In the
Supreme Court of the State of Nevada

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Elizabeth A. Brown
Clerk of Supreme Court

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 CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE,

Respondents.

Case No.: 84110

First Judicial District Court
Case No.: 21 OC 00172 1B

APPELLANT'S RESPONSE TO NEVADA VOTERS FIRST AND TODD L. BICE'S MOTION FOR SUMMARY ADJUDICATION

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RULE 26.1 DISCLOSURE

Pursuant to Nevada Rule of Appellate Procedure ("NRAP") 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in NRAP 26.1(a) that must be disclosed.

DATED this 27th day of January, 2022.

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By: */s/ Bradley S. Schrager*
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MEMORANDUM OF POINTS & AUTHORITIES

Respondents Nevada Voters First PAC and Todd L. Bice ask this Court for extraordinary relief, requesting that Mr. Helton's appeal be decided without allowing him to make a single argument explaining why the district court got it wrong. Mr. Helton has found no precedent in which this Court has decided a challenge like this one on summary adjudication without the parties' consent, and Respondents cite none. For good reason. Mr. Helton is entitled to make his arguments to this Court and there remains plenty of time for the Court to decide the matter. This Court routinely decides appeals just like this one, involving pre-enactment challenges to ballot initiatives at this point, or even later, in the election cycle. Accordingly, Mr. Helton asks that the Court deny Respondents' motion and allow this matter to proceed to briefing and argument.

I. Respondents' request appears to be unprecedented.

While NRS 295.061 ballot petition challenges are often appealed to this Court, to Mr. Helton's knowledge, the Court has never denied an appellant the opportunity to brief its arguments on appeal unless the parties *agreed* that the matter could be decided on the record. *Compare*

Prevent Sanctuary Cities v. Haley, No. 74966, 2018 WL 2272955 (2018) (unpublished disposition) (considering briefs submitted by the parties and oral argument in deciding initiative challenge), *and Coalition for Nevada's Future v. RIP Com. Tax, Inc.*, No. 69501, 2016 WL 2842925 (2016) (unpublished disposition) (same), *with Educ. Init. v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 39 n.2, 293 P.3d 874, 877 n. 2 (2013) (considering initiative challenge without briefing where "[the parties] agreed to not file appellate briefs").

Respondents do not cite any legal authority or precedent in support of their extraordinary request. They do not even cite a rule that explicitly allows for summary adjudication of this matter. There is none. Although many jurisdictions have chosen to adopt rules that govern (and to some degree, invite) motions for summary affirmance on appeal, Nevada has not. *See, e.g.*, 1st Cir. Local Rule 27.0(c); Fla. R. App. P. 9.315; N.M. R. App. P. 12-210(D); Utah R. App. P. 10(a)(2); W. Va. R. App. P. 21(c). This is consistent with Nevada's long-standing tradition of safeguarding appellants' rights to have their cases heard and the Court's long-standing preference of deciding matters on the merits with full briefing.

Respondents accordingly ask the Court to suspend the normal

operation of the Nevada Rules of Appellate Procedure, based on nothing other than a vague, conclusory statement that "voter initiatives are time sensitive" and "there is no need for delay." Mot. at 1. But this Court routinely hears appeals involving initiatives on full briefing, including in cases far more time-sensitive than this one.

For example, in 2020, the Court decided a similarly situated appeal in *Prevent Sanctuary Cities* with full briefing and argument. The notice of appeal was filed on January 31, the parties filed merits briefs, arguments were heard on May 8, and the Court issued its order reversing the district court in part and affirming it in part on May 16. Four years earlier, the Court decided a similar appeal in *No Solar Tax PAC v. Citizens for Solar & Energy Fairness*, 132 Nev. 1012 (2016), on an even more "time-sensitive" deadline. That appeal was not filed until April 13, eleven weeks before the signature gathering deadline. The parties submitted their briefs on the normal briefing schedule, the Court heard argument on July 29, and the Court issued its decision on August 4.

In other words, this appeal is not unusual, and it does not even present an unusually curtailed timeframe for merits briefing, argument, and decision. The Court historically has and routinely does decide

precisely these types of appeals with the benefit of full merits briefing and argument. To the extent that Respondents wish they had more time, the issue is largely one of their own making. They could have filed their petition with the Secretary of State as early as September 1, 2021, but waited nearly two and a half months—until November 12, 2021—to do so. Nev. Const. Art. 19, Sec. 2. Mr. Helton moved promptly to file his challenge as required by NRS 295.061 and has diligently pursued his rights at every stage. Mr. Helton should not be penalized for Respondents' delay in filing their initiative, and Respondents' indefinite statements about time sensitivity are inadequate grounds to deny Mr. Helton his right to address the errors that the district court made to this Court, so that the Court may fully and fairly consider his appeal.[1]

II. Summary adjudication would be inappropriate here.

Even if summary adjudication of this type of appeal over the appellant's objection were permissible as a general matter, it would not be warranted here, because Respondents' motion is procedurally flawed

[1] The Court possesses ample tools for managing its docket without intruding on a party's right to be heard, *see Personhood Nevada v. Bristol*, 126 Nev. 599, 603, 245 P.3d 572, 575 (2010), but Respondents have not requested it employ them here.

and substantively baseless. In jurisdictions that permit summary appellate dispositions, courts have long recognized that the procedure is to be "indulged . . . cautiously," *Rossitto v. State*, 298 A.2d 775, 778 (Del. 1972), and used "sparingly, both because of [the courts'] desire to assure litigants of their full day in court and [their] experience that a motion for summary affirmance tends rather to burden than to facilitate the disposition of [their] work." *Okin v. Sec. & Exch. Comm'n*, 145 F.2d 913, 914–15 (2d Cir. 1944); *see also, e.g.*, *In re Int'l House of Pancakes Franchise Litig.*, 487 F.2d 303, 304 (8th Cir. 1973) (summary affirmance only appropriate when "the questions presented for review are so unsubstantial as not to need further argument" or "the appeal is frivolous and entirely without merit"); *accord, e.g.*, *United States v. Lee*, No. 19-2166, 2020 WL 8270545, at *1 (1st Cir. May 12, 2020) (citing 1st Cir. Local Rule 27.0(c)); *see also* Utah R. App. P. 10(a)(2); W. Va. R. App. P. 21(c).

Respondents do not argue that the questions presented in Mr. Helton's appeal are unsubstantial or frivolous. Nor could they. They simply assert that Mr. Helton's challenge is a "legal matter which the District Court resolved on argument, without consideration of any

evidence." Mot. at 1. But reviewing district courts' application of Nevada law on appeal with the benefit of briefing and argument is what this Court does every day as the "ultimate interpreter" of Nevada law. *Legislature of State v. Settelmeyer*, 137 Nev. Adv. Op. 21, 486 P.3d 1276, 1280 (2021) (quoting *Baker v. Carr*, 369 U.S. 186, 211 (1962)). And although there is no requirement that the matter present complex questions or questions of public importance for an appellant to be permitted to make their case to this Court, the fact of the matter is that this appeal both presents issues of great public importance and involves the application of laws that Nevada district courts have consistently struggled to correctly apply. This Court has repeatedly had to reverse lower court decisions involving the very issues that this appeal presents over the years. *See, e.g.*, *Prevent Sanctuary Cities*, 2018 WL 2272955 at *3; *RIP Commerce Tax*, 2016 WL 2842925 at *4; *Educ. Init.*, 129 Nev. at 51. The Court's resolution of these questions will impact the legal landscape far beyond the litigants in this case, and they are hardly the type of unsubstantial or frivolous issues that can be hastily and summarily resolved without the aid of full briefing.

Finally, denying Mr. Helton the opportunity to make his arguments

on appeal, including to address the reasoning in the district court's order, would raise serious due process concerns. *See Grupo Famsa v. Eighth Jud. Dist. Ct.*, 132 Nev. 334, 337, 371 P.3d 1048, 1050 (2016) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is . . . an opportunity [for parties] to present their objections." (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950))); *cf. Lopez v. State*, 105 Nev. 68, 85, 769 P.2d 1276, 1287 (1989) (recognizing that procedural defects that prevent an appeals court from fully considering all issues "handicap[] appellate review and trigger[] possible due process clause violations").[2]

[2] In apparent recognition of these Due Process concerns, many jurisdictions permit summary disposition only after the party opposing the disposition has had an opportunity to be heard on the merits, with some not allowing it until after briefing and argument. *See, e.g.*, N.D. R. App. P. 35.1 (permitting summary affirmance only "after argument, unless waived"); Fla. R. App. P. 9.315(a)-(b) (summary affirmance authorized only upon initiative of the court and only after substantive briefing filed); N.M. R. App. P. 12-210(D) (requiring notice of proposed summary disposition be filed that includes the proposed basis for the decision and allowing parties to file memoranda in opposition or support thereof).

CONCLUSION

For the forgoing reasons, this Court should deny the Respondents' Motion for Summary Adjudication.

DATED this 27th day of January, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2022, a true and correct copy of the **APPELLANT'S RESPONSE TO NEVADA VOTERS FIRST AND TODD L. BICE'S MOTION FOR SUMMARY ADJUDICATION** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

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