

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

Respondents.

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Feb 15 2022 02:30 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 84110

District Court Case No.:
21 OC 001721B

DOCKETING STATEMENT OF CIVIL APPEALS

1. Judicial District: First Judicial
District Court

Department: II

County: Carson City

Judge: James Wilson

District Ct. Case No.: 21OC001721B

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Client: Respondent, Barbara Cegavske

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Telephone: (702) 214-2100

Client: Respondents, *Nevada Voters First PAC and Todd L. Bice*

5. Nature of Disposition Below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCF 60(b) relief | <input checked="" type="checkbox"/> Other (specify)
<u>Initiative Challenge Rejected and Final Judgement Entered</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify)
_____ |

6. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

7. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

8. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

9. Nature of the action. Briefly describe the nature of the action and the result below:

On November 12, 2021, the proponents filed the “Better Voting Nevada Initiative” petition (the “Petition”) with the Secretary of State of Nevada, proposing to amend the Nevada Constitution to effect at least two distinct changes to the state’s electoral system.

Plaintiff filed a complaint, pursuant to NRS 295.061, challenging the Petition because: (1) it violates Nevada’s single-subject rule for initiative petitions; (2) it mandates changes to Nevada’s primary and general elections without allocating or imposing a tax for those changes; and (3) its description of effect is confusing, deceptive, and misleading. The district court held hearing, and denied Plaintiff’s challenge.

10. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court properly rejected the grounds identified above supporting Plaintiff’s initiative petition challenge.

11. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

12. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

13. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where *en banc* consideration is necessary to maintain uniformity of this court's decisions

☒ A ballot question

If so, explain: An initiative petition challenge made pursuant to NRS 295.061.

14. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(2) – a cases involving a ballot or election question.

15. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

16. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

17. Date of entry of written judgment or order appealed from:

Findings of Fact and Conclusions of Law; and Judgment:

January 6, 2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

18. Date written notice of entry of judgment or order was served:

Notice of Entry of Order for Defendants' Motion to Dismiss:

January 12, 2022

Was service by:

☐ Delivery

☒ Mail/electronic/fax

19. If the time for filing the notice of appeal was tolled by a post judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _

Was service by:

☐ Delivery

☐ Mail

20. Date notice of appeal filed

January 14, 2022

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal.

21. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

22. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- ☒ NRAP 3A(b)(1) ☐ NRS 38.205
☐ NRAP 3A(b)(2) ☐ NRS 233B.150
☐ NRAP 3A(b)(3) ☐ NRS 703.376
☐ Other (specify)

(b) Explain how each authority provides a basis for appeal from the judgment order:

A final judgment in an action or proceeding commenced in the court in which the judgment is rendered. Plaintiff's challenge to a filed ballot initiative.

23. List all parties involved in the action or consolidated action in the district court:

(a) Parties:

Nathaniel Helton, Nevada Voters First, Todd L. Bice, and Barbara Cegavske

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

24. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

N/A

25. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

26. If you answered “No” to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

27. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

28. Attach file-stamped copies of the following documents:

- The latest filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order.

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nathaniel Helton
Name of appellant

Bradley Schrager, Esq.
Name of counsel of record

February 14, 2022
Date

/s/ Bradley Schrager
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2022, a true and correct copy of the **DOCKETING STATEMENT** 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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By: /s/ Dannielle Fresquez

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

INDEX OF EXHIBITS

Exhibit 1 – Complaint

Exhibit 2 – Findings of Fact and Conclusions of Law; and
Judgment

Exhibit 3 – Notice of Entry of Order re Findings of Fact and
Conclusions of Law; and Judgment

EXHIBIT 1
Complaint For Declaratory Relieve Challenging the Bette Voting
Nevada Initiative Filed on December 6, 2021

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Complaint For Declaratory Relieve Challenging the Bette Voting
Nevada Initiative Filed on December 6, 2021

REC'D & FILED

2021 DEC -6 PM 1:26

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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
more than 50% support is determined as the winner.

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

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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DATED this 6th day of December, 2021.

By: John Smith

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EXHIBIT 2
Findings of Fact and Conclusions of Law; and Judgement, filed
January 6, 2022

EXHIBIT 2
Findings of Fact and Conclusions of Law; and Judgement, filed
January 6, 2022

REC'D & FILED

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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

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).

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

(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. 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
14 Bradley S. Schrager, Esq.
3773 Howard Hughes Pkwy.,
15 Ste. 590 South
Las Vegas, NV 89169

Todd Bice, Esq.
400 South 7th St., Ste. 300
Las Vegas, NV 89101

16 Craig A. Newby, Esq.
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
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
27
28

EXHIBIT 3
Notice of Entry of Order

EXHIBIT 3
Notice of Entry of Order

Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
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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,

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,

Defendants.

NOTICE OF ENTRY OF ORDER

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.

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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Jordan T. Smith, Esq., Bar No. 12097
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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:

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

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

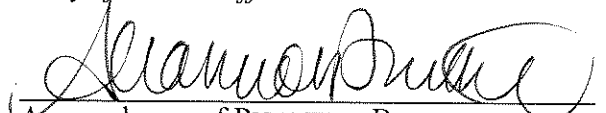
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2022 JAN -6 AM 9:16

AUSREY J. HUNT
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

(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. 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 *[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