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

12 ERIC JENG, an individual,

13 Plaintiff,

14 vs.

15 FRANCISCO V. AGUILAR, in his
16 official capacity as NEVADA
SECRETARY OF STATE,

17 Defendant

18 and

19 Fair Maps Nevada,

20 Intervenor-Defendant.
21

Case No.: 23 OC 000138 IB

Dept. No.: II

**REPLY IN SUPPORT OF
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-03-2023**

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1 Initiative Petition C-03-2023 violates the Nevada Constitution’s prohibition on
2 unfunded mandates by creating a new government body to engage in an inevitably
3 costly redistricting process, without containing any mechanism to raise the necessary
4 funds, and because of fatal flaws in its description of effect. This Court already held
5 in 2020—in a case in which Fair Maps Nevada PAC was a party—that a substantively
6 identical petition would require an expenditure of funds and needed revisions to its
7 description of effect that are missing from the Petition at issue here. Compl. Ex. 3, at
8 4-5. Fair Maps has no answer to that decision, and so simply ignores it. The Court
9 should reach the same conclusions here, and should therefore enjoin the Nevada
10 Secretary of State from taking further action on the Petition.

11 **ARGUMENT**

12 **A. The Petition fails to fund required expenditures in violation of article**
13 **19, section 6 of the Nevada Constitution.**

14 The Petition is unlawful because it would require the expenditure of public
15 funds to fund the Commission but does not provide for raising the necessary money.
16 The Nevada Constitution prohibits any initiative that “makes an appropriation *or*
17 *otherwise requires the expenditure of money*, unless such statute or amendment also
18 imposes a sufficient tax, not prohibited by the constitution, or otherwise
19 constitutionally provides for raising the necessary revenue.” Nev. Const. art. 19, § 6
20 (emphasis added).

21 Fair Maps argues that creating the Commission will not require an
22 appropriation because it will not cost money. Answering Br. 4-5. But the Court held
23 to the contrary four years ago with respect to a substantively identical petition,
24 explaining that it would “result in the expenditure of state funds.” *See Jackson v. Fair*
25 *Maps Nevada PAC*, No. 19-OC-002909 1B (Nev. 1st Jud. Dist. Ct. Jan. 2, 2020),
26 Compl. Ex. 3, *aff’d*, No. 80563 (Nev. July 24, 2020), Compl. Ex. 4. Fair Maps fails to
27 grapple with (or even mention) the 2020 holding in its brief, and offers no explanation
28 for why the Court should reach a different conclusion this time around.

1 Issue preclusion bars Fair Maps from relitigating whether the Petition will
2 require an expenditure of funds. Issue preclusion applies where (1) the prior litigation
3 involved “the same fact issue” issue as prior litigation, even if the legal claims are
4 “substantially different,” provided that (2) the prior ruling was on the merits and
5 became final, (3) the party to be precluded was a party to the prior action, and (4),
6 the issue was “actually and necessarily litigated.” *Five Star Cap. Corp. v. Ruby*, 124
7 Nev. 1048, 1053, 1055, 194 P.3d 709 (2008) (quoting *LaForge v. State, Univ. & Cmty.*
8 *Coll. Sys. Of Nev.*, 116 Nev. 415, 421, 997 P.2d 130 (2000)). Each of those factors is
9 met here. The Petition is substantively identical to the petition at issue in the 2020
10 case, so the question whether it will require an expenditure of state funds is “the
11 same fact issue” decided there. *Id.* at 1053. The 2020 ruling was on the merits and
12 became final after the Supreme Court’s affirmance. *See* Compl. Exs. 3, 4. Fair Maps
13 was a defendant in the prior action and is an intervenor-defendant here. *See id.* And
14 the issue was actually and necessarily litigated, because the complaint and briefing
15 in the 2020 case argued that the petition would require state funding, and the Court
16 so held when it ordered the description of effect revised to say so. *See Exhibit 1*, a
17 true and accurate copy of the Opening Br. in Supp. of Compl. for Declaratory &
18 Injunctive Relief, *Jackson v. Fair Maps Nevada PAC*, No. 19-OC-002909 1B (Nev. 1st
19 Jud. Dist. Ct. Nov. 26, 2019).

20 Preclusion aside, the Petition undeniably requires funding in violation of
21 article 19, section 6, because it creates a new government body to engage in a costly,
22 time-consuming process without providing any means of funding it. Fair Maps offers
23 three contrary arguments, but each fails.

24 *First*, the existing “general appropriation to fund the Legislature’s business”
25 that funds the *Legislature’s* redistricting activities will not help fund the new
26 Commission that the Petition would create. Answering Br. 4. The Petition is explicit
27 that the “Independent Redistricting Commission” is a new body, created by the
28 Petition for the first time, whose members *cannot* be current legislators. Compl. Ex.

1 1, at 2. That the Legislature has an existing funding stream to carry out its own
2 activities will do nothing to help fund the activities of the new body, with different
3 members, that the Petition would create.

4 Moreover, the necessary funding will likely be substantial. Fair Maps argues
5 that it could be a “volunteer effort” but points to no example from anywhere in which
6 redistricting has been carried out for free. To the contrary, redistricting commissions
7 in other states have required millions of dollars in state funding. Compl. ¶¶ 19-22.
8 And the Nevada Legislature, too, has spent substantial funds on redistricting when
9 it has done so in the past.¹ At a minimum, it will cost money to recruit, identify, and
10 vet the Commission’s members, and the Commission will need to analyze the maps,
11 consider its options, hold public hearings, and ensure it complies with nine specific
12 criteria identified in the Petition. See Compl. Ex. 1.

13 *Second*, redistricting by the Nevada courts in 2011 is not a template for
14 redistricting by the Commission. The Nevada courts, of course, are an existing
15 government body with an existing source of funding. In contrast, the Commission will
16 be a new body that is not already funded and will require an appropriation of funds.
17 Moreover, the need for the courts to become involved in redistricting in 2011 was not
18 the result of an initiative petition, and therefore was not subject to the restrictions in
19

20 ¹ The Legislature relies on a fully staffed and salaried Committee to Conduct
21 an Investigation into Matters Relating to Reapportionment and Redistricting in
22 Nevada. See **Exhibit 2**, a true and accurate copy of the Nevada Legislature webpage
23 identifying staff members of the Committee to Conduct an Investigation into Matters
24 Relating to Reapportionment and Redistricting in Nevada. Further, the Committee
25 to Conduct an Interim Study of the Requirements for Reapportionment and
26 Redistricting recommended redistricting software that costs money, including
27 AutoBound by Citygate GIS, which is estimated to fall in the range of \$53,000-67,000.
28 See **Exhibit 3**, a true and accurate copy of the Legislative Counsel Bureau’s
presentation on Redistricting Software Options. The Legislative Commission
purchased the AutoBound software and any necessary hardware under the 2021
Session Budget. See **Exhibit 4**, a true and accurate copy of the May 27, 2020
Summary Minutes of the Nevada Legislature Committee to Conduct an Interim
Study of the Requirements for Reapportionment and Redistricting in the State of
Nevada.

1 article 19, section 6 in any event.

2 *Third*, concluding that the Petition violates article 19, section 6 would be
3 consistent with prior initiative petitions. Fair Maps argues that other petitions have
4 been adopted that similarly required, but did not provide for, funding. But none of
5 those other petitions is analogous because each either tasked an existing government
6 body or entity with activities already within its purview, Nev. Const. art. 1, § 21, *id.*
7 art. 2, § 10, *id.* art. 4, §§ 38-39, *id.* art. 10, §§ 3, 3b, *id.* art. 11, § 6, or imposed at most
8 incidental costs to maintain or adjust an existing process, Nev. Const. art. 4, § 39, *id.*
9 art. 10, §§ 3, 3b, *id.* art. 11, § 6, *id.* art. 15, § 16, *id.* art. 1, § 22. Some of the examples
10 merely set priorities or impose conditions in the event that an existing government
11 entity decided to do something, Nev. Const. art. 11, § 6, *id.* art. 1, § 22. The Petition,
12 in contrast, creates an entirely new body to carry out a mandatory task.

13 **B. Well-established law indicates that constitutional initiative petitions**
14 **must comply with article 19, section 6.**

15 The Nevada Supreme Court has held that “regardless of whether the initiative
16 petition is proposing statutory or constitutional changes, if the initiative petition
17 requires expenditures or appropriations, it must include funding provisions.” *Educ.*
18 *Freedom PAC v. Reid*, C, 138 Nev. Adv. Op. 47, 512 P.3d 296, 303 (Nev. 2022). Fair
19 Maps encourages this Court to ignore binding precedent and cites the concurrence in
20 *Reid* to argue that its unconstitutional Petition should withstand this Court’s
21 scrutiny because the Petition is a constitutional initiative, not a statutory one. But
22 the controlling majority opinion holds to the contrary. *Reid*’s clear holding is bolstered
23 by the Nevada Supreme Court’s consistent prior decisions that “[s]ection 6 applies to
24 *all* proposed initiatives, without exception, and *does not permit* any initiative that
25 fails to comply with the stated conditions.” *Rogers v. Heller*, 117 Nev. 169, 173, 18
26 P.3d 1034 (2001) (*per curiam*); *see also Herbst Gaming, Inc. v. Heller*, 122 Nev. 877,
27 890-91 (2006) (recognizing that article 19, section 6 “prevents the electorate from
28 creating the deficit that would result if government officials were forced to set aside

1 or pay money without generating the funds”—a purpose which is only achieved if the
2 requirement applies to all initiative petitions).

3 **C. The Petition’s description of effect is legally insufficient.**

4 The Petition’s description of effect is legally insufficient because it fails to
5 include the fact that the Petition will result in an expenditure of funds—a material
6 fact that the First Judicial District Court held must be included in the description of
7 the materially identical 2019 petition. Ex. 3, at 4–5. Fair Maps ignores this holding
8 and fails to articulate how the Court can overlook the Petition’s deficiency despite
9 this holding.

10 **CONCLUSION**

11 The Petition is legally deficient, and Plaintiff’s requested relief should be
12 granted.

13 **AFFIRMATION**

14 The undersigned hereby affirm that the foregoing document does not contain
15 the social security number of any person.

16 DATED this 3rd day of January, 2024.

17 BRAVO SCHRAGER LLP

18 By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2024, a true and correct copy of the **REPLY IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023** was served upon all parties via U.S.P.S. Mail, Las Vegas Nevada and via electronic mail as follows:

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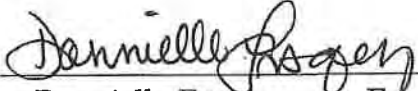
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Exhibit 1

Exhibit 1

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

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11 REV. LEONARD JACKSON,
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Plaintiff,
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v.
14 FAIR MAPS NEVADA PAC, and
BARBARA CEGAVSKE, in her official
15 capacity as Nevada Secretary of State,
16
Defendants.

Case No.: 1902 00209 13
Dept. No.: 4

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

17
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).

26
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.

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).

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.

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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: 

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28

Exhibit 2

Exhibit 2

[Interim Committees \(/App/InterimCommittee/REL/Interim2021\)](#)

[/ Committees \(/App/InterimCommittee/REL/Interim2021/CommitteeList\)](#) / [Legislative Interim Studies](#)

[/ Committee to Conduct an Investigation into Matters Relating to Reapportionment and Redistricting in Nevada](#)

Committee to Conduct an Investigation into Matters Relating to Reapportionment and Redistricting in Nevada (SCR13 (<https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8218/Overview>))

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- Asher A. Killian, Chief Deputy Legislative Counsel
- Samuel J. Quast, Senior Deputy Legislative Counsel

Exhibit 3

Exhibit 3



REDISTRICTING SOFTWARE OPTIONS

May 27, 2020

Connecting People to Policy

A. autoBound by Citygate GIS

Website: <http://www.citygategis.com/products/autobound>

Desktop Application	Online Application	Staff Familiarity	Support	Pricing
<ol style="list-style-type: none"> 1. Built-in Census Data import tool that allows staff to begin processing data when Census releases it. Citygate GIS will also process and import data within 3-4 days. 2. Includes most recent American Community Survey (ACS) population data estimates that can be used for redistricting projections now while waiting for Census data. 3. Create plans from scratch or existing plan with multiple assignment methods and advanced boundary editing tools. 4. Active matrix Excel spread sheet for displaying and computing district statistics. 5. Tools for compactness measurements and contiguity analysis. 6. Imports and disaggregates election results. 7. Export plans as GIS shapefiles, standard equivalency file formats, and Google Earth files. 8. Complete report writing system. 	<p>Mydistricting.com</p> <ol style="list-style-type: none"> 1. Web-based redistricting designed specifically for members of the public. 2. Users can create account and login on any device with internet connection. 3. Supported on both Windows and Linux systems and all modern browsers. 4. Easy to use and learn, based on Google Maps. 5. Import/Export tools and report tools. 6. Plan sharing and public commenting tool. 7. Available as perpetual license or monthly service. 	<p>Desktop application used during 2001 and 2011 redistricting.</p> <p>High comfort level with staff and great relationship with vendor.</p>	<p>Support during 2001 and 2011 redistricting was outstanding—widely available, even outside of regular business hours.</p> <p>\$5,500 per year.</p>	<p>\$53,000 - \$67,000</p> <p>Average price per license decreases as more licenses are purchased or if Mydistricting.com is bundled.</p> <p>Option 1: \$53,000</p> <ul style="list-style-type: none"> • 9 desktop licenses (including one year of support): 2 for LCB staff, 4 for session hires, 1 for NSHE, and 2 for public workstations <p>Option 2: \$67,000</p> <ul style="list-style-type: none"> • 7 desktop licenses (including one year of support): 2 for LCB staff, 4 for session hires, and 1 for NSHE • Perpetual Mydistricting.com license for public workstations (and available anywhere through internet connection) <p>Option 3: \$63,000</p> <ul style="list-style-type: none"> • 7 desktop licenses (including one year of support): 2 for LCB staff, 4 for session hires, and 1 for NSHE • 2-month Mydistricting.com license for public workstations (and available anywhere through internet connection)

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B. Maptitude by Caliper Corporation

Website: <https://www.caliper.com/mtredist.htm>

Desktop Application	Online Application	Staff Familiarity	Support	Pricing
<ol style="list-style-type: none"> 1. Caliper processes and provides Census data within 48 hours of release. 2. Create plans from scratch or existing plan with multiple assignment methods. 3. Active matrix that displays district statistics. 4. Tools for compactness measurements and contiguity analysis, including travel contiguity. 5. Imports and disaggregates election results. 6. Export plans as GIS shapefiles, standard equivalency file formats, and Google Earth files. 7. Complete report writing system. 	<p>Mapitude Online Redistricting</p> <ol style="list-style-type: none"> 1. Web-based redistricting designed specifically for members of the public. 2. Users can create account and login on any device with internet connection. 3. Supported on both Windows and Linux systems and all modern browsers. 4. Similar in complexity to desktop application. 5. Import/Export tools and report tools. 6. Available as 12-month license. 	<p>No previous experience with software.</p>	<p>By phone or email during regular business hours (EST).</p> <p>One year of support included in license cost.</p>	<p>\$72,000 - \$116,000</p> <p>Fixed cost of \$8,000 per license and \$60,000 for Maptitude Online Redistricting.</p> <p>Option 1: \$72,000</p> <ul style="list-style-type: none"> • 9 desktop licenses (including one year of support) <p>Option 2: \$116,000</p> <ul style="list-style-type: none"> • 7 desktop licenses (including one year of support) • Maptitude Online Redistricting license for one year

C. Esri Redistricting by Esri*

Website: <https://www.esri.com/en-us/arcois/products/esri-redistricting/overview>

*For consideration for public redistricting software licenses only

Desktop Application	Online Application	Staff Familiarity	Support	Pricing
N/A	<ol style="list-style-type: none"> 1. Web-based software—no installation needed. 2. Users can create account and login on any device with internet connection. 3. Esri processes and provides census data. 4. Create plans from scratch or existing plan with multiple assignment methods. 5. Integrity checks for compactness and contiguity. 6. Reporting and thematic mapping. 7. Plan and user management and security. 8. Import/Export tools. 9. Available as 12-month license. 	Based on Esri's ArcGIS software platform that is actively being used by staff now.	<p>24/7 technical and operational support.</p> <p>One year of support included in license cost.</p>	<p>\$9,000 - \$140,000 (plus 7 desktop licenses from autoBound or Maptitude)</p> <p>Option 1: \$9,000</p> <ul style="list-style-type: none"> • Two individual web-based licenses for public workstations • Supports 2 concurrent users <p>Option 2: \$107,000</p> <ul style="list-style-type: none"> • On-Premise server installation • Supports up to 100 concurrent users • Accessible through public workstations or any device with internet connection <p>Option 3: \$140,000</p> <ul style="list-style-type: none"> • Managed Cloud Services • Supports up to 100 concurrent users • Accessible through public workstations or any device with internet connection

Exhibit 4

Exhibit 4



**NEVADA LEGISLATURE
COMMITTEE TO CONDUCT AN INTERIM STUDY OF
THE REQUIREMENTS FOR REAPPORTIONMENT AND
REDISTRICTING IN THE STATE OF NEVADA**

(Senate Concurrent Resolution 9 [SCR] [2019])

**SUMMARY MINUTES
May 27, 2020**

The second meeting of the Committee to Conduct an Interim Study of the Requirements for Reapportionment and Redistricting for the 2019–2020 Interim was held on Wednesday, May 27, 2020, at 9:30 a.m. Pursuant to Section 1 of Governor Steve Sisolak’s Emergency Directive 006, there was no physical location for this meeting.

The agenda, minutes, meeting materials, and audio or video recording of the meeting are available on the Committee’s meeting page. The audio or video recording may also be found at <https://www.leg.state.nv.us/Video/>. Copies of the audio or video record can be obtained through the Publications Office of the Legislative Counsel Bureau (LCB) (publications@lcb.state.nv.us or 775/684-6835).

COMMITTEE MEMBERS PRESENT:

Senator Joyce Woodhouse, Chair
Assemblyman Jason Frierson, Vice Chair
Senator Yvanna D. Cancela
Senator Nicole J. Cannizzaro
Senator Heidi SeEVERS Gansert
Senator Pete Goicoechea
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Sandra Jauregui
Assemblyman Glen Leavitt
Assemblyman Howard Watts III

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Michael J. Stewart, Research Director, Research Division
Haley Proehl, Geographic Information Systems (GIS) Analyst/Redistricting GIS Specialist,
Research Division
Gayle Nadeau, Research Policy Assistant, Research Division
Kathy Steinle, Redistricting Specialist, Information Technology Services
Asher A. Killian, Senior Principal Deputy Legislative Counsel, Legal Division
Samuel J. Quast, Deputy Legislative Counsel, Legal Division

Items taken out of sequence during the meeting have been placed in agenda order.

AGENDA ITEM I—OPENING REMARKS AND INTRODUCTIONS

Chair Woodhouse called the second meeting of the Committee to Conduct an Interim Study of the Requirements for Reapportionment and Redistricting in the State of Nevada to order. She reminded the members and those listening over the Internet that SCR 9 of the 2019 Legislative Session is the genesis of this interim study.

Chair Woodhouse said the Coronavirus Disease of 2019 (COVID-19) affected the role of the Committee and halted, until recently, the gathering of 2020 Census counts by the United States Census Bureau. She noted the census activity delays would impact how the 2021 Legislative Session will conduct the redistricting exercise.

AGENDA ITEM II—PUBLIC COMMENT

Forrest Darby, Vice President, Nevada Alliance for Retired Americans, Las Vegas, commented on his written testimony regarding historical information on redistricting. (Agenda Item II)

AGENDA ITEM III—APPROVAL OF THE MINUTES FOR THE MEETING HELD ON JANUARY 27, 2020

MOTION: Vice Chair Frierson moved to approve the minutes of the January 27, 2020, meeting. The motion was seconded by Senator Cannizzaro and passed. Senator Seevers Gansert was absent for the vote.

AGENDA ITEM IV—OVERVIEW OF THE PROGRAMS AND ACTIVITIES OF NEVADA'S OFFICE OF THE STATE DEMOGRAPHER AND DISCUSSION OF POPULATION TRENDS AND PROJECTIONS IN NEVADA

Jeff Hardcastle, AICP, Nevada State Demographer, Nevada's Department of Taxation, testified regarding his role as Nevada's State Demographer and on the projections and trends in Nevada from the past nine years and going forward. He said there was a decrease in population in the state from 2010 through 2019. However, Mr. Hardcastle said the components of the change have been different from previous records with less international and domestic migration, and there was a greater increase in deaths.

Mr. Hardcastle addressed the following matters identified in his slide presentation: (Agenda Item IV A-1)

- Assembly Bill 450 (Chapter 186, *Statutes of Nevada* 2019), which is an act relating to incarcerated persons;
- Revenue distribution estimates, how projections and estimates are used in Nevada, and how population projections and economic analysis are used;
- Coordinating with the U.S. Census Bureau to improve knowledge about the census and data quality;
- His involvement as chair of the Federal-State Cooperative for Population Estimates Steering Committee and participation in establishing various working groups;

- Ensuring a complete count for Nevada with a series of iterative processes such as the Local Update of Census Addresses Operation (LUCA);
- Through LUCA, the U.S. Census Bureau provides all the address information that it has in the master address file for an area;
- The daily, weekly, and monthly counting of hotel units, which are considered housing units, if the lodging is the person's usual place of residence;
- State and county level cumulative census count response rates for Nevada as of May 21, 2020;
- Revised operations due to current operational delays and the unknown impacts on the quality of the data and/or post enumeration survey;
- Trends and projections—Components of change to Nevada's population;
- Net migration for Clark and Washoe Counties;
- The decrease, over time, of California's net out-migration;
- Nevada by age cohort for 2010 through 2018;
- Four factors that fueled Nevada's population in the 1990s and early 2000s: (1) a monopolistic economy; (2) competitive housing prices; (3) the relatively easy development of infrastructure and land; and (4) a relatively stable national and international economy;
- The "great recession" and the COVID-19 global pandemic; and
- Maps tracking the global and U.S. outbreak of the coronavirus.

Discussion ensued between Vice Chair Frierson and Mr. Hardcastle regarding how accurate the state's projections have been to actual growth and how Nevada compares to other states, as well as the consequences relative to the degree of inaccurate projections.

To clarify, Mr. Hardcastle provided an example of how the 2010 census overestimated the population of Mesquite, Nevada. He said such an occurrence could have a negative economic impact on someone starting a business because the actual population base may not support such a venture.

Vice Chair Frierson asked what an average acceptable projection would be, to which Mr. Hardcastle said a standard range would be 5 percent higher or lower.

Continuing, Vice Chair Frierson asked whether the state is able to make annual adjustments or revise population estimates throughout a decade to become more accurate.

Mr. Hardcastle said population estimates for revenue distribution purposes in Nevada, as well as in other states, become certified and "fixed in time," which is why local governments have the right to appeal those estimates. He said the estimates the state produces are certified yearly. However, with receipt of the 2021 census data, the Census Bureau, as well as Nevada, will correct errors from the previous decennial census.

Assemblyman Watts asked how the Census Bureau counts Nevadans who reside in a monthly or weekly housing situation.

Mr. Hardcastle responded it was his understanding people living in a typical apartment receive a letter from the Census Bureau. However, for units that may be housing people in a transitory situation, the census staff will contact the complex manager to identify such units. If the manager is not able to provide this information, the counters will knock on every door and ask whether the location is the person's place of residence. He said even people contacted in recreational vehicles (RV), who indicate the RV is their usual place of residence, will be counted.

Assemblyman Watts asked whether there has been further tracking of migration trends due to the COVID-19 pandemic.

Mr. Hardcastle responded there has not been any apparent migration trends noted at the state level because of the pandemic. However, he said as businesses and activities continue to reopen and people once again begin to recreate, growth in the state may rebound.

Commenting on the decennial census and annual updates, Senator Gansert asked whether the resources from the federal government are fixed on the census numbers even though the population fluctuates within ten-year periods.

Mr. Hardcastle said it depends on the federal funding program, which uses more than 1,000 funding formulas, and some of the census data. He said some of the formulas rely on the population estimates or characteristics of the population that come from the American Community Survey. For example, statistics regarding education, income, poverty, and unemployment are gathered during the course of the decade.

Subsequent to the meeting, Mr. Hardcastle provided additional information that addressed many of Vice Chair Frierson's questions relating to demographic data collection.

(Agenda Item IV A-2)

AGENDA ITEM V—REVIEW OF ANTICIPATED REAPPORTIONMENT AND REDISTRICTING EFFORTS BY THE BOARD OF REGENTS, NEVADA SYSTEM OF HIGHER EDUCATION

Joe Reynolds, Chief General Counsel, Nevada System of Higher Education (NSHE), said the Board of Regents and NSHE are engaged in the redistricting process and look forward to working with the Committee and the Nevada Legislature. He stressed the Board of Regents' overall goal is to present a redistricting plan for consideration by the Legislature that is reliable and has integrity. (Agenda Item V)

Mr. Reynolds discussed the following information during his presentation:

- NSHE's redistricting timeline;
- The Board of Regents' 13 nonpartisan districts and related maps;
- 2010 census population and racial data for NSHE's regent districts;
- 2010 through 2020 estimated population changes provided by LCB's Research Division;
- Statewide distribution of the Board of Regents' districts from the 2019 census data;
- State demographers' 2020 population projections for the Board of Regents' districts; and

- NSHE's 2018 American Community Survey estimates of population and racial data reports.

AGENDA ITEM VI—UPDATE ON DECENNIAL CENSUS OUTREACH EFFORTS IN NEVADA AND IMPACTS OF COVID-19 RESPONSE ON CENSUS ACTIVITIES

Kerry Durmick, MA, Nevada Census Coordinator, Nevada Census 2020, Office of the Governor, provided an update on Nevada's 2020 Census outreach before the COVID-19 pandemic and its ongoing effect on census activities. She discussed some of Nevada Census 2020's current challenges and activities to engage more citizens in the census process. (Agenda Item VI)

Ms. Durmick's slide presentation covered the following matters:

- The Nevada Census 2020 Mission;
- Nevada's census regions;
- Recap of the January through March census operation;
- Census grants;
- COVID-19 operation changes;
- Census Bureau updates;
- Highlights of challenges;
- Nevada Legislature's friendly census competition between the Senate and Assembly;
- Status of self-response rates in Nevada; and
- Ideas to help the Nevada Census 2020 achieve its goal of a complete count in the state.

Assemblyman Leavitt asked where the Nevada Census 2020 statewide events were held and whether Ms. Durmick could provide the Committee with a list of past and future events.

Ms. Durmick said no further Nevada Census 2020 events would be held because of COVID-19; however, 1,000 educational events were held from November 2019 through March 2020. She pointed out that, in addition to activities held in Clark and Washoe Counties, there were three rural events, and at one point, there were 10 to 20 organizers in the rural areas. Ms. Durmick stated she would provide the Committee with a list of the number of people attending the past events.

AGENDA ITEM VII—UPDATE OF UNITED STATES CENSUS BUREAU ACTIVITIES, OUTREACH, AND CENSUS RESPONSE RATES IN NEVADA AND DISCUSSION OF CENSUS BUREAU RESPONSE TO THE COVID-19 PANDEMIC

Guillermo Gonzalez, Congressional Partnership Specialist, Los Angeles Regional Census Center, U.S. Census Bureau, U.S. Department of Commerce, provided an overview of the 2020 Census operational adjustments due to COVID-19. (Agenda Item VII)

Mr. Gonzalez said, with guidance from the Centers for Disease Control and Prevention and state and local health officials, the Census Bureau has resumed operations in Las Vegas and North Las Vegas. He said these locations have incorporated public health officials' guidelines to ensure the safety of the public, as well as Census Bureau employees, so that a complete count is achieved in Nevada. Mr. Gonzalez shared the Census Bureau extended the self-response period to October 31, 2020.

Brian Lee Berman, Senior Partnership Specialist, Los Angeles Regional Census Center, U.S. Census Bureau, U.S. Department of Commerce, commented that Nevada is doing well with a 60.1 percent total self-response rate in comparison to the rest of the country. He demonstrated online census response links that are available to help the U.S. Census Bureau, as well as legislators and the public, follow self-response rates. Mr. Berman pointed out that the tools are important in allocating time and resources for census workers through the October 31, 2020, deadline to ensure the most accurate counts. Lastly, he stated all the maps are sharable by clicking on a "share widget" on each page.

Mr. Berman reviewed several Census Bureau response rate maps from the 2020 Self-Response by State link (<https://2020census.gov/en/response-rates.html>), which shows the status of self-responses in each state. These response rates are shown as percentages and can be displayed in various geographies, including by state, county, city, congressional district, and tribal area. Mr. Berman also highlighted several tables and available filtering options designed to review various data choices.

Discussion ensued between Senator Goicoechea and Mr. Berman regarding the number of online self-response rates received in the rural areas of Nevada at the time of the meeting. Mr. Berman noted the total rural responses are on the 2020 initial self-response online map (<https://2020census.gov/en/response-rates.html>). He shared that residents living in rural areas of Nevada are able to respond to the 2020 census online as well as by phone: (844) 330-2020 for English and (844) 468-2020 for Spanish.

AGENDA ITEM VIII—OVERVIEW OF SELECT LEGAL CONSIDERATIONS FOR REAPPORTIONMENT AND REDISTRICTING

Asher A. Killian, previously identified, stated the presentation by him and Samuel J. Quast, previously identified, would provide an overview of the legal principles the Committee, as well as the 2021 Legislature, must consider as it draws the redistricting plans from the 2020 census data. ([Agenda Item VIII](#))

The categories discussed by Mr. Killian and Mr. Quast covered:

- *Legal Parameters*—Various limitations are imposed on the redistricting process by a variety of sources.
 - Prevailing legal principles presented during the legal overview were distilled from numerous court decisions in the redistricting area.
- *Primary Federal Protections*—Two of the most important issues that must be considered when drawing districts are protections granted by the *U.S. Constitution* and federal law. Specifically, attaining population equality among districts and the equitable treatment of racial and language minorities.

- *Equal Population Measures*—Ideal population; population deviation; and overall range. Courts are primarily interested in the final range of overall deviation when determining the validity of a district plan based on population equality.
- *Equal Population Sources*—The equal protection clause of the *U.S. Constitution's* Fourteenth Amendment to both houses of a state legislature, which was decided by the U.S. Supreme Court in the case of *Reynolds v. Sims* in 1964, relies on the principal of "one person—one vote."
- *Equal Population Standards*—Two standards apply: (1) "strict equality" for Congressional districts; and (2) state legislative districts, which allow states some flexibility in drawing plans.
- *Equal Population (Congress)*—The U.S. Supreme Court has interpreted the *U.S. Constitution* to require that the population of each Congressional district for a state must be as nearly equal as practicable.
- *Equal Population (State Legislatures)*—The U.S. Supreme Court has set forth the standard of achieving "substantial equality of population" among various districts.
- *Racial and Language Minorities Sources*—Another important consideration when drawing districts is the equitable treatment of minorities. If there is a challenge to a redistricting plan under Section 2 of the Voting Rights Act of 1965, a plaintiff must meet certain preconditions that were articulated by the U.S. Supreme in the 1986 case of *Thornburg v. Gingles*.
- *Racial and Language Minorities Racial Gerrymandering*—If a court determines traditional districting principles were subordinated to race, and race was the predominant factor used in drawing a district, a court will apply strict scrutiny to analyze whether the state had a compelling interest in drawing a district and whether a district was narrowly tailored to achieve that interest.
- *Traditional Districting Principles*—States often consider secondary factors beyond equal population and the equitable treatment of minorities when drawing maps, such as compactness, contiguity, preservation of communities of interest, et cetera.
- *Nevada Constitution*—Mr. Killian pointed out several specific provisions in Nevada's Constitution that the Committee should be aware of, which are listed on the slide titled "Nevada Constitution." ([Agenda Item VIII](#))
- *Census Data Delay*—Complying with the various requirements discussed requires a careful analysis of the census data. Due to the COVID-19 pandemic, it is very likely that the Census Bureau will not make the necessary census data available to Nevada until after the conclusion of the 2021 Legislative Session.

Mr. Killian stressed that because Nevada's Legislature meets biennially, if Census data delivery is delayed as proposed by the Bureau, no regular session will occur between receiving the 2020 census data, leaving the Legislature without an opportunity to redistrict before the next general election. Therefore, he stated it is the opinion of LCB's Legal Division that if the Legislature does not enact a new redistricting plan based on the 2020 census data prior to the 2022 Elections, there is a significant risk a court will either order a special session or impose a court-drawn interim plan.

In summary, Mr. Killian stated there are two mandatory principles the Nevada Legislature must follow during the process of redistricting: (1) equal population and the equitable

treatment of racial and language minorities; and (2) compliance with the Voting Rights Act of 1965.

Referring to the slide showing the 2010 redistricting table on the Equal Population for Congress, Vice Chair Frierson asked why some states' population deviation is more than one, while it was his understanding a Congressional district's deviation should be zero to one. ([Agenda Item VIII](#))

Mr. Killian said the states on the table showing a Congressional deviation of more than one person have substantially smaller counties and populations spread more broadly amongst their counties than Nevada. He explained there are states where the courts, in certain special cases, have upheld tiny deviations so that counties or municipalities may remain intact.

AGENDA ITEM IX—OVERVIEW OF OPTIONS AND RECOMMENDATIONS CONCERNING THE USE AND ACQUISITION OF REDISTRICTING GEOGRAPHIC INFORMATION SYSTEMS SOFTWARE AND HARDWARE AND DISCUSSION REGARDING THE POSSIBLE HIRING OF LCB SESSION STAFF FOR GEOGRAPHIC INFORMATION SYSTEMS OPERATIONS

Haley Proehl, previously identified, presented three GIS software programs—autoBound, Maptitude, and Esri Redistricting—for the Committee to consider when making a recommendation to the Legislative Commission for redistricting software to use during the 2021 Legislative Session's redistricting exercise. She referenced five categories—desktop application, online application, staff familiarity, support, and pricing—for comparing the options. ([Agenda Item IX A-1](#))

Ms. Proehl discussed the three software programs in detail:

1. autoBound by Citygate GIS—The program has a built-in Microsoft Excel spreadsheet matrix that actively displays population and racial statistics for each district and updates the data in real time as changes to boundaries are made. The program has a tool that imports and aggregates election results. In the past, Nevada has used election data, which the census bureau does not provide, when redistricting; it is helpful to have this tool to aggregate imported data to the census block level. ([Agenda Item IX A-2](#))
2. Maptitude by Caliper Corporation—Like autoBound, this program offers desktop and online redistricting applications, as well as tools to create plans that meet legal requirements. However, Maptitude does not have a tool for staff to import redistricting data, but instead, Caliper Corporation processes the data and provides it via an electronic download. The program does not include [American Community Survey](#) (ACS) estimates, so there is little pre-redistricting value with Maptitude, and its active matrix does not allow custom calculations as does autoBound's Microsoft Excel feature. Additionally, there is not a public commenting tool with Maptitude's online application in comparison to autoBound's online application. ([Agenda Item IX A-3](#))
3. Esri Redistricting by Esri—This program is web-based and presented only for licensing consideration to use for public redistricting workstations. ([Agenda Item IX A-4](#))

Assemblywoman Jauregui noted autoBound is the redistricting software LCB GIS staff has worked with in the past; however, she asked whether Maptitude was included for consideration because it may be a program LCB staff is interested in using.

Ms. Proehl said Maptitude was included because it meets the functionality requirements, and staff focused on presenting unbiased redistricting software options. However, she noted autoBound has a few benefits compared to Maptitude, including dependable software and technical support based on previous experience. It is also a well-priced option, and staff has an established relationship with the vendor.

Senator Gansert asked whether there is a disadvantage to the autoBound program.

Ms. Proehl responded the GIS staff does not view using autoBound again as a disadvantage. If anything, she noted, autoBound has the necessary tools to create many plans that Maptitude does not have. In addition, autoBound meets the legal requirements for redistricting. Ms. Proehl added that autoBound offers an ACS estimates feature that could be used to make projections while waiting for the actual 2020 census data.

Senator Gansert asked whether upgrading to the perpetual subscription is allowable after possibly purchasing the less expensive two-month subscription.

Ms. Proehl said it was her understanding a decision is needed at the time of purchasing either the monthly or the perpetual option. Waiting to make a decision on which option to purchase until knowing how long the redistricting process would last would help determine which license to purchase. She commented the actual cost of the monthly service is \$8,500, so after two months, there is no cost advantage to purchasing a monthly option.

Senator Gansert asked whether receipt of the 2020 census data is required before starting the redistricting task or whether scenarios could be developed in the meantime based on assumptions.

Ms. Proehl said the goal is to purchase at least the staff licenses a few months prior to the release of the 2020 census data in order for staff to learn the software well enough and practice updating data so that they can assist legislators and other staff who need to use the GIS program. Therefore, she said, having the autoBound program prior to the release of the census data would enable the creation of various scenarios, maps, and projecting plan assumptions.

Michael J. Stewart, previously identified, discussed the position requirements for the 2020-2021 Session GIS technicians who would support legislators before and during the 2021 redistricting undertaking, if the Legislative Commission approves the possible hiring of GIS technicians.

Mr. Stewart proceeded to review the job description for a GIS technician. He noted the Nevada Legislature approved hiring four GIS technicians for the 2011 redistricting exercise and assigned one to each caucus to assist legislators in a nonpartisan capacity with GIS questions. Mr. Stewart said the typical employment period for this position is between six and nine months. ([Agenda Item IX B](#))

Considering the COVID-19 social distancing needs, Vice Chair Frierson and Mr. Stewart discussed the location of offices for the potential GIS technicians. Mr. Stewart stated LCB is reviewing spacing to ensure social distancing is a priority in the caucus rooms and staff offices throughout the buildings during the 2021 Legislative Session.

Kathy Steinle, previously identified, reported on the essential hardware needs to support the redistricting software and staffing configurations during the 2021 Legislative redistricting undertaking. She said the costs noted in her handout are estimates, and some savings may

be realized when the hardware is purchased. Ms. Steinle also shared that LCB staff will be able to use the hardware after the redistricting task is completed. ([Agenda Item IX C](#))

Chair Woodhouse suggested the Committee recommend to the Legislative Commission to purchase under the 2021 Session budget the autoBound software, up to \$67,000, and the necessary hardware and hire 2021 Session GIS staff—only if necessary due to the census data delays caused by the COVID-19 situation.

MOTION: Senator Cannizzaro moved to recommend to the Legislative Commission the purchase, under the 2021 Session budget, of the autoBound software up to \$67,000; the authorization to purchase necessary hardware for GIS services; and the authorization to hire, if necessary, LCB session hires for GIS work. Vice Chair Frierson seconded the motion. The motion passed. Assemblywoman Benitez-Thompson was absent for the vote.

AGENDA ITEM X—REVIEW AND DEVELOPMENT OF THE INTERNET WEBSITE REGARDING THE NEVADA LEGISLATURE’S REAPPORTIONMENT AND REDISTRICTING EFFORTS

Haley Proehl, previously identified, demonstrated the Nevada Legislature’s GIS redistricting website pertaining to the 2021 reapportionment and redistricting cycle. She said the website debuted on May 1, 2020, and is offered to legislators, stakeholders, and members of the public as a resource for information and data about reapportionment and redistricting in Nevada. Ms. Proehl called attention to her document about the 2121 website, which references additional resources about the website. ([Agenda Item X](#))

AGENDA ITEM XI—BRIEF REVIEW OF REAPPORTIONMENT AND REDISTRICTING RESOURCES, MATERIALS, AND OTHER INFORMATION

Michael J. Stewart, previously identified, briefly discussed the following three informational items the Committee may find helpful during its work on preparing its recommendations to the 2021 Legislative Session regarding the redistricting exercise:

1. A letter to the U.S. House Committee on Oversight and Reform from the National Conference of State Legislatures (NCSL), concerning census delays and the use of differential privacy statistical methods to meet the goal of avoiding disclosure of individual resources and how such methodology could affect small level geographies transmitted to the states ([Agenda Item XI A-1](#));
2. A document from April 17, 2020, about state redistricting deadlines, which includes a table with data about the redistricting deadlines for the states and which is helpful to note how states are handling various census delivery issues ([Agenda Item XI A-2](#)); and
3. A document titled “Status of Current Operations” listing area census offices that are restarting operations, resuming field operations, and completing the hiring process for nonresponse follow-up field staff under new COVID-19 guidelines. ([Agenda Item XI A-3](#))

AGENDA ITEM XII—DISCUSSION OF FUTURE MEETING DATES AND POTENTIAL AGENDA TOPICS FOR FUTURE MEETINGS

Chair Woodhouse shared that the Committee would seek an extension from the Legislative Commission to extend its operations, which has been the case for this interim study committee in the past, in order to complete its task to make necessary redistricting recommendations to the Legislature during a decennial census year.

Chair Woodhouse proposed holding the third meeting of the Committee in mid-August and the fourth meeting in mid to late October, which is closer to the revised census deadline of October 31 and the 2020 General Election. She said staff would communicate with the Committee to schedule the last two meetings.

AGENDA ITEM XIII—PUBLIC COMMENT

Forrest Darby, previously identified, commented he would meet with his grassroots redistricting team to discuss the matters presented at the meeting. Subsequent to the meeting, he emailed the Committee the opinions of the grassroots team.

(Agenda Item XIII A)

Subsequent to the meeting, Doug Goodman, Founder and Executive Director, Nevadans for Election Reform, submitted written public comment concerning Agenda Item VIII relating to legal considerations for reapportionment and redistricting. (Agenda Item XIII B)

AGENDA ITEM XIV—ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 1:37 p.m.

Respectfully submitted,

Gayle Nadeau

Research Policy Assistant

Michael J. Stewart

Director, Research Division

APPROVED BY:

Senator Joyce Woodhouse, Chair

Date: August 27, 2020

MEETING MATERIALS

AGENDA ITEM	PRESENTER/ENTITY	DESCRIPTION
<u>Agenda Item II</u>	Forrest Darby, Vice President, Nevada Alliance for Retired Americans, Las Vegas	Prepared remarks
<u>Agenda Item IV A-1</u>	Jeff Hardcastle, AICP, Nevada State Demographer, Nevada's Department of Taxation (NDT)	Microsoft PowerPoint presentation
<u>Agenda Item IV A-2</u>	Jeff Hardcastle, AICP, Nevada State Demographer, NDT	Demographic information
<u>Agenda Item V</u>	Joe Reynolds, Chief General Counsel, Nevada System of Higher Education	Microsoft PowerPoint presentation
<u>Agenda Item VI</u>	Kerry Durmick, MA, Nevada Census Coordinator, Nevada Census 2020, Office of the Governor	Microsoft PowerPoint presentation
<u>Agenda Item VII</u>	Guillermo Gonzalez, Congressional Partnership Specialist, Los Angeles Regional Census Center, United States Census Bureau, U.S. Department of Commerce	Information on 2020 Census operational adjustments due to COVID-19
<u>Agenda Item VIII</u>	Asher A. Killian, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau (LCB), and Samuel J. Quast, Deputy Legislative Counsel, Legal Division, LCB	Microsoft PowerPoint presentation
<u>Agenda Item IX A-1</u>	Haley Proehl, Geographic Information Systems (GIS) Analyst/Redistricting GIS Specialist, Research Division, LCB	Data table regarding redistricting software options
<u>Agenda Item IX A-2</u>	Haley Proehl, GIS Analyst/Redistricting GIS Specialist, Research Division, LCB	Brochure about autoBound's redistricting software
<u>Agenda Item IX A-3</u>	Haley Proehl, GIS Analyst/Redistricting GIS Specialist, Research Division, LCB	Brochure about Maptitude's redistricting software
<u>Agenda Item IX A-4</u>	Haley Proehl, GIS Analyst/Redistricting GIS Specialist, Research Division, LCB	Brochure about Esri's redistricting software

AGENDA ITEM	PRESENTER/ENTITY	DESCRIPTION
<u>Agenda Item IX B</u>	Michael J. Stewart, Research Director, Research Division, LCB	LCB job description for a geographic information systems technician
<u>Agenda Item IX C</u>	Kathy Steinle, Redistricting Specialist, Information Technology Services, LCB	Data sheet regarding redistricting hardware essentials
<u>Agenda Item X</u>	Haley Proehl, GIS Analyst/Redistricting GIS Specialist, Research Division, LCB	Informational document about Nevada's 2021 reapportionment and redistricting website
<u>Agenda Item XI A-1</u>	Michael J. Stewart, Research Director, Research Division, LCB	National Conference of State Legislatures' (NCSL) letter to the U.S. House Committee on Oversight and Reform
<u>Agenda Item XI A-2</u>	Michael J. Stewart, Research Director, Research Division, LCB	Document about state redistricting deadlines
<u>Agenda Item XI A-3</u>	Michael J. Stewart, Research Director, Research Division, LCB	Document concerning current census operations in cities throughout the United States
<u>Agenda Item XIII A</u>	Forrest Darby, Vice President, Nevada Alliance for Retired Americans, Las Vegas	Email concerning suggested boundary lines for certain congressional districts
<u>Agenda Item XIII B</u>	Doug Goodman, Founder and Executive Director, Nevadans for Election Reform	Email regarding legal considerations for redistricting

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