

IN THE SUPREME COURT OF THE STATE OF NEVADA

FAIR MAPS NEVADA,

Appellant,

v.

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

Respondents.

Supreme Court Case No. 88263

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Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX VOLUME 2 OF 2

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that **APPENDIX TO OPENING BRIEF - VOLUME 2 of 2** does not contain the social security number of any person.

DATED: March 20, 2024.

McDONALD CARANO LLP

By: /s/ Adam Hosmer-Henner

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on March 20, 2024, a true and correct copy of the foregoing **APPENDIX TO OPENING BRIEF - VOLUME 2 of 2** was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system.

By: /s/ Pamela Miller
An Employee of McDonald Carano LLP

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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
 14 Plaintiff,
 15
 16 vs.
 17 FRANCISCO V. AGUILAR, in his
 18 official capacity as NEVADA
 19 SECRETARY OF STATE,
 20 Defendant
 21
 and
 Fair Maps Nevada,
 Intervenor-Defendant.

Case No.: 23 OC 000137 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-04-2023**

1 Initiative Petition C-04-2023 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

1 for why the Court should reach a different conclusion this time around.

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

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

25 *First*, the existing “general appropriation to fund the Legislature’s business”
26 that funds the *Legislature’s* redistricting activities will not help fund the new
27 Commission that the Petition would create. Answering Br. 4. The Petition is explicit
28

1 that the "Independent Redistricting Commission" is a new body, created by the
2 Petition for the first time, whose members *cannot* be current legislators. Compl. Ex.
3 1, at 2. That the Legislature has an existing funding stream to carry out its own
4 activities will do nothing to help fund the activities of the new body, with different
5 members, that the Petition would create.

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

15 *Second*, redistricting by the Nevada courts in 2011 is not a template for
16 redistricting by the Commission. The Nevada courts, of course, are an existing
17

18 ¹ The Legislature relies on a fully staffed and salaried Committee to Conduct
19 an Investigation into Matters Relating to Reapportionment and Redistricting in
20 Nevada. See **Exhibit 2**, a true and accurate copy of the Nevada Legislature webpage
21 identifying staff members of the Committee to Conduct an Investigation into Matters
22 Relating to Reapportionment and Redistricting in Nevada. Further, the Committee
23 to Conduct an Interim Study of the Requirements for Reapportionment and
24 Redistricting recommended redistricting software that costs money, including
25 AutoBound by Citygate GIS, which is estimated to fall in the range of \$53,000-67,000.
26 See **Exhibit 3**, a true and accurate copy of the Legislative Counsel Bureau's
27 presentation on Redistricting Software Options. The Legislative Commission
28 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 government body with an existing source of funding. In contrast, the Commission will
2 be a new body that is not already funded and will require an appropriation of funds.
3 Moreover, the need for the courts to become involved in redistricting in 2011 was not
4 the result of an initiative petition, and therefore was not subject to the restrictions in
5 article 19, section 6 in any event.

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

17 *Finally*, the Petition's mandating mid-cycle redistricting after the 2026 general
18 election is certain to incur additional costs. It is no answer to say that the Legislature
19 might otherwise choose to redistrict anyway. Doing so would be the Legislature's
20 choice—a choice that is not subject to article 19, section 6. But the Petition makes
21 such mid-cycle redistricting mandatory, and thus requires an expenditure of funds
22 that might not otherwise have occurred.

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

25 The Nevada Supreme Court has held that “regardless of whether the initiative
26 petition is proposing statutory or constitutional changes, if the initiative petition
27 requires expenditures or appropriations, it must include funding provisions.” *Educ.*
28

1 *Freedom PAC v. Reid*, C, 138 Nev. Adv. Op. 47, 512 P.3d 296, 303 (Nev. 2022). Fair
2 Maps encourages this Court to ignore binding precedent and cites the concurrence in
3 *Reid* to argue that its unconstitutional Petition should withstand this Court's
4 scrutiny because the Petition is a constitutional initiative, not a statutory one. But
5 the controlling majority opinion holds to the contrary. *Reid's* clear holding is bolstered
6 by the Nevada Supreme Court's consistent prior decisions that "[s]ection 6 applies to
7 all proposed initiatives, without exception, and *does not permit* any initiative that
8 fails to comply with the stated conditions." *Rogers v. Heller*, 117 Nev. 169, 173, 18
9 P.3d 1034 (2001) (per curiam); *see also Herbst Gaming, Inc. v. Heller*, 122 Nev. 877,
10 890-91, 141 P.3d 1224, (2006) (recognizing that article 19, section 6 "prevents the
11 electorate from creating the deficit that would result if government officials were
12 forced to set aside or pay money without generating the funds"—a purpose which is
13 only achieved if the requirement applies to all initiative petitions).

14 **C. The Petition's description of effect is legally insufficient.**

15 The Petition's description of effect is legally insufficient because it fails to
16 include the fact that the Petition will result in an expenditure of funds and to explain
17 that mid-cycle redistricting could replace maps drawn by the legislature—two
18 material facts that the First Judicial District Court held must be included in the
19 description of the materially identical 2019 petition. Ex. 3, at 4–5. Fair Maps ignores
20 this holding and fails to articulate how the Court can overlook the Petition's
21 deficiencies despite this holding.

22 **CONCLUSION**

23 The Petition is legally deficient, and Plaintiff's requested relief should be
24 granted.

25 ///

26 ///

27 ///

1 **AFFIRMATION**

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

4 DATED this 3rd day of January, 2024.

5 BRAVO SCHRAGER LLP

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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-04-2023** was served upon all parties via U.S.P.S. Mail, Las Vegas Nevada and via electronic mail as follows:

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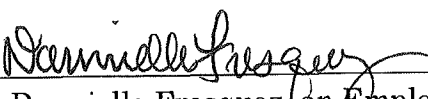
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Exhibit 1

Exhibit 1

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

9
10
11 REV. LEONARD JACKSON,
12 Plaintiff,
13 v.
14 FAIR MAPS NEVADA PAC, and
15 BARBARA CEGAVSKE, in her official
16 capacity as Nevada Secretary of State,
17 Defendants.

Case No.: 1900 00209 13
Dept. No.: #

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

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

23 **I. FACTS**

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 III. CONCLUSION

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

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

17 Dated this 26th day of November, 2019.

18
19 BENSON LAW, LLC

20
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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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- 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)

JA000206

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>Maptitude 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/arcgis/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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15 *Attorneys for Plaintiff*

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

18 ERIC JENG, an individual,

19 Plaintiff,

20 vs.

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

24 Defendant

25 and

26 Fair Maps Nevada,

27 Intervenor-Defendant.
28

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**

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 Plaintiffs 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.

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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:

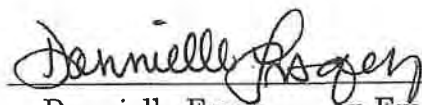
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Exhibit 1

Exhibit 1

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

9
10
11 REV. LEONARD JACKSON,
12 Plaintiff,

13 v.

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

Case No.: 1902 00209 13

Dept. No.: 11

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

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

23 **I. FACTS**

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

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

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

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

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

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

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

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.

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
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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>))

Overview

Meetings

Members

Staff

Research Division

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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>Maptitude 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/arcgis/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

The Summary Minutes are supplied as an informational service. All meeting materials are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. For copies, contact the Library at (775) 684-6827 or <https://www.leg.state.nv.us/Division/Research/Library/About/Contact/feedbackmail.cfm>.

--FILED--
Administrative Office of the Courts
Date: 1/10/2024

By: A. Johnson

**SUPREME COURT OF THE STATE OF NEVADA
ADMINISTRATIVE OFFICE OF THE COURTS**

IN THE MATTER OF THE ASSIGNMENT OF
A SENIOR JUDGE

Order No. 24-00187

REC'D & FILED
2024 JAN 10 PM 12:02
WILLIAMSON
BY [Signature]

MEMORANDUM OF TEMPORARY ASSIGNMENT

WHEREAS, the Honorable James E. Wilson, District Judge, Department 2, First Judicial District Court, will be unavailable and no other Judge in the District is available, now therefore,

IT IS HEREBY ORDERED that the Honorable Robert E. Estes, Senior Judge, shall hear any and all matters in the matter of *Eric Jeng v. Francisco Aguilar*, Case Number 23-OC-00137-1B, and shall have authority to sign any orders arising out of this assignment. During this time, the Honorable Robert E. Estes, Senior Judge, may preside over any other matters as requested by the Chief or Presiding Judge.

ENTERED this 10th day of January 2024.

NEVADA SUPREME COURT

By:  Justice

Copy: The Honorable Robert E. Estes, Senior Judge
The Honorable James E. Wilson, District Judge, First Judicial District Court

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9 *Attorneys for Fair Maps Nevada PAC*

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

13 ERIC JENG, an individual,
14
15 Plaintiffs,

16 vs.

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

20 Defendant.

Case No.: 23OC000137 1B

Dept. No.: 1

**STIPULATION AND ORDER
REGARDING INTERVENTION**

21 Plaintiff ERIC JENG, Defendant FRANCISCO V. AGUILAR, in his official capacity
22 as NEVADA SECRETARY OF STATE, and FAIR MAPS NEVADA PAC ("Fair Maps"), by
23 and through their counsel, hereby submit this stipulation and order regarding the intervention of
24 Fair Maps in the instant litigation. As the circulator of record of the Constitutional Initiative
25 Petition C-04-2023 ("Initiative Petition") filed with the Nevada Secretary of State and the
26 subject of this litigation, Fair Maps claims an interest relating to the property or transaction that
27 is the subject of the action and is so situated that disposing of the action may as a practical matter
28 impair or impede Fair Maps's ability to protect its interest.

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REC'D & FILED
2024 JAN 11 AM 11:36
WILLIAM SCOTT HOEFLER
B. SHADRON
BY _____ DEPUTY

The parties therefore agree and stipulate that the Court should approve Fair Maps's intervention in this action.

Dated: December 11, 2023

Dated: December 11, 2023

McDONALD CARANO LLP

BRAVO SCHRAGER LLP

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Attorneys for Francisco V. Aguilar

The parties therefore agree and stipulate that the Court should approve Fair Maps's intervention in this action.

Dated: December 11, 2023

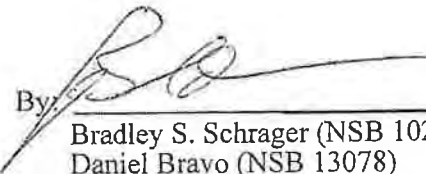
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Dated: December 11, 2023

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Attorneys for Francisco V. Aguilar

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The parties therefore agree and stipulate that the Court should approve Fair Maps's intervention in this action.

Dated: December ^{13th}~~11~~, 2023

McDONALD CARANO LLP

Dated: December ^{13th}~~11~~, 2023

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Attorneys for Francisco V. Aguilar

ORDER

IT IS ORDERED:

☒ Granted
☐ Granted in part:

and Denied in part:

☐ Denied
☐ Declined to consider ex parte
☐ Declined to consider without a hearing
☐ Other:

DATED:

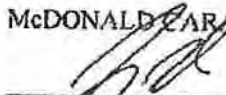
January 11, 2024

DISTRICT COURT JUDGE



Respectfully submitted by:

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Attorneys for Defendant Secretary of State

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

ERIC JENG, an individual,
Plaintiffs,

vs.

FRANCISCO AGUILAR, in his Official
Capacity as NEVADA SECRETARY OF
STATE

Defendant,

and

Fair Maps Nevada,

Intervenor-Defendant.

Case No.: 230C00138 1B

Dept. No. II

SECRETARY OF STATE'S LIMITED RESPONSE TO MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE
PETITION C-03-2023

Defendant Francisco Aguilar, in his official capacity as Nevada Secretary of State
("Secretary of State"), submits the following Limited response to Plaintiffs Complaint for
Declaratory and Injunctive Relief Challenging Initiative Petition C-03-2023.

1 The Secretary of State does not take a position on the legality of the proposed
2 initiative petition. This case was brought prior to the Secretary of State having the
3 opportunity to consider certifying the proposed initiative petition as sufficient pursuant to
4 NRS 295.061(2). Plaintiff and Intervenor-Defendant will make those arguments, and the
5 Secretary of State will comply with any final judgment in this case. The Secretary of State
6 does not take a position on the policy merits of the proposed initiative petition. If deemed
7 legal and qualified for the 2024 general election ballot, Nevadan voters will have that
8 debate and make that policy decision.

9 Under such circumstances, no award of attorneys' fees or costs is appropriate against
10 the Secretary of State.

11 DATED this 22nd day of January, 2024.

12 AARON D. FORD
13 Attorney General

14 By: 

15 LAENA ST. JULES (Bar No. 15156)
16 Senior Deputy Attorney General
17 Office of the Attorney General
18 100 North Carson Street
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23 *Attorneys for Defendant Secretary of State*
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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 22nd day of January, 2024, I served a true and correct copy of the foregoing SECRETARY OF STATE'S LIMITED RESPONSE TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023, by USPS First Class Regular mail and electronic mail to:

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Aaron D. Van Sickle

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Attorneys for Defendant Secretary of State

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.: 230C00137 1B

Dept. No. II

SECRETARY OF STATE'S LIMITED RESPONSE TO MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE
PETITION C-04-2023

Defendant Francisco Aguilar, in his official capacity as Nevada Secretary of State
("Secretary of State"), submits the following Limited response to Plaintiff's Complaint for
Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2023.

1 The Secretary of State does not take a position on the legality of the proposed
2 initiative petition. This case was brought prior to the Secretary of State having the
3 opportunity to consider certifying the proposed initiative petition as sufficient pursuant to
4 NRS 295.061(2). Plaintiff and Intervenor-Defendant will make those arguments, and the
5 Secretary of State will comply with any final judgment in this case. The Secretary of State
6 does not take a position on the policy merits of the proposed initiative petition. If deemed
7 legal and qualified for the 2024 general election ballot, Nevadan voters will have that
8 debate and make that policy decision.

9 Under such circumstances, no award of attorneys' fees or costs is appropriate against
10 the Secretary of State.

11 DATED this 22nd day of January, 2024.

12 AARON D. FORD
13 Attorney General

14 By: 

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22 E: lstjules@ag.nv.gov

23 *Attorneys for Defendant*
24
25
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27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 22nd day of January, 2024, I served a true and correct copy of the foregoing SECRETARY OF STATE'S LIMITED RESPONSE TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-04-2023, by USPS First Class Regular mail and electronic mail to:

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Aaron D. Van Sickle


--FILED--
Administrative Office of the Courts
Date: 1/24/2024

By: A. Johnson

**SUPREME COURT OF THE STATE OF NEVADA
ADMINISTRATIVE OFFICE OF THE COURTS**

IN THE MATTER OF THE ASSIGNMENT OF
A SENIOR JUDGE

Order No. 24-00214

2024 JAN 24 AM 11:59
WILLIAM S. JONES
BY 

REC'D & FILED

MEMORANDUM OF TEMPORARY ASSIGNMENT

WHEREAS, the Honorable James Todd Russell, District Judge, is unable to hear the matter of *Eric Jeng v. Francisco Aguilar*, Case Number 23 OC 00138 1B, now pending in the First Judicial District, now therefore

IT IS HEREBY ORDERED that the Honorable Robert E. Estes, Senior Judge, is assigned to hear any and all matters in *Eric Jeng v. Francisco Aguilar*, Case Number 23 OC 00138 1B, and he shall have authority to sign any orders arising out of this assignment. The Court shall notify the parties of the assignment and provide Robert E. Estes, Senior Judge with any assistance as requested.

Entered this 24th day of January 2024.

NEVADA SUPREME COURT

By:  Justice

Copy: The Honorable Robert E. Estes, Senior Judge
The Honorable James Todd Russell, District Judge, First Judicial District Court

Lucas Foletta (NSBN 12154)
Joshua Hicks (NSBN 6679)
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Attorneys for Intervenor Fair Maps Nevada

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.

Case No.: 23 OC 000137 1B

Dept. No.: II

**FAIR MAPS NEVADA'S MOTION TO STRIKE A PORTION OF PLAINTIFF'S
REPLY, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SUR-REPLY**

Intervenor Fair Maps Nevada, a Nevada political action committee ("Fair Maps"), by and through its attorneys, hereby moves the Court to strike a portion of Plaintiff Eric Jeng's ("Plaintiff") Reply in Support of Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2023 ("Reply"). Alternatively, Fair Maps requests leave to file a sur-reply. This motion is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file with the Court, and any oral argument entertained by the Court at a hearing in this matter.

///

///

Counsel for Fair Maps certifies that Fair Maps has complied in good faith with Local Rule 3.7(b) as follows:

- (1) Counsel for Fair Maps conferred with counsel for Plaintiff on January 22, 2024;
- (2) The parties conferred via telephone;
- (3) No witnesses were identified by either party supporting their contentions with respect to this Motion;
- (4) No documents were exchanged in support of the parties' respective contentions, as all pertinent documents have been previously filed in this action;
- (5) None of the issues raised in this motion were resolved during the meet and confer; and
- (6) All issues are unresolved.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In his reply filed on January 3, 2024, Plaintiff advances an argument that he never presented in his Memorandum of Points and Authorities in Support of the Complaint for Declaratory and Injunctive Relief (“MPA”). In doing so, Plaintiff circumvents the standard briefing schedule set forth in the Court’s procedural rules and deprives Fair Maps of the opportunity to respond to Plaintiff’s new argument. The case law is clear that a reply brief must be limited in scope to those arguments presented in the original motion--new arguments are prohibited. Because Plaintiff has violated this rule, Fair Maps requests that the new argument in Plaintiff’s reply brief be stricken, or in the alternative, that Fair Maps be granted leave to file a sur-reply.

II. FACTUAL AND PROCEDURAL BACKGROUND

Fair Maps filed Initiative Petition #C-04-2023 (“Petition”) on November 14, 2023 to amend the Nevada Constitution. Complaint (“Compl.”), Ex. 1. Plaintiff filed a Complaint for Declaratory Relief and the MPA in support of the Complaint on December 7, 2023, seeking to prevent the Petition from the ballot. *See generally* Compl; MPA. Fair Maps filed an Answering Brief in response to Plaintiff’s MPA on December 26, 2023. On January 3, 2024, Plaintiff filed a Reply in support of the MPA, in which he advanced a new argument not presented in his MPA. Specifically, in his Reply, Plaintiff now contends for the first time that issue preclusion bars Fair Maps from relitigating whether the Petition will require an expenditure of funds. Reply at 2-3. Because this new argument did not exist in the original MPA, Fair Maps has not had an opportunity to respond.

III. ARGUMENT

A. Plaintiff’s Reply Brief Improperly Contains An Argument Not Presented In His MPA

For the first time, Plaintiff contends issue preclusion bars Fair Maps from relitigating whether the Petition will require an expenditure of funds. Reply at 2-3. It is well-established and universally recognized in all courts that a party cannot raise new arguments and/or issues for the first time in its reply brief. *See, e.g., Phillips v. Mercer*, 94 Nev. 279, 283, 579 P.2d 174,

1 176 (1978); *Blouin v. Blouin*, 67 Nev. 314, 316, 218 P.2d 937, 938 (1950); *see also Zamini v.*
2 *Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (noting “[t]he district court need not consider
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6 The reasons [why a court will not review issues first raised in the reply brief] are
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the benefit of the [opposing party’s] response.

10 *Stump v. Gates*, 211 F.3d 527, 533 (10th Cir. 2000); *see also Francis v. Wynn Las Vegas, LLC*,
11 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011) (declining to consider argument because
12 moving party “raised it for the first time in his reply brief, thereby depriving [the non-moving
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16 Likewise, First Judicial District Court Rule (“FJDCR”) 3.9 provides the “purpose of a
17 reply is to rebut facts, law, or argument raised in the opposition. Parties will not file a reply that
18 simply repeats facts, law, or argument contained in the motion, or to provide facts or law that
19 should have been but were not included in the motion. The court may strike a reply in its entirety
20 or in part and impose other sanctions if a reply violates this rule.” FJDCR 3.9.

21 Here, the face of Plaintiff’s Reply demonstrates arguments that were not presented in the
22 MPA. Because Plaintiff held back from his MPA the argument related to issue preclusion, instead
23 saving those arguments for the Reply, Fair Maps has been denied the opportunity to respond. For
24 this reason, the Court should strike the argument on pages 2 and 3 of the Reply related to issue
25 preclusion. *See* FJDCR 3.9.

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28 ///

B. A Sur-Reply Is Warranted

Should the Court decide to consider the new arguments first raised in Plaintiff's Reply, Fair Maps asks for leave to file a sur-reply. The proposed sur-reply is attached hereto as **Exhibit 1**. If the Court were to render a decision without the benefit of both sides' briefing, the opportunity for error is elevated. *See Stump*, 211 F.3d at 533. Moreover, Fair Maps will be denied the due process protections that are inherent to the briefing schedule set forth in the procedural rules that guide the Court's proceedings. *See* FJDCR 3.9. For these reasons, to the extent that the Court should consider Plaintiff's new argument, Fair Maps requests leave to file a sur-reply limited to those new arguments.

IV. CONCLUSION

Plaintiff's Reply in support of his MPA improperly contains a new argument not first advanced in the MPA. As a result, Fair Maps has been denied the opportunity to respond to this argument. For this reason, Fair Maps asks that the new argument in Plaintiff's Reply be stricken, or in the alternative, that the Court grant leave to file a sur-reply to address the new argument.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain any personal information, as defined in NRS 603A.040.

Dated this 22nd day of January, 2024.

McDONALD CARANO LLP

By: 

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Joshua Hicks (NSBN 6679)
Adam Hosmer-Henner (NSBN 12779)
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100 W. Liberty Street, Tenth Floor
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Telephone: (775) 788-2000

Attorneys for Fair Maps Nevada

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on January 22, 2024, I served the within **MOTION TO STRIKE A PORTION OF PLAINTIFF'S REPLY, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SUR-REPLY** on the parties in said case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113

Laena St-Jules, Esq.
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

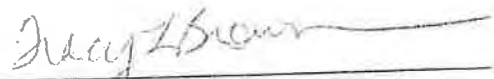
David R. Fox
Elias Law Group LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001

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The envelopes addressed to the above parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

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

Executed on January 22, 2024 at Reno, Nevada.

By 
An employee of McDonald Carano LLP

INDEX OF EXHIBITS

Exhibit No.	Description	Pages
1	Sur-Reply	7

EXHIBIT 1

EXHIBIT 1

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Attorneys for Intervenor Fair Maps Nevada

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.

Case No.: 23 OC 000137 1B

Dept. No.: II

**FAIR MAPS NEVADA'S SUR-REPLY TO PLAINTIFF'S REPLY IN SUPPORT OF
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE
PETITION C-04-2023**

Intervenor Fair Maps Nevada, a Nevada political action committee ("Fair Maps"), by and through its attorneys, hereby files its sur-reply to Plaintiff Eric Jeng's ("Plaintiff") Reply in Support of Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2023 ("Reply"). This sur-reply is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file with the Court, and any oral argument entertained by the Court at a hearing in this matter.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite clear guidance from the Nevada Supreme Court, Plaintiff seeks to use a mooted appeal from a 2020 ballot initiative petition (“2020 Petition”) to preclude Fair Maps from making any argument related to whether the Initiative Petition C-04-2023 (“Petition”) will require an expenditure of state funds. Because issue preclusion is wholly inapplicable to the instant suit, Plaintiff’s untimely argument should be disregarded.

II. ARGUMENT¹

A. Issue Preclusion is Inapplicable and Barred Under *Personhood Nev. v. Bristol*

As a threshold and dispositive matter, issue preclusion is inapplicable here. In *Personhood Nev. v. Bristol*, the Nevada Supreme Court considered an appeal regarding appellant’s proposed ballot initiative petition. 126 Nev. 599, 600, 245 P.3d 572, 573 (2010). The district court determined the proposed initiative violated the single subject rule and enjoined its placement from the general election ballot. *Id.* at 601, 245 P.3d at 574. Appellants appealed the district court’s determination; however, a decision was not rendered prior to the deadline for submitting initiatives with the necessary number of signatures to the Secretary of State. *Id.* The appeal was thus moot. *Id.*

Rather than dismissing the appeal, the Nevada Supreme Court ordered supplemental briefing regarding whether the district court’s order had a preclusive effect on future litigation. *Id.* at 601-02, 245 P.3d at 574. The Court determined that vacating the district court’s order was not necessary, because it adopted Restatement (Second) of Judgments, which advocates that “issue preclusion principles do not apply when an appeal has been rendered moot.” *Id.* at 604-05, 245 P.3d at 576. The Court ultimately concluded “*the district court’s order has no preclusive effect, and thus, there is no need to set the order aside to avoid it being used as binding precedent.*” *Id.* at 605, 245 P.3d at 576 (emphasis added).

¹ For the sake of brevity, Fair Maps does not repeat additional factual or procedural background. Fair Maps incorporates by reference all pleadings in this matter, including Fair Maps’ Motion to Strike, filed concurrently.

1 Here, Plaintiff seeks to do exactly what *Personhood* prohibits—use a prior district court’s
2 order where an appeal was rendered moot as binding precedent. In the 2020 Petition appeal, Fair
3 Maps cross appealed, arguing the district court erred in determining that its original description of
4 effect was misleading. *Jackson v. Fair Maps Nevada PAC*, No. 80563, 2020 WL 4283287, at *1
5 (Order of Affirmance, July 24, 2020). The Nevada Supreme Court dismissed the cross appeal,
6 noting that “[i]n light of our above-mentioned determination, however, *this issue is moot*.” *Id.*
7 (emphasis added). Thus, Plaintiff’s argument that Fair Maps is precluded from arguing whether
8 the Petition will require an expenditure is categorically barred under *Personhood*.

9 **B. The Required Elements of Application of Issue Preclusion Are Not Met**

10 Even if issue preclusion did apply to the Petition, Plaintiff has not demonstrated the required
11 factors have been met. To determine whether issue preclusion should apply, the Nevada Supreme
12 Court has articulated a four-part test: “(1) the issue decided in the prior litigation must be identical
13 to the issue presented in the current action; (2) the initial ruling must have been on the merits and
14 have become final; . . . (3) the party against whom the judgment is asserted must have been a party
15 or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily
16 litigated.” *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding*
17 *modified on other grounds by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015). As the party
18 asserting preclusion, Plaintiff bears the burden of proving the preclusive effect of the judgment.
19 *Bennett v. Fidelity & Deposit Co. of Maryland*, 98 Nev. 494, 452, 652 P.2d 1178, 1180 (1982).
20 Plaintiff has failed to meet this burden.

21 First, the Nevada Supreme Court has never sanctioned the form of issue preclusion pressed by
22 Plaintiff in this case: non-mutual offensive issue preclusion, in which “the plaintiff seeks to
23 foreclose the defendant from litigating an issue the defendant has previously litigated
24 unsuccessfully in an action with another party.” *Parklane Hosiery Co. v. Shore*, 439 U.S. 322,
25 326 n.4 (1979). Instead, the Nevada Supreme Court repeatedly has stated that issue preclusion
26 applies only in subsequent litigation “between the parties” to the prior case. *Five Star*, 124 Nev.
27 at 1055, 194 P.3d at 713-14 (explaining that issue preclusion “applies to prevent relitigation of
28 only a specific issue that was decided in a previous suit *between the parties*.”) (emphasis added);

1 *see also id.* at 1052, 194 P.3d at 711 (stating issue preclusion may “apply when the issues
2 addressed in an earlier suit arose in a later suit *between the parties*”) (emphasis added). Those
3 statements in turn are supported by the Nevada Supreme Court’s pre-*Five Star* case law, where it
4 likewise stated that issue preclusion applies only to “issues that were actually decided and
5 necessary to a judgment in an earlier suit on a different claim *between the same parties*.” *City of*
6 *Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 894, 59 P.3d 1212, 1216 (2002) (emphasis
7 added). Because the parties from the 2020 Petition are not the same as the instant case, issue
8 preclusion is not applicable. *See Jackson v. Fair Maps Nevada PAC*, No. 19-OC-002909 1B (Nev.
9 1st Jud. Dist. Ct. Jan 2, 2020), Compl. Ex. 3.

10 Second, as described herein, the ruling in the 2020 Petition was not on the merits and did not
11 become final. *See supra*, Section A; *see also Personhood*, 126 Nev. at 605, 245 P.3d at 576.
12 Because Plaintiff cannot satisfy his burden to prove the preclusive effect of the 2020 Petition
13 judgment, issue preclusion is inapplicable.

14 **C. Fair Maps’ Alternative Description**

15 While Fair Maps contends that issue preclusion is applicable, in the interest of expediency,
16 Fair Maps has attached a proposed alternative description of effect that describes the expenditure
17 of state funds hereto as **Exhibit A**.

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1 **III. CONCLUSION**

2 For all of the above reasons, the Court should reject Plaintiff's untimely and unpersuasive
3 argument in his Reply.

4 **AFFIRMATION**

5 Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain
6 any personal information, as defined in NRS 603A.040.

7 Dated this 22nd day of January, 2024.

8 McDONALD CARANO LLP

9
10 By: 

11 Lucas Foletta, Esq. (NSBN 12154)
12 Joshua Hicks (NSBN 6679)
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18 *Attorneys for Fair Maps Nevada*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on January 22, 2024, I served the within **SUR-REPLY TO PLAINTIFF'S REPLY IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-04-2023** on the parties in said case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:

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Executed on January 22, 2024 at Reno, Nevada.

By Tracy Brown
An employee of McDonald Carano LLP

INDEX OF EXHIBITS

Exhibit No.	Description	Pages
A	Proposed Alternative Description of Effect	1

EXHIBIT A

EXHIBIT A

Exhibit A-Proposed Alternative Description of Effect

Petition C-04-2023

A. Redline Version

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

The Commission will have seven members, four who will be appointed by the leadership of the Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by the other four commissioners. Commissioners may not be partisan candidates, lobbyists, or certain relatives of individuals. Commission meetings shall be open to the public which shall have opportunities to participate in the hearings.

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

This amendment will require redistricting following the 2026 election and each federal census thereafter. The existing and ongoing expense will be shifted to the Commission but will remain based in the legislative branch.

B. Clean Version

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

The Commission will have seven members, four who will be appointed by the leadership of the Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by the other four commissioners. Commissioners may not be partisan candidates, lobbyists, or certain relatives of individuals. Commission meetings shall be open to the public which shall have opportunities to participate in the hearings.

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Case No.: 23 OC 000138 1B

Dept. No.: II

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the Court, and any oral argument entertained by the Court at a hearing in this matter.

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REC'D & FILED
2024 JAN 22 PM 4:06
WILLIAM J. COFFIN, CLERK
BY _____ DEPUTY

1 Counsel for Fair Maps certifies that Fair Maps has complied in good faith with Local
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- 3 (1) Counsel for Fair Maps conferred with counsel for Plaintiff on January 22, 2024;
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MEMORANDUM OF POINTS AND AUTHORITIES

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///

1 **B. A Sur-Reply Is Warranted**

2 Should the Court decide to consider the new arguments first raised in Plaintiff's Reply, Fair
3 Maps asks for leave to file a sur-reply. The proposed sur-reply is attached hereto as **Exhibit 1**. If
4 the Court were to render a decision without the benefit of both sides' briefing, the opportunity for
5 error is elevated. *See Stump*, 211 F.3d at 533. Moreover, Fair Maps will be denied the due process
6 protections that are inherent to the briefing schedule set forth in the procedural rules that guide the
7 Court's proceedings. *See* FJDCR 3.9. For these reasons, to the extent that the Court should
8 consider Plaintiff's new argument, Fair Maps requests leave to file a sur-reply limited to those
9 new arguments.

10 **IV. CONCLUSION**

11 Plaintiff's Reply in support of his MPA improperly contains a new argument not first advanced
12 in the MPA. As a result, Fair Maps has been denied the opportunity to respond to this argument.
13 For this reason, Fair Maps asks that the new argument in Plaintiff's Reply be stricken, or in the
14 alternative, that the Court grant leave to file a sur-reply to address the new argument.

15 **AFFIRMATION**

16 Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain
17 any personal information, as defined in NRS 603A.040.

18 Dated this 22nd day of January, 2024.

19 McDONALD CARANO LLP

20
21 By: 

22 Lucas Foletta, Esq. (NSBN 12154)
23 Joshua Hicks (NSBN 6679)
24 Adam Hosmer-Henner (NSBN 12779)
25 Katrina Weil (NSBN 16152)
26 100 W. Liberty Street, Tenth Floor
27 Reno, NV 89501
28 Telephone: (775) 788-2000

 Attorneys for Fair Maps Nevada

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on January 22, 2024, I served the within **MOTION TO STRIKE A PORTION OF PLAINTIFF'S REPLY, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SUR-REPLY** on the parties in said case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113

Laena St-Jules, Esq.
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

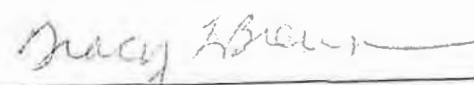
David R. Fox
Elias Law Group LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service.

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

Executed on January 22, 2024 at Reno, Nevada.

By 
An employee of McDonald Carano LLP

INDEX OF EXHIBITS

Exhibit No.	Description	Pages
1	Sur-Reply	7

EXHIBIT 1

EXHIBIT 1

1 Lucas Foletta (NSBN 12154)
Joshua Hicks (NSBN 6679)
2 Adam Hosmer-Henner (NSBN 12779)
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6 ahosmerhenner@mcdonaldcarano.com
kweil@mcdonaldcarano.com

7 *Attorneys for Intervenor Fair Maps Nevada*

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

11 ERIC JENG, an individual,
12 Plaintiff,

Case No.: 23 OC 000138 1B

Dept. No.: II

13 vs.

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

16 Defendant.

17 **FAIR MAPS NEVADA'S SUR-REPLY TO PLAINTIFF'S REPLY IN SUPPORT OF**
18 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT**
19 **FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE**
20 **PETITION C-03-2023**

21 Intervenor Fair Maps Nevada, a Nevada political action committee ("Fair Maps"), by
22 and through its attorneys, hereby files its sur-reply to Plaintiff Eric Jeng's ("Plaintiff") Reply in
23 Support of Memorandum of Points and Authorities in Support of Complaint for Declaratory and
24 Injunctive Relief Challenging Initiative Petition C-03-2023 ("Reply"). This sur-reply is
25 supported by the following Memorandum of Points and Authorities, the pleadings and papers
26 on file with the Court, and any oral argument entertained by the Court at a hearing in this matter.

27 ///

28 ///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite clear guidance from the Nevada Supreme Court, Plaintiff seeks to use a mooted appeal from a 2020 ballot initiative petition ("2020 Petition") to preclude Fair Maps from making any argument related to whether the Initiative Petition C-03-2023 ("Petition") will require an expenditure of state funds. Because issue preclusion is wholly inapplicable to the instant suit, Plaintiff's untimely argument should be disregarded.

II. ARGUMENT¹

A. Issue Preclusion is Inapplicable and Barred Under *Personhood Nev. v. Bristol*

As a threshold and dispositive matter, issue preclusion is inapplicable here. In *Personhood Nev. v. Bristol*, the Nevada Supreme Court considered an appeal regarding appellant's proposed ballot initiative petition. 126 Nev. 599, 600, 245 P.3d 572, 573 (2010). The district court determined the proposed initiative violated the single subject rule and enjoined its placement from the general election ballot. *Id.* at 601, 245 P.3d at 574. Appellants appealed the district court's determination; however, a decision was not rendered prior to the deadline for submitting initiatives with the necessary number of signatures to the Secretary of State. *Id.* The appeal was thus moot. *Id.*

Rather than dismissing the appeal, the Nevada Supreme Court ordered supplemental briefing regarding whether the district court's order had a preclusive effect on future litigation. *Id.* at 601-02, 245 P.3d at 574. The Court determined that vacating the district court's order was not necessary, because it adopted Restatement (Second) of Judgments, which advocates that "issue preclusion principles do not apply when an appeal has been rendered moot." *Id.* at 604-05, 245 P.3d at 576. The Court ultimately concluded "*the district court's order has no preclusive effect*, and thus, there is no need to set the order aside to avoid it being used as binding precedent." *Id.* at 605, 245 P.3d at 576 (emphasis added).

¹ For the sake of brevity, Fair Maps does not repeat additional factual or procedural background. Fair Maps incorporates by reference all pleadings in this matter, including Fair Maps' Motion to Strike, filed concurrently.

Here, Plaintiff seeks to do exactly what *Personhood* prohibits—use a prior district court’s order where an appeal was rendered moot as binding precedent. In the 2020 Petition appeal, Fair Maps cross appealed, arguing the district court erred in determining that its original description of effect was misleading. *Jackson v. Fair Maps Nevada PAC*, No. 80563, 2020 WL 4283287, at *1 (Order of Affirmance, July 24, 2020). The Nevada Supreme Court dismissed the cross appeal, noting that “[i]n light of our above-mentioned determination, however, *this issue is moot.*” *Id.* (emphasis added). Thus, Plaintiff’s argument that Fair Maps is precluded from arguing whether the Petition will require an expenditure is categorically barred under *Personhood*.

B. The Required Elements of Application of Issue Preclusion Are Not Met

Even if issue preclusion did apply to the Petition, Plaintiff has not demonstrated the required factors have been met. To determine whether issue preclusion should apply, the Nevada Supreme Court has articulated a four-part test: “(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; . . . (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated.” *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding modified on other grounds by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015). As the party asserting preclusion, Plaintiff bears the burden of proving the preclusive effect of the judgment. *Bennett v. Fidelity & Deposit Co. of Maryland*, 98 Nev. 494, 452, 652 P.2d 1178, 1180 (1982). Plaintiff has failed to meet this burden.

First, the Nevada Supreme Court has never sanctioned the form of issue preclusion pressed by Plaintiff in this case: non-mutual offensive issue preclusion, in which “the plaintiff seeks to foreclose the defendant from litigating an issue the defendant has previously litigated unsuccessfully in an action with another party.” *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.4 (1979). Instead, the Nevada Supreme Court repeatedly has stated that issue preclusion applies only in subsequent litigation “between the parties” to the prior case. *Five Star*, 124 Nev. at 1055, 194 P.3d at 713-14 (explaining that issue preclusion “applies to prevent relitigation of only a specific issue that was decided in a previous suit *between the parties.*”) (emphasis added);

1 *see also id.* at 1052, 194 P.3d at 711 (stating issue preclusion may “apply when the issues
2 addressed in an earlier suit arose in a later suit *between the parties*”) (emphasis added). Those
3 statements in turn are supported by the Nevada Supreme Court’s pre-*Five Star* case law, where it
4 likewise stated that issue preclusion applies only to “issues that were actually decided and
5 necessary to a judgment in an earlier suit on a different claim *between the same parties*.” *City of*
6 *Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 894, 59 P.3d 1212, 1216 (2002) (emphasis
7 added). Because the parties from the 2020 Petition are not the same as the instant case, issue
8 preclusion is not applicable. *See Jackson v. Fair Maps Nevada PAC*, No. 19-OC-002909 1B (Nev.
9 1st Jud. Dist. Ct. Jan 2, 2020), Compl. Ex. 3.

10 Second, as described herein, the ruling in the 2020 Petition was not on the merits and did not
11 become final. *See supra*, Section A; *see also Personhood*, 126 Nev. at 605, 245 P.3d at 576.
12 Because Plaintiff cannot satisfy his burden to prove the preclusive effect of the 2020 Petition
13 judgment, issue preclusion is inapplicable.

14 **C. Fair Maps’ Alternative Description**

15 While Fair Maps contends that issue preclusion is applicable, in the interest of expediency,
16 Fair Maps has attached a proposed alternative description of effect that describes the expenditure
17 of state funds hereto as **Exhibit A**.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on January 22, 2024, I served the within **SUR-REPLY TO PLAINTIFF'S REPLY IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023** on the parties in said case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:

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

Executed on January 22, 2024 at Reno, Nevada.

By Mary L. Brown
An employee of McDonald Carano LLP

INDEX OF EXHIBITS

Exhibit No.	Description	Pages
A	Proposed Alternative Description of Effect	1

EXHIBIT A

EXHIBIT A

Exhibit A—Proposed Alternative Description of Effect

Petition C-03-2023

A. Redline Version

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

The Commission will have seven members, four who will be appointed by the leadership of the Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by the other four commissioners. Commissioners may not be partisan candidates, lobbyists, or certain relatives of individuals. Commission meetings shall be open to the public which shall have opportunities to participate in the hearings.

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

This amendment will require redistricting following each federal census. The existing and ongoing expense will be shifted to the Commission but will remain based in the legislative branch.

B. Clean Version

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

The Commission will have seven members, four who will be appointed by the leadership of the Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by the other four commissioners. Commissioners may not be partisan candidates, lobbyists, or certain relatives of individuals. Commission meetings shall be open to the public which shall have opportunities to participate in the hearings.

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

This amendment will require redistricting following each federal census. The existing and ongoing expense will be shifted to the Commission but will remain based in the legislative branch.

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Attorneys for Intervenor Fair Maps Nevada

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2024 JAN 22 PM 4:10
WILLIAM SCOTT
CLERK
BY _____
DEPUTY

**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.

Case No.: 23 OC 000137 1B

Dept. No.: II

**FAIR MAPS NEVADA'S MOTION TO DISMISS COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-04-2023**

Intervenor Fair Maps Nevada, a Nevada political action committee ("Fair Maps"), by and through its attorneys, hereby moves the Court to dismiss Plaintiff Eric Jeng's ("Plaintiff") Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2023 ("Compl.") This motion is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file with the Court, and any oral argument entertained by the Court at a hearing in this matter.

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///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The Court should reject Plaintiff's attempt to obstruct Fair Maps' constitutional right to
4 access the ballot. Due to unnecessary delays caused by Plaintiff's deliberate acts, a hearing on
5 the challenge to Petition C-04-2023 ("Petition") has not been set or heard, despite a clear
6 mandate from NRS 295.061(1) that a hearing be set no later than 15 days after a complaint is
7 filed. Indeed, despite the Legislature's recognition of the critical need for expediency in ballot
8 petition challenges, Fair Maps must now incur significant detriment as a result of the delays in
9 this challenge. Accordingly, the Court must dismiss Plaintiff's case.

10 **II. FACTUAL AND PROCEDURAL BACKGROUND**

11 Fair Maps filed the Petition on November 14, 2023 to amend the Nevada Constitution.
12 Complaint ("Compl."), Ex. 1. Plaintiff filed a Complaint for Declaratory and Injunctive Relief
13 and an Opening Brief in Support of Complaint for Declaratory and Injunctive Relief on
14 December 7, 2023. *See generally* Compl. Fair Maps filed an Answering Brief in response to
15 Plaintiff's MPA on December 26, 2023. On January 3, 2024, Plaintiff filed a Reply in support
16 of the MPA. Despite the Complaint being filed over one month prior to this instant Motion, a
17 hearing has not been set for the matter.

18 **III. ARGUMENT**

19 NRS 295.061(1) requires the district court to set a hearing for challenges to initiative
20 petitions "not later than 15 days after the complaint is filed and shall give priority to such a
21 complaint over all other matters pending with the court, except for criminal proceedings." The
22 Nevada Supreme Court has emphasized that "district courts must make every effort to comply
23 with the expedited, statutory time frame for considering initiative challenges." *Education*
24 *Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 301 (2022). Given that Plaintiff
25 filed his Complaint on December 7, 2023, the district court only had until December 29, 2023
26 to hold a hearing. Despite the 15-day hearing requirement, at the time of this motion, a hearing
27 has not been held—or even set.

28 ///

1 Moreover, Plaintiff took unnecessary steps to delay this court's consideration of the
2 Complaint. Plaintiff waited until the last possible day under NRS 295.061(1) to challenge the
3 Petition. Plaintiff then filed an unnecessary preemptory challenge knowing no judge in the First
4 Judicial District Court is available to hear the case. This preemptory challenge requires the case
5 to be assigned to a Senior Judge.

6 This delay has resulted in significant detriment to Fair Maps for whose protection the
7 procedural requirements of NRS 295.061 exist. Fair Maps must rapidly collect signatures from
8 "10 percent or more of the voters who voted in the entire State at the last preceding general
9 election." Nev. Const. art. 19, § 2(2). Every day this matter is pending is a day Fair Maps loses
10 in circulating a court-approved Petition. *See Nevadans for Nev. v. Beers*, 122 Nev. 930, 940,
11 142 P.3d 339, 345 (2006) (holding that an initiative petition without a compliant description of
12 effect is not operative). Indeed, dilatory tactics like these have been condoned by courts. *See*,
13 *e.g., Pest Comm. v. Miller*, 626 F.3d 1097, 1109 (9th Cir. 2010) (recognizing "that challenges
14 by opponents have tied initiative petitions up in litigation for extended periods of time or that,
15 in some cases, they have left the proponents without sufficient time to gather signatures").
16 Because a hearing has not been held in the statutorily required time, this matter must be
17 dismissed.

18 **IV. CONCLUSION**

19 For all of the above reasons, the Court should deny Plaintiff's attempt to keep the Petition
20 off the ballot and dismiss Plaintiff's suit.

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MCDONALD CARA ANO
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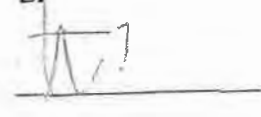
AFFIRMATION

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain any personal information, as defined in NRS 603A.040.

Dated this 22nd day of January, 2024.

McDONALD CARA ^N ^{LP}

By:

 
Lucas Foletta, Esq. (NSBN 12154)
Joshua Hicks (NSBN 6679)
Adam Hosmer-Henner (NSBN 12779)
Katrina Weil (NSBN 16152)
100 W. Liberty Street, Tenth Floor
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Telephone: (775) 788-2000

Attorneys for Fair Maps Nevada

CERTIFICATE OF SERVICE

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Case No.: 23 OC 000138 1B

Dept. No.: II

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Intervenor Fair Maps Nevada, a Nevada political action committee ("Fair Maps"), by and through its attorneys, hereby moves the Court to dismiss Plaintiff Eric Jeng's ("Plaintiff") Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-03-2023 ("Compl.") This motion is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file with the Court, and any oral argument entertained by the Court at a hearing in this matter.

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8 "10 percent or more of the voters who voted in the entire State at the last preceding general
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18 **IV. CONCLUSION**

19 For all of the above reasons, the Court should deny Plaintiff's attempt to keep the Petition
20 off the ballot and dismiss Plaintiff's suit.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain any personal information, as defined in NRS 603A.040.

Dated this 22nd day of January, 2024.

McDONALD CARANO LLP

By: 

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I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service.

The envelopes addressed to the above parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

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

Executed on January 22, 2024 at Reno, Nevada.

By 
An employee of McDonald Carano LLP

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15 *Attorneys for Plaintiff*

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

18 ERIC JENG, an individual,
 19 Plaintiff,

20 vs.

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

24 Defendant,

25 and

26 Fair Maps Nevada,

27 Intervenor-Defendant.

Case No.: 23 OC 000137 IB

Dept. No.: II

**RESPONSE IN OPPOSITION TO
 FAIR MAPS NEVADA'S MOTION
 TO DISMISS COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF
 CHALLENGING INITIATIVE
 PETITION C-04-2023**

28 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

1 296, 301 (2022). The Court therefore held that, while “district courts must make every
2 effort to comply with” the 15-day deadline, a court’s failure to meet that deadline
3 provides no basis for dismissal. *Id.*

4 Fair Maps Nevada makes no effort to distinguish *Education Freedom PAC*, and
5 it controls here. There, just as here, the district court was unable to set a hearing on
6 an initiative-petition challenge within the 15-day statutory deadline in NRS
7 295.061(1). *Educ. Freedom PAC*, 138 Nev., Adv. Op. 47, 512 P.3d at 300–01. And
8 there, just as here, the delay was partly caused by the challenger exercising his right
9 to preempt the assigned judge in a circumstance where no other active judge was
10 available. *Id.* at 300; Nev. Sup. Ct. R. 48.1. *Education Freedom PAC* therefore
11 addresses *exactly the circumstances of this case* when it holds that the statutory
12 requirement to set the hearing within 15 days after the filing of the complaint is
13 “directory,” not mandatory, and that it is *not* a basis for dismissal. *Educ. Freedom*
14 *PAC*, 138 Nev., Adv. Op. 47, 512 P.3d at 300–01. And *Education Freedom PAC* makes
15 clear that the 15-day deadline applies to *district courts*, not to challengers, demanding
16 that the *courts* “make every effort to comply with the expedited, statutory time frame
17 for considering initiative challenges.” *Id.*

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

26 Finally, if any of the parties is to blame for this case not being heard within
27 the 15-day deadline, it is Fair Maps Nevada. Plaintiff timely commenced this case on
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1 December 7, 2023, by simultaneously filing both its Complaint and a brief on the
2 merits. Plaintiff informed Fair Maps Nevada of the challenge the very next day. But
3 Fair Maps Nevada then waited *eighteen days* before filing its response brief on
4 December 26—a delay that is completely inconsistent with Fair Maps Nevada’s
5 position now that the matter must be dismissed because it was not heard by
6 December 22, fifteen days after the Complaint was filed and four days before Fair
7 Maps Nevada even filed its response.

8 CONCLUSION

9 The motion to dismiss should be denied.

10 AFFIRMATION

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

13 DATED this 7th day of February, 2024.

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16 By: 

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Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT
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ERIC JENG, an individual,

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vs.

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 official capacity as NEVADA
 SECRETARY OF STATE,

Defendant,

and

Fair Maps Nevada,

Intervenor-Defendant.

Case No.: 23 OC 000138 IB

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

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7 Maps Nevada even filed its response.

8 CONCLUSION

9 The motion to dismiss should be denied.

10 AFFIRMATION

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12 the social security number of any person.

13 DATED this 7th day of February, 2024.

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1 CERTIFICATE OF SERVICE


2 I hereby certify that on this 7th day of February, 2024, a true and correct copy
3 of the **RESPONSE IN OPPOSITION TO FAIR MAPS NEVADA'S MOTION TO**
4 **DISMISS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
5 **CHALLENGING INITIATIVE PETITION C-03-2023** was served upon all parties
6 via electronic mailing to the following:
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Case No.: 23 OC 000137 IB

Dept. No.: II

**RESPONSE IN OPPOSITION TO
 FAIR MAPS NEVADA'S MOTION
 TO STRIKE A PORTION OF
 PLAINTIFF'S REPLY PETITION
 C-04-2023**

28 Plaintiff has been clear from the very start of this case that a central basis for his claims is the First Judicial District Court's holding in a 2020 case that a 2019 petition materially identical to Initiative Petition C-04-2023 would "result in the expenditure of state funds." That holding featured not only in Plaintiff's Complaint but also his opening brief. Plaintiff had no reason to suspect that Fair Maps Nevada would simply ignore that prior decision entirely and litigate this case as if the 2020

1 decision had never happened. But when Fair Maps Nevada intervened and filed its
2 response brief, that is precisely what it did. It was completely appropriate for Plaintiff
3 to address that tactical decision by Fair Maps Nevada in Plaintiff's reply, including,
4 specifically, to make the point that issue preclusion bars Fair Maps Nevada's effort
5 to relitigate issues previously decided in the 2020 case. The Court should deny both
6 Fair Maps Nevada's motion to strike and its alternative request to file a (meritless)
7 sur-reply.

8 ARGUMENT

9 **A. The Court should deny the motion to strike.**

10 Plaintiff's Complaint and opening brief—filed simultaneously on December 7,
11 2023—rely repeatedly on the First Judicial District Court's decision in *Jackson v.*
12 *Fair Maps Nevada PAC*, No. 19-OC-00209 1B (1st Jud. Dist. Ct. Nev. Jan. 2, 2020),
13 *aff'd*, No. 80563 (Nev. July 24, 2020). Plaintiff attaches that decision as an exhibit,
14 cites it repeatedly, and argues that it compels the conclusion that the Petition
15 challenged here will require an expenditure of state funds for the same reason that
16 the materially identical petition challenged in *Jackson* did so. *See* Compl. ¶¶ 8–9, 17,
17 29; Pl.'s Mem. in Supp. of Compl. 3–4, 5, 9. Plaintiff does not directly use the term
18 “issue preclusion,” but that is because there was not—at that time—anyone or
19 anything to preclude. Fair Maps Nevada was not at that time a party to this case,
20 and there was no reason to believe that it or anyone else would make any arguments
21 inconsistent with the decision in *Jackson*.

22 That changed on December 26, when Fair Maps Nevada filed its responsive
23 brief after intervening in this case. Despite Plaintiff's repeated reliance on the
24 *Jackson* decision, Fair Maps Nevada chose to ignore that decision entirely and
25 pretend that whether the Petition requires an expenditure is a brand new, open
26 question. Fair Maps Nevada's Answering Brief at 3–6, 8.

27 Plaintiff was entitled to address and rebut Fair Maps Nevada's surprising
28

1 approach in its reply, and that is just what Plaintiff did. Plaintiff's reply pointed out
2 that issue preclusion bars many of the arguments in Fair Maps Nevada's response
3 brief, which were a blatant attempt to relitigate whether the Petition will require an
4 expenditure of funds. See Pl.'s Reply at 2. Plaintiff raised this issue preclusion
5 argument in direct response to Fair Maps Nevada's contention that the Petition's
6 expenditure of funds was an unsettled matter. This was Plaintiff's first opportunity
7 to make that point: Plaintiff could not have argued that issue preclusion bars Fair
8 Maps Nevada's arguments before Fair Maps Nevada made them, in an opening brief
9 filed before Fair Maps Nevada was even a party to the case.

10 Plaintiff did nothing wrong in raising in his reply the preclusive effect of a
11 decision Plaintiff had repeatedly cited in his opening brief, to address arguments first
12 made in Fair Maps Nevada's response. None of the cases Fair Maps Nevada cites
13 addresses a similar circumstance. Several involve only the entirely separate rule that
14 an appellant may not raise a new claim of error in a reply brief on appeal. See *Phillips*
15 *v. Mercer*, 94 Nev. 279, 283, 579 P.2d 174, 176 (1978); *Blouin v. Blouin*, 67 Nev. 314,
16 317, 218 P.2d 937, 938 (1950); *Stump v. Gates*, 211 F.3d 527, 533 (10th Cir. 2000). All
17 but one of the rest involve *entirely new issues* raised for the first time in a reply. See
18 *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n. 7, 262 P.3d 705, 715 (2011)
19 (entirely new argument that damages were not ascertained); *Weaver v. State DMV*,
20 121 Nev. 494, 502, 117 P.3d 193, 198–99 (2005) (entirely new constitutional challenge
21 to statute at issue); *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (entirely new
22 privilege argument). That leaves *Knapp v. Miller*, 873 F. Supp. 375, 378 (D. Nev.
23 1994), which directly refutes Fair Maps Nevada's argument because it *did* consider
24 an argument from a reply, after explaining that it merely “refine[d]” the party's
25 original argument, rather than making an entirely new one. That is far closer to the
26 scenario here.

27 Plaintiff's issue preclusion argument is also consistent with First Judicial
28

1 District Court Rule 3.9, because the argument is directly responsive to Fair Maps
2 Nevada's arguments, in its response brief, that the Petition will not require the
3 expenditure of state funds. Rule 3.9 provides that "[t]he purpose of a reply is to rebut
4 facts, law, or argument *raised in the opposition*." (emphasis added). Plaintiff's reply
5 does exactly that. The Court should therefore deny the motion to strike.

6 **B. The Court should not allow Fair Maps Nevada to file a sur-reply.**

7 The Court should also deny Fair Maps Nevada's alternative request to file a
8 sur-reply regarding the preclusive effect of the *Jackson* decision. Fair Maps Nevada
9 had every opportunity to address the effect and significance of *Jackson* in its response
10 brief, after Plaintiff repeatedly relied on that decision in his Complaint and opening
11 brief. Fair Maps Nevada made a clear, tactical decision to ignore *Jackson* instead.
12 There is no basis for rewarding Fair Maps Nevada with a second bite at the apple.

13 In any event, Fair Maps Nevada makes two arguments in the proposed sur-
14 reply, and both are meritless. First, the dismissal of Fair Maps Nevada's cross-appeal
15 in *Jackson* as moot does not rob the district court's decision of preclusive effect
16 because that dismissal came only after Fair Maps Nevada conceded the issue on
17 appeal. As *Personhood Nevada v. Bristol* explains, dismissal of an appeal as moot
18 eliminates a judgment's preclusive effect only if the "appeal is dismissed as moot *by*
19 *no fault of the appellant*." 126 Nev. 599, 605, 245 P.3d 572, 576 (2010) (emphasis
20 added). In *Jackson*, Fair Maps Nevada was directly responsible for the dismissal of
21 its cross-appeal as moot, because—as the Nevada Supreme Court explained—it never
22 pressed its cross-appeal or otherwise "indicated that it would prefer to proceed with
23 its original petition instead of its amended petition." Compl. Ex. 4 at 2. Nothing in
24 *Personhood Nevada* allows a party to eliminate a preclusive judgment by mooting its
25 own appeal.

26 Second, it makes no difference that Plaintiff was not a party in *Jackson*,
27 because issue preclusion requires only that "the party *against whom the judgment is*
28

1 asserted must have been a party” to the prior case. *Five Star Cap. Corp. v. Ruby*, 124
2 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (emphasis added). If the Supreme Court
3 wanted to require that *both parties* be the same for issue preclusion, it could easily
4 have said so in *Five Star*; indeed, it imposed that very requirement on the separate
5 doctrine of claim preclusion. *See id.* at 1054, 194 P.3d at 712–13 (holding that for
6 claim preclusion, “the parties or their privies [must be] the same”). Fair Maps Nevada
7 also relies on “pre-*Five Star* case law,” but the court in *Five Star* explains that there
8 was a “lack of clarity in [prior] caselaw regarding the factors relevant to determining
9 whether claim or issue preclusion apply,” and it therefore “establish[ed] clear tests
10 for making such determinations” going forward. *Id.* As Plaintiff explained in his
11 Reply, *Five Star*’s “clear test[]” for issue preclusion is satisfied here.

12 Finally, Fair Maps Nevada also attempts in its proposed sur-reply to belatedly
13 remedy its deficient description of effect by adding one sentence that explains “[t]he
14 existing and ongoing expense will be shifted to the Commission but will remain based
15 in the legislative branch.” Proposed Sur-Reply, Ex. A. But the proposed revision is
16 still deceptive and misleading because it describes merely a *shift* in expenditures, and
17 not the *additional* expenditures that *Jackson* held would be required to establish the
18 redistricting commission as a new government body. The proposed revision is also
19 deceptive and misleading because it fails to inform voters that the Petition will result
20 in mid-cycle redistricting that would replace maps the Legislature has already drawn.
21 The revised description of effect cannot, in any event, resolve the problem that the
22 Petition proposes an unfunded mandate in violation of Article 19, Section 6 of the
23 Nevada Constitution and is therefore invalid.


24 CONCLUSION

25 The Court should deny Fair Maps Nevada’s motion to strike and its alternative
26 motion for leave to file a sur-reply.

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DATED this 7th day of February, 2024.

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**RESPONSE IN OPPOSITION TO
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Plaintiff has been clear from the very start of this case that a central basis for his claims is the First Judicial District Court's holding in a 2020 case that a 2019 petition materially identical to Initiative Petition C-03-2023 would "result in the expenditure of state funds." That holding featured not only in Plaintiff's Complaint but also his opening brief. Plaintiff had no reason to suspect that Fair Maps Nevada would simply ignore that prior decision entirely and litigate this case as if the 2020

1 decision had never happened. But when Fair Maps Nevada intervened and filed its
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3 to address that tactical decision by Fair Maps Nevada in Plaintiff's reply, including,
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8 ARGUMENT

9 **A. The Court should deny the motion to strike.**

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11 2023—rely repeatedly on the First Judicial District Court's decision in *Jackson v.*
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4 expenditure of funds. *See* Pl.'s Reply at 2. Plaintiff raised this issue preclusion
5 argument in direct response to Fair Maps Nevada's contention that the Petition's
6 expenditure of funds was an unsettled matter. This was Plaintiff's first opportunity
7 to make that point: Plaintiff could not have argued that issue preclusion bars Fair
8 Maps Nevada's arguments before Fair Maps Nevada made them, in an opening brief
9 filed before Fair Maps Nevada was even a party to the case.

10 Plaintiff did nothing wrong in raising in his reply the preclusive effect of a
11 decision Plaintiff had repeatedly cited in his opening brief, to address arguments first
12 made in Fair Maps Nevada's response. None of the cases Fair Maps Nevada cites
13 addresses a similar circumstance. Several involve only the entirely separate rule that
14 an appellant may not raise a new claim of error in a reply brief on appeal. *See Phillips*
15 *v. Mercer*, 94 Nev. 279, 283, 579 P.2d 174, 176 (1978); *Blouin v. Blouin*, 67 Nev. 314,
16 317, 218 P.2d 937, 938 (1950); *Stump v. Gates*, 211 F.3d 527, 533 (10th Cir. 2000). All
17 but one of the rest involve *entirely new issues* raised for the first time in a reply. *See*
18 *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n. 7, 262 P.3d 705, 715 (2011)
19 (entirely new argument that damages were not ascertained); *Weaver v. State DMV*,
20 121 Nev. 494, 502, 117 P.3d 193, 198–99 (2005) (entirely new constitutional challenge
21 to statute at issue); *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (entirely new
22 privilege argument). That leaves *Knapp v. Miller*, 873 F. Supp. 375, 378 (D. Nev.
23 1994), which directly refutes Fair Maps Nevada's argument because it *did* consider
24 an argument from a reply, after explaining that it merely “refine[d]” the party's
25 original argument, rather than making an entirely new one. That is far closer to the
26 scenario here.

27 Plaintiff's issue preclusion argument is also consistent with First Judicial
28

1 District Court Rule 3.9, because the argument is directly responsive to Fair Maps
2 Nevada's arguments, in its response brief, that the Petition will not require the
3 expenditure of state funds. Rule 3.9 provides that "[t]he purpose of a reply is to rebut
4 facts, law, or argument *raised in the opposition*." (emphasis added). Plaintiff's reply
5 does exactly that. The Court should therefore deny the motion to strike.

6 **B. The Court should not allow Fair Maps Nevada to file a sur-reply.**

7 The Court should also deny Fair Maps Nevada's alternative request to file a
8 sur-reply regarding the preclusive effect of the *Jackson* decision. Fair Maps Nevada
9 had every opportunity to address the effect and significance of *Jackson* in its response
10 brief, after Plaintiff repeatedly relied on that decision in his Complaint and opening
11 brief. Fair Maps Nevada made a clear, tactical decision to ignore *Jackson* instead.
12 There is no basis for rewarding Fair Maps Nevada with a second bite at the apple.

13 In any event, Fair Maps Nevada makes two arguments in the proposed sur-
14 reply, and both are meritless. First, the dismissal of Fair Maps Nevada's cross-appeal
15 in *Jackson* as moot does not rob the district court's decision of preclusive effect
16 because that dismissal came only after Fair Maps Nevada conceded the issue on
17 appeal. As *Personhood Nevada v. Bristol* explains, dismissal of an appeal as moot
18 eliminates a judgment's preclusive effect only if the "appeal is dismissed as moot by
19 *no fault of the appellant*." 126 Nev. 599, 605, 245 P.3d 572, 576 (2010) (emphasis
20 added). In *Jackson*, Fair Maps Nevada was directly responsible for the dismissal of
21 its cross-appeal as moot, because—as the Nevada Supreme Court explained—it never
22 pressed its cross-appeal or otherwise "indicated that it would prefer to proceed with
23 its original petition instead of its amended petition." Compl. Ex. 4 at 2. Nothing in
24 *Personhood Nevada* allows a party to eliminate a preclusive judgment by mooting its
25 own appeal.

26 Second, it makes no difference that Plaintiff was not a party in *Jackson*,
27 because issue preclusion requires only that "the party *against whom the judgment is*
28

1 asserted must have been a party” to the prior case. *Five Star Cap. Corp. v. Ruby*, 124
2 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (emphasis added). If the Supreme Court
3 wanted to require that *both parties* be the same for issue preclusion, it could easily
4 have said so in *Five Star*; indeed, it imposed that very requirement on the separate
5 doctrine of claim preclusion. *See id.* at 1054, 194 P.3d at 712–13 (holding that for
6 claim preclusion, “the parties or their privies [must be] the same”). Fair Maps Nevada
7 also relies on “pre-*Five Star* case law,” but the court in *Five Star* explains that there
8 was a “lack of clarity in [prior] caselaw regarding the factors relevant to determining
9 whether claim or issue preclusion apply,” and it therefore “establish[ed] clear tests
10 for making such determinations” going forward. *Id.* As Plaintiff explained in his
11 Reply, *Five Star*’s “clear test[]” for issue preclusion is satisfied here.

12 Finally, Fair Maps Nevada also attempts in its proposed sur-reply to belatedly
13 remedy its deficient description of effect by adding one sentence that explains “[t]he
14 existing and ongoing expense will be shifted to the Commission but will remain based
15 in the legislative branch.” Proposed Sur-Reply, Ex. A. But the proposed revision is
16 still deceptive and misleading because it describes merely a *shift* in expenditures, and
17 not the *additional* expenditures that *Jackson* held would be required to establish the
18 redistricting commission as a new government body. The revised description of effect
19 cannot, in any event, resolve the problem that the Petition proposes an unfunded
20 mandate in violation of Article 19, Section 6 of the Nevada Constitution and is
21 therefore invalid.

22 CONCLUSION

23 The Court should deny Fair Maps Nevada’s motion to strike and its alternative
24 motion for leave to file a sur-reply.

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DATED this 7th day of February, 2024.

By: BS
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Attorneys for Plaintiff

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 7th day of February, 2024, a true and correct copy
3 of the **RESPONSE IN OPPOSITION TO FAIR MAPS NEVADA'S MOTION TO**
4 **STRIKE A PORTION OF PLAINTIFF'S REPLY PETITION C-03-2023** was
5 served upon all parties via electronic mailing to the following:
6


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8 Joshua Hicks (NSBN 6679)
9 Adam Hosmer-Henner (NSBN 12779)
10 Katrina Weil (NSBN 16152)
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19 By:


Dannielle Fresquez, an Employee of
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10
11 **IN THE FIRST JUDICIAL DISTRICT COURT**
12 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

13 ERIC JENG, an individual,
14
15 Plaintiffs,

16 vs.

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

20 Defendant.

Case No.: 23OC000138 1B

Dept. No.: 1

21 **STIPULATION AND ORDER**
22 **REGARDING INTERVENTION**

23 Plaintiff ERIC JENG, Defendant FRANCISCO V. AGUILAR, in his official capacity
24 as NEVADA SECRETARY OF STATE, and FAIR MAPS NEVADA PAC ("Fair Maps"), by
25 and through their counsel, hereby submit this stipulation and order regarding the intervention of
26 Fair Maps in the instant litigation. As the circulator of record of the Constitutional Initiative
27 Petition C-03-2023 ("Initiative Petition") filed with the Nevada Secretary of State and the
28 subject of this litigation, Fair Maps claims an interest relating to the property or transaction that
is the subject of the action and is so situated that disposing of the action may as a practical matter
impair or impede Fair Maps's ability to protect its interest.

///

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///

///

///

The parties therefore agree and stipulate that the Court should approve Fair Maps's intervention in this action.


Dated: December 11, 2023

Dated: December 11, 2023

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The parties therefore agree and stipulate that the Court should approve Fair Maps's intervention in this action.

Dated: December 11, 2023

Dated: December 11, 2023

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The parties therefore agree and stipulate that the Court should approve Fair Maps's intervention in this action.

Dated: December ^{13th} 11, 2023

Dated: December ^{13th} 11, 2023

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ORDER

IT IS ORDERED:

☒ Granted
☐ Granted in part:

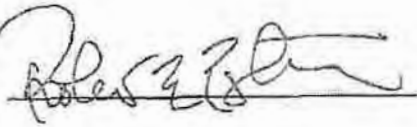
and Denied in part:

☐ Denied
☐ Declined to consider ex parte
☐ Declined to consider without a hearing
☐ Other:

DATED:

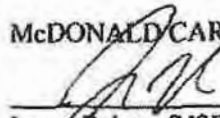
February 7, 2024

DISTRICT COURT JUDGE



Respectfully submitted by:

McDONALD CARANO LLP


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Joshua Hicks (NSBN 6679)
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Attorneys for Fair Maps Nevada PAC

In the First Judicial District Court of the State of Nevada
In and For Carson City 202. FEB -8
TELEPHONE CONFERENCE MEMO

Case No.: 23 OC 00137 1B

Set in Department: 2

Bradley S. Schrager, Esq.
Attorney for Plaintiff

ERIC JENG, an individual,

Plaintiff,

Vs.

Lucas Foletta, Esq.
Attorney for Intervenor

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

Defendant.

Laena St-Jules, Esq.
Office of the Attorney General
Attorney for Defendant

HEARING ON COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING
INITIATIVE PETITION C-04-2023

TO COMMENCE on the 15 day of FEBRUARY, 2024 AT 9:00 o'clock A.M.

TO BE HEARD IN DEPT 1 COURTROOM
THE HEARING SET FOR MARCH 8, 2024 AT 1:30 P.M. IS VACATED

Written Consent
Plaintiff's Counsel

DATED February 8, 2024

Written Consent
Intervenor's Counsel

Written Consent
Defendant's Counsel

Robert Estes
Senior District Judge

JA000349

CERTIFICATE OF SERVICE

The undersigned, an employee of the Carson City Clerk/District Judge, hereby certifies that on February 8, 2024
() Handing a copy thereof to the (x) Plaintiff's attorney (x) Defendant's attorney () DA () Pro per (X) Other
(X) Faxing and/or depositing a copy thereof in the U.S. Mail at Carson City, Nevada, postage paid, addressed as follows:

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Laena St-Jules, Esq.
Senior Deputy Attorney General
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Carson City NV 89701-4717

SUBSCRIBED and SWORN to before me
this ___ day of _____, 2024
William Scot Hoen, Clerk

BY: _____ Deputy



REC'D & FILED
2024 FEB -8 11 11
In the First Judicial District Court of the State of Nevada
In and For Carson City
TELEPHONE CONFERENCE MEMO

Case No.: 23 OC 00138 1B

BY
Set In Department 2

Bradley S. Schrager, Esq.
Attorney for Plaintiff

ERIC JENG, an individual,

Plaintiff,

Vs.

Lucas Foletta, Esq.
Attorney for Intervenor

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

Defendant.

Laena St-Jules, Esq.
Office of the Attorney General
Attorney for Defendant

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Written Consent
Plaintiff's Counsel

DATED February 8, 2024

Written Consent
Intervenor's Counsel

Written Consent
Defendant's Counsel

Robert Estes
Senior District Judge

JA000351

CERTIFICATE OF SERVICE

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SUBSCRIBED and SWORN to before me
this ___ day of _____, 2024
William Scot Hoen, Clerk

BY: _____ Deputy



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Attorneys for Plaintiff

**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 000137 1B

Dept. No.: II

ERIC JENG, an individual,

Plaintiff,

vs.

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

Case No.: 23 OC 000138 1B

Dept. No.: II

REC'D & FILED

2024 MAR -6 AM 8:22

WILLIAM J. JOHNSON
 CLERK

BY  DEPT.

1 Defendant,
2 and
3 FAIR MAPS NEVADA,
4 Intervenor-Defendant.

5
6 **[PROPOSED] ORDER**

7 These matters came before the Court pursuant to Plaintiff Eric Jeng's
8 Complaints for Declaratory and Injunctive Relief challenging Initiative Petition C-
9 04-2023 (in Case No. 23 OC 000137 1B) and Initiative Petition C-03-2023 (in Case
10 No. 23 OC 000138 1B), Plaintiff's Memorandum of Points and Authorities in Support
11 of the Complaint in each case, Intervenor Fair Maps Nevada's Answering Brief in
12 each case, and Plaintiff's Reply in each case. Also before the Court in each case are
13 Fair Maps Nevada's Motion to Dismiss the Complaint ("Motion to Dismiss") and Fair
14 Maps Nevada's Motion to Strike a portion of Plaintiff's reply brief ("Motion to Strike"),
15 as well as Plaintiff's Oppositions to those motions. Defendant Secretary of State
16 Aguilar has taken no position on any issue in either case. Having considered the
17 parties' filings and the arguments of counsel at the February 15, 2024, hearing, the
18 Court rules as follows:

19 **PROCEDURAL BACKGROUND**

20 Fair Maps Nevada filed Initiative Petitions C-03-2023 and C-04-2023
21 ("Petition" or "Petitions") on November 14, 2023. Each Petition would amend the
22 Nevada Constitution to establish a new, seven-member state body called the
23 "Independent Redistricting Commission," and require that the Commission, rather
24 than the Legislature itself, undertake redistricting of Nevada's state legislative plans
25 and congressional districts after each decennial census. The Petitions impose a host
26 of procedural and substantive requirements that the Commission would be required
27 to follow in carrying out this task. Petition C-04-2023 would additionally require that
28

1 the Commission redraw Nevada's state legislative plans and congressional districts
2 in 2027. The Petitions are otherwise identical. Petition C-03-2023 includes the
3 following description of effect:

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

7 The Commission will have seven members, four who will be
8 appointed by the leadership of the Legislature, and three who are
9 unaffiliated with the two largest political parties who will be appointed
10 by the other four commissioners. Commissioners may not be partisan
11 candidates, lobbyists, or certain relatives of such individuals.
12 Commission meetings shall be open to the public which shall have
13 opportunities to participate in hearings.

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

23 This amendment will require redistricting following each federal
24 census.

25 Petition C-04-2023's description of effect replaces the last paragraph with the
26 following: "This amendment will require redistricting following the 2026 election and
27 each federal census thereafter."

28 Plaintiff filed a separate Complaint and Memorandum of Points and
29 Authorities in Support of Complaint for Declaratory and Injunctive Relief
30 Challenging each of the Petitions on December 7, 2023. He alleged that each Petition
31 unlawfully mandates an unfunded expenditure in violation of Article 19, Section 6 of
32 the Nevada Constitution. He also contended that each Petition has a description of
33 effect that fails to comply with NRS 295.009(1)(b) and is deficient because it does not
34 explain that the Petition will result in the expenditure of state funds. After
35 intervening, Fair Maps Nevada filed a responsive brief regarding each Petition on

1 December 26, 2023. Plaintiff filed a reply brief regarding each Petition on January 4,
2 2024. Eighteen days later, on January 22, Fair Maps Nevada filed its Motion to
3 Dismiss and Motion to Strike in each case. Plaintiff opposed both motions in both
4 cases on February 8.

5 On February 15, 2024, the Court held an omnibus hearing on all pending
6 matters in both cases. At the conclusion of the hearing, the Court orally denied the
7 Motions to Dismiss and the Motions to Strike, and the Court held on the merits that
8 both Petitions violate Article 19, Section 6's prohibition on unfunded mandates and
9 contain legally deficient descriptions of effect. This written Order follows.

10 LEGAL STANDARDS

11 Article 19, Section 6's prohibition on initiative petitions that mandate
12 unfunded expenditures is a "threshold content restriction" and voids any initiative
13 that does not comply. *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d
14 296, 303 (2022) (quoting *Rogers v. Heller*, 117 Nev. 169, 173 (2001) (per curiam)).
15 Nevada law also allows challenges to an initiative petition where the description of
16 effect is deficient, see NRS 295.061. Both such challenges are "properly evaluated at
17 the preelection stage." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890 & n.38, 141
18 P.3d 1224, 1233 & n.38 (2006) (per curiam) (citing *Rogers*, 117 Nev. At 173, 18 P.3d
19 at 1036).

20 FINDINGS OF FACT AND CONCLUSIONS OF LAW

21 **I. The Motions to Dismiss**

22 Fair Maps Nevada's Motions to Dismiss are denied. Although NRS 295.061(1)
23 directs courts to set matters challenging the legal sufficiency of initiative petitions
24 "for hearing not later than 15 days after the complaint is filed," the Supreme Court
25 has held that deadline "directory," rather than "mandatory," and explained that it
26 would be "harsh and absurd to dismiss a party's challenge to an initiative merely
27 because the district court failed or was not able to set the hearing within 15 days
28

1 through no fault of the party filing the complaint.” *Reid*, 512 P.3d at 301. The facts of
2 *Reid* are nearly identical to the facts here: in both cases, the delay was partially
3 attributable to the preemption of an assigned judge under Nev. Sup. Ct. R. 48.1(1)
4 under circumstances where no replacement was readily available. *See id.* at 300. The
5 undersigned set this case for a hearing on the earliest possible date after being
6 assigned to the case in late January. There is therefore no basis for dismissing the
7 challenges.

8 II. The Motions to Strike

9 Fair Maps Nevada’s Motions to Strike a portion of Plaintiff’s replies are denied.
10 Under First Judicial District Court Rule 3.9, “[t]he purpose of a reply is to rebut facts,
11 law, or argument raised in the opposition.” Plaintiff’s replies appropriately raised
12 issue preclusion to rebut Fair Maps Nevada’s arguments that the Petitions would not
13 require an expenditure of government funds, which were directly inconsistent with
14 the holding of *Jackson v. Fair Maps Nevada PAC*, No. 19-OC-209 1B (1st Jud. Dist.
15 Ct. Nev. Jan. 2, 2020), *aff’d*, No. 80563 (Nev. July 24, 2020). Moreover, because
16 Plaintiff had already discussed and relied upon *Jackson* in his Complaints and
17 opening memoranda of law, Fair Maps Nevada had the opportunity to address
18 *Jackson* in its response briefs but chose not to do so.

19 Fair Maps Nevada’s alternative request to file sur-reply briefs is denied as
20 moot. The Court has considered the arguments in the proposed sur-reply briefs and,
21 for the reasons given below, they do not affect the Court’s conclusions in this matter.

22 III. The Petitions violate Article 19, Section 6.

23 Article 19, Section 6 of the Nevada Constitution prohibits initiative petitions
24 that “make[] an appropriation or otherwise require[] the expenditure of money, unless
25 [they] also impose[] a sufficient tax, not prohibited by the Constitution, or otherwise
26 constitutionally provide[] for raising the necessary revenue.” Accordingly, when an
27 initiative “create[es] a new requirement for the appropriation of state funding that
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1 does not now exist and provides no discretion to the Legislature about whether to
2 appropriate or expend the money” but does not provide for raising the necessary
3 revenue, it does not comply with Article 19, Section 6 and is thus void. *Reid*, 512 P.3d
4 at 303–04.

5 The Court concludes that the Petitions violate Article 19, Section 6 because
6 they would require the expenditure of state funds but would not raise any revenue.
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8 that it undertake legislative redistricting, subject to detailed procedural and
9 substantive requirements. Complying with these requirements will invariably
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12 Issue preclusion bars Fair Maps Nevada from denying that the Petitions will
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14 materially identical petition in 2020 and held that it “will result in the expenditure
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24 Here, the Petitions are substantively almost identical to the petition at issue
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26 any factual distinction between the petition in *Jackson* and the Petitions before the
27 Court now. Fair Maps Nevada therefore waived any such distinction. The ruling in
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1 *Jackson* was on the merits, and it became final when Fair Maps Nevada chose to moot
2 its cross-appeal of that issue by declining to pursue it. *Jackson v. Fair Maps Nevada*,
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8 The Court would conclude that the Petitions violate Article 19, Section 6 even
9 if Fair Maps Nevada were not precluded from arguing that the Petitions do not
10 require the expenditure of state funds. The Court considers it obvious that the
11 creation of a new, seven-member government body tasked with undertaking a
12 mandatory, difficult task will require an expenditure of government funds. And that
13 conclusion is confirmed by Nevada's own past experience with redistricting, the
14 experiences of other states that have authorized redistricting commissions like the
15 one the Petition would create anew in Nevada, and the detailed requirements of the
16 Petition itself. The Court reaches this conclusion as to both Petitions. Petition C-04-
17 2023 would additionally require an extra round of redistricting in 2027, that would
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19 state funds as well.

20 Fair Maps Nevada's argument that the Petitions would merely shift
21 expenditures from the Legislature to the Commission does not resolve this problem.
22 The Commission is an entirely new body whose members cannot be current
23 legislators. And the required expenditure to fund the Commission would be a new,
24 mandatory expenditure. Under Article 19, Section 6, that required expenditure must
25 be offset by new "tax or revenue" raised by the Petitions. *Rogers*, 117 Nev. at 177, 18
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27 budget—does not suffice. And regardless, nothing in the Petitions requires the
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1 Legislature to cover the Commission's expenses by reducing its own operational
2 budget.

3 The Court therefore holds that the Petitions violate Article 19, Section 6
4 because they mandate a government expenditure to fund the Commission, without
5 raising the necessary revenue to pay for it.

6 **IV. The Petitions' descriptions of effect are invalid.**

7 For similar reasons, the Petitions' descriptions of effect are unlawful. Under
8 NRS 295.009(1)(b), initiative petitions must "set forth, in not more than 200 words, a
9 description of the effect of the initiative or referendum if the initiative or referendum
10 is approved by the voters." The description of effect "must not be deceptive or
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15 the initiative, the description must identify "the need for or nature of the revenue
16 source" to fund the proposed initiative. *Reid*, 512 P.3d at 304.

17 The Petitions' original descriptions of effect fail to explain that the Petitions
18 will result in the expenditure of state funds to fund the Commission. As explained
19 above, Fair Maps Nevada is precluded from denying that the Petitions would require
20 a state expenditure, and the Court in any event independently concludes that they
21 would require such an expenditure. The descriptions of effect must reflect that fact.
22 *Id.* Without that information, the descriptions fail to sufficiently "identify what the
23 law proposes and how it intends to achieve that proposal." *Educ. Initiative PAC*, 129
24 Nev. at 42, 293 P.3d at 879. Moreover, the description of effect for Petition C-04-2023
25 is also deficient for failing to explain that the Petition would require mid-cycle
26 redistricting and invalidate the existing legislative plans and congressional districts
27 early, in 2027, when they would otherwise remain in force until 2031.

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1 Fair Maps Nevada's proposed amended descriptions of effect do not adequately
2 remedy these problems. These descriptions propose adding one sentence stating that
3 "[t]he existing and ongoing expense" of redistricting "will be shifted to the
4 Commission but will remain based in the legislative branch." This revision does not
5 cure the problem, because it describes a *shift* in expenditures rather than an increase
6 in expenditures, and because nothing in the Petitions requires that the Legislature
7 offset the cost of the Commission by reducing the Legislature's own operational
8 budget. The proposed amended descriptions of effect therefore remain inadequate.
9 And no change to the descriptions of effect could resolve the fact that the Petitions'
10 substance includes an unfunded mandate in violation of Article 19, Section 6.

11 Accordingly, for the reasons set forth above, and good cause appearing,
12 Fair Maps Nevada's Motions to Dismiss and Motions to Strike are **DENIED**;
13 Fair Maps Nevada's alternative request for leave to file a sur-reply brief is
14 **DENIED AS MOOT**; and

15 **IT IS HEREBY ORDERED** and declared that Petition C-03-2023 and
16 Petition C-04-2023 are *void ab initio* because they violate Article 19, Section 6 of the
17 Nevada Constitution, and that their descriptions of effect fail to satisfy the
18 requirements of NRS 295.009(1)(b). The Secretary of State is enjoined from taking
19 any action on the Petitions.

20 Bradley S. Schrager shall serve a notice of entry of the order on all parties and
21 file proof of such service within 7 days after the date the Court sent the order to the
22 attorney.

23 **IT IS SO ORDERED.**

24 Dated this 6th day of March, 2024.
25

26 
27 DISTRICT COURT JUDGE
28

1
2 Respectfully submitted by:

3 **BRAVO SCHRAGER LLP**

4 Bradley S. Schrager, Esq.

5 BRADLEY S. SCHRAGER, ESQ. (SBN 10217)

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9 *Attorneys for Plaintiff*

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

13 ERIC JENG, an individual,

14 Plaintiff,

15 vs.

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

18 Defendant

19 and

20 Fair Maps Nevada,

21 Intervenor-Defendant.

Case No.: 23 OC 00137 1B

Dept. No.: II

22
23 **NOTICE OF ENTRY OF ORDER**

24 NOTICE IS HEREBY given that an ORDER was entered in the above-
25 captioned matter on the 6th day of March, 2024. A true and correct copy of the
26 ORDER is attached hereto as Exhibit 1.

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DATED this 6th day of March, 2024.

By: Blk

DAVID R. FOX, ESQ. (SBN 16536)
ELIAS LAW GROUP LLP
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Tele.: (202) 968-4490
Email: dfox@elias.law

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2024, I served the foregoing
NOTICE OF ENTRY OF ORDER by depositing a true copy of the same via U.S.P.S.
Mail postage pre-paid Las Vegas, Nevada via electronic mail as follows:

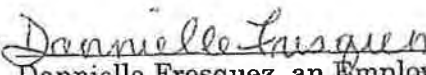
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By: 
Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP

INDEX OF EXHIBITS

Exhibit No.	Document Title	No. of Pages
1	Order	10

EXHIBIT 1

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1 BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
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10 **IN THE FIRST JUDICIAL DISTRICT COURT**
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12 ERIC JENG, an individual,
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Case No.: 23 OC 000137 1B

Dept. No.: II

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25 FRANCISCO V. AGUILAR, in his
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 SECRETARY OF STATE,


Case No.: 23 OC 000138 1B

Dept. No.: II

REC'D & FILED

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WILLIAM S. SCHRAGER
 CLERK

BY  DEPT

1 Defendant,
2 and
3 FAIR MAPS NEVADA,
4 Intervenor-Defendant.

5
6 ~~PROPOSED~~ ORDER

7 These matters came before the Court pursuant to Plaintiff Eric Jeng's
8 Complaints for Declaratory and Injunctive Relief challenging Initiative Petition C-
9 04-2023 (in Case No. 23 OC 000137 1B) and Initiative Petition C-03-2023 (in Case
10 No. 23 OC 000138 1B), Plaintiff's Memorandum of Points and Authorities in Support
11 of the Complaint in each case, Intervenor Fair Maps Nevada's Answering Brief in
12 each case, and Plaintiff's Reply in each case. Also before the Court in each case are
13 Fair Maps Nevada's Motion to Dismiss the Complaint ("Motion to Dismiss") and Fair
14 Maps Nevada's Motion to Strike a portion of Plaintiff's reply brief ("Motion to Strike"),
15 as well as Plaintiff's Oppositions to those motions. Defendant Secretary of State
16 Aguilar has taken no position on any issue in either case. Having considered the
17 parties' filings and the arguments of counsel at the February 15, 2024, hearing, the
18 Court rules as follows:

19 PROCEDURAL BACKGROUND

20 Fair Maps Nevada filed Initiative Petitions C-03-2023 and C-04-2023
21 ("Petition" or "Petitions") on November 14, 2023. Each Petition would amend the
22 Nevada Constitution to establish a new, seven-member state body called the
23 "Independent Redistricting Commission," and require that the Commission, rather
24 than the Legislature itself, undertake redistricting of Nevada's state legislative plans
25 and congressional districts after each decennial census. The Petitions impose a host
26 of procedural and substantive requirements that the Commission would be required
27 to follow in carrying out this task. Petition C-04-2023 would additionally require that
28

1 the Commission redraw Nevada's state legislative plans and congressional districts
2 in 2027. The Petitions are otherwise identical. Petition C-03-2023 includes the
3 following description of effect:

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

7 The Commission will have seven members, four who will be
8 appointed by the leadership of the Legislature, and three who are
9 unaffiliated with the two largest political parties who will be appointed
10 by the other four commissioners. Commissioners may not be partisan
11 candidates, lobbyists, or certain relatives of such individuals.
12 Commission meetings shall be open to the public which shall have
13 opportunities to participate in hearings.

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

23 This amendment will require redistricting following each federal
24 census.

25 Petition C-04-2023's description of effect replaces the last paragraph with the
26 following: "This amendment will require redistricting following the 2026 election and
27 each federal census thereafter."

28 Plaintiff filed a separate Complaint and Memorandum of Points and
29 Authorities in Support of Complaint for Declaratory and Injunctive Relief
30 Challenging each of the Petitions on December 7, 2023. He alleged that each Petition
31 unlawfully mandates an unfunded expenditure in violation of Article 19, Section 6 of
32 the Nevada Constitution. He also contended that each Petition has a description of
33 effect that fails to comply with NRS 295.009(1)(b) and is deficient because it does not
34 explain that the Petition will result in the expenditure of state funds. After
35 intervening, Fair Maps Nevada filed a responsive brief regarding each Petition on

1 December 26, 2023. Plaintiff filed a reply brief regarding each Petition on January 4,
2 2024. Eighteen days later, on January 22, Fair Maps Nevada filed its Motion to
3 Dismiss and Motion to Strike in each case. Plaintiff opposed both motions in both
4 cases on February 8.

5 On February 15, 2024, the Court held an omnibus hearing on all pending
6 matters in both cases. At the conclusion of the hearing, the Court orally denied the
7 Motions to Dismiss and the Motions to Strike, and the Court held on the merits that
8 both Petitions violate Article 19, Section 6's prohibition on unfunded mandates and
9 contain legally deficient descriptions of effect. This written Order follows.

10 LEGAL STANDARDS

11 Article 19, Section 6's prohibition on initiative petitions that mandate
12 unfunded expenditures is a "threshold content restriction" and voids any initiative
13 that does not comply. *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d
14 296, 303 (2022) (quoting *Rogers v. Heller*, 117 Nev. 169, 173 (2001) (per curiam)).
15 Nevada law also allows challenges to an initiative petition where the description of
16 effect is deficient, see NRS 295.061. Both such challenges are "properly evaluated at
17 the preelection stage." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890 & n.38, 141
18 P.3d 1224, 1233 & n.38 (2006) (per curiam) (citing *Rogers*, 117 Nev. At 173, 18 P.3d
19 at 1036).

20 FINDINGS OF FACT AND CONCLUSIONS OF LAW

21 **I. The Motions to Dismiss**

22 Fair Maps Nevada's Motions to Dismiss are denied. Although NRS 295.061(1)
23 directs courts to set matters challenging the legal sufficiency of initiative petitions
24 "for hearing not later than 15 days after the complaint is filed," the Supreme Court
25 has held that deadline "directory," rather than "mandatory," and explained that it
26 would be "harsh and absurd to dismiss a party's challenge to an initiative merely
27 because the district court failed or was not able to set the hearing within 15 days
28

1 through no fault of the party filing the complaint.” *Reid*, 512 P.3d at 301. The facts of
2 *Reid* are nearly identical to the facts here; in both cases, the delay was partially
3 attributable to the preemption of an assigned judge under Nev. Sup. Ct. R. 48.1(1)
4 under circumstances where no replacement was readily available. *See id.* at 300. The
5 undersigned set this case for a hearing on the earliest possible date after being
6 assigned to the case in late January. There is therefore no basis for dismissing the
7 challenges.

8 II. The Motions to Strike

9 Fair Maps Nevada’s Motions to Strike a portion of Plaintiff’s replies are denied.
10 Under First Judicial District Court Rule 3.9, “[t]he purpose of a reply is to rebut facts,
11 law, or argument raised in the opposition.” Plaintiff’s replies appropriately raised
12 issue preclusion to rebut Fair Maps Nevada’s arguments that the Petitions would not
13 require an expenditure of government funds, which were directly inconsistent with
14 the holding of *Jackson v. Fair Maps Nevada PAC*, No. 19-OC-209 1B (1st Jud. Dist.
15 Ct. Nev. Jan. 2, 2020), *aff’d*, No. 80563 (Nev. July 24, 2020). Moreover, because
16 Plaintiff had already discussed and relied upon *Jackson* in his Complaints and
17 opening memoranda of law, Fair Maps Nevada had the opportunity to address
18 *Jackson* in its response briefs but chose not to do so.

19 Fair Maps Nevada’s alternative request to file sur-reply briefs is denied as
20 moot. The Court has considered the arguments in the proposed sur-reply briefs and,
21 for the reasons given below, they do not affect the Court’s conclusions in this matter.

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5 The Court concludes that the Petitions violate Article 19, Section 6 because
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9 substantive requirements. Complying with these requirements will invariably
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3 The Court therefore holds that the Petitions violate Article 19, Section 6
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9 And no change to the descriptions of effect could resolve the fact that the Petitions'
10 substance includes an unfunded mandate in violation of Article 19, Section 6.

11 Accordingly, for the reasons set forth above, and good cause appearing,
12 Fair Maps Nevada's Motions to Dismiss and Motions to Strike are **DENIED**;
13 Fair Maps Nevada's alternative request for leave to file a sur-reply brief is
14 **DENIED AS MOOT**; and

15 **IT IS HEREBY ORDERED** and declared that Petition C-03-2023 and
16 Petition C-04-2023 are *void ab initio* because they violate Article 19, Section 6 of the
17 Nevada Constitution, and that their descriptions of effect fail to satisfy the
18 requirements of NRS 295.009(1)(b). The Secretary of State is enjoined from taking
19 any action on the Petitions.

20 Bradley S. Schrager shall serve a notice of entry of the order on all parties and
21 file proof of such service within 7 days after the date the Court sent the order to the
22 attorney.

23 **IT IS SO ORDERED.**

24 Dated this 6th March
25 day of ~~February~~, 2024.

26 

27 DISTRICT COURT JUDGE

28

1
2 Respectfully submitted by:

3 **BRAVO SCHRAGER LLP**

4 Bradley S. Schrager, Esq.

5 BRADLEY S. SCHRAGER, ESQ. (SBN 10217)

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9 *Attorneys for Plaintiff*

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

13 ERIC JENG, an individual,

14 Plaintiff,

15 vs.

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

18 Defendant

19 and

20 Fair Maps Nevada,

21 Intervenor-Defendant.

Case No.: 23 OC 00138 1B

Dept. No.: II

22
23 **NOTICE OF ENTRY OF ORDER**

24 NOTICE IS HEREBY given that an ORDER was entered in the above-
25 captioned matter on the 6th day of March, 2024. A true and correct copy of the
26 ORDER is attached hereto as Exhibit 1.

27 ///

28

AFFIRMATION

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

DATED this 6th day of March, 2024.

BRAVO SCHRAGER LLP

By: 

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2024, I served the foregoing
NOTICE OF ENTRY OF ORDER by depositing a true copy of the same via U.S.P.S.
Mail postage pre-paid Las Vegas, Nevada via electronic mail as follows:

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By: Dannielle Fresquez
Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP

INDEX OF EXHIBITS

Exhibit No.	Document Title	No. of Pages
1	Order	10

EXHIBIT 1

EXHIBIT 1

1 BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
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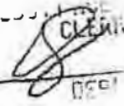
9 *Attorneys for Plaintiff*

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
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 SECRETARY OF STATE,
 17 Defendant,
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22 ERIC JENG, an individual,
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 SECRETARY OF STATE,
 27

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 2024 MAR -6 AM 8:22

WILLIAM J. SCHRAGER
 BY  CLERK

Case No.: 23 OC 000137 1B

Dept. No.: II

Case No.: 23 OC 000138 1B

Dept. No.: II

1 Defendant,
2 and
3 FAIR MAPS NEVADA,
4 Intervenor-Defendant.

5
6 **PROPOSED ORDER**

7 These matters came before the Court pursuant to Plaintiff Eric Jeng's
8 Complaints for Declaratory and Injunctive Relief challenging Initiative Petition C-
9 04-2023 (in Case No. 23 OC 000137 1B) and Initiative Petition C-03-2023 (in Case
10 No. 23 OC 000138 1B), Plaintiff's Memorandum of Points and Authorities in Support
11 of the Complaint in each case, Intervenor Fair Maps Nevada's Answering Brief in
12 each case, and Plaintiff's Reply in each case. Also before the Court in each case are
13 Fair Maps Nevada's Motion to Dismiss the Complaint ("Motion to Dismiss") and Fair
14 Maps Nevada's Motion to Strike a portion of Plaintiff's reply brief ("Motion to Strike"),
15 as well as Plaintiff's Oppositions to those motions. Defendant Secretary of State
16 Aguilar has taken no position on any issue in either case. Having considered the
17 parties' filings and the arguments of counsel at the February 15, 2024, hearing, the
18 Court rules as follows:

19 **PROCEDURAL BACKGROUND**

20 Fair Maps Nevada filed Initiative Petitions C-03-2023 and C-04-2023
21 ("Petition" or "Petitions") on November 14, 2023. Each Petition would amend the
22 Nevada Constitution to establish a new, seven-member state body called the
23 "Independent Redistricting Commission," and require that the Commission, rather
24 than the Legislature itself, undertake redistricting of Nevada's state legislative plans
25 and congressional districts after each decennial census. The Petitions impose a host
26 of procedural and substantive requirements that the Commission would be required
27 to follow in carrying out this task. Petition C-04-2023 would additionally require that
28

1 the Commission redraw Nevada's state legislative plans and congressional districts
2 in 2027. The Petitions are otherwise identical. Petition C-03-2023 includes the
3 following description of effect:

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

7 The Commission will have seven members, four who will be
8 appointed by the leadership of the Legislature, and three who are
9 unaffiliated with the two largest political parties who will be appointed
10 by the other four commissioners. Commissioners may not be partisan
11 candidates, lobbyists, or certain relatives of such individuals.
12 Commission meetings shall be open to the public which shall have
13 opportunities to participate in hearings.

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

23 This amendment will require redistricting following each federal
24 census.

25 Petition C-04-2023's description of effect replaces the last paragraph with the
26 following: "This amendment will require redistricting following the 2026 election and
27 each federal census thereafter."

28 Plaintiff filed a separate Complaint and Memorandum of Points and
29 Authorities in Support of Complaint for Declaratory and Injunctive Relief
30 Challenging each of the Petitions on December 7, 2023. He alleged that each Petition
31 unlawfully mandates an unfunded expenditure in violation of Article 19, Section 6 of
32 the Nevada Constitution. He also contended that each Petition has a description of
33 effect that fails to comply with NRS 295.009(1)(b) and is deficient because it does not
34 explain that the Petition will result in the expenditure of state funds. After
35 intervening, Fair Maps Nevada filed a responsive brief regarding each Petition on

1 December 26, 2023. Plaintiff filed a reply brief regarding each Petition on January 4,
2 2024. Eighteen days later, on January 22, Fair Maps Nevada filed its Motion to
3 Dismiss and Motion to Strike in each case. Plaintiff opposed both motions in both
4 cases on February 8.

5 On February 15, 2024, the Court held an omnibus hearing on all pending
6 matters in both cases. At the conclusion of the hearing, the Court orally denied the
7 Motions to Dismiss and the Motions to Strike, and the Court held on the merits that
8 both Petitions violate Article 19, Section 6's prohibition on unfunded mandates and
9 contain legally deficient descriptions of effect. This written Order follows.

10 LEGAL STANDARDS

11 Article 19, Section 6's prohibition on initiative petitions that mandate
12 unfunded expenditures is a "threshold content restriction" and voids any initiative
13 that does not comply. *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d
14 296, 303 (2022) (quoting *Rogers v. Heller*, 117 Nev. 169, 173 (2001) (per curiam)).
15 Nevada law also allows challenges to an initiative petition where the description of
16 effect is deficient, see NRS 295.061. Both such challenges are "properly evaluated at
17 the preelection stage." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890 & n.38, 141
18 P.3d 1224, 1233 & n.38 (2006) (per curiam) (citing *Rogers*, 117 Nev. At 173, 18 P.3d
19 at 1036).

20 FINDINGS OF FACT AND CONCLUSIONS OF LAW

21 I. The Motions to Dismiss

22 Fair Maps Nevada's Motions to Dismiss are denied. Although NRS 295.061(1)
23 directs courts to set matters challenging the legal sufficiency of initiative petitions
24 "for hearing not later than 15 days after the complaint is filed," the Supreme Court
25 has held that deadline "directory," rather than "mandatory," and explained that it
26 would be "harsh and absurd to dismiss a party's challenge to an initiative merely
27 because the district court failed or was not able to set the hearing within 15 days
28

1 through no fault of the party filing the complaint.” *Reid*, 512 P.3d at 301. The facts of
2 *Reid* are nearly identical to the facts here: in both cases, the delay was partially
3 attributable to the preemption of an assigned judge under Nev. Sup. Ct. R. 48.1(1)
4 under circumstances where no replacement was readily available. *See id.* at 300. The
5 undersigned set this case for a hearing on the earliest possible date after being
6 assigned to the case in late January. There is therefore no basis for dismissing the
7 challenges.

8 **II. The Motions to Strike**

9 Fair Maps Nevada’s Motions to Strike a portion of Plaintiff’s replies are denied.
10 Under First Judicial District Court Rule 3.9, “[t]he purpose of a reply is to rebut facts,
11 law, or argument raised in the opposition.” Plaintiff’s replies appropriately raised
12 issue preclusion to rebut Fair Maps Nevada’s arguments that the Petitions would not
13 require an expenditure of government funds, which were directly inconsistent with
14 the holding of *Jackson v. Fair Maps Nevada PAC*, No. 19-OC-209 1B (1st Jud. Dist.
15 Ct. Nev. Jan. 2, 2020), *aff’d*, No. 80563 (Nev. July 24, 2020). Moreover, because
16 Plaintiff had already discussed and relied upon *Jackson* in his Complaints and
17 opening memoranda of law, Fair Maps Nevada had the opportunity to address
18 *Jackson* in its response briefs but chose not to do so.

19 Fair Maps Nevada’s alternative request to file sur-reply briefs is denied as
20 moot. The Court has considered the arguments in the proposed sur-reply briefs and,
21 for the reasons given below, they do not affect the Court’s conclusions in this matter.

22 **III. The Petitions violate Article 19, Section 6.**

23 Article 19, Section 6 of the Nevada Constitution prohibits initiative petitions
24 that “make[] an appropriation or otherwise require[] the expenditure of money, unless
25 [they] also impose[] a sufficient tax, not prohibited by the Constitution, or otherwise
26 constitutionally provide[] for raising the necessary revenue.” Accordingly, when an
27 initiative “create[es] a new requirement for the appropriation of state funding that
28

1 does not now exist and provides no discretion to the Legislature about whether to
2 appropriate or expend the money” but does not provide for raising the necessary
3 revenue, it does not comply with Article 19, Section 6 and is thus void. *Reid*, 512 P.3d
4 at 303–04.

5 The Court concludes that the Petitions violate Article 19, Section 6 because
6 they would require the expenditure of state funds but would not raise any revenue.
7 The Petitions would create a new government body, the Commission, and mandate
8 that it undertake legislative redistricting, subject to detailed procedural and
9 substantive requirements. Complying with these requirements will invariably
10 require government expenditures. And the Petitions undeniably do not raise any
11 revenue.

12 Issue preclusion bars Fair Maps Nevada from denying that the Petitions will
13 require a government expenditure. The First Judicial District Court addressed a
14 materially identical petition in 2020 and held that it “will result in the expenditure
15 of state funds[.]” Order at 4, *Jackson v. Fair Maps Nev. PAC*, No. 19-OC-00209 1B
16 (Nev. 1st Jud. Dist. Ct. Jan. 2, 2020), *aff’d*, 136 Nev. 832, 467 P.3d 635 (2020). Issue
17 preclusion applies where (1) the prior litigation involved “the same fact issue,” even
18 if the legal claims are “substantially different,” provided that (2) the prior ruling was
19 on the merits and became final, (3) the party to be precluded was a party to the prior
20 action, and (4), the issue was “actually and necessarily litigated.” *Five Star Cap. Corp.*
21 *v. Ruby*, 124 Nev. 1048, 1053, 1055, 194 P.3d 709, 712–13 (2008) (quoting *LaForge v.*
22 *State, Univ. & Cmty. Coll. Sys. Of Nev.*, 116 Nev. 415, 420, 421, 997 P.2d 130, 134
23 (2000)).

24 Here, the Petitions are substantively almost identical to the petition at issue
25 in *Jackson*. Fair Maps Nevada’s briefing, including its sur-reply, never articulated
26 any factual distinction between the petition in *Jackson* and the Petitions before the
27 Court now. Fair Maps Nevada therefore waived any such distinction. The ruling in
28

1 *Jackson* was on the merits, and it became final when Fair Maps Nevada chose to moot
2 its cross-appeal of that issue by declining to pursue it. *Jackson v. Fair Maps Nevada*,
3 No. 803563 (Nev. July 24, 2020); see *Personhood Nevada v. Bristol*, 126 Nev. 599, 605,
4 245 P.3d 572, 576 (2010). Fair Maps Nevada was a party in *Jackson*. And the issue
5 of whether the petition would require a government expenditure was actually
6 litigated, with the plaintiff in that case raising, and the Court accepting, many of the
7 same arguments made in this case.

8 The Court would conclude that the Petitions violate Article 19, Section 6 even
9 if Fair Maps Nevada were not precluded from arguing that the Petitions do not
10 require the expenditure of state funds. The Court considers it obvious that the
11 creation of a new, seven-member government body tasked with undertaking a
12 mandatory, difficult task will require an expenditure of government funds. And that
13 conclusion is confirmed by Nevada's own past experience with redistricting, the
14 experiences of other states that have authorized redistricting commissions like the
15 one the Petition would create anew in Nevada, and the detailed requirements of the
16 Petition itself. The Court reaches this conclusion as to both Petitions. Petition C-04-
17 2023 would additionally require an extra round of redistricting in 2027, that would
18 not otherwise be mandatory, and therefore requires an additional expenditure of
19 state funds as well.

20 Fair Maps Nevada's argument that the Petitions would merely shift
21 expenditures from the Legislature to the Commission does not resolve this problem.
22 The Commission is an entirely new body whose members cannot be current
23 legislators. And the required expenditure to fund the Commission would be a new,
24 mandatory expenditure. Under Article 19, Section 6, that required expenditure must
25 be offset by new "tax or revenue" raised by the Petitions. *Rogers*, 117 Nev. at 177, 18
26 P.3d at 1038. A reduction in costs elsewhere—such as in the Legislature's operational
27 budget—does not suffice. And regardless, nothing in the Petitions requires the
28

1 Legislature to cover the Commission's expenses by reducing its own operational
2 budget.

3 The Court therefore holds that the Petitions violate Article 19, Section 6
4 because they mandate a government expenditure to fund the Commission, without
5 raising the necessary revenue to pay for it.

6 **IV. The Petitions' descriptions of effect are invalid.**

7 For similar reasons, the Petitions' descriptions of effect are unlawful. Under
8 NRS 295.009(1)(b), initiative petitions must "set forth, in not more than 200 words, a
9 description of the effect of the initiative or referendum if the initiative or referendum
10 is approved by the voters." The description of effect "must not be deceptive or
11 misleading," *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293
12 P.3d 874, 879 (2013), and must "explain the[] ramifications of the proposed
13 amendment" to allow voters to make an informed decision, *Nev. Judges Ass'n v. Lau*,
14 112 Nev. 51, 59, 910 P.2d 898, 903 (1996). To accurately explain the consequences of
15 the initiative, the description must identify "the need for or nature of the revenue
16 source" to fund the proposed initiative. *Reid*, 512 P.3d at 304.

17 The Petitions' original descriptions of effect fail to explain that the Petitions
18 will result in the expenditure of state funds to fund the Commission. As explained
19 above, Fair Maps Nevada is precluded from denying that the Petitions would require
20 a state expenditure, and the Court in any event independently concludes that they
21 would require such an expenditure. The descriptions of effect must reflect that fact.
22 *Id.* Without that information, the descriptions fail to sufficiently "identify what the
23 law proposes and how it intends to achieve that proposal." *Educ. Initiative PAC*, 129
24 Nev. at 42, 293 P.3d at 879. Moreover, the description of effect for Petition C-04-2023
25 is also deficient for failing to explain that the Petition would require mid-cycle
26 redistricting and invalidate the existing legislative plans and congressional districts
27 early, in 2027, when they would otherwise remain in force until 2031.

28

1 Fair Maps Nevada's proposed amended descriptions of effect do not adequately
2 remedy these problems. These descriptions propose adding one sentence stating that
3 "[t]he existing and ongoing expense" of redistricting "will be shifted to the
4 Commission but will remain based in the legislative branch." This revision does not
5 cure the problem, because it describes a *shift* in expenditures rather than an increase
6 in expenditures, and because nothing in the Petitions requires that the Legislature
7 offset the cost of the Commission by reducing the Legislature's own operational
8 budget. The proposed amended descriptions of effect therefore remain inadequate.
9 And no change to the descriptions of effect could resolve the fact that the Petitions'
10 substance includes an unfunded mandate in violation of Article 19, Section 6.

11 Accordingly, for the reasons set forth above, and good cause appearing,
12 Fair Maps Nevada's Motions to Dismiss and Motions to Strike are **DENIED**;
13 Fair Maps Nevada's alternative request for leave to file a sur-reply brief is
14 **DENIED AS MOOT**; and

15 **IT IS HEREBY ORDERED** and declared that Petition C-03-2023 and
16 Petition C-04-2023 are *void ab initio* because they violate Article 19, Section 6 of the
17 Nevada Constitution, and that their descriptions of effect fail to satisfy the
18 requirements of NRS 295.009(1)(b). The Secretary of State is enjoined from taking
19 any action on the Petitions.

20 Bradley S. Schrager shall serve a notice of entry of the order on all parties and
21 file proof of such service within 7 days after the date the Court sent the order to the
22 attorney.

23 **IT IS SO ORDERED.**

24 Dated this 6th March
25 day of ~~February~~, 2024.

26 

27 DISTRICT COURT JUDGE
28

1
2 Respectfully submitted by:

3 **BRAVO SCHRAGER LLP**

4 Bradley S. Schrager, Esq.

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13 *Attorneys for Intervenor Fair Maps Nevada*

14 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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27 Intervenor-Defendant.

Case No.: 23 OC 000138 1B

Dept. No.: II

NOTICE OF APPEAL

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28 Notice is hereby given that Intervenor Fair Maps Nevada appeals to the Nevada
Supreme Court from the Order Voiding Petition C-03-2023 dated March 6, 2024, notice of

///

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///


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FILED
2024 MAR -7 PM 3:54
WILLIAM HENRIksen
K. PETERSON
BY _____
CLERK

1 entry of which was filed on March 6, 2024, and all other interlocutory judgments, orders, and
2 rulings by the District Court made appealable by the foregoing.

3 Dated: March 7, 2024.

4 McDONALD CARANO LLP

5
6 By: 
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8 Joshua Hicks (NSBN 6679)
9 Adam Hosmer-Henner (NSBN 12779)
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28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on March 7, 2024, I served the within **NOTICE OF APPEAL** on the parties in said case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113

Laena St-Jules, Esq.
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

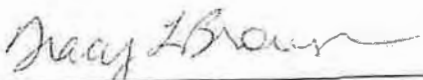
David R. Fox
Elias Law Group LLP
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Washington, DC 20001

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service.

The envelopes addressed to the above parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

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

Executed on March 7, 2024 at Reno, Nevada.


Employee of McDonald Carano LLP

1 Lucas Foletta (NSBN 12154)
Joshua Hicks (NSBN 6679)
2 Adam Hosmer-Henner (NSBN 12779)
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7 *Attorneys for Intervenor Fair Maps Nevada*

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9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
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Case No.: 23 OC 000137 1B

Dept. No.: II

NOTICE OF APPEAL

22 **NOTICE OF APPEAL**

23 Notice is hereby given that Intervenor Fair Maps Nevada appeals to the Nevada
24 Supreme Court from the Order Voiding Petition C-04-2023 dated March 6, 2024, notice of

25 ///

26 ///

27 ///

28 ///

FILED & FILED
2024 MAR -7 PM 3:53
WILLIAM SCOTT HEN
BY K. PETERSON
REPLY

1 entry of which was filed on March 6, 2024, and all other interlocutory judgments, orders, and
2 rulings by the District Court made appealable by the foregoing.

3 Dated: March 7, 2024.

4 McDONALD CARANO LLP

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6 By: 

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Attorneys for Fair Maps Nevada

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on March 7, 2024, I served the within **NOTICE OF APPEAL** on the parties in said case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
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Las Vegas, NV 89113

Laena St-Jules, Esq.
Office of the Attorney General
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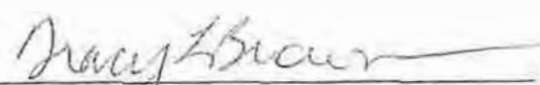
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Joshua Hicks (NSBN 6679)
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Telephone: (775) 788-2000
lfoletta@mdonaldcarano.com
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Attorneys for Intervenor Fair Maps Nevada

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WILLIAM SCOTT HEN
K. PETERSON
BY _____
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

* * *

ERIC JENG, an individual,

Case No.: 23 OC 000138 1B

Plaintiffs,

Dept. No.: II

vs.

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

**FAIR MAPS NEVADA'S CASE APPEAL
STATEMENT**

Defendant,

and

FAIR MAPS NEVADA, a Nevada political
action committee,

Intervenor-Defendant.

FAIR MAPS NEVADA'S CASE APPEAL STATEMENT

Intervenor Fair Maps Nevada submits the following Case Appeal Statement pursuant to
NRAP 3(f):

1. Name of Appellant filing this Case Appeal Statement:

Fair Maps Nevada.

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

The Honorable Robert E. Estes, Senior Judge, Department 2, First Judicial District Court.

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

Appellant: Fair Maps Nevada
Represented by: Lucas Foletta, Esq. (NSBN 12154)
Joshua Hicks, Esq. (NSBN 66679)
Adam Hosmer-Henner, Esq. (NSBN 12779)
Katrina Weil, Esq. (NSBN 16152)
McDONALD CARANO LLP
100 West Liberty Street, 10th Floor
Reno, NV 89501

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

Respondent: Eric Jeng
Trial Counsel: Bradley S. Schrager, Esq. (NSBN 10217)
Daniel Bravo, Esq. (NSBN 13078)
BRAVO SCHRAGER LLP
6675 South Tenaya Way, Suite 200
Las Vegas, Nevada 89113
David R. Fox, Esq. (NSBN 16536)
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20001

Respondent: Francisco Aguilar, in his Official Capacity as Nevada Secretary of State
Trial Counsel: Aaron D. Ford, Esq. (NSBN 7704)
Laena St-Jules, Esq. (NSBN 15156)
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

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

granting such permission):

N/A.

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

Retained counsel.

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

Retained counsel.

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

N/A.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

December 7, 2023.

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

Appellant Fair Maps filed Petition C-03-2023 ("Petition") on November 14, 2023 to amend the Nevada Constitution. Respondent Eric Jeng filed a Complaint for Declaratory Relief and an Opening Brief in Support of the Complaint for Declaratory and Injunctive Relief on December 7, 2023, contending the Petition unlawfully mandates an unfunded expenditure and that the Petition's description of effect rendered it legally insufficient.

Appellant Fair Maps filed an Answering Brief in Response to Respondent Eric Jeng's Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief ("Answering Brief") on December 26, 2023. As set forth in the Answering Brief, the Petition does not mandate an unfunded expenditure. Further, the description of effect, as revised in the district court's order, is sufficient under NRS 295.009(1)(b). As a result, the Petition was not void under Article 19, Section 6 of the Nevada Constitution and the revised description of

1 effect was sufficient. Fair Maps should have thus been permitted to re-file an amended petition
2 with the revised description of effect that should be accorded the finality set forth in NRS
3 295.061(3).

4 On March 6, 2024, the district court entered its Order Voiding Petition C-04-2023, which
5 Fair Maps now appeals.

6 **11. Indicate whether the case has previously been the subject of an appeal to or**
7 **original writ proceeding in the Supreme Court, and if so, the caption and Supreme Court**
8 **Docket number of the prior proceeding:**

9 N/A.

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

11 N/A.

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

14 There is no likelihood of settlement in this election case for which time is of the
15 essence.

16 Dated: March 7, 2024.

17 McDONALD CARANO LLP

18
19 By: 

20 Lucas Foletta, Esq. (NSBN 12154)
21 Joshua Hicks (NSBN 6679)
22 Adam Hosmer-Henner (NSBN 12779)
23 Katrina Weil (NSBN 16152)
24 100 W. Liberty Street, Tenth Floor
25 Reno, NV 89501
26 Telephone: (775) 788-2000

27 *Attorneys for Fair Maps Nevada*
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on March 7, 2024, I served the within **FAIR MAPS NEVADA'S CASE APPEAL STATEMENT** on the parties in said case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113

Laena St-Jules, Esq.
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

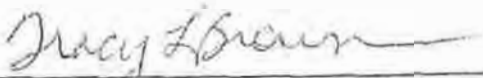
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Washington, DC 20001

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service.

The envelopes addressed to the above parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

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

Executed on March 7, 2024 at Reno, Nevada.


Employee of McDonald Carano LLP

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Joshua Hicks (NSBN 6679)
Adam Hosmer-Henner (NSBN 12779)
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kweil@mdonaldcarano.com

Attorneys for Intervenor Fair Maps Nevada

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IN AND FOR CARSON CITY**

* * *

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Plaintiffs,

vs.

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STATE,

Defendant,

and

FAIR MAPS NEVADA, a Nevada political
action committee,

Intervenor-Defendant.

Case No.: 23 OC 000137 1B

Dept. No.: II

**FAIR MAPS NEVADA'S CASE APPEAL
STATEMENT**

FAIR MAPS NEVADA'S CASE APPEAL STATEMENT

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NRAP 3(f):

1. **Name of Appellant filing this Case Appeal Statement:**

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

CLERK & FILED
2024 MAR -7 PM 3:53
WILLIAM COBITZ
CLERK
BY K. PETERSON
DEPUTY

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26 *Attorneys for Fair Maps Nevada*

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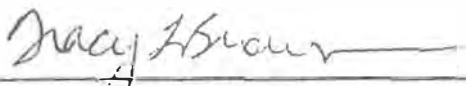
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