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Electronically Filed
Jan 21 2022 09:27 a.m.
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18 **IN THE FIRST JUDICIAL DISTRICT COURT**
19 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

20 NATHANIEL HELTON, an individual,
21 Plaintiff,

22 vs.

23 NEVADA VOTERS FIRST PAC, a
Nevada Committee for Political Action;
24 TODD L. BICE, in his capacity as the
President of NEVADA VOTERS FIRST
25 PAC; and BARBARA CEGAVSKE, in
her official capacity as NEVADA
26 SECRETARY OF STATE,

27 Defendants.
28

Case No.: 21 OC 001721B
Dept.: II

NOTICE OF APPEAL

1 **NOTICE OF APPEAL**

2 PLEASE TAKE NOTICE that Plaintiff NATHANIEL HELTON, by and
3 through his attorneys of record, hereby appeals to the Supreme Court of the State of
4 Nevada from the FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND
5 JUDGMENT entered on January 6, 2022, attached hereto as Exhibit 1.

6 DATED this 14th day of January, 2022.

7 **WOLF, RIFKIN, SHAPIRO,**
8 **SCHULMAN & RABKIN, LLP**

9 By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2022, a true and correct copy of the **NOTICE OF APPEAL** was served upon all parties via electronic mailing to the following:

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By /s/ Dannielle Fresquez
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INDEX OF EXHIBITS

Exhibit No.	Documents	Pages
1	Notice of Entry of Order	19

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

10 NATHANIEL HELTON, an individual,
11 **Plaintiffs,**
12 v.

Case No.: 21 OC 00172 1B
Dept. No.: II

13 NEVADA VOTERS FIRST PAC, a Nevada
Committee for Political Action; TODD L.
14 BICE, in his capacity as the President of
NEVADA VOTERS FIRST PAC; and
15 BARBARA CEGAVSKE, in her capacity as
NEVADA SECRETARY OF STATE,
16 **Defendants.**

NOTICE OF ENTRY OF ORDER

17
18
19 PLEASE TAKE NOTICE that a "Findings of Fact and Conclusions of Law; and
20 Judgment" was entered in the above-captioned matter on January 6, 2022, a true and correct copy
21 of which is attached hereto.
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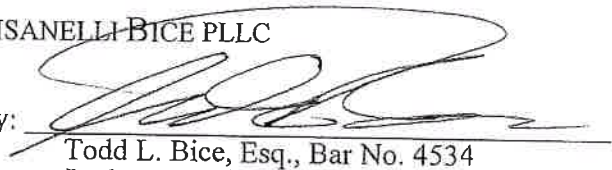
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AFFIRMATION

I affirm this document does not contain the personal information of any person.

DATED this 12th day of January, 2022.

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1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this
3 12th day of January 2022, pursuant to NRCP 5(b), I served a true and correct copy of the above
4 and foregoing **NOTICE OF ENTRY OF ORDER**, by United States Mail, postage prepaid, and
5 by electronic mail, the following:

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BY _____
IN PRIVITY

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

NATHANIEL HELTON, an individual,

Plaintiff,

v.

NEVADA VOTERS FIRST PAC, a Nevada
Committee for Political Action; TODD L. BICE,
in his capacity as the President of NEVADA
VOTERS FIRST PAC; and BARBARA
CEGAVSKE, in her capacity as NEVADA
SECRETARY OF STATE,

Defendants.

Case No.: 21 OC 00172 1B

Dept. No.: II

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW; AND
JUDGMENT**

This matter came before this Court pursuant to NRS 295.061 and Plaintiff's request to enjoin Defendant Barbara Cegavske, in her capacity as Nevada Secretary of State (the "Secretary") from any action allowing Initiative Petition C-01-2021, styled as the Better Voting Nevada Initiative (the "Initiative"), to proceed. The Initiative was filed with the Secretary on November 12, 2021, by Defendants Nevada Voters First PAC, and its President, Todd L. Bice (collectively, "Voters First").

The Court, having reviewed the papers and pleadings on file, and considered the matter, and being fully advised, and good cause appearing, finds and orders as follows:

1 FINDINGS OF FACT AND CONCLUSIONS OF LAW¹

2 A. FINDINGS OF FACT

3 1. Voters First proposed the Initiative so as to change how certain officeholders of
4 elected partisan office are chosen. Citing reports that more and more Nevada voters are choosing
5 to identify as non-partisan, as opposed to joining the two major political parties, Voters First claims
6 that the existing selection process effectively excludes a plurality of voters from having an effective
7 say in the choosing of their elected representatives. Voters First thus seeks to address what it
8 considers to be voter disenfranchisement.

9 2. The Initiative follows a similar voter-approved effort in Alaska to end closed
10 primaries and provide for ranked-choice voting. The Initiative provides that all voters and all
11 interested candidates – Democrat, Republican, or otherwise seeking office for Congress, Governor,
12 Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller, and State
13 Legislator – will participate in a non-partisan primary to narrow the field for that particular office
14 to the top-five vote getters. (*See* Proposed Amendment to Article 15, Sections 4 and 14 and adding
15 Section 17 subparts 1-9 to implement an open primary); *see also id.* Proposed Nevada
16 Const. art. 15, § 17, ¶ 8 (defining partisan offices to which it applies).)

17 3. Any candidate for these offices may run in the primary "regardless of the person's
18 affiliation with a political party, or lack thereof." (*Id.* Proposed Nevada Const. art. 15, § 17, ¶ 1(b).)
19 Likewise, "[a]ny registered voter may cast a primary ballot for any candidate for partisan office
20 regardless of the political party affiliation of the voter or any political party preference indicated by
21 the candidate." (*Id.* ¶ 1(c).) Following the primary, the top-five vote getters "shall advance to the
22 general election for partisan office." (*Id.* ¶ 2.) (*Id.* at Proposed Nevada Const. art. 15, § 17, ¶ 3.)

23 4. The Initiative provides voters that candidates will be allowed to self-identify
24 whether they want to be associated with any political parties' primary system, including how
25 "[i]mmediately following the name of each candidate for a partisan office must appear the name or
26

27 ¹ Any findings of fact which are more appropriately considered conclusions of law shall be
28 treated as such, and any conclusions of law which are more appropriately considered findings of
fact shall be treated as such.

1 abbreviation of the political party with which the candidate is registered, the words, 'no political
2 party' or the abbreviation 'NPP,' as the case may be." (*Id.* ¶ 5.) And, the Initiative tells voters that
3 the primary system will no longer be the means by which partisan political parties choose their
4 preferred nominee:

5 [t]he ballots for the primary elections for partisan office must include a
6 conspicuously placed statement: "A candidate for partisan office may state a
7 political party that he or she prefers. A candidate's preference does not imply that
the candidate is nominated or endorsed by the party, or that the party approves of or
associates with that candidate."

8 (*Id.* ¶ 6.)

9 5. The Initiative also provides for a procedure in the event a top-five vote getter
10 "withdraws, is disqualified, dies, or is otherwise deemed ineligible" and permits "the candidate
11 receiving the next greatest number of votes at the primary election for partisan office shall be
12 declared a nominee." (*Id.* ¶ 7.) It further directs that "[n]ot later than July 1, 2015, the Legislature
13 shall provide by law for provisions consistent with Section 17 of Article 15 of this Constitution to
14 require top-five primary elections for partisan office." (*Id.* at Proposed Nevada Const. art. 15, § 17,
15 ¶ 9.)

16 6. Once the candidates are winnowed by the primary process, the remaining five
17 candidates proceed to the general election where voters are allowed to rank each candidate in order
18 of preference. (*Id.* at Proposed Nev. Const. art. 15 § 18 ¶¶1-2.) "The general election ballots for
19 partisan office shall be designed so that the voter is directed to mark candidates in order of
20 preference and to mark as many choices as the voter wishes, but not to assign the same ranking to
21 more than one candidate for the same office." (*Id.* at ¶ 3.) As Initiative further provides, voters may
22 choose just one candidate, or may decide to rank all five. (*Id.* at ¶ 8(a)-(g).)

23 7. The Initiative provides that when tabulating the ballots, "each County shall initially
24 tabulate each validly cast ballot as one vote for the highest-ranked candidate on that ballot or as an
25 inactive ballot. If a candidate is highest-ranked on a majority of the active ballots, that candidate
26 is elected and the tabulation is complete." (*Id.* at ¶ 6.) In the event no candidate obtains over 50%
27 of the first-place votes, "tabulation proceeds in sequential rounds" until the candidate with the
28

1 highest level of support (i.e. the greatest number of votes) is determined as the winner. (*Id.* at
2 Proposed Nevada Const. art. 15, § 17, ¶ 7.)

3 8. In accordance with NRS 295.009(1)(b), Voters First included the following
4 description of effect:

5 If enacted, this initiative changes Articles 5 and 15 of Nevada's Constitution for
6 Congressional, Governor, Lieutenant Governor, Attorney General, Secretary of
7 State, Treasurer, Controller and State Legislator elections, eliminating partisan
8 primaries and establishing an open top-five primary election and a rank-choice
9 voting general election.

10 For these offices, all candidates and voters participate in a single primary election
11 regardless of party affiliation or non-affiliation. The top five finishers advance to
12 the general election, and the general election winner is determined by rank-choice
13 voting:

- 14 • General election voters rank the candidates in order of preference from first
15 to last, if they wish to rank more than their first preference.
- 16 • As traditionally, a candidate receiving first-choice votes of more than 50%
17 wins.
- 18 • If no candidate is the first choice of more than 50%, the candidate with the
19 fewest votes is eliminated. And each voter who had ranked the
20 now-eliminated candidate as their first choice, has their single vote
21 transferred to their next highest choice candidate.
- 22 • This tabulation process repeats until the one candidate with more than 50%
23 support is determined as the winner.

24 The Legislature must adopt implementing legislation by July 1, 2025.

25 9. Pursuant to NRS 295.061, Plaintiff initiated this action raising three issues which,
26 he alleges, should preclude the Initiative from being circulated for signature gathering or being
27 considered by Nevada voters: First, Plaintiff asserts that the Initiative is not limited to a single
28 subject and engages in log rolling. Second, Plaintiff contends that the Initiative violates Article 19,
Section 6 of the Nevada Constitution by failing to provide for a separate funding mechanism. And
finally, Plaintiff contends that the Initiative's 200-word description of effect is deficient.

10 10. As further set forth herein, the Court considers each of Plaintiff's challenges in turn,
11 and rejects each of these challenges.

12 B. CONCLUSIONS OF LAW

13 11. At this juncture, challenges to an initiative petition are limited to whether it complies
14 with the procedural requirements for its potential consideration by voters. *Herbst Gaming, Inc. v.*
15 *Heller*, 122 Nev. 877, 882-3, 141 P.3d 1224, 1228 (2006) (discussing "to what extent we may
16 entertain pre-election challenges to initiative measures"). Specifically, "it is not the function of this
17

1 Court to judge the wisdom" of a proposed ballot measure, as such policy choices are left to the
2 voters. *Nevada Judges Ass'n. v. Lau*, 112 Nev. 51, 57, 910 P.2d 898, 902 (1996).

3 **A. The Initiative Complies with the Single-Subject Requirement.**

4 12. Article 19, Section 2(1) of the Nevada Constitution provides that "the people reserve
5 to themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
6 The Nevada Supreme Court recognizes that "the right to initiate change in this State's laws through
7 ballot proposals is one of the basic powers enumerated in this State's Constitution." *Nevadans for*
8 *the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247 (2006).

9 13. The right of the citizenry to implement legislative change is coextensive with that
10 of the Legislature itself. When the Legislature enacts a law, the Constitution likewise requires that
11 each such law "shall embrace but one subject, and matter, properly connected therewith . . ." Nev.
12 Const. art. 4, § 17. Consistent with that legislative single-subject requirement, NRS 295.009(1)
13 specifies that each initiative by the people must similarly embrace "but one subject and matters
14 necessarily connected therewith and pertaining thereto." The statute explains that an initiative
15 "embraces but one subject and matters necessarily connected therewith and pertaining thereto, if
16 the parts of the proposed initiative or referendum are functionally related and germane to each other
17 in a way that provides sufficient notice of the general subject of, and the interests likely to be
18 affected by, the proposed initiative or referendum." NRS 295.009(2).

19 14. As the Nevada Supreme Court directs, the provisions of NRS 295.009 must be
20 interpreted and implemented so as to "make every effort to sustain and preserve the people's
21 constitutional right to amend their constitution through the initiative process." *Heller*, 122 Nev.
22 at 912, 141 P.3d at 1247. Indeed, "[c]onsistent with the constitutional interests at stake, the law
23 requires the challenger of the initiative, not its proponent, to bear the burden of demonstrating that
24 a proposed initiative is clearly invalid because it embraces more than one subject." *Prevent*
25 *Sanctuary Cities v. Haley*, Case No. 74966, 2018 WL 2272955, at * 1 Nev. (2018) (unpublished
26 disposition)²; see also *Las Vegas Taxpayer Comm. v. City Council*, 125 Nev. 165, 176, 208 P.3d

27
28 ² See NRAP 36(3).

1 429, 436 (2009) (party seeking to invalidate an initiative bears the burden of establishing that the
2 initiative is "clearly invalid.").

3 15. The reason courts impose such a high burden on a challenger is because efforts to
4 impede the voters' initiative power is contrary to the democratic process. *Farley v. Healey*, 431
5 P.2d 650, 652 (Cal. 1967); *see also City of Firecrest v. Jensen*, 143 P.3d 776, 779 (Wash. 2006)
6 (legal limitations on proposed initiatives are "broadly construed in favor of upholding" the initiative
7 and therefore the challenger of an initiative must establish its "unconstitutionality beyond a
8 reasonable doubt.").

9 16. Since NRS 295.009's codification of the single-subject requirement in 2005, the
10 Nevada Supreme Court has had several instances to apply it to voter-backed initiatives, reiterating
11 the citizenry's right to propose broad policy changes through a single initiative. In the first such
12 case, *Heller*, the Court recognized that the single subject there was the broad topic of "eminent
13 domain." *Heller*, 122 Nev. at 907, 141 P.3d at 1244. The Court upheld the right of the initiative's
14 proponents to incorporate numerous provisions – and the policy choices therein – because each
15 ultimately related to that broad subject. *Id.* The Court found that only those provisions untethered
16 to the subject of "eminent domain," such as creating "a broad new class of fundamental rights" and
17 "any government action that causes substantial economic loss" did not relate to the "primary
18 subject" of eminent domain, and thus had to be severed. *Id.* at 909, 141 P.3d at 1245.

19 17. Similarly, in *Education Initiative PAC v. Committee to Protect Nevada Jobs*, 129
20 Nev. 35, 50-51, 293 P.3d 874, 884-85 (2013), the Court determined that the proposed initiative's
21 "primary purpose is clearly to fund education." Consistent with that broad subject, the initiative
22 addressed two distinct taxes, implementing a new tax and temporarily increasing a different
23 preexisting tax. Rejecting the same approach Plaintiff urges here — that two different taxes are
24 necessarily two different subjects because some voters might favor one but not both — the Court
25 explained that "both taxes are functionally related and germane" to the broad subject matter of
26 "funding public education" and thus are not two separate subjects under NRS 295.009. *Id.* at 51,
27 293 P.3d at 885. *Accord, Prevent Sanctuary Cities* 2018 WL 2272955 at *3 (noting that while
28 initiative's various components – spanning three different levels of government (state, county and

1 city) were phrased in broad general terms – all of its provisions were consistent with the
2 single-subject requirement because they functionally related and were germane to the broad policy
3 of immigration enforcement).

4 18. The present Initiative is narrower and squarely comports with NRS 295.009 and the
5 Nevada Supreme Court's precedents. Each of the Initiative's provisions functionally relates, and is
6 germane, to how the specified officeholders – defined in the Initiative as the "Partisan Offices" –
7 are chosen by voters. Plaintiff's assertion that the "primary" election is separate and distinct subject
8 from the "general" – insisting that no one initiative can simultaneously address both – is
9 unsupported and contrary to existing Nevada law. The primary election is just a step in the process.
10 The primary election and general election are intertwined steps in the process for how officeholders
11 are ultimately chosen, which is the primary purpose of this Initiative. *See also* Nev. Const. art. 2, §
12 10 (Constitutional amendment adopted by the voters in 1996, simultaneously imposed campaign
13 contribution limits on both the primary and general elections).

14 19. The Alaska Supreme Court's recent decision in *Meyer v. Alaskans for Better*
15 *Elections*, 465 P.3d 477 (Alaska 2020) concerned a similar initiative to change that state's selection
16 process. There, the initiative proposed three changes to Alaska election law, (1) replacing the
17 closed primary system with an open, nonpartisan primary, (2) establishing ranked-choice voting in
18 the general election, and (3) mandating new campaign finance disclosures. *Id.* at 498. The Alaska
19 Supreme Court rejected the claim that the initiative violated the single-subject requirement,
20 explaining that a "plain reading of the initiative shows that its provisions embrace the single subject
21 of 'election reform' and share the nexus of election administration." *Id.*

22 20. As the Alaska court noted, all the substantive provisions fall under the same subject
23 matter and seek to institute an election reform process. *Id.* The court concluded that the initiative's
24 provisions were all logically related to one another, as the "open, nonpartisan primary system
25 changes the status quo by forwarding four candidates for voters to rank in the general election by
26 ranked-choice voting. These two substantive changes *are interrelated* because together they ensure
27 that voting does not revert to a two candidate system." *Id.* at 499 (emphasis added).

28

1 21. Plaintiff's reliance on *Las Vegas Taxpayer Accountability v. City Council*, 125 Nev.
2 165, 208 P.3d 429 (2009) to challenge the Initiative is misplaced. As the Nevada Supreme Court
3 explained there, that proposed local initiative had so many disparate parts that "*a primary purpose*
4 *cannot be determined from the initiative itself and the description of effect.*" 125 Nev. at 180,
5 208 P.3d at 439 (emphasis original). The court concluded that the proposed initiative governed at
6 least two separate subjects, the first requiring voter approval for any municipal lease purchase
7 agreement exceeding \$2 million, and a separate requirement for voter approval of all "major
8 redevelopment decisions." *Id.* No overarching subject matter existed to join these unrelated
9 provisions other than what the Court said would be a generic subject like "voter approval," which
10 is so excessively general as to render the single-subject requirement meaningless. *Id.*

11 22. Plaintiff's assertion that the Initiative engages in "log rolling" – postulating that
12 changes to the primary election process and rank-choice voting for the general election are separate
13 and discreet subjects since "either could stand on its own without the other" – misstates the standard.
14 (Pl.'s Memo., at 10:21-22.) Log rolling occurs when "two or more completely separate provisions
15 are combined in a petition, when one or both of which would not obtain enough votes to pass
16 without the other." *Heller*, 122 Nev. at 922, 141 P.3d at 1254 (Hardesty, J. concurring in part and
17 dissenting in part). To "log roll" a provision in violation of the single-subject requirement means
18 to advance a proposition that the proponent expects would be supported by voters, but then include
19 other provisions, often concealed or hidden, that are less popular. *Id.* The purpose of the single
20 subject rule is to preclude such log rolling by ensuring that all of an initiative's provisions are
21 germane to the primary subject, so that voters are not faced with a "Hobson's choice" of having to
22 choose between two discrete and unrelated matters. *Id.*

23 23. Contrary to Plaintiff's articulation, it is not log rolling simply because each of an
24 initiative's provisions "could" be voted on separately and stand on their own. *Meyer*, 465 P.3d at
25 498 ("The question is not whether the initiative could be split into separate measures, but rather
26 whether the various provisions 'embrace some one general subject'") (citations omitted). Here, as
27 the Initiative's proponents correctly note, the adoption of non-partisan primaries for these offices
28 functionally relates to the effectiveness in ranked-choice voting. *Id.* at 499. After all, the benefits

1 of ranked-choice voting in the general election are much negated if the primary election outcome
2 results in a general election between just two candidates. Changing the closed primary system and
3 providing that the top-five finishers advance to the general election is what makes ranked-choice
4 voting most effective in conformity with the Initiative's purpose.³

5 24. There is no requirement that every constitutional amendment for the voters'
6 consideration be narrowly tailored to one discreet provision, anytime that provision can purportedly
7 stand alone. Doing so "would significantly hinder the people's power to legislate by initiative and
8 effectively bar all but the simplest ballot measures." *Educ. Initiative*, 129 Nev. at 45, 293 P.3d at
9 881. Every initiative presents the voters with policy choices, some of which voters may prefer more
10 than others. But so long as those provisions relate to a single subject, it is for the initiative's
11 proponents to propose those policy choices. The law allows Nevada voters to propose to change
12 the manner in which specified officeholders are chosen. *See Nevada Judges Ass'n.*, 112 Nev. at 56,
13 910 P.2d at 901-2 (explaining that partisan officeholders are a separate class as opposed to
14 nonpartisan offices, like judges, and term limits applying to partisan officeholders by way of a
15 single initiative is allowed).

16 **B. The Initiative Does Not Violate Article 19, Section 6.**

17 25. The Court also rejects Plaintiff's second contention – that the Initiative violates the
18 requests of Article 19, Section 6. As a threshold matter, Plaintiff's claim that the Initiative
19 constitutes a "massive overhaul" of voting for elected officials that "would cost money" and "is
20 more expensive than the ongoing administration of a simple one" is unsupported speculation.
21 Regardless, claims about any increase (or decrease) in the costs of existing government functions
22 – like elections – is not what Article 19, Section 6 addresses.

23 26. Article 19, section 2(1) of Nevada's constitution provides that the initiative process
24 is "subject to the limitations of" Article 19, Section 6, which "does not permit the proposal of any
25 statute or statutory amendment which makes an appropriation or otherwise requires the expenditure
26

27 ³ Because the Court rejects Plaintiff's single-subject challenge, it need not address Plaintiff's
28 arguments concerning severability of open primaries from ranked-choice general elections.

1 of money, unless such statute or amendment also imposes a sufficient tax, not prohibited by the
2 constitution, or otherwise constitutionally provides for raising the necessary revenue." As the
3 Nevada Supreme Court holds, Section 6 applies to all proposed initiatives. *Rogers v. Heller*, 117
4 Nev. 169, 173, 18 P.3d 1034, 1036 (2001).

5 27. It is normal that a change in the law will carry with it some associated burden,
6 including training, updates, record keeping, enforcement efforts and similar obligations. But such
7 common burdens are not what Article 19, Section 6 concerns: "[A]n initiative makes an
8 appropriation or expenditure of money when it leaves budgeting officials *no discretion* in
9 appropriating or expending the money *mandated by the initiative* – the budgeting official *must*
10 approve the appropriation or expenditure, regardless of any other financial considerations." *Herbst*
11 *Gaming Inc. v. Heller*, 122 Nev. 877, 890, 141 P.3d 1224, 1233 (2006) (emphasis added).

12 28. By comparing the cases that Plaintiff relies upon, it is apparent that this Initiative
13 does not trigger Article 19, Section 6. In *Rogers*, the Court evaluated an initiative that sought to
14 raise funds as well as impose a threshold funding level for Nevada's public elementary and
15 secondary schools. 117 Nev. at 171-76, 18 P.3d at 1035-1038. Thus, the *Rogers* Court reasoned,
16 "[e]ven if the Legislature has a perpetual duty to fund education, because of its traditional role in
17 funding education and its promise to pay any needed portion of the basic support guarantees, the
18 Legislature is not required to continue funding education at any particular level. A necessary
19 appropriation or expenditure in *any* set amount or percentage is a new requirement that otherwise
20 does not exist." *Id.* at 176, 18 P.3d at 1038 (emphasis in original). Concluding that the initiative
21 was "a new requirement" that invaded the Legislature's traditional "broad discretion in determining
22 education funding" and the corresponding proposed tax within the initiative fell "far short of"
23 maintaining a balanced budget, the Supreme Court found that the initiative thus violated Article 19,
24 Section 6. *Id.* at 177, 18 P.3d at 1039.

25 29. In comparison, *Herbst Gaming* involved an initiative that did "not make an
26 appropriation or required the expenditure of money. It simply expand[ed] the statutory list of public
27 places in which smoking [wa]s unlawful and le[ft] untouched provisions that set forth the penalty
28 for smoking in an area in which smoking is prohibited." 122 Nev. at 891, 141 P.3d at 1233

1 (footnotes omitted). Rejecting arguments like Plaintiff makes here — how the initiative's changes
2 in the law would increase the costs and expenses for enforcement — the Court explained that, such
3 expenses do not implicate Article 19, Section 6:

4 In particular, the [initiative] requires *neither* the setting aside nor the payment of
5 any funds. Further, and *significantly*, the [initiative] leaves budgeting officials'
6 discretion entirely intact. It does not, for example, *compel* an increase or
7 reallocation of police officers to enforce its provision. Because the [initiative]
8 *neither* explicitly or implicitly compels an appropriation or expenditure, but rather
9 leaves the mechanics of its enforcement with government official, it does not involve
10 an appropriation or expenditure warranting a revenue-generating provision.

11 *Id.* (emphasis added).

12 30. Here, the Initiative does not impose a new requirement of funding elections, nor
13 compel a specified level of spending. Instead, it seeks election reform to include all Nevada voters
14 by having a single non-closed primary which narrows the field to the top-five who are then ranked
15 by the voters in the general election. Holding both a primary and general election are already
16 provided by Nevada law. Having a single primary election, as opposed to multiple, imposes no new
17 expenditure mandate. And, ranked-choice voting does not create a new requirement for an election;
18 it is simply a process for tabulation of all the votes.

19 31. Furthermore, NRS 293.442-NRS 293.460 provides discretion to the Nevada
20 Secretary of State as well as local officials to incur expenses as both implement elections. This
21 Initiative does not disturb this discretion — either implicitly or explicitly — because, and as detailed
22 in both Sections 9 and 11, the Initiative vests the implementation with the Legislature and likewise
23 the Secretary of State and local officials. *See Herbst Gaming*, 122 Nev. at 891, 141 P.3d at 1233
24 (permitting an initiative that left discretion to the administrative officials). So again, Plaintiff's
25 arguments claiming this Initiative is an unfunded mandate is in direct conflict with Nevada
26 precedent.

27 **C. The Initiative's Description is Straightforward, Succinct, and**
28 **Non-argumentative.**

32. Finally, Plaintiff fails in his burden to show that the Description of Effect does not
comply with NRS 295.009. The Initiative's description satisfies Nevada's requirements as its plain
language is straightforward, succinct, and non-argumentative. Plaintiff's proposal does not comply

1 with Nevada law, as it is argumentative, advocates partisan interests, and does not accurately
2 describe the Initiative.

3 33. NRS 295.009 vests the Initiative's proponents with the obligation and right to
4 provide a description of effect. That description "need not articulate every detail and possible effect
5 that an initiative may have. Instead, given that these descriptions are utilized only in the early,
6 signature-gathering of the initiative process and that the descriptions of effect are limited to 200
7 words, they need only provide a straightforward, succinct and nonargumentative summary of what
8 the initiative is designed to achieve and how it intends to reach those goals." *Educ. Initiative*, 129
9 Nev. at 51, 293 P.3d at 885. As such, the description "does not need to explain 'hypothetical' effects
10 of an initiative." *Id.* at 42, 293 P.3d at 879. (cleaned up); see *Nevadans for Nevada v. Beers*, 122
11 Nev. 930, 939, 142 P.3d 339, 345 (2006) (detailing that NRS 295.009's description of effect
12 "requirements served to prevent voter confusion and promote informed decisions" (internal
13 quotation marks omitted)).

14 34. As the Supreme Court holds, "[g]iven this constraint and in light of its statutory
15 function to facilitate the initiative process, a *hyper-technical interpretation* of the requirements for
16 a description of effect may impede the people from exercising their constitutional right to propose
17 laws and is therefore an inappropriate method for assessing the adequacy of a description of effect."
18 *Educ. Initiative*, 129 Nev. at 42-43, 293 P.3d at 879 (emphasis added); *Herbst Gaming*, 122 Nev.
19 at 889, 141 P.3d at 1232 ("[A] ballot measure's summary and title need not be the best possible
20 statement of a proposed measure's intent or address every aspect of a proposal." (internal quotation
21 marks omitted)).

22 35. Mitigating all of this, as the Nevada Supreme Court explains, "[d]uring the signature
23 gathering process, signers, before signing the petition, may read the initiative on the Secretary's
24 website or the copy in the circulator's possession . . ." *Educ. Initiative*, 129 Nev. at 43, 293 P.3d
25 at 880. The burden lies with Plaintiff to prove to this Court that the description of effect is "clearly
26 invalid." *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 176, 208 P.3d at 436.

27 36. Plaintiff fails in his burden to prove that the description proposed by Voters First is
28 invalid. Within the 200 words allowed, the description informs voters what the Initiative proposes

1 to do and how it intends to do it. In the very first sentence, the description announces to which
2 offices the changes in the selection process would apply, and states that it proposes to eliminate
3 partisan primaries for these offices and establish an open top-five primary election followed by
4 ranked-choice voting in the general election. It then explains how the ranked-choice voting works.
5 Finally, it discloses when the Legislature would be required to implement these changes to the
6 process. There is nothing misleading in the description. It discloses what the Initiative proposes to
7 do.

8 37. Plaintiff's criticisms are not well founded and are largely an attempt to use the
9 description as an advocacy piece for his opposition to the Initiative. Plaintiff's proposed description
10 omits disclosing to which elective offices the Initiative would even apply. He then proposes to use
11 the description's limited space to discuss the remote hypothetical of what happens should there be
12 a tie between the fifth and sixth place candidates in the non-partisan primary.

13 38. Plaintiff also seeks to use the description as advocacy for the role of partisan political
14 parties. Voters sufficiently understand the role of political parties. *See Washington State Grange*
15 *v. Washington State Republican Party*, 552 U.S. 442, 454 (2018) ("There is simply no basis to
16 presume that a well-informed electorate will interpret a candidates' party-preference designation to
17 mean that the candidate is the party's chosen nominee or representative or that the party associates
18 with or approves of the candidate"). Moreover, this type of partisan advocacy is not a
19 "nonargumentative summary of what an initiative is designed to achieve and how it intends to reach
20 those goals." *Educ. Initiative*, 129 Nev. at 52, 293 P.3d at 885.

21 39. The proponents' description accurately states that the Initiative is "*eliminating*
22 *partisan primaries*" and establishing a single top-five primary election and a ranked-choice voting
23 general election. (emphasis added). The description continues, "voters participate in a single
24 primary election *regardless of party affiliation or non-affiliation.*" (*Id.*) (emphasis added) Thus,
25 voters are informed about the reduced role of party control and party affiliation under the new
26 process. The specifics about how party designation appears on the printed ballot form are, at best,
27 secondary effects that do not need to be included in the limited space of the description. Nor do the
28

1 collateral consequences to national political party gate-keepers need to be mentioned at this early
2 state.

3 40. Plaintiff's attempt to claim that the top vote-getter would no longer be guaranteed
4 victory if this Initiative is adopted is also misleading. The proponents' description accurately states
5 that "as traditionally, a candidate receiving the first-choice votes of more than 50% wins." 50%
6 plus one vote is the winner under the current tabulation method as well as what the Initiative
7 proposes.⁴ The difference is what happens when no candidate receives more than 50% of the initial
8 first-choice votes. Then, as the proponents' description accurately describes, the explained
9 tabulation process occurs until the one candidate with the most votes is declared the winner.

10 41. Plaintiff's final request – for the description's inclusion of his cost arguments – is not
11 the purpose of the description under NRS 295.009. This type of partisan advocacy is not allowed.
12 Under Nevada law, such arguments are matters for the ballot committees to make once the Initiative
13 is put before the voters. *See Educ. Initiative*, 129 Nev. at 39, 293 P.3d at 878 (Noting the
14 requirements of NRS 293.252 for the creation of ballot committees to write arguments for and
15 against passage, including the claimed fiscal impact by proponents and opponents).

16 42. The description prepared by Voters First is what NRS 295.009 contemplates: It lets
17 the public make up their mind about signing without skewed partisan spin.

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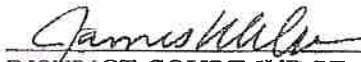
25 ⁴ *See also* NRS 293.260(5) (stating that "if one of those candidates receive a majority of the
26 votes cast in the primary election for [nonpartisan office], the candidate must be declared elected
27 to the office and his or her name must not be place on the ballot for the general election."). It is the
28 long-established "traditional" rule that any candidate that receives more than 50% is necessarily the
declared winner in the general election. The fact that under the current system someone can
sometimes win even if they receive less than 50% of the votes does not anyway change the well-
understood traditional rule that 50% plus 1 vote necessarily wins.

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Based on the foregoing findings of fact and conclusions of law:

IT IS HEREBY ORDERED that Plaintiff's challenges to the Initiative are rejected and that final judgment is hereby entered against Plaintiff and in favor of Defendants.

January 6, 2022



DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 6 day of January 2022, I served a copy of this document by placing a true copy in an envelope addressed to:

Bradley S. Schrager, Esq. 3773 Howard Hughes Pkwy., Ste. 590 South Las Vegas, NV 89169	Todd Bice, Esq. 400 South 7 th St., Ste. 300 Las Vegas, NV 89101 Craig A. Newby, Esq. Office of the Attorney General 555 E. Washington Ave., Ste. 3900 Las Vegas, NV 89101
---	---

the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.


Billie Shadron
Judicial Assistant

ORIGINAL

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AUDREY ROWLAND
CLERK

BY _____ DEPUTY

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16 *Attorneys for Plaintiff*

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

20 NATHANIEL HELTON, an individual,
21 Plaintiff,

22 vs.

23 NEVADA VOTERS FIRST PAC, a
Nevada Committee for Political Action;
24 TODD L. BICE, in his capacity as the
President of NEVADA VOTERS FIRST
25 PAC; and BARBARA CEGAVSKE, in
her official capacity as NEVADA
26 SECRETARY OF STATE,

27 Defendants.
28

Case No.: 21 OC 001721B
Dept.: II

**PLAINTIFF'S CASE APPEAL
STATEMENT**

1 PLAINTIFF'S CASE APPEAL STATEMENT

2 Pursuant to NRAP 3A, Plaintiff, by and through his attorneys of record,
3 hereby submits this Case Appeal Statement pursuant to NRAP 3(f)(1).

- 4 1. Appellant filing this appeal statement: Nathaniel Helton
5 2. Judge issuing decision, judgment, or order appealed from: Hon. James

6 Wilson

- 7 3. Appellant: Plaintiff Nathaniel Helton

8 COUNSEL OF RECORD:

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4. Respondent: Defendants Nevada Voters First PAC and Todd L. Bice

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3 JTS@pisanellibice.com

4 5. Respondent Barbara Cegavske in her official capacity as Nevada
5 Secretary of State

6 COUNSEL OF RECORD:

7 Craig A. Newby, Esq.
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11 CNewby@ag.nv.gov

12 6. Out of State Counsel for Appellants were granted permission to appear by the
13 District Court, Orders attached hereto as **Exhibit 1**. All other counsel identified above are licensed
14 to practice in Nevada.

15 7. Appellant was represented by retained counsel in the district court.

16 8. Appellant is represented by retained counsel on appeal.

17 9. No request has been made to proceed in forma pauperis.

18 10. The Complaint in this matter was originally filed on December 6, 2021.

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

22 This is a challenge, pursuant to NRS 295.061, to a filed initiative petition, alleging violation
23 of Nevada's single-subject rule, the petition's description of effect, and other associated pre-
24 election claims regarding the legal sufficiency of the petition as filed. Below, the district court
25 denied Plaintiff's claims for relief, and entered judgment in favor of the Defendants. It is the order
26 and judgment of the district court that is the subject of this appeal.

27 12. The case has not been subject of an appeal to or original writ proceeding in the
28 Supreme Court.

13. This appeal does not involve child custody or visitation.

While settlement thus far has not seemed likely, Plaintiff/Appellant will participate in the

1 Court's mandatory mediation program in good faith, and with an open mind to the possibility of
2 settlement.

3
4 DATED this 17th day of January, 2022.

5 **WOLF, RIFKIN, SHAPIRO,**
6 **SCHULMAN & RABKIN, LLP**

7 By: 

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24 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2022, a true and correct copy of the **NOTICE OF APPEAL** was served upon all parties via electronic mailing to the following:

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Attorney for Barbara Cegauske

*Attorneys for Nevada Voters First PAC
and Todd L. Bice*

Billie Shadron
Judicial Assistant, Dept. 2
First Judicial District Court
Honorable James E. Wilson Jr.
BShadron@carson.org

By /s/ Dannielle Fresquez
Dannielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN
& RABKIN, LLP

INDEX OF EXHIBITS

Exhibit No.	Documents	Pages
1	Orders Granting Motion to Associate Counsel	9

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1 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
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Attorneys for Plaintiff

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17 IN THE FIRST JUDICIAL DISTRICT COURT
18 OF THE STATE OF NEVADA IN AND FOR CARSON CITY
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20 NATHANIEL HELTON, an individual,
21 Plaintiff,

22 vs.

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Nevada Committee for Political Action;
24 TODD L. BICE, in his capacity as the
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26 SECRETARY OF STATE,
27 Defendants.
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Case No.: 21 OC 001721B
Dept.: II

PLAINTIFF'S [~~PROPOSED~~]
ORDER ADMITTING TO
PRACTICE

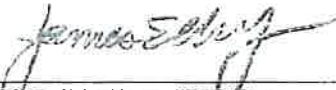
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PLAINTIFF'S [PROPOSED] ORDER ADMITTING TO PRACTICE

Eric Levinrad, Esq. having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificate of Good Standing for California, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby


ORDERED, that said application is hereby granted, and Eric Levinrad, Esq. is hereby admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

Dated this 31 day of December, 2021.



DISTRICT COURT JUDGE

Submitted by:



Bradley S. Schrager, Esq., SBN 10217
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Daniel Bravo, Esq., SBN 13078
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Attorneys for Plaintiff

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Attorneys for Plaintiff

17 IN THE FIRST JUDICIAL DISTRICT COURT
 18 OF THE STATE OF NEVADA IN AND FOR CARSON CITY
 19

20 NATHANIEL HELTON, an individual,
 21 Plaintiff,

22 vs.

23 NEVADA VOTERS FIRST PAC, a
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27 Defendants.

Case No.: 21 OC 001721B
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**PLAINTIFF'S [PROPOSED]
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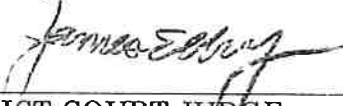
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PLAINTIFF'S [PROPOSED] ORDER ADMITTING TO PRACTICE

Lindsay J. McAleer, Esq. having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificate of Good Standing for the Supreme Court of the State of Washington, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

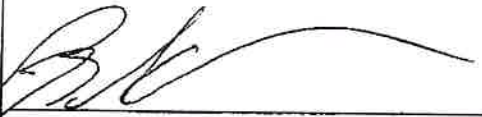
ORDERED, that said application is hereby granted, and Lindsay J. McAleer, Esq. is hereby admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

Dated this 31 day of December, 2021.



DISTRICT COURT JUDGE

Submitted by:



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15 *Attorneys for Plaintiff*

17 **IN THE FIRST JUDICIAL DISTRICT COURT**

18 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

20 NATHANIEL HELTON, an individual,

21 Plaintiff,

22 vs.

23 NEVADA VOTERS FIRST PAC, a
 Nevada Committee for Political Action;
 24 TODD L. BICE, in his capacity as the
 President of NEVADA VOTERS FIRST
 25 PAC; and BARBARA CEGAVSKE, in
 her official capacity as NEVADA
 26 SECRETARY OF STATE,

27 Defendants.

Case No.: 21 OC 001721B
Dept.: II

**PLAINTIFF'S [~~PROPOSED~~]
ORDER ADMITTING TO
PRACTICE**

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PLAINTIFF'S [PROPOSED] ORDER ADMITTING TO PRACTICE

Marc Erik Elias, Esq. having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificate of Good Standing for the District of Columbia, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

ORDERED, that said application is hereby granted, and Marc Erik Elias, Esq. is hereby admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

Dated this 31 day of December, 2021.


DISTRICT COURT JUDGE

Submitted by:



Bradley S. Schrager, Esq., SBN 10217
John Samberg, Esq., SBN 10828
Daniel Bravo, Esq., SBN 13078
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
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Attorneys for Plaintiff

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15 *Attorneys for Plaintiff*

16
 17 **IN THE FIRST JUDICIAL DISTRICT COURT**
 18 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**
 19

20 NATHANIEL HELTON, an individual,
 21 Plaintiff,

22 vs.

23 NEVADA VOTERS FIRST PAC, a
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 24 TODD L. BICE, in his capacity as the
 President of NEVADA VOTERS FIRST
 25 PAC; and BARBARA CEGAVSKE, in
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 26 SECRETARY OF STATE,

27 Defendants.

Case No.: 21 OC 001721B
 Dept.: II

**PLAINTIFF'S [PROPOSED]
 ORDER ADMITTING TO
 PRACTICE**

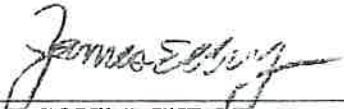
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PLAINTIFF'S [PROPOSED] ORDER ADMITTING TO PRACTICE

Spencer McCandless, Esq. having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificate of Good Standing for the District of Columbia, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

ORDERED, that said application is hereby granted, and Spencer McCandless, Esq. is hereby admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

Dated this 31 day of December, 2021.



DISTRICT COURT JUDGE

Submitted by:



Bradley S. Schrager, Esq., SBN 10217
John Samberg, Esq., SBN 10828
Daniel Bravo, Esq., SBN 13078
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Judge: WILSON JR, JAMES E Case No. 21 OC 00172 1B
Ticket No.
CTN:

HELTON, NATHANIEL By:

BICE, TODD L DRSPND -vs- By:

Dob: Sex:
Lic: Sid:
CEGAVSKE, BARBARA DRSPND By:

Dob: Sex:
Lic: Sid:
NEVADA VOTERS FIRST PAC DRSPND By:

Dob: Sex:
Lic: Sid:

Plate#:
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Year: Accident:
Type:
Venue:
Location:

HELTON, NATHANIEL PLNTPET Bond: Set:
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No.	Filed	Action	Operator	Fine/Cost	Due
1	01/14/22	APPEAL BOND DEPOSIT Receipt: 72784 Date: 01/14/2022	1BSBARAJAS	500.00	0.00
2	01/14/22	PLAINTIFF'S CASE APPEAL STATEMENT	1BSBARAJAS	0.00	0.00
3	01/14/22	NOTICE OF APPEAL Receipt: 72784 Date: 01/14/2022	1BSBARAJAS	24.00	0.00
4	01/13/22	NOTICE OF ENTRY OF ORDER	1BSBARAJAS	0.00	0.00
5	01/13/22	HEARING HELD: The following event: MOTION HEARING - CIVIL scheduled for 01/05/2022 at 10:30 am has been resulted as follows: Result: HEARING HELD Judge: WILSON JR, JAMES E Location: DEPT II	1BJHIGGINS	0.00	0.00
6	01/06/22	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
7	01/06/22	FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT	1BJULIEH	0.00	0.00
8	01/06/22	NOTICE OF SUBMISSION OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND JUDGMENT BY DEFENDANTS NEVADA VOTERS FIRST PAC AND TODD L. BICE	1BJULIEH	0.00	0.00
9	01/04/22	REQUEST FOR SUBMISSION	1BJULIEH	0.00	0.00
10	01/04/22	PLAINTIFF NATHANIEL HELTON'S REPLY IN SUPPORT OF COMPLAINT FO RDECLARATORY AND INJUNCTIVE RELIEF CHALLENGING THE BETTER VOTING NEVADA	1BJULIEH	0.00	0.00

INITIATIVE

No.	Filed	Action	Operator	Fine/Cost	Due
11	01/04/22	NOTICE OF ENTRY OF ORDER (4)	1BJULIEH	0.00	0.00
12	01/04/22	REQUEST FOR SUBMISSION (4)	1BJULIEH	0.00	0.00
13	01/03/22	PLAINTIFFS ORDER ADMITTING TO PRACTICE (4)	1BCCOOPER	0.00	0.00
14	12/29/21	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
15	12/29/21	ORDER FOLLOWING TELEPHONIC CONFERENCE HELD ON DECEMBER 15, 2021	1BCCOOPER	0.00	0.00
16	12/23/21	DEFENDANTS NEVADA VOTERS FIRST PAC AND TODD BICE'S OPPOSITION TO PLAINTIFF'S DECLARATORY AND INJUNCTIVE RELIEF CHALLENGE THE BETTER VOTING NEVADA INITIATIVE	1BPETERSON	0.00	0.00
17	12/23/21	INITIAL APPEARANCE FEE DISCLOSURE	1BPETERSON	0.00	0.00
18	12/23/21	ADDITIONAL DEFENDANT Receipt: 72557 Date: 12/27/2021	1BPETERSON	30.00	0.00
19	12/23/21	DEFENDANTS NEVADA VOTERS FIRST PAC AND TODD BICE'S ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGE THE BETTER VOTING NEVADA INITIATIVE Receipt: 72557 Date: 12/27/2021	1BPETERSON	218.00	0.00
20	12/21/21	LIMITED RESPONSE TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING THE BETTER VOTING NEVADA INITIATIVE	1BCCOOPER	0.00	0.00
21	12/21/21	PLAINTIFFS MOTION TO ASSOCIATE COUNSEL PURSUANT TO NEVADA SUPREME COURT RULE 42	1BCCOOPER	0.00	0.00
22	12/21/21	PLAINTIFF'S PROPOSED DESCRIPTION OF EFFECT	1BPETERSON	0.00	0.00
23	12/20/21	PLAINTIFF'S MOTION TO ASSOCIATE COUNSEL PURSUANT TO NEVADA SUPREME COURT RULE 42 (3)	1BPETERSON	0.00	0.00
24	12/15/21	HEARING HELD: The following event: STATUS CHECK scheduled for 12/15/2021 at 10:30 am has been resulted as follows: Result: HEARING HELD Judge: WILSON JR, JAMES E Location: DEPT II	1BJHIGGINS	0.00	0.00
25	12/14/21	SUMMONS (2)	1BJHIGGINS	0.00	0.00
26	12/13/21	TELEPHONE CONFERENCE MEMO	1BPETERSON	0.00	0.00
27	12/09/21	ORDER TRANSFERRING CASE TO DEPARTMENT 2	1BJULIEH	0.00	0.00
28	12/08/21	SUMMONS	1BJULIEH	0.00	0.00
29	12/06/21	ISSUING SUMMONS	1BSBARAJAS	0.00	0.00
30	12/06/21	PLAINTIFF'S APPENDIX OF EXHIBITS	1BSBARAJAS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
31	12/06/21	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING THE BETTER VOTING NEVADA INITIATIVE	1BSBARAJAS	0.00	0.00
32	12/06/21	PLAINTIFF'S INITIAL APPEARANCE FEE DISCLOSURE	1BSBARAJAS	0.00	0.00
33	12/06/21	PLAINTIFF'S AFFIRMATION	1BSBARAJAS	0.00	0.00
34	12/06/21	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING THE BETTER VOTING NEVADA INITIATIVE Receipt: 72314 Date: 12/06/2021	1BSBARAJAS	265.00	0.00
			Total:	1,037.00	0.00
Totals By: COST				537.00	0.00
HOLDING				500.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

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

NATHANIEL HELTON, an individual,

Plaintiff,

v.

NEVADA VOTERS FIRST PAC, a Nevada
Committee for Political Action; TODD L. BICE,
in his capacity as the President of NEVADA
VOTERS FIRST PAC; and BARBARA
CEGAVSKE, in her capacity as NEVADA
SECRETARY OF STATE,

Defendants.

Case No.: 21 OC 00172 1B

Dept. No.: II

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW; AND
JUDGMENT**

This matter came before this Court pursuant to NRS 295.061 and Plaintiff's request to enjoin Defendant Barbara Cegavske, in her capacity as Nevada Secretary of State (the "Secretary") from any action allowing Initiative Petition C-01-2021, styled as the Better Voting Nevada Initiative (the "Initiative"), to proceed. The Initiative was filed with the Secretary on November 12, 2021, by Defendants Nevada Voters First PAC, and its President, Todd L. Bice (collectively, "Voters First").

The Court, having reviewed the papers and pleadings on file, and considered the matter, and being fully advised, and good cause appearing, finds and orders as follows:

1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW¹**

2 **A. FINDINGS OF FACT**

3 1. Voters First proposed the Initiative so as to change how certain officeholders of
4 elected partisan office are chosen. Citing reports that more and more Nevada voters are choosing
5 to identify as non-partisan, as opposed to joining the two major political parties, Voters First claims
6 that the existing selection process effectively excludes a plurality of voters from having an effective
7 say in the choosing of their elected representatives. Voters First thus seeks to address what it
8 considers to be voter disenfranchisement.

9 2. The Initiative follows a similar voter-approved effort in Alaska to end closed
10 primaries and provide for ranked-choice voting. The Initiative provides that all voters and all
11 interested candidates – Democrat, Republican, or otherwise seeking office for Congress, Governor,
12 Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller, and State
13 Legislator – will participate in a non-partisan primary to narrow the field for that particular office
14 to the top-five vote getters. (*See* Proposed Amendment to Article 15, Sections 4 and 14 and adding
15 Section 17 subparts 1-9 to implement an open primary); *see also id.* Proposed Nevada
16 Const. art. 15, § 17, ¶ 8 (defining partisan offices to which it applies.)

17 3. Any candidate for these offices may run in the primary "regardless of the person's
18 affiliation with a political party, or lack thereof." (*Id.* Proposed Nevada Const. art. 15, § 17, ¶ 1(b).)
19 Likewise, "[a]ny registered voter may cast a primary ballot for any candidate for partisan office
20 regardless of the political party affiliation of the voter or any political party preference indicated by
21 the candidate." (*Id.* ¶ 1(c).) Following the primary, the top-five vote getters "shall advance to the
22 general election for partisan office." (*Id.* ¶ 2.) (*Id.* at Proposed Nevada Const. art. 15, § 17, ¶ 3.)

23 4. The Initiative provides voters that candidates will be allowed to self-identify
24 whether they want to be associated with any political parties' primary system, including how
25 "[i]mmediately following the name of each candidate for a partisan office must appear the name or
26

27 ¹ Any findings of fact which are more appropriately considered conclusions of law shall be
28 treated as such, and any conclusions of law which are more appropriately considered findings of
fact shall be treated as such.

1 abbreviation of the political party with which the candidate is registered, the words, 'no political
2 party' or the abbreviation 'NPP,' as the case may be." (*Id.* ¶ 5.) And, the Initiative tells voters that
3 the primary system will no longer be the means by which partisan political parties choose their
4 preferred nominee:

5 [t]he ballots for the primary elections for partisan office must include a
6 conspicuously placed statement: "A candidate for partisan office may state a
7 political party that he or she prefers. A candidate's preference does not imply that
the candidate is nominated or endorsed by the party, or that the party approves of or
associates with that candidate."

8 (*Id.* ¶ 6.)

9 5. The Initiative also provides for a procedure in the event a top-five vote getter
10 "withdraws, is disqualified, dies, or is otherwise deemed ineligible" and permits "the candidate
11 receiving the next greatest number of votes at the primary election for partisan office shall be
12 declared a nominee." (*Id.* ¶ 7.) It further directs that "[n]ot later than July 1, 2015, the Legislature
13 shall provide by law for provisions consistent with Section 17 of Article 15 of this Constitution to
14 require top-five primary elections for partisan office." (*Id.* at Proposed Nevada Const. art. 15, § 17,
15 ¶ 9.)

16 6. Once the candidates are winnowed by the primary process, the remaining five
17 candidates proceed to the general election where voters are allowed to rank each candidate in order
18 of preference. (*Id.* at Proposed Nev. Const. art. 15 § 18 ¶¶1-2.) "The general election ballots for
19 partisan office shall be designed so that the voter is directed to mark candidates in order of
20 preference and to mark as many choices as the voter wishes, but not to assign the same ranking to
21 more than one candidate for the same office." (*Id.* at ¶ 3.) As Initiative further provides, voters may
22 choose just one candidate, or may decide to rank all five. (*Id.* at ¶ 8(a)-(g).)

23 7. The Initiative provides that when tabulating the ballots, "each County shall initially
24 tabulate each validly cast ballot as one vote for the highest-ranked candidate on that ballot or as an
25 inactive ballot. If a candidate is highest-ranked on a majority of the active ballots, that candidate
26 is elected and the tabulation is complete." (*Id.* at ¶ 6.) In the event no candidate obtains over 50%
27 of the first-place votes, "tabulation proceeds in sequential rounds" until the candidate with the
28

1 highest level of support (i.e. the greatest number of votes) is determined as the winner. (*Id.* at
2 Proposed Nevada Const. art. 15, § 17, ¶ 7.)

3 8. In accordance with NRS 295.009(1)(b), Voters First included the following
4 description of effect:

5 If enacted, this initiative changes Articles 5 and 15 of Nevada's Constitution for
6 Congressional, Governor, Lieutenant Governor, Attorney General, Secretary of
7 State, Treasurer, Controller and State Legislator elections, eliminating partisan
8 primaries and establishing an open top-five primary election and a rank-choice
9 voting general election.

10 For these offices, all candidates and voters participate in a single primary election
11 regardless of party affiliation or non-affiliation. The top five finishers advance to
12 the general election, and the general election winner is determined by rank-choice
13 voting:

- 14 • General election voters rank the candidates in order of preference from first
15 to last, if they wish to rank more than their first preference.
- 16 • As traditionally, a candidate receiving first-choice votes of more than 50%
17 wins.
- 18 • If no candidate is the first choice of more than 50%, the candidate with the
19 fewest votes is eliminated. And each voter who had ranked the
20 now-eliminated candidate as their first choice, has their single vote
21 transferred to their next highest choice candidate.
- 22 • This tabulation process repeats until the one candidate with more than 50%
23 support is determined as the winner.

24 The Legislature must adopt implementing legislation by July 1, 2025.

25 9. Pursuant to NRS 295.061, Plaintiff initiated this action raising three issues which,
26 he alleges, should preclude the Initiative from being circulated for signature gathering or being
27 considered by Nevada voters: First, Plaintiff asserts that the Initiative is not limited to a single
28 subject and engages in log rolling. Second, Plaintiff contends that the Initiative violates Article 19,
Section 6 of the Nevada Constitution by failing to provide for a separate funding mechanism. And
finally, Plaintiff contends that the Initiative's 200-word description of effect is deficient.

10 10. As further set forth herein, the Court considers each of Plaintiff's challenges in turn,
11 and rejects each of these challenges.

12 **B. CONCLUSIONS OF LAW**

13 11. At this juncture, challenges to an initiative petition are limited to whether it complies
14 with the procedural requirements for its potential consideration by voters. *Herbst Gaming, Inc. v.*
15 *Heller*, 122 Nev. 877, 882-3, 141 P.3d 1224, 1228 (2006) (discussing "to what extent we may
16 entertain pre-election challenges to initiative measures"). Specifically, "it is not the function of this

1 Court to judge the wisdom" of a proposed ballot measure, as such policy choices are left to the
2 voters. *Nevada Judges Ass'n. v. Lau*, 112 Nev. 51, 57, 910 P.2d 898, 902 (1996).

3 **A. The Initiative Complies with the Single-Subject Requirement.**

4 12. Article 19, Section 2(1) of the Nevada Constitution provides that "the people reserve
5 to themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
6 The Nevada Supreme Court recognizes that "the right to initiate change in this State's laws through
7 ballot proposals is one of the basic powers enumerated in this State's Constitution." *Nevadans for*
8 *the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247 (2006).

9 13. The right of the citizenry to implement legislative change is coextensive with that
10 of the Legislature itself. When the Legislature enacts a law, the Constitution likewise requires that
11 each such law "shall embrace but one subject, and matter, properly connected therewith" Nev.
12 Const. art. 4, § 17. Consistent with that legislative single-subject requirement, NRS 295.009(1)
13 specifies that each initiative by the people must similarly embrace "but one subject and matters
14 necessarily connected therewith and pertaining thereto." The statute explains that an initiative
15 "embraces but one subject and matters necessarily connected therewith and pertaining thereto, if
16 the parts of the proposed initiative or referendum are functionally related and germane to each other
17 in a way that provides sufficient notice of the general subject of, and the interests likely to be
18 affected by, the proposed initiative or referendum." NRS 295.009(2).

19 14. As the Nevada Supreme Court directs, the provisions of NRS 295.009 must be
20 interpreted and implemented so as to "make every effort to sustain and preserve the people's
21 constitutional right to amend their constitution through the initiative process." *Heller*, 122 Nev.
22 at 912, 141 P.3d at 1247. Indeed, "[c]onsistent with the constitutional interests at stake, the law
23 requires the challenger of the initiative, not its proponent, to bear the burden of demonstrating that
24 a proposed initiative is clearly invalid because it embraces more than one subject." *Prevent*
25 *Sanctuary Cities v. Haley*, Case No. 74966, 2018 WL 2272955, at * 1 Nev. (2018) (unpublished
26 disposition)²; see also *Las Vegas Taxpayer Comm. v. City Council*, 125 Nev. 165, 176, 208 P.3d

27
28 ² See NRAP 36(3).

1 429, 436 (2009) (party seeking to invalidate an initiative bears the burden of establishing that the
2 initiative is "clearly invalid.").

3 15. The reason courts impose such a high burden on a challenger is because efforts to
4 impede the voters' initiative power is contrary to the democratic process. *Farley v. Healey*, 431
5 P.2d 650, 652 (Cal. 1967); *see also City of Firecrest v. Jensen*, 143 P.3d 776, 779 (Wash. 2006)
6 (legal limitations on proposed initiatives are "broadly construed in favor of upholding" the initiative
7 and therefore the challenger of an initiative must establish its "unconstitutionality beyond a
8 reasonable doubt.").

9 16. Since NRS 295.009's codification of the single-subject requirement in 2005, the
10 Nevada Supreme Court has had several instances to apply it to voter-backed initiatives, reiterating
11 the citizenry's right to propose broad policy changes through a single initiative. In the first such
12 case, *Heller*, the Court recognized that the single subject there was the broad topic of "eminent
13 domain." *Heller*, 122 Nev. at 907, 141 P.3d at 1244. The Court upheld the right of the initiative's
14 proponents to incorporate numerous provisions – and the policy choices therein – because each
15 ultimately related to that broad subject. *Id.* The Court found that only those provisions untethered
16 to the subject of "eminent domain," such as creating "a broad new class of fundamental rights" and
17 "any government action that causes substantial economic loss" did not relate to the "primary
18 subject" of eminent domain, and thus had to be severed. *Id.* at 909, 141 P.3d at 1245.

19 17. Similarly, in *Education Initiative PAC v. Committee to Protect Nevada Jobs*, 129
20 Nev. 35, 50-51, 293 P.3d 874, 884-85 (2013), the Court determined that the proposed initiative's
21 "primary purpose is clearly to fund education." Consistent with that broad subject, the initiative
22 addressed two distinct taxes, implementing a new tax and temporarily increasing a different
23 preexisting tax. Rejecting the same approach Plaintiff urges here — that two different taxes are
24 necessarily two different subjects because some voters might favor one but not both — the Court
25 explained that "both taxes are functionally related and germane" to the broad subject matter of
26 "funding public education" and thus are not two separate subjects under NRS 295.009. *Id.* at 51,
27 293 P.3d at 885. *Accord, Prevent Sanctuary Cities* 2018 WL 2272955 at *3 (noting that while
28 initiative's various components – spanning three different levels of government (state, county and

1 city) were phrased in broad general terms – all of its provisions were consistent with the
2 single-subject requirement because they functionally related and were germane to the broad policy
3 of immigration enforcement).

4 18. The present Initiative is narrower and squarely comports with NRS 295.009 and the
5 Nevada Supreme Court's precedents. Each of the Initiative's provisions functionally relates, and is
6 germane, to how the specified officeholders – defined in the Initiative as the "Partisan Offices" –
7 are chosen by voters. Plaintiff's assertion that the "primary" election is separate and distinct subject
8 from the "general" – insisting that no one initiative can simultaneously address both – is
9 unsupported and contrary to existing Nevada law. The primary election is just a step in the process.
10 The primary election and general election are intertwined steps in the process for how officeholders
11 are ultimately chosen, which is the primary purpose of this Initiative. *See also* Nev. Const. art. 2, §
12 10 (Constitutional amendment adopted by the voters in 1996, simultaneously imposed campaign
13 contribution limits on both the primary and general elections).

14 19. The Alaska Supreme Court's recent decision in *Meyer v. Alaskans for Better*
15 *Elections*, 465 P.3d 477 (Alaska 2020) concerned a similar initiative to change that state's selection
16 process. There, the initiative proposed three changes to Alaska election law, (1) replacing the
17 closed primary system with an open, nonpartisan primary, (2) establishing ranked-choice voting in
18 the general election, and (3) mandating new campaign finance disclosures. *Id.* at 498. The Alaska
19 Supreme Court rejected the claim that the initiative violated the single-subject requirement,
20 explaining that a "plain reading of the initiative shows that its provisions embrace the single subject
21 of 'election reform' and share the nexus of election administration." *Id.*

22 20. As the Alaska court noted, all the substantive provisions fall under the same subject
23 matter and seek to institute an election reform process. *Id.* The court concluded that the initiative's
24 provisions were all logically related to one another, as the "open, nonpartisan primary system
25 changes the status quo by forwarding four candidates for voters to rank in the general election by
26 ranked-choice voting. These two substantive changes *are interrelated* because together they ensure
27 that voting does not revert to a two candidate system." *Id.* at 499 (emphasis added).'
28

1 21. Plaintiff's reliance on *Las Vegas Taxpayer Accountability v. City Council*, 125 Nev.
2 165, 208 P.3d 429 (2009) to challenge the Initiative is misplaced. As the Nevada Supreme Court
3 explained there, that proposed local initiative had so many disparate parts that "*a primary purpose*
4 *cannot be determined from the initiative itself and the description of effect.*" 125 Nev. at 180,
5 208 P.3d at 439 (emphasis original). The court concluded that the proposed initiative governed at
6 least two separate subjects, the first requiring voter approval for any municipal lease purchase
7 agreement exceeding \$2 million, and a separate requirement for voter approval of all "major
8 redevelopment decisions." *Id.* No overarching subject matter existed to join these unrelated
9 provisions other than what the Court said would be a generic subject like "voter approval," which
10 is so excessively general as to render the single-subject requirement meaningless. *Id.*

11 22. Plaintiff's assertion that the Initiative engages in "log rolling" – postulating that
12 changes to the primary election process and rank-choice voting for the general election are separate
13 and discreet subjects since "either could stand on its own without the other" – misstates the standard.
14 (Pl.'s Memo., at 10:21-22.) Log rolling occurs when "two or more completely separate provisions
15 are combined in a petition, when one or both of which would not obtain enough votes to pass
16 without the other." *Heller*, 122 Nev. at 922, 141 P.3d at 1254 (Hardesty, J. concurring in part and
17 dissenting in part). To "log roll" a provision in violation of the single-subject requirement means
18 to advance a proposition that the proponent expects would be supported by voters, but then include
19 other provisions, often concealed or hidden, that are less popular. *Id.* The purpose of the single
20 subject rule is to preclude such log rolling by ensuring that all of an initiative's provisions are
21 germane to the primary subject, so that voters are not faced with a "Hobson's choice" of having to
22 choose between two discrete and unrelated matters. *Id.*

23 23. Contrary to Plaintiff's articulation, it is not log rolling simply because each of an
24 initiative's provisions "could" be voted on separately and stand on their own. *Meyer*, 465 P.3d at
25 498 ("The question is not whether the initiative could be split into separate measures, but rather
26 whether the various provisions 'embrace some one general subject'") (citations omitted). Here, as
27 the Initiative's proponents correctly note, the adoption of non-partisan primaries for these offices
28 functionally relates to the effectiveness in ranked-choice voting. *Id.* at 499. After all, the benefits

1 of ranked-choice voting in the general election are much negated if the primary election outcome
2 results in a general election between just two candidates. Changing the closed primary system and
3 providing that the top-five finishers advance to the general election is what makes ranked-choice
4 voting most effective in conformity with the Initiative's purpose.³

5 24. There is no requirement that every constitutional amendment for the voters'
6 consideration be narrowly tailored to one discreet provision, anytime that provision can purportedly
7 stand alone. Doing so "would significantly hinder the people's power to legislate by initiative and
8 effectively bar all but the simplest ballot measures." *Educ. Initiative*, 129 Nev. at 45, 293 P.3d at
9 881. Every initiative presents the voters with policy choices, some of which voters may prefer more
10 than others. But so long as those provisions relate to a single subject, it is for the initiative's
11 proponents to propose those policy choices. The law allows Nevada voters to propose to change
12 the manner in which specified officeholders are chosen. *See Nevada Judges Ass'n.*, 112 Nev. at 56,
13 910 P.2d at 901-2 (explaining that partisan officeholders are a separate class as opposed to
14 nonpartisan offices, like judges, and term limits applying to partisan officeholders by way of a
15 single initiative is allowed).

16 **B. The Initiative Does Not Violate Article 19, Section 6.**

17 25. The Court also rejects Plaintiff's second contention – that the Initiative violates the
18 requests of Article 19, Section 6. As a threshold matter, Plaintiff's claim that the Initiative
19 constitutes a "massive overhaul" of voting for elected officials that "would cost money" and "is
20 more expensive than the ongoing administration of a simple one" is unsupported speculation.
21 Regardless, claims about any increase (or decrease) in the costs of existing government functions
22 – like elections – is not what Article 19, Section 6 addresses.

23 26. Article 19, section 2(1) of Nevada's constitution provides that the initiative process
24 is "subject to the limitations of" Article 19, Section 6, which "does not permit the proposal of any
25 statute or statutory amendment which makes an appropriation or otherwise requires the expenditure
26

27 ³ Because the Court rejects Plaintiff's single-subject challenge, it need not address Plaintiff's
28 arguments concerning severability of open primaries from ranked-choice general elections.

1 of money, unless such statute or amendment also imposes a sufficient tax, not prohibited by the
2 constitution, or otherwise constitutionally provides for raising the necessary revenue." As the
3 Nevada Supreme Court holds, Section 6 applies to all proposed initiatives. *Rogers v. Heller*, 117
4 Nev. 169, 173, 18 P.3d 1034, 1036 (2001).

5 27. It is normal that a change in the law will carry with it some associated burden,
6 including training, updates, record keeping, enforcement efforts and similar obligations. But such
7 common burdens are not what Article 19, Section 6 concerns: "[A]n initiative makes an
8 appropriation or expenditure of money when it leaves budgeting officials *no discretion* in
9 appropriating or expending the money *mandated by the initiative* – the budgeting official *must*
10 approve the appropriation or expenditure, regardless of any other financial considerations." *Herbst*
11 *Gaming Inc. v. Heller*, 122 Nev. 877, 890, 141 P.3d 1224, 1233 (2006) (emphasis added).

12 28. By comparing the cases that Plaintiff relies upon, it is apparent that this Initiative
13 does not trigger Article 19, Section 6. In *Rogers*, the Court evaluated an initiative that sought to
14 raise funds as well as impose a threshold funding level for Nevada's public elementary and
15 secondary schools. 117 Nev. at 171-76, 18 P.3d at 1035-1038. Thus, the *Rogers* Court reasoned,
16 "[e]ven if the Legislature has a perpetual duty to fund education, because of its traditional role in
17 funding education and its promise to pay any needed portion of the basic support guarantees, the
18 Legislature is not required to continue funding education at any particular level. A necessary
19 appropriation or expenditure in *any* set amount or percentage is a new requirement that otherwise
20 does not exist." *Id.* at 176, 18 P.3d at 1038 (emphasis in original). Concluding that the initiative
21 was "a new requirement" that invaded the Legislature's traditional "broad discretion in determining
22 education funding" and the corresponding proposed tax within the initiative fell "far short of"
23 maintaining a balanced budget, the Supreme Court found that the initiative thus violated Article 19,
24 Section 6. *Id.* at 177, 18 P.3d at 1039.

25 29. In comparison, *Herbst Gaming* involved an initiative that did "not make an
26 appropriation or required the expenditure of money. It simply expand[ed] the statutory list of public
27 places in which smoking [wa]s unlawful and le[ft] untouched provisions that set forth the penalty
28 for smoking in an area in which smoking is prohibited." 122 Nev. at 891, 141 P.3d at 1233

1 (footnotes omitted). Rejecting arguments like Plaintiff makes here — how the initiative's changes
2 in the law would increase the costs and expenses for enforcement — the Court explained that, such
3 expenses do not implicate Article 19, Section 6:

4 In particular, the [initiative] requires *neither* the setting aside nor the payment of
5 any funds. Further, and *significantly*, the [initiative] leaves budgeting officials'
6 discretion entirely intact. It does not, for example, *compel* an increase or
7 reallocation of police officers to enforce its provision. Because the [initiative]
8 *neither* explicitly or implicitly compels an appropriation or expenditure, but rather
9 leaves the mechanics of its enforcement with government official, it does not involve
10 an appropriation or expenditure warranting a revenue-generating provision.

11 *Id.* (emphasis added).

12 30. Here, the Initiative does not impose a new requirement of funding elections, nor
13 compel a specified level of spending. Instead, it seeks election reform to include all Nevada voters
14 by having a single non-closed primary which narrows the field to the top-five who are then ranked
15 by the voters in the general election. Holding both a primary and general election are already
16 provided by Nevada law. Having a single primary election, as opposed to multiple, imposes no new
17 expenditure mandate. And, ranked-choice voting does not create a new requirement for an election;
18 it is simply a process for tabulation of all the votes.

19 31. Furthermore, NRS 293.442-NRS 293.460 provides discretion to the Nevada
20 Secretary of State as well as local officials to incur expenses as both implement elections. This
21 Initiative does not disturb this discretion – either implicitly or explicitly – because, and as detailed
22 in both Sections 9 and 11, the Initiative vests the implementation with the Legislature and likewise
23 the Secretary of State and local officials. *See Herbst Gaming*, 122 Nev. at 891, 141 P.3d at 1233
24 (permitting an initiative that left discretion to the administrative officials). So again, Plaintiff's
25 arguments claiming this Initiative is an unfunded mandate is in direct conflict with Nevada
26 precedent.

27 **C. The Initiative's Description is Straightforward, Succinct, and**
28 **Non-argumentative.**

32. Finally, Plaintiff fails in his burden to show that the Description of Effect does not
comply with NRS 295.009. The Initiative's description satisfies Nevada's requirements as its plain
language is straightforward, succinct, and non-argumentative. Plaintiff's proposal does not comply

1 with Nevada law, as it is argumentative, advocates partisan interests, and does not accurately
2 describe the Initiative.

3 33. NRS 295.009 vests the Initiative's proponents with the obligation and right to
4 provide a description of effect. That description "need not articulate every detail and possible effect
5 that an initiative may have. Instead, given that these descriptions are utilized only in the early,
6 signature-gathering of the initiative process and that the descriptions of effect are limited to 200
7 words, they need only provide a straightforward, succinct and nonargumentative summary of what
8 the initiative is designed to achieve and how it intends to reach those goals." *Educ. Initiative*, 129
9 Nev. at 51, 293 P.3d at 885. As such, the description "does not need to explain 'hypothetical' effects
10 of an initiative." *Id.* at 42, 293 P.3d at 879. (cleaned up); *see Nevadans for Nevada v. Beers*, 122
11 Nev. 930, 939, 142 P.3d 339, 345 (2006) (detailing that NRS 295.009's description of effect
12 "requirements served to prevent voter confusion and promote informed decisions" (internal
13 quotation marks omitted)).

14 34. As the Supreme Court holds, "[g]iven this constraint and in light of its statutory
15 function to facilitate the initiative process, a **hyper-technical interpretation** of the requirements for
16 a description of effect may impede the people from exercising their constitutional right to propose
17 laws and is therefore an inappropriate method for assessing the adequacy of a description of effect."
18 *Educ. Initiative*, 129 Nev. at 42-43, 293 P.3d at 879 (emphasis added); *Herbst Gaming*, 122 Nev.
19 at 889, 141 P.3d at 1232 ("[A] ballot measure's summary and title need not be the best possible
20 statement of a proposed measure's intent or address every aspect of a proposal." (internal quotation
21 marks omitted)).

22 35. Mitigating all of this, as the Nevada Supreme Court explains, "[d]uring the signature
23 gathering process, signers, before signing the petition, may read the initiative on the Secretary's
24 website or the copy in the circulator's possession . . ." *Educ. Initiative*, 129 Nev. at 43, 293 P.3d
25 at 880. The burden lies with Plaintiff to prove to this Court that the description of effect is "clearly
26 invalid." *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 176, 208 P.3d at 436.

27 36. Plaintiff fails in his burden to prove that the description proposed by Voters First is
28 invalid. Within the 200 words allowed, the description informs voters what the Initiative proposes

1 to do and how it intends to do it. In the very first sentence, the description announces to which
2 offices the changes in the selection process would apply, and states that it proposes to eliminate
3 partisan primaries for these offices and establish an open top-five primary election followed by
4 ranked-choice voting in the general election. It then explains how the ranked-choice voting works.
5 Finally, it discloses when the Legislature would be required to implement these changes to the
6 process. There is nothing misleading in the description. It discloses what the Initiative proposes to
7 do.

8 37. Plaintiff's criticisms are not well founded and are largely an attempt to use the
9 description as an advocacy piece for his opposition to the Initiative. Plaintiff's proposed description
10 omits disclosing to which elective offices the Initiative would even apply. He then proposes to use
11 the description's limited space to discuss the remote hypothetical of what happens should there be
12 a tie between the fifth and sixth place candidates in the non-partisan primary.

13 38. Plaintiff also seeks to use the description as advocacy for the role of partisan political
14 parties. Voters sufficiently understand the role of political parties. *See Washington State Grange*
15 *v. Washington State Republican Party*, 552 U.S. 442, 454 (2018) ("There is simply no basis to
16 presume that a well-informed electorate will interpret a candidates' party-preference designation to
17 mean that the candidate is the party's chosen nominee or representative or that the party associates
18 with or approves of the candidate"). Moreover, this type of partisan advocacy is not a
19 "nonargumentative summary of what an initiative is designed to achieve and how it intends to reach
20 those goals." *Educ. Initiative*, 129 Nev. at 52, 293 P.3d at 885.

21 39. The proponents' description accurately states that the Initiative is "**eliminating**
22 **partisan primaries**" and establishing a single top-five primary election and a ranked-choice voting
23 general election. (emphasis added). The description continues, "voters participate in a single
24 primary election **regardless of party affiliation or non-affiliation.**" (*Id.*) (emphasis added) Thus,
25 voters are informed about the reduced role of party control and party affiliation under the new
26 process. The specifics about how party designation appears on the printed ballot form are, at best,
27 secondary effects that do not need to be included in the limited space of the description. Nor do the
28

1 collateral consequences to national political party gate-keepers need to be mentioned at this early
2 state.

3 40. Plaintiff's attempt to claim that the top vote-getter would no longer be guaranteed
4 victory if this Initiative is adopted is also misleading. The proponents' description accurately states
5 that "as traditionally, a candidate receiving the first-choice votes of more than 50% wins." 50%
6 plus one vote is the winner under the current tabulation method as well as what the Initiative
7 proposes.⁴ The difference is what happens when no candidate receives more than 50% of the initial
8 first-choice votes. Then, as the proponents' description accurately describes, the explained
9 tabulation process occurs until the one candidate with the most votes is declared the winner.

10 41. Plaintiff's final request – for the description's inclusion of his cost arguments – is not
11 the purpose of the description under NRS 295.009. This type of partisan advocacy is not allowed.
12 Under Nevada law, such arguments are matters for the ballot committees to make once the Initiative
13 is put before the voters. *See Educ. Initiative*, 129 Nev. at 39, 293 P.3d at 878 (Noting the
14 requirements of NRS 293.252 for the creation of ballot committees to write arguments for and
15 against passage, including the claimed fiscal impact by proponents and opponents).

16 42. The description prepared by Voters First is what NRS 295.009 contemplates: It lets
17 the public make up their mind about signing without skewed partisan spin.

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25 ⁴ *See also* NRS 293.260(5) (stating that “if one of those candidates receive a majority of the
26 votes cast in the primary election for [nonpartisan office], the candidate must be declared elected
27 to the office and his or her name must not be place on the ballot for the general election.”). It is the
28 long-established "traditional" rule that any candidate that receives more than 50% is necessarily the
declared winner in the general election. The fact that under the current system someone can
sometimes win even if they receive less than 50% of the votes does not anyway change the well-
understood traditional rule that 50% plus 1 vote necessarily wins.

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Based on the foregoing findings of fact and conclusions of law:

IT IS HEREBY ORDERED that Plaintiff's challenges to the Initiative are rejected and that final judgment is hereby entered against Plaintiff and in favor of Defendants.

January 6, 2022


DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 6 day of January 2022, I served a copy of this document by placing a true copy in an envelope addressed to:

Bradley S. Schrager, Esq. 3773 Howard Hughes Pkwy., Ste. 590 South Las Vegas, NV 89169	Todd Bice, Esq. 400 South 7 th St., Ste. 300 Las Vegas, NV 89101 Craig A. Newby, Esq. Office of the Attorney General 555 E. Washington Ave., Ste. 3900 Las Vegas, NV 89101
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the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.


Billie Shadron
Judicial Assistant

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7 *Nevada Voters First PAC and Todd Bice*

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DEPUTY

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

10 NATHANIEL HELTON, an individual,
11 Plaintiffs,
12 v.

Case No.: 21 OC 00172 1B
Dept. No.: II

13 NEVADA VOTERS FIRST PAC, a Nevada
Committee for Political Action; TODD L.
14 BICE, in his capacity as the President of
NEVADA VOTERS FIRST PAC; and
15 BARBARA CEGAVSKE, in her capacity as
NEVADA SECRETARY OF STATE,
16
17 Defendants.

NOTICE OF ENTRY OF ORDER

18
19 PLEASE TAKE NOTICE that a "Findings of Fact and Conclusions of Law; and
20 Judgment" was entered in the above-captioned matter on January 6, 2022, a true and correct copy
21 of which is attached hereto.
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AFFIRMATION

I affirm this document does not contain the personal information of any person.

DATED this 12th day of January, 2022.

PISANELLI BICE PLLC

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 12th day of January 2022, pursuant to NRCP 5(b), I served a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER**, by United States Mail, postage prepaid, and by electronic mail, the following:

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

NATHANIEL HELTON, an individual,

Plaintiff,

v.

NEVADA VOTERS FIRST PAC, a Nevada
Committee for Political Action; TODD L. BICE,
in his capacity as the President of NEVADA
VOTERS FIRST PAC; and BARBARA
CEGAVSKE, in her capacity as NEVADA
SECRETARY OF STATE,

Defendants.

Case No.: 21 OC 00172 1B

Dept. No.: II

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW; AND
JUDGMENT**

This matter came before this Court pursuant to NRS 295.061 and Plaintiff's request to enjoin Defendant Barbara Cegavske, in her capacity as Nevada Secretary of State (the "Secretary") from any action allowing Initiative Petition C-01-2021, styled as the Better Voting Nevada Initiative (the "Initiative"), to proceed. The Initiative was filed with the Secretary on November 12, 2021, by Defendants Nevada Voters First PAC, and its President, Todd L. Bice (collectively, "Voters First").

The Court, having reviewed the papers and pleadings on file, and considered the matter, and being fully advised, and good cause appearing, finds and orders as follows:

1 FINDINGS OF FACT AND CONCLUSIONS OF LAW¹

2 A. FINDINGS OF FACT

3 1. Voters First proposed the Initiative so as to change how certain officeholders of
4 elected partisan office are chosen. Citing reports that more and more Nevada voters are choosing
5 to identify as non-partisan, as opposed to joining the two major political parties, Voters First claims
6 that the existing selection process effectively excludes a plurality of voters from having an effective
7 say in the choosing of their elected representatives. Voters First thus seeks to address what it
8 considers to be voter disenfranchisement.

9 2. The Initiative follows a similar voter-approved effort in Alaska to end closed
10 primaries and provide for ranked-choice voting. The Initiative provides that all voters and all
11 interested candidates – Democrat, Republican, or otherwise seeking office for Congress, Governor,
12 Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller, and State
13 Legislator – will participate in a non-partisan primary to narrow the field for that particular office
14 to the top-five vote getters. (See Proposed Amendment to Article 15, Sections 4 and 14 and adding
15 Section 17 subparts 1-9 to implement an open primary); see also *id.* Proposed Nevada
16 Const. art. 15, § 17, ¶ 8 (defining partisan offices to which it applies).)

17 3. Any candidate for these offices may run in the primary "regardless of the person's
18 affiliation with a political party, or lack thereof." (*Id.* Proposed Nevada Const. art. 15, § 17, ¶ 1(b).)
19 Likewise, "[a]ny registered voter may cast a primary ballot for any candidate for partisan office
20 regardless of the political party affiliation of the voter or any political party preference indicated by
21 the candidate." (*Id.* ¶ 1(c).) Following the primary, the top-five vote getters "shall advance to the
22 general election for partisan office." (*Id.* ¶ 2.) (*Id.* at Proposed Nevada Const. art. 15, § 17, ¶ 3.)

23 4. The Initiative provides voters that candidates will be allowed to self-identify
24 whether they want to be associated with any political parties' primary system, including how
25 "[i]mmediately following the name of each candidate for a partisan office must appear the name or
26

27 ¹ Any findings of fact which are more appropriately considered conclusions of law shall be
28 treated as such, and any conclusions of law which are more appropriately considered findings of
fact shall be treated as such.

1 abbreviation of the political party with which the candidate is registered, the words, 'no political
2 party' or the abbreviation 'NPP,' as the case may be." (*Id.* ¶ 5.) And, the Initiative tells voters that
3 the primary system will no longer be the means by which partisan political parties choose their
4 preferred nominee:

5 [t]he ballots for the primary elections for partisan office must include a
6 conspicuously placed statement: "A candidate for partisan office may state a
7 political party that he or she prefers. A candidate's preference does not imply that
the candidate is nominated or endorsed by the party, or that the party approves of or
associates with that candidate."

8 (*Id.* ¶ 6.)

9 5. The Initiative also provides for a procedure in the event a top-five vote getter
10 "withdraws, is disqualified, dies, or is otherwise deemed ineligible" and permits "the candidate
11 receiving the next greatest number of votes at the primary election for partisan office shall be
12 declared a nominee." (*Id.* ¶ 7.) It further directs that "[n]ot later than July 1, 2015, the Legislature
13 shall provide by law for provisions consistent with Section 17 of Article 15 of this Constitution to
14 require top-five primary elections for partisan office." (*Id.* at Proposed Nevada Const. art. 15, § 17,
15 ¶ 9.)

16 6. Once the candidates are winnowed by the primary process, the remaining five
17 candidates proceed to the general election where voters are allowed to rank each candidate in order
18 of preference. (*Id.* at Proposed Nev. Const. art. 15 § 18 ¶¶1-2.) "The general election ballots for
19 partisan office shall be designed so that the voter is directed to mark candidates in order of
20 preference and to mark as many choices as the voter wishes, but not to assign the same ranking to
21 more than one candidate for the same office." (*Id.* at ¶ 3.) As Initiative further provides, voters may
22 choose just one candidate, or may decide to rank all five. (*Id.* at ¶ 8(a)-(g).)

23 7. The Initiative provides that when tabulating the ballots, "each County shall initially
24 tabulate each validly cast ballot as one vote for the highest-ranked candidate on that ballot or as an
25 inactive ballot. If a candidate is highest-ranked on a majority of the active ballots, that candidate
26 is elected and the tabulation is complete." (*Id.* at ¶ 6.) In the event no candidate obtains over 50%
27 of the first-place votes, "tabulation proceeds in sequential rounds" until the candidate with the
28

1 highest level of support (i.e. the greatest number of votes) is determined as the winner. (*Id.* at
2 Proposed Nevada Const. art. 15, § 17, ¶ 7.)

3 8. In accordance with NRS 295.009(1)(b), Voters First included the following
4 description of effect:

5 If enacted, this initiative changes Articles 5 and 15 of Nevada's Constitution for
6 Congressional, Governor, Lieutenant Governor, Attorney General, Secretary of
7 State, Treasurer, Controller and State Legislator elections, eliminating partisan
8 primaries and establishing an open top-five primary election and a rank-choice
9 voting general election.

10 For these offices, all candidates and voters participate in a single primary election
11 regardless of party affiliation or non-affiliation. The top five finishers advance to
12 the general election, and the general election winner is determined by rank-choice
13 voting:

- 14 • General election voters rank the candidates in order of preference from first
15 to last, if they wish to rank more than their first preference.
- 16 • As traditionally, a candidate receiving first-choice votes of more than 50%
17 wins.
- 18 • If no candidate is the first choice of more than 50%, the candidate with the
19 fewest votes is eliminated. And each voter who had ranked the
20 now-eliminated candidate as their first choice, has their single vote
21 transferred to their next highest choice candidate.
- 22 • This tabulation process repeats until the one candidate with more than 50%
23 support is determined as the winner.

24 The Legislature must adopt implementing legislation by July 1, 2025.

25 9. Pursuant to NRS 295.061, Plaintiff initiated this action raising three issues which,
26 he alleges, should preclude the Initiative from being circulated for signature gathering or being
27 considered by Nevada voters: First, Plaintiff asserts that the Initiative is not limited to a single
28 subject and engages in log rolling. Second, Plaintiff contends that the Initiative violates Article 19,
Section 6 of the Nevada Constitution by failing to provide for a separate funding mechanism. And
finally, Plaintiff contends that the Initiative's 200-word description of effect is deficient.

10 10. As further set forth herein, the Court considers each of Plaintiff's challenges in turn,
11 and rejects each of these challenges.

12 **B. CONCLUSIONS OF LAW**

13 11. At this juncture, challenges to an initiative petition are limited to whether it complies
14 with the procedural requirements for its potential consideration by voters. *Herbst Gaming, Inc. v.*
15 *Heller*, 122 Nev. 877, 882-3, 141 P.3d 1224, 1228 (2006) (discussing "to what extent we may
16 entertain pre-election challenges to initiative measures"). Specifically, "it is not the function of this
17

1 Court to judge the wisdom" of a proposed ballot measure, as such policy choices are left to the
2 voters. *Nevada Judges Ass'n. v. Lau*, 112 Nev. 51, 57, 910 P.2d 898, 902 (1996).

3 **A. The Initiative Complies with the Single-Subject Requirement.**

4 12. Article 19, Section 2(1) of the Nevada Constitution provides that "the people reserve
5 to themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
6 The Nevada Supreme Court recognizes that "the right to initiate change in this State's laws through
7 ballot proposals is one of the basic powers enumerated in this State's Constitution." *Nevadans for*
8 *the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247 (2006).

9 13. The right of the citizenry to implement legislative change is coextensive with that
10 of the Legislature itself. When the Legislature enacts a law, the Constitution likewise requires that
11 each such law "shall embrace but one subject, and matter, properly connected therewith . . ." Nev.
12 Const. art. 4, § 17. Consistent with that legislative single-subject requirement, NRS 295.009(1)
13 specifies that each initiative by the people must similarly embrace "but one subject and matters
14 necessarily connected therewith and pertaining thereto." The statute explains that an initiative
15 "embraces but one subject and matters necessarily connected therewith and pertaining thereto, if
16 the parts of the proposed initiative or referendum are functionally related and germane to each other
17 in a way that provides sufficient notice of the general subject of, and the interests likely to be
18 affected by, the proposed initiative or referendum." NRS 295.009(2).

19 14. As the Nevada Supreme Court directs, the provisions of NRS 295.009 must be
20 interpreted and implemented so as to "make every effort to sustain and preserve the people's
21 constitutional right to amend their constitution through the initiative process." *Heller*, 122 Nev.
22 at 912, 141 P.3d at 1247. Indeed, "[c]onsistent with the constitutional interests at stake, the law
23 requires the challenger of the initiative, not its proponent, to bear the burden of demonstrating that
24 a proposed initiative is clearly invalid because it embraces more than one subject." *Prevent*
25 *Sanctuary Cities v. Haley*, Case No. 74966, 2018 WL 2272955, at * 1 Nev. (2018) (unpublished
26 disposition)²; see also *Las Vegas Taxpayer Comm. v. City Council*, 125 Nev. 165, 176, 208 P.3d

27

28 ² See NRAP 36(3).

1 429, 436 (2009) (party seeking to invalidate an initiative bears the burden of establishing that the
2 initiative is "clearly invalid.").

3 15. The reason courts impose such a high burden on a challenger is because efforts to
4 impede the voters' initiative power is contrary to the democratic process. *Farley v. Healey*, 431
5 P.2d 650, 652 (Cal. 1967); *see also City of Firecrest v. Jensen*, 143 P.3d 776, 779 (Wash. 2006)
6 (legal limitations on proposed initiatives are "broadly construed in favor of upholding" the initiative
7 and therefore the challenger of an initiative must establish its "unconstitutionality beyond a
8 reasonable doubt.").

9 16. Since NRS 295.009's codification of the single-subject requirement in 2005, the
10 Nevada Supreme Court has had several instances to apply it to voter-backed initiatives, reiterating
11 the citizenry's right to propose broad policy changes through a single initiative. In the first such
12 case, *Heller*, the Court recognized that the single subject there was the broad topic of "eminent
13 domain." *Heller*, 122 Nev. at 907, 141 P.3d at 1244. The Court upheld the right of the initiative's
14 proponents to incorporate numerous provisions – and the policy choices therein – because each
15 ultimately related to that broad subject. *Id.* The Court found that only those provisions untethered
16 to the subject of "eminent domain," such as creating "a broad new class of fundamental rights" and
17 "any government action that causes substantial economic loss" did not relate to the "primary
18 subject" of eminent domain, and thus had to be severed. *Id.* at 909, 141 P.3d at 1245.

19 17. Similarly, in *Education Initiative PAC v. Committee to Protect Nevada Jobs*, 129
20 Nev. 35, 50-51, 293 P.3d 874, 884-85 (2013), the Court determined that the proposed initiative's
21 "primary purpose is clearly to fund education." Consistent with that broad subject, the initiative
22 addressed two distinct taxes, implementing a new tax and temporarily increasing a different
23 preexisting tax. Rejecting the same approach Plaintiff urges here — that two different taxes are
24 necessarily two different subjects because some voters might favor one but not both — the Court
25 explained that "both taxes are functionally related and germane" to the broad subject matter of
26 "funding public education" and thus are not two separate subjects under NRS 295.009. *Id.* at 51,
27 293 P.3d at 885. *Accord, Prevent Sanctuary Cities* 2018 WL 2272955 at *3 (noting that while
28 initiative's various components – spanning three different levels of government (state, county and

1 city) were phrased in broad general terms – all of its provisions were consistent with the
2 single-subject requirement because they functionally related and were germane to the broad policy
3 of immigration enforcement).

4 18. The present Initiative is narrower and squarely comports with NRS 295.009 and the
5 Nevada Supreme Court's precedents. Each of the Initiative's provisions functionally relates, and is
6 germane, to how the specified officeholders – defined in the Initiative as the "Partisan Offices" –
7 are chosen by voters. Plaintiff's assertion that the "primary" election is separate and distinct subject
8 from the "general" – insisting that no one initiative can simultaneously address both – is
9 unsupported and contrary to existing Nevada law. The primary election is just a step in the process.
10 The primary election and general election are intertwined steps in the process for how officeholders
11 are ultimately chosen, which is the primary purpose of this Initiative. *See also* Nev. Const. art. 2, §
12 10 (Constitutional amendment adopted by the voters in 1996, simultaneously imposed campaign
13 contribution limits on both the primary and general elections).

14 19. The Alaska Supreme Court's recent decision in *Meyer v. Alaskans for Better*
15 *Elections*, 465 P.3d 477 (Alaska 2020) concerned a similar initiative to change that state's selection
16 process. There, the initiative proposed three changes to Alaska election law, (1) replacing the
17 closed primary system with an open, nonpartisan primary, (2) establishing ranked-choice voting in
18 the general election, and (3) mandating new campaign finance disclosures. *Id.* at 498. The Alaska
19 Supreme Court rejected the claim that the initiative violated the single-subject requirement,
20 explaining that a "plain reading of the initiative shows that its provisions embrace the single subject
21 of 'election reform' and share the nexus of election administration." *Id.*

22 20. As the Alaska court noted, all the substantive provisions fall under the same subject
23 matter and seek to institute an election reform process. *Id.* The court concluded that the initiative's
24 provisions were all logically related to one another, as the "open, nonpartisan primary system
25 changes the status quo by forwarding four candidates for voters to rank in the general election by
26 ranked-choice voting. These two substantive changes *are interrelated* because together they ensure
27 that voting does not revert to a two candidate system." *Id.* at 499 (emphasis added).

28

1 21. Plaintiff's reliance on *Las Vegas Taxpayer Accountability v. City Council*, 125 Nev.
2 165, 208 P.3d 429 (2009) to challenge the Initiative is misplaced. As the Nevada Supreme Court
3 explained there, that proposed local initiative had so many disparate parts that "*a primary purpose*
4 *cannot be determined from the initiative itself and the description of effect.*" 125 Nev. at 180,
5 208 P.3d at 439 (emphasis original). The court concluded that the proposed initiative governed at
6 least two separate subjects, the first requiring voter approval for any municipal lease purchase
7 agreement exceeding \$2 million, and a separate requirement for voter approval of all "major
8 redevelopment decisions." *Id.* No overarching subject matter existed to join these unrelated
9 provisions other than what the Court said would be a generic subject like "voter approval," which
10 is so excessively general as to render the single-subject requirement meaningless. *Id.*

11 22. Plaintiff's assertion that the Initiative engages in "log rolling" – postulating that
12 changes to the primary election process and rank-choice voting for the general election are separate
13 and discreet subjects since "either could stand on its own without the other" – misstates the standard.
14 (Pl.'s Memo., at 10:21-22.) Log rolling occurs when "two or more completely separate provisions
15 are combined in a petition, when one or both of which would not obtain enough votes to pass
16 without the other." *Heller*, 122 Nev. at 922, 141 P.3d at 1254 (Hardesty, J. concurring in part and
17 dissenting in part). To "log roll" a provision in violation of the single-subject requirement means
18 to advance a proposition that the proponent expects would be supported by voters, but then include
19 other provisions, often concealed or hidden, that are less popular. *Id.* The purpose of the single
20 subject rule is to preclude such log rolling by ensuring that all of an initiative's provisions are
21 germane to the primary subject, so that voters are not faced with a "Hobson's choice" of having to
22 choose between two discrete and unrelated matters. *Id.*

23 23. Contrary to Plaintiff's articulation, it is not log rolling simply because each of an
24 initiative's provisions "could" be voted on separately and stand on their own. *Meyer*, 465 P.3d at
25 498 ("The question is not whether the initiative could be split into separate measures, but rather
26 whether the various provisions 'embrace some one general subject'") (citations omitted). Here, as
27 the Initiative's proponents correctly note, the adoption of non-partisan primaries for these offices
28 functionally relates to the effectiveness in ranked-choice voting. *Id.* at 499. After all, the benefits

1 of ranked-choice voting in the general election are much negated if the primary election outcome
2 results in a general election between just two candidates. Changing the closed primary system and
3 providing that the top-five finishers advance to the general election is what makes ranked-choice
4 voting most effective in conformity with the Initiative's purpose.³

5 24. There is no requirement that every constitutional amendment for the voters'
6 consideration be narrowly tailored to one discreet provision, anytime that provision can purportedly
7 stand alone. Doing so "would significantly hinder the people's power to legislate by initiative and
8 effectively bar all but the simplest ballot measures." *Educ. Initiative*, 129 Nev. at 45, 293 P.3d at
9 881. Every initiative presents the voters with policy choices, some of which voters may prefer more
10 than others. But so long as those provisions relate to a single subject, it is for the initiative's
11 proponents to propose those policy choices. The law allows Nevada voters to propose to change
12 the manner in which specified officeholders are chosen. *See Nevada Judges Ass'n.*, 112 Nev. at 56,
13 910 P.2d at 901-2 (explaining that partisan officeholders are a separate class as opposed to
14 nonpartisan offices, like judges, and term limits applying to partisan officeholders by way of a
15 single initiative is allowed).

16 **B. The Initiative Does Not Violate Article 19, Section 6.**

17 25. The Court also rejects Plaintiff's second contention – that the Initiative violates the
18 requests of Article 19, Section 6. As a threshold matter, Plaintiff's claim that the Initiative
19 constitutes a "massive overhaul" of voting for elected officials that "would cost money" and "is
20 more expensive than the ongoing administration of a simple one" is unsupported speculation.
21 Regardless, claims about any increase (or decrease) in the costs of existing government functions
22 – like elections – is not what Article 19, Section 6 addresses.

23 26. Article 19, section 2(1) of Nevada's constitution provides that the initiative process
24 is "subject to the limitations of" Article 19, Section 6, which "does not permit the proposal of any
25 statute or statutory amendment which makes an appropriation or otherwise requires the expenditure
26

27 ³ Because the Court rejects Plaintiff's single-subject challenge, it need not address Plaintiff's
28 arguments concerning severability of open primaries from ranked-choice general elections.

1 of money, unless such statute or amendment also imposes a sufficient tax, not prohibited by the
2 constitution, or otherwise constitutionally provides for raising the necessary revenue." As the
3 Nevada Supreme Court holds, Section 6 applies to all proposed initiatives. *Rogers v. Heller*, 117
4 Nev. 169, 173, 18 P.3d 1034, 1036 (2001).

5 27. It is normal that a change in the law will carry with it some associated burden,
6 including training, updates, record keeping, enforcement efforts and similar obligations. But such
7 common burdens are not what Article 19, Section 6 concerns: "[A]n initiative makes an
8 appropriation or expenditure of money when it leaves budgeting officials *no discretion* in
9 appropriating or expending the money *mandated by the initiative* – the budgeting official *must*
10 approve the appropriation or expenditure, regardless of any other financial considerations." *Herbst*
11 *Gaming Inc. v. Heller*, 122 Nev. 877, 890, 141 P.3d 1224, 1233 (2006) (emphasis added).

12 28. By comparing the cases that Plaintiff relies upon, it is apparent that this Initiative
13 does not trigger Article 19, Section 6. In *Rogers*, the Court evaluated an initiative that sought to
14 raise funds as well as impose a threshold funding level for Nevada's public elementary and
15 secondary schools. 117 Nev. at 171-76, 18 P.3d at 1035-1038. Thus, the *Rogers* Court reasoned,
16 "[e]ven if the Legislature has a perpetual duty to fund education, because of its traditional role in
17 funding education and its promise to pay any needed portion of the basic support guarantees, the
18 Legislature is not required to continue funding education at any particular level. A necessary
19 appropriation or expenditure in *any* set amount or percentage is a new requirement that otherwise
20 does not exist." *Id.* at 176, 18 P.3d at 1038 (emphasis in original). Concluding that the initiative
21 was "a new requirement" that invaded the Legislature's traditional "broad discretion in determining
22 education funding" and the corresponding proposed tax within the initiative fell "far short of"
23 maintaining a balanced budget, the Supreme Court found that the initiative thus violated Article 19,
24 Section 6. *Id.* at 177, 18 P.3d at 1039.

25 29. In comparison, *Herbst Gaming* involved an initiative that did "not make an
26 appropriation or required the expenditure of money. It simply expand[ed] the statutory list of public
27 places in which smoking [wa]s unlawful and le[ft] untouched provisions that set forth the penalty
28 for smoking in an area in which smoking is prohibited." 122 Nev. at 891, 141 P.3d at 1233

1 (footnotes omitted). Rejecting arguments like Plaintiff makes here — how the initiative's changes
2 in the law would increase the costs and expenses for enforcement — the Court explained that, such
3 expenses do not implicate Article 19, Section 6:

4 In particular, the [initiative] requires *neither* the setting aside nor the payment of
5 any funds. Further, and *significantly*, the [initiative] leaves budgeting officials'
6 discretion entirely intact. It does not, for example, *compel* an increase or
7 reallocation of police officers to enforce its provision. Because the [initiative]
8 *neither* explicitly or implicitly compels an appropriation or expenditure, but rather
9 leaves the mechanics of its enforcement with government official, it does not involve
10 an appropriation or expenditure warranting a revenue-generating provision.

11 *Id.* (emphasis added).

12 30. Here, the Initiative does not impose a new requirement of funding elections, nor
13 compel a specified level of spending. Instead, it seeks election reform to include all Nevada voters
14 by having a single non-closed primary which narrows the field to the top-five who are then ranked
15 by the voters in the general election. Holding both a primary and general election are already
16 provided by Nevada law. Having a single primary election, as opposed to multiple, imposes no new
17 expenditure mandate. And, ranked-choice voting does not create a new requirement for an election;
18 it is simply a process for tabulation of all the votes.

19 31. Furthermore, NRS 293.442-NRS 293.460 provides discretion to the Nevada
20 Secretary of State as well as local officials to incur expenses as both implement elections. This
21 Initiative does not disturb this discretion – either implicitly or explicitly – because, and as detailed
22 in both Sections 9 and 11, the Initiative vests the implementation with the Legislature and likewise
23 the Secretary of State and local officials. *See Herbst Gaming*, 122 Nev. at 891, 141 P.3d at 1233
24 (permitting an initiative that left discretion to the administrative officials). So again, Plaintiff's
25 arguments claiming this Initiative is an unfunded mandate is in direct conflict with Nevada
26 precedent.

27 **C. The Initiative's Description is Straightforward, Succinct, and**
28 **Non-argumentative.**

32. Finally, Plaintiff fails in his burden to show that the Description of Effect does not
comply with NRS 295.009. The Initiative's description satisfies Nevada's requirements as its plain
language is straightforward, succinct, and non-argumentative. Plaintiff's proposal does not comply

1 with Nevada law, as it is argumentative, advocates partisan interests, and does not accurately
2 describe the Initiative.

3 33. NRS 295.009 vests the Initiative's proponents with the obligation and right to
4 provide a description of effect. That description "need not articulate every detail and possible effect
5 that an initiative may have. Instead, given that these descriptions are utilized only in the early,
6 signature-gathering of the initiative process and that the descriptions of effect are limited to 200
7 words, they need only provide a straightforward, succinct and nonargumentative summary of what
8 the initiative is designed to achieve and how it intends to reach those goals." *Educ. Initiative*, 129
9 Nev. at 51, 293 P.3d at 885. As such, the description "does not need to explain 'hypothetical' effects
10 of an initiative." *Id.* at 42, 293 P.3d at 879. (cleaned up); see *Nevadans for Nevada v. Beers*, 122
11 Nev. 930, 939, 142 P.3d 339, 345 (2006) (detailing that NRS 295.009's description of effect
12 "requirements served to prevent voter confusion and promote informed decisions" (internal
13 quotation marks omitted)).

14 34. As the Supreme Court holds, "[g]iven this constraint and in light of its statutory
15 function to facilitate the initiative process, a *hyper-technical interpretation* of the requirements for
16 a description of effect may impede the people from exercising their constitutional right to propose
17 laws and is therefore an inappropriate method for assessing the adequacy of a description of effect."
18 *Educ. Initiative*, 129 Nev. at 42-43, 293 P.3d at 879 (emphasis added); *Herbst Gaming*, 122 Nev.
19 at 889, 141 P.3d at 1232 ("[A] ballot measure's summary and title need not be the best possible
20 statement of a proposed measure's intent or address every aspect of a proposal." (internal quotation
21 marks omitted)).

22 35. Mitigating all of this, as the Nevada Supreme Court explains, "[d]uring the signature
23 gathering process, signers, before signing the petition, may read the initiative on the Secretary's
24 website or the copy in the circulator's possession . . ." *Educ. Initiative*, 129 Nev. at 43, 293 P.3d
25 at 880. The burden lies with Plaintiff to prove to this Court that the description of effect is "clearly
26 invalid." *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 176, 208 P.3d at 436.

27 36. Plaintiff fails in his burden to prove that the description proposed by Voters First is
28 invalid. Within the 200 words allowed, the description informs voters what the Initiative proposes

1 to do and how it intends to do it. In the very first sentence, the description announces to which
2 offices the changes in the selection process would apply, and states that it proposes to eliminate
3 partisan primaries for these offices and establish an open top-five primary election followed by
4 ranked-choice voting in the general election. It then explains how the ranked-choice voting works.
5 Finally, it discloses when the Legislature would be required to implement these changes to the
6 process. There is nothing misleading in the description. It discloses what the Initiative proposes to
7 do.

8 37. Plaintiff's criticisms are not well founded and are largely an attempt to use the
9 description as an advocacy piece for his opposition to the Initiative. Plaintiff's proposed description
10 omits disclosing to which elective offices the Initiative would even apply. He then proposes to use
11 the description's limited space to discuss the remote hypothetical of what happens should there be
12 a tie between the fifth and sixth place candidates in the non-partisan primary.

13 38. Plaintiff also seeks to use the description as advocacy for the role of partisan political
14 parties. Voters sufficiently understand the role of political parties. *See Washington State Grange*
15 *v. Washington State Republican Party*, 552 U.S. 442, 454 (2018) ("There is simply no basis to
16 presume that a well-informed electorate will interpret a candidates' party-preference designation to
17 mean that the candidate is the party's chosen nominee or representative or that the party associates
18 with or approves of the candidate"). Moreover, this type of partisan advocacy is not a
19 "nonargumentative summary of what an initiative is designed to achieve and how it intends to reach
20 those goals." *Educ. Initiative*, 129 Nev. at 52, 293 P.3d at 885.

21 39. The proponents' description accurately states that the Initiative is "*eliminating*
22 *partisan primaries*" and establishing a single top-five primary election and a ranked-choice voting
23 general election. (emphasis added). The description continues, "voters participate in a single
24 primary election *regardless of party affiliation or non-affiliation.*" (*Id.*) (emphasis added) Thus,
25 voters are informed about the reduced role of party control and party affiliation under the new
26 process. The specifics about how party designation appears on the printed ballot form are, at best,
27 secondary effects that do not need to be included in the limited space of the description. Nor do the
28

1 collateral consequences to national political party gate-keepers need to be mentioned at this early
2 state.

3 40. Plaintiff's attempt to claim that the top vote-getter would no longer be guaranteed
4 victory if this Initiative is adopted is also misleading. The proponents' description accurately states
5 that "as traditionally, a candidate receiving the first-choice votes of more than 50% wins." 50%
6 plus one vote is the winner under the current tabulation method as well as what the Initiative
7 proposes.⁴ The difference is what happens when no candidate receives more than 50% of the initial
8 first-choice votes. Then, as the proponents' description accurately describes, the explained
9 tabulation process occurs until the one candidate with the most votes is declared the winner.

10 41. Plaintiff's final request – for the description's inclusion of his cost arguments – is not
11 the purpose of the description under NRS 295.009. This type of partisan advocacy is not allowed.
12 Under Nevada law, such arguments are matters for the ballot committees to make once the Initiative
13 is put before the voters. *See Educ. Initiative*, 129 Nev. at 39, 293 P.3d at 878 (Noting the
14 requirements of NRS 293.252 for the creation of ballot committees to write arguments for and
15 against passage, including the claimed fiscal impact by proponents and opponents).

16 42. The description prepared by Voters First is what NRS 295.009 contemplates: It lets
17 the public make up their mind about signing without skewed partisan spin.

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25 ⁴ See also NRS 293.260(5) (stating that "if one of those candidates receive a majority of the
26 votes cast in the primary election for [nonpartisan office], the candidate must be declared elected
27 to the office and his or her name must not be place on the ballot for the general election."). It is the
28 long-established "traditional" rule that any candidate that receives more than 50% is necessarily the
declared winner in the general election. The fact that under the current system someone can
sometimes win even if they receive less than 50% of the votes does not anyway change the well-
understood traditional rule that 50% plus 1 vote necessarily wins.

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Based on the foregoing findings of fact and conclusions of law:

IT IS HEREBY ORDERED that Plaintiff's challenges to the Initiative are rejected and that final judgment is hereby entered against Plaintiff and in favor of Defendants.

January 6, 2022



DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 6 day of January 2022, I served a copy of this document by placing a true copy in an envelope addressed to:

Bradley S. Schrager, Esq. 3773 Howard Hughes Pkwy., Ste. 590 South Las Vegas, NV 89169	Todd Bice, Esq. 400 South 7 th St., Ste. 300 Las Vegas, NV 89101 Craig A. Newby, Esq. Office of the Attorney General 555 E. Washington Ave., Ste. 3900 Las Vegas, NV 89101
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the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.


Billie Shadron
Judicial Assistant

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 21 OC 00172 1B

TITLE: NATHANIEL HELTON, an individual VS NEVADA VOTERS FIRST PAC, a Nevada Committee for Political Action; TODD L. BICE, in his capacity as the President of NEVADA VOTERS FIRST PAC; and BARBARA CEGAVSKE, in her capacity as NEVADA SECRETARY OF STATE

1/5/22 – DEPT. II – HONORABLE JAMES E. WILSON, JR.
J. Higgins, Clerk – Not Reported

ORAL ARGUMENTS

Present via telephone: Pltf. with counsel, Bradley Schrage and Lindsay McAleer; Deft. Todd Bice; Jordan Smith and John Fortin; Craig A. Newby, Deputy A.G.

Statements were made by Court.

McAleer, Bice and Newby presented arguments.

Statements were made by Court.

Matter taken under submission.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 21 OC 00172 1B

TITLE: NATHANIEL HELTON, an individual VS NEVADA VOTERS FIRST PAC, a Nevada Committee for Political Action; TODD L. BICE, in his capacity as the President of NEVADA VOTERS FIRST PAC; and BARBARA CEGAVSKE, in her capacity as NEVADA SECRETARY OF STATE

12/15/21 – DEPT. II – HONORABLE JAMES E. WILSON, JR.
J. Higgins, Clerk – Not Reported

STATUS CHECK

Present via telephone: Bradley Schragger and Elisabeth Frost, counsel for Pltf.; Deft. Todd Bice; Craig A. Newby and Greg Ott, Deputies A.G.; John Ford; David Raul; Spencer McCandless.

Statements were made by Court, Schragger, Bice regarding service and deadlines. Schragger requested a hearing before the proposed briefing schedule and Court, Bice and Schragger responded. Upon inquiry by Bice, Court was okay with doing it by video and upon inquiry by Court, no objections to video were stated on the record. Further statements were made by Court, Bice, Schragger and Newby.

COURT ORDERED: The hearing will be set at January 5, 2022 at 10:30 a.m. It wants counsel to comply with the First Judicial District Court Rules.

Further statements were made by Court. Court inquired counsel if they are able to file proposed orders filed by December 31, 2021, and Bice, Schragger and Newby affirmed. Court addressed counsel as to local rule on proposed orders.

COURT ORDERED: It would like for counsel to submit proposed orders, both in writing with a cover sheet and mailed to all the parties so that everybody knows what's been filed but it would also like counsel to submit it electronically to its Judicial Assistant.

Upon inquiry by Court, Schragger, Bice, and Newby indicated it is just for arguments.

COURT ORDERED: A prehearing statement is not going to be necessary just for oral argument.

Statements were made by Court and Schragger regarding timeline of pleadings. Bice clarified filing of reply.

COURT ORDERED: 29th would be fine.

Bice inquired if he could submit the opposition by the 22nd.

COURT ORDERED: That is fine with the Court.

Schragger indicated it was fine and made statements regarding filing a reply and proposed order at the same time.

CASE NO. 21 OC 00172 1B

TITLE: HELTON VS NEVADA VOTERS FIRST
PAC

12/15/21 – Cont.'d

COURT ORDERED: That will be fine.

Court addressed counsel regarding local rule on replies. Statements were made by Court, Schragger, Bice, and Newby regarding page limits.

COURT ORDERED: 20 for the responses from the defense.

Court inquired Schragger on the amount for the reply.

COURT ORDERED: 10 would be fine.

Statements were made by Court and Bice regarding requirement of written descriptive effect.

COURT ORDERED: It does want that Mr. Schragger, and it would like that also to be filed and sent electronically as well.

Statements were made by Schragger and Court regarding descriptive effects.

Schragger to prepare Order.

COURT ORDERED: Hearing is set for Jan. 5, 2022 at 10:30 a.m. until 12. The proposed briefing schedule is that the defendants will file their points and authorities by Dec. 22nd. They will be entitled to 20 pages each. The reply will be 10 pages.

Upon inquiry by Court, Schragger clarified the reply will be due Dec. 31st. Bice requested to submit the brief to Schragger and everyone including court staff via email that day and overnight it to the Court.

COURT ORDERED: Yes, and please include that in the order.

Newby inquired about the 31st and file date as a holiday. Statements were made by Court and Schragger indicated the date will be emailed by 30th and filed as soon as possible thereafter.

COURT ORDERED: Indicate in the order that the hearing is for oral argument only and not for any presentation of evidence.

Court advised counsel they can hire a Court Reporter and of the court's recording system.

Schragger, Bice and Newby in response and Schragger indicated they will coordinate it with counsel.

Further statements were made by Court and Schragger regarding order.

COURT ORDERED: Schragger to send it to the parties first and not send it to Ms. Shadron until he has been notified that there is no objection. If something comes up, it will do its best to accommodate a phone conference.

CONTINUED TO: 1/5/22 – 10:30 A.M. – Oral Arguments

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

DISTRICT COURT CIVIL COVER SHEET

Carson City County, Nevada

Case No. 21 CC 00172 IB
(Assigned by Clerk's Office)

REC'D & FILED

2021 DEC -6 PM 1:26

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
NATHANIEL HELTON, an individual	NEVADA VOTERS FIRST PAGE; TODD L. BICE; and BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE
Attorney (name/address/phone):	Attorney (name/address/phone):
BRADLEY S. SCHRAGER, ESQ. and DANIEL BRAVO, ESQ. 3773 Howard Hughes Parkway, Suite 590 South Las Vegas, Nevada 89169 / Phone: (702) 341-5200	Unknown

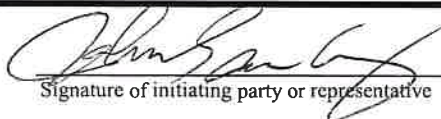
II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

<p>Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Foreclosure Mediation Assistance <input type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p>Torts</p> <p>Other Torts</p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<p>Probate</p> <p>Probate (select case type and estate value)</p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p>Estate Value</p> <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-20,000 <input type="checkbox"/> \$2,500 or less	<p>Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract
<p>Civil Writ</p> <p>Civil Writ</p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum	<p>Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<p>Other Civil Filing</p> <p>Other Civil Filing</p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters	

Business Court filings should be filed using the Business Court civil coversheet.

Dec. 6, 2021
Date


Signature of initiating party or representative

See other side for family-related case filings.