to fairness is the
10 way this is composed is it requires a super majority of
11 commission five votes in order to approve a plan, and those
12 votes have to be distributed between -- there has to be at
13 least one vote from each major party, and there also has to
14 be at least one vote from one of the non major party
15 commissioners.

16 And so what this does is it creates an
17 essentially automatic veto power in a very small minority of
18 the commission. And so for example, let's say you have all
19 three non major party commissioners and two on the same side
20 major party commissioners, they all agree on a plan. The
21 other two major party commissioners, if they vote no, that
22 plan can't pass, and all it takes is a little bit of, you
23 know, political polarization and this committee will never be
24 able to pass a plan because they have absolute veto power

1 even if the entire other five commissioners agree on the
2 plan.

3 So giving that kind of power to a very small
4 minority on this commission, that is unfair, and that ties
5 into what I talked about before is that the commission
6 doesn't represent and especially going into the future with
7 the changing of the demographics if we amend the
8 constitution, it's going to be even worse and it's not going
9 to represent the partisan breakdown of the state's voters.

10 THE COURT: Wouldn't that be nice to have a
11 commission that basically took this out of the legislative
12 hands and the Courts hands?

13 MR. BENSON: I think that, again, if you want to
14 propose the policy of an actual independent redistricting
15 commission that again we can debate whether that's good
16 policy, bad policy, but the point in this case is that that's
17 not what they are doing. And I anticipate as discussed in
18 the brief that this petition, you know, the minority veto
19 power, there's nothing in this petition that describes what
20 happens if they can't pass a plan. Presumably we're right
21 back here just like we were in 2011.

22 There's nothing that discusses what happens if
23 they -- if the two major party, the four evenly party split
24 commissioners can't agree on who to appoint for those other

1 three other commissioners. There's nothing to fill vacancies
2 generally or in that commission or the commission might not
3 be able to be constituted because of that, and yet there's
4 nothing in this petition that will account for any of those
5 contingencies.

6 So as a result I think that it's going to
7 increase cost of redistricting not to just in terms of
8 redistricting itself but in terms of the litigation that it's
9 going to cost, and this is not what I'm going to call
10 ordinary redistricting litigation. This is not litigation
11 over whether the plan itself is constitutional or whether it
12 violates the voter rights act or anything like that. It's
13 purely litigation related to procedural issues with the
14 commission itself.

15 So going on to the other aspect of redistricting
16 effect of competitiveness issue is, again, the description of
17 effect tells voters that it's going to create politically
18 competitive districts. And once again this is simply not
19 accurate, and it's misleading because there is no requirement
20 in the petition that it create competitive districts.

21 It does tell voters that it will, and this -- the
22 petition in this case simply directs the commission to if
23 practicable consider political competitiveness, and it is the
24 very last of the considerations that the commission is

1 supposed to consider. And not only is it very last, it says
2 especially in the commission that each of those has to be
3 considered in order. So it's the very last thing and it's
4 only if practical. So, again, it's going to mislead voters
5 into believing this commission is going to do something that
6 its simply not required to do.

7 So we've already discussed the cost aspects of
8 this -- of the petition as well and especially the fact that
9 it's going to have a do-over. That both relates to the cost
10 and this argument that that's speculative or hypothetical,
11 frankly, I don't think has any merit because the petition
12 mandates that they redistrict in 2023. So that's going to be
13 a cost. There's nothing hypothetical or speculative about
14 that. The idea is it won't be much of a cost because it
15 could just, you know, adopt the plan that the legislature
16 passed in 2021. It's possible, I mean everything is possible
17 but, frankly, I think it's extremely improbable.

18 And there's going to be, of course, different
19 political influences on this commission because of the way
20 it's constituted and so forth and so on that for it to simply
21 adopt the plan that the legislature adopted is probably not
22 going to happen. So it's misleading and it's inaccurate by
23 not describing to voters, one, that it's going to increase
24 their cost and there's nothing speculative about that and

1 also that it's going to have a do-over of what the
2 legislature had just done.

3 And so what we're asking the Court to do in this
4 case is to define the description effect as presented
5 currently is not valid. That does not comply with NRS 295.09
6 because it is inaccurate and misleading in describing the
7 commission as independent, that it promises voters that it's
8 going to fix partisan gerrymandering when it won't, and it
9 tells voters that it's going to create Fair Maps. And,
10 again, it will not do this. It's not required to in terms of
11 geographic or language or racial diversity in the state.
12 It's not going to be fair in the sense that it doesn't
13 reflect the partisan makeup of the voters and that that's
14 only going to get worse as time goes on, and this is in the
15 constitution.

16 And it tells voters it's going to create
17 politically competitive districts when, again, it's not
18 actually required to do so. And, again, this is, it's the
19 responsibility of this Court to determine the validity of the
20 description of that. It's the responsibility of the
21 petitioners to, should the Court so rule that it's invalid in
22 any respect to amend the petition.

23 And in this case they can amend it, refile it
24 with the Secretary of State. We are -- we're here before

1 Christmas. It's actually very early in this process, so.

2 THE COURT: I'm going to say awfully early in
3 this process.

4 MR. BENSON: Yes. This is unusual. We're not
5 usually here this early. So there's plenty of time for them
6 to amend the description effect, correct it. If we're going
7 to do a constitutional petition let's do it right. There's
8 no reason to not fix it at this point. There's still going
9 to be plenty of time to circulate and get signatures on this
10 petition.

11 So with that being said, if you have anymore
12 questions I would be happy to answer them, Your Honor. I
13 would reserve my time for rebuttal.

14 THE COURT: Thank you.

15 MR. BENSON: Thank you.

16 THE COURT: Mr. Hosmer-Henner.

17 MR. HOSMER-HENNER: Yes, Your Honor. I would
18 like to start by saying there is plenty of time for us to
19 refile and move forward with this petition unless, of course,
20 the other side decides to file another lawsuit and they pick
21 the remnant synonyms that we chose to include in our proposed
22 descriptions of the fact.

23 Fair Maps has proposed a petition to amend the
24 Nevada Constitution to stop partisan and racial

1 gerrymandering by transferring the authority for
2 redistricting from the legislature to this separate
3 redistricting commission.

4 At the beginning of his argument, Mr. Benson
5 stated the point of this is not to argue over whether this is
6 good or bad policy and we strongly believe that this is good
7 policy for the State of Nevada, but the point is to determine
8 whether the description of effect matches our petition. And
9 yet throughout that opening statement, it was almost
10 impossible for the other side to refrain from digging into
11 the policy in terms of what will actually happen whether
12 something is a benefit or a detriment because our description
13 of effect matches what we say and intend to do in our
14 petition and is valid under NRS 295.09.

15 I have several broad arguments to begin with and
16 the first is under Pest Committee versus Miller, the Ninth
17 Circuit decision, the description of effect is a valid
18 statutory requirement that can effect people's right to
19 petition the -- to file an initiative petition to amend the
20 Nevada Constitution, but it's only a valid requirement
21 insofar as it's contend neutral and doesn't unduly interfere
22 with the political process.

23 What that means is there must be some description
24 of effect that matches our petition in order for that

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

11 REV. LEONARD JACKSON,
12 Plaintiff,

13 v.

14 FAIR MAPS NEVADA PAC, and
15 BARBARA CEGAVSKE, in her official
16 capacity as Nevada Secretary of State,
17 Defendants.

Case No.: 190000209 13

Dept. No.: #

**COMPLAINT FOR
DECLARATORY RELIEF**

Priority Claimed: NRS 295.061(1)

**Arbitration Exemption:
Request for Declaratory and Injunctive
Relief.**

19 Plaintiff, Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of BENSON
20 LAW, LLC, seeks declaratory and injunctive relief against Defendants that the Redistricting
21 Commission Initiative Petition does not comply with the requirements of state law and therefore
22 cannot appear on the general election ballot for 2020. Plaintiff alleges and complains as follows:

23 **I. JURISDICTION**

24 1. This Court has jurisdiction pursuant to Nev. Const. Art. 6, § 6 and NRS 295.061(1).

25 **II. PARTIES**

26 2. Plaintiff Rev. Leonard Jackson is citizen of Nevada and a registered voter.

27 3. Defendant Fair Maps Nevada PAC is a proponent of a constitutional initiative petition
28 designated as #C-02-2019 by the Secretary of State. The initiative petition seeks to amend the

1 Nevada Constitution to require that redistricting be performed by a commission rather than by the
2 Legislature ("the Petition").

3 4. Defendant Barbara Cegavske is Nevada's duly elected Secretary of State. She is sued
4 in her official capacity only. The Secretary's duties include certifying the number of signatures on an
5 initiative petition and other processing necessary to place an initiative petition on the ballot.

6 **III. GENERAL ALLEGATIONS**

7 5. On November 4, 2019, Sondra Cosgrove, in connection with Defendant FAIR MAPS
8 NEVADA PAC, filed with the Secretary of State a Notice of Intent to Circulate Petition and a copy
9 of the Petition.

10 6. The Petition proposes to add a new Section 5A to Article 4, Section 5 of the Nevada
11 Constitution, which would be titled: "Apportionment; Creation of Independent Redistricting
12 Commission."

13 7. The Petition would create the "Independent Redistricting Commission"
14 ("Commission") within the legislative branch of state government. Starting in the year 2023, the
15 Commission would apportion the number of Senators and Assemblymen among the state legislative
16 districts and would apportion the number of representatives to the United States House of
17 Representatives among the congressional districts.

18 8. The Commission would consist of seven members. The Senate Majority Leader,
19 Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader each appoint one
20 commissioner. These four commissioners appoint three additional commissioners, each of whom has
21 not been registered or affiliated with either of the two largest political parties in the State within the
22 last four years, and is not registered or affiliated with the same political party as another
23 commissioner.

24 9. The commissioners cannot, within the four years preceding appointment and during
25 their term on the Commission, be a registered lobbyist, a candidate for partisan office, an elected
26 official to a partisan office, an officer or member of the governing body of a political party, a paid
27 consultant or employee of a partisan elected official, candidate, PAC, or caucus, an employee of the
28 Legislature or the State of Nevada, except the judicial branch, the armed forces, or a state institution

1 of higher education. Nor may a commissioner be related within the third degree of consanguinity or
2 affinity to any such individual.

3 10. All meetings of the Commission must be open to the public and the Commission shall
4 ensure that the public has the opportunity to view, present testimony, and participate in the hearings
5 before the Commission. All Commission materials shall be public records.

6 11. The Commission shall adopt a redistricting plan not later than July 1, 2023, and
7 thereafter not later than 180 from the release of the decennial census.

8 12. A final plan requires five affirmative votes, including votes from at least one
9 commissioner from each of the two largest political parties and one commissioner not registered or
10 affiliated with either of those parties.

11 13. The Commission must draw districts according to certain criteria, and must apply
12 those criteria in the order listed in the Petition. These criteria include ensuring that, on a statewide
13 basis, the districts "do not unduly advantage or disadvantage a political party." The last criteria is that
14 the Commission may consider the number of politically competitive districts.

15 14. The Description of Effect of the Petition states in full:

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

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

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

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

FIRST CAUSE OF ACTION

(Misleading Description of Effect: "Independent")

15. The Petition's Description of Effect is materially misleading and fails to comply with NRS 295.009(1)(b) because the Description of Effect describes the Commission as an "independent" redistricting commission when in fact the Commission is not independent.

16. The Commission is not independent because a majority of commissioners are directly appointed by the legislative leadership of the two major political parties. Those commissioners in turn appoint the remaining three commissioners. Thus there is no mechanism to ensure that any of the commissioners are in fact independent of the legislative leadership of the two major parties.

17. Redistricting is an expensive and difficult process that requires substantial technical expertise, specialized software, and personnel with knowledge and experience in the field. Moreover, the Commission will need administrative assistance to manage its materials and to schedule, notice, and hold public meetings.

18. The Commission is part of the legislative branch, but the Petition does not provide for any funding or funding mechanism for the Commission. It does not require the Legislature to fund the Commission at all. Therefore the Commission is not independent of the Legislature because the Legislature can control its funding.

19. The Petition does not prohibit the commissioners from being appointed to or becoming a candidate for any partisan office or government employment immediately after approving a redistricting plan.

20. The ordinary definition of "independent" is: "free from outside control; not subject to another's authority." Oxford English Dictionary (<https://www.lexico.com/en/definition/independent>, last visited: Nov. 12, 2019).

21. Because the Commission is not independent of the Legislature, voters will be materially misled by the Description of Effect's statement that the Petition "will amend the Nevada Constitution to establish an **Independent** Redistricting Commission..." (emphasis added).

22. The Petition's Description of Effect therefore violates NRS 295.009(1)(b) and cannot appear on the 2020 general election ballot.

SECOND CAUSE OF ACTION

(Misleading Description of Effect: "Fair and competitive maps")

23. The Petition's Description of Effect is materially misleading because it claims that the Commission will oversee "the mapping of fair and competitive electoral districts," but the Petition in fact requires neither fairness nor competitiveness.

24. The criteria to be used in drawing maps adhere to the general requirements for redistricting that are required under federal law to satisfy the Voting Rights Act and the one-person, one-vote doctrine.

25. Beyond this, the Petition requires that the districts "do not unduly advantage or disadvantage a political party." The use of the word "unduly" indicates that the Petition is actually designed and intended to tolerate *un*fairness as between the political parties, but to what degree is unknown. The Petition sets forth no criteria for determining when a party is "unduly" advantaged or disadvantaged. There will obviously be disagreement on that question and the lack of any guidelines leaves the potential for every plan to be challenged through litigation.

26. Further, competitiveness is the very *last* of the criteria that the Commission is to consider when drawing maps, and it is expressly subordinate to all the other criteria. The Commission is only required to consider competitiveness "to the extent practicable." Thus the Petition does not in fact require that the Commission create, or even attempt to create, competitive districts.

27. Voters will be materially misled by the Description of Effect's assertion that the Commission will create "fair and competitive" maps, because the Petition does not require either.

28. The Petition's Description of Effect therefore violates NRS 295.009(1)(b) and the Petition cannot appear on the 2020 general election ballot.

THIRD CAUSE OF ACTION

(Misleading Description of Effect: Practical and Fiscal Impacts)

29. The Petition's Description of Effect is deceptive and misleading because it fails to inform voters of the practical ramifications of the Petition.

30. The Petition's Description of Effect recites the language of the Petition stating that the proposed Commission would draw new maps beginning in 2023, but it fails to inform voters of the

1 practical effects. It fails to inform voters that the Legislature will have just drawn maps in 2021,
2 which will be effective for only the 2022 election. It fails to inform voters that the Commission will
3 “undo” those maps and create new maps in 2023, thus potentially doubling the resources that would
4 otherwise be spent on redistricting following the 2020 census.

5 31. By failing to describe these material practical consequences, the Description of Effect
6 is deceptive. The Petition and therefore violates NRS 295.009(1)(b) and cannot appear on the 2020
7 general election ballot.

8 WHEREFORE, the Plaintiff Rev. Jackson respectfully requests that the Court enter an order:

- 9 1. Declaring that the Petition does not comply with NRS 295.009(1)(b) and is therefore
10 invalid;
11 2. Prohibiting the Secretary of State from placing the Petition on any ballot; and,
12 3. Granting any other relief the Court deems just.

13
14 Dated this 26th day of November, 2019.

15
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11 REV. LEONARD JACKSON,

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

16 Defendants.
17

Case No.: 190000209 B

Dept. No.: II

**OPENING BRIEF IN SUPPORT OF
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

18
19 Plaintiff, Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of BENSON
20 LAW, LLC, seeks declaratory and injunctive relief against Defendants that the Redistricting
21 Commission Initiative Petition does not comply with the requirements of state law and therefore
22 cannot appear on the general election ballot for 2020.

23 **I. FACTS**

24 On November 4, 2019, Sondra Cosgrove, in connection with Defendant Fair Maps Nevada
25 PAC, filed a constitutional initiative petition designated as #C-02-2019 by the Secretary of State. The
26 initiative petition seeks to amend the Nevada Constitution to require that redistricting be performed
27 by a commission rather than by the Legislature ("the Petition"). The Petition proposes to add a new
28

1 Section 5A to Article 4, Section 5 of the Nevada Constitution, which would be titled:
2 “Apportionment; Creation of Independent Redistricting Commission.” Petition, Section 5A.¹

3 The Petition would create the “Independent Redistricting Commission” (“Commission”)
4 within the legislative branch of state government. Petition, Section 5A(1). Starting in the year 2023,
5 the Commission would apportion the number of Senators and Assemblymen among the state
6 legislative districts and would apportion the number of representatives to the United States House of
7 Representatives among the congressional districts. *Id.*

8 The Commission would consist of seven members. Petition, Section 5A(2). The Senate
9 Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader
10 each appoint one commissioner. *Id.* These four commissioners appoint three additional
11 commissioners, each of whom has not been registered or affiliated with either of the two largest
12 political parties in the State within the last four years, and is not registered or affiliated with the same
13 political party as another commissioner. *Id.*

14 Additionally, a commissioner cannot, within the four years preceding appointment and during
15 their term on the Commission, be a registered lobbyist, a candidate for partisan office, an elected
16 official to a partisan office, an officer or member of the governing body of a political party, a paid
17 consultant or employee of a partisan elected official, candidate, PAC, or caucus, an employee of the
18 Legislature or the State of Nevada (except employees of the judicial branch, the armed forces, or a
19 state institution of higher education). Petition, Section 5A(3). Nor may a commissioner be related
20 within the third degree of consanguinity or affinity to any such individual. *Id.*

21 All meetings of the Commission must be open to the public and the Commission shall ensure
22 that the public has the opportunity to view, present testimony, and participate in the hearings before
23 the Commission. All Commission materials shall be public records. Petition, Section 5A(5).

24 The Commission shall adopt a redistricting plan not later than July 1, 2023, and thereafter not
25 later than 180 from the release of the decennial census. Petition, Section 5B(2).

27 ¹ Unless otherwise noted, the citations to the text of the Petition are to the *proposed* constitutional section and subsection
28 numbers in Section 2 of the Petition.

1 A final plan requires five affirmative votes, including votes from at least one commissioner
2 from each of the two largest political parties and one commissioner not registered or affiliated with
3 either of those parties. *Id.*

4 The Commission must draw districts according to certain criteria, and must apply those criteria
5 in the order listed in the Petition. Petition, Section 5B(1). These criteria include ensuring that, on a
6 statewide basis, the districts “do not unduly advantage or disadvantage a political party.” *Id.* The last
7 criteria that the Commission may consider is the number of politically competitive districts. *Id.*

8 The Description of Effect of the Petition states in full:

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

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

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

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

27 Petition, p. 3, Description of Effect.

28 II. ARGUMENT

A. Legal Standard for the Description of Effect.

29 NRS 295.009(1)(b) requires that every initiative “[s]et forth, in not more than 200 words, a
30 description of the effect of the initiative or referendum if the initiative or referendum is approved by
31 the voters.” The purpose of the description of effect is to “prevent voter confusion and promote
32 informed decisions.” *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006).

1 The description of effect must appear on every signature page. NRS 295.009(1)(b). Thus “[t]he
2 importance of the description of effect cannot be minimized, as it is what the voters see when
3 deciding whether to even sign a petition.” *Coal. for Nev.’s Future v. RIP Commerce Tax, Inc.*, No.
4 69501, 2016 Nev. Unpub. LEXIS 153, at *5 (May 11, 2016) (unpublished decision – NRAP 36(c),
5 citing *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876
6 (2013) and *Las Vegas Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 177, 208 P.3d
7 429, 437 (2009)).

8 For that reason, the description of effect “must be a straightforward, succinct, and
9 nonargumentative summary of what the initiative is designed to achieve.” *Educ. Initiative*, 129 Nev.
10 at 37, 293 P.3d at 876. The district court must also analyze “whether the information contained in the
11 description is correct and does not misrepresent what the initiative will accomplish and how it intends
12 to achieve those goals.” *Id.*, 129 Nev. at 35. 293 P.3d at 883.

13 **B. The Description of Effect inaccurately states that the Commission would be**
14 **“independent,” and therefore is misleading.**

15 The first sentence of the Petition’s description of effect states in relevant part: “This measure
16 will amend the Nevada Constitution to establish an **Independent** Redistricting Commission.”
17 (Emphasis added.) However, the Commission is not independent, thus that statement is inaccurate
18 and seriously misleading. The Commission is not independent for two main reasons: its composition
19 and its funding.

20 1. The Commission is not independent because legislative leadership would directly
21 appoint a majority of the commissioners.

22 First, a majority of the Commission is directly appointed by the major parties’ legislative
23 leadership. Petition, Section 5A(2). The Petition prohibits certain politically-active people from
24 serving as commissioners. See Petition, Section 5A(3) (prohibiting from serving those who in the
25 previous four years have been partisan candidates or elected officials, lobbyists, most state
26 employees, paid political staff, etc., and their close relatives). These exclusions only prevent a certain
27 sub-set of politically-involved people from serving on the Commission. For example, it does not
28 prevent a legislator from appointing a campaign volunteer, nor does it prevent county commissioners

1 or city council members from being appointed. The exclusions do not create independence because
2 the appointments are still directly made by legislative leadership. Thus the exclusions do nothing to
3 ensure that appointees are insulated from political pressures, are not beholden to the legislative
4 leadership, and do not stand to gain personally or politically from serving on the Commission.

5 The composition and selection of the Commission as proposed in the Petition is contrary to
6 truly "independent" redistricting commissions that have been adopted in other states. Four other
7 states have given primary redistricting responsibility to independent commissions. In each of them,
8 the independence of the commissioners is ensured by having a body *other than* the legislative
9 leadership either appoint the commissioners directly, or create the pool from which commissioners
10 are chosen.

11 In Arizona, the commission on appellate court appointments creates an initial pool of 25
12 nominees, ten from each of the two largest parties, and five not from those two parties. Ariz. Const.
13 art. IV, pt. 2, § 1(4), (5). Legislative leadership can only appoint commissioners from this pool. *Id.* at
14 (6).

15 In Colorado, a panel of three retired appellate court justices or judges randomly select
16 nominees from all applicants who meet the minimum qualifications, then the panel creates pools for
17 each of the two major parties and for nonpartisans. Colo. Const. Art. V, Section 44.1. Applicants are
18 selected based on, among other things, their experience, analytical skills, and ability to remain
19 impartial. *Id.* at 44.1(8)(1),(2). The panel of judges must ensure that the commission reflects
20 Colorado's racial, ethnic, gender, and geographical diversity. *Id.* at 44.1(10). Legislative leadership
21 can choose sub-pools from their respective party's pool, but ultimately the panel of retired judges
22 make the final selection. *Id.* at 44.1(8)-(10).

23 In California, Proposition 11 of 2008 amended the California Constitution to create the
24 Citizens Redistricting Commission. That amendment expressly states: "The selection process is
25 designed to produce a commission that is independent from legislative influence and reasonably
26 representative of this State's diversity." Cal. Const. Art. XXI, Section 2(c)(1). Government auditors
27 create a pool from the qualified applicants. Cal. Govt. Code § 8252. Legislative leadership can reduce
28 the pool, but then the auditors pick a majority of the commissioners by lottery, and those

1 commissioners appoint additional commissions from the remaining members of the pools, who form
2 a minority of the commission. *Id.*

3 In Michigan, the secretary of state must make the application to serve as a commission widely
4 available to the general public in all areas of the state. Mich. Const., Art. IV, § 6. The secretary of
5 state must also mail 10,000 applications to randomly selected voters. *Id.* The secretary of state then
6 creates the pools by randomly selecting from the qualified applicants, but shall also use accepted
7 statistical methods to ensure that the pool represents the geographical and demographic diversity of
8 the state. *Id.* Similar to California, legislative leadership can reduce the pools by striking a certain
9 number of names, but the secretary of state, by lottery, makes the final selections of commissioners
10 from the remaining pool. *Id.*

11 Additionally, most states prohibit commissioners from running for partisan office or being
12 appointed to an office or government employment for a certain period of time *after* serving on the
13 commission. *See e.g.*, Ariz. Const. art. IV, pt. 2, § 1(13) (ineligible for public office and cannot be a
14 paid lobbyist for three years after serving); Cal. Const. Art. XXI, Section 2(c)(6) (ineligible for office
15 for 5 to 10 years, depending on the office); Mich. Const. Art. IV § 6(1)(e). This reduces the incentive
16 for commissioners to draw maps that would favor their own future political ambitions.

17 By contrast, the Petition in this case: (1) allows legislative leadership to directly appoint a
18 majority of the Commission; (2) allows the commissioners to run for an office for which they just
19 finished drawing new districts; and (3) allows the commissioners to be appointed to an office or any
20 other government position immediately after completing redistricting. Thus the Petition permits
21 substantial political influence over individual commissioners and the Commission itself. Nor does the
22 Petition prevent individual commissioners from acting solely for their own political interests.

23 2. The Commission is not independent because it has no independent funding.

24 Redistricting is an expensive and difficult process. *See* “Reapportionment and Redistricting,”
25 Legislative Counsel Bureau Bulletin No. 11-04 (January 2011).² It requires a huge amount of data,
26 staff with technical expertise, and specialized software. *Id.* Additionally, the Commission would

27
28 ² Available at: <https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2011/Bulletin11-04.pdf>

1 require administrative staff to manage its materials, schedule, notice, and hold its meetings, and
2 respond to requests and input from the public. The Commission will also need legal guidance to
3 ensure that it complies with the Voting Rights Act and other federal requirements, as well as the
4 requirements in the Petition.

5 Despite these substantial costs, the Petition does not provide for any funding or funding
6 mechanism for the Commission. In fact, the Petition does not require that the Commission be funded
7 at all. Again, this contrasts starkly with truly independent commissions in other states.

8 For example, the Michigan Constitution mandates that the legislature shall fund the
9 commission, and sets forth a formula for the amount. It states: "the legislature **shall** appropriate funds
10 sufficient to compensate the commissioners and to enable the commission to carry out its functions,
11 operations and activities, which activities include retaining independent, nonpartisan subject-matter
12 experts and legal counsel, conducting hearings, publishing notices and maintaining a record of the
13 commission's proceedings, and any other activity necessary for the commission to conduct its
14 business, **at an amount equal to not less than 25 percent of the general fund/general purpose**
15 **budget for the secretary of state for that fiscal year.**" Mich. Const. Art. IV § 6(5) (emphasis
16 added).

17 Other states have similar language, and also mandate that the legislature fund the commission
18 adequately to ensure that it can carry out its duties.

19 California requires that the legislature appropriate funds for the commission according to a
20 formula, but in no event less than \$3 million for each cycle of redistricting. Cal. Govt. Code. §
21 8253.6.

22 The Arizona Constitution similarly requires that the legislature fund the commission, and
23 mandates that it be appropriated \$6 million for its first year of operation. Ariz. Const. Art. 4, Part 2,
24 Section 1(18). The commission has express authority to challenge the sufficiency of the funding
25 appropriated. *Id.*

26 The Legislature is the branch of government that holds the purse strings. *State Emps. Ass'n v.*
27 *Daines*, 108 Nev. 15, 21, 824 P.2d 276, 279 (1992). As such, it has tremendous power to control the
28 Commission by deciding whether, when, how much, and for what purposes to appropriate money for

1 the Commission. Likewise, it can direct the Legislative Counsel Bureau whether or not provide
2 assistance to the Commission. *See* NRS 218F.110 (LCB staff hired and duties defined pursuant to
3 budget approved by Legislative Commission).

4 In the context of the separation of powers doctrine, the Nevada Supreme Court has recognized
5 that the judiciary cannot truly function as an independent branch of government if it is not able to
6 require the disbursement of funds necessary to carrying out its basic duties. *State ex rel. Harvey v.*
7 *Second Judicial Dist. Ct.*, 117 Nev. 754, 770, 32 P.3d 1263, 1273 (2001). Similarly here, the
8 Commission cannot operate independently of the Legislature if it has no independent control of the
9 funding necessary to perform its duties. Indeed, the problem is exacerbated in this case because the
10 Petition declares the Commission to be part of the legislative branch and to be executing legislative
11 powers. Petition, Section 5A(7). That raises the question of whether it would itself be a violation of
12 the separation of powers doctrine should a court attempt to order the Legislature to fund the
13 Commission, or fund it in any particular way or amount. *Cf.* Ariz. Const. Art. 4, Part 2, Section 1(18)
14 (expressly granting the commission standing in court and the power to challenge the adequacy of its
15 funding).

16 3. The Description of Effect is inaccurate and misleading because the Commission is
17 not "independent."

18 "[A]n initiative petition signer must be informed at the time of signing of the nature and effect
19 of that which is proposed. Failure to so inform the signatories and voters is deceptive and
20 misleading..." *Stumpf v. Lau*, 108 Nev. 826, 833, 839 P.2d 120, 124 (1992) (internal quotations
21 omitted).

22 The Petition's Description of Effect states that the Petition would establish an "independent"
23 redistricting commission. The Description of Effect is invalid because it would mislead voters into
24 believing that the Commission is independent from the political influence of the Legislature and other
25 officials, when in fact it is not.

26 As discussed above, the Commission is not "independent" because a majority of the
27 Commission is directly appointed at the sole discretion of the legislative leadership. Additionally, the
28 Petition does not prevent Commissioners from running for or being appointed to an office

1 immediately after redistricting is complete. Finally, the Petition does not require that the Commission
2 be funded. Consequently, the Legislature will be able to exercise substantial, if not total, control over
3 the Commission by determining whom to appoint and how or whether to fund the Commission.

4 This case is closely analogous to *Las Vegas Taxpayer Accountability v. City Council of Las*
5 *Vegas*, 125 Nev. 165, 183-84, 208 P.3d 429, 441 (2009). In that case, the description of effect stated
6 that the petition would prevent the redevelopment agency from undertaking any *additional*
7 redevelopment projects in a certain area. *Id.* However, the actual effect of the petition would be to
8 stop *all* redevelopment projects, including those already underway. *Id.* The court held that the
9 description of effect was inaccurate and materially misleading and it invalidated the petition. *Id.*

10 In this case, the Description of Effect states that the Commission will be “independent,” but
11 the text of the Petition itself shows that to be an inaccurate statement of the Petition’s effect. Like in
12 *Taxpayer Accountability*, that inaccuracy renders the Description of Effect materially misleading
13 because the independence of the Commission is a critical factor for voters in determining whether to
14 support to the Petition. Accordingly, this Petition therefore violates NRS 295.009(1)(b) and cannot be
15 placed on the ballot.

16 **C. The Description of Effect inaccurately states that the Commission will create “fair**
17 **and competitive” districts.**

18 The U.S. Supreme Court recently held, again, that partisan gerrymandering presents a non-
19 justiciable political question. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506-07 (June 27, 2019).
20 Accordingly, the federal laws and the U.S. Constitution do not provide voters with any relief from
21 unfair partisan gerrymanders. The Petition’s Description of Effect represents that it will end partisan
22 gerrymandering in Nevada by creating “fair and competitive electoral districts.” But this is a promise
23 it cannot and will not keep. The Description of Effect is materially misleading because in fact the
24 Petition requires neither fairness nor competitiveness.

25 The Petition sets forth various criteria that the Commission must use when creating districts.
26 See Petition, 5B(1). The Petition states that the criteria must be followed in the order listed in the
27 Petition. *Id.* Most of these criteria reflect the general federal requirements to comply with the Voting
28 Rights Act and the one-person, one-vote doctrine. See *id.* In addition to these minimum requirements,

1 the Petition states that the Commission should ensure that the districts “do not unduly advantage or
2 disadvantage a political party.” *Id.* By use of the term “unduly,” it is clear that the Petition is designed
3 and intended to tolerate **un**fairness between the political parties. The Petition sets forth no definitions
4 or mechanism for determining when a party is “unduly” advantaged or disadvantaged. There will
5 obviously be disagreement on that question, and the lack of any guidelines leaves every plan open to
6 being challenged through litigation.

7 The Petition also invites other types of unfairness, besides partisan bias. The Petition contains
8 no requirements that the Commissioners fairly represent Nevada’s racial, language, ethnic, gender,
9 geographic, or demographic diversity. All of the Commissioners could be white, male, wealthy
10 residents of Las Vegas, for example. This would leave all other Nevadans without any formal
11 representation in drawing districts that, among other things, are supposed to keep communities intact,
12 while also ensuring that minorities retain their political voice.

13 Finally, partisan competitiveness is the very *last* of the criteria that the Commission is to
14 consider when drawing districts. The Petition provides that the criteria must be applied in the order
15 presented, so competitiveness will always be the last item considered. Petition, 5(B)(1). The Petition
16 in fact expressly makes competitiveness subordinate to all other criteria. *Id.* And most importantly,
17 the Petition does not even require that the Commission create competitive districts, and instead
18 instructs it to “consider” competitiveness “to the extent practicable.” *Id.*

19 In conclusion, the Description of Effect is inaccurate and materially misleading because it
20 states that the Commission will create “fair and competitive electoral districts,” but the Petition does
21 not in fact require “fairness,” nor does it require “competitive” districts. Voters will therefore be
22 misled into believing that the Petition will prevent partisan gerrymandering and that the Commission
23 will create truly fair and nonpartisan maps, when it actually need not do so.

24 **D. The Description of Effect is Invalid Because it Fails to Inform Voters of the Cost of**
25 **the Commission.**

26 As described above, the Petition does not provide for funding or any funding source for the
27 Commission. But in order to operate, the Commission necessarily needs funding. Redistricting is
28 complex and expensive, requiring specialized software and often involving special experts to analyze

1 the data. *See* LCB Bulletin No. 11-04, *supra* at 6. As described above, other states expressly require
2 the legislature to fund the commission, and typically set forth a formula intended to ensure that the
3 funding is adequate. Several years ago, California set a baseline of \$3 million, while Arizona used a
4 baseline of \$6 million.

5 However, the Description of Effect fails to describe any of these costs, nor does it notify voters
6 of these costs. Furthermore, the Petition is likely to generate more litigation over the validity of the
7 maps drawn by the Commission, because it states that no political party should be “unduly”
8 advantaged or disadvantaged, but provides no guidelines, safe harbors, or other mechanism for the
9 parties or the courts to evaluate when that criterion has been satisfied or when it has been violated.
10 This type of litigation will further increase the costs of redistricting.

11 Additionally, the Description of Effect fails to inform voters that the Commission will “undo”
12 whatever maps are drawn by the Legislature in 2021. The Description of Effect states that the
13 Commission will begin drawing maps in 2023, but fails to describe the practical consequence: that
14 the Legislature will have just drawn new districts 2021, which will only be operative for the 2022
15 election, and then the Commission will immediately start redrawing the maps. Thus the State will
16 potentially spend twice the resources (or more) as it would normally on redistricting efforts in the
17 three-year period following the 2020 census.

18 In *Coal. for Nev.’s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS
19 153, at *5 (May 11, 2016) (unpublished decision – NRAP 36(c)), the Nevada Supreme Court held
20 that a referendum’s description of effect was deceptive because it failed to inform voters of its
21 practical consequences. The referendum’s description of effect accurately summarized the *legal*
22 effect it would have: it would repeal the commerce tax. *Id.* at *9-10. However, the description of
23 effect contained no description of the *practical* consequences of repealing the commerce tax, which
24 would be to unbalance the state budget for the biennium. *Id.* The court therefore held that the
25 referendum’s “description is deceptive for failing to accurately identify the practical ramification of
26 the commerce tax’s disapproval.” *Id.*

27 It is not enough for a petition’s description of effect to merely recite or summarize the
28 petition’s language. *See id.*; *Prevent Sanctuary Cities v. Haley*, 421 P.3d 281, No. 74966, 2018 Nev.

1 Unpub. LEXIS 442, at *9-10 (May 16, 2018) (unpublished decision – NRAP 36(c)). The purpose of
2 the description of effect is to inform the voters of the practical ramifications of the petition. Failure to
3 do so renders the description of effect deceptive and misleading.

4 Like in *RIP Commerce Tax* and *Prevent Sanctuary Cities*, the Petition's Description of Effect
5 simply repeats the language of the Petition without actually informing voters of the Petition's real
6 consequences. These practical consequences include at potentially doubling the cost of redistricting
7 for the 2020 census, and failing to inform voters that the Commission will require substantial
8 taxpayer funding to carry out its duties. Therefore, like the petitions in *RIP Commerce Tax* and
9 *Prevent Sanctuary Cities*, the Petition must be declared invalid for failure to comply with NRS
10 295.009(1)(b).

11 III. CONCLUSION

12 For the reasons discussed above, Plaintiff respectfully requests that the Court enter an order:

- 13 1. Declaring that the Petition does not comply with NRS 295.009(1)(b) and is therefore
14 invalid;
- 15 2. Prohibiting the Secretary of State from placing the Petition on any ballot; and,
- 16 3. Granting any other relief the Court deems just.

17 Dated this 26th day of November, 2019.

18
19 BENSON LAW, LLC

20
21 By: 
22 KEVIN BENSON, ESQ.
23 Nevada State Bar No. 9970
24 123 W. Nye Lane, Suite #487
25 Carson City, NV 89706
26 Telephone: (775) 884-0838
27 Email: kevin@bensonlawnv.com
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Attorneys for Defendant Fair Maps Nevada PAC

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AUBREY ROWLATT
CLERK
BY G. COOPER
DEPUTY

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

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. II


PEREMPTORY CHALLENGE OF JUDGE

Defendant FAIR MAPS NEVADA PAC, a registered Nevada political action committee ("Fair Maps"), pursuant to Rule 48.1 of the Nevada Supreme Court Rules, hereby gives notice of its peremptory challenge of the Honorable James Wilson, and asks pursuant to this Rule that the matter be transferred to the remaining judge within the First Judicial District Court.

Dated: December 4, 2019

MCDONALD CARANO

By:


Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Defendant Fair Maps Nevada PAC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on December 4, 2019, I served the within **PEREMPTORY CHALLENGE OF JUDGE** on the parties in said case by placing a true copy thereof in the United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501 addressed as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed to the parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2019 at Reno, Nevada.

By 
An Employee of McDonald Carano LLP

4829-3749-5470, v. 2

1 Case No.: 19 OC 00209 1B

2 Dept. No.: 1

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AUDREY ROWLATT
CLERK

BY

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5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY

8
9 REV. LEONARD JACKSON,

10 Plaintiff,

11 vs.

ORDER TO SET FOR HEARING

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

14 Defendants.
15

16 This matter is before this Court pursuant to a Complaint for Declaratory and Injunctive
17 Relief and an Opening Brief, both filed by the Plaintiff on November 26, 2019. The Complaint
18 is made pursuant to NRS 295.061.

19 NRS 295.061(2) requires that the Court set this matter for a hearing no later than 15 days
20 after the filing of a Complaint. A Peremptory Challenge of Judge was filed on December 4,
21 2019, causing the above-referenced matter be transferred to Department I of the above-
22 referenced Court. Therefore, good cause appearing,

23 IT IS HEREBY ORDERED that the parties appear telephonically at 9:00 a.m. before the
24 Court's Judicial Assistant on Monday, December 16, 2019, to set this matter for a hearing.
25 Plaintiff shall arrange a conference call to chambers, providing the call-in number to the Court
26 and opposing counsel.

27 ///

28 ///

1
2 IT IS FURTHER ORDERED that Plaintiff shall immediately serve a copy of its
3 Complaint for Declaratory and Injunctive Relief on Defendants and Opening Brief, along with
4 this Order, and provide proof of such service to the Court. This includes service on the Secretary
5 of State. Defendants will have 20 days after being served to file an Answer and responsive
6 briefs.

7 Dated this 10th day of December, 2019.

8 
9 JAMES T. RUSSELL
10 DISTRICT JUDGE
11
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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 10th day of December, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, and caused to be transmitted via email, a true and correct copy of the foregoing Order addressed as follows:

Kevin Benson, Esq.
123 W. Nye Lane, Suite 487
Carson City, NV 89706
kevin@bensonlawnv.com

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
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Angela Jeffries
Judicial Assistant, Dept. 1

1 KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
2 BENSON LAW, LLC.
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Email: kevin@bensonalawnv.com
5 *Attorneys for Plaintiff*

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AUBREY ROWLATT
V. Alegria
BY _____ DEPUTY

6
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 v.

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

15 Defendants.
16

Case No.: 19 OC 00209 1B


Dept. No.: II

**ACCEPTANCE AND WAIVER
OF SERVICE**

17 I, Defendant (or counsel for Defendant) FAIR MAPS NEVADA PAC, have received a copy of
18 the Complaint for Declaratory Relief and the Opening Brief in this matter, and I hereby waive service
19 of the summons and complaint.

20 Dated: December 4, 2019

21 McDONALD CARANO, LLP

22 
23 Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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*Attorneys for Defendant
Fair Maps Nevada PAC*

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

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

ANSWER TO COMPLAINT FOR DECLARATORY RELIEF

Defendant FAIR MAPS NEVADA PAC, a registered Nevada political action committee ("Fair Maps"), by and through its attorneys Adam Hosmer-Henner, Esq. and Lucas Foletta Esq., of MCDONALD CARANO LLP, hereby responds to the Complaint for Declaratory Relief ("Complaint") of Plaintiff as follows:

INTRODUCTION

1. The allegations of Paragraph 1 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations of this Paragraph.

2. Fair Maps is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and on this basis denies the allegations of this Paragraph.

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CLERK
BY V. Alegria
DEPUTY

1 3. Fair Maps denies the allegations contained in Paragraph 3.

2 4. Fair Maps is without knowledge or information sufficient to form a belief as to
3 the truth of the allegations contained in Paragraph 4 and on that basis denies the allegations of
4 this Paragraph.

5 **GENERAL ALLEGATIONS**

6 5. Fair Maps denies the allegations contained in Paragraph 5, except admits that the
7 constitutional initiative petition designated as #C-02-2019 ("Petition") and related Notice of
8 Intent to Circulate Statewide Initiative or Referendum Petition ("Notice of Intent") was filed on
9 November 4, 2019.

10 6. Fair Maps denies the allegations contained in Paragraph 6, except admits that the
11 Petition states as follows:

12 The People of the State of Nevada do enact as follows:

13 **Section 1:** Article 4, Section 5 of the Nevada Constitution is hereby amended to read as
14 follows:

15 **Section 5. Number of Senators and members of Assembly; apportionment.**
16 Senators and members of the Assembly shall be duly qualified electors in the respective
17 counties and districts which they represent, and the number of Senators shall not be less
18 than one-third nor more than one-half of that of the members of the Assembly.

17 It shall be the mandatory duty of the Legislature at its first session after the taking
18 of the decennial census of the United States in the year 1950, and after each subsequent
19 decennial census, to fix by law the number of Senators and Assemblymen, and apportion
18 them among the several counties of the State, or among legislative districts which may
19 be established by law, according to the number of inhabitants in them, respectively.

20 **Section 2:** Article 4 of the Nevada Constitution is hereby amended by adding thereto
21 new sections to be designated as Sections 5A, 5B and 5C, to read as follows:

22 **Section 5A. Apportionment; Creation of Independent Redistricting Commission.**

23 *1. There is created within the legislative branch of state government the Independent
24 Redistricting Commission. It shall be the duty of the Commission in the year 2023, and
25 after each subsequent decennial census of the United States, to apportion the number
26 of Senators and Assemblymen among legislative districts established by the
27 Commission and to apportion the number of representatives in the United States
28 House of Representatives among districts established by the Commission.*

*2. The Commission shall be composed of seven members who are registered and
eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3.
The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and
Assembly Minority Leader shall each appoint one Commissioner. The four
Commissioners appointed in this manner shall appoint three additional
Commissioners, each of whom, for at least four years immediately preceding their
appointment, has not been registered or affiliated with the largest political party or the*

second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.

3. Within four years preceding appointment and during their term, no Commissioner may be a registered lobbyist; a candidate for a federal, state, or partisan local office; an elected official to a federal, state, or partisan local office; an officer or member of the governing body of a national, state, or local political party; a paid consultant or employee of a federal, state, or partisan local elected official or candidate, or of a political action committee, or of a committee sponsored by a political party, or of a committee that seeks to influence elections to federal, state, or partisan local offices; an employee of the Legislature; an employee of the State of Nevada, except for employees in the judicial branch, the armed forces, or a state institution of higher education; or related within the third degree of consanguinity or affinity to any individual disqualified under this subsection.

4. The term of office of each Commissioner shall expire once the Commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete and shall expire no later than the release of the following decennial census of the United States.

5. All meetings of the Commission shall be open to the public. The Commission shall ensure that the public has opportunities to view, present testimony, and participate in hearings before the Commission. All Commission materials shall be public records.

6. The Commission shall adopt rules to govern its administration and operation.

7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

Section 5B. Criteria for Determination of Districts; Approval of Final Plans.

1. In adopting a redistricting plan, the Independent Redistricting Commission shall use the following criteria, in the order listed, to draw districts: Ensure that districts comply with the United States Constitution and applicable federal law; Ensure that districts have an approximately equal number of inhabitants; Ensure that districts are geographically contiguous; Ensure that districts are not drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or elect representatives of their choice, whether by themselves or voting in concert with other persons; Ensure that districts, when considered on a statewide basis, do not unduly advantage or disadvantage a political party; Ensure that districts reflect, to the extent possible, county, city, and township boundaries; Minimize, to the extent practicable, the division of communities of interest, meaning an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities, but not including common relationships with political parties or political candidates; Ensure that districts are reasonably compact; and to the extent practicable, after complying with the requirements above, consider the number of politically competitive districts, measured by creating a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses.

2. Not later than July 1, 2023, and thereafter not later than 180 days from the release of the decennial census of the United States, the Commission shall approve a redistricting plan for the Nevada State Senate, the Nevada State Assembly, and Nevada's Congressional Districts, after providing public notice of each proposed final plan and allowing sufficient time for public review and comment. A final plan may be approved by the Commission only upon at least five affirmative votes, including at least one Commissioner registered with the largest political party, one Commissioner registered with the second largest political party, and one Commissioner not registered or affiliated with the largest or second largest political party, according to voter

1 *registration data published by the Secretary of State as of the earliest day in January*
2 *of the redistricting year.*

3 ***Section 5C. Severability.***

4 ***Should any part of this Amendment be declared invalid, or the application thereof to***
5 ***any person, thing, or circumstance be held invalid, such invalidity shall not affect the***
6 ***remaining provisions or application of this Amendment which can be given effect***
7 ***without the invalid provision or application, and to this end the provisions of this***
8 ***Amendment are declared to be severable. This Section shall be construed broadly to***
9 ***preserve and effectuate the purpose of this Amendment.***

10 7. Fair Maps denies the allegations contained in Paragraph 7, except admits that the
11 text of the Petition is as stated in Paragraph 6 of this Answer.

12 8. Fair Maps denies the allegations contained in Paragraph 8, except admits that the
13 text of the Petition is as stated in Paragraph 6 of this Answer.

14 9. Fair Maps denies the allegations contained in Paragraph 9, except admits that the
15 text of the Petition is as stated in Paragraph 6 of this Answer.

16 10. Fair Maps denies the allegations contained in Paragraph 10, except admits that
17 the text of the Petition is as stated in Paragraph 6 of this Answer.

18 11. Fair Maps denies the allegations contained in Paragraph 11, except admits that
19 the text of the Petition is as stated in Paragraph 6 of this Answer.

20 12. Fair Maps denies the allegations contained in Paragraph 12, except admits that
21 the text of the Petition is as stated in Paragraph 6 of this Answer.

22 13. Fair Maps denies the allegations contained in Paragraph 13, except admits that
23 the text of the Petition is as stated in Paragraph 6 of this Answer.

24 14. Fair Maps denies the allegations contained in Paragraph 14, except admits that
25 the text of the Description of Effect states:

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

The Commission will consist of seven Nevada voters, four who will be appointed
by the leadership of the Nevada 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, lobbyists, or certain relatives of such
individuals. All meetings of the Commission shall be open to the public who shall have
opportunities to participate in hearings before the Commission.

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

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

FIRST CAUSE OF ACTION

(Misleading Description of Effect: "Independent")

15. Fair Maps denies the allegations contained in Paragraph 15.
16. Fair Maps denies the allegations contained in Paragraph 16.
17. Fair Maps denies the allegations contained in Paragraph 17.
18. Fair Maps denies the allegations contained in Paragraph 18.
19. Fair Maps denies the allegations contained in Paragraph 19.
20. Fair Maps denies the allegations contained in Paragraph 20.
21. Fair Maps denies the allegations contained in Paragraph 21.
22. Fair Maps denies the allegations contained in Paragraph 22.

SECOND CAUSE OF ACTION

(Misleading Description of Effect: "Fair and competitive maps")

23. Fair Maps denies the allegations contained in Paragraph 23.
24. Fair Maps denies the allegations contained in Paragraph 24.
25. Fair Maps denies the allegations contained in Paragraph 25.
26. Fair Maps denies the allegations contained in Paragraph 26.
27. Fair Maps denies the allegations contained in Paragraph 27.
28. Fair Maps denies the allegations contained in Paragraph 28.

THIRD CAUSE OF ACTION

(Misleading Description of Effect: "Practical and Fiscal Impacts")

29. Fair Maps denies the allegations contained in Paragraph 29.
30. Fair Maps denies the allegations contained in Paragraph 30.

1 31. Fair Maps denies the allegations contained in Paragraph 31.

2 **AFFIRMATIVE DEFENSES**

3 As separate and affirmative defenses to the Complaint and to each cause of action, claim
4 and allegation contained therein, Fair Maps alleges as follows:

5 1. Neither the Complaint nor any cause of action therein states a claim for which
6 relief may be granted.

7 2. That the allegations in the Complaint are barred by any applicable equitable
8 doctrine.

9 3. That all possible affirmative defenses may not have been alleged herein insofar as
10 sufficient facts were unavailable upon the filing of the Answer. Therefore, Fair Maps reserves
11 the right to amend this Answer to allege additional affirmative defenses if subsequent
12 investigation warrants.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Fair Maps prays as follows:

- 15 1. That Plaintiff take nothing by way of the Complaint and that the same be
16 dismissed with prejudice;
- 17 2. That the Petition is valid and complies with Nevada law;
- 18 3. In the alternative that the Petition, with a revised or amended description of
19 effect, is valid and complies with Nevada law;
- 20 4. That judgment be entered in favor of Fair Maps;
- 21 5. For an award of attorney's fees and costs incurred in the defense of this action;
22 and
- 23 6. For such other and further relief as the Court deems just and proper under all the
24 circumstances of this mater.

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AFFIRMATION

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

Dated: December 13, 2019

MCDONALD CARANO

By:


Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Defendant Fair Maps Nevada PAC

1 **CERTIFICATE OF SERVICE**

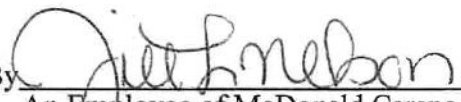
2 I hereby certify that I am an employee of McDONALD CARANO LLP and that on
3 December 13, 2019, I served the within **ANSWER TO COMPLAINT FOR**
4 **DECLARATORY RELIEF** on the parties in said case by placing a true copy thereof in the
5 United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501
6 addressed as follows:

7 Kevin Benson, Esq.
8 Benson Law, LLC
9 123 Nye Lane, Suite #487
10 Carson City, NV 89706

11 I am familiar with the firm's practice for collection and processing of correspondence for
12 mailing with the United States Postal Service. The envelope addressed to the parties were
13 sealed and placed for collection by the firm's messengers and will be deposited today with the
14 United States Postal Service in the ordinary course of business.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed on December 13, 2019 at Reno, Nevada.

17 By 
18 An Employee of McDonald Carano LLP

19 4837-7475-6526, v. 1

1 Case No.: 19 OC 00209 1B

2 Dept. No.: 1

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AUDREY ROWLETT
CLERK

BY  CLERK

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

8
9 REV. LEONARD JACKSON,
10 Plaintiff,

11 vs.

ORDER SETTING HEARING


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

15 Defendants.

16 Following a telephonic setting on December 16, 2019, and good cause appearing,

17 IT IS HEREBY ORDERED that this matter is set for an initial hearing before the First
18 Judicial District Court, located at 885 East Musser Street, Carson City, Nevada, Department I, on
19 December 23, 2019, at 2:30 p.m.

20 Dated this 16th day of December, 2019.

21 
22 JAMES T. RUSSELL
23 DISTRICT JUDGE
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Gregory Zunino, Esq.
Office of the Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701

-2-

Adam Hosmer-Henner, Esq. (NSBN 12779)
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lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

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AUBREY ROWLAND
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DEPUTY

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

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

**DEFENDANT FAIR MAPS NEVADA PAC's ANSWERING BRIEF
IN RESPONSE TO PLAINTIFF'S OPENING BRIEF IN SUPPORT OF COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendant FAIR MAPS NEVADA PAC, a registered Nevada political action committee ("Fair Maps"), by and through its attorneys Adam Hosmer-Henner, Esq. and Lucas Foletta, Esq. of MCDONALD CARANO LLP, hereby submits its Answering Brief in Response to Plaintiff Rev. Leonard Jackson's ("Plaintiff") Opening Brief in Support of Complaint for Declaratory Relief and Injunctive Relief ("Opening Brief" or "Op. Br."). This Answering Brief is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file with the Court, and any oral argument entertained by the Court at a hearing in this matter.

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I. INTRODUCTION

The only consistency within Plaintiff's lawsuit is that it is an attempt to defend one anti-democratic tactic, political and racial gerrymandering, through the use of another anti-democratic tactic, meritless pre-election litigation to keep ballot initiatives away from the voters. *See, e.g., Rucho v. Common Cause*, 139 S. Ct. 2484, 2525 (2019) (Kagan, J., dissenting) (describing gerrymandering as "anti-democratic in the most profound sense"). Plaintiff directly seeks to prevent Fair Maps' Initiative Petition #C-02-2019 ("Petition"), Exhibit 1, from "appear[ing] on the general election ballot for 2020." Op. Br. 1. Yet throughout the Opening Brief, Plaintiff struggles to articulate a basis for its opposition to the Petition and instead seems to argue that the Petition does not go far enough. Op. Br. 6 (arguing that the proposed amendment does not completely remove "political influence over individual commissioners and the Commission itself"); Op. Br. 9-10 (arguing that the proposed amendment "requires neither fairness nor competitiveness" but only makes it a factor to be considered "to the extent practicable"). As Plaintiff's arguments reflect policy differences rather than legal objections, Plaintiff's remedy is to propose an alternative initiative to the public, not to litigate against Fair Maps' Petition.

The description of effect, limited to two-hundred words, must be considered holistically and not hyper-technically. Fair Maps's Petition seeks to transfer responsibility for redistricting from the Nevada Legislature to a newly established commission. Ex. 1. Plaintiff introduces policy arguments about the description of effect that should be reserved for the political process or ballot arguments rather than the courtroom. The description of effect, however, accurately and succinctly describes the proposed amendment to voters and need not address Plaintiff's policy objections. If Plaintiff disagrees with this policy, he may decline to sign the Petition or campaign against it, but policy disagreements do not render the description of effect legally invalid.

Most importantly, while Plaintiff asks the Court to prohibit the Petition from appearing on the ballot, this is relief that the Court cannot grant. As the sole challenge in this litigation is based on the Petition's description of effect, the sole relief that the Court can grant is to amend the description of effect based on its factual findings. Fair Maps has proactively provided five

alternative descriptions of effect attached to this Answering Brief. Exhibit 2. Should the Court accept any of Plaintiff's arguments, it can select an alternative description from Exhibit 2; Fair Maps can provide additional alternatives consistent with the Court's factual findings in this matter; or the Court can further amend the description of effect. Under no circumstance can the Petition, which Plaintiff does not challenge, be barred from the ballot in violation of Nevadans' right to propose amendments to the Nevada Constitution.

II. FACTUAL AND PROCEDURAL BACKGROUND

Fair Maps filed the Petition on November 4, 2019 to amend the Nevada Constitution by adding a new section, Section 5A, to the Nevada Constitution. Ex. 1. The Petition includes the following description of effect:

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

The Commission will consist of seven Nevada voters, four who will be appointed by the leadership of the Nevada 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, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.

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

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

Ex. 1.

Plaintiff filed a Complaint and the Opening Brief on November 26, 2019, which was the last possible day (resulting in maximum delay) to file such a Complaint pursuant to NRS 295.065(1). The Complaint is limited to a challenge of the Petition's description of effect.

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III. LEGAL STANDARD

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

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

In reviewing a description of effect, "it is inappropriate to parse the meanings of the words and phrases used in a description of effect" as closely as a reviewing court would a statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach "comes at too high a price in that it carries the risk of depriving the people of Nevada of their constitutional right to propose laws by initiative." *Id.* Thus, a reviewing court "must take a holistic approach" to the required analysis. *Id.* "The opponent of a ballot initiative bears the burden of showing that the initiative's description of effect fails to satisfy this standard." *Id.* at 42, 293 P.3d at 879.

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1 **IV. ARGUMENT**

2 “The [gerrymandering] practices challenged in these cases imperil our system of
3 government. Part of the Court’s role in that system is to defend its foundations. None is more
4 important than free and fair elections.” *Rucho*, 139 S. Ct. at 2525 (Kagan, J., dissenting). In
5 response to the majority decision in *Rucho* where the U.S. Supreme Court held that partisan
6 gerrymandering claims were nonjusticiable political questions, political initiatives have been
7 launched across the country to protect voting rights. *See* League of Women Voters of the US,
8 *Redistricting*, LWV (last visited Dec. 17, 2019), <https://www.lwv.org/voting-rights/redistricting>,
9 (“We promote transparent and accountable redistricting processes and to end hyper-partisan
10 practices that don’t benefit constituents. We believe responsibility for fair redistricting should be
11 vested in an independent special commission, with membership that reflects the diversity of the
12 unit of government. The League works in states across the country to pass ballot initiatives to
13 institute independent redistricting commissions.”). The Petition is part of this nationwide effort
14 and seeks to amend the Nevada Constitution to transfer responsibility for redistricting from the
15 Nevada Legislature to a newly established independent commission.

16 Plaintiff concedes that the current redistricting process is politicized insofar as it is
17 conducted by the Legislature. Despite this concession, Plaintiff seems to argue that Fair Maps
18 should have gone farther—created more independence and fairness in redistricting—in order to
19 support the language in the description of effect. Instead of proposing an alternative description
20 of effect to correspond more closely to his interpretation of the Petition or proposing a separate
21 initiative, Plaintiff requests that the Court preclude the Petition from reaching the ballot. This
22 clearly reveals Plaintiff’s interest is not in the accuracy of the description of effect, but rather in
23 preserving the status quo.

24 Plaintiff’s central argument is that the proposed redistricting commission is not
25 sufficiently insulated from political pressure to prevent partisan gerrymandering because four of
26 the seven members of the commission will be appointed by members of the Legislature. He
27 contends that as a result, the districts it generates will not be fair and competitive, and therefore
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