

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

Electronically Filed
District Court Case Nos. 88206
Mar 20 2024 06:58 PM
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Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX VOLUME 1 OF 2

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2/8/2024	Telephone Conference Memo Setting Hearing	2	JA000351 - JA000352

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that **APPENDIX TO OPENING BRIEF - VOLUME 1 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 1 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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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.

Case No.: 230C00138-1B

Dept. No.: 5

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-03-2023**

**Priority Matter Pursuant to NRS
295.061(1)**

Arbitration Exemption: Declaratory
and Injunctive Relief

25 Plaintiff Eric Jeng, an individual registered to vote in Nevada, files this
26 Complaint for Declaratory and Injunctive Relief against Francisco V. Aguilar, in his
27 official capacity as the Nevada Secretary of State, pursuant to NRS 295.061, 30.030,
28 and 30.010. Plaintiff alleges and complains as follows:

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Senate, Assembly, and U.S. House of Representatives.

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

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

This amendment will require redistricting following each federal census.

Ex. 1 at 3.

8. The substance of the Petition is nearly identical to a petition that was previously circulated, and the subject of significant litigation, in 2019. See **Exhibit 2**, a true and accurate copy of Initiative Petition C-02-2019; see also *Jackson v. Fair Maps Nevada PAC*, No. 19-OC-002909 1B (1st Jud. Dist. Ct. Nev., Carson City Jan. 2, 2020) (**Exhibit 3**), *aff'd*, No. 80563 (Nev. July 24, 2020) (**Exhibit 4**).

9. In reviewing a challenge to the 2019 petition's description of effect, the First Judicial District Court concluded that the description was "inadequate in that it does not provide potential signatories with enough information about the cost consequences of the Petition—specifically, that it will result in the expenditure of state funds." **Exhibit 3** at 4. The Court therefore rewrote the description of effect to specify that the 2019 petition "will result in the expenditure of state funds to fund the Commission." *Id.*

10. The 2019 petition was circulated to voters with that revised description but failed to attract sufficient signatures for inclusion on the ballot.

1 FIRST CAUSE OF ACTION

2 **Violation of Unfunded Mandate Prohibition, Nev. Const. Art. 19, Sec. 6**

3 11. The foregoing paragraphs of this Complaint are realleged and fully
4 incorporated as if set forth in full herein.

5 12. Article 19, Section 6 of the Nevada Constitution prohibits any initiative
6 that “makes an appropriation or otherwise requires the expenditure of money, unless
7 such statute or amendment also imposes a sufficient tax, not prohibited by the
8 Constitution, or otherwise constitutionally provides for raising the necessary
9 revenue.” (emphasis added). Accordingly, when an initiative “creat[es] a new
10 requirement for the appropriation of state funding that does not now exist and
11 provides no discretion to the Legislature about whether to appropriate or expend the
12 money” but does not provide for the necessary revenue, it does not comply with Article
13 19, Section 6 and is thus void. *Educ. Freedom PAC v. Reid*, C, 512 P.3d 296, 303-04
14 (Nev. 2022).

15 13. “Section 6 applies to *all* proposed initiatives, without exception, and *does*
16 *not permit* any initiative that fails to comply with the stated conditions.” *Rogers v.*
17 *Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001) (per curiam). When an initiative
18 violates this “threshold content restriction” by creating an unfunded mandate, it is
19 void ab initio and pre-election intervention by the courts is warranted. *Herbst*
20 *Gaming, Inc. v. Heller*, 122 Nev. 877, 890, 141 P.3d 1224, 1233 (2006) (per curiam)
21 (quoting *Rogers*, 117 Nev. at 173, 18 P.3d at 1036).

22 14. Notably, “[t]he fact that [an] initiative leaves it up to the Legislature to
23 determine how to fund the proposed change does not exclude the initiative from the
24 funding mandate.” *Educ. Freedom PAC*, 512 P.3d at 303. An initiative makes an
25 appropriation or expenditure when “the budgeting official must approve the
26 appropriation or expenditure, regardless of any other financial considerations.”
27 *Herbst Gaming*, 122 Nev. at 890, 141 P.3d at 1233.

1 15. The Petition imposes an unfunded mandate in violation of Article 19,
2 Section 6 because it creates a new state body, the Commission, but it raises no new
3 revenue to pay the expenses of that body.

4 16. The Commission will unavoidably incur substantial expenses if the
5 Petition is adopted.

6 17. The First Judicial District Court held in 2019 that the materially
7 identical 2019 petition "will result in the expenditure of state funds." Exhibit 3 at 4.¹

8 18. Redistricting commissions in other states have required millions of
9 dollars of state funding to carry out their duties. In California, the Citizens
10 Redistricting Commission incurred more than \$10 million in costs before the adoption
11 of the final set of maps from July 1, 2020 through December 27, 2021. Letter from
12 Antonio Le Mons, Commissioner on California Citizens Redistricting Commission, to
13 Hans Hemann, Joint Legislative Budget Committee, and Charles LaSalle,
14 Department of Finance (June 30, 2023), [https://wedrawthelines.ca.gov/wp-](https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2023/07/wd-2023-06-30-LegislatureExpReport.pdf)
15 [content/uploads/sites/64/2023/07/wd-2023-06-30-LegislatureExpReport.pdf](https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2023/07/wd-2023-06-30-LegislatureExpReport.pdf).

16 19. In Arizona, appropriations for the Independent Redistricting
17 Commission totaled \$12,716,227 for 2011-2017 and \$8,400,000 for 2021-2022.
18 Independent Redistricting Commission, FY 2023 Appropriations Report,
19 <https://www.azjlbc.gov/23AR/irc.pdf>.

20 20. In Ohio, the Office of Budget and Management estimated that a
21 constitutional amendment establishing a redistricting commission and requiring new
22 districts to be redrawn would cost between \$11 million and \$15.2 million over an
23 eight-year period. Letter from Timothy Keen, Director of Ohio Office of Budget &
24 Management, to Jon Husted, Ohio Secretary of State (Oct. 3,

25
26 ¹ The challenger in the 2019 case challenged only the description of effect, so
27 the Court did not consider the implications of this holding under Article 19, Section
28 6. *See id.*

1 2012), <https://www.ohiosos.gov/globalassets/ballotboard/2012/2-fiscalanalysis.pdf>.

2 Redistricting expenditures under the Ohio Redistricting Commission amounted to
3 \$625,000 from 2020 through October 2021, for “redistricting mapping software
4 applications, consulting and research services, mileage reimbursements, and other
5 such expenses related to the process of redistricting.” Fiscal Note & Local Impact

6 Statement for S.B. 258 (Nov. 3,
7 2021), <https://www.legislature.ohio.gov/download?key=17742&format=pdf>.

8 21. There is no reason to believe that the funding requirements for the
9 redistricting commission the Petition proposes for Nevada would be any different.
10 The Petition imposes numerous requirements on the Commission’s maps, which must
11 comply with the U.S. Constitution and federal law, are approximately equal in
12 population, are geographically contiguous, do not deny or abridge the equal
13 opportunity of racial or language minorities, do not favor any political party, reflect
14 city, county, and township boundaries, keep communities of interest together, are
15 reasonably compact, and consider the number of politically competitive districts. Ex.
16 1 at 2. Complying with these requirements will require significant expert and
17 technological support.

18 22. This is further supported by and consistent with reapportionment and
19 redistricting historically in this state. Nevada legislative committees that have
20 studied reapportionment and redistricting have similarly relied upon the assistance
21 of staff, including research staff, legislative counsel, redistricting and GIS specialists,
22 and special masters, all of which carry significant expenses. See, e.g., Nevada
23 Legislature Committee to Conduct an Interim Study of the Requirements for
24 Reapportionment and Redistricting in the State of Nevada (Aug. 27, 2020),
25 <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/16591>;

26 Committee to Conduct an Investigation into Matters Relating to Reapportionment
27 and Redistricting in Nevada,

28

1 <https://www.leg.state.nv.us/App/InterimCommittee/REL/Interim2021/Committee/19>
2 09/Staff; Nevada Legislature, Summary Minutes of the Public Hearing by Special
3 Masters to Receive Testimony Concerning Redistricting of Legislative and
4 Congressional Districts,
5 <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/14769>.

6 23. The Petition also requires the Commission to hold public meetings, with
7 an opportunity for public viewing, testimony, and participation, to provide public
8 notice of proposed plans and an opportunity for public review and comment, and to
9 make its records available as public records. Exhibit 1 at 2. All of that costs money,
10 but the Petition raises no revenue to fund it.

11 24. By creating the Commission, the Petition therefore “creat[es] a new
12 requirement for the appropriation of state funding that does not now exist.” *Educ.*
13 *Freedom PAC*, 512 P.3d at 304. The Petition leaves “budgeting officials no discretion
14 in appropriating or expending the money mandated by the initiative—the budgeting
15 official must approve the appropriation or expenditure” to comply with its provisions.
16 *Herbst Gaming*, 122 Nev. at 890, 141 P.3d at 1233. Because the Petition *requires* an
17 appropriation and expenditure but does *not* “provide[] for raising the necessary
18 revenue” as Article 19, Section 6 requires, it is void ab initio. *Rogers*, 117 Nev. at 173,
19 18 P.3d at 1036.

20 SECOND CAUSE OF ACTION

21 **Violation of Description of Effect Requirement, NRS 295.009(1)(b)**

22 25. The foregoing paragraphs of this Complaint are realleged and fully
23 incorporated as if set forth in full herein.

24 26. NRS 295.009(1)(b) requires that initiative petitions “set forth, in not
25 more than 200 words, a description of the effect of the initiative or referendum if the
26 initiative or referendum is approved by the voters.” The purpose of the description of
27 effect is to “prevent voter confusion and promote informed decisions.” *Nevadans for*
28

1 *Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006) (per curiam) (quoting
2 *Campbell v. Buckley*, 203 F.3d 738, 746 (10th Cir. 2000)).

3 27. “[A] description of effect must identify what the law proposes and how it
4 intends to achieve that proposal.” *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*,
5 129 Nev. 35, 42, 293 P.3d 874, 879 (2013). In doing so, it “must be straightforward,
6 succinct, and nonargumentative, and it must not be deceptive or misleading.” *Id.*, 293
7 P.3d at 879 (cleaned up) (quoting *Las Vegas Taxpayer Accountability Comm. v. City*
8 *Council*, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009)). A description must also
9 sufficiently “explain the[] ramifications of the proposed amendment” to allow voters
10 to make an informed decision. *Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59, 910 P.2d
11 898, 903 (1996).

12 28. While a description of effect does not need to explain every possible
13 effect, it must at a minimum accurately describe the main consequences of the
14 initiative. *See, e.g., Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 184, 208
15 P.3d at 441 (finding description of effect materially misleading where it “materially
16 fails to accurately identify the consequences of the referendum’s passage”). This
17 includes “the need for or nature of the revenue source” to fund a proposed initiative.
18 *Educ. Freedom PAC*, 512 P.3d at 304.

19 29. The Petition’s description of effect is legally deficient because it fails to
20 include a material fact that the First Judicial District Court held must be included in
21 the description of the materially identical 2019 petition. Exhibit 3 at 4–5.

22 30. The Petition’s description of effect does not include a statement that the
23 Petition “will result in the expenditure of state funds to fund the Commission,” which
24 the First Judicial District Court ordered to be added to the 2019 petition’s description
25 of effect. *Id.* at 5. Like the original description for the 2019 petition, the Petition’s
26 description therefore “does not provide potential signatories with enough information
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1 about the cost consequences of the Petition—specifically, that it will result in the
2 expenditure of state funds.” *Id.* at 4.

3 31. The Petition’s description of effect therefore fails to sufficiently “identify
4 what the law proposes and how it intends to achieve that proposal.” *Educ. Initiative*
5 *PAC*, 129 Nev. at 42, 293 P.3d at 879. This omission renders the Petition’s description
6 of effect legally deficient.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff asks this Court to enter an order:

9 1. Declaring that the Petition does not comply with Article 19, Section 6 of
10 the Nevada Constitution because it impermissibly creates an unfunded mandate, and
11 is therefore invalid;

12 2. Declaring that the Petition’s description of effect does not comply with
13 NRS 295.009(1)(b) because it is deceptive, misleading, and fails to explain the
14 ramifications of the proposed amendment to allow voters to make an informed
15 decision, and is therefore invalid;

16 3. Enjoining and prohibiting the Secretary from placing the Petition on the
17 2024 general election ballot, or from taking further action upon it;

18 4. Awarding Plaintiff his reasonable costs and attorneys’ fees; and

19 5. Granting such other relief as the Court deems appropriate.
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DATED this 6th day of December, 2023.

BRADLEY S. SCHRAGER, ESQ (SBN 10217)

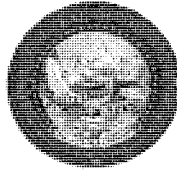
DAVID R. FOX, ESQ. (SBN 16536)
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20001
Tele.: (202) 968-4490
Email: dfox@elias.law

Attorneys for Plaintiff

Exhibit 1

Exhibit 1

State of Nevada
Secretary of State
Francisco V. Aguilar



Notice of Intent
Statewide Initiative or
Referendum Petition
NRS 295.009 and 295.015

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

NAME OF PERSON FILING THE PETITION

Sondra Cosgrove

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

1. Sondra Cosgrove
2. Richard MacLean
3. Edward Gonzalez Jr.

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

Fair Maps Nevada

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

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

X Sondra Cosgrove
Signature of Petition Filer

11/14/2023
Date

State of Nevada - Initiative Petition – Constitutional Amendment

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

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

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

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

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

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

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

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

2. The Commission shall be composed of seven members who are registered and eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3. The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader shall each appoint one Commissioner. The four Commissioners appointed in this manner shall appoint three additional Commissioners, each of whom, for at least four years immediately preceding their appointment, has not been registered or affiliated with the largest political party or the second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.

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

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

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

6. The Commission shall adopt rules to govern its administration and operation.
7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

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

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

Section 5C. Severability.

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

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

This measure will amend the Nevada Constitution to establish 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 such individuals. Commission meetings shall be open to the public which shall have opportunities to participate in hearings.

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

This amendment will require redistricting following each federal census.

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

			This Space For Office Use Only	
1	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	DATE / /	CITY	COUNTY
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Petition District _____

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	YOUR SIGNATURE	DATE / /	CITY	

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
COUNTY OF _____)

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

Signature of Circulator

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

Notary Public or person authorized to administer oath

EL501S
Revised 8/2019

Exhibit 2

Exhibit 2

State of Nevada - Initiative Petition - Constitutional Amendment

C-02-2019

FILED NV.SDS
2019 NOV 4 PM 4:16

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

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

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

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

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

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

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

Section 5C. Severability.

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

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DESCRIPTION OF EFFECT

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

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

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

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

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

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Petition District _____

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

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

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)

COUNTY OF _____)

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

Signature of Circulator _____

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

Notary Public or person authorized to administer oath

Exhibit 3

Exhibit 3

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

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(775) 788-2000
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lfoletta@mcdonaldcarano.com

5 *Attorneys for Defendant*
6 *Fair Maps Nevada PAC*

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

9 * * *

10 REV. LEONARD JACKSON,

11 Plaintiff,

12 vs.

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

15 Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

16 **ORDER**

17
18 This matter having come before this Court pursuant to Plaintiff Reverend Leonard
19 Jackson's Complaint for Declaratory Relief ("Complaint") and Plaintiff's Opening Brief in
20 Support of Complaint for Declaratory and Injunctive Relief ("Opening Brief"), and having
21 considered Defendant Fair Maps Nevada PAC's ("Fair Maps") Answer and Answering Brief in
22 Response to Plaintiff's Opening Brief in Support of Complaint for Declaratory and Injunctive
23 Relief ("Answering Brief") and Plaintiff's Reply Brief in Support of Complaint for Declaratory
24 Relief ("Reply Brief") as well as the arguments of counsel at the hearing held December 23,
25 2019, the Court finds as follows:

26 //


27 //

28

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AUBREY HONLATT
CLERK

BY  DEPUTY

JA000025

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

PROCEDURAL BACKGROUND

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

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

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

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

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

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he argues that the Petition’s description of effect fails to comply with NRS 295.009(1)(b). More specifically, he contends that description of the commission as independent and the description of effect’s statement that the commission will oversee “the mapping of fair and competitive electoral districts,” are materially misleading statements. Compl. ¶¶ 15 & 23. He also asserts that the description of effect is deceptive and misleading because it fails to inform voters of a specific practical effect of passage of the Petition—that the redistricting commission will “undo” electoral maps generated by the Legislature in 2021 “thus potentially doubling the resources that would otherwise be spent on redistricting following the 2020 census.” *Id.* at ¶¶ 30. Plaintiff’s Complaint is limited to his challenge to the description of effect.

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

7 LEGAL STANDARDS

8 Article 19, Section 2 of the Nevada Constitution enshrines the people's right to amend
9 the Nevada Constitution by initiative petition. Specifically it states that "the people reserve to
10 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
11 Nev. Const. art. 19, § 2(1). The Nevada Constitution further provides that the Legislature "may
12 provide by law for procedures to *facilitate* the operation thereof." *Id.* art. 19, § 5 (emphasis
13 added). In interpreting such laws, the courts "must make every effort to sustain and preserve the
14 people's constitutional right to amend their constitution through the initiative process."
15 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247
16 (2006).

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

27 In reviewing a description of effect, "it is inappropriate to parse the meanings of the
28 words and phrases used in a description of effect" as closely as a reviewing court would a

1 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
2 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
3 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
4 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
5 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 In this case, the description of effect for the Petition does not meet the requirements of
8 NRS 295.009(1)(b). The description of effect could be argumentative or confusing or
9 misleading to voters as currently written. The description of effect does not adequately explain
10 to voters what is meant by the term “independent” or the phrase “fair and competitive.” The
11 Court further finds that the description of effect is inadequate in that it does not provide potential
12 signatories with enough information about the cost consequences of the Petition—specifically,
13 that it will result in the expenditure of state funds. *See, e.g., Nev. Judges Ass’n v. Lau*, 112 Nev.
14 51,59 (1996). The Petition also does not adequately inform voters that the Petition would result
15 in redistricting in 2023 after the Legislature has already drawn electoral districts after the 2020
16 Census.

17 The Court finds that the above-referenced deficiencies may be cured through the revised
18 description of effect provided herein. NRS 295.061(3) provides that “[i]f a description of the
19 effect of an initiative or referendum required pursuant to NRS 295.009 is challenged
20 successfully . . . and such description is amended in compliance with the order of the court, the
21 amended description may not be challenged.” NRS 295.061(3). Thus, the Court, in consultation
22 with the parties, identifies a new description of effect that satisfies the legal standard required by
23 NRS 295.061(3). This revised description of effect states:

24
25 “This measure will amend the Nevada Constitution to establish a redistricting
26 commission to map electoral districts for the Nevada Senate, Assembly, and U.S. House of
Representatives.

27 The Commission will have seven members, four who will be appointed by the leadership
28 of the Legislature, and three who are unaffiliated with the two largest political parties who will
be appointed by the other four commissioners. Commissioners may not be partisan candidates,

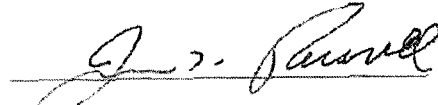
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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

9 This amendment requires redistricting after each federal census, beginning in 2023,
10 which could replace maps drawn by the Legislature after the 2020 census, and will result in the
11 expenditure of state funds to fund the Commission."

12 **IT IS THEREFORE ORDERED** and declared that the description of effect filed with
13 the Secretary of State on November 4, 2019 failed to satisfy the requirements of NRS
14 295.009(1)(b). Thus, any signatures collected on the Petition containing the description of effect
15 are invalid. However, Defendant Fair Maps may re-file an amended petition with the revised
16 description of effect as set forth by this Order, which cures all deficiencies raised by Plaintiff
17 and identified by the Court. Upon re-filing, the description of effect will have been amended in
18 compliance with this Order and be accorded the finality set forth in NRS 295.061(3) and shall
19 not be subject to further challenge. NRS 295.061(3).

20 Dated this 2 day of ~~December~~ ^{January} 2020.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:

24 MCDONALD CARANO LLP

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

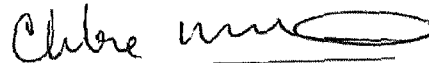
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2 day of January 2020 I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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

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

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



Chloe McClintick, Esq.
Law Clerk, Dept. 1

Exhibit 4

Exhibit 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

REV. LEONARD JACKSON,
Appellant/Cross-Respondent,
vs.
FAIR MAPS NEVADA PAC,
Respondent/Cross-Appellant,
and
BARBARA K. CEGAVSKE, IN HER
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE,
Respondent.

No. 80563

FILED

JUL 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a district court order granting declaratory relief in a ballot initiative matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

Reverend Leonard Jackson contends that the district court lacked "jurisdiction" to "rewrite" Fair Maps Nevada PAC's description of effect. We are not persuaded by Jackson's argument, as he has presented no authority that actually supports his position, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (requiring parties to support arguments with salient authority), nor has he explained how construing NRS 295.061(3) in such a manner would further any public policy goals, *see Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 800, 358 P.3d 234, 240 (2015) (recognizing that we construe statutes in accordance with "reason and public policy" (internal quotation marks omitted)).

Jackson next contends that Fair Maps' rewritten description of effect is still misleading. We disagree. While a description of effect must not be deceptive or misleading, *Educ. Initiative PAC v. Comm. to Protect*

SUPREME COURT
OF
NEVADA

(U) 1947A 

20-27106

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Nev. Jobs, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013), Jackson's fixation on the description's use of "could" instead of "will" requires an improperly "hyper-technical" analysis of the description, *id.* at 49, 293 P.3d at 883-84. We are likewise unpersuaded that the district court failed to make sufficient factual findings. The only shortcoming Jackson alleges pertains to an issue that appeared in the original description of effect but that is absent from the amended description. Accordingly, we affirm the district court's order insofar as Jackson challenges it.

On cross-appeal, Fair Maps argues that the district court erred in determining that its original description of effect was misleading. In light of our above-mentioned determinations, however, this issue is moot, and we therefore dismiss Fair Maps' cross-appeal. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("This court's duty is not to render advisory opinions . . ."). In so doing, we note that Fair Maps has not indicated that it would prefer to proceed with its original petition instead of its amended petition. In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. James Todd Russell, District Judge
Benson Law LLC
Attorney General/Carson City
McDonald Carano LLP/Reno
Carson City Clerk

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WILLIAM SCOTT HEN
K. PETERSON
CLERK
CY. DEPUTY

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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.

Case No.: 23 OC 00 137 1B

Dept. No.: I

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

**Priority Matter Pursuant to NRS
295.061(1)**

Arbitration Exemption: Declaratory
and Injunctive Relief

25 Plaintiff Eric Jeng, an individual registered to vote in Nevada, files this
26 Complaint for Declaratory and Injunctive Relief against Francisco V. Aguilar, in his
27 official capacity as the Nevada Secretary of State, pursuant to NRS 295.061, 30.030,
28 and 30.010. Plaintiff alleges and complains as follows:

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1 7. The Petition includes the following description of effect:

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

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

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

13 This amendment will require redistricting following the 2026
14 election and each federal census thereafter.

15 Ex. 1 at 3.

16 8. The substance of the Petition is nearly identical to a petition that was
17 previously circulated, and the subject of significant litigation, in 2019. See **Exhibit**
18 **2**, a true and accurate copy of Initiative Petition C-02-2019; see also *Jackson v. Fair*
19 *Maps Nevada PAC*, No. 19-OC-002909 1B (1st Jud. Dist. Ct. Nev., Carson City Jan.
20 2, 2020) (**Exhibit 3**), *aff'd*, No. 80563 (Nev. July 24, 2020) (**Exhibit 4**).

21 9. In reviewing a challenge to the 2019 petition's description of effect, the
22 First Judicial District Court concluded that the description was "inadequate in that
23 it does not provide potential signatories with enough information about the cost
24 consequences of the Petition—specifically, that it will result in the expenditure of
25 state funds." **Exhibit 3** at 4. The Court therefore rewrote the description of effect to
26 specify that the 2019 petition "will result in the expenditure of state funds to fund
27 the Commission." *Id.*

1 10. The Court also concluded that the description for the 2019 petition did
2 not “adequately inform voters that the Petition would result in redistricting in 2023
3 after the Legislature has already drawn electoral districts after the 2020 census.” *Id.*
4 The Court therefore also rewrote the description to expressly state that the 2019
5 petition would lead to new maps “which could replace maps drawn by the Legislature
6 after the 2020 census.” *Id.* at 5.

7 11. The 2019 petition was circulated to voters with that revised description
8 but failed to attract sufficient signatures for inclusion on the ballot.

9 **FIRST CAUSE OF ACTION**

10 **Violation of Unfunded Mandate Prohibition, Nev. Const. Art. 19, Sec. 6**

11 12. The foregoing paragraphs of this Complaint are realleged and fully
12 incorporated as if set forth in full herein.

13 13. Article 19, Section 6 of the Nevada Constitution prohibits any initiative
14 that “makes an appropriation or *otherwise requires the expenditure of money*, unless
15 such statute or amendment also imposes a sufficient tax, not prohibited by the
16 Constitution, or otherwise constitutionally provides for raising the necessary
17 revenue.” (emphasis added). Accordingly, when an initiative “creat[es] a new
18 requirement for the appropriation of state funding that does not now exist and
19 provides no discretion to the Legislature about whether to appropriate or expend the
20 money” but does not provide for the necessary revenue, it does not comply with Article
21 19, Section 6 and is thus void. *Educ. Freedom PAC v. Reid*, C, 512 P.3d 296, 303-04
22 (Nev. 2022).

23 14. “Section 6 applies to *all* proposed initiatives, without exception, and *does*
24 *not permit* any initiative that fails to comply with the stated conditions.” *Rogers v.*
25 *Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001) (per curiam). When an initiative
26 violates this “threshold content restriction” by creating an unfunded mandate, it is
27 void ab initio and pre-election intervention by the courts is warranted. *Herbst*
28

1 *Gaming, Inc. v. Heller*, 122 Nev. 877, 890, 141 P.3d 1224, 1233 (2006) (per curiam)
2 (quoting *Rogers*, 117 Nev. at 173, 18 P.3d at 1036).

3 15. Notably, “[t]he fact that [an] initiative leaves it up to the Legislature to
4 determine how to fund the proposed change does not exclude the initiative from the
5 funding mandate.” *Educ. Freedom PAC*, 512 P.3d at 303. An initiative makes an
6 appropriation or expenditure when “the budgeting official must approve the
7 appropriation or expenditure, regardless of any other financial considerations.”
8 *Herbst Gaming*, 122 Nev. at 890, 141 P.3d at 1233.

9 16. The Petition imposes an unfunded mandate in violation of Article 19,
10 Section 6 because it creates a new state body, the Commission, but it raises no new
11 revenue to pay the expenses of that body.

12 17. The Commission will unavoidably incur substantial expenses if the
13 Petition is adopted.

14 18. The First Judicial District Court held in 2019 that the materially
15 identical 2019 petition “will result in the expenditure of state funds.” Exhibit 3 at 4.¹

16 19. Redistricting commissions in other states have required millions of
17 dollars of state funding to carry out their duties. In California, the Citizens
18 Redistricting Commission incurred more than \$10 million in costs before the adoption
19 of the final set of maps from July 1, 2020 through December 27, 2021. Letter from
20 Antonio Le Mons, Commissioner on California Citizens Redistricting Commission, to
21 Hans Hemann, Joint Legislative Budget Committee, and Charles LaSalle,
22 Department of Finance (June 30, 2023), [https://wedrawthelines.ca.gov/wp-](https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2023/07/wd-2023-06-30-LegislatureExpReport.pdf)
23 [content/uploads/sites/64/2023/07/wd-2023-06-30-LegislatureExpReport.pdf](https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2023/07/wd-2023-06-30-LegislatureExpReport.pdf).

24

25
26 ¹ The challenger in the 2019 case challenged only the description of effect, so
27 the Court did not consider the implications of this holding under Article 19, Section
28 6. *See id.*

1 20. In Arizona, appropriations for the Independent Redistricting
2 Commission totaled \$12,716,227 for 2011-2017 and \$8,400,000 for 2021-2022.
3 Independent Redistricting Commission, FY 2023 Appropriations Report,
4 <https://www.azjlb.gov/23AR/irc.pdf>.

5 21. In Ohio, the Office of Budget and Management estimated that a
6 constitutional amendment establishing a redistricting commission and requiring new
7 districts to be redrawn would cost between \$11 million and \$15.2 million over an
8 eight-year period. Letter from Timothy Keen, Director of Ohio Office of Budget &
9 Management, to Jon Husted, Ohio Secretary of State (Oct. 3,
10 2012), <https://www.ohiosos.gov/globalassets/ballotboard/2012/2-fiscalanalysis.pdf>.
11 Redistricting expenditures under the Ohio Redistricting Commission amounted to
12 \$625,000 from 2020 through October 2021, for "redistricting mapping software
13 applications, consulting and research services, mileage reimbursements, and other
14 such expenses related to the process of redistricting." Fiscal Note & Local Impact
15 Statement for S.B. 258 (Nov. 3, 2021), [https://www.legislature.ohio.gov/download?ke](https://www.legislature.ohio.gov/download?key=17742&format=pdf)
16 [y=17742&format=pdf](https://www.legislature.ohio.gov/download?key=17742&format=pdf).

17 22. There is no reason to believe that the funding requirements for the
18 redistricting commission the Petition proposes for Nevada would be any different.
19 The Petition imposes numerous requirements on the Commission's maps, which must
20 comply with the U.S. Constitution and federal law, are approximately equal in
21 population, are geographically contiguous, do not deny or abridge the equal
22 opportunity of racial or language minorities, do not favor any political party, reflect
23 city, county, and township boundaries, keep communities of interest together, are
24 reasonably compact, and consider the number of politically competitive districts. Ex.
25 1 at 2. Complying with these requirements will require significant expert and
26 technological support.

27

28

1 23. This is further supported by and consistent with reapportionment and
2 redistricting historically in this state. Nevada legislative committees that have
3 studied reapportionment and redistricting have similarly relied upon the assistance
4 of staff, including research staff, legislative counsel, redistricting and GIS specialists,
5 and special masters, all of which carry significant expenses. *See, e.g.*, Nevada
6 Legislature Committee to Conduct an Interim Study of the Requirements for
7 Reapportionment and Redistricting in the State of Nevada (Aug. 27, 2020),
8 <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/16591>;
9 Committee to Conduct an Investigation into Matters Relating to Reapportionment
10 and Redistricting in Nevada, [https://www.leg.state.nv.us/App/InterimCommittee/RE](https://www.leg.state.nv.us/App/InterimCommittee/REL/Interim2021/Committee/1909/Staff)
11 [L/Interim2021/Committee/1909/Staff](https://www.leg.state.nv.us/App/InterimCommittee/REL/Interim2021/Committee/1909/Staff); Nevada Legislature, Summary Minutes of the
12 Public Hearing by Special Masters to Receive Testimony Concerning Redistricting of
13 Legislative and Congressional Districts, [https://www.leg.state.nv.us/App/InterimCo](https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/14769)
14 [mmittee/REL/Document/14769](https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/14769).

15 24. The Petition also requires the Commission to hold public meetings, with
16 an opportunity for public viewing, testimony, and participation, to provide public
17 notice of proposed plans and an opportunity for public review and comment, and to
18 make its records available as public records. Exhibit 1 at 2. All of that costs money,
19 but the Petition raises no revenue to fund it.

20 25. By creating the Commission, the Petition therefore “creat[es] a new
21 requirement for the appropriation of state funding that does not now exist.” *Educ.*
22 *Freedom PAC*, 512 P.3d at 304. The Petition leaves “budgeting officials no discretion
23 in appropriating or expending the money mandated by the initiative—the budgeting
24 official must approve the appropriation or expenditure” to comply with its provisions.
25 *Herbst Gaming*, 122 Nev. at 890, 141 P.3d at 1233. Because the Petition *requires* an
26 appropriation and expenditure but does *not* “provide[] for raising the necessary
27
28

1 revenue" as Article 19, Section 6 requires, it is void ab initio. *Rogers*, 117 Nev. at 173,
2 18 P.3d at 1036.

3 SECOND CAUSE OF ACTION

4 **Violation of Description of Effect Requirement, NRS 295.009(1)(b)**

5 26. The foregoing paragraphs of this Complaint are realleged and fully
6 incorporated as if set forth in full herein.

7 27. NRS 295.009(1)(b) requires that initiative petitions "set forth, in not
8 more than 200 words, a description of the effect of the initiative or referendum if the
9 initiative or referendum is approved by the voters." The purpose of the description of
10 effect is to "prevent voter confusion and promote informed decisions." *Nevadans for*
11 *Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006) (per curiam) (quoting
12 *Campbell v. Buckley*, 203 F.3d 738, 746 (10th Cir. 2000)).

13 28. "[A] description of effect must identify what the law proposes and how it
14 intends to achieve that proposal." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*,
15 129 Nev. 35, 42, 293 P.3d 874, 879 (2013). In doing so, it "must be straightforward,
16 succinct, and nonargumentative, and it must not be deceptive or misleading." *Id.*, 293
17 P.3d at 879 (cleaned up) (quoting *Las Vegas Taxpayer Accountability Comm. v. City*
18 *Council*, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009)). A description must also
19 sufficiently "explain the[] ramifications of the proposed amendment" to allow voters
20 to make an informed decision. *Nev. Judges Ass'n v. Lau*, 112 Nev. 51, 59, 910 P.2d
21 898, 903 (1996).

22 29. While a description of effect does not need to explain every possible
23 effect, it must at a minimum accurately describe the main consequences of the
24 initiative. *See, e.g., Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 184, 208
25 P.3d at 441 (finding description of effect materially misleading where it "materially
26 fails to accurately identify the consequences of the referendum's passage"). This

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1 includes “the need for or nature of the revenue source” to fund a proposed initiative.
2 *Educ. Freedom PAC*, 512 P.3d at 304.

3 30. The Petition’s description of effect is legally deficient because it fails to
4 include two material facts that the First Judicial District Court held must be included
5 in the description of the materially identical 2019 petition. Exhibit 3 at 4–5.

6 31. *First*, the Petition’s description of effect does not include a statement
7 that the Petition “will result in the expenditure of state funds to fund the
8 Commission,” which the First Judicial District Court ordered to be added to the 2019
9 petition’s description of effect. *Id.* at 5. Like the original description for the 2019
10 petition, the Petition’s description therefore “does not provide potential signatories
11 with enough information about the cost consequences of the Petition—specifically,
12 that it will result in the expenditure of state funds.” *Id.* at 4.

13 32. *Second*, the Petition’s description of effect does not include a statement
14 that the Petition provides for mid-cycle redistricting that “could replace maps drawn
15 by the Legislature after the 2020 census,” which the First Judicial District Court
16 ordered added to the 2019 petition’s description of effect after holding that the
17 original description did “not adequately inform voters that the Petition would result
18 in redistricting in 2023 after the Legislature has already drawn electoral districts
19 after the 2020 census.” *Id.* at 5. Instead, the Petition’s description says only that the
20 Petition “will require redistricting following the 2026 election and each federal census
21 thereafter”—precisely the formula that the First Judicial District Court held
22 inadequate in 2019. *See id.* at 2 (“This amendment will require redistricting by the
23 Commission beginning in 2023 and thereafter following each federal census.”).

24 33. The Petition’s description of effect therefore fails to sufficiently “identify
25 what the law proposes and how it intends to achieve that proposal.” *Educ. Initiative*
26 *PAC*, 129 Nev. at 42, 293 P.3d at 879. Independently and collectively, these omissions
27 render the Petition’s description of effect legally deficient.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court to enter an order:

1. Declaring that the Petition does not comply with Article 19, Section 6 of the Nevada Constitution because it impermissibly creates an unfunded mandate, and is therefore invalid;
2. Declaring that the Petition's description of effect does not comply with NRS 295.009(1)(b) because it is deceptive, misleading, and fails to explain the ramifications of the proposed amendment to allow voters to make an informed decision, and is therefore invalid;
3. Enjoining and prohibiting the Secretary from placing the Petition on the 2024 general election ballot, or from taking further action upon it;
4. Awarding Plaintiff his reasonable costs and attorneys' fees; and
5. Granting such other relief as the Court deems appropriate.

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BRADLEY S. SCHRAGER, ESQ (SBN 10217)

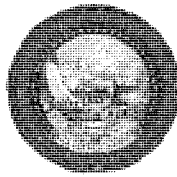
DAVID R. FOX, ESQ. (SBN 16536)
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20001
Tele.: (202) 968-4490
Email: dfox@elias.law

Attorneys for Plaintiff

Exhibit 1

Exhibit 1

State of Nevada
Secretary of State
Francisco V. Aguilar



Notice of Intent
Statewide Initiative or
Referendum Petition

NRS 295.009 and 295.015

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

NAME OF PERSON FILING THE PETITION

Sondra Cosgrove

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

1. Sondra Cosgrove
2. Richard MacLean
3. Edward Gonzalez Jr.

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

Fair Maps Nevada

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

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

X Sondra Cosgrove
Signature of Petition Filer

11/14/2023

Date

State of Nevada - Initiative Petition – Constitutional Amendment

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

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

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

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

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

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

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

- 1. There is created within the legislative branch of state government the Independent Redistricting Commission. It shall be the duty of the Commission no later than December 31, 2027 and after each decennial census of the United States thereafter, to apportion the number of Senators and Assemblymen among legislative districts established by the Commission and to apportion the number of representatives in the United States House of Representatives among districts established by the Commission.***
- 2. The Commission shall be composed of seven members who are registered and eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3. The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader shall each appoint one Commissioner. The four Commissioners appointed in this manner shall appoint three additional Commissioners, each of whom, for at least four years immediately preceding their appointment, has not been registered or affiliated with the largest political party or the second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.***
- 3. Within four years preceding appointment and during their term, no Commissioner may be a registered lobbyist; a candidate for a federal, state, or partisan local office; an elected official to a federal, state, or partisan local office; an officer or member of the governing body of a national, state, or local political party; a paid consultant or employee of a federal, state, or partisan local elected official or candidate, or of a political action committee, or of a committee sponsored by a political party, or of a committee that seeks to influence elections to federal, state, or partisan local offices; an employee of the Legislature; an employee of the State of Nevada, except for employees in the judicial branch, the armed forces, or a state institution of higher education; or related within the third degree of consanguinity or affinity to any individual disqualified under this subsection.***
- 4. The term of office of each Commissioner shall expire once the Commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete and shall expire no later than the release of the following decennial census of the United States.***
- 5. All meetings of the Commission shall be open to the public. The Commission shall ensure that the public has opportunities to view, present testimony, and participate in hearings before the Commission. All Commission materials shall be public records.***

6. The Commission shall adopt rules to govern its administration and operation.
7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

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

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

2. Not later than December 31, 2027 and 180 days from the release of the decennial census of the United States thereafter, the Commission shall approve a redistricting plan for the Nevada State Senate, the Nevada State Assembly, and Nevada's Congressional Districts, after providing public notice of each proposed final plan and allowing sufficient time for public review and comment. A final plan may be approved by the Commission only upon at least five affirmative votes, including at least one Commissioner registered with the largest political party, one Commissioner registered with the second largest political party, and one Commissioner not registered or affiliated with the largest or second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year.

Section 5C. Severability.

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

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

This measure will amend the Nevada Constitution to establish 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 such individuals. Commission meetings shall be open to the public which shall have opportunities to participate in hearings.

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

This amendment will require redistricting following the 2026 election and each federal census thereafter.

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

			This Space For Office Use Only
1	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY
	YOUR SIGNATURE	DATE / /	CITY COUNTY
2	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY
	YOUR SIGNATURE	DATE / /	CITY COUNTY
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	YOUR SIGNATURE	DATE / /	CITY COUNTY
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	YOUR SIGNATURE	DATE / /	CITY COUNTY

DESCRIPTION OF EFFECT

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 such individuals. Commission meetings shall be open to the public which shall have opportunities to participate in hearings.

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

This amendment will require redistricting following the 2026 election and each federal census thereafter.

County of _____
Petition District _____

(Only registered voters of this county may sign below)

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

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Office Use Only

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

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

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

Signature of Circulator

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

Notary Public or person authorized to administer oath

Exhibit 2

Exhibit 2

State of Nevada - Initiative Petition – Constitutional Amendment

C-02-2019

FILED NV.SOS
2019 NOV 4 PM 4:16

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

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

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

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

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

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

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

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

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

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

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

Section 5C. Severability.

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

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

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

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

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

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

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

			This Space For Office Use Only	
1	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	DATE / /	CITY	COUNTY
2	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	DATE / /	CITY	COUNTY
3	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY	
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	YOUR SIGNATURE	DATE / /	CITY	COUNTY
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	YOUR SIGNATURE	DATE / /	CITY	COUNTY

DESCRIPTION OF EFFECT

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

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

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

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

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

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Office Use Only

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

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)

COUNTY OF _____)

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

Signature of Circulator

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

Notary Public or person authorized to administer oath

EL501C
Revised 8/2019

Exhibit 3

Exhibit 3

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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Reno, NV 89501
(775) 788-2000
ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED

2020 JAN -2 PM 12:15

AUDREY ROFLATT
CLERK

DEPUTY

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

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

ORDER

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

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PROCEDURAL BACKGROUND

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

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

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

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

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

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he argues that the Petition's description of effect fails to comply with NRS 295.009(1)(b). More specifically, he contends that description of the commission as independent and the description of effect's statement that the commission will oversee "the mapping of fair and competitive electoral districts," are materially misleading statements. Compl. ¶¶ 15 & 23. He also asserts that the description of effect is deceptive and misleading because it fails to inform voters of a specific practical effect of passage of the Petition—that the redistricting commission will "undo" electoral maps generated by the Legislature in 2021 "thus potentially doubling the resources that would otherwise be spent on redistricting following the 2020 census." *Id.* at ¶¶ 30. Plaintiff's Complaint is limited to his challenge to the description of effect.

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

7 LEGAL STANDARDS

8 Article 19, Section 2 of the Nevada Constitution enshrines the people's right to amend
9 the Nevada Constitution by initiative petition. Specifically it states that "the people reserve to
10 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
11 Nev. Const. art. 19, § 2(1). The Nevada Constitution further provides that the Legislature "may
12 provide by law for procedures to *facilitate* the operation thereof." *Id.* art. 19, § 5 (emphasis
13 added). In interpreting such laws, the courts "must make every effort to sustain and preserve the
14 people's constitutional right to amend their constitution through the initiative process."
15 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247
16 (2006).

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

27 In reviewing a description of effect, "it is inappropriate to parse the meanings of the
28 words and phrases used in a description of effect" as closely as a reviewing court would a

1 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
2 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
3 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
4 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
5 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 In this case, the description of effect for the Petition does not meet the requirements of
8 NRS 295.009(1)(b). The description of effect could be argumentative or confusing or
9 misleading to voters as currently written. The description of effect does not adequately explain
10 to voters what is meant by the term “independent” or the phrase “fair and competitive.” The
11 Court further finds that the description of effect is inadequate in that it does not provide potential
12 signatories with enough information about the cost consequences of the Petition—specifically,
13 that it will result in the expenditure of state funds. *See, e.g., Nev. Judges Ass’n v. Lau*, 112 Nev.
14 51,59 (1996). The Petition also does not adequately inform voters that the Petition would result
15 in redistricting in 2023 after the Legislature has already drawn electoral districts after the 2020
16 Census.

17 The Court finds that the above-referenced deficiencies may be cured through the revised
18 description of effect provided herein. NRS 295.061(3) provides that “[i]f a description of the
19 effect of an initiative or referendum required pursuant to NRS 295.009 is challenged
20 successfully . . . and such description is amended in compliance with the order of the court, the
21 amended description may not be challenged.” NRS 295.061(3). Thus, the Court, in consultation
22 with the parties, identifies a new description of effect that satisfies the legal standard required by
23 NRS 295.061(3). This revised description of effect states:

24
25 “This measure will amend the Nevada Constitution to establish a redistricting
26 commission to map electoral districts for the Nevada Senate, Assembly, and U.S. House of
Representatives.

27 The Commission will have seven members, four who will be appointed by the leadership
28 of the Legislature, and three who are unaffiliated with the two largest political parties who will
be appointed by the other four commissioners. Commissioners may not be partisan candidates,

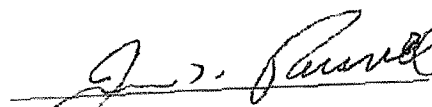
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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

9 This amendment requires redistricting after each federal census, beginning in 2023,
10 which could replace maps drawn by the Legislature after the 2020 census, and will result in the
11 expenditure of state funds to fund the Commission."

12 **IT IS THEREFORE ORDERED** and declared that the description of effect filed with
13 the Secretary of State on November 4, 2019 failed to satisfy the requirements of NRS
14 295.009(1)(b). Thus, any signatures collected on the Petition containing the description of effect
15 are invalid. However, Defendant Fair Maps may re-file an amended petition with the revised
16 description of effect as set forth by this Order, which cures all deficiencies raised by Plaintiff
17 and identified by the Court. Upon re-filing, the description of effect will have been amended in
18 compliance with this Order and be accorded the finality set forth in NRS 295.061(3) and shall
19 not be subject to further challenge. NRS 295.061(3).

20 Dated this 2 day of January, 2020.
21 ~~December, 2019.~~

22 
23 District Court Judge James Russell

24 Respectfully submitted by:

25 McDONALD CARANO LLP

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

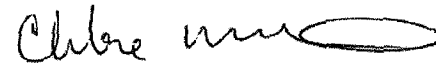
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2 day of January 2020 I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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

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

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



Chloe McClintick, Esq.
Law Clerk, Dept. 1

Exhibit 4

Exhibit 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

REV. LEONARD JACKSON,
Appellant/Cross-Respondent,
vs.
FAIR MAPS NEVADA PAC,
Respondent/Cross-Appellant,
and
BARBARA K. CEGAVSKE, IN HER
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE,
Respondent.

No. 80563

FILED

JUL 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a district court order granting declaratory relief in a ballot initiative matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

Reverend Leonard Jackson contends that the district court lacked "jurisdiction" to "rewrite" Fair Maps Nevada PAC's description of effect. We are not persuaded by Jackson's argument, as he has presented no authority that actually supports his position, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (requiring parties to support arguments with salient authority), nor has he explained how construing NRS 295.061(3) in such a manner would further any public policy goals, *see Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 800, 358 P.3d 234, 240 (2015) (recognizing that we construe statutes in accordance with "reason and public policy" (internal quotation marks omitted)).

Jackson next contends that Fair Maps' rewritten description of effect is still misleading. We disagree. While a description of effect must not be deceptive or misleading, *Educ. Initiative PAC v. Comm. to Protect*

Nev. Jobs, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013), Jackson's fixation on the description's use of "could" instead of "will" requires an improperly "hyper-technical" analysis of the description, *id.* at 49, 293 P.3d at 883-84. We are likewise unpersuaded that the district court failed to make sufficient factual findings. The only shortcoming Jackson alleges pertains to an issue that appeared in the original description of effect but that is absent from the amended description. Accordingly, we affirm the district court's order insofar as Jackson challenges it.

On cross-appeal, Fair Maps argues that the district court erred in determining that its original description of effect was misleading. In light of our above-mentioned determinations, however, this issue is moot, and we therefore dismiss Fair Maps' cross-appeal. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("This court's duty is not to render advisory opinions . . ."). In so doing, we note that Fair Maps has not indicated that it would prefer to proceed with its original petition instead of its amended petition. In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. James Todd Russell, District Judge
Benson Law LLC
Attorney General/Carson City
McDonald Carano LLP/Reno
Carson City Clerk

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WILLIAM SCHRAMM
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DEPUTY

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15 *Attorneys for Plaintiff*

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

ERIC JENG, an individual,

Plaintiff,

vs.

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

Defendant.

Case No.: 230C00138-1B
Dept. No.: I

PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-03-2023

Plaintiff Eric Jeng, an individual registered to vote in Nevada, by and through
his attorneys of record, submits this Memorandum of Points and Authorities in
support of his Complaint for Declaratory and Injunctive Relief challenging Initiative
Petition C-03-2023 as follows:

INTRODUCTION

Initiative Petition C-03-2023 (the "Petition") seeks to amend Article 4, Section
5 of the Nevada Constitution to establish the "Independent Redistricting
Commission," require that redistricting be performed by a commission rather than

1 by the Legislature. See **Exhibit 1**, a true and accurate copy of the Notice of Intent to
2 Circulate Statewide Initiative or Referendum Petition associated with the Petition.

3 The Petition is invalid because it violates two threshold requirements of
4 Nevada law: (1) the Petition violates the unfunded-mandate prohibition in Article 19,
5 Section 6 of the Nevada Constitution because it will require the expenditure of state
6 money to fund the Commission but does not provide for raising the necessary revenue,
7 and (2) the Petition's description of effect is legally deficient under NRS 295.009(1)(b)
8 because it fails to explain that the initiative will require the expenditure of state
9 funds.

10 The Court should therefore enjoin the Nevada Secretary of State (the
11 "Secretary") from taking any further action on the Petition.

12 **BACKGROUND**

13 On November 14, 2023, Sondra Cosgrove, on behalf of the Fair Maps Nevada
14 PAC, filed the Petition with the Secretary. The Petition seeks to amend Article 4,
15 Section 5 of the Nevada Constitution to require that redistricting be performed by a
16 commission rather than by the Legislature.

17 The Petition proposes the creation of a new, seven-member state body—the
18 "Independent Redistricting Commission"—within the legislative branch, tasked with
19 drawing districts for state legislators and congressional representatives. Ex. 1 at 2.
20 The Commission would be required to ensure that districts comply with the U.S.
21 Constitution and applicable federal law, have an approximately equal number of
22 inhabitants, are geographically contiguous, are not drawn with "the intent or result
23 of denying or abridging the equal opportunity of racial or language minorities to
24 participate in the political process or elect representatives of their choice," do not
25 "unduly advantage or disadvantage a political party," reflect county, city, and
26 township boundaries, minimize the division of communities of interest, are
27 reasonably compact, and consider the number of politically competitive districts. *Id.*

28

1 at 2. The Commission's meetings would be open to the public, and the Commission
2 must ensure that the public has opportunities to view, present testimony, and
3 participate in Commission hearings. Commission materials would be public records.
4 *Id.* at 1-2. The Petition does not provide any new revenue to fund any of these
5 mandates. *See id.*

6 The Petition includes the following description of effect:

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

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

13 The Commission will ensure, to the extent possible, that the
14 districts comply with the U.S. Constitution, have an approximately
15 equal number of inhabitants, are geographically compact and
16 contiguous, provide equal opportunities for racial and language
17 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.

18 This amendment will require redistricting following each federal census.

19 Ex. 1 at 3.

20 The substance of the Petition is nearly identical to a petition that was
21 previously circulated in 2019. *See Exhibit 2*, a true and accurate copy of Initiative
22 Petition C-02-2019; *see also Jackson v. Fair Maps Nevada PAC*, No. 19-OC-002909
23 1B (1st Jud. Dist. Ct. Nev., Carson City Jan. 2, 2020) (*Exhibit 3*), *aff'd*, No. 80563
24 (Nev. July 24, 2020) (*Exhibit 4*).

25 In reviewing a challenge to the 2019 petition's description of effect, the First
26 Judicial District Court concluded that the description was "inadequate in that it does
27 not provide potential signatories with enough information about the cost
28

1 consequences of the Petition—specifically, that it will result in the expenditure of
2 state funds.” Ex. 3 at 4. The Court therefore rewrote the description of effect to specify
3 that the 2019 petition “will result in the expenditure of state funds to fund the
4 Commission.” *Id.* at 5. The Court also concluded that the description did not
5 “adequately inform voters that the Petition would result in redistricting in 2023 after
6 the Legislature has already drawn electoral districts after the 2020 census” and
7 rewrote the description to expressly state that the 2019 petition would lead to new
8 maps “which could replace maps drawn by the Legislature after the 2020 census.” *Id.*
9 at 4-5. The 2019 petition was circulated to voters with that revised description but
10 failed to attract sufficient signatures for inclusion on the ballot.

11 LEGAL STANDARD

12 Article 19, Section 6’s prohibition on initiatives that mandate unfunded
13 expenditures is a “threshold content restriction” and voids any initiative that does
14 not comply. *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 303
15 (2022). Nevada law also allows challenges to an initiative petition where the
16 description of effect is deficient, see NRS 295.061. Such challenges are “properly
17 evaluated at the preelection stage.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890
18 & n.38, 141 P.3d 1224, 1233 & n.38 (2006) (per curiam) (quoting *Rogers v. Heller*, 117
19 Nev.169, 173, 18 P.3d 1034, 1036 (2001) (per curiam)).

20 ARGUMENT

21 The Petition suffers from two fatal flaws. It violates the constitutional bar on
22 unfunded mandates because it would require the expenditure of government funds,
23 but it does not provide any revenue source to cover these new costs. Its description of
24 effect is also inadequate because it does not mention that the Petition would require
25 the expenditure of state funds.

1 **I. The Petition unlawfully mandates an unfunded expenditure.**

2 Under Article 19, Section 6 of the Nevada Constitution, an initiative is
3 prohibited if it “makes an appropriation or otherwise requires the expenditure of
4 money, unless [it] also imposes a sufficient tax, not prohibited by the Constitution, or
5 otherwise constitutionally provides for raising the necessary revenue.” Accordingly,
6 when an initiative “creat[es] a new requirement for the appropriation of state funding
7 that does not now exist and provides no discretion to the Legislature about whether
8 to appropriate or expend the money” but does not provide for the necessary revenue,
9 it does not comply with Article 19, Section 6 and is thus void. *Educ. Freedom PAC v.*
10 *Reid*, 138 Nev., Adv. Op. 47, 512 P.3d at 303–04. “[A]n initiative makes an
11 appropriation or expenditure when . . . the budgeting official must approve the
12 appropriation or expenditure, regardless of any other financial considerations.”
13 *Herbst Gaming*, 122 Nev. at 890, 141 P.3d at 1233.

14 The Petition makes an appropriation under this standard because it requires
15 the creation of a new state body—a redistricting commission—which will necessarily
16 incur expenses, but the Petition fails to provide the revenue required to cover those
17 expenses.

18 There is no question that the Petition would require the expenditure of state
19 funds. The First Judicial District Court held in 2019 that the materially identical
20 2019 petition “will result in the expenditure of state funds,” and ordered the
21 description of effect amended to expressly say so. Ex. 3 at 4.¹ And redistricting
22 commissions in other states have required millions of dollars of state funding to carry
23 out their mandates. In California, the Citizens Redistricting Commission incurred
24 more than \$10 million in costs before the adoption of the final set of maps from July

25
26 ¹ The challenger in the 2019 case challenged only the description of effect, so
27 the Court did not consider the implications of this holding under Article 19, Section
28 6. *See id.*

1 1, 2020 through December 27, 2021.² In Arizona, appropriations for the Independent
2 Redistricting Commission totaled \$12,716,227 for 2011-2017 and \$8,400,000 for 2021-
3 2022.³ And in Ohio, the Office of Budget and Management estimated that a
4 constitutional amendment establishing a redistricting commission and requiring new
5 districts to be redrawn would cost between \$11 million and \$15.2 million over an
6 eight-year period.⁴ Redistricting expenditures under the Ohio Redistricting
7 Commission amounted to \$625,000 from 2020 through October 2021, for
8 "redistricting mapping software applications, consulting and research services,
9 mileage reimbursements, and other such expenses related to the process of
10 redistricting."⁵

11 There is no reason to conclude that the funding requirements for the
12 redistricting commission the Petition proposes for Nevada would be any different.
13 The Petition requires that the Commission draw districts that comply with the U.S.
14 Constitution and federal law, are approximately equal in population, are
15 geographically contiguous, do not deny or abridge the equal opportunity of racial or
16 language minorities, do not favor any political party, reflect city, county, and
17 township boundaries, keep communities of interest together, are reasonably compact,

18
19 ² Letter from Antonio Le Mons, Commissioner on California Citizens
20 Redistricting Commission, to Hans Hemann, Joint Legislative Budget Committee,
21 and Charles LaSalle, Department of Finance (June 30, 2023),
<https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2023/07/wd-2023-06-30-LegislatureExpReport.pdf>.

22 ³ Independent Redistricting Commission, FY 2023 Appropriations Report,
23 <https://www.azjlbc.gov/23AR/irc.pdf>.

24 ⁴ Letter from Timothy Keen, Director of Ohio Office of Budget & Management,
25 to Jon Husted, Ohio Secretary of State (Oct. 3,
2012), <https://www.ohiosos.gov/globalassets/ballotboard/2012/2-fiscalanalysis.pdf>.

26 ⁵ Fiscal Note & Local Impact Statement for S.B. 258 (Nov. 3,
27 2023), <https://www.legislature.ohio.gov/download?key=17742&format=pdf>.

1 and consider the number of politically competitive districts. Ex. 1 at 2. Complying
2 with these requirements will require significant expert and technological support,
3 none of which are provided for in the Petition. Confirming this conclusion, the Nevada
4 legislative committees that have previously undertaken reapportionment and
5 redistricting have done so with the assistance of staff, including research staff,
6 legislative counsel, redistricting and GIS specialists, and special masters, all of which
7 carry significant expenses.⁶

8 Nor will the expenses of the Commission be limited to the redistricting itself.
9 Under the Petition, the Commission must hold meetings “open to the public,” with an
10 opportunity for public viewing, testimony, and participation, provide public notice of
11 proposed plans and an opportunity for public review and comment, and make its
12 records available as public records. Ex. 1 at 1. Meeting these requirements costs
13 money, too, but the Petition fails to raise any revenue to fund it.

14 The Petition therefore “creat[es] a new requirement for the appropriation of
15 state funding that does not now exist,” *Educ. Freedom PAC*, 138 Nev., Adv. Op. 47,
16 512 P.3d at 304, and leaves “budgeting officials no discretion in appropriating or
17 expending the money mandated by the initiative—the budgeting official must
18 approve the appropriation or expenditure” to comply with its provisions. *Herbst*
19 *Gaming*, 122 Nev. at 890, 141 P.3d at 1233. Because the Petition requires an
20

21 ⁶ See, e.g., Nevada Legislature Committee to Conduct an Interim Study of the
22 Requirements for Reapportionment and Redistricting in the State of Nevada (Aug.
23 27, 2020),
24 <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/16591>;
25 Committee to Conduct an Investigation into Matters Relating to Reapportionment
26 and Redistricting in Nevada,
27 <https://www.leg.state.nv.us/App/InterimCommittee/REL/Interim2021/Committee/1909/Staff>; Nevada Legislature, Summary Minutes of the Public Hearing by Special
28 Masters to Receive Testimony Concerning Redistricting of Legislative and Congressional Districts,
<https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/14769>.

1 appropriation and expenditure but does not "provide[] for raising the necessary
2 revenue" as Article 19, Section 6 requires, it is void ab initio for unlawfully mandating
3 an unfunded expenditure. *Rogers*, 117 Nev. at 173, 18 P.3d at 1036.

4 **II. The Petition's description of effect's omission of critical information
renders it legally insufficient.**

5 The Petition also includes an unlawfully deficient description of its effects.

6 Under NRS 295.009(1)(b), initiative petitions must "set forth, in not more than 200
7 words, a description of the effect of the initiative or referendum if the initiative or
8 referendum is approved by the voters." The description of effect should "prevent voter
9 confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev. 930,
10 939, 142 P.3d 339, 345 (2006) (per curiam) (quoting *Campbell v. Buckley*, 203 F.3d
11 738, 746 (10th Cir. 2000)). To achieve this end, "a description of effect must identify
12 what the law proposes and how it intends to achieve that proposal." *Educ. Initiative*
13 *PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013). In
14 doing so, the description "must be straightforward, succinct, and nonargumentative,
15 and it must not be deceptive or misleading." *Id.* (cleaned up) (quoting *Las Vegas*
16 *Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 183, 208 P.3d 429, 441
17 (2009)). A description must also sufficiently "explain the[] ramifications of the
18 proposed amendment" to allow voters to make an informed decision. *Nev. Judges*
19 *Ass'n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996). A description does not need
20 to describe *every* possible effect, but it must accurately describe the main
21 consequences of the initiative. *See, e.g., Las Vegas Taxpayer Accountability Comm.*,
22 125 Nev. at 184, 208 P.3d at 441 (finding description of effect materially misleading
23 where it "materially fails to accurately identify the consequences of the referendum's
24 passage"). This includes identifying "the need for or nature of the revenue source" to
25 fund the proposed initiative. *Educ. Freedom PAC*, 138 Nev., Adv. Op. 47, 512 P.3d at
26 304.

1 The Petition's description of effect is legally deficient because it fails to include
2 a material fact that the First Judicial District Court held must be included in the
3 description of the materially identical 2019 petition. Ex. 3 at 4-5. The Petition's
4 description of effect does not include a statement that the Petition "will result in the
5 expenditure of state funds to fund the Commission," which the First Judicial District
6 Court ordered to be added to the 2019 petition's description of effect. *Id.* at 5. Like
7 the original description for the 2019 petition, the Petition's description therefore
8 "does not provide potential signatories with enough information about the cost
9 consequences of the Petition—specifically, that it will result in the expenditure of
10 state funds." *Id.* at 4.

11 The Petition's description of effect therefore fails to sufficiently "identify what
12 the law proposes and how it intends to achieve that proposal." *Educ. Initiative PAC*,
13 129 Nev. at 42, 293 P.3d at 879. This omission renders the Petition's description of
14 effect legally deficient.

15 CONCLUSION

16 Because the Petition would mandate significant public expenditures without
17 providing for reciprocal revenues, it violates Article 19, Section 6 of the Nevada
18 Constitution and is void. And because the description of effect omits critical
19 information, it is legally insufficient. The Court should therefore grant Plaintiffs
20 requested relief, striking the Petition and issuing an injunction prohibiting the
21 Secretary from taking further action upon it.

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DATED this 6th day of December, 2023.

By: [Signature]
[Signature] / CDR / CDR, ESC (CPN 10217)

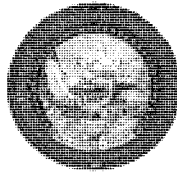
DAVID R. FOX, ESQ. (SBN 16536)
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Washington, D.C. 20001
Tele.: (202) 968-4490
Email: dfox@elias.law

Attorneys for Plaintiff

Exhibit 1

Exhibit 1

State of Nevada
Secretary of State
Francisco V. Aguilar



Notice of Intent
Statewide Initiative or
Referendum Petition
NRS 295.009 and 295.015

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

NAME OF PERSON FILING THE PETITION

Sondra Cosgrove

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

1. Sondra Cosgrove
2. Richard MacLean
3. Edward Gonzalez Jr.

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

Fair Maps Nevada

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

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

X Sondra Cosgrove
Signature of Petition Filer

11/14/2023
Date

State of Nevada - Initiative Petition – Constitutional Amendment

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

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

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

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

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

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

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

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

2. The Commission shall be composed of seven members who are registered and eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3. The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader shall each appoint one Commissioner. The four Commissioners appointed in this manner shall appoint three additional Commissioners, each of whom, for at least four years immediately preceding their appointment, has not been registered or affiliated with the largest political party or the second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.

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

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

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

6. The Commission shall adopt rules to govern its administration and operation.
7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

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

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

Section 5C. Severability.

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

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

This measure will amend the Nevada Constitution to establish 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 such individuals. Commission meetings shall be open to the public which shall have opportunities to participate in hearings.

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

This amendment will require redistricting following each federal census.

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

			This Space For Office Use Only
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	<div style="display: flex; justify-content: space-between;"> YOUR SIGNATURE DATE </div> <div style="text-align: center; margin-top: 10px;">/ /</div>	<div style="display: flex; justify-content: space-between;"> CITY COUNTY </div>	
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DESCRIPTION OF EFFECT

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 such individuals. Commission meetings shall be open to the public which shall have opportunities to participate in hearings.

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

This amendment will require redistricting following each federal census.

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

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

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

Signature of Circulator

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

Notary Public or person authorized to administer oath

EL501S
Revised 8/2019

Exhibit 2

Exhibit 2

State of Nevada - Initiative Petition – Constitutional Amendment

C-02-2019

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

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

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

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

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

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

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

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

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

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

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

Section 5C. Severability.

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

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

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

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

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

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

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

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3	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	DATE / /	CITY	COUNTY
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DESCRIPTION OF EFFECT

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

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

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

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

County of _____
Petition District _____

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

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Office Use Only

6	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	
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Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)

COUNTY OF _____)

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

Signature of Circulator _____

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

Notary Public or person authorized to administer oath

EL501C
Revised 8/2019

Exhibit 3

Exhibit 3

1 Adam Hosmer-Henner, Esq. (NSBN 12779)
2 Lucas Foletta, Esq. (NSBN 12154)
3 MCDONALD CARANO
4 100 West Liberty Street, 10th Floor
5 Reno, NV 89501
6 (775) 788-2000
7 ahosmerhenner@mcdonaldcarano.com
8 lfoletta@mcdonaldcarano.com

9 *Attorneys for Defendant*
10 *Fair Maps Nevada PAC*

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

13 * * *

14 REV. LEONARD JACKSON,

15 Plaintiff,

16 vs.

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

20 Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

21 **ORDER**

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

//

//

REC'D & FILED

2020 JAN -2 PM 12:15

AUBREY HENSLATT
CLERK

DEPUTY

PROCEDURAL BACKGROUND

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

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

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

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

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

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he argues that the Petition’s description of effect fails to comply with NRS 295.009(1)(b). More specifically, he contends that description of the commission as independent and the description of effect’s statement that the commission will oversee “the mapping of fair and competitive electoral districts,” are materially misleading statements. Compl. ¶¶ 15 & 23. He also asserts that the description of effect is deceptive and misleading because it fails to inform voters of a specific practical effect of passage of the Petition—that the redistricting commission will “undo” electoral maps generated by the Legislature in 2021 “thus potentially doubling the resources that would otherwise be spent on redistricting following the 2020 census.” *Id.* at ¶¶ 30. Plaintiff’s Complaint is limited to his challenge to the description of effect.

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

7 LEGAL STANDARDS

8 Article 19, Section 2 of the Nevada Constitution enshrines the people's right to amend
9 the Nevada Constitution by initiative petition. Specifically it states that "the people reserve to
10 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
11 Nev. Const. art. 19, § 2(1). The Nevada Constitution further provides that the Legislature "may
12 provide by law for procedures to *facilitate* the operation thereof." *Id.* art. 19, § 5 (emphasis
13 added). In interpreting such laws, the courts "must make every effort to sustain and preserve the
14 people's constitutional right to amend their constitution through the initiative process."
15 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247
16 (2006).

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

27 In reviewing a description of effect, "it is inappropriate to parse the meanings of the
28 words and phrases used in a description of effect" as closely as a reviewing court would a

1 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
2 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
3 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
4 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
5 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

6 FINDINGS OF FACT AND CONCLUSIONS OF LAW

7 In this case, the description of effect for the Petition does not meet the requirements of
8 NRS 295.009(1)(b). The description of effect could be argumentative or confusing or
9 misleading to voters as currently written. The description of effect does not adequately explain
10 to voters what is meant by the term “independent” or the phrase “fair and competitive.” The
11 Court further finds that the description of effect is inadequate in that it does not provide potential
12 signatories with enough information about the cost consequences of the Petition—specifically,
13 that it will result in the expenditure of state funds. *See, e.g., Nev. Judges Ass’n v. Lau*, 112 Nev.
14 51,59 (1996). The Petition also does not adequately inform voters that the Petition would result
15 in redistricting in 2023 after the Legislature has already drawn electoral districts after the 2020
16 Census.

17 The Court finds that the above-referenced deficiencies may be cured through the revised
18 description of effect provided herein. NRS 295.061(3) provides that “[i]f a description of the
19 effect of an initiative or referendum required pursuant to NRS 295.009 is challenged
20 successfully . . . and such description is amended in compliance with the order of the court, the
21 amended description may not be challenged.” NRS 295.061(3). Thus, the Court, in consultation
22 with the parties, identifies a new description of effect that satisfies the legal standard required by
23 NRS 295.061(3). This revised description of effect states:

24
25 “This measure will amend the Nevada Constitution to establish a redistricting
26 commission to map electoral districts for the Nevada Senate, Assembly, and U.S. House of
Representatives.

27 The Commission will have seven members, four who will be appointed by the leadership
28 of the Legislature, and three who are unaffiliated with the two largest political parties who will
be appointed by the other four commissioners. Commissioners may not be partisan candidates,

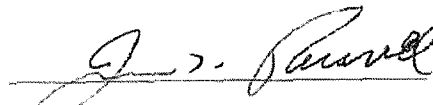
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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

9 This amendment requires redistricting after each federal census, beginning in 2023,
10 which could replace maps drawn by the Legislature after the 2020 census, and will result in the
11 expenditure of state funds to fund the Commission.”

12 **IT IS THEREFORE ORDERED** and declared that the description of effect filed with
13 the Secretary of State on November 4, 2019 failed to satisfy the requirements of NRS
14 295.009(1)(b). Thus, any signatures collected on the Petition containing the description of effect
15 are invalid. However, Defendant Fair Maps may re-file an amended petition with the revised
16 description of effect as set forth by this Order, which cures all deficiencies raised by Plaintiff
17 and identified by the Court. Upon re-filing, the description of effect will have been amended in
18 compliance with this Order and be accorded the finality set forth in NRS 295.061(3) and shall
19 not be subject to further challenge. NRS 295.061(3).

20 Dated this 2 day of January, 2020
21 ~~December, 2019.~~

22 
23 District Court Judge James Russell

24 Respectfully submitted by:

25 McDONALD CARANO LLP

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

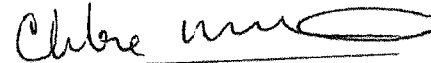
CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2 day of January 2020 deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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

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

Gregory L. Zunino, Esq.
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Chloe McClintick, Esq.
Law Clerk, Dept. 1

Exhibit 4

Exhibit 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

REV. LEONARD JACKSON,
Appellant/Cross-Respondent,
vs.
FAIR MAPS NEVADA PAC,
Respondent/Cross-Appellant,
and
BARBARA K. CEGAVSKE, IN HER
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE,
Respondent.

No. 80563

FILED

JUL 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a district court order granting declaratory relief in a ballot initiative matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

Reverend Leonard Jackson contends that the district court lacked "jurisdiction" to "rewrite" Fair Maps Nevada PAC's description of effect. We are not persuaded by Jackson's argument, as he has presented no authority that actually supports his position, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (requiring parties to support arguments with salient authority), nor has he explained how construing NRS 295.061(3) in such a manner would further any public policy goals, *see Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 800, 358 P.3d 234, 240 (2015) (recognizing that we construe statutes in accordance with "reason and public policy" (internal quotation marks omitted)).

Jackson next contends that Fair Maps' rewritten description of effect is still misleading. We disagree. While a description of effect must not be deceptive or misleading, *Educ. Initiative PAC v. Comm. to Protect*

Nev. Jobs, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013), Jackson's fixation on the description's use of "could" instead of "will" requires an improperly "hyper-technical" analysis of the description, *id.* at 49, 293 P.3d at 883-84. We are likewise unpersuaded that the district court failed to make sufficient factual findings. The only shortcoming Jackson alleges pertains to an issue that appeared in the original description of effect but that is absent from the amended description. Accordingly, we affirm the district court's order insofar as Jackson challenges it.

On cross-appeal, Fair Maps argues that the district court erred in determining that its original description of effect was misleading. In light of our above-mentioned determinations, however, this issue is moot, and we therefore dismiss Fair Maps' cross-appeal. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("This court's duty is not to render advisory opinions . . ."). In so doing, we note that Fair Maps has not indicated that it would prefer to proceed with its original petition instead of its amended petition. In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. James Todd Russell, District Judge
Benson Law LLC
Attorney General/Carson City
McDonald Carano LLP/Reno
Carson City Clerk

COPY

REC'D & FILED

2023 DEC -7 AM 9:33

WILLIAM SCOTT HOEN
K. PETERSON CLERK

BY _____ DEPUTY

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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 official
22 capacity as NEVADA SECRETARY OF
23 STATE;
24 Defendant.

Case No.: 230C0013716

Dept. No.: I

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-04-2023**

25 Plaintiff Eric Jeng, an individual registered to vote in Nevada, by and through
26 his attorneys of record, submits this Memorandum of Points and Authorities in
27 support of his Complaint for Declaratory and Injunctive Relief challenging Initiative
28 Petition C-04-2023 as follows:

INTRODUCTION

Initiative Petition C-04-2023 (the "Petition") seeks to amend Article 4, Section
5 of the Nevada Constitution to establish the "Independent Redistricting
Commission," require that redistricting be performed by a commission rather than

BRAVO SCHRAGER LLP

JA000104

1 by the Legislature, and require the existing districts, which would otherwise be in
2 place until the next decennial census, be redrawn in 2027. See **Exhibit 1**, a true and
3 accurate copy of the Notice of Intent to Circulate Statewide Initiative or Referendum
4 Petition associated with the Petition.

5 The Petition is invalid because it violates two threshold requirements of
6 Nevada law: (1) the Petition violates the unfunded-mandate prohibition in Article 19,
7 Section 6 of the Nevada Constitution because it will require the expenditure of state
8 money to fund the Commission but does not providing for raising the necessary
9 revenue, and (2) the Petition's description of effect is legally deficient under NRS
10 295.009(1)(b) because it fails to explain that the initiative will require the
11 expenditure of state funds and will prematurely invalidate the existing legislative
12 districts.

13 The Court should therefore enjoin the Nevada Secretary of State (the
14 "Secretary") from taking any further action on the Petition.

15 **BACKGROUND**

16 On November 14, 2023, Sondra Cosgrove, on behalf of the Fair Maps Nevada
17 PAC, filed the Petition with the Secretary. The Petition seeks to amend Article 4,
18 Section 5 of the Nevada Constitution to require that redistricting be performed by a
19 commission rather than by the Legislature.

20 The Petition proposes the creation of a new, seven-member state body—the
21 "Independent Redistricting Commission"—within the legislative branch, tasked with
22 drawing districts for state legislators and congressional representatives. Ex. 1, at 1.
23 The Commission would be required to ensure that districts comply with the U.S.
24 Constitution and applicable federal law, have an approximately equal number of
25 inhabitants, are geographically contiguous, are not drawn with "the intent or result
26 of denying or abridging the equal opportunity of racial or language minorities to
27 participate in the political process or elect representatives of their choice," do not
28

1 "unduly advantage or disadvantage a political party," reflect county, city, and
2 township boundaries, minimize the division of communities of interest, are
3 reasonably compact, and consider the number of politically competitive districts. *Id.*
4 at 2. The Commission's meetings would be open to the public, and the Commission
5 must ensure that the public has opportunities to view, present testimony, and
6 participate in Commission hearings. Commission materials would be public records.
7 *Id.* at 1-2.

8 The Petition would also invalidate the current legislative and congressional
9 districts—which would otherwise be in force until 2032—after the 2026 elections, and
10 require a new redistricting plan in 2027. *Id.* at 2. The Petition does not provide any
11 new revenue to fund any of these mandates. *See id.*

12 The Petition includes the following description of effect:

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

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

19 The Commission will ensure, to the extent possible, that the
20 districts comply with the U.S. Constitution, have an approximately
21 equal number of inhabitants, are geographically compact and
22 contiguous, provide equal opportunities for racial and language
23 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.

24 This amendment will require redistricting following the 2026
25 election and each federal census thereafter.

26 Ex. 1 at 3.
27
28

1 The substance of the Petition is nearly identical to a petition that was
2 previously circulated in 2019. See **Exhibit 2**, a true and accurate copy of Initiative
3 Petition C-02-2019; see also *Jackson v. Fair Maps Nevada PAC*, No. 19-OC-002909
4 1B (1st Jud. Dist. Ct. Nev., Carson City Jan. 2, 2020) (**Exhibit 3**), *aff'd*, No. 80563
5 (Nev. July 24, 2020) (**Exhibit 4**).

6 In reviewing a challenge to the 2019 petition's description of effect, the First
7 Judicial District Court concluded that the description was "inadequate in that it does
8 not provide potential signatories with enough information about the cost
9 consequences of the Petition—specifically, that it will result in the expenditure of
10 state funds." Ex. 3 at 4. The Court therefore rewrote the description of effect to specify
11 that the 2019 petition "will result in the expenditure of state funds to fund the
12 Commission." *Id.* at 5. The Court also concluded that the description did not
13 "adequately inform voters that the Petition would result in redistricting in 2023 after
14 the Legislature has already drawn electoral districts after the 2020 census" and
15 rewrote the description to expressly state that the 2019 petition would lead to new
16 maps "which could replace maps drawn by the Legislature after the 2020 census." *Id.*
17 at 4-5. The 2019 petition was circulated to voters with that revised description but
18 failed to attract sufficient signatures for inclusion on the ballot.

19 LEGAL STANDARD

20 Article 19, Section 6's prohibition on initiatives that mandate unfunded
21 expenditures is a "threshold content restriction" and voids any initiative that does
22 not comply. *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 303
23 (2022). Nevada law also allows challenges to an initiative petition where the
24 description of effect is deficient, see NRS 295.061, and where the petition embraces
25 more than one subject, see NRS 295.009(1)(a). Such challenges are "properly
26 evaluated at the preelection stage." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890
27
28

1 & n.38, 141 P.3d 1224, 1233 & n.38 (2006) (per curiam) (quoting *Rogers v. Heller*, 117
2 Nev.169, 173, 18 P.3d 1034, 1036 (2001) (per curiam)).

3 ARGUMENT

4 The Petition suffers from two fatal flaws. It violates the constitutional bar on
5 unfunded mandates because it would require the expenditure of government funds
6 but it does not provide any revenue source to cover these new costs. Its description of
7 effect is also inadequate because it does not mention that the Petition would require
8 the expenditure of state funds or that it would prematurely invalidate the existing
9 maps.

10 I. **The Petition unlawfully mandates an unfunded expenditure.**

11 Under Article 19, Section 6 of the Nevada Constitution, an initiative is
12 prohibited if it “makes an appropriation or otherwise requires the expenditure of
13 money, unless [it] also imposes a sufficient tax, not prohibited by the Constitution, or
14 otherwise constitutionally provides for raising the necessary revenue.” Accordingly,
15 when an initiative “creat[es] a new requirement for the appropriation of state funding
16 that does not now exist and provides no discretion to the Legislature about whether
17 to appropriate or expend the money” but does not provide for the necessary revenue,
18 it does not comply with Article 19, Section 6 and is thus void. *Educ. Freedom PAC v.*
19 *Reid*, 138 Nev., Adv. Op. 47, 512 P.3d at 303–04. “[A]n initiative makes an
20 appropriation or expenditure when . . . the budgeting official must approve the
21 appropriation or expenditure, regardless of any other financial considerations.”
22 *Herbst Gaming*, 122 Nev. at 890, 141 P.3d at 1233.

23 The Petition makes an appropriation under this standard because it requires
24 the creation of a new state body—the redistricting commission—which will
25 necessarily incur expenses, but the Petition fails to provide the revenue required to
26 cover those expenses.

27

28

1 There is no question that the Petition would require the expenditure of state
2 funds. The First Judicial District Court held in 2019 that the materially identical
3 2019 petition “will result in the expenditure of state funds,” and ordered the
4 description of effect amended to expressly say so. Ex. 3 at 4.¹ And redistricting
5 commissions in other states have required millions of dollars of state funding to carry
6 out their mandates. In California, the Citizens Redistricting Commission incurred
7 more than \$10 million in costs before the adoption of the final set of maps from July
8 1, 2020 through December 27, 2021.² In Arizona, appropriations for the Independent
9 Redistricting Commission totaled \$12,716,227 for 2011-2017 and \$8,400,000 for 2021-
10 2022.³ And in Ohio, the Office of Budget and Management estimated that a
11 constitutional amendment establishing a redistricting commission and requiring new
12 districts to be redrawn would cost between \$11 million and \$15.2 million over an
13 eight-year period.⁴ Redistricting expenditures under the Ohio Redistricting
14 Commission amounted to \$625,000 from 2020 through October 2021, for
15 “redistricting mapping software applications, consulting and research services,
16
17

18 ¹ The challenger in the 2019 case challenged only the description of effect, so
19 the Court did not consider the implications of this holding under Article 19, Section
20 6. *See id.*

21 ² Letter from Antonio Le Mons, Commissioner on California Citizens
22 Redistricting Commission, to Hans Hemann, Joint Legislative Budget Committee,
23 and Charles LaSalle, Department of Finance (June 30, 2023),
[https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2023/07/wd-2023-06-30-](https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2023/07/wd-2023-06-30-LegislatureExpReport.pdf)
[LegislatureExpReport.pdf](https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2023/07/wd-2023-06-30-LegislatureExpReport.pdf).

24 ³ Independent Redistricting Commission, FY 2023 Appropriations Report,
25 <https://www.azjlbc.gov/23AR/irc.pdf>.

26 ⁴ Letter from Timothy Keen, Director of Ohio Office of Budget & Management,
27 to Jon Husted, Ohio Secretary of State (Oct. 3,
28 2012), <https://www.ohiosos.gov/globalassets/ballotboard/2012/2-fiscalanalysis.pdf>.

1 mileage reimbursements, and other such expenses related to the process of
2 redistricting.”⁵

3 There is no reason to conclude that the funding requirements for the
4 redistricting commission the Petition proposes for Nevada would be any different.
5 The Petition requires that the Commission draw districts that comply with the U.S.
6 Constitution and federal law, are approximately equal in population, are
7 geographically contiguous, do not deny or abridge the equal opportunity of racial or
8 language minorities, do not favor any political party, reflect city, county, and
9 township boundaries, keep communities of interest together, are reasonably compact,
10 and consider the number of politically competitive districts. Ex. 1 at 2. Complying
11 with these requirements will require significant expert and technological support,
12 none of which are provided for in the Petition. Confirming this conclusion, the Nevada
13 legislative committees that have previously undertaken reapportionment and
14 redistricting have done so with the assistance of staff, including research staff,
15 legislative counsel, redistricting and GIS specialists, and special masters, all of which
16 carry significant expenses.⁶

17
18
19 ⁵ Fiscal Note & Local Impact Statement for S.B. 258 (Nov. 3,
20 2023), <https://www.legislature.ohio.gov/download?key=17742&format=pdf>.

21 ⁶ See, e.g., Nevada Legislature Committee to Conduct an Interim Study of the
22 Requirements for Reapportionment and Redistricting in the State of Nevada (Aug.
23 27, 2020), <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/16591>;
24 Committee to Conduct an Investigation into Matters Relating to Reapportionment
25 and Redistricting in Nevada,
26 [https://www.leg.state.nv.us/App/InterimCommittee/REL/Interim2021/Committee/19](https://www.leg.state.nv.us/App/InterimCommittee/REL/Interim2021/Committee/1909/Staff)
27 09/Staff; Nevada Legislature, Summary Minutes of the Public Hearing by Special
28 Masters to Receive Testimony Concerning Redistricting of Legislative and
Districts,
<https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/14769>.

1 Nor will the expenses of the Commission be limited to the redistricting itself.
2 Under the Petition, the Commission must hold meetings “open to the public,” with an
3 opportunity for public viewing, testimony, and participation, provide public notice of
4 proposed plans and an opportunity for public review and comment, and make its
5 records available as public records. Ex. 1 at 1. Meeting these requirements costs
6 money, too, but the Petition fails to raise any revenue to fund it.

7 The Petition therefore “creat[es] a new requirement for the appropriation of
8 state funding that does not now exist,” *Educ. Freedom PAC*, 138 Nev., Adv. Op. 47,
9 512 P.3d at 304, and leaves “budgeting officials no discretion in appropriating or
10 expending the money mandated by the initiative—the budgeting official must
11 approve the appropriation or expenditure” to comply with its provisions. *Herbst*
12 *Gaming*, 122 Nev. at 890, 141 P.3d at 1233. Because the Petition requires an
13 appropriation and expenditure but does not “provide[] for raising the necessary
14 revenue” as Article 19, Section 6 requires, it is void ab initio for unlawfully mandating
15 an unfunded expenditure. *Rogers*, 117 Nev. at 173, 18 P.3d at 1036.

16 **II. The Petition’s description of effect’s omission of critical details**
17 **renders it legally insufficient.**

18 The Petition also includes an unlawfully deficient description of its effects.
19 Under NRS 295.009(1)(b), initiative petitions must “set forth, in not more than 200
20 words, a description of the effect of the initiative or referendum if the initiative or
21 referendum is approved by the voters.” The description of effect should “prevent voter
22 confusion and promote informed decisions.” *Nevadans for Nev. v. Beers*, 122 Nev. 930,
23 939, 142 P.3d 339, 345 (2006) (per curiam) (quoting *Campbell v. Buckley*, 203 F.3d
24 738, 746 (10th Cir. 2000)). To achieve this end, “a description of effect must identify
25 what the law proposes and how it intends to achieve that proposal.” *Educ. Initiative*
26 *PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013). In
27 doing so, the description “must be straightforward, succinct, and nonargumentative,
28 and it must not be deceptive or misleading.” *Id.* (cleaned up) (quoting *Las Vegas*

1 *Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 183, 208 P.3d 429, 441
2 (2009)). A description must also sufficiently “explain the[] ramifications of the
3 proposed amendment” to allow voters to make an informed decision. *Nev. Judges*
4 *Ass’n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996). A description does not need
5 to describe *every* possible effect, but it must accurately describe the main
6 consequences of the initiative. *See, e.g., Las Vegas Taxpayer Accountability Comm.*,
7 125 Nev. at 184, 208 P.3d at 441 (finding description of effect materially misleading
8 where it “materially fails to accurately identify the consequences of the referendum’s
9 passage”). This includes identifying “the need for or nature of the revenue source” to
10 fund the proposed initiative. *Educ. Freedom PAC*, 138 Nev., Adv. Op. 47, 512 P.3d at
11 304.

12 The Petition’s description of effect is legally deficient because it fails to include
13 two material facts that the First Judicial District Court held must be included in the
14 description of the materially identical 2019 petition. Ex. 3 at 4–5. *First*, the Petition’s
15 description of effect does not include a statement that the Petition “will result in the
16 expenditure of state funds to fund the Commission,” which the First Judicial District
17 Court ordered to be added to the 2019 petition’s description of effect. *Id.* at 5. Like
18 the original description for the 2019 petition, the Petition’s description therefore
19 “does not provide potential signatories with enough information about the cost
20 consequences of the Petition—specifically, that it will result in the expenditure of
21 state funds.” *Id.* at 4.

22 *Second*, the Petition’s description of effect does not include a statement that
23 the Petition provides for mid-cycle redistricting that “could replace maps drawn by
24 the Legislature after the 2020 census,” which the First Judicial District Court ordered
25 added to the 2019 petition’s description of effect after holding that the original
26 description did “not adequately inform voters that the Petition would result in
27 redistricting in 2023 after the Legislature has already drawn electoral districts after
28

1 the 2020 census." *Id.* at 4–5. The Petition's description says only that the Petition
2 "will require redistricting following the 2026 election and each federal census
3 thereafter," which is exactly the language that the First Judicial District Court held
4 inadequate in 2019. *See id.* at 2 ("This amendment will require redistricting by the
5 Commission beginning in 2023 and thereafter following each federal census.").

6 The Petition's description of effect therefore fails to sufficiently "identify what
7 the law proposes and how it intends to achieve that proposal." *Educ. Initiative PAC*,
8 129 Nev. at 42, 293 P.3d at 879. Independently and collectively, these omissions
9 render the Petition's description of effect legally deficient.

10 CONCLUSION

11 Because the Petition would mandate significant public expenditures without
12 providing for reciprocal revenues, it violates Article 19, Section 6 of the Nevada
13 Constitution and is void. And because the description of effect omits critical details,
14 it is legally insufficient. The Court should therefore grant Plaintiff's requested relief,
15 striking the Petition and issuing an injunction prohibiting the Secretary from taking
16 further action upon it.

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DATED this 6th day of December, 2023.

By: *[Signature]*

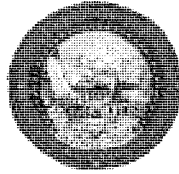
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Attorneys for Plaintiff

Exhibit 1

Exhibit 1

State of Nevada
Secretary of State
Francisco V. Aguilar



Notice of Intent
Statewide Initiative or
Referendum Petition
NRS 295.009 and 295.015

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

NAME OF PERSON FILING THE PETITION

Sondra Cosgrove

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

1. Sondra Cosgrove
2. Richard MacLean
3. Edward Gonzalez Jr.

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

Fair Maps Nevada

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

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

X Sondra Cosgrove
Signature of Petition Filer

11/14/2023
Date

State of Nevada - Initiative Petition – Constitutional Amendment

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

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

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

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

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

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

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

- 1. There is created within the legislative branch of state government the Independent Redistricting Commission. It shall be the duty of the Commission no later than December 31, 2027 and after each decennial census of the United States thereafter, to apportion the number of Senators and Assemblymen among legislative districts established by the Commission and to apportion the number of representatives in the United States House of Representatives among districts established by the Commission.***
- 2. The Commission shall be composed of seven members who are registered and eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3. The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader shall each appoint one Commissioner. The four Commissioners appointed in this manner shall appoint three additional Commissioners, each of whom, for at least four years immediately preceding their appointment, has not been registered or affiliated with the largest political party or the second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.***
- 3. Within four years preceding appointment and during their term, no Commissioner may be a registered lobbyist; a candidate for a federal, state, or partisan local office; an elected official to a federal, state, or partisan local office; an officer or member of the governing body of a national, state, or local political party; a paid consultant or employee of a federal, state, or partisan local elected official or candidate, or of a political action committee, or of a committee sponsored by a political party, or of a committee that seeks to influence elections to federal, state, or partisan local offices; an employee of the Legislature; an employee of the State of Nevada, except for employees in the judicial branch, the armed forces, or a state institution of higher education; or related within the third degree of consanguinity or affinity to any individual disqualified under this subsection.***
- 4. The term of office of each Commissioner shall expire once the Commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete and shall expire no later than the release of the following decennial census of the United States.***
- 5. All meetings of the Commission shall be open to the public. The Commission shall ensure that the public has opportunities to view, present testimony, and participate in hearings before the Commission. All Commission materials shall be public records.***

6. The Commission shall adopt rules to govern its administration and operation.
7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

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

1. In adopting a redistricting plan, the Independent Redistricting Commission shall use the following criteria, in the order listed, to draw districts: Ensure that districts comply with the United States Constitution and applicable federal law; Ensure that districts have an approximately equal number of inhabitants; Ensure that districts are geographically contiguous; Ensure that districts are not drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or elect representatives of their choice, whether by themselves or voting in concert with other persons; Ensure that districts, when considered on a statewide basis, do not unduly advantage or disadvantage a political party; Ensure that districts reflect, to the extent possible, county, city, and township boundaries; Minimize, to the extent practicable, the division of communities of interest, meaning an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities, but not including common relationships with political parties or political candidates; Ensure that districts are reasonably compact; and to the extent practicable, after complying with the requirements above, consider the number of politically competitive districts, measured by creating a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses.
2. Not later than December 31, 2027 and 180 days from the release of the decennial census of the United States thereafter, the Commission shall approve a redistricting plan for the Nevada State Senate, the Nevada State Assembly, and Nevada's Congressional Districts, after providing public notice of each proposed final plan and allowing sufficient time for public review and comment. A final plan may be approved by the Commission only upon at least five affirmative votes, including at least one Commissioner registered with the largest political party, one Commissioner registered with the second largest political party, and one Commissioner not registered or affiliated with the largest or second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year.

Section 5C. Severability.

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

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

This measure will amend the Nevada Constitution to establish 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 such individuals. Commission meetings shall be open to the public which shall have opportunities to participate in hearings.

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

This amendment will require redistricting following the 2026 election and each federal census thereafter.

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

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1	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY
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DESCRIPTION OF EFFECT

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 such individuals. Commission meetings shall be open to the public which shall have opportunities to participate in hearings.

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

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Petition District _____

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	<div style="display: flex; justify-content: space-between;"> YOUR SIGNATURE DATE </div> <div style="text-align: center; margin-top: 10px;">/ /</div>	CITY	COUNTY

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

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

Signature of Circulator

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

Notary Public or person authorized to administer oath

EL501S
Revised 8/2019

Exhibit 2

Exhibit 2

State of Nevada - Initiative Petition – Constitutional Amendment

C-02-2019

FILED NV.SOS
2019 NOV 4 PM 4:16

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

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

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

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

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

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

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

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

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

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

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

Section 5C. Severability.

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

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

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

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

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

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

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AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)

COUNTY OF _____)

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

Signature of Circulator

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

Notary Public or person authorized to administer oath

Exhibit 3

Exhibit 3

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

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED

2020 JAN -2 PM 12:15

AUBREY ROWLATT
CLERK

DEPUTY

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

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

ORDER

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

//

//

MCDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.798.2500 • FAX 775.785.2020

PROCEDURAL BACKGROUND

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

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

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

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

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

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he argues that the Petition's description of effect fails to comply with NRS 295.009(1)(b). More specifically, he contends that description of the commission as independent and the description of effect's statement that the commission will oversee "the mapping of fair and competitive electoral districts," are materially misleading statements. Compl. ¶¶ 15 & 23. He also asserts that the description of effect is deceptive and misleading because it fails to inform voters of a specific practical effect of passage of the Petition—that the redistricting commission will "undo" electoral maps generated by the Legislature in 2021 "thus potentially doubling the resources that would otherwise be spent on redistricting following the 2020 census." *Id.* at ¶¶ 30. Plaintiff's Complaint is limited to his challenge to the description of effect.

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

7 LEGAL STANDARDS

8 Article 19, Section 2 of the Nevada Constitution enshrines the people's right to amend
9 the Nevada Constitution by initiative petition. Specifically it states that "the people reserve to
10 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
11 Nev. Const. art. 19, § 2(1). The Nevada Constitution further provides that the Legislature "may
12 provide by law for procedures to *facilitate* the operation thereof." *Id.* art. 19, § 5 (emphasis
13 added). In interpreting such laws, the courts "must make every effort to sustain and preserve the
14 people's constitutional right to amend their constitution through the initiative process."
15 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247
16 (2006).

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

27 In reviewing a description of effect, "it is inappropriate to parse the meanings of the
28 words and phrases used in a description of effect" as closely as a reviewing court would a

1 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
2 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
3 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
4 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
5 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

6 FINDINGS OF FACT AND CONCLUSIONS OF LAW

7 In this case, the description of effect for the Petition does not meet the requirements of
8 NRS 295.009(1)(b). The description of effect could be argumentative or confusing or
9 misleading to voters as currently written. The description of effect does not adequately explain
10 to voters what is meant by the term “independent” or the phrase “fair and competitive.” The
11 Court further finds that the description of effect is inadequate in that it does not provide potential
12 signatories with enough information about the cost consequences of the Petition—specifically,
13 that it will result in the expenditure of state funds. *See, e.g., Nev. Judges Ass’n v. Lau*, 112 Nev.
14 51,59 (1996). The Petition also does not adequately inform voters that the Petition would result
15 in redistricting in 2023 after the Legislature has already drawn electoral districts after the 2020
16 Census.

17 The Court finds that the above-referenced deficiencies may be cured through the revised
18 description of effect provided herein. NRS 295.061(3) provides that “[i]f a description of the
19 effect of an initiative or referendum required pursuant to NRS 295.009 is challenged
20 successfully . . . and such description is amended in compliance with the order of the court, the
21 amended description may not be challenged.” NRS 295.061(3). Thus, the Court, in consultation
22 with the parties, identifies a new description of effect that satisfies the legal standard required by
23 NRS 295.061(3). This revised description of effect states:

24
25 “This measure will amend the Nevada Constitution to establish a redistricting
26 commission to map electoral districts for the Nevada Senate, Assembly, and U.S. House of
Representatives.

27 The Commission will have seven members, four who will be appointed by the leadership
28 of the Legislature, and three who are unaffiliated with the two largest political parties who will
be appointed by the other four commissioners. Commissioners may not be partisan candidates,

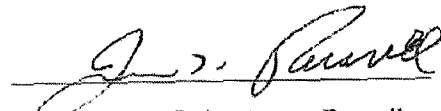
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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

9 This amendment requires redistricting after each federal census, beginning in 2023,
10 which could replace maps drawn by the Legislature after the 2020 census, and will result in the
11 expenditure of state funds to fund the Commission.”

12 **IT IS THEREFORE ORDERED** and declared that the description of effect filed with
13 the Secretary of State on November 4, 2019 failed to satisfy the requirements of NRS
14 295.009(1)(b). Thus, any signatures collected on the Petition containing the description of effect
15 are invalid. However, Defendant Fair Maps may re-file an amended petition with the revised
16 description of effect as set forth by this Order, which cures all deficiencies raised by Plaintiff
17 and identified by the Court. Upon re-filing, the description of effect will have been amended in
18 compliance with this Order and be accorded the finality set forth in NRS 295.061(3) and shall
19 not be subject to further challenge. NRS 295.061(3).

20 Dated this 2 day of January, 2020.
21 ~~December, 2019.~~

22 
23 District Court Judge James Russell

24 Respectfully submitted by:

25 McDONALD CARANO LLP

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

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2 day of January 2020 I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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

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

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

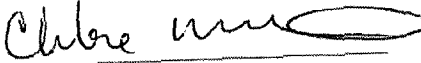

Chloe McClintick, Esq.
Law Clerk, Dept. 1

Exhibit 4

Exhibit 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

REV. LEONARD JACKSON,
Appellant/Cross-Respondent,
vs.
FAIR MAPS NEVADA PAC,
Respondent/Cross-Appellant,
and
BARBARA K. CEGAVSKE, IN HER
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE,
Respondent.

No. 80563

FILED

JUL 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a district court order granting declaratory relief in a ballot initiative matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

Reverend Leonard Jackson contends that the district court lacked "jurisdiction" to "rewrite" Fair Maps Nevada PAC's description of effect. We are not persuaded by Jackson's argument, as he has presented no authority that actually supports his position, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (requiring parties to support arguments with salient authority), nor has he explained how construing NRS 295.061(3) in such a manner would further any public policy goals, *see Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 800, 358 P.3d 234, 240 (2015) (recognizing that we construe statutes in accordance with "reason and public policy" (internal quotation marks omitted)).

Jackson next contends that Fair Maps' rewritten description of effect is still misleading. We disagree. While a description of effect must not be deceptive or misleading, *Educ. Initiative PAC v. Comm. to Protect*

SUPREME COURT
OF
NEVADA

(U) 1947A 

20-27106

JA000136

Nev. Jobs, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013), Jackson's fixation on the description's use of "could" instead of "will" requires an improperly "hyper-technical" analysis of the description, *id.* at 49, 293 P.3d at 883-84. We are likewise unpersuaded that the district court failed to make sufficient factual findings. The only shortcoming Jackson alleges pertains to an issue that appeared in the original description of effect but that is absent from the amended description. Accordingly, we affirm the district court's order insofar as Jackson challenges it.

On cross-appeal, Fair Maps argues that the district court erred in determining that its original description of effect was misleading. In light of our above-mentioned determinations, however, this issue is moot, and we therefore dismiss Fair Maps' cross-appeal. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("This court's duty is not to render advisory opinions . . ."). In so doing, we note that Fair Maps has not indicated that it would prefer to proceed with its original petition instead of its amended petition. In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. James Todd Russell, District Judge
Benson Law LLC
Attorney General/Carson City
McDonald Carano LLP/Reno
Carson City Clerk

BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
 DANIEL BRAVO, ESQ. (SBN 13078)
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 Washington, D.C. 20001
 Tele.: (202) 968-4490
 Email: dfox@elias.law

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.

Case No.: 23 OC 00137 1B

Dept. No.: I

PEREMPTORY CHALLENGE OF JUDGE

Plaintiff ERIC JENG by and through his attorneys of record, pursuant to Rule 48.1 of the Nevada Supreme Court Rules, does hereby give notice of their peremptory challenge of the Honorable James T. Russell, and ask pursuant to this Rule that the matter be transferred by random selection to a different judge.

///

///


///

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 11th day of December, 2023.

5 **BRAVO SCHRAGER LLP**

6
7 By: 
8 BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
9 DANIEL BRAVO, ESQ. (SBN 13078)
6675 South Tenaya Way, Suite 200
Las Vegas, Nevada 89113
Tele.: (702) 996-1724
Email: bradley@bravoschrager.com
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11 DAVID R. FOX, ESQ. (SBN 16536)
12 ELIAS LAW GROUP LLP
13 250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20001
14 Tele.: (202) 968-4490
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15 *Attorneys for Plaintiff*

1 BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
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2 BRAVO SCHRAGER LLP
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3 Las Vegas, Nevada 89113
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6 ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
7 Washington, D.C. 20001
Tele.: (202) 968-4490
8 Email: dfox@elias.law

9 *Attorneys for Plaintiff*

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

13 ERIC JENG, an individual,

14 Plaintiff,

15 vs.

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

18 Defendant.

Case No.: 23 OC 00138 1B

Dept. No.: I

19
20 **PEREMPTORY CHALLENGE OF JUDGE**

21 Plaintiff ERIC JENG by and through his attorneys of record, pursuant to Rule
22 48.1 of the Nevada Supreme Court Rules, does hereby give notice of their preemptory
23 challenge of the Honorable James T. Russell, and ask pursuant to this Rule that the
24 matter be transferred by random selection to a different judge.

25 ///

26 ///

27 ///


28

AFFIRMATION

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

DATED this 11th day of December, 2023.

BRAVO SCHRAGER LLP

By: 

BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
DANIEL BRAVO, ESQ. (SBN 13078)
6675 South Tenaya Way, Suite 200
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Attorneys for Plaintiff

REC'D & FILED
2023 DEC 15 PM 2:16
WILLIAM SCOTT HOSE
CLERK
BY *[Signature]*
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.: 22 OC 00137 1B

Dept. No.: 1

ORDER TRANSFERRING CASE TO SENIOR JUDGE

This case, upon filing, was assigned to Department 1 of the First Judicial District Court of the State of Nevada, in and for Carson City, in which said department District Judge James T. Russell presides.

On December 12, 2023, a Notice of Peremptory Challenge of Judge was filed by Plaintiff against Judge James T. Russell, transferring the case to Department 2, in which said department District Judge James E. Wilson, Jr. presides.

Due to Judge Wilson's retirement on January 5, 2024, and this matter being a priority matter pursuant to NRS 295.061(1). This Court finds it appropriate to assign a Senior Judge to handle this matter.

///


///

///

1 Therefore, good cause appearing,

2 NOW, THEREFORE, IT IS HEREBY ORDERED that the above-entitled matter be
3 assigned to a Senior Judge presiding in Department Two, for all further proceedings.
4

5 DATED this 15 day of December, 2023

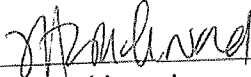
6 
7 JAMES E. WILSON, JR.
8 District Judge
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CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 15 day of December, 2023, I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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

Lucas Foletta, Esq.
Joshua Hicks, Esq.
Adam Hosmer-Henner, Esq.
McDonald Carano LLP
100 W Liberty Street, 10th Floor
Reno, NV 89501


Julie Harkleroad
Judicial Assistant, Dept. 1

REC'D & FILED
2023 DEC 15 PM 2:16

WILLIAM SCOTT HOEN
CLERK
BY *[Signature]*
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.: 22 OC 00138 1B

Dept. No.: 1

ORDER TRANSFERRING CASE TO SENIOR JUDGE

This case, upon filing, was assigned to Department 1 of the First Judicial District Court of the State of Nevada, in and for Carson City, in which said department District Judge James T. Russell presides.

On December 12, 2023, a Notice of Peremptory Challenge of Judge was filed by Plaintiff against Judge James T. Russell, transferring the case to Department 2, in which said department District Judge James E. Wilson, Jr. presides.

Due to Judge Wilson's retirement on January 5, 2024, and this matter being a priority matter pursuant to NRS 295.061(1). This Court finds it appropriate to assign a Senior Judge to handle this matter.

///

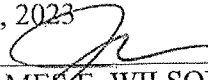
///

///

1 Therefore, good cause appearing,

2 NOW, THEREFORE, IT IS HEREBY ORDERED that the above-entitled matter be
3 assigned to a Senior Judge presiding in Department Two, for all further proceedings.
4

5 DATED this 15 day of December, 2023

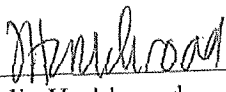
6 
7 JAMES E. WILSON, JR.
8 District Judge
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CERTIFICATE OF MAILING

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100 W Liberty Street, 10th Floor
Reno, NV 89501


Julie Harkleroad
Judicial Assistant, Dept. 1

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

REC'D & FILED
2023 DEC 18 PM 3:57
WILLIAM COURTNEY
BY **D. ORTIZ**
CLERK

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

ERIC JENG, an individual,

Plaintiffs,

vs.

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

Defendant.

Case No.: 23 OC 000137 1B

Dept. No.: I

**ANSWER TO 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 responds to Plaintiff's Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2023 ("Complaint"), as follows:

JURISDICTION AND VENUE

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

2. The allegations in Paragraph 2 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations in Paragraph 2.

PARTIES

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

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

3 **GENERAL FACTUAL ALLEGATIONS**

4 5. Fair Maps denies the allegations in Paragraph 5, except admits that the Initiative
5 Petition designated as C-04-2023 (the "Petition") was filed on November 14, 2023, and that the
6 text of the Petition is as stated in Exhibit 1 to the Complaint.

7 6. Fair Maps denies the allegations in Paragraph 6, except admits that the text of the
8 Petition is as stated in Exhibit 1 to the Complaint.

9 7. Fair Maps denies the allegations in Paragraph 7, except admits that the text of the
10 Petition is as stated in Exhibit 1 to the Complaint.

11 8. Fair Maps denies the allegations in Paragraph 8, except admits that the text of the
12 Petition is as stated in Exhibit 1 to the Complaint, the text of the Initiative Petition C-02-2019 is
13 as stated in Exhibit 2 to the Complaint, the text of the First Judicial District Court dated January
14 2, 2020 ("FJDCR Order") is as stated in Exhibit 3 to the Complaint, and the Nevada Supreme
15 Court Order of Affirmance ("NSC Order") is as stated in Exhibit 4 to the Complaint.

16 9. Fair Maps denies the allegations in Paragraph 9, except admits that the text of the
17 FJDCR Order is as stated in Exhibit 3 to the Complaint.

18 10. Fair Maps denies the allegations in Paragraph 10, except admits that the text of the
19 FJDCR Order is as stated in Exhibit 3 to the Complaint.

20 11. Fair Maps denies the allegations in Paragraph 11.

21 **FIRST CAUSE OF ACTION**

22 **Violation of Unfunded Mandate Prohibition, Nev. Const. Art. 19, Sec. 6**

23 12. Fair Maps repeats, re-alleges, and incorporates its responses in the foregoing
24 paragraphs as if fully set forth herein.

25 13. Fair Maps denies the allegations in Paragraph 13, except admits that the full text
26 of Nev. Const. Art. 19, Sec. 6 is as follows:

27 **Sec. 6. Limitation on initiative making appropriation or requiring**
28 **expenditure of money.** This Article does not permit the proposal of any statute
or statutory amendment which makes an appropriation or otherwise requires the
expenditure of money, unless such statute or amendment also imposes a sufficient
tax, not prohibited by the Constitution, or otherwise constitutionally provides for
raising the necessary revenue.

14. The allegations in Paragraph 14 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph 14.

15. The allegations in Paragraph 15 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph 15.

16. Fair Maps denies the allegations in Paragraph 16.

17. Fair Maps denies the allegations in Paragraph 17.

18. Fair Maps denies the allegations in Paragraph 18, except admits that the text of the FJDCR Order is as stated in Exhibit 3 to the Complaint.

19. Fair Maps is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and denies them on that basis.

20. Fair Maps is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and denies them on that basis.

21. Fair Maps is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and denies them on that basis.

22. Fair Maps denies the allegations in Paragraph 22.

23. Fair Maps is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and denies them on that basis.

24. Fair Maps denies the allegations in Paragraph 24.

25. The allegations in Paragraph 25 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph 25.

SECOND CAUSE OF ACTION

Violation of Description of Effect Requirement, NRS 295.009(1)(b)

26. Fair Maps repeats, re-alleges, and incorporates its responses in the foregoing paragraphs as if fully set forth herein.

27. Fair Maps denies the allegations in Paragraph 27, except admits that the full text of NRS 295.009 is as follows:

1. Each petition for initiative or referendum must:

(a) Embrace but one subject and matters necessarily connected therewith and pertaining thereto; and

(b) Set 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 description must appear on each signature page of the petition.

2. For the purposes of paragraph (a) of subsection 1, a petition for initiative or referendum embraces but one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative or referendum are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative or referendum.

28. The allegations in Paragraph 28 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph 28.

29. The allegations in Paragraph 29 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph 29.

30. Fair Maps denies the allegations in Paragraph 30.

31. Fair Maps denies the allegations in Paragraph 31.

32. Fair Maps denies the allegations in Paragraph 32.

33. Fair Maps denies the allegations in Paragraph 33.

AFFIRMATIVE DEFENSES

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

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

2. Estoppel and other equitable doctrines bar the allegations in the Complaint.

3. Fair Maps may not have alleged all possible affirmative defenses insofar as sufficient facts were unavailable upon the filing of the Answer, and therefore reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

PRAYER FOR RELIEF

WHEREFORE, Fair Maps prays as follows:

1. That Plaintiffs take nothing by way of its Complaint;
2. Plaintiffs' Complaint be dismissed with prejudice;
3. That the Petition is valid and complies with Nevada law;
2. That judgment be entered in favor of Fair Maps;

- 1 4. For an award of attorney fees and costs incurred in the defense of this action; and
2 5. For such other and further relief as the Court deems just and proper under all the
3 circumstances of this matter.

4 **AFFIRMATION**

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

7 DATED this 16 day of December, 2023.

8 McDONALD CARANO LLP

9
10 By: 

Lucas Foletta, Esq. (NSBN 12154)
Joshua Hicks (NSBN 6679)
Adam Hosmer-Henner (NSBN 12779)
100 W. Liberty Street, Tenth Floor
Reno, NV 89501
Telephone: (775) 788-2000

11
12
13
14 *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 December 18, 2023, I served the within **ANSWER TO 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:

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.

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 December 18, 2023 at Reno, Nevada.

By Carol S. Smith
An employee of McDonald Carano LLP

Lucas Foletta (NSBN 12154)
Joshua Hicks (NSBN 6679)
Adam Hosmer-Henner (NSBN 12779)
McDONALD CARANO LLP
100 W. Liberty St., 10th Floor
Reno, Nevada 89501
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lfoletta@mdonaldecarano.com
jhicks@mdonaldecarano.com
ahosmerhenner@mdonaldecarano.com

Attorneys for Intervenor Fair Maps Nevada

REC'D & FILED
2023 DEC 18 PM 4:01
WILLIAM COURTNEY
BY D. ORTIZ
CLERK

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

ERIC JENG, an individual,

Plaintiffs,

vs.

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

Defendant.

Case No.: 23 OC 000138 1B

Dept. No.: I

**ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
CHALLENGING INITIATIVE PETITION C-03-2023**

Intervenor Fair Maps Nevada, a Nevada political action committee ("Fair Maps"), by and through its attorneys, hereby responds to Plaintiff's Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-03-2023 ("Complaint"), as follows:

JURISDICTION AND VENUE

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

2. The allegations in Paragraph 2 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations in Paragraph 2.

PARTIES

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

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

3 **GENERAL FACTUAL ALLEGATIONS**

4 5. Fair Maps denies the allegations in Paragraph 5, except admits that the Initiative
5 Petition designated as C-03-2023 (the "Petition") was filed on November 14, 2023, and that the
6 text of the Petition is as stated in Exhibit 1 to the Complaint

7 6. Fair Maps denies the allegations in Paragraph 6, except admits that the text of the
8 Petition is as stated in Exhibit 1 to the Complaint.

9 7. Fair Maps denies the allegations in Paragraph 7, except admits that the text of the
10 Petition is as stated in Exhibit 1 to the Complaint.

11 8. Fair Maps denies the allegations in Paragraph 8, except admits that the text of the
12 Petition is as stated in Exhibit 1 to the Complaint, the text of the Initiative Petition C-02-2019 is
13 as stated in Exhibit 2 to the Complaint, the text of the First Judicial District Court order dated
14 January 2, 2020 ("FJDCR Order") is as stated in Exhibit 3 to the Complaint, and the Nevada
15 Supreme Court Order of Affirmance ("NSC Order") is as stated in Exhibit 4 to the Complaint.

16 9. Fair Maps denies the allegations in Paragraph 9, except admits that the text of the
17 FJDCR Order is as stated in Exhibit 3 to the Complaint.

18 10. Fair Maps denies the allegations in Paragraph 10.

19 **FIRST CAUSE OF ACTION**

20 **Violation of Unfunded Mandate Prohibition, Nev. Const. Art. 19, Sec. 6**

21 11. Fair Maps repeats, re-alleges, and incorporates its responses in the foregoing
22 paragraphs as if fully set forth herein.

23 12. Fair Map denies the allegations in Paragraph 12, except admits that the full text of
24 Nev. Const. Art. 19, Sec. 6 is as follows:

25 **Sec. 6. Limitation on initiative making appropriation or requiring**
26 **expenditure of money.** This Article does not permit the proposal of any statute
27 or statutory amendment which makes an appropriation or otherwise requires the
28 expenditure of money, unless such statute or amendment also imposes a sufficient
tax, not prohibited by the Constitution, or otherwise constitutionally provides for
raising the necessary revenue.

///

1 13. The allegations in Paragraph 13 set forth legal conclusions to which no response is
2 necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph 13.

3 14. The allegations in Paragraph 14 set forth legal conclusions to which no response is
4 necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph 14.

5 15. Fair Maps denies the allegations in Paragraph 15.

6 16. Fair Maps denies the allegations in Paragraph 16.

7 17. Fair Maps denies the allegations in Paragraph 17, except admits that the text of the
8 FJDCR Order is as stated in Exhibit 3 to the Complaint.

9 18. Fair Maps is without knowledge or information sufficient to form a belief as to
10 the truth of the allegations in Paragraph 18 and denies them on that basis.

11 19. Fair Maps is without knowledge or information sufficient to form a belief as to
12 the truth of the allegations in Paragraph 19 and denies them on that basis.

13 20. Fair Maps is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations in Paragraph 20 and denies them on that basis.

15 21. Fair Maps denies the allegations in Paragraph 21.

16 22. Fair Maps is without knowledge or information sufficient to form a belief as to
17 the truth of the allegations in Paragraph 22 and denies them on that basis.

18 23. Fair Maps denies the allegations in Paragraph 23.

19 24. The allegations in Paragraph 24 set forth legal conclusions to which no response
20 is necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph
21 24.

SECOND CAUSE OF ACTION

Violation of Description of Effect Requirement, NRS 295.009(1)(b)

22 25. Fair Maps repeats, re-alleges, and incorporates its responses in the foregoing
23 paragraphs as if fully set forth herein.

24 26. Fair Maps denies the allegations in Paragraph 26, except admits that the full text
25 of NRS 295.009 is as follows:

26 1. Each petition for initiative or referendum must:

27 (a) Embrace but one subject and matters necessarily connected therewith and
28 pertaining thereto; and

(b) Set 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 description must appear on each signature page of the petition.

2. For the purposes of paragraph (a) of subsection 1, a petition for initiative or referendum embraces but one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative or referendum are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative or referendum.

27. The allegations in Paragraph 27 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph 27.

28. The allegations in Paragraph 28 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations of Paragraph 28.

29. Fair Maps denies the allegations in Paragraph 29.

30. Fair Maps denies the allegations in Paragraph 30.

31. Fair Maps denies the allegations in Paragraph 31.

AFFIRMATIVE DEFENSES

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

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

2. Estoppel and other equitable doctrines bar the allegations in the Complaint.

3. Fair Maps may not have alleged all possible affirmative defenses insofar as sufficient facts were unavailable upon the filing of the Answer, and therefore reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

PRAYER FOR RELIEF

WHEREFORE, Fair Maps prays as follows:

1. That Plaintiffs take nothing by way of its Complaint;
2. Plaintiffs' Complaint be dismissed with prejudice;
3. That the Petition is valid and complies with Nevada law;
2. That judgment be entered in favor of Fair Maps;

- 1 4. For an award of attorney fees and costs incurred in the defense of this action; and
2 5. For such other and further relief as the Court deems just and proper under all the
3 circumstances of this matter.

4 **AFFIRMATION**

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

7 DATED this 18 day of December, 2023.

8 McDONALD CARANO LLP

9
10 By: 

11 Lucas Foletta, Esq. (NSBN 12154)

12 Joshua Hicks (NSBN 6679)

13 Adam Hosmer-Henner (NSBN 12779)

14 100 W. Liberty Street, Tenth Floor

15 Reno, NV 89501

16 Telephone: (775) 788-2000

17 *Attorneys for Fair Maps Nevada*
18
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23
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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 December 18, 2023, I served the within **ANSWER TO 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:

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.

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 December 18, 2023 at Reno, Nevada.

By Laena St-Jules
An employee of McDonald Carano LLP

Lucas Foletta (NSBN 12154)
Joshua Hicks (NSBN 6679)
Adam Hosmer-Henner (NSBN 12779)
Katrina Weil (NSBN 16152)
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lfoletta@mcdonalddcarano.com
jhicks@mcdonalddcarano.com
ahosmerhenner@mcdonalddcarano.com
kweil@mcdonalddcarano.com

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,
Plaintiffs,

vs.

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

Case No.: 23 OC 000137 1B

Dept. No.: I

**FAIR MAPS NEVADA'S ANSWERING BRIEF IN RESPONSE TO PLAINTIFF'S
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 submits its Answering Brief in Response to Plaintiff Eric Jeng's ("Plaintiff") Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2023 ("Opening Brief" or "Op. Br."). This Answering Brief is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file with the Court, and any oral argument entertained by the Court at a hearing in this matter.

///

REC'D & FILED

2023 DEC 26 PM 3:22

WILLIAM SCOTT HEN
CLERK

BY K. PETERSON
DEPUTY

I. INTRODUCTION

In a cynical attempt to keep important redistricting ballot questions from the voters, Plaintiff has sued to prevent Fair Maps from circulating Initiative Petition #C-03-2023 ("Petition"). The Petition is a common-sense response to gerrymandering practices that have badly impacted Nevada's electoral process. The Court should reject Plaintiff's misplaced attack on the Petition and allow Nevadans to decide whether it qualifies for the ballot. As one member of the Supreme Court stated: "Part of the Court's role in [our system of government] . . . is to defend its foundations. None is more important than free and fair elections." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506-07 (2019) (Kagan, J., dissenting). Because the Petition satisfies the requirements of the Nevada Constitution and state statute, the Court should dismiss Plaintiff's claims.

II. FACTUAL AND PROCEDURAL BACKGROUND

Fair Maps filed the Petition on November 14, 2023 to amend the Nevada Constitution. Complaint ("Compl."), Ex. 1. The Petition includes the following description of effect ("Description"):

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.

Compl., ¶ 7.

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1 Plaintiff filed a Complaint for Declaratory Relief and an Opening Brief in Support of
2 Complaint for Declaratory and Injunctive Relief on December 7, 2023. *See generally*
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4 **III. LEGAL STANDARD**

5 Article 19, Section (2) of the Nevada Constitution enshrines the people's right to amend the
6 Nevada Constitution by initiative petition. Specifically, it states that "the people reserve to
7 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
8 Nev. Const. art. 19, § 2. The Nevada Constitution further provides that the Legislature "may
9 provide by law for procedures to *facilitate* the operation thereof." *Id.* (emphasis added.) In
10 interpreting such laws, the courts "must make every effort to sustain and preserve the people's
11 constitutional right to amend their constitution through the initiative process." *Nevadans for the*
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14 **A. The Initiative Petition Does Not Unlawfully Mandate an Unfunded Expenditure**

15 Article 19, Section 2 of the Nevada Constitution provides that "subject to the limitations of
16 Section 6 of this Article, the people reserve to themselves the power to propose, by initiative
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18 or reject them at the polls." Section 6 provides that Article 19 "does not permit the proposal of
19 any *statute or statutory amendment* which makes an appropriation or otherwise requires the
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22 revenue." Nev. Const. art, 19, § 6 (emphasis added).

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1 That this Court should reject Plaintiff's assertion of *Reid* as a bar to the Petition is likely
2 obvious. Plaintiff's interpretation calls into doubt numerous constitutional provisions enacted
3 by initiative petition. *See, e.g.*, Nev. Const. art. 1, § 21 (initiative petition recognizing validity
4 of same-sex marriage and requiring the state to process same-sex marriage licenses); Nev. Const.
5 art. 1, § 22 (initiative petition allowing eminent domain proceedings and requiring the
6 government to pay "the highest price the property would bring on the open market"); Nev.
7 Const. art. 2, § 10 (initiative petition limiting campaign contributions and necessitating changes
8 in the campaign finance reporting and compliance system); Nev. Const. art. 4, § 38 (initiative
9 petition allowing the use of medical marijuana and implementing a cannabis compliance and
10 taxation system); Nev. Const. art. 4, § 39 (initiative petition requiring increased usage of
11 renewable energy necessitating changes to the state reporting and compliance structure); Nev.
12 Const. art. 10, § 3 (initiative petition exempting household goods from taxation necessitating
13 changes to tax reporting systems and compliance training process); Nev. Const. art. 10, § 3B
14 (initiative petition exempting durable medical equipment from taxation necessitating changes to
15 state tax reporting systems and compliance training); Nev. Const. art. 11, § 6 (initiative petition
16 establishing the priority of education funding and necessitating sufficient education funding
17 before any other appropriation); Nev. Const. art. 15, § 16 (initiative petition establishing
18 minimum wage increases and necessitating sufficient appropriation to pay state employees).

19 The preclusion of a constitutional amendment seeking to modify an already existing
20 expense only chills the people's initiative power. Such an interpretation flies in the face of well-
21 established policy directives for initiative proposals. Indeed, "the right to initiate change in this
22 state's laws through ballot proposals is one of the basic powers enumerated in this state's
23 constitution." *Univ. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 734, 100 P.3d 179, 195
24 (2004). Thus, the Petition is entirely consistent with other initiative petitions in the Nevada
25 Constitution.

26 That the Petition will require redistricting after the 2026 general election does not change
27 this conclusion. The Legislature has always had the prerogative to redistrict at any time. *See,*
28 *e.g., Legislative Redistricting, in 2018 Political History of Nevada* 401, 401-47. As such, the

fact that the Petition will require redistricting after the 2026 general election does not create an “additional” redistricting. As is the case with the other redistricting that will take place, the Petition merely redirects the task of redistricting from the Legislature to the commission. That this is the case is underscored by the fact that the Legislature has redistricted multiple times after a decennial census and before the next decennial census in the past. *See, e.g.*, A.B. 1, 11th Special Leg. (Nev. 1965) (redistricting out of cycle) S.B. 62, 57th Leg. (Nev. 1973) (same); A.B. 375, 72nd Leg. (Nev. 2003) (same).

B. Constitutional Initiative Petitions Should Not Be Subject to Article 19, Section 6 of the Nevada Constitution

As the concurrence in *Reid* properly noted, “under the plain language of Article 19, Section 6 of the Nevada Constitution, its funding mandate applies only to initiative petitions proposing statutes or statutory amendments, not to initiatives proposing constitutional amendments.” *Reid*, 512 P.3d at 306 (Herndon, J., concurring). Section 6 is “unambiguous and clearly singles out two distinct initiative-based actions available to the people: proposals for new statutes and proposals for amendments to existing statutes; while specifically excluding a third initiative-based action available to the people: proposals to amend the constitution.” *Id.* (Herndon, J., concurring). When a constitutional provision is unambiguous, the court will apply it according to the plain language of the provision. *Nevadans for Nev. v. Beers*, 122 Nev. 930, 942, 142 P.3d 339, 347 (2006); *see also In re Resort at Summerlin Litig.*, 122 Nev. 177, 185, 127 P.3d 1076, 1081 (2006) (noting when “a general statutory provision and a specific one cover the same subject matter, the specific provision controls”). “Because a state constitution is meant to be a basic set of laws and principles that set out the framework of the state’s government, including a funding provision for each specific basic law and principle within that document would be inappropriate.” *Reid*, 512 P.3d at 307 (Herndon, J., concurring).

Ignoring the plain language of Article 19, Section 6 and creating a requirement for ballot initiatives to identify a specific source of funding runs afoul the constitutional right to file ballot questions. *See, e.g.*, Nev. Const. art. 19, § 2. Under Plaintiff’s proposed expansive interpretation of *Reid*, any constitutional petition that increases expenses in any way is invalid. As described

1 above, this reading would invalidate a number of constitutional provisions enacted by initiated
2 petition. This reading also badly misconstrues the Nevada Supreme Court's prior case law
3 addressing the issue. Prior to *Reid*, the Nevada Supreme Court had *not* concluded that Article
4 19, Section 6 applies to constitutional initiatives. *Reid*, 512 P.3d at 307-08 (distinguishing
5 *Rogers*, 117 Nev. at 173, and *Herbst*, 122 Nev. at 890-91 from *Reid*) (Herndon, J., concurring).

6 **C. The Description of the Petition Is Not Deficient**

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

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

24 Plaintiff's first contention regarding the Description is that it fails to state that the Petition
25 will "result in the expenditure of state funds to fund the Commission." Op. Br. at 8-9. As
26 discussed herein, the Petition does not require a description of the expenditure because the
27 expenditure is already allocated through existing legislative processes. *See supra*, sections A-
28 B.

1 Plaintiff also contends that the Description should include a statement that the maps drawn
2 by the Legislature in 2021 may be replaced. Op. Br. at 9-10. However, there is no requirement
3 in the Petition that the previously drawn maps should be replaced. The Commission has the
4 option to adopt the same maps previously drawn by the Legislature if the maps comply with the
5 proposed amendment. What the Legislature and Commission may choose to do in the future is
6 not an effect that can be definitively conveyed to voters. Indeed, it is exactly the type of
7 “hypothetical” effect the Nevada Supreme Court has held need not be included in the description
8 of effect. *See Herbst Gaming*, 122 Nev. at 889, 141 P.3d at 1232. Thus, the description in the
9 Petition describes the changes to the redistricting process and “is a straightforward, succinct,
10 and nonargument statement of what the initiative petition will accomplish and how it will
11 achieve those goals.” *Educ. Initiative PAC*, 129 Nev at 38, 293 P.3d at 876.

12 While the Description contained within the Petition is legally sufficient and holistically
13 sound, should this court determine that Fair Maps needs to revise the Description to reference
14 the possibility that the Petition will require an expenditure of state funds or the possibility of
15 2021 maps being revised, Fair Maps may revise the Description in accordance with the Court’s
16 findings. NRS 295.061(3) (clarifying that the proponent of an initiative is afforded the
17 opportunity to amend a description of effect to resolve any inadequacies identified by the court).

18 **D. 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

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

Dated this 26th day of December, 2023.

McDONALD CARANO LLP

By: 

Lucas Foletta, Esq. (NSBN 12154)

Joshua Hicks (NSBN 6679)

Adam Hosmer-Henner (NSBN 12779)

Katrina Weil (NSBN 16152)

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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 December 26, 2023, I served the within **ANSWERING BRIEF IN RESPONSE TO 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:

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.

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 December 26, 2023 at Reno, Nevada.

By Tracy L. Sullivan
An employee of McDonald Carano LLP

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Attorneys for Intervenor Fair Maps Nevada

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BY K. PETERSON
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

ERIC JENG, an individual,

Plaintiffs,

vs.

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

Defendant.

Case No.: 23 OC 000138 1B

Dept. No.: I

**FAIR MAPS NEVADA'S ANSWERING BRIEF IN RESPONSE TO PLAINTIFF'S
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE
PETITION C-03-2023**

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

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27 Dec. 26, 2023); *Autoredistrict, a free and open source computer program*, <http://autoredistrict.org>
28 (last accessed Dec. 26, 2023); Carl Smith, *Can New Technology Tools Keep Redistricting Honest*
and Fair?, GOVERNING, [https://www.governing.com/now/can-new-technology-tools-keep-](https://www.governing.com/now/can-new-technology-tools-keep-redistricting-honest-and-fair)
[redistricting-honest-and-fair](https://www.governing.com/now/can-new-technology-tools-keep-redistricting-honest-and-fair) (last accessed Dec. 26, 2023).

1 That this Court should reject Plaintiff's assertion of *Reid* as a bar to the Petition is likely
2 obvious. Plaintiff's interpretation calls into doubt numerous constitutional provisions enacted
3 by initiative petition. *See, e.g.*, Nev. Const. art. 1, § 21 (initiative petition recognizing validity
4 of same-sex marriage and requiring the state to process same-sex marriage licenses); Nev. Const.
5 art. 1, § 22 (initiative petition allowing eminent domain proceedings and requiring the
6 government to pay "the highest price the property would bring on the open market"); Nev.
7 Const. art. 2, § 10 (initiative petition limiting campaign contributions and necessitating changes
8 in the campaign finance reporting and compliance system); Nev. Const. art. 4, § 38 (initiative
9 petition allowing the use of medical marijuana and implementing a cannabis compliance and
10 taxation system); Nev. Const. art. 4, § 39 (initiative petition requiring increased usage of
11 renewable energy necessitating changes to the state reporting and compliance structure); Nev.
12 Const. art. 10, § 3 (initiative petition exempting household goods from taxation necessitating
13 changes to tax reporting systems and compliance training process); Nev. Const. art. 10, § 3B
14 (initiative petition exempting durable medical equipment from taxation necessitating changes to
15 state tax reporting systems and compliance training); Nev. Const. art. 11, § 6 (initiative petition
16 establishing the priority of education funding and necessitating sufficient education funding
17 before any other appropriation); Nev. Const. art. 15, § 16 (initiative petition establishing
18 minimum wage increases and necessitating sufficient appropriation to pay state employees).

19 The preclusion of a constitutional amendment seeking to modify an already existing
20 expense only chills the people's initiative power. Such an interpretation flies in the face of well-
21 established policy directives for initiative proposals. Indeed, "the right to initiate change in this
22 state's laws through ballot proposals is one of the basic powers enumerated in this state's
23 constitution." *Univ. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 734, 100 P.3d 179, 195
24 (2004). Thus, the Petition is entirely consistent with other initiative petitions in the Nevada
25 Constitution.

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B. Constitutional Initiative Petitions Should Not Be Subject to Article 19, Section 6 of the Nevada Constitution

As the concurrence in *Reid* properly noted, “under the plain language of Article 19, Section 6 of the Nevada Constitution, its funding mandate applies only to initiative petitions proposing statutes or statutory amendments, not to initiatives proposing constitutional amendments.” *Reid*, 512 P.3d at 306 (Herndon, J., concurring). Section 6 is “unambiguous and clearly singles out two distinct initiative-based actions available to the people: proposals for new statutes and proposals for amendments to existing statutes; while specifically excluding a third initiative-based action available to the people: proposals to amend the constitution.” *Id.* (Herndon, J., concurring). When a constitutional provision is unambiguous, the court will apply it according to the plain language of the provision. *Nevadans for Nev. v. Beers*, 122 Nev. 930, 942, 142 P.3d 339, 347 (2006); *see also In re Resort at Summerlin Litig.*, 122 Nev. 177, 185, 127 P.3d 1076, 1081 (2006) (noting when “a general statutory provision and a specific one cover the same subject matter, the specific provision controls”). “Because a state constitution is meant to be a basic set of laws and principles that set out the framework of the state’s government, including a funding provision for each specific basic law and principle within that document would be inappropriate.” *Reid*, 512 P.3d at 307 (Herndon, J., concurring).

Ignoring the plain language of Article 19, Section 6 and creating a requirement for ballot initiatives proposing changes to the Nevada Constitution to identify a specific source of funding runs afoul the right to file ballot questions. *See, e.g., Nev. Const. art. 19, § 2.* Under Plaintiff’s proposed expansive interpretation of *Reid*, any constitutional petition that increases expenses in any way is invalid. As described above, this reading would invalidate a number of constitutional provisions enacted by initiated petition. This reading also badly misconstrues the Nevada Supreme Court’s prior case law addressing the issue. Prior to *Reid*, the Nevada Supreme Court had *not* concluded that Article 19, Section 6 applies to constitutional initiatives. *Reid*, 512 P.3d at 307-08 (distinguishing *Rogers*, 117 Nev. at 173, and *Herbst*, 122 Nev. at 890-91 from *Reid*) (Herndon, J., concurring).

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C. The Description of the Petition Is Not Deficient

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

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

Plaintiff’s sole contention regarding the Description is that it fails to state that the Petition will “result in the expenditure of state funds to fund the Commission.” Op. Br. at 8-9. As discussed herein, the Petition does not require a description of the expenditure because the Petition does not require an appropriation. *See supra*, sections A-B. The description in the Petition describes the changes to the redistricting process and “is a straightforward, succinct, and nonargument statement of what the initiative petition will accomplish and how it will achieve those goals.” *Educ. Initiative PAC*, 129 Nev at 38, 293 P.3d at 876.

While the description of the effect contained within the Petition is legally sufficient and holistically sound, should this court determine that Fair Maps needs to revise the Description to include reference to the possibility that the Petition will require an expenditure of state funds,

1 Fair Maps may revise the Description in accordance with the Court's findings. NRS 295.061(3)
2 (clarifying that the proponent of an initiative is afforded the opportunity to amend a description
3 of effect to resolve any inadequacies identified by the court).

4 **D. CONCLUSION**

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

7 **AFFIRMATION**

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

10 Dated this 26th day of December, 2023.

11 McDONALD CARANO LLP

12
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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 December 26, 2023, I served the within **ANSWERING BRIEF IN RESPONSE TO 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:

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
6675 South Tenaya Way, Suite 200
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Laena St-Jules, Esq.
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100 North Carson Street
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David R. Fox
Elias Law Group LLP
250 Massachusetts Ave. NW, Suite 400
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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 December 26, 2023 at Reno, Nevada.

By Tracy L. Skene
An employee of McDonald Carano LLP