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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ERIC JENG, an individual,

Plaintiff,

vs.

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

Defendant,

and

Fair Maps Nevada,

Intervenor-Defendant.

Case No.: 23 OC 000138 1B

Dept. No.: II

RESPONSE IN OPPOSITION TO FAIR MAPS NEVADA'S MOTION TO DISMISS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023

Fair Maps Nevada's motion to dismiss urges this Court to take action that would run directly contrary to controlling precedent from the Nevada Supreme Court. The Court held just two years ago, concerning the very statute at issue here, that "it would be harsh and absurd to dismiss a party's challenge to an initiative merely because the district court failed or was not able to set the hearing within 15 days" as NRS 295.061(1) requires. *Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d

296, 301 (2022). The Court therefore held that, while "district courts must make every effort to comply with" the 15-day deadline, a court's failure to meet that deadline provides no basis for dismissal. *Id.*

Fair Maps Nevada makes no effort to distinguish *Education Freedom PAC*, and it controls here. There, just as here, the district court was unable to set a hearing on an initiative-petition challenge within the 15-day statutory deadline in NRS 295.061(1). *Educ. Freedom PAC*, 138 Nev., Adv. Op. 47, 512 P.3d at 300–01. And there, just as here, the delay was partly caused by the challenger exercising his right to preempt the assigned judge in a circumstance where no other active judge was available. *Id.* at 300; Nev. Sup. Ct. R. 48.1. *Education Freedom PAC* therefore addresses *exactly the circumstances of this case* when it holds that the statutory requirement to set the hearing within 15 days after the filing of the complaint is "directory," not mandatory, and that it is *not* a basis for dismissal. *Educ. Freedom PAC*, 138 Nev., Adv. Op. 47, 512 P.3d at 300–01. And *Education Freedom PAC* makes clear that the 15-day deadline applies *to district courts*, not to challengers, demanding that the *courts* "make every effort to comply with the expedited, statutory time frame for considering initiative challenges." *Id.*

Moreover, contrary to Fair Maps Nevada's argument, Plaintiff is not responsible for the delay in this case being heard. Plaintiff timely filed this action under the very tight, 15-day statutory deadline. NRS 295.061(1). The fact that Plaintiff filed on the last day of that short period makes no difference to the 15-day hearing deadline, because that deadline runs *from the filing of the Complaint*. And Plaintiff's preemption of the initially assigned judge just three business days after filing of the Complaint does nothing to distinguish *Education Freedom PAC*, where the judge was also preempted under materially identical circumstances.

Finally, if any of the parties is to blame for this case not being heard within the 15-day deadline, it is Fair Maps Nevada. Plaintiff timely commenced this case on

December 7, 2023, by simultaneously filing both its Complaint and a brief on the merits. Plaintiff informed Fair Maps Nevada of the challenge the very next day. But Fair Maps Nevada then waited *eighteen days* before filing its response brief on December 26—a delay that is completely inconsistent with Fair Maps Nevada's position now that the matter must be dismissed because it was not heard by December 22, fifteen days after the Complaint was filed and four days before Fair Maps Nevada even filed its response.

CONCLUSION

The motion to dismiss should be denied.

AFFIRMATION

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

DATED this 7th day of February, 2024.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2024, a true and correct copy of the **RESPONSE IN OPPOSITION TO FAIR MAPS NEVADA'S MOTION TO DISMISS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023** was served upon all parties via electronic mailing to the following:

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