

IN THE SUPREME COURT OF THE STATE OF NEVADA

NATHANIEL HELTON, AN
INDIVIDUAL,

Appellant,

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 K.
CEGAVSKE, IN HER CAPACITY AS
NEVADA SECRETARY OF STATE,

Respondents,

Case No. 84110

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Elizabeth A. Brown
Clerk of Supreme Court
**APPENDIX IN SUPPORT OF
MOTION FOR SUMMARY
ADJUDICATION**

VOLUME I

DATED this 21st day of January 2022.

PISANELLI BICE PLLC

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Pisanelli Bice PLLC, and that on the 21st day of January 2022, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **APPENDIX IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION** to:

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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,

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 official capacity as NEVADA
SECRETARY OF STATE,

Defendants.

Case No.: 21 00 001721B

Dept.: I

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING THE BETTER
VOTING NEVADA INITIATIVE**

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

Arbitration Exemption: Declaratory
and Injunctive Relief

1 Plaintiff Nathaniel Helton, an individual registered to vote in Nevada, files
2 this Complaint for declaratory and injunctive relief against Defendants Nevada
3 Voters First PAC; Todd L. Bice, in his capacity as President of Nevada Voters First
4 PAC; and Barbara Cegavske, in her official capacity as the Nevada Secretary of State,
5 pursuant to NRS 30.030 and 33.010. Plaintiff alleges and complains as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has jurisdiction to hear Plaintiff's claims pursuant to
8 NRS 295.061 and to grant declaratory and injunctive relief pursuant to NRS 30.030,
9 30.040, and 33.010.

10 2. Venue is proper under NRS 13.020 and 13.040 because this action is
11 against a public officer for acts done in her official capacity.

12 **PARTIES**

13 3. Plaintiff Nathaniel Helton is a resident and registered voter of Churchill
14 County, Nevada.

15 4. Defendant Nevada Voters First PAC is a Nevada committee for political
16 action existing pursuant to Chapter 294A of the Nevada Revised Statutes and is
17 named herein as the proponent of the initiative petition at issue here, titled the Better
18 Voting Nevada Initiative (the "Petition").

19 5. Defendant Todd L. Bice is named as a proponent of the Petition. Todd
20 L. Bice is the registered agent and President of Nevada Voters First PAC. *See*
21 **Exhibit 1** to Plaintiff's Appendix ("P.App.") at 1-2, a true and accurate copy of the
22 State of Nevada Committee Registration Form for Nevada Voters First. Upon
23 information and belief, Mr. Bice is an individual and, at all times relevant herein,
24 was and is a resident of the State of Nevada.

25 6. Defendant Barbara Cegavske is Nevada Secretary of State and is sued
26 in her official capacity. As the Secretary of State, Ms. Cegavske is the Chief Officer of
27 Elections for Nevada and is responsible for the execution, administration, and
28 enforcement of the state's election laws. *See* NRS 293.124. Ms. Cegavske's duties also

1 include qualifying initiatives for submission to the Nevada Legislature and/or the
2 Nevada electorate and disqualifying initiatives that are determined to be invalid.

3 GENERAL FACTUAL ALLEGATIONS

4 7. On or about November 12, 2021, Todd L. Bice, on behalf of Nevada
5 Voters First PAC, filed Initiative Petition C-01-2021, styled as the Better Voting
6 Nevada Initiative, with the Nevada Secretary of State. *See Exhibit 2* to P.App.
7 (“Ex. 2”) at 3, a true and accurate copy of the Notice of Intent to Circulate Statewide
8 Initiative or Referendum Petition associated with C-01-2021.

9 8. The Petition seeks to amend the Nevada Constitution to effect two major
10 changes to the state’s electoral system. The first would effectuate a sea change in how
11 Nevada operates, voters participate in, and candidates are chosen from the state’s
12 primary elections. The second would entirely revamp (in an equally fundamental,
13 though very different way) how the candidates who run in the general election are
14 elected by the voters. *See Ex. 2* at 4-13, a true and accurate copy of the filed Petition.

15 9. First, the Petition seeks to **eliminate partisan primary elections as**
16 **nominating contests** for federal, state constitutional, and state legislative
17 elections. *See Ex. 2* at 4-6 (proposing to amend Article 15 of the Nevada Constitution
18 by adding “*Section 17 – Top-five primary elections for primary office*”). The Petition
19 would replace these contests with open, non-partisan primaries in which the top-five
20 finishers for each office qualify to participate in the succeeding general election. In
21 other words, the Petition would do away with primaries in which party voters choose
22 their standard-bearers to run in the general elections, representing an extraordinary
23 and fundamental shift from the way primaries have historically operated and the way
24 in which the people of Nevada have chosen their public officials.

25 10. Second, the Petition would **establish and impose a whole new**
26 **system of voting in the general election known as “ranked-choice voting”** for
27 federal, state constitutional, and state legislative offices. *See Ex. 2* at 6-8 (proposing
28 to amend Article 15 of the Nevada Constitution by adding “*Section 18 – Ranked-choice*

1 *voting for general elections for partisan offices*"). This would entirely replace the
2 system under which the candidate who wins the most votes wins the election, long
3 used by Nevada voters to elect candidates to public office. Ranked-choice voting is a
4 complex system in which voters indicate their preferences by ordering up to five
5 candidates from most to least preferred. If no candidate receives **over 50%** of first-
6 choice votes, the election proceeds through rounds of elimination, with the candidate
7 receiving the least votes removed from the contest and voters who listed that
8 candidate as their first choice have their votes redistributed to their next-preferred
9 choice until a victor attains a statistically assigned majority. Ex. 2 at 6-7.

10 11. The Petition further provides that, during both the new open primary
11 and the modified general election, ballots would list a political party following each
12 candidate's name. However, because candidates can register at will with the party of
13 their choice and the Petition would do away with the political parties' ability to select
14 their candidates through primary contests, these denotations would no longer
15 indicate that the party had affiliated itself with the candidate, or even that the
16 candidate necessarily shares the values and policy preferences reflected in the party's
17 platform. The Petition itself recognizes this and would require ballots to carry a
18 conspicuous disclaimer stating "A candidate for partisan office may state a political
19 party that he or she prefers. A candidate's preference **does not imply** that the
20 candidate is nominated or endorsed by the party, or that the party approves of or
21 associates with that candidate." Ex. 2 at 6 (proposed Section 18(b)) (emphasis added).
22 Thus, if the Petition were enacted, Nevada voters would no longer be able to rely on
23 the party affiliation listed next to a candidate's name on the general election ballot
24 as shorthand to reliably communicate the general values or policies that the
25 candidate supports.

26 12. To make these changes, the Petition would amend or establish four
27 different sections of the Nevada Constitution and 50 separate constitutional
28 provisions. See Ex. 2 at 4-8.

1 13. The Petition includes a description of effect as required by NRS
2 295.009(1)(b), which reads, in full:

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

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

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

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

19 See Ex. 2 at 9.

20 **FIRST CAUSE OF ACTION**

21 **Violation of NRS 295.009(1)(a), Nevada's Single-Subject Rule for Initiatives**

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

24 15. NRS 295.009(1)(a) requires that initiative petitions must "[e]mbrace but
25 one subject and matters necessarily connected therewith and pertaining thereto."
26 (Emphasis added). This single subject requirement is met "if the parts of the proposed
27 initiative or referendum are functionally related and germane to each other in a way
28

1 that provides sufficient notice of the general subject of, and of the interests likely to
2 be affected by, the proposed initiative or referendum.” NRS 295.009(2).

3 16. The single subject rule is violated if more than one subject is addressed
4 in an initiative. *See, e.g., Nevadans for the Protection of Prop. Rights v. Heller*, 122
5 Nev. 894, 908 (2006).

6 17. Here, the Petition violates Nevada’s single-subject rule for initiative
7 petitions by incorporating at least two subjects—(1) a prohibition on the traditional
8 practice of party primary nomination contests (replaced with a non-partisan, top-five
9 primary), *and* (2) the radical alteration of how voters vote and candidates are elected
10 to public office in the general election, replacing wholesale Nevada’s longstanding
11 first-past-the-post method of tabulating votes with a complex system of ranked voting
12 and tabulation rounds.

13 18. Though sweeping in scope, each of these changes is a discrete,
14 independent modification of present election law that neither depends upon the other
15 for its operation nor even references it in its voluminous text.

16 19. They share no common link other than a general connection to voting,
17 albeit in wholly different elections and through vastly different mechanisms, and the
18 Nevada Supreme Courts have already held that “voting” is too excessively general a
19 theme to comply with NRS 295.009(1)(a)’s single-subject rule. *See Las Vegas*
20 *Taxpayer Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165,
21 181, 208 P.3d 429, 440 (2009).

22 20. Accordingly, the Petition is invalid and must be stricken, and the
23 Secretary of State should be enjoined from taking any further action upon it.

24 **SECOND CAUSE OF ACTION**

25 **Violation of Unfunded Expenditure Prohibition, Nev. Const. Art. 19, Sec. 6**

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

1 22. Nevada Constitution Article 19, Section 6 prohibits any initiative that
2 “makes an appropriation or otherwise requires the expenditure of money, unless such
3 statute or amendment also imposes a sufficient tax, not prohibited by the
4 Constitution, or otherwise constitutionally provides for raising the necessary
5 revenue.”

6 23. When an initiative violates this “threshold content restriction” by
7 mandating unfunded expenditures, it is void ab initio, and pre-election intervention
8 by Nevada courts is warranted. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 891, 141
9 P.3d 1224, 1233 (2006) (quoting *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034,
10 1036 (2001)).

11 24. Here, the Petition proposes myriad sweeping changes, first by
12 eliminating Nevada’s long-standing partisan primary system and replacing it with a
13 brand-new non-partisan, top-five primary system, and second, by imposing a new,
14 complex structure of ranked choice voting on Nevada’s general elections.

15 25. The comprehensive revisions to the primary process and the separate
16 but equally fundamental changes to the general election will both require significant
17 expenditures to implement and administer, including, but not exclusively, the
18 modification or purchase of new voting machines, the wholesale revision of ballots,
19 the training of poll workers and other election officials, the likely purchase of new
20 software to perform the complex tabulations. Moreover, it would require countless
21 compensated hours of government-employee and contractor work to even decide upon
22 and set up the basic framework for these new systems, and much more to adequately
23 explain to and educate the Nevada electorate about these sweeping changes, what
24 they mean, and how to navigate them.

25 26. Although the wide-ranging changes mandated by the Petition would
26 unquestionably require expenditures of money, the Petition contains no tax or other
27 provision for their funding, thereby violating Article 19, Section 6.
28

27. Accordingly, the Petition is invalid and must be stricken, and the Secretary of State should be enjoined from taking any further action upon it.

THIRD CAUSE OF ACTION

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

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

29. NRS 295.009(1)(b) requires that initiative petitions “set forth, in not more than 200 words, a description of the effect of the initiative or referendum if the initiative or referendum is approved by the voters.”

30. “[A] description of effect . . . [can]not be deceptive or misleading.” *Educ. Initiative PAC v. Comm. to Protect Nevada Jobs*, 293 P. 3d 874, 879 (Nev. 2013) (internal quotation marks and citation omitted). It must also “explain these ramifications of the proposed amendment” in order to allow voters to make an informed decision. *Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59 (1996).

31. Here, the description of effect is deficient, first, because it is deceptive or misleading, and second, because it fails to provide essential information regarding the Petition’s effects, including significant financial, legislative, and practical ramifications that are necessary for voters to make an informed decision as to whether to support the Petition.

32. First, the description of effect is deceptive (or at the very least, highly misleading) because it states that, “as traditionally, a candidate receiving first-choice votes of more than 50% wins.” Ex. 2 at 9. But in fact, “traditionally,” candidates in Nevada only needed to receive a *plurality* of the votes—that is more than any other candidate, **not more than 50%**—in order to win. And, of course, the concept of “first-choice votes” is unique to ranked-choice voting and does not exist in the current electoral system. Thus, not only does the description of effect falsely describe the “traditional” voting system in Nevada, but it also deceptively minimizes the sweeping changes that imposing the brand new ranked-choice voting system in Nevada would

1 make to the current electoral system. Voters might well read this description of effect
2 and come away with the misimpression that the Petition is in keeping with how
3 voting has taken place “traditionally” in Nevada and will not have much, if any,
4 impact on their voting experience or the likelihood that the candidates they support
5 will be elected. Neither is, in fact, true.

6 33. Second, the Petition itself recognizes that, as a result of the radical
7 revision of Nevada’s primary elections away from a system in which the political
8 parties and the voters who affiliate with them select the party’s standard bearer to
9 advance to the general election, voters will no longer be able to rely on the annotations
10 of party affiliation listed beneath the candidates’ names on the general election ballot
11 to accurately convey that “the candidate is nominated or endorsed by the party, or
12 that the party approves of or associates with that candidate.” Ex. 2 at 5 (proposed
13 Section 17(6)). But the description of effect says absolutely nothing about this.

14 34. This is a fundamental and significant ramification of the revisions that
15 the Petition would mandate, and it must be explained in the description of effect to
16 enable voters to make an informed decision about whether the Petition is one they
17 wish to support. When there is a partisan primary, voters can and do rely on the party
18 designations beneath a candidate’s name to tell them a great deal about that
19 candidate, but with the elimination of the partisan primary—and the implementation
20 of a system where candidates can simply self-select their own party affiliation—
21 voters will no longer be able to trust that a candidate who purports to affiliate with a
22 political party in fact ascribes to that party’s platform as a candidate. As a result,
23 Nevada voters who traditionally and historically have been able to rely on party
24 designation when they go to vote on Election Day will no longer be able to confidently
25 do so. This is a sea change that will have serious consequences for the voter who
26 would ordinarily trust that designation to guide their voting in the general election.
27 It may also be properly characterized as yet another independent subject that has
28 been baked into this multi-subject Petition. But at the very least, it is a significant

1 consequence of the Petition that must be clearly communicated to voters in the
2 description of effect.

3 35. Third, the description of effect does not make any mention of what it
4 means to be a "top-five finisher" in the new open primary, including what occurs if
5 there is a tie for fifth place. In fact, the petition would have the candidates draw lots
6 to determine which advances in a process that many voters might consider arbitrary.

7 36. Fourth, the description of effect is also materially deficient because it
8 says nothing about "exhaustion," a phenomenon that may occur in a ranked-choice
9 voting system in which voters who fail to rank all candidates in the general election
10 may not have their votes counted towards the ultimate result. It does not inform
11 potential signatories that, in many instances, validly cast ballots will not be included
12 in the final voting tally.

13 37. Finally, the description does not include any indication that the new
14 electoral system mandated by the Petition will require a substantial expenditure of
15 public funds to implement and administer. Yet the reality is that Nevada's current
16 voting system is not set up to process ranked-choice ballots, and the sweeping
17 overhaul the Petition proposes will come only at considerable public expense. The
18 Petition, therefore, misleads signatories into thinking that there are no, or minimal,
19 implementation and administration costs for the proposal.

20 38. Collectively, these omissions render it impossible for a potential
21 signatory to make an informed decision whether to sign the Petition. Accordingly, the
22 Petition is invalid and must be stricken, and the Secretary of State should be enjoined
23 from taking any further action upon it.

24 **PRAYER FOR RELIEF**

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

- 26 1. Declaring that the Petition does not comply with NRS 295.009(1)(a) by
27 addressing more than one subject, and is therefore invalid;
28

2. Declaring that the Petition does not comply with Article 19, Section 6 of the Nevada Constitution because it impermissibly mandates an unfunded expenditure;
3. Declaring that the Petition's description of effect does not comply with NRS 295.009(1)(b) because it does not adequately inform voters of the Petitions effects, and is therefore invalid;
4. Enjoining and prohibiting the Nevada Secretary of State from placing the Petition on the 2022 general election ballot, or from taking further action upon it;
5. Enjoining Defendant PAC and its proponents, officers, or agents from circulating the signatures for verification pursuant to NRS 293.1276 to 293.1279, inclusive;
6. In the circumstance that Defendants have obtained any signatures of Nevada voters, invalidating those signatures;
7. Awarding Plaintiff his reasonable costs and attorneys' fees; and
8. Granting such other relief as the Court deems appropriate.

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1 **AFFIRMATION**

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

4 DATED this 6th day of December, 2021.

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

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S. BARAJAS

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(206) 656-0235/Fax: (202) 968-4498
lmcaleer@elias.law

Attorneys for Plaintiff

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

NATHANIEL HELTON, an individual,
Plaintiff,

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 official capacity as NEVADA
SECRETARY OF STATE,

Defendants.

Case No.: 21 00 00172 1B
Dept.: I

PLAINTIFF'S APPENDIX OF
EXHIBITS

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3	Declaration of Daniel Bravo, Esq.	14-15

DATED this 6th day of December, 2021.

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

By: 

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice forthcoming*)
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Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1



BARBARA K. CEGAUSKE
Secretary of State
101 North Carson Street, Suite 3
Carson City, Nevada 89701
(775) 684-5705
Facsimile: (775) 684-5718
Email: nvelect@sos.nv.gov
Website: www.nvsos.gov

State of Nevada
Committee Registration Form

Use this form to register or make changes to a:

- Committee for Political Action (PAC)
- Committee for Political Action (PAC) Advocating Passage or Defeat of a Ballot Question
- Committee Sponsored by a Political Party
- Recall Committee

Select Committee Type

- ☐ Committee for Political Action (PAC) ☐ Committee Sponsored by a Political Party ☐ Recall Committee
- ☒ Committee for Political Action (PAC) Advocating Passage

Action Requested

(select all that apply)

- ☒ New Registration ☐ PAC Annual Registration (Due on or before January 15th of each year – NRS 294A.230(4)(b))
- ☐ Amended Registration (check all that apply):
- ☐ Change Officers ☐ Change Registered Agent ☐ Change Address ☐ Reactivation
- ☐ Change Name (previous name of Committee)
- ☐ Other

Name of Committee

Nevada Voters First

Mailing Address

400 South 7th Street, Suite 300

City

Las Vegas

State

NV

ZIP Code

89101

Email Address

tlb@pisanellibice.com

Telephone Number

(702) 214-2100

PURPOSE: Briefly state the purpose for which the Committee was organized.

Initiative Petition - Better Voting Nevada Initiative

Name of Public Officer to be Recalled (Include title of office held) *This section only applies to a Recall Committee*

REGISTERED AGENT: Pursuant to NRS 294A.240, each PAC must appoint and keep in the State a registered agent, as provided in NRS 14.020, who must be a natural person who resides in the State of Nevada.

Recall Committees only need a Registered Agent if it is an organization located outside the State.

Name of Registered Agent

Todd L. Bice

Email Address

tlb@pisanellibice.com

Telephone Number

(702) 214-2100

Physical Address

400 South 7th Street, Suite 300

City

Las Vegas

State

NV

ZIP Code

89101

REGISTERED AGENT ACCEPTANCE: I hereby accept appointment as Registered Agent for the above-named Committee.

Signature of Registered Agent

Date

For Office Use Only

Office of the
Secretary of State

Barbara Cegauske

Barbara Cegauske
Elections Division

KRhynes

11/12/21 #9064


OFFICERS: List the name, title, address and telephone number of each officer (attach additional pages, if necessary).			
Officer Name and Title Todd L. Bice, President		Telephone Number (702) 214-2100	
Mailing Address 400 South 7th Street, Suite 300	City Las Vegas	State NV	ZIP Code 89101
Officer Name and Title		Telephone Number	
Mailing Address	City	State	ZIP Code
Officer Name and Title		Telephone Number	
Mailing Address	City	State	ZIP Code
Officer Name and Title		Telephone Number	
Mailing Address	City	State	ZIP Code
AFFILIATIONS: If the PAC is affiliated with any other organizations, list the name, address and telephone number of each organization (attach additional pages, if necessary). <i>*Political Party Committees and Recall Committees may skip this section.*</i>			
Name of Organization		Telephone Number	
Mailing Address	City	State	ZIP Code
Name of Organization		Telephone Number	
Mailing Address	City	State	ZIP Code
SUBMITTED BY:			
Todd L. Bice		(702) 214-2100	
Printed Name		Telephone Number	
		11/12/2021	
Signature		Date	

EXHIBIT 2

EXHIBIT 2

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

received
11.12.2021

State of Nevada



Secretary of State Barbara K. Cegavske

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

NAME OF PERSON FILING THE PETITION

Todd L. Bice

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

1. Todd L. Bice

2.

3.

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

Nevada Voters First

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

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

X

Signature of Petition Filer

Date

FILED

NOV 12 2021

SECRETARY OF STATE
ELECTIONS DIVISIONS

11.12.2021

Initiative Petition – Constitutional Amendment

State of Nevada

BETTER VOTING NEVADA INITIATIVE

EXPLANATION: Matter in bolded italics is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

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

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

Section 4. Returns of general election transmitted to secretary of state; canvass by supreme court; declaration of election. The returns of every election for United States senator and member of Congress, district and state officers, and for and against any questions submitted to the electors of the State of Nevada, voted for at the general election, shall be sealed up and transmitted to the seat of government, directed to the secretary of state, and the chief justice of the supreme court, and the associate justices, or a majority thereof, shall meet at the office of the secretary of state, on a day to be fixed by law, and open and canvass the election returns for United States senator and member of Congress, district and state officers, and for and against any questions submitted to the electors of the State of Nevada, and forthwith declare the result and publish the names of the persons elected and the results of the vote cast upon any question submitted to the electors of the State of Nevada. The persons having the highest number of votes for the respective offices *as provided for and governed by Nevada law and/or Section 18 of Article 15 of this Constitution* shall be declared elected. ~~[but in case any two or more have an equal and the highest number of votes for the same office, the legislature shall, by joint vote of both houses, elect one of said persons to fill said office.]~~

Section 2. Article 15, Section 14 of the Nevada Constitution is hereby amended to read as follows:

Sec: 14. Election by plurality. A plurality of votes given at an election by the people, shall constitute a choice, *except as provided in Section 18 of Article 15 or* where not otherwise provided by this Constitution.

Section 3. Article 15 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 17, to read as follows:

Section 17. Top-five primary elections for partisan office.

1. Primary elections for partisan office shall be conducted as follows:

- a. The primary election for partisan offices must be held on the date and time as provided by Nevada law.**
- b. A person may become a candidate at the primary election for partisan office regardless of the person's affiliation with a political party, or lack thereof.**

FILED

NOV 12 2021

SECRETARY OF STATE
ELECTIONS DIVISIONS

Page 1 of 10

RCV0004

APP0020

9. Implementation

- a. Not later than July 1, 2025, the Legislature shall provide by law for provisions consistent with Section 17 of Article 15 of this Constitution to require top-five primary elections for partisan office.*
- b. Upon enactment of any law by the Legislature pursuant to Section 17 of Article 15 of this Constitution before July 1, 2025, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with Section 17 of Article 15 of this Constitution will be void. However, the Legislature may enact legislation, in whole or in part, consistent with Section 17 of Article 15 of this Constitution that to provide top-five primary elections for partisan office before July 1, 2025.*

Section 4. Article 15 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 18, to read as follows:

Section 18. *Ranked-choice voting for general elections for partisan office.*

- 1. All general elections for partisan office shall be conducted by ranked-choice voting.*
- 2. The general election ballots for partisan office shall be designed so that the candidates are selected by ranked-choice voting.*
- 3. The general election ballots for partisan office shall be designed so that the voter is directed to mark candidates in order of preference and to mark as many choices as the voter wishes, but not to assign the same ranking to more than one candidate for the same office.*
- 4. Immediately following the name of each candidate for a partisan office must appear the name or abbreviation the political party with which the candidate is registered, the words "no political party" or the abbreviation "NPP," as the case may be.*
- 5. The ballots for the general elections for partisan office must include a conspicuously placed statement that: "Each candidate for partisan office may state a 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."*
- 6. When counting ballots in a general election for partisan office, the Registrar, County Clerk, or chief election official (as applicable) in each County shall initially tabulate each validly cast ballot as one vote for the highest-ranked candidate on that ballot or as an inactive ballot. If a candidate is highest-ranked on a majority of the active ballots, that candidate is elected and the tabulation is complete. If no candidate is highest-ranked on a majority of the active ballots, tabulation proceeds in sequential rounds as outlined in Section 7.*
- 7. Tabulation proceeds in sequential rounds as follows:*
 - a. If two or fewer continuing candidates remain, the candidate with the greatest number of votes is elected and the tabulation is complete; otherwise, the tabulation continues under (b) of this subsection.*

- b. The candidate with the fewest votes is eliminated, votes cast for the eliminated candidate shall cease counting for the eliminated candidate and shall be added to the totals of each ballot's next-highest-ranked continuing candidate or considered an inactive ballot under (8)(b) and (8)(c) of this section, and a new round begins under (7)(a) of this subsection.*
- 8. When counting general election ballots for partisan office,*
 - a. A voter may choose to rank just one candidate for partisan office, and that vote will be tabulated.*
 - b. A ballot containing an overvote shall be considered an inactive ballot once the overvote is encountered at the highest ranking for a continuing candidate.*
 - c. If a ballot skips a ranking, then the election board shall count the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an inactive ballot for that race.*
 - d. Any votes for "None of These Candidates" shall be tabulated, recorded, and made public, but not be counted for the purpose of electing or ranking any candidates for partisan office.*
 - e. In the event of a tie between the final two continuing candidates, the winner shall be decided in a manner as provided by statute.*
 - f. In the event of a tie between two candidates with the fewest votes, the candidate eliminated shall be decided by lot.*
 - g. An inactive ballot may not be counted for any candidate in that particular race.*
- 9. As used in this section:*
 - a. "Continuing candidate" means a candidate who has not been eliminated.*
 - b. "Inactive ballot" means a ballot that is no longer tabulated, either in whole or in part, because it does not rank any continuing candidate, contains an overvote at the highest continuing ranking, or contains two or more sequential skipped rankings before its highest continuing ranking.*
 - c. "Overvote" means an instance where a voter has assigned the same ranking to more than one candidate.*
 - d. "Ranking" or "ranked" means the number assigned by a voter to a candidate to express the voter's choice for that candidate; a ranking of "1" is the highest ranking, followed by "2," and then "3," and so on.*
 - e. "Round" means an instance of the sequence of voting tabulation in a general election for partisan office.*
 - f. "Skipped ranking" means a blank ranking on a ballot on which a voter has ranked another candidate at a subsequent ranking.*
 - g. "Partisan office" means the Offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Legislators, and excludes the Offices of President of the United States and Vice President of the United States.*

10. *Completion of ballot count; certificate.*
 - a. *The certification of results shall be conducted as provided by Nevada law.*
11. *Implementation*
 - a. *Not later than July 1, 2025, the Legislature shall provide by law for provisions consistent with this constitutional amendment, including providing for disclosure as to the full ranking of each candidate.*
 - b. *Upon enactment of any law by the Legislature pursuant to this constitutional amendment before July 1, 2025, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with this constitutional amendment will be void. However, the Legislature may enact legislation, in whole or in part, consistent with this constitutional amendment before July 1, 2025.*

Section 5. Severability. If any provision of this act, or the application therefore to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

DESCRIPTION OF EFFECT

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

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

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

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

County of _____

(Only registered voters of this county may sign below)

Petition District: _____

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

This Space for
Office Use Only

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

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(Only registered voters of this county may sign below)

Petition District: _____

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

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Office Use Only

6	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY				
	YOUR SIGNATURE	DATE	CITY	COUNTY		PETITION DISTRICT
	/ /					
7	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY				
	YOUR SIGNATURE	DATE	CITY	COUNTY		PETITION DISTRICT
	/ /					
8	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY				
	YOUR SIGNATURE	DATE	CITY	COUNTY		PETITION DISTRICT
	/ /					
9	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY				
	YOUR SIGNATURE	DATE	CITY	COUNTY		PETITION DISTRICT
	/ /					
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	YOUR SIGNATURE	DATE	CITY	COUNTY		PETITION DISTRICT
	/ /					

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

County of _____

(Only registered voters of this county may sign below)

Petition District: _____

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

This Space for
Office Use Only

11	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	
12	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	
13	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	
14	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	
15	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	

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

County of _____

(Only registered voters of this county may sign below)

Petition District: _____

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

This Space for
Office Use Only

16	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	
17	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	
18	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	
19	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	
20	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT	

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
County of _____)

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

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

EXHIBIT 3

EXHIBIT 3

1 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
2 DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice forthcoming*)
3 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**
3773 Howard Hughes Parkway, Suite 590 South
4 Las Vegas, Nevada 89169
(702) 341-5200/Fax: (702) 341-5300
5 bschrager@wrslawyers.com
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6 elevinrad@wrslawyers.com
dbravo@wrslawyers.com

7
8 MARC E. ELIAS, ESQ. (*pro hac vice forthcoming*)
SPENCER MCCANDLESS, ESQ. (*pro hac vice forthcoming*)
ELIAS LAW GROUP LLP
9 10 G St. NE Suite 600
Washington, DC 20002
10 (202) 968-4490/Fax: (202) 968-4498
melias@elias.law
11 smccandless@elias.law

12 LINDSAY MCALEER, ESQ. (*pro hac vice forthcoming*)
ELIAS LAW GROUP LLP
13 1700 Seventh Ave, Suite 2100
Seattle, WA 98101
14 (206) 656-0235/Fax: (202) 968-4498
lmcaleer@elias.law

15 *Attorneys for Plaintiff*

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

19 NATHANIEL HELTON, an individual,
20
21 Plaintiff,

22 vs.

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

26 Defendants.
27
28

Case No.:
Dept.:

**PLAINTIFF'S APPENDIX OF
EXHIBITS**

[illegible]

1. I am an attorney with the law firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, duly admitted to practice law in the state of Nevada, and counsel for Plaintiff in the above-captioned action.

3. Attached to the Appendix of Exhibits, as Exhibit 1, is a true and accurate copy of State of Nevada Committee Registration Form for Nevada Voters First.

Under penalties of perjury under the laws of the United States of America and the State of Nevada, I declare that the foregoing is true and correct to my own knowledge, except as to those matters stated on information and belief, and that as to such matters I believe to be true.


DANIEL BRAVO, ESQ.

DANIEL BRAVO, ESQ.

REC'D & FILED
2021 DEC -6 PM 1:26
AUBREY ROWLATT
S. BARAJAS
BY _____

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
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lmcaleer@elias.law

Attorneys for Plaintiff

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

NATHANIEL HELTON, an individual,
Plaintiff,

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
official capacity as NEVADA
SECRETARY OF STATE,

Defendants.

Case No.: 21 00 00172 1B
Dept.: I

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING THE BETTER
VOTING NEVADA INITIATIVE

1 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES**

2 COMES NOW, Plaintiff Nathaniel Helton, an individual registered to vote in
3 Nevada, by and through his attorneys of record, hereby submits this Memorandum
4 of Points and Authorities in Support of the Complaint for Declaratory and Injunctive
5 Relief Challenging the Better Voting Nevada Initiative as follows:

6 **I. INTRODUCTION**

7 The initiative petition ("Petition") proposed by Defendants Nevada Voters
8 First PAC and Todd L. Bice (collectively, "Proponents") —the "Better Voting Nevada
9 Initiative"—seeks to amend the Nevada Constitution to make two significant—and
10 distinct—changes: (1) eliminating the state's current partisan primary system under
11 which the political parties' nominees are selected by the party's voters and replacing
12 it with a non-partisan open primary in which the top five vote getters advance to the
13 general election, and (2) doing away with Nevada's traditional general elections
14 under which the candidate who gets the most votes wins, and instead implementing
15 a complicated ranked-choice voting system.

16 By combining these two very different measures, the Petition would radically
17 change both Nevada's primary and general election systems with several significant
18 consequences, including substantial financial ones. It would change not only *which*
19 candidates voters are presented with in the general election, but also *what it means*
20 that a candidate is designated with a party affiliation on the general election ballot.
21 Without a partisan primary, voters will no longer be able to trust that a candidate
22 who purports to affiliate with a political party does in fact ascribe to that party's
23 platform as a candidate, or that they have persuaded the party's electorate that they
24 share and will advance their interests. As a result, Nevada voters who traditionally
25 and historically have been able to rely on party designation when they vote in a
26 general election will no longer be able to confidently do so.

27 And Proponents attempt to do all of this in a Petition that is facially and
28 woefully legally deficient because (1) it violates Nevada's long-standing and strictly

1 enforced single-subject rule for initiative petitions; (2) it mandates massive—and
2 expensive—changes to Nevada’s primary and general elections, without allocating or
3 raising a cent to pay for those changes; and (3) its description of effect is confusing,
4 deceptive, and misleading, failing to enable voters to make an informed decision as
5 to whether to support it. For each of these reasons, the Court should strike the
6 Petition and issue an injunction prohibiting the Secretary from acting on the Petition
7 and Defendants from collecting signatures in support.

8 First, the Petition impermissibly encompasses more than one subject in
9 violation of clear and longstanding Nevada law. The revisions to present law that the
10 Petition proposes are sweeping in scope, altering or adding no less than 50 provisions
11 across four distinct sections of the Nevada Constitution, and invalidating or
12 amending untold numbers of statutes and regulations. Moreover, the two overarching
13 changes it seeks to make—first, by eliminating the partisan primary system, and
14 second, by imposing a ranked choice voting system in the general election—are
15 discrete, independent revisions of present law that neither depend upon each other
16 for their operation nor even reference each other in their voluminous text. They share
17 no common link other than a general connection to voting, albeit in different elections
18 and through different mechanisms, and the Nevada Supreme Court has already held
19 that “voting” is too excessively general a theme to comply with the single-subject rule.

20 Second, the Petition unconstitutionally seeks to enact reforms that would
21 mandate public expenditures without providing for revenues to offset the cost. The
22 massive electoral overhaul it proposes would come at considerable public expense,
23 necessitating the purchase of new specialized voting equipment, significant revisions
24 in ballot design, the purchase or modification of tabulation software to ensure those
25 ballots are accurately counted, the development of revised voting procedures, a public
26 education campaign, and countless hours of compensated work. The Nevada
27 Constitution permits initiatives to mandate such appropriations and expenditures
28 only when they are balanced by reciprocal revenues. The Petition does not raise any

1 funds at all to cover the new spending it calls for, and the Nevada Supreme Court has
2 made clear such an imbalance renders an initiative void ab initio.

3 Last, the Petition's description of effect is confusing, deceptive, and
4 misleading, mischaracterizing and inaccurately minimizing how the law would alter
5 Nevada's current elections processes and omitting discussion of many of the Petition's
6 most significant ramifications. For example, in describing the new ranked-choice
7 voting system the Petition would impose in Nevada's general elections, the
8 description of effect states that "as traditionally, a candidate receiving first-choice
9 votes of more than 50% wins." But "traditionally," candidates in Nevada need to
10 receive only a plurality of the votes cast to win, **not more than 50%**. And, of course,
11 "first-choice votes" is a concept unique to ranked-choice voting that does not exist in
12 the current electoral system. Moreover, the Petition's description of effect makes no
13 mention of the fact that the Petition would fully eliminate political parties'
14 prerogative to select their nominees for major offices, or that it would permit
15 candidates to freely choose the party affiliation that appears on the ballot, meaning
16 that party affiliation would no longer be a reliable indicator of a candidate's values
17 and policy preference to guide and inform a voter's decision in the general election.
18 Notably, the Petition recognizes as much and, in a detailed subsection, directs that
19 the ballot must include a conspicuous disclaimer that advises the voter that party
20 affiliation on the ballot does "not imply that the candidate is nominated or endorsed
21 by the party, or that the party approves of or associates with that candidate." But the
22 description of effect is entirely silent on this significant—and for many voters, highly
23 consequential—impact. Further, the description is void of information regarding
24 what it means for a candidate to be a "top five finisher," including what happens if
25 there is a tie. The description's comparison of ranked-choice voting also fails to inform
26 voters that their general election votes may not be counted if they fail to rank all
27 candidates. Finally, the description of effect does not so much as mention that
28 implementing both of the new voting systems that the Petition mandates would

1 require substantial expenditures of public funds. These gaps render the description
2 incapable of facilitating a fully informed decision on the part of signatories and
3 eventual voters, should the petition advance past the signature gathering stage.

4 For these reasons, the Petition does not comply with the requirements of state
5 law, and the Court should enjoin the Defendant Secretary of State from taking any
6 further action on it.

7 **II. THE INITIATIVE PETITION**

8 On November 12, 2021, Mr. Bice filed the “Better Voting Nevada Initiative”
9 petition with the Defendant Secretary of State. *See* Petition, Exhibit 1 to Plaintiffs
10 Appendix (“P.App.”). The Petition seeks to amend the Nevada Constitution to effect
11 at least two drastic—and distinct—changes to the state’s electoral system. *See*
12 Exhibit 2 to P.App (“Ex. 2”).

13 The first would effectuate a sea change in how Nevada operates, voters
14 participate in, and candidates are chosen in the state’s primary elections. The
15 Petition seeks to eliminate major party primary elections as nominating contests for
16 federal, state constitutional, and state legislative offices. *See* Ex. 2 at 4-6 (proposing
17 to amend Article 15 of the Nevada Constitution by adding “*Section 17 – Top-five*
18 *primary elections for primary office*”). It would replace these contests with open, non-
19 partisan primaries in which the top-five finishers for each office qualify to participate
20 in the succeeding general election. In other words, the Petition would do away with
21 primaries in which party voters choose their standard-bearers to run in the general
22 election. This is an extraordinary and fundamental shift from the way primaries have
23 historically operated and the way in which candidates have been chosen by Nevadans
24 to run for public office in the general election.

25 Second, the Petition would establish and impose a whole new voting system
26 known as “ranked-choice voting” in the general election for federal, state
27 constitutional, and state legislative offices. This would entirely replace the system
28 long used by Nevada voters to elect candidates to public office, under which the

1 candidate who wins the most votes wins the election. Ranked-choice voting is a
2 complex system in which voters indicate their preferences by ordering up to five
3 candidates from most to least preferred. *See* Ex. 2 at 6-8 (proposing to amend Article
4 15 of the Nevada Constitution by adding “*Section 18 – Ranked-choice voting for*
5 *general elections for partisan offices*”). If no candidate receives over 50% of first-choice
6 votes, the election proceeds through rounds of elimination, with the candidate
7 receiving the least votes removed from the contest. Voters who listed that candidate
8 as their first choice would then have their votes redistributed to their next-preferred
9 choice until a victor attains a statistically assigned majority. But voters are not
10 required to rank all candidates, and those who choose not to are excluded from the
11 final tally if their preferred candidates are eliminated.

12 The Petition provides that, during both the new open primary and the modified
13 general election, ballots would list a political party following each candidate's name.
14 *See* Ex. 2 at 5 (proposed Section 17(5)) and 6 (proposed Section 18(4)). However,
15 because candidates can register at will with the party of their choice and the Petition
16 would do away with the parties' ability to select their candidates through primary
17 contests, these denotations would no longer indicate that the party had affiliated
18 itself with the candidate, or even that the candidate necessarily shares the values
19 and policy preferences reflected in the party's platform.

20 The Petition itself recognizes this and would require ballots to carry a
21 conspicuous disclaimer stating “A candidate for partisan office may state a political
22 party that he or she prefers. A candidate's preference does not imply that the
23 candidate is nominated or endorsed by the party, or that the party approves of or
24 associates with that candidate.” Ex. 2 at 6 (proposed Section 18(5)). Thus, if the
25 Petition were enacted, a voter would be unable to determine with certainty what
26 general values or policies a candidate supports from the party affiliation appearing
27 on the face of the ballot without doing (likely extensive, and potentially unreliable)
28 independent research.

1 To make these changes, the Petition seeks to amend or establish four discrete
2 sections of the Nevada Constitution and 50 separate constitutional provisions. See
3 Ex. 2 at 4-8. It also includes a description to inform potential signatories of its effect,
4 as required by NRS 295.009(1)(b). The description of effect reads, in full:

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

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

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

19 The Legislature must adopt implementing legislation by July 1,
20 2025.

21 Ex. 2 at 9.

22 III. LEGAL STANDARD

23 Nevada law allows challenges to an initiative petition when, as here, it
24 embraces more than one subject and when the description of effect is deficient.
25 Specifically, NRS 295.061 states: "whether an initiative or referendum embraces but
26 one subject and matters necessarily connected therewith and pertaining thereto, and
27 the description of the effect of an initiative or referendum required pursuant to NRS
28 295.000, may be challenged by filing a complaint in the First Judicial District Court

1 not later than 15 days, Saturdays, Sundays and holidays excluded, after a copy of the
2 petition is placed on file with the Secretary of State pursuant to NRS 295.015.”
3 Similarly, Nevada courts have characterized Article 19, Section 6’s prohibition on
4 initiatives that mandate unfunded expenditures as a “threshold content restriction”
5 that is ripe for review before the initiative is enacted. *Herbst Gaming, Inc. v. Heller*,
6 122 Nev. 877, 891, 141 P.3d 1224, 1233 & n.38 (2006) (quoting *Rogers v. Heller*, 117
7 Nev. 169, 173, 18 P.3d 1034, 1036 (2001)). Here, Plaintiff brings timely legal
8 challenges pursuant to the statute and constitutional provision.

9 **IV. ARGUMENT**

10 **A. The Petition Violates Nevada’s Single-Subject Rule for Initiatives 11 and Must be Invalidated**

12 **1. The Single-Subject Rule Prohibits “Logrolling” Multiple Subjects into a Single Initiative**

13 Nevada law requires that any initiative petition “[e]mbrace but one subject and
14 matters necessarily connected therewith and pertaining thereto.” NRS 295.009(1)(a).
15 NRS 295.009(2) further explains that a petition for initiative “embraces but one
16 subject and matters necessarily connected therewith and pertaining thereto, if the
17 parts of the proposed initiative or referendum are functionally related and germane
18 to each other in a way that provides sufficient notice of the general subject of, and of
19 the interests likely to be affected by, the proposed initiative or referendum.” NRS
20 295.009(2). “By limiting petitions to a single subject, NRS 295.009 facilitates the
21 initiative process by preventing petition drafters from circulating confusing petitions
22 that address multiple subjects.” *Nevadans for the Prot. Of Prop. Rights, Inc. v. Heller*,
23 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). The rule “helps both in promoting
24 informed decisions and in preventing the enactment of unpopular provisions by
25 attaching them to more attractive proposals or concealing them in lengthy, complex
26 initiatives (i.e., logrolling).” *Las Vegas Taxpayer Accountability Comm. v. City Council
27 of City of Las Vegas (“LVTAC”)*, 125 Nev. 165, 176–77, 208 P.3d 429, 437 (2009).
28 “Logrolling,” in ballot initiative parlance, “is the practice of combining dissimilar

propositions into one voter initiative,” *State ex rel. Wagner v. Evnen*, 307 Neb. 142, 151, 948 N.W.2d 244, 253 (2020). “[U]nlike other means of enacting law, the initiative process typically does not allow for input in drafting proposed laws,” *LVTAC*, 125 Nev. at 177 n.6, and thus citizens do not have an opportunity to advocate for tailoring the measure to their preferences. The single-subject requirement thus guards against voters being placed in a position where they “must vote for or against the whole package even though they only support certain of the initiative’s propositions.” *Evnen*, 307 Neb. at 151.

In a single-subject analysis, this Court’s “preliminary inquiry . . . is whether the initiative’s parts are ‘functionally related’ and ‘germane’ to each other.” *Nevadans for the Prot. Of Prop. Rights*, 122 Nev. at 907. “[I]n considering the arguments made by the proponents’ counsel and examining the text of the initiative on its face, we may determine what the initiative’s overall subject is.” *Id.* If no single subject is ascertainable, the initiative petition violates NRS 295.009(2) and is invalid. *See LVTAC*, 125 Nev. at 181-82. “[A]n initiative proponent may not circumvent the single-subject rule by phrasing the proposed law’s purpose or object in terms of ‘excessive generality’” in an attempt to group unrelated provisions into a vague overarching category. *Id.* at 181 (citing *Harbor v. Deukmejian*, 43 Cal.3d 1078, 240 Cal. Rptr. 569, 742 P.2d 1290, 1303 (1987)).

2. The Petition Violates the Single-Subject Rule Because It Would Enact Two Wholly Independent Constitutional Changes

The Petition violates the single-subject rule by logrolling two entirely separate but equally-dramatic changes to Nevada’s election processes into a single ballot measure—(1) the end of partisan primaries to select parties’ nominees for the state’s most significant elected offices, to be replaced with open primaries under a novel top-five system; and (2) the implementation of an ranked-choice, multi-round voting system for the general election.

The two separate subjects are discrete policy changes that do not depend upon

1 one another, either textually, within the terms of the Petition, or generally, as a
2 matter of logic. The Petition's text separates the two, enacting the primary election
3 reforms in a new Section 17 and the general election reforms in a new Section 18
4 within the Nevada Constitution. Neither new section contains any cross-reference to
5 the other. Moreover, the two changes function wholly independently of one another.
6 The top-five open primary system the Petition proposes does not depend on the use
7 of ranked voting in the general election; Louisiana has long used something much
8 like the former system, for example, but never adopted the latter. Conversely, the
9 ranked-choice voting system the Petition seeks to impose on the general election can
10 be conducted with any number of candidates and with candidates selected through
11 partisan primaries. The two measures are wholly independent, as even the Petition's
12 strongest supporters acknowledge. See The Institute for Political Innovation, Final
13 Five Voting FAQ, <https://political-innovation.org/final-five-voting/> (last visited Dec.
14 2, 2021) ("Final-Five Voting is the combination of *two* innovations: 1. Top-five
15 primaries in which we don't use ranked-choice voting (RCV) and; 2. RCV general
16 elections." (emphasis added)).

17 It is immediately apparent that a Nevada voter could be in favor of open
18 primaries, but not of ranked-choice voting, and vice-versa. Proponents, however, force
19 voters to accept the two proposals together as a whole or not at all, a classic instance
20 of logrolling in contravention of Nevada's single-subject rule. Both of these proposals
21 may have individual merit, but they are quite obviously different in their natures and
22 potential impacts, and either could stand on its own without the other. Simply stated,
23 they are not "functionally related" and "germane" to one another. *Nevadans for the*
24 *Prot. of Prop. Rights*, 122 Nev. at 907.

25 The multi-subject nature of the Petition is further confirmed when it is
26 compared with previous initiative petitions Nevada courts have invalidated as
27 violating the single-subject rule. In *LVTAC*, for instance, initiative proponents sought
28 to enact a series of changes to the Las Vegas Charter. The initiative sought to require

1 voter approval for the city to enter public lease-purchase agreements costing more
2 than \$2 million a year and for other key redevelopment decisions, including the
3 adoption of a redevelopment plan, the amendment of and material deviation from
4 that plan, and the authorization for various redevelopment projects. *LVTAC*, 125
5 Nev. at 170. The initiative's proponents argued that "the measure's purpose [was] to
6 provide the voters of Las Vegas with greater input into the City's redevelopment
7 decisions by requiring voter approval for major redevelopment decisions." *Id.* The
8 Nevada Supreme Court concluded, however, that "'voter approval,' . . . is an
9 excessively general subject that cannot meet NRS 295.009's requirement." *Id.* at 181
10 (citing *Senate of the State of Cal. V. Jones*, 90 Cal.Rptr.2d 810, 988 P.2d 1089, 1101–
11 02 (1999)). "[V]oter approval of use of taxpayer funds to finance large new
12 development projects,' is no better," the court explained, "because the proposed
13 initiative is not limited to the financing of 'large new development projects' but
14 instead encompasses the far more complex task of adopting and amending
15 redevelopment plans." *Id.* Because the court could not ascertain the single subject of
16 the initiative from its textual language or description, and because the claimed
17 purpose provided by the initiative's proponents was too general, the court ruled the
18 initiative violated the single-subject requirement and declared it invalid. *Id.* at 182.

19 This Petition, the "Better Voting Nevada Initiative," violates the single-subject
20 rule in much the same manner. Like the *LVTAC* initiative, the Petition's text lays
21 out disparate—and massive—changes that have nothing in common, save the fact
22 that both involve the general act of voting. Even then, the voting at issue is voting in
23 distinctly different elections: the primary, which has traditionally been the election
24 in which voters who affiliate with a specific political party choose their standard
25 bearer to run for office in the general election, and the general election, which
26 operates for a different purpose—to elect public officers to office. The Petition takes
27 aim at both separately and, in the process, would fundamentally alter their DNA in
28 very different ways. It would overhaul Nevada's primary election system to forbid the

1 current and longstanding single-winner partisan elections and instead institute a
2 wide open, non-partisan primary from which the top five candidates would then be
3 presented to the electorate in the general. And it would effectuate equally dramatic
4 (but distinctively different) change to the longstanding general election system, in
5 which the candidate with the most votes wins, replacing it with an entirely different
6 ranked-choice voting system with a complex multi-round method of tabulating votes
7 based on voters' ranking numerous candidates in order of preference. *See* Ex. 2 at 6-
8 8.

9 As in *LVTAC*, the proposals do not simply alter a discrete aspect of the electoral
10 system. Instead, they encompass a "far more complex" overhaul of the system as a
11 whole, requiring the enactment or amendment of 50 separate constitutional
12 provisions, a host of new implementing legislation, and the amendment or repeal of
13 statutory and regulatory provisions so numerous that the Petition does not even
14 attempt to identify them and instead would just declares all existing law void to the
15 extent of any conflict. 125 Nev. at 181; *see* Ex. 2 at 8. And, like in *LVTAC*, "[n]either
16 the title nor the description indicate how these two provisions relate to any single
17 subject." *Id.* at 180. Instead, the description underscores the violation of the single-
18 subject rule the Petition evinces in its text, simply stating that if enacted the proposed
19 initiative would result in the two separate outcomes described above. The "Better
20 Voting Nevada Initiative" title is equally unhelpful.

21 The single subject rule "obviously forbids joining disparate provisions which
22 appear germane only to topics of excessive generality such as 'government' or 'public
23 welfare.'" *LVTAC*, 125 Nev. at 181 (quoting *Harbor v. Deukmejian*, 43 Cal.3d 1078
24 (1987)). Just as "voter approval" is too general a purpose to comply with the single-
25 subject requirement, so too is "better voting," which attempts to link the Petition's
26 disparate provisions through only a vague, over-generalized theme. *Cf. Chem.*
27 *Specialties Manufacturers Assn., Inc. v. Deukmejian*, 278 Cal. Rptr. 128, 133 (Ct. App.
28 1991) ("[T]he object of providing the public with accurate information in advertising

1 is so broad that a virtually unlimited array of provisions could be considered germane
2 thereto and joined in this proposition, essentially obliterating the [single-subject]
3 requirement.”). Indeed, “better voting” could encompass countless other distinct
4 topics, such as implementing voter registration measures, ballot access restrictions,
5 or even just upgrading voting equipment and other election infrastructure. The
6 initiative enacts two widely divergent provisions, whose only common overlap is that
7 they both involve “voting,” but in altogether different types of elections and through
8 altogether different mechanisms. The Nevada Supreme Court has already ruled that
9 such a tenuous link is insufficient. *See LVTAC*, 125 Nev. at 181.

10 In short, the Petition lacks a unified, central purpose and would instead enact
11 massive, unrelated changes across Nevada’s electoral system in one fell swoop,
12 forcing voters to choose to accept them in bulk or not at all. It is precisely the type of
13 disjointed, multi-subject initiative NRS 295.009(1)(a) guards against.

14 **3. It is Impossible to Identify and Sever the Non-Germane Portions**
15 **of the Petition**

16 Because the Petition lacks a single central purpose, it cannot be rehabilitated
17 by severing the non-germane portions. In *Nevadans for the Protection of Property*
18 *Rights*, the Nevada Supreme Court determined that severance is a “permissible”
19 remedy when an initiative violates NRS 295.009’s single-subject requirement,
20 reasoning that the statute contained no clear “legislative mandate that all violations
21 of the single-subject requirement result in an initiative’s disqualification from the
22 ballot.” 122 Nev. at 894. But a comparison between the Petition and the initiative
23 considered in that case makes clear why severance is not appropriate or even possible
24 in this case. Unlike the Petition, the initiative at issue in *Nevadans for the Protection*
25 *of Property Rights* had an identifiable primary purpose. Because the initiative
26 “originated as a response to” a then-recent United States Supreme Court eminent
27 domain decision and “the vast majority of its provisions address[ed] one subject—
28 eminent domain,” the court had little trouble declaring that “the primary subject of

1 the initiative is unquestionably eminent domain.” *Id.* And because it found that only
2 two sections of the measure were not functionally related to eminent domain, the
3 court was able to sever the offending sections and permit the measure to proceed
4 without compromising its primary purpose.

5 By contrast, severance is not an option for the Court here because, for the
6 reasons discussed, the Petition lacks a primary purpose—a single subject—to which
7 its sections and clauses must functionally relate. The Court cannot with reasonable
8 certainty say the Petition is most concerned with replacing the partisan primary
9 system with a single, wide-open, top-five primary, or with replacing a simple
10 plurality-winner general election regime with a complex ranked-choice system, for
11 the two purposes are equally embraced within the Petition. And because neither
12 purpose is more or less important than the other, the Court cannot sever those
13 aspects of the Petition unrelated to its one central purpose.

14 In sum, the Petition fails to meet the single-subject requirement of NRS
15 295.009, cannot be severed to create compliance, and therefore is wholly invalid. The
16 Court should enjoin the Secretary from any further action upon it.

17 **B. The Petition Violates the Nevada Constitution’s Prohibition on**
18 **Initiatives that Mandate Unfunded Expenditures**

19 The Petition is separately invalid because it mandates expenditures without
20 providing reciprocal revenues in violation of Article 19, Section 6 of the Nevada
21 Constitution. That provision prohibits any initiative that “makes an appropriation or
22 otherwise requires the expenditure of money, unless such statute or amendment also
23 imposes a sufficient tax, not prohibited by the Constitution, or otherwise
24 constitutionally provides for raising the necessary revenue.” Nev. Const. art. 19, § 6.
25 “Section 6 applies to all proposed initiatives, without exception, and does not permit
26 any initiative that fails to comply with the stated conditions.” *Rogers v. Heller*, 117
27 Nev. 169, 173, 18 P.3d 1034, 1036 (2001). “If the Initiative does not comply with
28 section 6, then the Initiative is void” in its entirety, and the offending provision cannot

1 be severed to render it constitutional.¹ *Id.* at 173, 177-78.

2 “Simply stated, an appropriation is the setting aside of funds, and an
3 expenditure of money is the payment of funds.” *Rogers*, 117 Nev. at 173. The Nevada
4 Constitution prohibits initiatives that require appropriations or expenditures in
5 order to “prevent[] the electorate from creating the deficit that would result if
6 government officials were forced to set aside or pay money without generating the
7 funds to do so.” *Herbst Gaming*, 122 Nev. at 891. An initiative need not “by its terms
8 appropriate money” to violate the prohibition. *Id.* at 890 n.40 (citing *State ex rel. Card*
9 *v. Kaufman*, 517 S.W.2d 78, 80 (Mo. 1974)). Rather, “an initiative makes an
10 appropriation or expenditure when it leaves budgeting officials no discretion in
11 appropriating or expending the money mandated by the initiative—the budgeting
12 official must approve the appropriation or expenditure, regardless of any other
13 financial considerations.” *Id.* at 890. This is precisely what the Petition does.

14 It is self-evident both that the massive overhaul of Nevada’s electoral system
15 the Petition calls for would cost money to implement and that the ongoing
16 administration of a complex electoral system across the state—particularly when it
17 comes to imposing ranked-choice voting—is more expensive than the ongoing
18 administration of a simple one. Voting machines and paper ballots would need to be
19 converted or new special voting equipment purchased to permit voters to rank
20 candidates in order of preference. Poll workers and other officials would need to be
21 trained on administering the new systems. The Petition would also require general
22 election votes to be tallied using a complex algorithm in which candidates are
23 eliminated and votes redistributed in a series of successive calculations. In the

24
25
26 ¹ Although the substantive constitutionality of a ballot initiative is often not
27 ripe for review until the initiative is enacted, see *Herbst Gaming, Inc. v. Heller*, 122
28 Nev. 877, 884, 141 P.3d 1224, 1229 (2006), Nevada courts have held that compliance
with Article 19, Section 6’s appropriation or expenditure provision is a “threshold
content restriction” that may be raised in a pre-election challenge, *id.* at 890 n.38
(quoting *Rogers*, 117 Nev. at 173).

1 modern age, it is difficult to imagine such an operation being performed without the
2 aid of specialized software, which the state would also have to purchase. But even
3 assuming *arguendo* that the state could perform the tabulations by hand, the training
4 and staff hours needed for the task would come with their own associated cost, for the
5 state must pay its employees and contractors. Moreover, Nevada would need to
6 educate voters regarding how to cast their votes and how the votes are counted under
7 the complicated new systems, necessitating a public relations campaign with its own
8 significant price tag.

9 Each of these expenditures is inherently required by the Petition, whose
10 measures cannot be achieved without them. By commanding Nevada officials to
11 implement and maintain its electoral reforms, the Petition leaves “budgeting officials
12 no discretion in appropriating or expending the money mandated by the initiative—
13 the budgeting official must approve the appropriation or expenditure” to comply with
14 its provisions. *Herbst Gaming*, 122 Nev. at 891. The Petition thus requires an
15 appropriation and expenditure. And, because no portion of the Petition “provides for
16 raising the necessary revenue,” as Article 19, Section 6 requires, it is void ab initio.
17 *Rogers*, 117 Nev. at 173. For this reason, too, the Court should enjoin the Secretary
18 from any further action upon the Petition.

19 **C. The Petition’s Description of Effect Is Legally Insufficient**

20 Even setting aside the issues with the Petition itself, Proponents should not be
21 permitted to solicit signatures because the Petition’s description of effect is deficient.
22 Nevada law requires that every initiative “[s]et forth, in not more than 200 words, a
23 description of the effect of the initiative or referendum if the initiative or referendum
24 is approved by the voters.” NRS 295.009(1)(b). The purpose of the description is to
25 “prevent voter confusion and promote informed decisions.” *Nevadans for Nev. v.*
26 *Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006). Thus “[t]he importance of the
27 description of effect cannot be minimized, as it is what the voters see when deciding
28 whether to even sign a petition.” *Coalition for Nevada’s Future v. RIP Commerce Tax*,

1 Inc., 132 Nev. 956 (2016) (unpublished disposition) (citing *Educ. Initiative PAC v.*
2 *Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013); *LV TAC*, 125
3 Nev. at 177.

4 Although a description of effect need not “explain hypothetical effects” or
5 “mention every possible effect” of the initiative, the Nevada Supreme Court has
6 repeatedly held that “a description of effect must be straightforward, succinct, and
7 non-argumentative, and it must not be deceptive or misleading.” *Educ. Initiative*
8 *PAC*, 129 Nev. at 37. In reviewing the description of effect, the Court must analyze
9 “whether the information contained in the description is correct and does not
10 misrepresent what the initiative will accomplish and how it intends to achieve those
11 goals.” *Id.*, 129 Nev. at 35. At the very least, the description of effect must fairly
12 present enough information for a potential signer to make an informed decision about
13 whether to support the initiative. *See Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59, 910
14 P.2 898, 903 (1996) (rejecting initiative description for “failure to explain [certain]
15 ramifications of the proposed amendment,” which “renders the initiative and its
16 explanation potentially misleading”); *Stumpf v. Lau*, 108 Nev. 826, 832, 839 P.2d 120,
17 124 (1992) (rejecting initiative petition because of a “fatal omission that effectively
18 prevents the signers from knowing what they are signing”), *overruled on other*
19 *grounds by Herbst Gaming*, 122 Nev. at 877.

20 Here, the Petition’s description of effect is deceptive, confusing, and
21 misleading. As to its first subject—the wholesale alteration of Nevada’s primary
22 election process—the description is misleading in that it does not explain that by
23 eliminating the party primary system, political parties would no longer select their
24 respective candidates to appear on the general election ballot, a longstanding—if not
25 time-honored—role and prerogative of political parties generally. Nor does it explain
26 that, as a consequence of eliminating partisan primaries, the party affiliation
27 appearing on a ballot will no longer reflect that a party has endorsed or otherwise
28 associated itself with the candidate. It gives no indication that the Petition would

1 allow candidates to freely choose which partisan affiliation will be listed beneath
2 their names, resulting in voters' no longer being able to count on the listed
3 designation as a reliable indicator of a candidate's values or policy positions.

4 Notably, the detailed text of the Petition itself acknowledges this—and
5 implicitly acknowledges its hefty significance for voters—by requiring ballots to carry
6 a conspicuous disclaimer stating “A candidate for partisan office may state a political
7 party that he or she prefers. ***A candidate's preference does not imply that the***
8 ***candidate is nominated or endorsed by the party, or that the party approves***
9 ***of or associates with that candidate.***” Ex. 2 at 6 (proposed Section 18(5))
10 (emphasis added). Yet this crucially important fact is nowhere to be found anywhere
11 in the Petition's description of effects. A voter signing the Petition based on that
12 description (or voting on it, should it qualify for the ballot) would very likely not know
13 that, if the Petition became law, they would no longer be able to utilize candidates'
14 partisan identification on the ballots to guide their voting behavior without
15 performing independent research to verify that a candidate's platform in fact aligns
16 with that of the listed party.

17 The description also contains no explanation of what it means for a candidate
18 to be a “top five finisher” in these new open primary elections—what happens, for
19 example, if there is a tie. The Petition in fact calls for the advancing individual to be
20 determined at random if there is a draw for fifth place, which many voters might
21 object to as arbitrary. But the description makes no mention of it.

22 On its second subject, the novel ranked-choice voting system for general
23 elections, the Petition's description fails to accurately describe the consequences of
24 ranked-choice voting and the instant runoff re-tabulation, rendering it confusing and
25 misleading. First, the description states that, “*as traditionally*, a candidate receiving
26 first-choice votes of more than 50% wins.” Ex. 2 at 9 (emphasis added). This is false.
27 The traditional voting system currently in effect does not require 50% of votes to win,
28 but instead only a plurality—more votes than any other candidate. And, of course,

1 the concept of “first-choice votes” does not exist in the current electoral system, in
2 which voters get to vote for only one candidate. By mischaracterizing the current
3 system and the delta between it and the system the Petition proposes, the Petition
4 deceptively minimizes the seriousness and import of the changes, appearing to
5 attempt to mislead the voter into believing that the difference is not all that acute.

6 The description also does not inform the prospective signatory that with
7 ranked-choice voting, voters who do not wish to rank more than their first preference
8 will not be counted, or their voices heard, if their preferred candidate is eliminated.
9 If these voters choose only one candidate on their ballots, they are more likely to
10 become “exhausted,” thereby giving those who fully complete their ballots more
11 influence over the electoral process. Indeed, the description of effect contains no
12 information as to how votes are counted when voters do not wish to rank all
13 candidates. Ex. 2 at 9 (describing that “each voter who had ranked the now-
14 eliminated candidate as their first choice, has their single vote transferred to the next
15 highest choice candidate” but failing to clarify what happens if the voter has not
16 ranked any other candidates). Exhausted ballots are a serious concern under ranked-
17 choice voting, as they systematically reduce the electoral influence of certain voters.
18 The Petition’s description of effect simply fails to accurately inform the voter of the
19 complicated process and consequences of ranked-choice voting.

20 Finally, the description of effect makes no mention of the financial implications
21 of the Petition and thus fails to advise voters that the new voting system will
22 undoubtedly require significant government funding to implement. The Petition,
23 therefore, misleads signatories into thinking that there are no, or minimal,
24 implementation costs for the proposal. But, as discussed, the reality is that Nevada’s
25 current voting system is not set up to process ranked-choice ballots, nor has this
26 process ever been used for major elections in Nevada before. Updating voting systems
27 and ballot counting procedures for the ten major statewide elections covered by the
28 Petition would be a massive undertaking. Implementing ranked-choice voting, which

1 is inherently confusing to voters, would also require voter outreach to educate voters
2 on this completely new process. Training on how to administer the ballot counting
3 process for both the primary and general election under these new systems would
4 also be necessary. Who would be responsible for creating training materials and
5 implementing these new changes and where that funding would come from are not
6 contemplated—let alone described—in the Petition. These omissions are misleading.

7 Because the description of effect is misleading and confusing, it is legally
8 insufficient, and this Court should not permit the Petition to proceed to the signature
9 gathering phase in this form.

10 V. CONCLUSION

11 For the reasons set forth above, the Petition is legally deficient. Therefore, the
12 Court should grant Plaintiff's requested relief, striking the Petition and issuing an
13 injunction prohibiting the Secretary from acting on the Petition and Defendants from
14 collecting signatures.

[illegible]

DATED this 6th day of December, 2021.

By:

Attorneys for Plaintiff

371	17:00	4863	12/06/21	17:00	17:00
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ASAP

ASAP

37211	Wolf Rifkin Shapiro Schulman R	SD_SOP	64	Cntrl#	55183319	DX*
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Danielle F. | LV4491-003
pu info:=====

1/ 1

12/06/21

Wolf Rifkin Shapiro Schulman Rabkin
3773 Howard Hughes Parkway
LAS VEGAS NV 89169
702 341-5200 Ext:5136 Zns: 7
Danielle F. Rm:Suite 590 South

Please serve the
following 7 docs. 1)
Cover Sheet, 2)
Complaint, 3)
Memorandum, 4)
Appendix, 5)

12/06/21
Fr:15:43

del info:=====

Todd Bice
400 South 7th Street
LAS VEGAS NV 89101
Zns: 1/1

Affirmation, 6)
IAFD, 7)

12/06/21

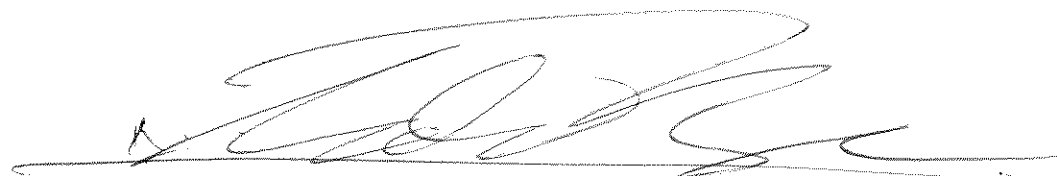
4863

To:21:43

Personal/ATA

12/06/21 15:43 Yes ???

12/06/21 15:44:06 DX* 21OC001721B
12/06/21 15:44:07 DX* Helton v. Nevada Voters First
12/06/21 15:44:08 DX* Serve Mult. Docs
12/06/21 15:44:09 DX* dfresquez was placing an order for customer.
12/06/21 15:44:10 DX* Summons.Return Affidavit of Service ASA to our office or
12/06/21 15:44:11 DX* email it to me. Thank you
12/06/21 15:44:12 DX* email it to me. Thank you
12/06/21 15:44:13 DX* Attachment: 211206_Civil_Cover_Sheet.pdf
12/06/21 15:44:14 DX* Attachment: 211206_Complaint.pdf
12/06/21 15:44:15 DX* Attachment: 211206_Plaintiff_s_Memorandum_ISO_Complaint.
12/06/21 15:44:16 DX* Attachment: 211206_Plaintiff_s_Appendix.pdf
12/06/21 15:44:17 DX* Attachment: 211206_Plaintiff_s_Affirmation.pdf
12/06/21 15:44:18 DX* Attachment: 211206_Plaintiff_s_Initial_Appearance_Fee_D
12/06/21 15:44:19 DX* Attachment: 211206_Summons_Todd_Bice_-_Issued.pdf
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12-7-21

APP0054

ASAP

64						ASAP
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=Cnttrl#:
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$$1/1$$

12/06/21

Please serve the following 7 docs. 1) Cover Sheet, 2) Complaint, 3) Memorandum, 4) Appendix, 5)

12/06/21
Fr:15:38

Affirmation, 6)
IAFD, 7)

12/06/21

4863

To:21:38

12/06/21	15:38	Yes	???
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12/06/21 15:38:29 DX* 21OC001721B
12/06/21 15:38:30 DX* Helton v. Nevada Voters First
12/06/21 15:38:31 DX* Service of Mult. Docs on Nevada Voters First
12/06/21 15:38:32 DX* dfresquez was placing an order for customer.
12/06/21 15:38:33 DX* Summons.Return Affidavit of Service ASA to our office or
12/06/21 15:38:34 DX* email it to me. Thank you
12/06/21 15:38:35 DX* email it to me. Thank you
12/06/21 15:38:36 DX* Attachment: 211206_Civil_Cover_Sheet.pdf
12/06/21 15:38:37 DX* Attachment: 211206_Complaint.pdf
12/06/21 15:38:38 DX* Attachment: 211206_Plaintiff_s_Memorandum_ISO_Complaint.
12/06/21 15:38:39 DX* Attachment: 211206_Plaintiff_s_Appendix.pdf
12/06/21 15:38:40 DX* Attachment: 211206_Plaintiff_s_Affirmation.pdf
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12/06/21 15:38:42 DX* Attachment: 211206_Summons_Nevada_Voters_First_-_Issued.
12/06/21 17:04:08 902 617

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Todd Bice Reg. Agent
Print

[Handwritten Signature]
12-7-01

APP0055

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JOHN SAMBERG, ESQ. (NSB 10828)
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Attorneys for Plaintiff

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

NATHANIEL HELTON, an individual,

Plaintiff,

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 official capacity as NEVADA
SECRETARY OF STATE,

Defendants.

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

**PLAINTIFF'S PROPOSED
DESCRIPTION OF EFFECT**

1 **PLAINTIFF'S PROPOSED DESCRIPTION OF EFFECT**

2 The petition amends Nevada's Constitution to overhaul its electoral system in
3 several ways, including by eliminating partisan primaries and instituting ranked-
4 choice voting in general elections. All candidates will run and all voters will vote in
5 a single primary, from which the top five finishers advance. If there is a tie for fifth
6 place, the candidates draw straws. In both the primary and general elections,
7 candidates self-select the party designation that appears with their names;
8 candidates' party affiliation will no longer reflect that they are chosen by the party
9 or its voters, or that they share the party's values. In the general election, the top
10 vote-getter will no longer be guaranteed victory. Instead, voters will rank the
11 candidates, and if no candidate wins over 50% of the vote, the lowest vote-getter is
12 eliminated and their votes redistributed to the voters' second choice. The process
13 repeats until a candidate obtains over 50%. Voters whose choices are eliminated and
14 who do not rank other candidates will have their ballots rejected. Making these
15 changes would require Nevada to invest significant funds purchasing or upgrading
16 voting machines, retraining poll workers and election officials, purchasing new
17 tabulation software, educating voters, and otherwise converting its election
18 infrastructure.

19 ///

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28 ///

1 DATED this 20th day of December, 2021.

2
3 **WOLF, RIFKIN, SHAPIRO,**
SCHULMAN & RABKIN, LLP

4
5 Bv: 

6 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)

7 JOHN SAMBERG, ESQ. (NSB 10828)

8 DANIEL BRAVO, ESQ. (NSB 13078)

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16 Washington, DC 20002

17 LINDSAY MCALEER, ESQ. (*pro hac vice forthcoming*)

18 **ELIAS LAW GROUP LLP**

19 1700 Seventh Ave, Suite 2100

20 Seattle, WA 98101

21 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 20th day of December, 2021, a true and correct
3 copy of the **PLAINTIFF'S PROPOSED DESCRIPTION OF EFFECT** was served
4 upon all parties via electronic mailing to the following:

5 Craig A. Newby, Esq.
6 **OFFICE OF THE ATTORNEY**
7 **GENERAL**
8 555 E. Washington Avenue, Suite #3900
9 Las Vegas, NV 89101
10 CNewby@ag.nv.gov

11 *Attorney for Barbara Cegavske*

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Jordan T. Smith, Esq.
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*Attorneys for Nevada Voters First PAC
and Todd L. Bice*

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

17 By: /s/ Dannielle Fresquez
18 Dannielle Fresquez, an Employee of
19 WOLF, RIFKIN, SHAPIRO, SCHULMAN
20 & RABKIN, LLP
21
22
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26
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28

1 AARON FORD
Attorney General
2 Craig A. Newby (Bar No. 8591)
Deputy Solicitor General
3 Office of the Attorney General
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4 Las Vegas, NV 89101
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5 (702) 486-3773 (fax)
cnewby@ag.nv.gov
6 *Attorneys for Defendant*
Barbara Cegavske

7 Affirmation pursuant to NRS 239B.030

8 The undersigned affirms that this
document does not contain the
9 personal information of any person

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

12 NATHANIEL HELTON, an individual,

Case No. 21 OC 00172 1B

13 Plaintiff,

Dept. No. II

14 vs.

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

18 Defendants
19

20 **LIMITED RESPONSE TO MEMORANDUM OF POINTS AND AUTHORITIES IN**
21 **SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
22 **CHALLENGING THE BETTER VOTING NEVADA INITIATIVE**

23 Respondent Barbara Cegavske, in her official capacity as Nevada Secretary of State,
24 submits the following limited response to Plaintiff Nathaniel Helton's "Memorandum of
25 Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief
Challenging the Better Voting Nevada Initiative."

26 The Secretary of State does not take a position on the legality of the proposed
27 initiative. This case was brought prior to the Secretary of State having the opportunity to
28 consider certifying the proposed initiative as sufficient pursuant to NRS 295.061(2).

1 Plaintiff and the other Defendants will make those arguments and the Secretary of State
2 will comply with any final judgment in this case. The Secretary of State does not take a
3 position on the policy merits of the proposed initiative. If deemed legal and qualified for the
4 2022 general election ballot, Nevadan voters will have that debate and make that policy
5 decision.

6 Under such circumstances, no award of attorneys' fees or costs is appropriate *against*
7 the Secretary of State.

8 DATED this 21st day of December 2021.

9 AARON D. FORD
10 Attorney General

11 By: Kiel #15368C
12 for Craig A. Newby (Bar No. 8591)
13 Deputy Solicitor General
14 *Attorneys for Defendant*
15 *Barbara Cegavske*
16
17
18
19
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28

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on the 21st day of December 2021, I deposited for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada, a true and correct copy of the foregoing document, addressed to the following:

Bradley S. Schrager
John Samberg
Daniel Bravo
Eric Levinrad
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3773 Howard Hughes Pkwy., Ste. 590 South
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Marc E. Elias
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An employee of the
Office of the Nevada Attorney General

COPY

RECD & FILED

2021 DEC 23 PM 12:13

AUBREY ROWLATT

CLERK
K. PETERSON

BY _____ DEPUTY

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Facsimile: 702.214.2101
Attorneys for Defendants
Nevada Voters First PAC and Todd Bice

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Case No.: 21 OC 00172 1B

Plaintiffs,

Dept. No.: I

v.

**DEFENDANTS NEVADA VOTERS FIRST
PAC AND TODD BICE'S ANSWER TO
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
CHALLENGE THE BETTER VOTING
NEVADA INITIATIVE**

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.

Defendants, Nevada Voters First PAC and Todd L. Bice, (collectively "Defendants")
answer Plaintiff Nathaniel Helton's, ("Plaintiff") Complaint for Declaratory and Injunctive Relief
Challenging the Better Voting Nevada Initiative (the "Complaint") as follows:

JURISDICTION AND VENUE

1. Defendants state that the allegations set forth in Paragraph 1 contain conclusions of
law and/or argument, to which no answer is required. To the extent a response is required,
Defendants deny the allegations.

2. Defendants state that the allegations set forth in Paragraph 2 contain conclusions of
law and/or argument, to which no answer is required. To the extent a response is required,
Defendants deny the allegations.

PARTIES

3. Defendants are without sufficient knowledge or information to form a belief necessary to admit or deny the allegations contained in paragraph 3 of Plaintiff's Complaint and therefore deny the same.

4. Admit.

5. Admit.

6. Defendants admit that Defendant Barbara Cegavske is the Nevada Secretary of Stated. The remaining allegations set forth in Paragraph 6 contain conclusions of law and/or argument, to which no answer is required. Insofar as these allegations are asserted against the Secretary, Defendants have no obligation to answer.

GENERAL FACTUAL ALLEGATIONS

7. Admit.

8. Defendants admit that the "[t]he Petition seeks to amend the Nevada Constitution" and reform Nevada's election process. Defendants deny the remaining allegations of Paragraph 8.

9. Defendants admit that "the Petition seeks to eliminate partisan primary elections for federal, state constitutional, and state legislative elections" which "would replace these contests with open, non-partisan primaries in which the top-five finishers for each office qualify in the succeeding general elections." (Emphasis omitted). Defendants deny the remaining allegations of Paragraph 9.

10. Defendants admit that "the Petition would establish and impose a whole new system of voting in the general election known as 'ranked-choice voting' for federal, state constitutional, and state legislative offices." (Emphasis omitted). Defendants admit that the Petition establishes a "system in which voters indicate their preferences by ordering up to five candidates from most to least preferred. If no candidate receives over 50% of first-choice votes, the election proceeds through rounds of elimination, with the candidate receiving the least votes removed from the contest and voters who listed that candidate as their first choice have their votes redistributed to their next-preferred choice until a victor attains a statistically assigned majority." (Emphasis omitted). Defendants deny the remaining allegations of Paragraph 10.

11. Defendants admit that "[t]he Petition further provides that, during both the new open primary and the modified general election, ballots would list a political party following each candidate's name." Defendants admit that the Petition provides a provision for ballots to contain a "disclaimer stating 'A candidate for partisan office may state a 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.'" (Emphasis omitted). Defendants deny the remaining allegations of Paragraph 11.

12. Defendants admit that the Petition would amend the Nevada Constitution. Defendants deny Plaintiff's characterization of the remaining allegations in Paragraph 12.

13. Admit.

FIRST CAUSE OF ACTION

14. Defendants incorporate by reference its responses contained within the preceding paragraphs as if fully set forth herein.

15. Defendants state that the allegations set forth in Paragraph 15 contain conclusions of law and/or argument, to which no answer is required.

16. Defendants state that the allegations set forth in Paragraph 16 contain conclusions of law and/or argument, to which no answer is required.

17. Denied.

18. Denied.

19. Defendants deny that "they share no common link other than a general connection to voting albeit in wholly different elections and through vastly different mechanisms." The remaining allegations set forth in Paragraph 19 contain conclusions of law and/or argument, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

20. Insofar as the allegations in Paragraph 20 are asserted against the Secretary, Defendants have no obligation to answer. Any remaining allegations of Paragraph 20 are denied insofar as they are asserted against Defendants.

SECOND CAUSE OF ACTION

21. Defendants incorporate by reference its responses contained within the preceding paragraphs as if fully set forth herein.

22. Defendants state that the allegations set forth in Paragraph 22 contain conclusions of law and/or argument, to which no answer is required.

23. Defendants state that the allegations set forth in Paragraph 23 contain conclusions of law and/or argument, to which no answer is required.

24. Defendants admit that the Petition alters the current "partisan primary system" and replaces that system with a "non-partisan, top-five primary system." Defendants additionally admit that the Petition imposes a "ranked choice voting [i]n Nevada's general elections." Defendants deny the remaining allegations in Paragraph 24.

25. Denied.

26. Defendants admit that the "Petition contains no tax or other provision for funding." Defendants deny the remaining allegations and assumptions set forth in Paragraph.

27. Insofar as the allegations in Paragraph 27 are asserted against the Secretary, Defendants have no obligation to answer. Any remaining allegations of Paragraph 20 are denied insofar as they are asserted against Defendants.

THIRD CAUSE OF ACTION

28. Defendants incorporate by reference its responses contained within the preceding paragraphs as if fully set forth herein.

29. Defendants state that the allegations set forth in Paragraph 29 contain conclusions of law and/or argument, to which no answer is required.

30. Defendants state that the allegations set forth in Paragraph 30 contain conclusions of law and/or argument, to which no answer is required.

31. Denied.

32. Defendants admit that the Petition's description of effects provides "as traditionally, a candidate receiving first-choice votes of more than 50% wins." Defendants deny the remaining allegations in Paragraph 32.

1 33. Denied.

2 34. Denied.

3 35. Denied.

4 36. Denied.

5 37. Denied.

6 38. Denied.

7 **AFFIRMATIVE DEFENSES**

8 As this is a limited statutory proceeding under NRS 295.009, Defendants aver that
9 Plaintiff's complaint fails to state a claim upon which relief can be granted.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the Defendants pray for relief as follows:

12 1. That Plaintiff take nothing by way of its Complaint herein;

13 2. Plaintiff's Complaint be dismissed with prejudice;

14 3. Defendants be allowed costs incurred in defending this action;

15 4. Defendants be awarded such other and further relief as the Court deems
16 appropriate in the premises.

17 **AFFIRMATION**

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

19 DATED this 22nd day of December, 2021.

20 PISANELLI BICE PLLC

21 By: 

22 Todd L. Bice, Esq., Bar No. 4534
23 Jordan T. Smith, Esq., Bar No. 12097
24 John A. Fortin, Esq., Bar No. 15221
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

25 *Attorneys for Defendants*
26 *Nevada Voters First PAC and Todd Bice*
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 22nd day of December 2021, pursuant to NRCP 5(b), I served a true and correct copy of the above and foregoing **DEFENDANTS NEVADA VOTERS FIRST PAC AND TODD BICE'S ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGE THE BETTER VOTING NEVADA INITIATIVE**, by United States Mail, postage prepaid, and by electronic mail, the following:

Original via FedEx:

First Judicial District of Nevada
Hon. James E. Wilson, Jr.
Carson City District Court Clerk
885 East Musser Street, Room 3057
Carson City, NV 89701
bshadron@carson.org

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*Attorneys for Defendant State of Nevada ex
rel. Barbara K. Cegavske, in her capacity as
Secretary of State of Nevada*

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Case No.: 21 OC 00172 1B

Plaintiff,

Dept. No.: I

v.

**DEFENDANTS NEVADA VOTERS
FIRST PAC AND TODD BICE'S
OPPOSITION TO PLAINTIFF'S
DECLARATORY AND INJUNCTIVE
RELIEF CHALLENGE THE BETTER
VOTING NEVADA INITIATIVE**

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.

I. INTRODUCTION

Nevada Voters First PAC ("Voters First") proposes a different method for choosing specified partisan officeholders. Each provision of the Better Voting Nevada Initiative ("Initiative") relates to that straight-forward subject. Contrary to Plaintiff's unsupported assertions, the primary and general elections are interrelated steps in the process for selecting representatives. The primary is where the number of candidates is culled and then moved to the general election for the voters' final choice. That there are two steps in the selection process does not make each step a separate "subject" for purposes of constitutional change. Indeed, Nevada's Legislature and voters have adopted multiple statutory and constitutional provisions that simultaneously address the two-step process for choosing representation. This Initiative is no different.

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1 Equally unfounded is Plaintiff's assertion that this Initiative constitutes an unfunded
2 mandate. The State has provided for elections since its founding. The Initiative does not impose
3 any new mandate, nor compel the expenditure of new funds. It simply establishes how the voters
4 express their choice for who will serve as their elected representative for these offices. Plaintiff
5 presents no evidence that the Initiative mandates the expenditure of new funds, nor that the process
6 of a single non-partisan primary is, in fact, not cheaper than what the State already provides,
7 although that is neither the legal standard nor a requirement.

8 Finally, Plaintiff seeks to misuse Nevada's description of effect requirement. The Initiative's
9 description accurately and faithfully explains what the Initiative does within the 200 words allowed.
10 If anyone is being misleading here, it is the self-interested partisans that Plaintiff represents, who
11 hope to continue their tightfisted control over the selection process to the exclusion of many voters.
12 Plaintiff's proposed description is a partisan advocacy piece that misrepresents the Initiative. The
13 Initiative's opponents cannot mask their lack of legal substance with hyperbole – with rhetoric like
14 "complicated," "radical," "sea change," or "massive overhaul." Overuse of a thesaurus provides no
15 basis to deprive Nevada's voters of their rights to propose constitutional change for how specific
16 officeholders are selected.

17 **II. OVERVIEW**

18 As recent political commentary notes, Nevada's voters are choosing to identify as non-
19 partisan, as opposed to joining the two major political parties.¹ The resulting alignment of a plurality
20 of voters outside of the Democrat and Republican parties leaves a large percentage of Nevadans
21 effectively excluded from the process of selecting their elected representatives. They cannot
22 participate in the closed partisan primaries and, as a result, have limited choices in the resulting
23 take it or leave it general election. As more and more voters are shutout from real participation in
24

25 ¹ See Jannelle Calderon, *Non-major party voters now make up plurality of registered Nevada*
26 *voters for first time in state history*, TheNevadaIndependent.com (Sept. 1, 2021, 5:41 pm PST),
27 [https://thenevadaindependent.com/article/non-major-party-voters-now-make-up-majority-of-](https://thenevadaindependent.com/article/non-major-party-voters-now-make-up-majority-of-registered-nevada-voters-for-first-time-in-state-history)
28 [registered-nevada-voters-for-first-time-in-state-history](https://thenevadaindependent.com/article/non-major-party-voters-now-make-up-majority-of-registered-nevada-voters-for-first-time-in-state-history); Rory Appleton, *Nonpartisan voters may*
hold key to Nevada 2020, LasVegasReviewJournal.com (Nov. 4, 2019, 4:17 a.m.),
[https://www.reviewjournal.com/news/politics-and-government/the-middle/nonpartisan-voters-](https://www.reviewjournal.com/news/politics-and-government/the-middle/nonpartisan-voters-may-hold-the-key-to-nevada-2020-1883687/)
[may-hold-the-key-to-nevada-2020-1883687/](https://www.reviewjournal.com/news/politics-and-government/the-middle/nonpartisan-voters-may-hold-the-key-to-nevada-2020-1883687/)

1 the primary – the first step of whittling down the candidates for the following general election – the
2 prevailing candidates become more disassociated from their constituents. After all, to make it to
3 the general election currently, candidates must "win" a closed primary process that now involves
4 fewer and fewer voices. As a result of the contraction in primary voices, and the fact that fewer
5 races are competitive as a result of things like gerrymandering, the primary plays an oversized role
6 in the selection process, a step that typically involves lower voter turnout. Thus, by the time the
7 candidates are available for selection in the general election, more and more voters have had no
8 effective say in choosing these candidates, even assuming that the race is competitive by the time
9 of the general election. Nevada Voters First PAC seeks to address this disenfranchisement with The
10 Better Voting Nevada Initiative ("Initiative"). (*See* Ex. 2, Petition, RCV0003-RCV0013.)²

11 This Initiative follows a similar voter-approved effort in Alaska to end closed primaries and
12 provide for ranked-choice voting. This Initiative provides that all voters and all interested
13 candidates – Democrat, Republican, or otherwise seeking office for Congress, Governor,
14 Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller, and State
15 Legislator ("Partisan Office") – can participate in a non-partisan primary to narrow the field for that
16 particular office to the top-five vote getters. (*Id.* at RCV0004-RCV0006 (amending Article 15,
17 Sections 4 and 14 and adding Section 17 subparts 1-9 to implement an open primary); *see also id.*
18 RCV0005 Proposed Nevada Const. art. 15, § 17, ¶ 8 (defining partisan offices to which it applies).)

19 Any candidate for these offices may run in the primary "regardless of the person's affiliation
20 with a political party, or lack thereof." (*Id.* at RCV0004 Proposed Nevada Const. art. 15, § 17, ¶
21 1(b).) Likewise, "[a]ny registered voter may cast a primary ballot for any candidate for partisan
22 office regardless of the political party affiliation of the voter or any political party preference
23 indicated by the candidate." (*Id.* ¶ 1(c).) Following the primary, the top-five vote getters "shall
24
25
26

27 ² For ease of reference, Voters First reference "Plaintiff's Appendix of Exhibits" throughout
28 this opposition and any additional exhibits are attached to this Opposition and labeled accordingly.

1 advance to the general election for partisan office." (*Id.* ¶ 2.)³ (*Id.* at RCV0005 Proposed Nevada
2 Const. art. 15, § 17, ¶ 3.)

3 The Initiative tells the voters precisely what it is proposing by eliminating the closed
4 primary system, including how "[i]mmediately following the name of each candidate for a partisan
5 office must appear the name or abbreviation of the political party with which the candidate is
6 registered, the words, 'no political party' or the abbreviation 'NPP,' as the case may be." (*Id.* ¶ 5.)
7 And, the Initiative tells voters that the primary system will no longer be the means by which partisan
8 political parties choose their preferred nominee:

9 [t]he ballots for the primary elections for partisan office must include a
10 conspicuously placed statement: "A candidate for partisan office may state a
11 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."

12 (*Id.* ¶ 6.)⁴

13 The Initiative also provides for a procedure in the event a top-five vote getter "withdraws,
14 is disqualified, dies, or is otherwise deemed ineligible" and permits "the candidate receiving the
15 next greatest number of votes at the primary election for partisan office shall be declared a
16 nominee." (*Id.* ¶ 7.) Consistent with the Constitution's requirements that initiatives set policy, this
17 Initiative then directs that "[n]ot later than July 1, 2015, the Legislature shall provide by law for
18 provisions consistent with Section 17 of Article 15 of this Constitution to require top-five primary
19 elections for partisan office." (*Id.* at RCV0006 Proposed Nevada Const. art. 15, § 17, ¶ 9.)

22 ³ If in the hypothetical circumstance of a tie between fifth and sixth place, the Initiative
provides that that tie will be "decided by lot."

23 ⁴ Underscoring Plaintiff's masquerading for partisan party interests, he questions the
24 sophistication of Nevada voters and bemoans the perceived loss of party influence in the narrowing
of candidates through the primary process. (*See, e.g.*, Pl.'s Memo., at 2:21-24) But such partisan-
25 driven interests are not a basis for precluding voters from considering the Initiative, and there is
nothing in the Initiative the precludes parties from nominating their own candidates. *See Herbst*
26 *Gaming Inc. v. Heller*, 122 Nev. 877, 882, 141 P.3d 1224, 1228 (2006) (Scope of pre-election
review is very narrow). And as the United States Supreme Court has also explained, primary
27 elections are a state-run function and political parties have no entitlement to serve as the gatekeeper
of who may run in a primary. *See Washington State Grange v. Washington State Republican Party*,
28 552 U.S. 442, 454 (2008) ("There is simply no basis to presume that a well-informed electorate will
interpret a candidate's party-preference designation to mean that the candidate is the party's chosen
nominee or representative or that the party associates with or approves of the candidate.").

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

8 The Initiative directs that when tabulating the ballots, "each County shall initially tabulate
9 each validly cast ballot as one vote for the highest-ranked candidate on that ballot or as an inactive
10 ballot. If a candidate is highest-ranked on a majority of the active ballots, that candidate is elected
11 and the tabulation is complete." (*Id.* at ¶ 6.) In the event no candidate obtains over 50% of the
12 first-place votes, "tabulation proceeds in sequential rounds" until the candidate with the highest
13 level of support (i.e. the greatest number of votes) is determined as the winner. (*Id.* at RCV0006
14 Proposed Nevada Const. art. 15, § 17, ¶ 7.)

15 No longer will Nevada voters be forced into a "take it or leave it" approach between
16 candidates for which most voters have had little say in the selection process. With the Initiative's
17 selection process for how these officeholders will now be chosen, all voters will have a voice and
18 the winning officeholder will be the one possessing the broadest support amongst *all* voters.

19 In conformity with the 200-word limitation imposed by the Nevada Legislature, the
20 Description of Effect accurately summarizes the Initiative's purpose and what happens if enacted:

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

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

- 26 • General election voters rank the candidates in order of preference from first
to last, if they wish to rank more than their first preference.
- 27 • As traditionally, a candidate receiving first-choice votes of more than 50%
wins.
- 28 • If no candidate is the first choice of more than 50%, the candidate with the
fewest votes is eliminated. And each voter who had ranked the

now-eliminated candidate as their first choice, has their single vote transferred to their next highest choice candidate.

- This tabulation process repeats until the one candidate with more than 50% support is determined as the winner.

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

(*Id.* at RCV0009.)

III. ANALYSIS

Contrary to Plaintiff's posturing, Nevada's voters are not unsophisticated and uninformed. Many are, after all, making the informed choice to leave partisan parties. Voters are fully capable of determining whether they want to change how certain representatives are chosen, particularly when the existing process excludes a multitude of voters. Plaintiff's routine contentions – those regularly advanced to obstruct every ballot initiative – fail to provide grounds to deny the voters their right to modify the selection method.

A. The Initiative Easily Comports with the Single-Subject Requirement.

The Initiative addresses a single subject: How voters elect the specified officeholders. Article 19, Section 2(1) of the Nevada Constitution provides that "the people reserve to themselves the power to propose, by initiative petition, . . . amendments to this Constitution." The Nevada Supreme Court recognizes that "the right to initiate change in this State's laws through ballot proposals is one of the basic powers enumerated in this State's Constitution." *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247 (2006). Because of the paramount importance of the citizenry's right, a court must "make every effort to sustain and preserve the people's constitutional right to amend their constitution through the initiative process." *Id.* at 912, 141 P.3d at 1247. As such, "it is not the function of this Court to judge the wisdom" of a proposed initiative; such policy choices are solely for the voters. *Nevada Judges Assn. v. Lau*, 112 Nev. 51, 57, 910 P.2d 898, 902 (1996).

The right of the citizenry to implement legislative change is coextensive with that of the Legislature itself. When the Legislature enacts a law, the Constitution likewise requires that each such law "shall embrace but one subject, and matter, properly connected therewith" Nev. Const. art. 4, § 17. Consistent with that legislative single-subject requirement, NRS 295.009(1)

1 specifies that each initiative by the people must similarly embrace "but one subject and matters
2 necessarily connected therewith and pertaining thereto." The statute explains that an initiative
3 "embraces but one subject and matters necessarily connected therewith and pertaining thereto, if
4 the parts of the proposed initiative or referendum are functionally related and germane to each other
5 in a way that provides sufficient notice of the general subject of, and the interests likely to be
6 affected by, the proposed initiative or referendum." NRS 295.009(2).

7 Again, as the Nevada Supreme Court commands, the provisions of NRS 295.009 must be
8 interpreted and implemented so as to "make every effort to sustain and preserve the people's
9 constitutional right to amend their constitution through the initiative process." *Heller*, 122 Nev. at
10 912, 141 P.3d at 1247. Indeed, "[c]onsistent with the constitutional interests at stake, the law
11 requires the challenger of the initiative, not its proponent, to bear the burden of demonstrating that
12 a proposed initiative is clearly invalid because it embraces more than one subject." *Prevent*
13 *Sanctuary Cities v. Haley*, Case No. 74966, 2018 WL 2272955, at * 1 Nev. (2018) (unpublished
14 disposition)⁵; *see also Las Vegas Taxpayer Comm. v. City Council*, 125 Nev. 165, 176, 208 P.3d
15 429, 436 (2009) (party seeking to invalidate an initiative bears the burden of establishing that the
16 initiative is "clearly invalid.").

17 The reason courts impose such a high burden on a challenger is because efforts to impede
18 the voters' initiative power is contrary to the democratic process. *Farley v. Healey*, 431 P.2d 650,
19 652 (Cal. 1967); *see also City of Firecrest v. Jensen*, 143 P.3d 776, 779 (Wash. 2006) (legal
20 limitations on proposed initiatives are "broadly construed in favor of upholding" the initiative and
21 therefore the challenger of an initiative must establish its "unconstitutionality beyond a reasonable
22 doubt.").

23 Since NRS 295.009's codification of the single-subject requirement in 2005, the Nevada
24 Supreme Court has had several instances to apply it to voter-backed initiatives, reiterating the
25 citizenry's right to propose broad policy changes through a single initiative. In the first such case,
26 *Heller*, the Court recognized that the single subject there was the broad topic of "eminent domain."

27
28 ⁵ See NRAP 36(3).

1 *Heller*, 122 Nev. at 907, 141 P.3d at 1244. The Court upheld the right of the initiative's proponents
2 to incorporate numerous provisions – and the policy choices therein – because each ultimately
3 related to that broad subject. *Id.* The Court found that only those provisions untethered to the
4 subject of "eminent domain," such as creating "a broad new class of fundamental rights" and "any
5 government action that causes substantial economic loss" did not relate to the "primary subject" of
6 eminent domain, and thus had to be severed. *Id.* at 909, 141 P.3d at 1245.

7 Similarly, in *Education Initiative PAC v. Committee to Protect Nevada Jobs*, 129 Nev. 35,
8 50-51, 293 P.3d 874, 884-85 (2013), the Court determined that the proposed initiative's "primary
9 purpose is clearly to fund education." Consistent with that broad subject, the initiative addressed
10 two distinct taxes, implementing a new tax and temporarily increasing a different preexisting tax.
11 Rejecting the very same tact Plaintiff advances here — that *two* different taxes are necessarily *two*
12 different subjects because some voters might favor one but not both — the Court explained that
13 "both taxes are functionally related and germane" to the broad subject matter of "funding public
14 education" and thus are not two separate subjects under NRS 295.009. *Id.* at 51, 293 P.3d at 885.

15 More recently, in the unpublished decision of *Prevent Sanctuary Cities*, the Court again
16 rejected the same, indeed at times near-verbatim, arguments that Plaintiff's counsel makes here.
17 The subject of the proposed initiative there was "sanctuary cities," and designed to preclude the
18 state as well as counties and cities from undermining federal immigration enforcement. 2018 WL
19 2272955 at *3. As the Court explained in reversing the trial court's single-subject analysis, while
20 that initiative's various components – spanning three different levels of government (state, county
21 and city) were phrased in broad general terms – all of its provisions were consistent with the
22 single-subject requirement because they functionally related and were germane to the broad policy
23 of immigration enforcement. *Id.*

24 The present Initiative is narrower and squarely comports with NRS 295.009 and the Nevada
25 Supreme Court's precedents. The Initiative's subject is to change how voters choose specified
26 representatives. Each of the Initiative's provisions functionally relates, and is germane, to how the
27 voters choose those officeholders. Plaintiff's assertion that the "primary" election is separate and
28 distinct subject from the "general" – insisting that no one initiative can simultaneously address both

1 – is untenable and tellingly unsupported by any authority. Indeed, it is contrary to existing Nevada
2 law, which provides that the "primary" is just a step – the first step – in the selection process. After
3 all, if there is not more than one candidate who has filed for nomination in a partisan race, their
4 names "must be omitted" from any primary election and instead placed only on the general election
5 ballot. NRS 293.260(3). In that instance, the primary's purpose — winnowing the number of
6 candidates — is unnecessary and the primary (the first step) is skipped. Likewise, for a non-partisan
7 race, if one candidate secures over 50% of the vote in the primary then he or she is declared the
8 winner – *i.e.*, the traditional rule – and there is no need for a general election for that office.
9 NRS 293.260(5). Plainly, the "primary" and "general" elections are not "separate" standalone
10 subjects. Instead, they are intertwined steps in the process for how officeholders are chosen, which
11 is the primary purpose of this Initiative. *See also* Nev. Const. art. 2, § 10 (Constitutional amendment
12 adopted by the voters in 1996, simultaneously imposed campaign contribution limits on both the
13 primary *and* general elections).

14 The Alaska Supreme Court's recent decision in *Meyer v. Alaskans for Better Elections*, 465
15 P.3d 477 (Alaska 2020) concerned a similar, albeit broader, 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. Just like
19 here, partisan political interests sought to stop Alaska voters from considering the initiative. The
20 Alaska Supreme Court rejected the claim that the initiative violated the single-subject requirement,
21 explaining that a "plain reading of the initiative shows that its provisions embrace the single subject
22 of 'election reform' and share the nexus of election administration." *Id.*

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

1 went even further and endorsed the proponent's explanation that the campaign finance provisions
2 were also "logically related" since "allowing more candidates on the general election ballot, it
3 becomes more important than ever that voters have adequate and accurate information about who
4 is paying for campaign communications." *Id.* (citations omitted).

5 Plaintiff ignores Nevada law and how the primary and general elections are interrelated
6 steps in the selection process. His near-singular reliance upon *Las Vegas Taxpayer Accountability*
7 *v. City Council*, 125 Nev. 165, 208 P.3d 429 (2009) wildly misses the mark. As the Nevada
8 Supreme Court explained there, that proposed local initiative had so many disparate parts that "*a*
9 *primary purpose cannot be determined from the initiative itself and the description of effect.*" 125
10 Nev. at 180, 208 P.3d at 439 (emphasis original). The court concluded that the proposed initiative
11 governed at least two separate subjects, the first requiring voter approval for any municipal lease
12 purchase agreement exceeding \$2 million, and a separate requirement for voter approval of all
13 "major redevelopment decisions." *Id.* No overarching subject matter existed to join these unrelated
14 provisions other than what the Court said would be a generic subject like "voter approval," which
15 is so excessively general as to render the single-subject requirement meaningless. *Id.*

16 Plaintiff confesses his lack of serious substance when he characterizes the present Initiative
17 as engaging in "log rolling" because the changes to the primary election process and ranked-choice
18 voting for the general election are separate subjects since "either could stand on its own without the
19 other." (Pl.'s Memo., at 10:21-22.) Plaintiff either misunderstands the law or knowingly
20 misrepresents it. Log rolling occurs when "two or more completely separate provisions are
21 combined in a petition, when one or both of which would not obtain enough votes to pass without
22 the other." *Heller*, 122 Nev. at 922, 141 P.3d at 1254 (Hardesty, J. concurring in part and dissenting
23 in part). To "log roll" a provision in violation of the single-subject requirement means to advance
24 a proposition that the proponent expects would be supported by voters, but then include other
25 provisions, often concealed or hidden, that are less popular. *Id.* The purpose of the single subject
26 rule is to preclude such log rolling by ensuring that all of an initiative's provisions are germane to
27 the primary subject, so that voters are not faced with a "Hobson's choice" of having to choose
28 between two discrete and unrelated matters. *Id.*

1 Contrary to Plaintiff's articulation, it is not log rolling simply because each of an initiative's
2 provisions "could" be voted on separately and stand on their own. *Meyer*, 465 P.3d at 498 ("The
3 question is not whether the initiative could be split into separate measures, but rather whether the
4 various provisions 'embrace some one general subject'") (citations omitted). Here, Plaintiff cannot
5 seriously pretend that nonpartisan primaries do not functionally relate to the effectiveness of
6 ranked-choice voting.⁶ After all, the benefits of ranked-choice voting in the general election are
7 much negated if the primary election outcome results in a general election between just two
8 candidates. Changing the closed primary system and providing that the top-five finishers advance
9 to the general election is what makes ranked-choice voting most effective. These two aspects
10 plainly function together so as to achieve the Initiative's purpose.⁷

11 If Plaintiff's single-subject approach were right, Nevada's voters could not have adopted a
12 host of constitutional amendments, including (for just one example) the voter's Bill of Rights
13 amendment they approved in 2020. Nev. Const., art. 2, § 1A. It contained eleven separate
14 provisions, all centered around the general subject of a voters' bill of rights. But plainly each of
15 those eleven rights "could" stand on their own and be voted on separately. Perhaps some voters
16 may have preferred the rights articulated in Sections 1-4, but not others. Still other voters might
17 have preferred the rights in Sections 5-10. There is no requirement that every constitutional
18 amendment be narrowly tailored to one discreet provision, anytime that provision can purportedly
19 stand alone. Doing so "would significantly hinder the people's power to legislate by initiative and
20 effectively bar all but the simplest ballot measures." *Educ. Initiative*, 129 Nev. at 45, 293 P.3d at
21 881.

22 Every initiative presents the voters with policy choices, some of which voters may prefer
23 more than others. But so long as those provisions relate to a single subject, it is for the initiative's
24

25 ⁶ Plaintiff also claims significance in the Institute for Political Innovation's reference to the
26 fact that Final Five Voting ("FFV") involves *two* innovations. (Pl's Memo. at 10). So what? The
27 two innovations – five candidates advancing from the primary and then ranked-choice voting in the
28 general – plainly function together to achieve the Initiative's objective. The Initiative also involves
multiple federal and state offices. That does not mean that it involves *multiple* subjects.

⁷ Plaintiff's contention that these two aspects of the Initiative are not severable underscores
how and why each is intertwined to its purpose. (Pl's. Memo. at 13-14).

1 proponents to propose those policy choices. Under Plaintiff's theory, each impacted office is a
2 separate subject. After all, some voters might prefer non-closed primaries with ranked-choice
3 voting for state legislative office, more so than for state executive branch offices, reasoning that
4 executive branch offices are elected state wide whereas legislative offices are voted on by district.
5 Still other voters might prefer such a method for congressional offices, but not so much for state
6 elective offices. But initiative proponents are not required to propose separate initiatives simply
7 because its opponents postulate how some voters might prefer some choices but not all. The law
8 allows Nevada voters to propose to change the manner in which core officeholders are chosen, and
9 that is precisely what the Initiative does. *See Nevada Judges Ass'n.*, 112 Nev. at 56, 910 P.2d at
10 901-2 (explaining that partisan officeholders are a separate class as opposed to nonpartisan offices,
11 like judges, and term limits applying to partisan officeholders by way of a single initiative is
12 allowed).

13 Plaintiff and his partisan sponsors feign concern about policy choices the voters are being
14 asked to make, suggesting they are too unsophisticated to understand these choices. The opposite
15 is true. The Initiative's partisan opponents fear that the voters will understand it all too well and
16 will support passage, just as voters did in Alaska. Nevada's voters are not uninformed; more and
17 more are choosing not to register with the partisan major parties. Cognizant that these same voters
18 will likely choose to change a selection process that presently excludes a plurality of the voters
19 from real choice, Plaintiff wants this Court to interfere with voters making that choice. The law is
20 otherwise.

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

22 Plaintiff's next argument – that the Initiative constitutes an unfunded mandate in violation
23 of Article 19, Section 6 – is equally unfounded. Indeed, his arguments are belied by the very cases
24 he cites. This Initiative does not require any new expenditure or appropriation of funds, it does not
25 remove discretion from budgeting officials, and Plaintiff's arguments regarding the lack of
26 implementation and administrative guidance within the Initiative ignores the Nevada Supreme
27 Court's "original Legislation" principles imposed in any ballot questions.
28

1 As a threshold matter, Plaintiff's claim that the Initiative constitutes a "massive overhaul"
2 of voting for elected officials that "would cost money" and "is more expensive than the ongoing
3 administration of a simple one" is entirely unsupported and based on nothing but self-serving
4 rhetoric. (Pl.'s Memo. at 15:14-18). But as Plaintiff simultaneously notes, the Initiative does away
5 with holding two separate primaries. (Pl.'s Memo. at 6:15-16.) Thus, it is just as feasible that the
6 Initiative may *reduce* the cost of future elections. Regardless of Plaintiff's speculative and
7 unsupported expenditure arguments, arguments about any increase (or decrease) in the costs of a
8 general government function – like elections – is not what Article 19, Section 6 concerns.⁸

9 Article 19, section 2(1) of Nevada's constitution provides that the initiative process is
10 "subject to the limitations of" Article 19, Section 6, which "does not permit the proposal of any
11 statute or statutory amendment which makes an appropriation or otherwise requires the expenditure
12 of money, unless such statute or amendment also imposes a sufficient tax, not prohibited by the
13 constitution, or otherwise constitutionally provides for raising the necessary revenue." As the
14 Nevada Supreme Court holds, Section 6 applies to all proposed initiatives. *Rogers v. Heller*, 117
15 Nev. 169, 173, 18 P.3d 1034, 1036 (2001).

16 But what constitutes an expenditure mandate under Article 19, Section 6 is not as Plaintiff
17 pretends. Indeed, any change in the law will carry with it some associated burden, including
18 training, updates, record keeping, enforcement efforts and similar obligations. But that is not what
19 Article 19, Section 6 concerns: "[A]n initiative makes an appropriation or expenditure of money
20 when it leaves budgeting officials *no discretion* in appropriating or expending the money *mandated*
21 *by the initiative* – the budgeting official *must* approve the appropriation or expenditure, regardless
22
23

24 ⁸ Under Plaintiff's articulation of the single-subject requirement, inclusion of a tax in this
25 Initiative would be a single-subject violation because changing the process for how officeholders
26 are chosen is not functionally related and germane to a tax increase, as each could stand alone and
27 involve distinct policy choices. *See Meyer*, 456 P.3d at 499 ("Unlike the *Croft* sponsors' juxtaposing
28 oil industry taxation, campaign finance, and Permanent Fund Dividend payments into one 'clean
elections' initiative, this initiative's provisions are properly classified under 'election reform' as a
matter of both logic and common sense." (footnote omitted)). Plaintiff's inconsistencies are
apparent.

1 of any other financial considerations." *Herbst Gaming Inc. v. Heller*, 122 Nev. 877, 890, 141 P.3d
2 1224, 1233 (2006) (emphasis added).

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

16 Contrast that with *Herbst Gaming* where the initiative in question did "not make an
17 appropriation or required the expenditure of money. It simply expand[ed] the statutory list of public
18 places in which smoking [wa]s unlawful and le[ft] untouched provisions that set forth the penalty
19 for smoking in an area in which smoking is prohibited." 122 Nev. at 891, 141 P.3d at 1233
20 (footnotes omitted). Rejecting arguments like Plaintiff makes here — how the initiative's changes
21 in the law would increase the costs and expenses for enforcement — the Court explained that, such
22 expenses do not implicate Article 19, Section 6:

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

1 *Id.* (emphasis added). And this was so even though that initiative's opponents (unlike Plaintiff here)
2 presented actual evidence from law enforcement during legislative hearings that it "would require
3 the expenditure of funds and resources."⁹

4 Here, the Initiative does not impose a new requirement of funding elections, nor a specific
5 level. Instead it seeks election reform to include all Nevada voters by having a single non-closed
6 primary which narrows the field to the top-five who are then ranked by the voters in the general
7 election. Holding both a primary and general election are already provided by Nevada law. Holding
8 a single primary election, as opposed to multiple, imposes no new expenditure mandate. And,
9 ranked-choice voting does not create a new requirement for an election; it is simply a process for
10 tabulation of all the votes. Having existing elections conducted in a way so as to maximize the way
11 in which *all* voters can have a say is not a mandate calling for a separate funding mechanism.

12 Second, NRS 293.442-NRS 293.460 provides discretion to the Nevada Secretary of State
13 as well as local officials to incur expenses as both implement elections. This Initiative does not
14 disturb this discretion – either implicitly or explicitly – because, and as detailed in both Sections 9
15 and 11, the Initiative vests the implementation with the Legislature and likewise the Secretary of
16 State and local officials. (*See* Ex. 2, RCV0006, RCV0008) *See Herbst Gaming*, 122 Nev. at 891,
17 141 P.3d at 1233 (permitting an initiative that left discretion to the administrative officials). So
18 again, Plaintiff's arguments claiming this Initiative is an unfunded mandate is in direct conflict with
19 Nevada precedent.

20 Again, Plaintiff's speculation that "[v]oting machines and paper ballots would need to be
21 converted or new special voting equipment purchased" coupled with "[p]oll workers and other
22 official[s]" being required "to be trained on administering the new systems," and that "Nevada
23 would need to educate voters regarding how to cast their votes" are not matters (even if true)
24 addressed by Article 19, Section 6. (Pl.'s Memo. at 15:18-19, 16:5-6.) Plaintiff provides no proof
25

26 ⁹ Appellants' Opening Brief at 3, *Herbst Gaming, Inc. v. Dean Heller*, 122 Nev. 877, 141
27 P.3d 1224 (2006) (No. 47620).
<http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=15475>

1 of any of these contentions, and ignores the fact that any change in election procedures – which
2 Nevada does regularly – will include such adjustments, updates, training and the like. Such matters
3 do not constitute a new unfunded mandate. In fact, if an initiative sought to impose such
4 administrative details, like the types of machines or the training of poll workers, it would ignore
5 the requirement that initiatives only present "original legislation" and avoid administrative details.
6 *See Heller*, 122 Nev. at 915, 141 P.3d at 1249.

7 Simply put, the Initiative does not impose a mandate for a new expenditure of funds. It
8 leaves discretion on implementation to the Legislature, just like the existing election process does.
9 Conducting elections, including the tabulation of votes, is already a requirement under Nevada law.
10 Plaintiff presents no evidence whatsoever let alone evidence sufficient to support his heavy burden
11 to show that the Initiative violates the Constitution. *See Las Vegas Taxpayers Comm.*, 125 Nev.
12 at 176, 208 P.3d at 436 (party seeking to invalidate an initiative bears the burden to show that it is
13 "clearly invalid.").

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

16 Finally, Plaintiff makes the usual pitch that the Initiative's description is deficient. Hardly.
17 The Initiative's description satisfies Nevada's requirements as it's plain language is straightforward,
18 succinct, and non-argumentative. Indeed, Plaintiff's proposed alternative is itself the best proof.
19 (Ex. A). He proposes a description that misrepresents the Initiative, and makes false assertions that
20 are transparent campaign spin. What Plaintiff proposes is precisely what Nevada law forbids.

21 NRS 295.009 vests the Initiative's proponents with the obligation and right to provide a
22 description of effect. That description "need not articulate every detail and possible effect that an
23 initiative may have. Instead, given that these descriptions are utilized only in the early, signature-
24 gathering of the initiative process and that the descriptions of effect are limited to 200 words, they
25 need only provide a straightforward, succinct and nonargumentative summary of what the initiative
26 is designed to achieve and how it intends to reach those goals." *Educ. Initiative*, 129 Nev. at 51,
27 293 P.3d at 885. As such, the description "does not need to explain 'hypothetical' effects of an
28 initiative." *Id.* at 42, 293 P.3d at 879. (cleaned up); *see Nevadans for Nevada v. Beers*, 122 Nev.

1 930, 939, 142 P.3d 339, 345 (2006) (detailing that NRS 295.009's description of effect
2 "requirements served to prevent voter confusion and promote informed decisions" (internal
3 quotation marks omitted)).

4 As the Supreme Court holds, "[g]iven this constraint and in light of its statutory function to
5 facilitate the initiative process, a *hyper-technical interpretation* of the requirements for a
6 description of effect may impede the people from exercising their constitutional right to propose
7 laws and is therefore an inappropriate method for assessing the adequacy of a description of effect."
8 *Educ. Initiative*, 129 Nev. at 42-43, 293 P.3d at 879 (emphasis added); *Herbst Gaming*, 122 Nev.
9 at 889, 141 P.3d at 1232 ("[A] ballot measure's summary and title need not be the best possible
10 statement of a proposed measure's intent or address every aspect of a proposal." (internal quotation
11 marks omitted)). Mitigating all of this, as the Nevada Supreme Court explains, "[d]uring the
12 signature gathering process, signers, before signing the petition, may read the initiative on the
13 Secretary's website or the copy in the circulator's possession . . . " *Educ. Initiative*, 129 Nev. at 43,
14 293 P.3d at 880. The burden lies with Plaintiff to prove to this Court that the description of effect
15 is "clearly invalid." *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 176, 208 P.3d at 436.

16 That Plaintiff has failed woefully in his burden is confirmed by comparing the quarrelling
17 in his brief with the proposed alternative description this Court order him to file. (Ex. A). Right
18 out of the chute, Plaintiff's proposed description misleads the public. He fails to identify the elected
19 offices to which the Initiative even applies, falsely implying that it applies to all elections, including
20 Presidential, judicial and a host of others. *Id.* It does not. And, that central misrepresentation says
21 everything about the opponents' unfaithfulness to the facts.

22 But that is just the first of many fatal flaws. Ignoring the Supreme Court's admonishment
23 that the description serves as a "summary of what the initiative is designed to achieve and how it
24 intends to reach those goals," Plaintiff proposes to address what might happen in the hypothetical
25 event of a tie between the fifth and sixth place candidates in the non-partisan primary. Seriously?
26
27
28

1 Remote hypotheticals are what potential signors need to focus upon in deciding whether this
2 Initiative should be on the ballot? Plaintiff exposes his illicit purposes with such unseriousness.¹⁰

3 Then Plaintiff proposes to hijack the description for more partisan party advocacy,
4 predicated on the unsupported assertion that voters are too unsophisticated to distinguish between
5 a party's actual nominee and those other candidates who self-identify with a party. The law is
6 otherwise. *Washington State Grange*, 552 U.S. at 454 (rejecting claims by partisan political parties
7 that they can serve as gatekeepers to the State-controlled primary process because voters are too
8 uninformed). Moreover, this type of partisan advocacy is not a "nonargumentative summary of
9 what an initiative is designed to achieve and how it intends to reach those goals." *Educ. Initiative*,
10 129 Nev. at 52, 293 P.3d at 885. The proponents' description accurately states that the Initiative is
11 "*eliminating partisan primaries*" and establishing a single top-five primary election and a ranked-
12 choice voting general election. (*See* Ex. 2, RCV0009 (emphasis added).) The description continues,
13 "voters participate in a single primary election *regardless of party affiliation or non-affiliation*."
14 (*Id.*) (emphasis added) Thus, voters are informed about the reduced role of party control and party
15 affiliation under the new process. The specifics about how party designation appears on the printed
16 ballot form are, at best, secondary effects that do not need to be included in the limited space of the
17 description. Nor do the collateral consequences to national political party gate-keepers need to be
18 mentioned at this early state.¹¹

19 Plaintiff's argumentative advocacy is particularly clear with the false assertion that "[i]n the
20 general election, the top vote-getter will no longer be guaranteed victory." (Ex. A.). Nonsense. With
21 ranked-choice voting, it is the top vote-getter of all votes that necessarily wins. By definition, the
22 winner in ranked-choice voting is the candidate who receives the most votes. Unlike what Plaintiff
23 wants, the proponents' description accurately states that "as traditionally, a candidate receiving the
24

25 ¹⁰ Besides that, unlike the Plaintiff, Nevada voters do not think that resolving ties by a lot is
somehow "arbitrary" (Pl. Memo. at 18-19-21). NRS 293.400(1)(b) already so provides.

26 ¹¹ Again, Nevada Supreme Court has accepted that "[d]uring the signature gathering process,
27 signers, before signing the petition, may read the initiative on the Secretary's website or the copy
in the circulator's possession . . ." *Educ. Initiative*, 129 Nev. at 43, 293 P.3d at 880; *see also Herbst*
28 *Gaming*, 122 Nev. at 889, 141 P.3d at 1232 (providing that if a petition signer questioned the
meaning of a phrase used in the initiative's title, that question could be resolved by reviewing the
actual text of the initiative).

1 first-choice votes of more than 50% wins.” (Ex. 2, RCV009.).¹² 50% plus one vote is the winner
2 under the current tabulation method as well as proposed Initiative. The difference is what happens
3 when no candidate receives more than 50% of the initial first-choice votes. Then, as the proponents'
4 description accurately describes, the explained tabulation process occurs until the one candidate
5 with the *most* votes is declared the winner. Plaintiff simply seeks to misrepresent the actual process
6 so as to advocate against the Initiative.

7 Equally false is Plaintiff's assertion that if a voter chooses not to rank all five candidates and
8 those candidates that the voter selects are defeated, this will "have their ballots *rejected*" (Ex. A)
9 (emphasis added). This pejorative language is untrue and deceives voters into thinking that the
10 system will leave their votes uncounted. No votes are uncounted or "rejected." The votes in a ballot
11 still count in those circumstances, but the voter has merely chosen, as is his or her right, to not rank
12 all potential candidates. If the candidate that they preferred is defeated by the choice of other voters,
13 obviously their candidate loses. That is how elections work; but their ballot is not "rejected," there
14 are no further rankings to consider and thus it is merely inactive for the further tabulations. If a
15 voter chooses to rank less than all five candidates, it is their choice. And, if other voters choose to
16 rank all 5 candidates so as to maximize their voice in determining the ultimate winner, that is their
17 choice. All voters have the same options and easily understand that ranked-choice voting involves
18 (unremarkably) ranking the candidates.

19 Finally, Plaintiff devotes over 15% of his description to argue (unsupported by actual
20 evidence) that the Initiative necessitates significant spending on a host of matters. (Ex. A). This is
21 classic political spin that is not allowed in the description. This is the type of advocacy relegated to
22 ballot committees to make once the Initiative is put before the voters. *See Educ. Initiative*, 129 Nev.
23 at 39, 293 P.3d at 878 (Noting the requirements of NRS 293.252 for the creation of ballot
24

25 ¹² 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.”). Contrary
28 to Plaintiff's wordsmithing, it is the long-established "traditional" rule that any candidate that
receives more than 50% is necessarily the declared winner. The fact that under the current system
someone can still win even if they receive less than 50% of the votes does not anyway change the
well-understood traditional rule that 50% plus 1 wins.

committees to write arguments for and against passage, including the claimed fiscal impact by proponents and opponents).

In contrast, the description prepared by Voters First is precisely what NRS 295.009 contemplates: It lets the public make up their mind about signing without skewed partisan spin. Plaintiff's attempt to misuse the description for his advocacy purposes is exactly what NRS 295.009 does not allow.

IV. CONCLUSION

The Nevada Constitution guarantees the voters the right to amend the Constitution, including the manner in which their elected representatives are chosen. That is what this Initiative proposes and the voters are entitled to consider it.

AFFIRMATION

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

DATED this 22nd day of December, 2021.

PISANELLI BICE PLLC

By: 

Todd L. Bice, Esq., Bar No. 4534
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 22nd day of December 2021, pursuant to NRCP 5(b), I served a true and correct copy of the above and foregoing **DEFENDANTS NEVADA VOTERS FIRST PAC AND TODD BICE'S OPPOSITION TO PLAINTIFF'S DECLARATORY AND INJUNCTIVE RELIEF CHALLENGE THE BETTER VOTING NEVADA INITIATIVE**, by United States Mail, postage prepaid, and by electronic mail, the following:

Original via FedEx:

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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,

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 official capacity as NEVADA
SECRETARY OF STATE,

Defendants.

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

**PLAINTIFF'S PROPOSED
DESCRIPTION OF EFFECT**

1 **PLAINTIFF'S PROPOSED DESCRIPTION OF EFFECT**

2 The petition amends Nevada's Constitution to overhaul its electoral system in
3 several ways, including by eliminating partisan primaries and instituting ranked-
4 choice voting in general elections. All candidates will run and all voters will vote in
5 a single primary, from which the top five finishers advance. If there is a tie for fifth
6 place, the candidates draw straws. In both the primary and general elections,
7 candidates self-select the party designation that appears with their names;
8 candidates' party affiliation will no longer reflect that they are chosen by the party
9 or its voters, or that they share the party's values. In the general election, the top
10 vote-getter will no longer be guaranteed victory. Instead, voters will rank the
11 candidates, and if no candidate wins over 50% of the vote, the lowest vote-getter is
12 eliminated and their votes redistributed to the voters' second choice. The process
13 repeats until a candidate obtains over 50%. Voters whose choices are eliminated and
14 who do not rank other candidates will have their ballots rejected. Making these
15 changes would require Nevada to invest significant funds purchasing or upgrading
16 voting machines, retraining poll workers and election officials, purchasing new
17 tabulation software, educating voters, and otherwise converting its election
18 infrastructure.

19 ///

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28 ///

1 DATED this 20th day of December, 2021.

2
3 **WOLF, RIFKIN, SHAPIRO,**
SCHULMAN & RABKIN, LLP

4
5 Bv: 

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21 *Attorneys for Plaintiff*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 20th day of December, 2021, a true and correct
3 copy of the **PLAINTIFF'S PROPOSED DESCRIPTION OF EFFECT** was served
4 upon all parties via electronic mailing to the following:

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7 **GENERAL**
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12 Billie Shadron
13 Judicial Assistant, Dept. 2
14 First Judicial District Court
15 Honorable James E. Wilson Jr.
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16
17 By: /s/ Dannielle Fresquez

18 Dannielle Fresquez, an Employee of
19 WOLF, RIFKIN, SHAPIRO, SCHULMAN
20 & RABKIN, LLP
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AUDREY REWLETT
CLERK

BY _____ DEPUTY

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

NATHANIEL HELTON, an individual,
Plaintiff,

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 official capacity as NEVADA
SECRETARY OF STATE,
Defendants.

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

**ORDER FOLLOWING
TELEPHONIC CONFERENCE
HELD ON DECEMBER 15, 2021**

On December 15, 2021, this Court held a telephonic hearing with the following counsel and parties: Bradley Schrager, Esq. appearing for Plaintiff; Craig Newby, Esq. appearing for Defendant Barbara Cegavske, in her official capacity as Nevada Secretary of State; and Todd L. Bice, Esq. appearing for Defendants Nevada Voters First PAC and Todd L. Bice, in his official capacity as the President of Nevada Voters First PAC.

Having heard from all parties and their respective counsel, this Court hereby **ORDERS** the following based upon the discussion and agreements of the parties:

1. The following deadlines are the dates by which the parties must electronically serve the filing at issue on all other parties and email the filing to this Court's judicial assistant, Billie Shadron, at BShadron@carson.org. Physical copies must be filed with the Court as soon as practicable thereafter and in no event later than the first day following the deadline on which the clerk's office is open for filing.

2. Because one of the arguments or challenges Plaintiff brings is to the description of effect, as soon as practicable and before Defendants' oppositions are

1 due, Plaintiff shall provide the Court and opposing counsel with a draft statement of
2 effect that Plaintiff believes accurately reflects the content of the petition. In doing
3 so, Plaintiff shall not be understood to have waived or conceded any argument or
4 challenge he has made to the Petition.

5 3. Defendants, Barbara Cegavske, Nevada Voters First PAC and Todd L.
6 Bice, shall have until December 22, 2021, at 5:00 p.m. PST, to file responses to
7 Plaintiff's Memorandum in Support of Complaint, limited to twenty (20) pages.

8 4. Plaintiff shall have until December 30, 2021, at 5:00 p.m. PST, to file a
9 reply, limited to ten (10) pages, in support of Plaintiff's Memorandum in Support of
10 Complaint in conformity with First Judicial District Court Rule 3.9.

11 5. Pursuant to First Judicial District Court Rule 3.10, the parties shall
12 have until December 30, 2021, at 5:00 p.m. PST, to submit proposed orders, with a
13 cover sheet, that includes a statement of fact, applicable standard of law, analysis,
14 and conclusions of law and order. The parties shall send to the Court an electronic
15 copy in Word, or some similar format.

16 6. Pursuant to First Judicial District Court Rule 3.11, the Plaintiff shall
17 file a Request for Submission after the filing of his reply brief.

18 7. All pleadings and papers shall be mailed to or filed at the Court, and
19 shall also be e-mailed to chambers to Ms. Billie Shadron at BSHADRON@CARSON.ORG.

20 8. The parties are reminded to comply with the Rules of Practice for the
21 First Judicial District Court, including, but not limited to, Rule 3.2 that requires
22 original signatures on all pleadings and papers.

23 9. The Court waives the requirement for the parties to file a pre-hearing
24 statement.

25 10. Hearing on this matter shall be on **January 5, 2022**, starting at
26 10:30 a.m. PST and ending at approximately 12:00 p.m. PST. As the parties have
27 agreed that this is a legal challenge not including evidence, there shall be no
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1 presentation of evidence by the parties at the hearing, which shall consist only of oral
2 argument. The hearing will be held remotely via video and telephonic-conferencing.
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4 **IT IS SO ORDERED** this 29 day of December, 2021.
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7 DISTRICT COURT JUDGE
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IN THE FIRST JUDICIAL DISTRICT COURT
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NATHANIEL HELTON, an individual,

Plaintiffs,

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

**NOTICE OF SUBMISSION OF
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW; AND
JUDGMENT BY DEFENDANTS NEVADA
VOTERS FIRST PAC AND TODD L.
BICE**

Defendants, Nevada Voters First PAC and Todd L. Bice hereby submit the attached
proposed Findings of Fact and Conclusions of Law; and Judgment in accordance with this Court's
directions.

DATED this 30th day of December, 2021.

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By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 30th day of December 2021, pursuant to NRCP 5(b), I served a true and correct copy of the above and foregoing **NOTICE OF SUBMISSION OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND JUDGMENT BY DEFENDANTS NEVADA VOTERS FIRST PAC AND TODD L. BICE**, via electronic mail, to 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.

Case No.: 21 OC 00172 1B

Dept. No.: II

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.

**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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW¹

A. FINDINGS OF FACT

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

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

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

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

¹ Any findings of fact which are more appropriately considered conclusions of law shall be 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

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

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

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

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

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

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

9. Pursuant to NRS 295.061, Plaintiff initiated this action raising three issues which, he alleges, should preclude the Initiative from being circulated for signature gathering or being considered by Nevada voters: First, Plaintiff asserts that the Initiative is not limited to a single 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. As further set forth herein, the Court considers each of Plaintiff's challenges in turn, and rejects each of these challenges.

B. CONCLUSIONS OF LAW

11. At this juncture, challenges to an initiative petition are limited to whether it complies with the procedural requirements for its potential consideration by voters. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 882-3, 141 P.3d 1224, 1228 (2006) (discussing "to what extent we may 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).

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. (emphasis added).

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

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

C. The Initiative's Description is Straightforward, Succinct, and 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. In fact, the proposed alternative

1 description which this Court ordered Plaintiff to prepare underscores the appropriateness of Voters
2 First's existing description. Plaintiff's proposal does not comply with Nevada law, as it is
3 argumentative, advocates partisan interests, and does not accurately describe the Initiative.

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

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

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

1 36. Plaintiff fails in his burden to prove that the description proposed by Voters First is
2 invalid. Within the 200 words allowed, the description informs voters what the Initiative proposes
3 to do and how it intends to do it. In the very first sentence, the description announces to which
4 offices the changes in the selection process would apply, and states that it proposes to eliminate
5 partisan primaries for these offices and establish an open top-five primary election followed by
6 ranked-choice voting in the general election. It then explains how the ranked-choice voting works.
7 Finally, it discloses when the Legislature would be required to implement these changes to the
8 process. There is nothing misleading in the description. It discloses what the Initiative proposes to
9 do.

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

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

23 39. The proponents' description accurately states that the Initiative is "***eliminating***
24 ***partisan primaries***" and establishing a single top-five primary election and a ranked-choice voting
25 general election. (emphasis added). The description continues, "voters participate in a single
26 primary election ***regardless of party affiliation or non-affiliation.***" (*Id.*) (emphasis added) Thus,
27 voters are informed about the reduced role of party control and party affiliation under the new
28 process. The specifics about how party designation appears on the printed ballot form are, at best,

secondary effects that do not need to be included in the limited space of the description. Nor do the collateral consequences to national political party gate-keepers need to be mentioned at this early state.

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

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

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

...

...

...

⁴ See also NRS 293.260(5) (stating that "if one of those candidates receive a majority of the votes cast in the primary election for [nonpartisan office], the candidate must be declared elected to the office and his or her name must not be place on the ballot for the general election."). It is the 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.

DISTRICT COURT JUDGE

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Attorneys for Plaintiff Nathaniel Helton

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

NATHANIEL HELTON, an individual,

Plaintiff,

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 official
capacity as NEVADA SECRETARY OF
STATE,

Defendants.

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

**[PROPOSED] ORDER GRANTING
DECLARATORY AND INJUNCTIVE
RELIEF**

1 candidates are eliminated. This would replace the present system used by Nevada voters to elect
2 candidates to public office, under which the candidate who wins a plurality of votes wins the election.

3 The Petition also provides that, during both the new open primary and the modified general
4 election, ballots would list a political party—or NPP for no party preference—following each
5 candidate’s name. *See* Petition (proposed Section 17(5)) and 6 (proposed Section 18(4)). Because
6 candidates can select at will with the party that is listed, these denotations would no longer indicate
7 that the party had affiliated itself with the candidate, or even that the candidate necessarily shares the
8 values and policy preferences reflected in the party’s platform. The Petition would instead require
9 ballots to carry a conspicuous disclaimer stating “A candidate for partisan office may state a political
10 party that he or she prefers. A candidate’s preference does not imply that the candidate is nominated
11 or endorsed by the party, or that the party approves of or associates with that candidate.” Petition at
12 6 (proposed Section 18(5)).

13 The Petition’s “Description of Effect” states:

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

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

- 22 • General election voters rank the candidates in order of preference from
23 first to last, if they wish to rank more than their first preference.
- 24 • As traditionally, a candidate receiving first-choice votes of more than
25 50% wins.
- 26 • If no candidate is the first choice of more than 50%, the candidate with
27 the fewest votes is eliminated. And each voter who had ranked the now-
28 eliminated candidate as their first choice, has their single vote
transferred to their next highest choice candidate.
- This tabulation process repeats until the one candidate with more than
50% support is determined as the winner.

1 **STANDARD OF LAW**

2 Nevada law requires that any initiative petition “[e]mbrace but one subject and matters
3 necessarily connected therewith and pertaining thereto.” NRS 295.009(1)(a). Additionally, Article
4 19, Section 6 of the Nevada Constitution prohibits any initiative that “makes an appropriation or
5 otherwise requires the expenditure of money, unless such statute or amendment also imposes a
6 sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides for raising
7 the necessary revenue.” Nev. Const. art. 19, § 6. Finally, an initiative’s description of effect “must be
8 straightforward, succinct, and nonargumentative, and it must not be deceptive or misleading.” *Educ.*
9 *Initiative PAC v. Comm. to Protect Nev. Jobs*, 293 P.3d 874, 879 (Nev. 2013) (internal quotation
10 marks and citation omitted).

11 **ANALYSIS AND CONCLUSIONS OF LAW**

12 First, the Petition violates the single-subject requirement for initiative petitions under NRS
13 295.009. A petition for initiative “embraces but one subject and matters necessarily connected
14 therewith and pertaining thereto, if the parts of the proposed initiative or referendum are functionally
15 related and germane to each other in a way that provides sufficient notice of the general subject of,
16 and of the interests likely to be affected by, the proposed initiative or referendum.” NRS 295.009(2).
17 “By limiting petitions to a single subject, NRS 295.009 facilitates the initiative process by preventing
18 petition drafters from circulating confusing petitions that address multiple subjects.” *Nevadans for*
19 *the Prot. Of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). The rule
20 “helps both in promoting informed decisions and in preventing the enactment of unpopular provisions
21 by attaching them to more attractive proposals or concealing them in lengthy, complex initiatives
22 (i.e., logrolling).” *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas*
23 *(“LVTAC”)*, 125 Nev. 165, 176–77, 208 P.3d 429, 437 (2009). “[A]n initiative proponent may not
24 circumvent the single-subject rule by phrasing the proposed law’s purpose or object in terms of
25 ‘excessive generality’” in an attempt to group unrelated provisions into a vague overarching category.
26 *Id.* at 181 (citing *Harbor v. Deukmejian*, 43 Cal.3d 1078, 240 Cal. Rptr. 569, 742 P.2d 1290, 1303
27 (1987)).

1 The Petition violates the single-subject rule because it seeks to enact two separate but
2 significant changes to Nevada’s election processes within a single ballot measure—(1) the end of
3 partisan primaries to select parties’ nominees for the state’s most significant elected offices, to be
4 replaced with open primaries under a novel top-five system; and (2) the implementation of an ranked-
5 choice, multi-round voting system for the general election. The two subjects are discrete policy
6 changes that do not depend upon one another, either textually, within the terms of the Petition, or
7 generally, as a matter of logic. The top-five open primary system the Petition proposes does not
8 depend on the use of ranked voting in the general election, and the ranked-choice voting system the
9 Petition seeks to impose on the general election could be conducted with any number of candidates
10 and with candidates selected through partisan primaries.

11 The commonality between the Petition’s changes is that both involve the general act of voting.
12 But the single subject rule “obviously forbids joining disparate provisions which appear germane
13 only to topics of excessive generality,” and a general connection to voting is too broad a theme to
14 qualify. *See LVTAC*, 125 Nev. at 181 (“[V]oter approval,’ . . . is an excessively general subject that
15 cannot meet NRS 295.009’s requirement.” (citing *Senate of the State of Cal. V. Jones*, 90 Cal.Rptr.2d
16 810, 988 P.2d 1089, 1101–02 (1999)). Indeed, “a virtually unlimited array of provisions could be
17 considered germane” to “Better Voting,” “essentially obliterating the [single-subject] requirement.”
18 *Chem. Specialties Manufacturers Assn., Inc. v. Deukmejian*, 278 Cal. Rptr. 128, 133 (Ct. App. 1991).
19 Defendant’s Petition thus fails to comply with NRS 295.009’s single-subject requirement.

20 Second, the Petition is invalid because it mandates expenditures without providing reciprocal
21 revenues in violation of Article 19, Section 6 of the Nevada Constitution. An initiative need not “by
22 its terms appropriate money” to violate the prohibition. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877,
23 890 n.40, 141 P.3d 1224, 1233 n.40 (citing *State ex rel. Card v. Kaufman*, 517 S.W.2d 78, 80 (Mo.
24 1974)). Rather, “an initiative makes an appropriation or expenditure when it leaves budgeting
25 officials no discretion in appropriating or expending the money mandated by the initiative—the
26 budgeting official must approve the appropriation or expenditure, regardless of any other financial
27 considerations.” *Id.* at 890. “If the Initiative does not comply with section 6, then the Initiative is
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1 void” in its entirety, and the offending provision cannot be severed to render it constitutional. *Id.* at
2 173, 177-78.

3 This is what the Petition does. It is apparent that the overhaul of Nevada’s electoral system
4 the Petition calls for would cost money to implement, in addition to the ongoing administration of a
5 complex electoral system across the state. For example, voting machines and paper ballots would
6 need to be converted or new special voting equipment purchased to permit voters to rank candidates
7 in order of preference. Nevada would also need to educate voters regarding how to cast their votes
8 and how the votes are counted under the complicated new systems, necessitating a public relations
9 campaign with its own significant price tag.

10 By commanding Nevada officials to implement and maintain its electoral reforms, the Petition
11 leaves “budgeting officials no discretion in appropriating or expending the money mandated by the
12 initiative—the budgeting official must approve the appropriation or expenditure” to comply with its
13 provisions. *Herbst Gaming*, 122 Nev. at 891. The Petition thus requires an appropriation and
14 expenditure. And, because no portion of the Petition “provides for raising the necessary revenue,” as
15 Article 19, Section 6 requires, it is void ab initio. *Rogers*, 117 Nev. at 173.

16 Finally, the Petition violates NRS 295.009(1)(b) because it does not inform voters of the
17 effects of the Petition. A description of effect must present enough information for a potential signer
18 to make an informed decision about whether to support the initiative; the failure to meet this
19 requirement renders an initiative invalid. *See e.g., Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59 (1996)
20 (rejecting initiative’s description of effect for “failure to explain [certain] ramifications of the
21 proposed amendment,” which “renders the initiative and its explanation potentially misleading”).

22 Here, the description of effect is invalid because it is confusing, deceptive, and misleading,
23 and omits discussion of many of the Petition’s most significant ramifications. For example, the
24 Petition’s description of effect does not mention that the Petition would eliminate political parties’
25 ability to select their nominees for major offices, or that it would permit candidates to choose the
26 party affiliation that appears on the ballot, meaning that party affiliation would no longer be a reliable
27 indicator of a candidate’s values and policy preference to guide and inform a voter’s decision in the
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1 general election. The description’s explanation of ranked-choice voting also fails to inform voters
2 that their general election votes may not be counted if they fail to rank all candidates, and it uses the
3 term “traditionally” in a misleading way that misrepresents the rules under the current system and the
4 scale of the changes the Petition would enact. Finally, the description of effect does not mention that
5 implementing both of the new voting systems that the Petition mandates would require substantial
6 expenditures of public funds.

7 **IT IS THEREFORE ORDERED** and declared that the “Better Voting Nevada Initiative”
8 Petition is legally deficient because it violates both the single subject and description of effect
9 requirements of NRS 295.009 and constitutes an impermissible unfunded governmental mandate.
10 Accordingly, Defendant Nevada Voters First PAC, its proponents, officers, or agents, including
11 Defendant Bice, are hereby enjoined from collecting signatures in support of the Petition and from
12 submitting any signatures for verification pursuant to NRS 293.1276. Any signatures previously
13 collected are declared invalid. Defendant Secretary of State is enjoined from placing the Petition on
14 the ballot.

15 Date this ____ day of January, 2022.

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17 District Court Judge James Wilson
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Attorneys for Plaintiff Nathaniel Helton

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

NATHANIEL HELTON, an individual,

Plaintiff,

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 official
capacity as NEVADA SECRETARY OF
STATE,

Defendants.

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

**PLAINTIFF NATHANIEL HELTON'S
REPLY IN SUPPORT OF COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING THE BETTER
VOTING NEVADA INITIATIVE**

I. INTRODUCTION

The “Better Voting Nevada Initiative” (the “Petition”) is legally deficient and must be invalidated under Nevada law. Defendants fail to provide reason to conclude otherwise. Defendants attempt to distract the Court with baseless accusations that Plaintiff underestimates Nevada voters. Nothing could be further from the truth. Plaintiff *is* a Nevada voter. Defendants may not like it, but Nevada law protects its voters from (1) being denied the right to consider each significant and unrelated proposed change to Nevada law in its own right, rather than forcing them to consider multiple topics rolled into a single measure as one; (2) being misled by a description of effect that misstates the impact of a petition, or makes material omissions as to its content or practical effect; and (3) unknowingly endorsing unfunded mandates. When Defendants’ arguments do turn to Nevada law, they get it wrong: to name just one example, Defendants’ assertion that the Petition properly links an open primary to ranked choice voting in the general is premised on a misunderstanding of Nevada law. Defendants believe that the only way to obtain ballot access is to win a partisan primary, Resp. at 3, but this is not so. In Nevada, candidates can and regularly do obtain access to the ballot through alternative means. On this, and on each of Plaintiff’s claims, the law weighs firmly against Defendants. The Petition should be invalidated.

II. ARGUMENT

A. The Petition Violates Nevada’s Single-Subject Rule for Ballot Initiatives.

Defendants’ contention that the Petition involves a single subject—i.e., “how voters elect the specified officeholders,” Resp. at 6—is a classic example of a subject stated with such “excessive generality” that, if permitted, would “circumvent the single-subject rule.” *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas* (“LVTAC”), 125 Nev. 165, 181 (2009). This is driven home by the key objectives of the single-subject rule: “promoting informed decisions” and “preventing [logrolling].” *Id.* at 176. As the Nevada Supreme Court has explained, logrolling is “the enactment of unpopular provisions by attaching them to more attractive proposals or concealing them in lengthy, complex initiatives.” *Id.* at 176–77; *see also Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #76* (“Matter #76”), 333 P.3d 76, 78, 79 (Colo. 2014)

1 (explaining “the single subject limitation . . . prevents the proponents from combining multiple
2 subjects to attract a ‘yes’ vote from voters who might vote ‘no’ to one or more of the subjects if they
3 were proposed separately”).¹ This is precisely what the Petition does: by packaging a nonpartisan
4 open primary with general election ranked-choice voting (through the addition of over 50
5 constitutional provisions), it combines two very different reforms (each addressing different issues)
6 in a single proposal, forcing voters to endorse—or reject—both, as one.

7 Defendants have no response to this, except to argue this is not logrolling, Resp. at 10, but
8 the Nevada Supreme Court disagrees. While an initiative may contain some provisions a voter favors
9 over others, it cannot (as here) contain markedly different reforms of two types of elections with
10 different purposes under the guise of one excessively general subject. This was made clear by the
11 Supreme Court in *LVTAC*, when it concluded that the petition there involved “two distinct subjects,
12 one relating to voter approval for all lease purchase agreements . . . the other seeking to govern the
13 redevelopment agency by popular vote.” 125 Nev. at 181. The proponents argued the petition had a
14 single subject rule because both reforms involved “voter approval,” *id.*, but the Court rejected that
15 argument, finding that subject excessively general. *Id.* The same is true here.

16 Even if the subject that Defendants posit were not, on its face, excessively general, the
17 Petition would still violate the single-subject rule because it deals with two different subjects. The
18 Court determines the Petition’s primary purpose or subject by considering its language and its
19 proponent’s arguments. *See id.* at 180. Here, Defendants’ own explanation only drives home that the
20 Petition is concerned with two separate subjects. Defendants contend that the Petition’s primary
21 purpose is to address the perceived problem that more Nevada voters are identifying as nonpartisan
22 and are “disenfranchise[d]” because they “cannot participate in the closed primary” and have
23 “limited choices” in the general election. Resp. at 2-3. But this describes two different purposes—
24 (1) to “enfranchise” nonpartisan voters in the (now partisan) primary elections process, and (2) to

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26 ¹ See also *Nevadans for the Protection of Property Rights, Inc. v. Heller*, 122 Nev. 894, 903-
27 906 (2006) (looking to decisions interpreting Colorado’s analogous single-subject rule in concluding
28 that Nevada’s rule is constitutional).

1 give general election voters more “choices.”

2 Defendants attempt to avoid this self-evident result by arguing that the top-five, open primary
3 and general election ranked-choice voting are necessarily linked, asserting ranked-choice voting
4 would be pointless² if there were only two candidates on the ballot. Resp. at 3. But this argument is
5 premised on the erroneous notion that, in Nevada’s current system, only candidates who win partisan
6 primaries can participate in the general. *See, e.g., id.* (“After all, to make it to the general election
7 currently, candidates must ‘win’ a closed primary process that now involves fewer and fewer
8 choices.”). This is wrong. Non-major party candidates can and do regularly appear on Nevada’s
9 general election ballot, obtaining access via methods other than partisan primaries. *See, e.g.,* NRS
10 293.200 (petition process to qualify independent candidates for general election ballot).

11 The unavoidable reality is that the Petition’s dramatic reformation of two different types of
12 elections—primary and general—in two very different ways—to make one “open” and impose
13 ranked choice voting on the other—addresses more than a single subject. This was the conclusion
14 of the Colorado Supreme Court when it considered whether a petition that (1) changed the process
15 of conducting recall elections, and (2) made additional officials subject to the recall process were
16 two different subjects, with “distinct and separate purpose[s],” and held that such petition violated
17 that state’s single-subject rule. *Matter #76*, 333 P.3d at 78. If two separate reforms that both address
18 the recall of public officers violate the rule, then two different means of dictating “how voters elect
19 the specified officeholders,” Resp. at 6, in two different types of elections must be similarly deficient.
20 After all, electing officers is simply the inverse of recalling them. If anything, the Petition at issue
21 here—which, first, eliminates Nevada’s current partisan primary system to impose a brand new top-
22 five, open primary, and second, dramatically reforms the general election, from winner takes all to
23 a complicated ranked choice voting system, where candidates choose their own party affiliation—is

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25 ² That an open primary and a ranked general election are not logically linked is evidenced by
26 jurisdictions such as California which have an open primary system, but no ranked choice voting.
27 *See* California Constitution, Art. II, § 5(a) (providing for an open primary, where “[t]he candidates
28 who are the top two vote-getters at a voter-nominated primary election for a congressional or state
elective office shall, regardless of party preference, compete in the ensuing general election.”).

1 more obviously problematic. *See also Matter #76*, 333 P.3d at 78-79 (noting “[a] proposed initiative
2 contains multiple subjects not only when it proposes *new* provisions constituting multiple subjects,
3 but also when it proposes to *repeal* multiple subjects”) (citation omitted).

4 None of the Nevada decisions upon which Defendants rely can save their Petition. Neither
5 *Prevent Sanctuary Cities v. Haley*, No. 74966, 2018 WL 2272955 (Nev. 2018) (unpublished
6 disposition), nor *Education Initiative v. Comm. to Protect Nev. Jobs*, 129 Nev. 35 (2013), involved
7 a petition that sought to solve two very distinct problems. *See Prevent Sanctuary Cities*, 2018 WL
8 2272955, at *5 (seeking to address perceived problem that officials were not cooperating with federal
9 immigration enforcement); *Educ. Init.*, 129 Nev. at 50 (seeking to address perceived problem of
10 insufficient education funding). As for *Heller*, it actually found that the petition at issue *violated* the
11 single-subject rule. 122 Nev. at 907. The Nevada Supreme Court found that some of the petition
12 survived, because it was clear that the primary purpose of that petition was “*eminent domain*.” *Id.*
13 Thus, the Court severed the parts that were not functionally related or germane to that subject—i.e.,
14 the declaration that property rights are fundamental rights, and the requirement of just compensation
15 for government taking of property. *Id.* at 909-10. In contrast, here, it is not clear which of the subjects
16 at issue—the elimination of the partisan primary, or the imposition of ranked choice voting in the
17 general—is the Petition’s “primary” purpose. And, indeed, even Defendants do not argue that part
18 of their Petition can be saved by severance.

19 In relying on the Alaska Supreme Court’s single-subject analysis in *Meyer v. Alaskans for*
20 *Better Elections*, 465 P.3d 477, 485 (Alaska 2020), Defendants ignore a critical fundamental
21 difference between Nevada and Alaska law: Alaska follows a much different single-subject standard
22 than Nevada—one that is “very liberal,” “should be construed with considerable breadth,” and
23 explicitly does *not* consider the functional relationship between an initiative’s contents and its
24 purpose. *Id.* at 484, 496. Nevada law, by contrast, requires that all matters be germane *and*
25 “functionally related” to a single-subject and uses the rule as a backstop to “assist voters in
26 determining whether to change the laws of Nevada and the structure of government and ultimately
27 protect[] the sanctity of Nevada’s election process.” *Heller*, 122 Nev. at 906, NRS § 295.009.2.

1 Thus, in *Meyer*, the court did not even consider whether “election reform” was framed with
2 “excessive generality.” *But see LVTAC*, 125 Nev. at 180-81 (making clear Nevada law requires this
3 inquiry).

4 **B. The Petition Violates the Nevada Constitution’s Prohibition on Initiatives that**
5 **Mandate Unfunded Expenditures.**

6 As Defendants acknowledge, Article 19, Section 6 of the Nevada Constitution prohibits
7 initiatives that fail to propose a means of funding the new spending they would require. Defendants
8 do not convincingly refute that the Petition does exactly that. Instead, they again obfuscate.

9 First, Defendants fault Plaintiff for not introducing external support for the self-evident fact
10 that overhauling a state’s electoral system will involve significant costs. Resp. at 12, 15-16. The
11 Secretary has yet to issue a financial impact statement regarding the Petition, but common sense
12 dictates that the significant changes it would mandate to Nevada’s primary and general elections
13 processes could not possibly be achieved without *some*—and, almost certainly, *substantial*—
14 expenditures. Other jurisdictions have concluded that the implementation expenses for similar
15 reforms measure in the hundreds of thousands—if not millions—of dollars.³

16 Defendants appear to recognize as much, quickly pivoting to unsupported speculation that,
17 because the Petition would replace two partisan primaries with one open one, it *might eventually*
18 reduce the cost of elections. Resp. at 13. This is a highly dubious assertion, but it also misses the
19 point. Article 19, Section 6 is not concerned with the speculative, long-term economic effects of an
20 initiative, but with whether it would *right now* unbalance the budgets carefully crafted by Nevada’s
21 Legislature and executive officials. This is clear from the cases Defendants cite. In *Rogers v. Heller*,
22 117 Nev. 169, 173-76 (2001), the Supreme Court held that an initiative that sought to increase

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24 ³ See, e.g., Alaska Div. of Elections, *19AKBE - Statement of Costs*, <https://www.elections.alaska.gov/petitions/19AKBE/19AKBEStatementOfCosts.pdf> (estimating that similar changes would cost
25 approximately \$906,943 in Alaska, a state with less than a quarter of Nevada’s population); New
26 York City Office of the Mayor, *New York City to Launch \$15 Million Ranked Choice Voting*
27 *Education Campaign* (April 28, 2021) <https://www1.nyc.gov/office-of-the-mayor/news/315-21/new-york-city-launch-15-million-ranked-choice-voting-education-campaign>.

1 funding to public schools violated Section 6 because it mandated an expenditure that was not fully
2 offset by the new tax it imposed. The long-term economic benefits of investing in public education
3 are well documented, and there are fair arguments that the new spending would have paid for itself
4 over time by increasing students' lifetime earning potential and thus the state's tax revenues and
5 decreasing reliance on state-funded social welfare programs.⁴ But these extrapolations were
6 irrelevant to the question of whether the initiative proposed an unfunded mandate. Because it would
7 have limited the Legislature's discretion to determine education funding *now*, and because the tax it
8 provided for was insufficient to cover all of the spending it would *immediately* require, the proposal
9 violated Article 19, Section 6. So too here, where the Petition would necessitate a significant upfront
10 investment that it does not fund *at all*.

11 And this initial spending would be *required*, Defendants' protests to the contrary
12 notwithstanding. Defendants' analogy to *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890 (2006),
13 is not well founded. The petition at issue in that case expanded Nevada's then-existing anti-smoking
14 law to include additional public accommodations where smoking was statutorily prohibited. The
15 Court found that the proposal did not *mandate* an expenditure, because "[i]t does not, for example,
16 compel an increase or reallocation of police officers to enforce its provisions." *Id.* at 891. In other
17 words, the expanded law could be enforced just like the same (more limited law) had been previously
18 enforced—using existing, fully funded law enforcement. By contrast, the Petition here leaves
19 Nevada's officials *no choice* but to spend the money needed to convert Nevada's electoral system
20 to handle the sweeping changes it contemplates. If the Petition were enacted and Nevada spent *no*
21 money to convert its systems, the result would be elections held according to the old systems
22 (prohibited by the Petition's new constitutional provisions), no elections at all, or absolute chaos. At
23 no point, for example, do Defendants explain how Nevada could possibly currently hold a ranked
24 choice election with the infrastructure it currently has, much less how voters and elections officials

26 ⁴ See generally, e.g., Dana Mitra, Ph.D., The Education Law Center, *Pennsylvania's Best*
27 *Investment: The Social and Economic Benefits of Public Education* (2011), [https://www.elc-](https://www.elc-pa.org/wp-content/uploads/2011/06/BestInvestment_Full_Report_6.27.11.pdf)
28 [pa.org/wp-content/uploads/2011/06/BestInvestment_Full_Report_6.27.11.pdf](https://www.elc-pa.org/wp-content/uploads/2011/06/BestInvestment_Full_Report_6.27.11.pdf).

1 would suddenly convert to brand new, entirely foreign processes, without at least *some* governmental
2 expenditure.

3 Defendants' argument that the Petition is not an unfunded mandate because it "vests the
4 implementation with the Legislature and likewise the Secretary of State and local officials," Resp.
5 at 15-16, misunderstands not only Nevada caselaw on administrative details,⁵ but also Plaintiff's
6 point. The test for whether an initiative imposes an expenditure is not whether it takes away
7 budgeting officials' discretion to decide *where* or *how* to spend money to accomplish the initiative's
8 aims, but rather whether it takes away their discretion to decide *whether* to spend the money in the
9 first place—whether, if the initiative is passed "the budgeting official must approve the appropriation
10 or expenditure regardless of any other financial considerations." *Herbst Gaming*, 122 Nev. at 890.
11 The Petition clearly qualifies under this standard, for it is impossible for the legislature, the Secretary
12 of State, or local election officials to comply with its provisions without spending additional money;
13 they either authorize and make the various expenditures required to implement the Petition or violate
14 the law. Plaintiff's objection is not that the Petition fails to spell out precisely how voting machines
15 will need to be converted or where new specialized voting equipment will need to be purchased
16 from. *Contra* Resp. at 15-16. It is that state officials will inevitably have to take these steps if the
17 Petition is enacted, and the Petition does not provide a means of paying for them as Article 19,
18 Section 6 requires.⁶

20 ⁵ The Nevada Supreme Court has been clear that the prohibition on administrative details does
21 not simply mean that a constitutional amendment may not include specific details about its own
22 implementation, as Defendants seem to suggest, but rather that it cannot "put into execution
23 *previously-declared* policies or *previously-enacted* laws or direct [] a decision that has been
delegated to [a governmental body with that authority]." *Heller*, 122 Nev. at 915 (emphases added)
(alterations in original) (quoting *Citizens for Pub. Train Trench Vote v. City of Reno*, 118 Nev. 574,
582 (2002)).

24 ⁶ Defendants contend that including a mechanism to fund an initiative's expenditures would
25 violate the single-subject rule as Plaintiff defines it. But this ignores the rule that legislation like
26 NRS 295.009(1)(a)'s single-subject requirement must be read in harmony with constitutional
27 provisions like Article 19, Section 6 if possible. *See List v. Whisler*, 99 Nev. 133, 137 (1983). No
28 comparable constitutional basis exists for construing the single-subject rule to allow wildly different
electoral reforms addressing wholly different areas of election law to be grouped into a single
petition.

1 **C. The Petition’s Description of Effect Is Legally Insufficient**

2 Defendants do no better in attempting to defend their description of effect. Instead, they dig
3 in their heels and cast aspersions at Plaintiff’s motivations. But their description is not made any less
4 confusing or misleading by attacking those who point out its deficiency.

5 Defendants accuse Plaintiff of ignoring the Nevada Supreme Court’s admonishment that the
6 description should detail “what the initiative is designed to achieve and how it intends to reach those
7 goals.” Resp. at 17 (quoting *Educ. Init.*, 129 Nev. at 37). But it is *Defendants’* description of effect
8 that falls short here. In fact, although Defendants now argue to this Court that the Petition is designed
9 to “[e]nfranchise” nonpartisan voters by allowing them to participate in the primary, Resp. at 3, its
10 statement of effect says nothing about this. And as for “how [the Petition] intends to reach [its]
11 goals,” Defendants’ description falls short here, too, describing only some of the clearly material
12 mechanisms of the reforms it proposes. Moreover, Defendants ignore that the Nevada Supreme
13 Court also considers whether the description embraces the “true effect” of the initiative, *LVTAC*,
14 125 Nev. 165, 183–84 (2009); *Prevent Sanctuary Cities*, at *5. In this case, the “true effect” is as
15 Plaintiff describes in his proposed statement of effect, including that voters would no longer be able
16 to rely on the party affiliations listed on the general election ballot, that the top vote-getter will no
17 longer be guaranteed victory; or that some voters ballots will be effectively rejected by being
18 excluded from the final count.

19 Defendants rely heavily on *Washington State Grange v. Washington State Republican Party*,
20 552 U.S. 442 (2008), to argue that voters need not be informed that the Petition would result in a
21 candidate’s listed party affiliation no longer being reliable indicators of candidates’ policy positions,
22 values, or endorsement by the party. But that case was decided on a markedly different posture and,
23 if anything, only underscores how critical it is that Nevada’s voters be permitted to make an informed
24 choice on this specific issue. There, a political party argued that a similar open primary system
25 violated the party’s associational rights because voters were likely to be confused by candidate’s
26 self-selected designations and mistakenly believe the party had associated itself with the candidate.
27 *Id.* 454-55. The Supreme Court dismissed this concern in part based on its finding that the system
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1 had been enacted through the initiative process in which the electorate had made an informed choice
2 and thus was likely to know of this effect. *Id.*

3 Here, the text of the Petition itself clearly recognizes that *this is a true effect of the Petition*,
4 so much so that it would require an *express and conspicuous warning* be printed on the ballots. Pet.
5 at 2, 3. Yet, Defendants conspicuously omit any mention of this from the statement of effect, denying
6 voters the ability to make an “informed choice” on this very important issue in deciding whether to
7 endorse the Petition. *See LVTAC*, 125 Nev. at 183. The elimination of dependable party designations
8 is not merely a “secondary effect” nor a “collateral consequence” of the Petition as Defendants argue,
9 Resp. at 18—distinctions that Nevada courts have *not* recognized when evaluating a description of
10 effect in any event—it is a true effect of which voters deserve to be informed in the description of
11 effect.⁷

12 Plaintiff’s truthful statement that “in the general election, the top vote-getter will no longer
13 be guaranteed victory” is not—as Defendants content—“[n]onsense.” Resp. at 18. Indeed, as
14 Defendants acknowledge in their very next sentence, first-choice votes are what voters
15 “traditionally” consider the term “votes” to refer to, and it is an objective fact that the candidate who
16 receives the *most first-choice votes* is **not** assured victory under the Petition’s ranked-choice voting
17 system. Yet, Defendants’ description of effect not only fails to mention this, it misleads voters by
18 asserting that the “traditional” means of electing candidates will persist. Pet. at 7. In attempting to
19 defend this, Defendants only underscore their error. They continue to state that “50% plus one vote
20 is *the* winner under the current tabulation method” Resp. at 18-19 (emphasis added), not that a
21 candidate receiving that number of votes would be *a* winner under Nevada’s current system, (which

23 ⁷ For similar reasons, Defendants’ contention that the Petition would not stop parties from
24 nominating their own candidates is beside the point. Resp. at 4 n. 4. There would still be no way for
25 a voter to distinguish from the ballot between a candidate that a party has nominated and other
26 candidates who have unilaterally chosen to affiliate with the party. Candidates’ listed party
27 affiliations serve as a useful heuristic, and voters should be informed that the Petition would render
28 them unreliable in deciding whether to support it. *C.f. Texas All. for Retired Americans v. Hughs*,
489 F. Supp. 3d 667, 686–87 (S.D. Tex. 2020) (noting the timesaving effect of allowing voters to
vote a straight ticket in support of all of a party’s candidates if they so choose); *Michigan State A.*
Philip Randolph Inst. v. Johnson, 209 F. Supp. 3d 935, 948 (E.D. Mich. 2016) (same).

1 appears to be the meaning they actually intend). But even if Defendants were to fix this mistaken
2 article, it would mislead voters. Simply put, under the current system (or “traditionally”) in Nevada,
3 a candidate is not required to get “50% plus one vote” to be the winner. Rather, under the current
4 system, a candidate who receives more votes than any other is the winner, regardless of whether that
5 candidate gets 50% plus one vote. Calling the proposed new rule “the well-understood traditional
6 rule,” Resp. at 19 n.12, is both wrong and misleading, and minimizes the scale of the changes the
7 Petition seeks to make to the general election.

8 Defendants also quibble over the semantic distinction between an exhausted ballot’s being
9 “rejected” and not counted in the final tally and the ballot’s merely being “inactive” and not included
10 in the final tally, ignoring that their proposed description mentions neither.⁸ Resp. at 19. Obviously,
11 there are not validly cast votes excluded from the final count under the current system, and
12 eliminating votes from this tally is not simply “how elections work” as Defendants claim. *Id.* Voters
13 should be informed of this significant change, which many might view as antithetical to democratic
14 values. They likewise should be told that the large-scale changes the Petition proposes come with
15 financial costs, not misled into believing the costs are nonexistent or negligible as the current
16 description would have it.⁹

17 **III. CONCLUSION**

18 For reasons discussed, the Petition is legally deficient. Plaintiff’s requested relief should be
19 granted.
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24 ⁸ That Defendants consider these voters to be properly left out of the final tally stands in
25 marked contrast to their view of voters who choose not to participate in partisan primaries.

26 ⁹ Defendants would also have the Court illogically conclude that, because a current statute
27 enacted by Nevada’s Legislature provides for tie votes to be resolved by random chance, Nevada’s
28 voters necessarily approve of the practice and do not need to be informed that the Petition would
enshrine it in the state constitution. The latter conclusion does not follow from the former premise.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 30th day of December, 2021, a true and correct copy of the
3 **PLAINTIFF NATHANIEL HELTON'S REPLY IN SUPPORT OF COMPLAINT FOR**
4 **DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING THE BETTER VOTING**
5 **NEVADA INITIATIVE** was served upon all parties via electronic mailing to 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,

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 official capacity as NEVADA
SECRETARY OF STATE,

Defendants.

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

REQUEST FOR SUBMISSION

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DATED this 30th day of December, 2021.

By: Bradley S. Schrage
BRADLEY S. SCHRAGE

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 30th day of December, 2021, a true and correct
3 copy of the **REQUEST FOR SUBMISSION** was served upon all parties via
4 electronic mailing to the following:

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AUBREY BOULATT
CLERK

BY _____ DEPUTY

**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

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

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

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

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

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

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

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

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24
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.

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

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

4 *January 6, 2022*

5
6 *James Miller*
7 DISTRICT COURT JUDGE

8
9 **CERTIFICATE OF SERVICE**

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

13
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Las Vegas, NV 89169

Todd Bice, Esq.
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16 Craig A. Newby, Esq.
Office of the Attorney General
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17 Las Vegas, NV 89101

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

21
22 *Billie Shadron*
23 Billie Shadron
24 Judicial Assistant
25
26
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AUDREY ROWLATT
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BY K. PETERSON
DEPUTY

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

NATHANIEL HELTON, an individual,
Plaintiffs,
v.

Case No.: 21 OC 00172 1B

Dept. No.: II

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,

NOTICE OF ENTRY OF ORDER

Defendants.

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

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101
702.214.2100

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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*Attorneys for Defendants
Nevada Voters First PAC and Todd Bice*

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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rel. Barbara K. Cegavske, in her capacity as
Secretary of State of Nevada*

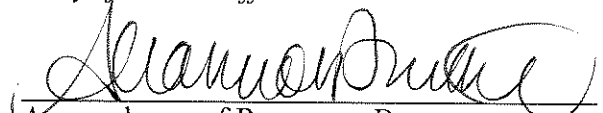
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AUBREY J. PLATT
CLERK

BY _____ DEPUTY

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

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

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

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

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

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.

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ⁴ *See also* NRS 293.260(5) (stating that "if one of those candidates receive a majority of the
25 votes cast in the primary election for [nonpartisan office], the candidate must be declared elected
26 to the office and his or her name must not be place on the ballot for the general election."). It is the
27 long-established "traditional" rule that any candidate that receives more than 50% is necessarily the
28 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.

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

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

4 *January 6, 2022*

5
6 *[Signature]*
7 DISTRICT COURT JUDGE

8
9 **CERTIFICATE OF SERVICE**

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

13 14 15 16 17	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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18 the envelope sealed and then deposited in the Court's central mailing basket in the court
19 clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for
20 mailing.

21
22 *[Signature]*
23 Billie Shadron
24 Judicial Assistant

25
26
27
28