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CASE NO. 23 OC 000137 1B and 23 OC 000138 1B

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY
BEFORE THE HONORABLE DISTRICT COURT JUDGE, ROBERT ESTES

ERIC JENG, AN INDIVIDUAL AND
FRANCISCO V. AGUILAR, IN HIS
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE,

Petitioner,

v

FAIR MAPS NEVADA,

Respondent.

_____ /

JAVS TRANSCRIPT OF PROCEEDINGS

HEARING

FEBRUARY 15, 2024

Transcribed By:

Kathy Jackson CSR
Nevada CCR #402
California CCR #10465

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1 FEBRUARY 15, 2024, CARSON CITY, NEVADA

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3
4 THE COURT: Let's start this by making your
5 representations.

6 MR. FOX: Good morning, Your Honor. David Fox
7 for Eric Jeng. And with me is Bradley Schrager.

8 MS. ST-JULES: Good morning, Your Honor. Laena
9 St-Jules from the attorney general's office on behalf of the
10 Secretary.

11 THE COURT: Got it.

12 MR. HOSMER-HENNER: Good morning, Your Honor.
13 Adam Hosmer-Henner of McDonald Carano on behalf of Fair Maps
14 Nevada. And together with me is Joshua Hicks and Lucas
15 Foletta.

16 THE COURT: And, Adam, would you spell your last
17 name, please.

18 MR. HOSMER-HENNER: Hosmer-Henner, H-o-s-m-e-r
19 hyphen H-e-n-n-e-r.

20 THE COURT: All right. Mr. Fox, I'm assuming
21 you're going to do most of the talking.

22 MR. FOX: At least for the plaintiffs, Your
23 Honor, that's right.

24 THE COURT: All right.

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MR. FOX: Your Honor, the --

THE COURT: All right.

MR. FOX: Sorry.

THE COURT: You're up.

MR. FOX: Thank you, Your Honor. The basic problem with the two petitions is simple. They create a new government body and they require it carry out an arduous task, but they do not raise any revenue to pay for it so they, therefore, violate the unfunded mandate prohibition in Article 19 section 6, and their descriptions of effect are inadequate because they do not explain the financial consequences.

The Court has, I recognize, a lot of papers in front of it. So I'll start by explaining the relationship between the two cases and then give a brief overview of the pending motions and then turn to the merits and explain why the decisions contain an unfunded mandate and why the descriptions of effect are inadequate.

So I'll start with the two cases. There are two very similar cases because Fair Maps Nevada filed two very similar petitions. Both petitions would create a new government body, the redistricting commission, and would task it with drawing Nevada State legislative map after every session subject to the same procedural and substantive

1 requirement and neither petition raises any revenue to fund
2 that.

3 The only difference between the petitions is that
4 one of them, Number 042023, which challenged in Case Number
5 137, also requires that the new commission draw a new map
6 immediately after the commission takes effect in 2027. While
7 the other, Number 032023, which is challenged in Case Number
8 138, would not require redistricting until after the 2030
9 commission.

10 All of the filings in the two cases are almost
11 identical. But the filings in Case Number 137, which
12 challenges petition number four adds two additional arguments
13 for why that petition is unlawful. That it will require an
14 expenditure to fund the extra round of redistricting and that
15 it does not explain that it will prematurely replace the
16 existing legislative map. Aside from that, the Court has two
17 sets of briefings that are identical because the petitions
18 and issues are identical.

19 So I'll talk about the two cases and the two
20 petitions together, but I'll highlight where there are
21 additional arguments applicable to Case Number 137, which
22 challenges petition number four.

23 That takes me to the motions that are pending in
24 both cases. There are three matters before the Court in each

1 case. The first is our substantive challenge to each
2 petition. As the Court has a brief from us, Fair Maps
3 Nevada's response and our reply, the Secretary of State has
4 taken no position in either case.

5 The second is Fair Maps Nevada's motion to
6 dismiss, which asks the Court to dismiss each case because it
7 was not heard within 15 days of filing. And the Court
8 authorized our opposition to that motion in each case. There
9 is no reply.

10 As our opposition explains, that motion is
11 followed by controlling precedent from the Supreme Court just
12 two years ago and that decision, Freedom PAC, factually and
13 distinguishable and tells that the 15-day hearing deadline
14 was directory, not mandatory, and that it would be, quote,
15 harsh and absurd to dismiss a case under these circumstances.
16 It's not clear to me if Fair Maps Nevada is still pursuing
17 these motions but if so, the Court should deny them.

18 Third, if Fair Maps Nevada's motion to strike
19 part of our reply or alternatively to file a surreply in each
20 case, the Court has our opposition to that motion as well.
21 Again, there's no reply. This motion focuses on Judge
22 Russell's decision four years ago in a case called Jackson
23 versus Fair Maps Nevada, which is Exhibit 3 to our complaint.
24 That decision addressed a substantively identical petition

1 that held that it required an expenditure of government
2 funds. We argued in our reply that Fair Maps Nevada, which
3 was the defendant in that case, is barred by issue preclusion
4 from relitigating that question. I'll address that once I
5 get to the merits.

6 For purposes of the motion to strike, the point
7 is that we appropriately addressed this in our reply because
8 it's a response to Fair Maps Nevada's argument in its
9 opposition and because we could not have raised it in our
10 opening brief. Fair Maps Nevada was not yet a party and had
11 not made any argument, so there was no one and nothing at
12 that time to preclude. So we ask the Court to deny that
13 motion as well.

14 And that takes me finally to the merits in each
15 of the two cases. And the merits really are simple here.
16 The petition each create a new government body and require it
17 to perform a difficult, complicated task, but they do not
18 raise any revenue to pay for it and that is exactly what
19 Article 19 section 6 prohibits.

20 There's no real debate that the Redistricting
21 Commission will require funding. Since we filed our
22 complaint and briefing in these, the legislative counsel
23 financial impact statements are now out, and they conclude
24 that both petitions will result in an increase of

1 expenditures for the state government. Judge Russell reached
2 the same conclusion in the Jackson case four years ago. And
3 that all makes sense because there's no way for a new
4 government body to hold public meeting, conduct public
5 hearing, make public records available and engage in the
6 technically demanding act of drawing maps that comply with
7 the petition's detailed substantive requirement without
8 funding.

9 Fair Maps is at the outset barred by issue
10 preclusion from arguing otherwise. Fair Maps litigated this
11 in the 2020 Jackson decision with respect to a substantive
12 identical petition and lost. Fair Maps doesn't offer any
13 factual distinction of that decision. And for the reasons we
14 give in our reply and our opposition to our motion to strike,
15 issue preclusion applies here.

16 But it's also just an easy question on the merit,
17 and Fair Maps does not seriously argue that the commission
18 won't require funding. They had one sentence in their
19 response brief, arguing that it could be a, quote, volunteer
20 effect. But even if it's backed by volunteers, the process
21 of holding public meetings, accepting public testimony,
22 making public documents available will inevitably cost money.

23 Fair Maps argues instead that this is just a
24 shift of expenses from the legislature that currently draws

1 the maps to the redistricting commission that would do so
2 under the petition. That effectively operates as a
3 concession that the commission will require funding, and
4 that's clear from the proposed order that they submitted this
5 week which only pursues a revised description of effect
6 describing a shifting of expenses. But this shift argument
7 does not help them perform.

8 First, the shift argument clearly does not
9 suffice for petition number four, the one that requires an
10 extra round of redistricting in 2027, that would not
11 otherwise be required because that extra round of
12 redistricting is just an extra expense. It's an extra
13 undertaking of redistricting that no one otherwise would have
14 to undertake.

15 Fair Maps' only response on that is to say that,
16 well, the legislature could choose to redistrict even under
17 current law, but that doesn't help. Because as the Supreme
18 Court explained in the Rogers case, if a petition imposes a
19 new funding requirement on the legislature, it makes no
20 difference that the legislature might otherwise have chosen
21 to appropriate those funds anyway. This would be a new
22 requirement to redistrict in 2027. There's no funding to do
23 it. That clearly violates Article 19 section 6 regardless of
24 this shifting of expense argument.

1 Second, for both petitions, the shift argument
2 relies on an unwarranted function about where the legislature
3 will get the money to fund the new commission. As Fair Maps
4 itself argued, the legislature pays per its own redistricting
5 expenses out of a general appropriation to fund the
6 legislature's business. It's not a separate line item.
7 There aren't separate staff hired just for this in general.
8 It's just part of the legislature's business.

9 I suppose it is possible that if one of the
10 petitions is adopted, the legislature might choose to fund
11 resulting expense by reducing its own operational budget,
12 laying off, holding fewer hearings, whatever it takes to
13 produce its budget so that the commission has funds to
14 operate.

15 But the legislature might fully choose to fund
16 the commission by cutting funding from other programs or by
17 raising additional revenue in some way. The point is that
18 the legislature will have to appropriate funds to fund the
19 commission and it will have to get that money from somewhere
20 else. And forcing that decision on the legislature is
21 exactly what Article 19 section 6 prohibits. A requirement
22 that's budgeting officials, quote, approve the appropriation
23 or expenditure regardless of other financial considerations.
24 That's from the Supreme Court's Education Freedom PAC

1 decision.

2 Third, even if the legislature does shift the
3 funding from its own operating budget to the commission, that
4 still would not resolve the Article 19 section 6 problem
5 because an initiative cannot evade Article 19 section 6 by
6 offsetting new expenditures with budget cuts elsewhere. It
7 has to raise revenue.

8 Article 19 section 6's language is clear. The
9 initiative must create enough tax or revenue to cover -- to
10 cover its required appropriation and expense. That's Rogers
11 at 126. So it's not enough to say well, they'll cut it
12 elsewhere even if the legislature said that, which they do
13 not.

14 Finally, there's every reason to believe that the
15 commission will be more expensive than the legislature's own
16 redistricting activities. The petitions impose a host of new
17 requirements that will make redirecting more expensive. And,
18 of course, the legislators already get heat for their work.
19 They already have staff. The commission members are new
20 additional (unintelligible).

21 For those reasons, the petitions require an
22 expenditure by creating a new government body and requiring
23 it to carry out a new difficult task. And Fair Maps's
24 argument that this is a new shift of expenses does not

1 overcome that problem.

2 Fair Maps also alternatively argues that the
3 petitions do not require an appropriation of any set amount
4 or percent but that is just not the case.

5 THE COURT: What? I didn't understand part of
6 that last sentence.

7 MR. FOX: So Fair Maps also alternatively argues
8 the petitions do not require an appropriation of a set amount
9 or a set percentage upon, but that is not standard. The
10 Supreme Court rejected a similar argument in Education
11 Freedom PAC, which also did not require a set amount of
12 merely, quote, an amount comparable to the amount of funding
13 that would otherwise be used to support the education of the
14 child. So that was not a set amount. It was a standard.

15 The Court explained that that clearly required an
16 appropriation of funds and that it did not help that the
17 funding met limited amounts without the legislature and
18 that's the same here. The petitions require an appropriation
19 of funds to fund the commission's activities that the
20 legislature might have some control over. How much that is
21 does not eliminate the Article 19 section 6 problem.

22 That, we submit, is the end of the matter under
23 Article 19 section 6. Fair Maps also does not view that
24 Article 19 section 6 does not apply to constitutional

1 amendments, but the Supreme Court rejected that argument two
2 years ago in the Education Freedom PAC.

3 That brings me to the description of effect. The
4 description of effect are unlawful and inadequate for the
5 same reason. The original description doesn't mention
6 expenditures at all. Fair Maps Nevada now seems to be
7 pursuing only amended descriptions, which describes a shift
8 in expenditures. But, if anything, the amended descriptions
9 are less accurate and more misleading because nothing in the
10 petitions require a shift of expenditure. The legislature
11 might shift expenditures in that way. They might do
12 something else about that. So the descriptions of effect
13 that are now proposed are misleading because they describe a
14 funding mechanism that is not required by the petition.

15 On the description for petition four, also has
16 the additional problem of failing to describe that it will
17 prematurely replace the current expense. And the amended
18 description, again, makes that even worse by saying that it
19 will be funded for a shift in expenditure just simply cannot
20 occur with respect to the 2027 redistricting.

21 So in sum, by creating a new government body to
22 undertake a mandatory task, the petitions require an
23 expenditure to fund it, but they don't raise enough revenue.
24 That violates Article 19 section 6. And the descriptions of

1 effect are unlawful because they do not adequately describe
2 it.

3 And with that, I welcome any questions from the
4 Court. Otherwise, we'll wrap up our briefs or address any
5 questions the Court has after hearing from the other side.

6 THE COURT: All right. Mr. Hosmer-Henner.

7 MR. HOSMER-HENNER: Good morning, Your Honor.
8 Adam Hosmer-Henner with McDonald Carano on behalf of Fair
9 Maps Nevada. Your Honor, I would like to provide a little
10 bit of background in this case because while it is not merely
11 the hyper-technical arguments that are raised by the party
12 trying to stop this petition, the matter that really does
13 matter is the right of the people to enact and follow this
14 process.

15 Fair Maps Nevada is seeking to change, not
16 implement a new redistricting process, but to change the way
17 that electoral maps in Nevada are drawn, to make sure that
18 the politicians that are themselves running for office are
19 not the ones who are choosing the voters but that the voters
20 get to choose the politicians in electoral districts that are
21 drawn fairly and in a neutral manner.

22 This is policy that is consistent with good
23 public policy and directives throughout the country and that
24 are being followed in multiple states, including Arizona,

1 through independent redistricting commissions that are
2 successful in stopping the process of political
3 gerrymandering.

4 The reason that this is being opposed by
5 plaintiff in this case is because the people funding this
6 lawsuit have a political interest and a vested interest in
7 making sure that they continue to get to choose the electoral
8 districts through the process of political gerrymandering in
9 the short-term because they currently are empowered.

10 Because of that, the only reason that they are
11 opposing this, and very likely counsel is seeking the
12 opposite position of other states where the political
13 realities are different, the only reason they are opposing it
14 is to preserve the power and the electoral benefit that
15 parties in redistricting has for the party that is currently
16 in power. There are no other objections to this other than
17 these hyper-technical arguments and that's why the merits are
18 important to discuss at the outset.

19 The other part of this process that I think is
20 important to bring to the Court's attention is --

21 THE COURT: Stop. Stop. Counsel, stop. I
22 didn't understand. You're claiming that the plaintiff in
23 this case has hypothetical arguments? I don't understand
24 what you mean by that.

1 MR. HOSMER-HENNER: No. There's a political
2 reality here, Your Honor, that I think is important and
3 undermines this type of lawsuit. And so is the concern about
4 -- and that's just the rhetoric that is important here and
5 kind of appears behind the scenes as to understand what
6 really is going on here because that brings us to our request
7 for this decision to be decided expediently.

8 With respect to the issue how quickly this Court
9 needs to hold a hearing, that motion is dismissed. We
10 recognize that there is precedent on that issue, and we saw
11 the motion to dismiss solely to preserve that argument for
12 appeal, and the reason is because there's a tight timeline
13 here that we believe we've informed the Court about through
14 the briefs, but it is critical in this process.

15 These challenges are filed routinely in every
16 electoral cycle in order to delay and to prevent political
17 petitioners and people who are intending to go through the
18 initiative process in order to circulate signatures and
19 obtain the necessary amount of signatures to place that
20 initiative on the ballot.

21 There is a June deadline to finish collecting
22 signatures under the revised description of effect that we've
23 proposed and to confirm that those signatures are significant
24 in order to get on the ballot. In every single one of these

1 Fair Maps cycles, including the last time, whatever this
2 Court decides is going to be appealed by plaintiff to the
3 Supreme Court in order to delay this process. They appealed
4 it after winning in the 2019 cycle solely to create
5 additional delay and uncertainty.

6 That's -- that's why, Your Honor, it's important
7 not only to decide this case correctly in favor of allowing
8 the petition to go forward to the people in Nevada but also
9 to decide it extraordinarily quickly so that the political
10 process is not delayed and stored entirely through this
11 litigation strategy. We had -- and so I believe that the
12 motion to dismiss, while we're still pursuing it, given the
13 Supreme Court precedent, is only for the purpose of
14 preserving our argument.

15 And then with respect to the issue of striking
16 the certified, which is the other motion, I believe, or our
17 attempt to strike their improper inclusion and reply, we have
18 two real responses to that, Your Honor. As this Court is
19 aware, the citation of that district court unpublished order
20 is inappropriate for any of the purposes that were included
21 in the original petition, so that should not have been
22 included in this case. It is no -- it has no precedential
23 value at all.

24 And with respect to issue --

1 THE COURT: Stop, counsel. I'm going to make
2 argument for them that this Court, I mean, and every time
3 that a Court makes a decision, it can be challenged by a
4 motion for review, a motion for reconsideration, and this
5 Court hasn't been reversed from that original Jackson case.
6 So that's different from using it as a precedent, isn't it?

7 MR. HOSMER-HENNER: No, Your Honor, no. What
8 you're talking about is non-mutual offensive collateral
9 estoppel, which has never been recognized in Nevada and which
10 would be inappropriate because the parties are different
11 here. So there's no authority that would permit using that
12 order. I mean, you're saying it's never been reversed. It
13 actually -- you know, our cross-appeal is being moot because
14 the arguments were mooted, and that's not litigated finally
15 at the Supreme Court.

16 I simply don't believe there's any authority that
17 would suggest that the argument you are making for the other
18 side is correct. Nevada has never adopted that type of
19 preclusion nor should it be acceptable here. Specifically
20 because the texts of the petitions are different, years on
21 which redistricting would be required are different.

22 And if I could compare the initial 2019 case,
23 that required redistricting at a certain point in time in an
24 additional period of redistricting. If anything, that

1 argument only applies with the C04 petition and has no
2 relevance to the C03 petition, which only requires
3 redistricting after the 2030 (unintelligible). So not only
4 is that issue preclusion, it should not have been raised for
5 the first time in reply. There's no Nevada precedent
6 whatsoever that would allow that type of preclusion. There's
7 certainly no authority to allow the citation of the district
8 court opinion. And to say that this Court has never been
9 reversed on that is not necessarily relevant nor factually
10 accurate given that the cross-appeal being moot and so the
11 issue was finally litigated by the Supreme Court.

12 THE COURT: That's not exactly what I meant or
13 said when I -- when broached that argument. This Court, this
14 Judge cannot overrule another judge in a case. And this
15 Court sees since the issues are essentially identical to the
16 Jackson case, which no one seems to disagree with, I see that
17 as relevant, but.

18 MR. HOSMER-HENNER: Right. Your Honor, if you're
19 suggesting that a district court cannot reach a different
20 conclusion than another district court in Nevada, that
21 respectfully is not true and not to be the law in Nevada with
22 respect to the other district courts.

23 THE COURT: There's a fine distinction that we're
24 talking about, but it doesn't matter in this case, so you may

1 continue.

2 MR. HOSMER-HENNER: Well, with respect to
3 preclusion and to the extent that was going to be adopted,
4 the most persuasive reasoning from the Supreme Court that
5 from the Supreme Court decision on that that the description
6 of effect was revised was valid. So to that extent, if
7 you're saying the issues are the same, then our revised
8 description of effect should be approved by this Court for
9 the same reasons --

10 THE COURT: All right. All right.

11 MR. HOSMER-HENNER: -- that --

12 THE COURT: Stop. Tell me why you think that --
13 well, not why you think. Go ahead and argue your position
14 regarding the unfunded mandate.

15 MR. HOSMER-HENNER: Your Honor, with respect to
16 the unfunded mandate issue, there is a -- a catthem of
17 difference between the Education Freedom case and this case.
18 What you heard from opposing counsel was that the -- any --
19 any appropriation, whether it's the cost of making a public
20 record available to the public, it's sufficient to require
21 the -- sufficient to void a petition and require the Court to
22 strike it down as an unfunded mandate.

23 In the Education Freedom case, that was something
24 where the constitutional initiative would have required the

1 legislature to set aside regardless of what the fixed amount
2 was, an amount of money that didn't previously exist in the
3 budget, and to expend that via legislative appropriation and
4 dedicate that to the voucher initiative program.

5 In our case, we're taking the exact same path
6 that the legislature performs now and having that done, not
7 by parties of beneficial but by independent members of this
8 commission, using the same legislative staff still within the
9 legislative branch. This is not an appellate proceeding
10 where the record has already been established.

11 THE COURT: Who says that?

12 MR. HOSMER-HENNER: I'm sorry, I didn't hear you,
13 Your Honor.

14 THE COURT: Who says that? I mean, what
15 evidence? What factual basis do you have to say that, oh,
16 this commission, it's just seven voters, not in the
17 legislature that's going to move in and use the legislative
18 staff, presumably the legislative experts, who says that?

19 MR. HOSMER-HENNER: It's a great point that I'll
20 get to with respect to who bears the burden of proof in this
21 case, Your Honor. But with respect to our petition, it
22 firmly places the independent redistricting commission within
23 the legislative branch, meaning that it operates within the
24 legislative branch and uses those resources that have already

1 been allocated to the legislature.

2 And what you heard from opposing counsel was the
3 legislature could cut other programs. It could do this. It
4 could require additional funds, but they bear the burden of
5 proof here, Your Honor, to show there is an unfunded mandate.
6 There's not a single piece of admissible evidence in this
7 case presented by plaintiff. There's not a verified
8 complaint. There's not an expert witness. There's not a
9 declarant. There's not a piece of evidence submitted to this
10 Court that has been verified and authenticated on which this
11 Court could draw the conclusion as is their burden to show
12 that this petition requires an expenditure.

13 There were reference to other documents from the
14 legislative finance commission that were not presented to
15 this Court, that are not in evidence and that are not
16 admissible. We have nothing in this record, Your Honor, to
17 submit at any point that there's any evidence that our
18 petition required the expenditure of money.

19 You have raw speculation from the other side that
20 there are going to be costs of making documents available to
21 the public. If that was adopted, there's not a single
22 petition that effects any aspect of government that could
23 ever be deemed anything other than an unfunded mandate and
24 void ab initio under that standard where any governmental

1 change would be subject to an unfunded mandate requirement
2 because there's the idea that any change creates some
3 expenditure of funds.

4 Our petition requires redistricting by a separate
5 body, no different than how the legislature would redistrict,
6 only changing the number of people, and there's no set
7 expenditure for them. It could be volunteers. There's no
8 requirement at all that any additional money comes out of
9 this process or that any additional appropriation would be
10 made from this -- from this change in the way that we simply
11 draw the electoral map.

12 And, importantly, the legislature itself does not
13 specifically appropriate funds for this process. So to argue
14 that this would create a hole in the budget, which is really
15 the gravamen of the Education Freedom case, where you're
16 telling the government that it has to spend money that it
17 doesn't have and hasn't raised is a much different situation
18 than here, where we're cabining the legislative expenses that
19 already exist within the legislative branch and keeping those
20 the same, simply changing the deciders.

21 THE COURT: Okay.

22 MR. HOSMER-HENNER: Your Honor, with respect to
23 the description of effect, those arguments follow and are
24 similarly flawed for the same reason the unfunded mandate

1 argument fails. So what we would respectfully request,
2 unless this Court has any specific questions, we'll address
3 at the end, is to quickly and expediently issue an order
4 approving our revised description of effect with respect to
5 petition C03 and C04, so that those can be circulated to the
6 people of Nevada.

7 Unless this Court has any other additional
8 questions, I would be happy to conclude at this time.

9 THE COURT: I don't.

10 All right, Mr. Fox.

11 MR. FOX: Yes, Your Honor. I'm happy to address
12 any questions the Court has. Otherwise, I have a few points
13 I would like to make. First of all, Article 19 section 6.

14 THE COURT: Go --

15 MR. FOX: Sorry.

16 THE COURT: Make your points.

17 MR. FOX: Article 19 section 6 is not some minor
18 technical issue. It is a fundamental limitation on the power
19 of the initiative designed to ensure that the legislature
20 retains its budgeting depression and that that is not
21 hampered by initiatives that require to spend money in a
22 particular way. And it's not that this is an unavoidable
23 barrier to this type of petition. It could avoid it by
24 providing a revenue source to cover the cost. They chose not

1 to do that, and the consequence of that is that it is
2 invalid.

3 On preclusion, their argument that the Nevada
4 Supreme Court has never recognized non-useful issue
5 preclusion is contrary to the plain language of Five Star,
6 which clearly specifies that issue for preclusion, the
7 required party -- the party requirement is that the party
8 against whom preclusion is asserted must have been a party to
9 the prior case.

10 If the Supreme Court wanted to say that the
11 requirement was that all the parties are the same, it easily
12 could have said so. That's what it said about claim
13 preclusion. The fact that it said what it said about issue
14 preclusion showed merely that it was recognizing non-mutual
15 issue preclusion.

16 The fundamental problem is that this is a new
17 government agency that will need new funding to carry out a
18 mandatory task. And so the arguments that we're hearing that
19 this would make it impossible to have any initiative
20 petition, that's not correct. And I think an example that
21 they cite really illustrates this.

22 So one of the things they say would be invalid
23 under our argument is an initiative petition requiring the
24 recognition of same sex marriage. But that would not require

1 any new funding because there's an existing government
2 apparatus that issues marriage licenses. They have an
3 existing set of staff that issue marriage licenses. This
4 would change the way marriage licenses are issued. It might
5 lead to a few more marriage licenses, but presumably the same
6 staff will add them to the queue and issue the licenses, as
7 staff is able to issue licences.

8 And so for that kind of issue, where you have an
9 existing government agency, an existing staff and existing
10 method, no problem, not a required expenditure. Here,
11 however, you have a completely new body to carry out a task
12 that it has never been required to carry out before or that
13 will require funding, and the legislature will have to get
14 that funding from somewhere, and that's exactly what Article
15 19 section 6 prohibits.

16 The argument about the record, first of all, I
17 think the public records that we cite are judicially
18 noticeable. Second of all, to the extent that the Court
19 believes it needs an evidentiary record rather than resolving
20 this as a matter of law, we're certainly open for having this
21 case set for an evidentiary hearing. We don't think it's
22 necessary. It seems to us that the Court can conclude, as a
23 matter of law, that creating a new government body to engage
24 in an activity that that body has never done before requires

1 an expenditure.

2 And I will conclude this is invalid under Article
3 19 section 6.

4 THE COURT: That's it?

5 MR. FOX: That's all I have, Your Honor. Thank
6 you.

7 THE COURT: All right. Now, whoever is running
8 the Zoom meeting, how do you -- how do you take a recess,
9 like say 20 minutes or 30 minutes?

10 THE CLERK: I can pause the recording for
11 30 minutes, Judge.

12 THE COURT: So we can just leave the Zoom on and
13 come back in 20 minutes?

14 THE CLERK: Yes. Zoom will stay on and the
15 recording will be paused for whenever we come back.

16 THE COURT: All right. I'll be back when the big
17 hand gets to the ten. That's 18 minutes. Thank you.

18 MR. HOSMER-HENNER: Thank you, Your Honor.

19 (Whereupon, a brief recess was taken.)

20 THE COURT: All right. I am prepared to make an
21 order. Regarding the first issue, that is the motion to
22 dismiss the complaint, the Court finds that it is
23 unwarranted. Obviously, the Education Freedom Pac versus
24 Reid, as well as other cases have noted that the 15-day rule

1 in which the hearing should have at least been held by I
2 believe it was December '22 is directory and not mandatory
3 and under special circumstances which are obvious. In one
4 case, the special circumstance was the hearing could not have
5 been set by December 22nd because the -- the -- well, Fair
6 Maps did not file their -- their brief until I believe it was
7 December 26th. That's not such a great earth-shattering
8 event. However, both judges were preempted and whether that
9 was a good move or not, I can't say. It's not my call but it
10 was a legal move and in this case, the other special
11 circumstance when that happened is you had to find a
12 replacement judge. It didn't have to be a senior judge but
13 that's the way it turned out.

14 This particular judge in department one now was
15 appointed on January the 24th and as you can see, we had our
16 hearing within, today is the 15th, so seven days, that would
17 have been -- you had your hearing not 15 days but in 22 since
18 the appointment of the second judge. So under the 15-day
19 rule, the motion to dismiss the complaint is denied.

20 Regarding the issue preclusion rule, I'm going to
21 rule that the issue preclusion is valid in this case because
22 Fair Maps made the argument regarding a nearly identical
23 petition two years ago. But even if it didn't, even if the
24 issue was not precluded, this Court has, with reason, that

1 the creation of a seven-member additional government body to
2 the legislature costs money and -- and the Court in Jackson
3 didn't reel off a number of reasons that -- that the fact
4 that this would cost money of -- from the taxpayers didn't
5 have a bunch of reasons.

6 My reasoning is, any time that a new government
7 entity is created, it's going to cost money, sort of like in
8 the rules of evidence, you don't need an expert witness to
9 explain to the jury what intoxication is. Everyone
10 understands that's the case. While this is not a simple
11 matter like intoxication, I don't believe there's hardly a
12 man alive or a voter alive that wouldn't recognize that the
13 creation of a new government body is not going to cost money.
14 It's sort of like the phrase by Mark Twain, that only one
15 thing in life is certain and that's death and taxes. I think
16 it's certain that any time a new or any government body is
17 created for whatever reason, it's going to cost the people of
18 the tribe or the nation, it's going to cost them something.

19 The Court agrees with the other judge from the
20 First District that this is going to cost money. If that's
21 the case -- and especially, I mean, no one can deny in the
22 Jeng case, whichever number that is, I can't remember which
23 number it is, but the fact that the redistricting --
24 redistricting would occur in 2026, it would be doing the same

1 thing that the taxpayers already funded. And right there in
2 the one case is a cost that -- that is not accounted for in
3 the petition or the petition for change.

4 In the other case, like I've already stated, any
5 time there is a government, a new government entity created,
6 I think Mr. Fox noted that this Court could find that as a
7 matter of law and if you want to call it a matter of law,
8 fine, but whatever it is, I think it's actually omatic that
9 it's going to cost the taxpayers money.

10 So whether the issue preclusion is in effect or
11 not, it doesn't really matter in this case. And with these
12 findings, the Court really has no choice to find that the
13 petition, description of effect is legally deficient. It
14 does not explain -- while I understand that the alternate
15 version that was presented in one of the briefs has the
16 notation and the effect that it would require taxpayer
17 funding, it does not explain also how that funding is going
18 to be met, which is required, the Court finds by Article 19
19 section 6.

20 Likewise, the voters must be aware of what was
21 legally done must be redone has not been explained in the
22 effects. And I think that regarding the Jeng case, the
23 voters should be aware of what was legally and properly done,
24 the redistricting has to be done again.

1 The Court is also cognizant by the arguments by
2 Mr. Hosmer-Henner regarding Article 19 section 2. I
3 understand and the Court takes specific cognizant --
4 cognizance that Article 19 section 2 gives the citizens the
5 absolute right to petition to change the constitution, change
6 the laws and anything else that the voters want to change.
7 That's part of our history. It's part of the United States
8 Constitution. And case law in Nevada states there should not
9 be a hyper-technicality in determining whether a petition is
10 proper under Article 19 section 6. It could be that there
11 are lots of people who would agree that the establishment of
12 a commission for redistricting would be at least a try to
13 make things agreeable to more people, I understand that too.

14 But according to the case law, the Court does
15 find that the petition is deficient and the Court finds that
16 it is void. And, of course, according to Article 19, this
17 does not preclude a re-filing after what this Court has ruled
18 is contained in the effect of the petition. I understand the
19 difficulties that that presents, but I really don't
20 understand why the folks that are presenting this initiative
21 didn't go ahead and take -- take more note of what the
22 Jackson case stated and do that initially. But, there again,
23 that's not my call. It's -- the Court only rules on what's
24 before it and that's the Court's ruling.

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Mr. Fox.

MR. FOX: Yes, Your Honor.

THE COURT: You and Mr. Schragger are going to prepare the order. And I would -- how much time do you need? A week? Three days? As short of time as you can manage.

MR. FOX: Your Honor, we could provide it on Tuesday, if that works.

THE COURT: All right. File it on Tuesday and -- well, let's see, actually, let me look. I'm going to be in Nevada --

MR. HOSMER-HENNER: Your Honor, I believe that plaintiff has already provided proposed orders.

THE COURT: Yes, sir, I noted that you provided proposed orders. I don't recall seeing one from Mr. Fox, not to say that he didn't. I just have not seen it or if I did, I don't remember it.

MR. FOX: We did file one and we would be happy to resend that one to make sure Your Honor has it. If Your Honor would like us to prepare one based more directly on what Your Honor said today, we would have that by Tuesday.

THE COURT: I would prefer that. So, yeah, write another one and you said you could have it finished by Tuesday?

MR. FOX: Yes, Your Honor, because of sort of

1 location and service we have to submit by e-mail on Tuesday
2 and then overnight it so that it's filed in paper.

3 THE COURT: You're not going to have to send it
4 here. I'm going to be in Fallon on the 20th.

5 MR. FOX: Okay.

6 THE COURT: And the 21st Winnemucca. And the
7 22nd, I'm going to be in Minden. But if you could get it
8 to -- just e-mail it to Fallon, to the district court there,
9 then they'll print it out for me. I'll sign it and they will
10 e-mail it back.

11 MR. SCHRAGER: Judge, this is --

12 THE COURT: I don't have to make any changes.

13 MR. SCHRAGER: Sure. This is Bradley Schrage.
14 If -- if we can e-mail it to the judicial assistant we've
15 been working with in the First Judicial District Court, she
16 can work out who to give it to after that. Would that be
17 acceptable?

18 THE COURT: Yeah, I don't -- I don't care how it
19 gets done.

20 MR. SCHRAGER: Okay.

21 THE COURT: Because I'm thinking to be fair, that
22 if the people behind the initiative, Fair Maps, is going to
23 provide a revised description, it's only fair to give them as
24 much time as we can.

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MR. SCHRAGER: Certainly, certainly.

THE COURT: So --

MR. SCHRAGER: Absolutely right. So we will send it in word and PDF version to the judicial assistant who will get it to you wherever you are.

THE COURT: Well, on the 20th, I'm going to be in Fallon.

MR. SCHRAGER: Okay.

THE COURT: In district court.

MR. SCHRAGER: Okay.

THE COURT: I think it's Tiffany Joseph is the head clerk there.

MR. SCHRAGER: We'll have it there no matter what.

THE COURT: Okay.

MR. SCHRAGER: Okay.

THE COURT: And I appreciate both of your arguments. They were cogent and I see this as actually kind of a close case, but my order is in tune with previous orders for initiatives, not just this one regarding the commission, all right. Thank you very much.

Court is in recess.

MR. HOSMER-HENNER: Thank you, Your Honor.

MR. SCHRAGER: Thank you.

1 STATE OF NEVADA,)
2 CARSON CITY.)

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I, KATHY JACKSON, do hereby certify:

That on February 15, 2024, a hearing was held in the within-entitled matter in the Carson City, Nevada District Court;

That said hearing was recorded by a recording system, and said recording was delivered to me for transcription;

That the foregoing transcript, consisting of pages 1 through 35 is a full, true and correct transcript of said recording performed to the best of my ability.

Dated at Carson City, Nevada, this 25th day of March, 2024.

Kathy Jackson

/s/ Kathy Jackson _____
KATHY JACKSON, CCR
Nevada CCR #402