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.

Case No.: 84110
District Court Case No.: 21 OC 001721B

JOINT APPENDIX

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice)*
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, NV 89169

MARC E. ELIAS, ESQ. (*pro hac vice*)
SPENCER MCCANDLESS, ESQ. (*pro hac vice*)
ELISABETH C. FROST, ESQ.
(*pro hac vice forthcoming*)
ELIAS LAW GROUP LLP
10 G St. NE Suite 600
Washington, DC 20002

LINDSAY MCALEER, ESQ. (*pro hac vice*)
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101

Attorneys for Appellant

ALPHABETICAL INDEX TO JOINT APPENDIX		
Document Name	**Date**	**Page No.**
Complaint for Declaratory and Injunctive Relief Challenging the Better Voting Nevada Initiative	12/6/21	JAPP0001 – JAPP0012
Defendant Barbara Cegavske's Limited Response to Memorandum of Points and Authorities in Support of Complaint	12/21/21	JAPP0075 – JAPP0078
Defendants Nevada Voters First PAC and Todd Bice's Answer to Complaint	12/23/21	JAPP0083 – JAPP0088
Defendants Nevada Voters First PAC and Todd Bice's Opposition to Plaintiff's Declaratory and Injunctive Relief Challenge the Better Voting Nevada Initiative	12/23/21	JAPP0089 – JAPP0114
Findings of Fact and Conclusions of Law; and Judgment	1/6/22	JAPP0131 – JAPP0145
Notice of Appeal	1/14/22	JAPP0164 – JAPP0185
Notice of Entry of Order	1/13/22	JAPP0146 – JAPP0163

ALPHABETICAL INDEX TO JOINT APPENDIX		
Document Name	**Date**	**Page No.**
Order Following Telephonic Conference Held on December 15, 2021	12/29/21	JAPP0115 – JAPP0117
Plaintiff's Appendix of Exhibits	12/6/21	JAPP0013 – JAPP0032
Plaintiff's Memorandum of Points and Authorities in Support of Complaint	12/6/21	JAPP0033 – JAPP0053
Plaintiff's Proposed Description of Effect	12/21/21	JAPP0079 – JAPP0082
Plaintiff's Reply in Support of Complaint	1/4/22	JAPP0118 – JAPP0130
Proof of Service for The State of Nevada Office of the Attorney General	12/13/21	JAPP0060 – JAPP0062
Summons and Proof of Service for Defendant Barbara Cegavske	12/8/21	JAPP0054 – JAPP0059
Summons and Proof of Service for Defendant Nevada Voters First PAC	12/14/21	JAPP0063 – JAPP0068

ALPHABETICAL INDEX TO JOINT APPENDIX		
Document Name	**Date**	**Page No.**
Summons and Proof of Service for Defendant Todd Bice	12/14/21	JAPP0069 – JAPP0074

DATED this 1st dav of March. 2022.

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

By: */s/ Bradley Schrager*
BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice)*
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, NV 89169

MARC E. ELIAS, ESQ. (*pro hac vice*)
SPENCER MCCANDLESS, ESQ. (*pro hac vice*)
ELISABETH C. FROST, ESQ.
(*pro hac vice forthcoming*)
ELIAS LAW GROUP LLP
10 G St. NE Suite 600
Washington, DC 20002

LINDSAY MCALEER, ESQ. (*pro hac vice*)
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2022, a true and correct copy of the **JOINT APPENDIX** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

Craig A. Newby, Esq.
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite #3900
Las Vegas, NV 89101
CNewby@ag.nv.gov

Attorney for Barbara Cegavske

Todd Bice, Esq.
Jordan T. Smith, Esq.
John A. Fortin, Esq.
PISANELLI BICE, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
tlb@pisanellibice.com
JTS@pisanellibice.com
JAF@pisanellibice.com

Attorneys for Nevada Voters First PAC and Todd L. Bice

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

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

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

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

Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

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vs.

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

Defendants.

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

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

JURISDICTION AND VENUE

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

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

PARTIES

3. Plaintiff Nathanial Helton is a resident and registered voter of Churchill County, Nevada.

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

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

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

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

GENERAL FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

> 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.

See Ex. 2 at 9.

FIRST CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

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

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

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

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

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

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

26. Although the wide-ranging changes mandated by the Petition would unquestionably require expenditures of money, the Petition contains no tax or other 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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court to enter an order:

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

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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AFFIRMATION

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

DATED this 6th day of December, 2021.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: _____

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice forthcoming*)
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
(702) 341-5200/Fax: (702) 341-5300
bschrager@wrslawyers.com
jsamberg@wrslawyers.com
elevinrad@wrslawyers.com
dbravo@wrslawyers.com

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

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

Attorneys for Plaintiff

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

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10 G St. NE Suite 600
Washington, DC 20002
(202) 968-4490/Fax: (202) 968-4498
melias@elias.law
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ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
(206) 656-0235/Fax: (202) 968-4498
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Defendants.

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PLAINTIFF'S APPENDIX OF EXHIBITS

TABLE OF CONTENTS

DATED this 6th day of December, 2021.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: _____

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
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ERIC LEVINRAD, ESQ. (*pro hac vice forthcoming)*
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
(702) 341-5200/Fax: (702) 341-5300
bschrager@wrslawyers.com
jsamberg@wrslawyers.com
elevinrad@wrslawyers.com
dbravo@wrslawyers.com

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

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

Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1

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

State of Nevada
Committee Registration Form

Use this form to register or make changes to a:

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

Select Committee Type

☐ Committee for Political Action (PAC) ☐ Committee Sponsored by a Political Party ☐ Recall Committee

☒ Committee for Political Action (PAC) Advocating Passage

Action Requested
(select all that apply)

☒ New Registration ☐ PAC Annual Registration (Due on or before January 15th of each year – NRS 294A.230(4)(b))

☐ Amended Registration (check all that apply):

☐ Change Officers ☐ Change Registered Agent ☐ Change Address ☐ Reactivation

☐ Change Name (previous name of Committee)

☐ Other

Name of Committee
Nevada Voters First

Mailing Address	City	State	ZIP Code
400 South 7th Street, Suite 300	Las Vegas	NV	89101

Email Address	Telephone Number
tlb@pisanellibice.com	(702) 214-2100

PUPROSE: Briefly state the purpose for which the Committee was organized.
Initiative Petition - Better Voting Nevada Initiative

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

REGISTERED AGENT: Pursuant to NRS 294A.240, each PAC must appoint and keep in the State a registered agent, as provided in NRS 14.020, who must be a natural person who resides in the State of Nevada.
Recall Committees only need a Registered Agent if it is an organization located outside the State.

Name of Registered Agent	Email Address	Telephone Number	
Todd L. Bice	tlb@pisanellibice.com	(702) 214-2100	
Physical Address	**City**	**State**	**ZIP Code**
400 South 7th Street, Suite 300	Las Vegas	NV	89101

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

Signature of Registered Agent

11-12-21
Date

For Office Use Only

Office of the Secretary of State
Barbara Cegavske
Barbara Cegavske
Elections Division

KRhynes
11/12/21 #9064

EL400
Revised: 02-05-2019

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

SUBMITTED BY:

Todd L. Bice
Printed Name

(702) 214-2100
Telephone Number

Signature

11/12/2021
Date

EXHIBIT 2

EXHIBIT 2

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

received
11.12.2021

State of Nevada — Secretary of State Barbara K. Cegavske

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

NAME OF PERSON FILING THE PETITION

Todd L. Bice

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

1. Todd L. Bice
2.
3.

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

Nevada Voters First

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

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

X _____ 11-12-21

Signature of Petition Filer — **Date**

FILED

NOV 12 2021

SECRETARY OF STATE
ELECTIONS DIVISIONS

EL500
NRS 295.009 NRS 295.015
Revised 07-24-2017

11.12.2021

BETTER VOTING NEVADA INITIATIVE

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

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

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

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

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

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

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

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

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

c. *Any registered voter may cast a primary ballot for any candidate for partisan office regardless of the political party affiliation of the voter or any political party preference indicated by the candidate. The primary election for partisan office does not serve to determine the nominee of a political party or political group but serves only to narrow the number of candidates whose names will appear on the ballot at the general election for partisan office.*

2. *At a primary election for partisan office, only the names of the five candidates receiving the greatest number of votes at the primary election shall advance to the general election for partisan office. If, however, there are five or fewer candidates for a specific partisan office, the primary election for partisan office will still be held and the results made public, and all must be declared the candidates for the general election.*
3. *In the event of a tie for fifth place, the candidate who proceeds to the general election for partisan office will be decided by lot.*
4. *The ballot for the primary election must clearly delineate the partisan offices to which the top-five process provided by this section applies.*
5. *Immediately following the name of each candidate for a partisan office must appear the name or abbreviation of the political party with which the candidate is registered, the words "no political party" or the abbreviation "NPP," as the case may be.*
6. *The ballots for the primary elections for partisan office must include a conspicuously placed statement: "A candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."*
7. *In the event that one of the five candidates who received the greatest number of votes at the primary election withdraws, is disqualified, dies, or is otherwise deemed ineligible to be elected after the primary election for partisan office but before the 5 p.m. on the fourth Friday in July, the candidate receiving the next greatest number of votes at the primary election for partisan office shall be declared a nominee, and his or her name shall be placed on the ballot at the general election for partisan office.*
8. *As used in this section:*

   "Partisan office" means the Offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Legislators, and excludes the Offices of President of the United States and Vice President of the United States.

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

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

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

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

b. The candidate with the fewest votes is eliminated, votes cast for the eliminated candidate shall cease counting for the eliminated candidate and shall be added to the totals of each ballot's next-highest-ranked continuing candidate or considered an inactive ballot under (8)(b) and (8))(c) of this section, and a new round begins under (7)(a) of this subsection.

8. When counting general election ballots for partisan office,

a. A voter may choose to rank just one candidate for partisan office, and that vote will be tabulated.

b. A ballot containing an overvote shall be considered an inactive ballot once the overvote is encountered at the highest ranking for a continuing candidate.

c. If a ballot skips a ranking, then the election board shall count the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an inactive ballot for that race.

d. Any votes for "None of These Candidates" shall be tabulated, recorded, and made public, but not be counted for the purpose of electing or ranking any candidates for partisan office.

e. In the event of a tie between the final two continuing candidates, the winner shall be decided in a manner as provided by statute.

f. In the event of a tie between two candidates with the fewest votes, the candidate eliminated shall be decided by lot.

g. An inactive ballot may not be counted for any candidate in that particular race.

9. As used in this section:

a. "Continuing candidate" means a candidate who has not been eliminated.

b. "Inactive ballot" means a ballot that is no longer tabulated, either in whole or in part, because it does not rank any continuing candidate, contains an overvote at the highest continuing ranking, or contains two or more sequential skipped rankings before its highest continuing ranking.

c. "Overvote" means an instance where a voter has assigned the same ranking to more than one candidate.

d. "Ranking" or "ranked" means the number assigned by a voter to a candidate to express the voter's choice for that candidate; a ranking of "1" is the highest ranking, followed by "2," and then "3," and so on.

e. "Round" means an instance of the sequence of voting tabulation in a general election for partisan office.

f. "Skipped ranking" means a blank ranking on a ballot on which a voter has ranked another candidate at a subsequent ranking.

g. "Partisan office" means the Offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Legislators, and excludes the Offices of President of the United States and Vice President of the United States.

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

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

DESCRIPTION OF EFFECT

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

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

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

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

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

This Space for Office Use Only

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

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

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

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

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
County of _____)

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

_____
Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____day of_____, _____, by _____.

_____
Notary Public or person authorized to administer oath

EXHIBIT 3

EXHIBIT 3

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

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

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

Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.:
Dept.:

PLAINTIFF'S APPENDIX OF EXHIBITS

DECLARATION OF DANIEL BRAVO, ESQ.

I, Daniel Bravo, Esq., under penalty of perjury, declare as follows:

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

2. I have personal knowledge of the facts stated herein.

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

4. Attached to the Appendix of Exhibits, as Exhibit 2, is a true and accurate copy of Notice of Intent to Circulate Statewide Initiative or Referendum Petition.

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

DATED this 6th day of December, 2021.

DANIEL BRAVO, ESQ.

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

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

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

Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

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

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

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES

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

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

II. THE INITIATIVE PETITION

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

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

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

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

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

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

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

> 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.

Ex. 2 at 9.

III. LEGAL STANDARD

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

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

IV. ARGUMENT

A. The Petition Violates Nevada's Single-Subject Rule for Initiatives and Must be Invalidated

1. The Single-Subject Rule Prohibits "Logrolling" Multiple Subjects into a Single Initiative

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Petition Violates the Nevada Constitution's Prohibition on Initiatives that Mandate Unfunded Expenditures

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

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

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

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

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

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

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

C. The Petition's Description of Effect Is Legally Insufficient

Even setting aside the issues with the Petition itself, Proponents should not be permitted to solicit signatures because the Petition's description of effect is deficient. Nevada law requires that every initiative "[s]et 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." NRS 295.009(1)(b). The purpose of the description is to "prevent voter confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006). Thus "[t]he importance of the description of effect cannot be minimized, as it is what the voters see when deciding whether to even sign a petition." *Coalition for Nevada's Future v. RIP Commerce Tax*,

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

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

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

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

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

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

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

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

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

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

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

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

V. CONCLUSION

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

AFFIRMATION

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

DATED this 6th day of December, 2021.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: _____

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice forthcoming*)
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
(702) 341-5200/Fax: (702) 341-5300
bschrager@wrslawyers.com
jsamberg@wrslawyers.com
elevinrad@wrslawyers.com
dbravo@wrslawyers.com

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

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

Attorneys for Plaintiff

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

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

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

Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.: 21 OC 00721B
Dept.: I

SUMMONS

SUMMONS

BARBARA CEGAVSKE,
in her official capacity as Nevada Secretary of State
State Capitol Building
101 N. Carson Street, Suite 3
Carson City, Nevada 89701

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.

READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading* in response to this Complaint.

2. Unless you respond, your default will be entered upon application of the plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint**, which could result in the taking of money or property or the relief requested in the Complaint.

3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

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4. You are required to serve your response upon plaintiff's attorney, whose address is:

Bradley S. Schrager, Esq.
John Samberg, Esq.
Daniel Bravo, Esq.
Eric Levinrad, Esq.
Wolf, Rifkin, Shapiro, Shulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169

AUBREY ROWLATT, Clerk of the Court

By: _____
Deputy Clerk

Date: December 6, 2021.

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
**Note – When service by publication, insert a brief statement of the object of the action. See Rule 4.

RULES OF CIVIL PROCEDURE FOR THE NEVADA DISTRICT COURTS

Rule 4. Summons and Service

(a) **Summons.**

(1) **Contents.** A summons must:

(A) name the court, the county, and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or — if unrepresented — of the plaintiff;

(D) state the time within which the defendant must appear and defend under Rule 12(a) or any other applicable rule or statute;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk;

(G) bear the court's seal; and

(H) comply with Rule 4.4(c)(2)(C) when service is made by publication.

(2) **Amendments.** The court may permit a summons to be amended.

(b) **Issuance.** On or after filing a complaint, the plaintiff must present a summons to the clerk for issuance under signature and seal. If a summons is properly presented, the clerk must issue a summons under signature and seal to the plaintiff for service on the defendant. A summons — or a copy of a summons that is addressed to multiple defendants — must be issued for each defendant to be served.

(c) **Service.**

(1) **In General.** Unless a defendant voluntarily appears, the plaintiff is responsible for:

(A) obtaining a waiver of service under Rule 4.1, if applicable; or

(B) having the summons and complaint served under Rule 4.2, 4.3, or 4.4 within the time allowed by Rule 4(e).

(2) **Service With a Copy of the Complaint.** A summons must be served with a copy of the complaint. The plaintiff must furnish the necessary copies to the person who makes service.

(3) **By Whom.** The summons and complaint may be served by the sheriff, or a deputy sheriff, of the county where the defendant is found or by any person who is at least 18 years old and not a party to the action.

(4) **Cumulative Service Methods.** The methods of service provided in Rules 4.2, 4.3, and 4.4 are cumulative and may be utilized with, after, or independently of any other methods of service.

(d) **Proof of Service.** Unless a defendant voluntarily appears or waives or admits service, a plaintiff must file proof of service with the court stating the date, place, and manner of service no later than the time permitted for the defendant to respond to the summons.

(1) **Service Within the United States.** Proof of service within Nevada or within the United States must be made by affidavit from the person who served the summons and complaint.

(2) **Service Outside the United States.** Service not within the United States must be proved as follows:

(A) if made under Rule 4.3(b)(1)(A), as provided in the applicable treaty or convention; or

(B) if made under Rule 4.3(b)(1)(B) or (C), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) **Service by Publication.** If service is made by publication, a copy of the publication must be attached to the proof of service, and proof of service must be made by affidavit from:

(A) the publisher or other designated employee having knowledge of the publication; and

(B) if the summons and complaint were mailed to a person's last-known address, the individual depositing the summons and complaint in the mail.

(4) **Amendments.** The court may permit proof of service to be amended.

(5) **Failure to Make Proof of Service.** Failure to make proof of service does not affect the validity of the service.

(e) **Time Limit for Service.**

(1) **In General.** The summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule.

(2) **Dismissal.** If service of the summons and complaint is not made upon a defendant before the 120-day service period — or any extension thereof — expires, the court must dismiss the action, without prejudice, as to that defendant upon motion or upon the court's own order to show cause.

(3) **Timely Motion to Extend Time.** If a plaintiff files a motion for an extension of time before the 120-day service period — or any extension thereof — expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made.

(4) **Failure to Make Timely Motion to Extend Time.** If a plaintiff files a motion for an extension of time after the 120-day service period — or any extension thereof — expires, the court must first determine whether good cause exists for the plaintiff's failure to timely file the motion for an extension before the court considers whether good cause exists for granting an extension of the service period. If the plaintiff shows that good cause exists for the plaintiff's failure to timely file the motion and for granting an extension of the service period, the court must extend the time for service and set a reasonable date by which service should be made.

DECLARATION OF SERVICE

I, **Dawn Calhoun**, declare: That at all time herein Declarant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under NV PILB LIC #2602, and not a party to or interested in the proceeding in which this declaration is made. The Declarant received **1 copy** of the **Summons, Complaint for Declaratory and Injunctive Relief Challenging the Better Voting Nevada Initiative, Civil Cover Sheet, Plaintiff's Appendix of Exhibits, Memorandum of Points and Authorities in Support of complaint for Declaratory and Injunctive Relief Challenging the Better Voting Nevada Initiative, Plaintiff's Affirmation and Plaintiff's Initial Appearance Fee Disclosure** on the **6th** day of **December, 2021** and served the same on the **6th** day of **December, 2021** at **3:03 pm** by serving **Barbara Cegavske, in her official capacity as Nevada Secretary of State** by personally delivering and leaving a copy at the **Nevada Secretary of State Annex, 202 N. Carson Street, Carson City, Nevada 89701** with **Ashley Pion, Processing Supervisor**.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Dated December 7, 2021

C & H COURIERS/PROCESS SERVERS

Declarant: DAWN CALHOUN
Process Server – NV PILB LIC #2602
301 Anderson Street
Carson City, Nevada 89701
(775) 219-2871

Work Order No. 177205

C & H Couriers/Process Servers
301 Anderson St.
Carson City, Nevada 89701
(775) 219-2871
candhcouriers@gmail.com

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

Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

Case No. 21-OC-00172 1B

Dept. No. I

/

DECLARATION OF SERVICE

I, **Dawn Calhoun**, declare: That at all time herein Declarant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under NV PILB LIC #2602, and not a party to or interested in the proceeding in which this declaration is made. The Declarant received **1 copy** of the **Summons, Complaint for Declaratory and Injunctive Relief Challenging the Better Voting Nevada Initiative, Civil Cover Sheet, Plaintiff's Appendix of Exhibits, Memorandum of Points and Authorities in Support of complaint for Declaratory and Injunctive Relief Challenging the Better Voting Nevada Initiative, Plaintiff's Affirmation and Plaintiff's Initial Appearance Fee Disclosure** on the **6th** day of **December, 2021** and served the same on the **9th** day of **December, 2021** at **2:15 pm** by serving a copy on **The State of Nevada Office of the Attorney General** by personally delivering and leaving a copy at the **The Office of the Attorney General, 100 N. Carson Street, Carson City, Nevada 89701** with **Esmeralda Valezquez, Research Assistant**.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Dated December 9, 2021

C & H COURIERS/PROCESS SERVERS

Dawn Calhoun

Affiant: DAWN CALHOUN
Process Server – NV PILB LIC #2602
301 Anderson Street
Carson City, Nevada 89701
(775) 219-2871

Work Order No. 598121

C & H Couriers/Process Servers
301 Anderson St.
Carson City, Nevada 89701
(775) 219-2871
candhcouriers@gmail.com

AARON D. FORD
Attorney General

KYLE E. N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701

JESSICA L. ADAIR
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

DATE RECEIVED: 12/9/2021 RECEIVED BY: Esmeralda Velazquez

NAME OF ENTITY/PERSON SERVING: Dawn Calhoun - CBH Couriers

CASE NAME: Nathaniel Helton v. Nevada Voters First PAC; Todd L. Price; Barbara Cegavske as Secretary of State of Nevada

CASE NUMBER: 21OC00172 1B COURT: 1st JD

DOCUMENT(S) RECEIVED: Plaintiffs Initial Appearance Fee Disclosure; Summons; Complaint for Declaratory and Injunctive Relief; Points and Authorities; Appendix of Exhibits; Affirmation - Civil Cover.

☐ **Service of Process** ☑ **Courtesy copy only (not Service of Process)**
PURSUANT TO STATUTE

NOTICE

☐ COMPLAINT: NRS 41.031(2) provides in part that, in any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the state whose actions are the basis for the suit. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon the Attorney General, at the Office of the Attorney General in Carson City and upon the person serving in the office of administrative head of the named agency. Service on the Attorney General or designee does not constitute service on any individual or administrative head.

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 41.031(2)(a). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

☐ SUBPOENA: Receipt of a subpoena by the Office of the Attorney General does not constitute valid service of the subpoena upon any individual or upon any state agency, with the exception of the Office of the Attorney General. **Receipt of subpoena or any other process by the Attorney General or designee does not constitute service upon any individual, nor does it constitute service upon the administrative head of an agency pursuant to NRS 174.345.**

☐ PETITION FOR JUDICIAL REVIEW: NRS 233B.130(2)(c)(1) provides in part that all Petitions for Judicial Review of state agency decisions/judgments/orders must be served upon, the Attorney General, a person designated by the Attorney General or the Office of the Attorney General in Carson City.

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 233B.130(2)(c)(1). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

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Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.: 21 OC 00072 1B
Dept.: I

SUMMONS

SUMMONS

NEVADA VOTERS FIRST
c/o Todd L. Bice, Registered Agent
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.

READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading* in response to this Complaint.

2. Unless you respond, your default will be entered upon application of the plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint**, which could result in the taking of money or property or the relief requested in the Complaint.

3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

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4. You are required to serve your response upon plaintiff's attorney, whose address is:

Bradley S. Schrager, Esq.
John Samberg, Esq.
Daniel Bravo, Esq.
Eric Levinrad, Esq.
Wolf, Rifkin, Shapiro, Shulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169

AUBREY ROWLATT, Clerk of the Court

By: _____
Deputy Clerk

Date: December 6, 2021.

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
**Note – When service by publication, insert a brief statement of the object of the action. See Rule 4.

RULES OF CIVIL PROCEDURE FOR THE NEVADA DISTRICT COURTS

Rule 4. Summons and Service

(a) **Summons.**

(1) **Contents.** A summons must:

(A) name the court, the county, and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or — if unrepresented — of the plaintiff;

(D) state the time within which the defendant must appear and defend under Rule 12(a) or any other applicable rule or statute;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk;

(G) bear the court's seal; and

(H) comply with Rule 4.4(c)(2)(C) when service is made by publication.

(2) **Amendments.** The court may permit a summons to be amended.

(b) **Issuance.** On or after filing a complaint, the plaintiff must present a summons to the clerk for issuance under signature and seal. If a summons is properly presented, the clerk must issue a summons under signature and seal to the plaintiff for service on the defendant. A summons — or a copy of a summons that is addressed to multiple defendants — must be issued for each defendant to be served.

(c) **Service.**

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(A) obtaining a waiver of service under Rule 4.1, if applicable; or

(B) having the summons and complaint served under Rule 4.2, 4.3, or 4.4 within the time allowed by Rule 4(e).

(2) **Service With a Copy of the Complaint.** A summons must be served with a copy of the complaint. The plaintiff must furnish the necessary copies to the person who makes service.

(3) **By Whom.** The summons and complaint may be served by the sheriff, or a deputy sheriff, of the county where the defendant is found or by any person who is at least 18 years old and not a party to the action.

(4) **Cumulative Service Methods.** The methods of service provided in Rules 4.2, 4.3, and 4.4 are cumulative and may be utilized with, after, or independently of any other methods of service.

(d) **Proof of Service.** Unless a defendant voluntarily appears or waives or admits service, a plaintiff must file proof of service with the court stating the date, place, and manner of service no later than the time permitted for the defendant to respond to the summons.

(1) **Service Within the United States.** Proof of service within Nevada or within the United States must be made by affidavit from the person who served the summons and complaint.

(2) **Service Outside the United States.** Service not within the United States must be proved as follows:

(A) if made under Rule 4.3(b)(1)(A), as provided in the applicable treaty or convention; or

(B) if made under Rule 4.3(b)(1)(B) or (C), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) **Service by Publication.** If service is made by publication, a copy of the publication must be attached to the proof of service, and proof of service must be made by affidavit from:

(A) the publisher or other designated employee having knowledge of the publication; and

(B) if the summons and complaint were mailed to a person's last-known address, the individual depositing the summons and complaint in the mail.

(4) **Amendments.** The court may permit proof of service to be amended.

(5) **Failure to Make Proof of Service.** Failure to make proof of service does not affect the validity of the service.

(e) **Time Limit for Service.**

(1) **In General.** The summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule.

(2) **Dismissal.** If service of the summons and complaint is not made upon a defendant before the 120-day service period — or any extension thereof — expires, the court must dismiss the action, without prejudice, as to that defendant upon motion or upon the court's own order to show cause.

(3) **Timely Motion to Extend Time.** If a plaintiff files a motion for an extension of time before the 120-day service period — or any extension thereof — expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made.

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Attorney or Party without Attorney:		For Court Use Only
Bradley S. Schrager Esq. (SBN 10217) Wolf Rifkin Shapiro Schulman & Rabkin, LLP 3773 Howard Hughes Pkwy Suite 590 South Las Vegas, NV 89169 Telephone No: (702) 341-5200		
Attorney For: Plaintiff	Ref. No. or File No.: LV4491-003	
Insert name of Court, and Judicial District and Branch Court: IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY		
Plaintiff: Nathan Helton, Defendant: Nevada Voters First PAC, et al.		

DECLARATION OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number:
			I	21OC001721B

1. *At the time of service I was at least 18 years of age and not a party to this action.*

2. I served copies of the District Court Civil Cover Sheet; Summons; Complaint for Declaratory and Injunctive Relief Challenging the Better Voting Nevada Initiative; Memorandum of Points and Authorities in Support for Complaint for Declaratory and Injunctive Relief Challenging the Better Voting Nevada Initiative; Plaintiff's Appendix of Exhibits; Plaintiff's Affirmation; Plaintiff's Initial Appearance Fee Disclosure

3. a. *Party served:* Nevada Voters First PAC, a Nevada Committee for Political Action
   b. *Person served:* Todd Brice , Authorized to accept, a person of suitable age and discretion, authorized to accept at the address listed below.
   Desc: Caucasian , Male , Age: 55 , Hair: Gray , Height: 6' , Weight: 180

4. *Address where the party was served:* 400 South 7th St, Las Vegas, NV 89101

5. *I served the party:*
   a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Tue, Dec 07 2021 (2) at: 10:35 AM

Fee for Service:
Pursuant to NRS 53.045
I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

6. ***Person Who Served Papers:***
   a. Leidy Serna (R-2021-00310, Clark)
   b. FIRST LEGAL
   NEVADA PI/PS LICENSE 1452
   2920 N. GREEN VALLEY PARKWAY, SUITE 514
   HENDERSON, NV 89014
   c. (702) 671-4002

12/07/2021
(Date)

(Signature)

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

IN THE FIRST JUDICIAL DISTRICT COURT

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Plaintiff,

vs.

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Defendants.

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

SUMMONS

SUMMONS

TODD L. BICE
in his capacity as the President of NEVADA VOTERS FIRST PAC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

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John Samberg, Esq.
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Las Vegas, Nevada 89169

AUBREY ROWLATT, Clerk of the Court

By: _____
Deputy Clerk

Date: December 6, 2021

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
**Note – When service by publication, insert a brief statement of the object of the action. See Rule 4.

RULES OF CIVIL PROCEDURE FOR THE NEVADA DISTRICT COURTS

Rule 4. Summons and Service

(a) **Summons.**

(1) **Contents.** A summons must:

(A) name the court, the county, and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or — if unrepresented — of the plaintiff;

(D) state the time within which the defendant must appear and defend under Rule 12(a) or any other applicable rule or statute;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk;

(G) bear the court's seal; and

(H) comply with Rule 4.4(c)(2)(C) when service is made by publication.

(2) **Amendments.** The court may permit a summons to be amended.

(b) **Issuance.** On or after filing a complaint, the plaintiff must present a summons to the clerk for issuance under signature and seal. If a summons is properly presented, the clerk must issue a summons under signature and seal to the plaintiff for service on the defendant. A summons — or a copy of a summons that is addressed to multiple defendants — must be issued for each defendant to be served.

(c) **Service.**

(1) **In General.** Unless a defendant voluntarily appears, the plaintiff is responsible for:

(A) obtaining a waiver of service under Rule 4.1, if applicable; or

(B) having the summons and complaint served under Rule 4.2, 4.3, or 4.4 within the time allowed by Rule 4(e).

(2) **Service With a Copy of the Complaint.** A summons must be served with a copy of the complaint. The plaintiff must furnish the necessary copies to the person who makes service.

(3) **By Whom.** The summons and complaint may be served by the sheriff, or a deputy sheriff, of the county where the defendant is found or by any person who is at least 18 years old and not a party to the action.

(4) **Cumulative Service Methods.** The methods of service provided in Rules 4.2, 4.3, and 4.4 are cumulative and may be utilized with, after, or independently of any other methods of service.

(d) **Proof of Service.** Unless a defendant voluntarily appears or waives or admits service, a plaintiff must file proof of service with the court stating the date, place, and manner of service no later than the time permitted for the defendant to respond to the summons.

(1) **Service Within the United States.** Proof of service within Nevada or within the United States must be made by affidavit from the person who served the summons and complaint.

(2) **Service Outside the United States.** Service not within the United States must be proved as follows:

(A) if made under Rule 4.3(b)(1)(A), as provided in the applicable treaty or convention; or

(B) if made under Rule 4.3(b)(1)(B) or (C), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) **Service by Publication.** If service is made by publication, a copy of the publication must be attached to the proof of service, and proof of service must be made by affidavit from:

(A) the publisher or other designated employee having knowledge of the publication; and

(B) if the summons and complaint were mailed to a person's last-known address, the individual depositing the summons and complaint in the mail.

(4) **Amendments.** The court may permit proof of service to be amended.

(5) **Failure to Make Proof of Service.** Failure to make proof of service does not affect the validity of the service.

(e) **Time Limit for Service.**

(1) **In General.** The summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule.

(2) **Dismissal.** If service of the summons and complaint is not made upon a defendant before the 120-day service period — or any extension thereof — expires, the court must dismiss the action, without prejudice, as to that defendant upon motion or upon the court's own order to show cause.

(3) **Timely Motion to Extend Time.** If a plaintiff files a motion for an extension of time before the 120-day service period — or any extension thereof — expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made.

(4) **Failure to Make Timely Motion to Extend Time.** If a plaintiff files a motion for an extension of time after the 120-day service period — or any extension thereof — expires, the court must first determine whether good cause exists for the plaintiff's failure to timely file the motion for an extension before the court considers whether good cause exists for granting an extension of the service period. If the plaintiff shows that good cause exists for the plaintiff's failure to timely file the motion and for granting an extension of the service period, the court must extend the time for service and set a reasonable date by which service should be made.

Attorney or Party without Attorney:		For Court Use Only
Bradley S. Schrager Esq. (SBN 10217) Wolf Rifkin Shapiro Schulman & Rabkin, LLP 3773 Howard Hughes Pkwy Suite 590 South Las Vegas, NV 89169 Telephone No: (702) 341-5200		
Attorney For: Plaintiff	Ref. No. or File No.: LV4491-003	
Insert name of Court, and Judicial District and Branch Court: IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY		
Plaintiff: Nathan Helton, Defendant: Nevada Voters First PAC, et al.		

DECLARATION OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number:
			I	21OC001721B

1. *At the time of service I was at least 18 years of age and not a party to this action.*

2. I served copies of the District Court Civil Cover Sheet; Summons; Complaint for Declaratory and Injunctive Relief Challenging the Better Voting Nevada Initiative; Memorandum of Points and Authorities in Support for Complaint for Declaratory and Injunctive Relief Challenging the Better Voting Nevada Initiative; Plaintiff's Appendix of Exhibits; Plaintiff's Affirmation; Plaintiff's Initial Appearance Fee Disclosure

3. *a. Party served:* Todd Bice in his capacity as the President of Nevada Voters First PAC
   b. Person served: Party in Item 3a
   Desc: Caucasian , Male , Age: 55 , Hair: Gray , Height: 6' , Weight: 180

4. *Address where the party was served:* 400 South 7th St, Las Vegas, NV 89101

5. *I served the party:*
   a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Tue, Dec 07 2021 (2) at: 10:35 AM

Fee for Service:
Pursuant to NRS 53.045
I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

*6. **Person Who Served Papers:***
a. Leidy Serna (R-2021-00310, Clark)
b. FIRST LEGAL
NEVADA PI/PS LICENSE 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
c. (702) 671-4002

12/07/2021
(Date) *(Signature)*

AARON FORD
Attorney General
Craig A. Newby (Bar No. 8591)
Deputy Solicitor General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3420 (phone)
(702) 486-3773 (fax)
cnewby@ag.nv.gov
Attorneys for Defendant
Barbara Cegavske

Affirmation pursuant to NRS 239B.030
The undersigned affirms that this document does not contain the personal information of any person

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

NATHANIEL HELTON, an individual, Plaintiff, vs. NEVADA VOTERS FIRST PAC, a Nevada Committee for Political Action; TODD L. BICE, in his capacity as the President of NEVADA VOTERS FIRST PAC; and BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Defendants	Case No. 21 OC 00172 1B Dept. No. II

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

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

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

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

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

DATED this 21st day of December 2021.

AARON D. FORD
Attorney General

By: Kiel #15368C
for Craig A. Newby (Bar No. 8591)
Deputy Solicitor General
Attorneys for Defendant
Barbara Cegavske

CERTIFICATE OF SERVICE

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

Bradley S. Schrager
John Samberg
Daniel Bravo
Eric Levinrad
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Pkwy., Ste. 590 South
Las Vegas, NV 89169

Marc E. Elias
Spencer McCandless
Elias Law Group LLP
10 G St. NE, Ste. 600
Washington, D.C. 20002

Lindsay McAleer
Elias Law Group LLP
1700 Seventh Ave., Ste. 2100
Seattle, WA 98101

Todd L. Bice
Pisanelli Bice, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101

An employee of the
Office of the Nevada Attorney General

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

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

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

Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

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

PLAINTIFF'S PROPOSED DESCRIPTION OF EFFECT

PLAINTIFF'S PROPOSED DESCRIPTION OF EFFECT

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

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DATED this 21st day of December, 2021.

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

By: _____

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice forthcoming*)
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169

MARC E. ELIAS, ESQ. (*pro hac vice forthcoming*)
SPENCER MCCANDLESS, ESQ. (*pro hac vice forthcoming*)
ELIAS LAW GROUP LLP
10 G St. NE Suite 600
Washington, DC 20002

LINDSAY MCALEER, ESQ. (*pro hac vice forthcoming*)
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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

Craig A. Newby, Esq.
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite #3900
Las Vegas, NV 89101
CNewby@ag.nv.gov

Attorney for Barbara Cegavske

Todd Bice, Esq.
Jordan T. Smith, Esq.
PISANELLI BICE, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
tlb@pisanellibice.com
JTS@pisanellibice.com

Attorneys for Nevada Voters First PAC and Todd L. Bice

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

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

Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com
John A. Fortin, Esq., Bar No. 15221
JAF@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101
Attorneys for Defendants
Nevada Voters First PAC and Todd Bice

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiffs,

v.

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

Defendants.

Case No.: 21 OC 00172 1B

Dept. No.: I

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

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

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

JURISDICTION AND VENUE

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

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

PARTIES

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

4. Admit.

5. Admit.

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

GENERAL FACTUAL ALLEGATIONS

7. Admit.

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

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

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

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

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

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

13. Admit.

FIRST CAUSE OF ACTION

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

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

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

17. Denied.

18. Denied.

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

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

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

SECOND CAUSE OF ACTION

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

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

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

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

25. Denied.

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

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

THIRD CAUSE OF ACTION

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

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

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

31. Denied.

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

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

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

AFFIRMATIVE DEFENSES

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

PRAYER FOR RELIEF

WHEREFORE, the Defendants pray for relief as follows:

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

2. Plaintiff's Complaint be dismissed with prejudice;

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

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

AFFIRMATION

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

DATED this 22nd day of December, 2021.

PISANELLI BICE PLLC

By: _____

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

Attorneys for Defendants
Nevada Voters First PAC and Todd Bice

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

CERTIFICATE OF SERVICE

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

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

Craig A. Newby
Deputy Solicitor General
Nevada Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
CNewby@ag.nv.gov

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

Bradley S. Schrager
John Samberg
Eric Levinrad
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Pkwy #590 South
Las Vegas, NV 89169
bschrager@wrslawyers.com
jsamberg@wrslawyers.com
elevinrad@wrslawyers.com
dbravo@wrslawyers.com

Attorneys for Plaintiff

Marc E. Elias
Spencer McCandless
Elias Law Group LLP
10 G St. NE Suite 600
Washington, DC 20002
melias@elias.law
smccandless@elias.law

Lindsay McAleer
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
lmcaleer@elias.law

Attorneys for Plaintiff

An employee of PISANELLI BICE PLLC

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

Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com
John A. Fortin, Esq., Bar No. 15221
JAF@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101
Attorneys for Defendants
Nevada Voters First PAC and Todd Bice

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

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

I. INTRODUCTION

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

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

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

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

II. OVERVIEW

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

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

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

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

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

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

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

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

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

(*Id.* ¶ 6.)[4]

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

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

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

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

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

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

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

> 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

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

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

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

(*Id.* at RCV0009.)

III. ANALYSIS

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

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

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

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

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

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

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

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

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[5] *See* NRAP 36(3).

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

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

More recently, in the unpublished decision of *Prevent Sanctuary Cities*, the Court again rejected the same, indeed at times near-verbatim, arguments that Plaintiff's counsel makes here. The subject of the proposed initiative there was "sanctuary cities," and designed to preclude the state as well as counties and cities from undermining federal immigration enforcement. 2018 WL 2272955 at *3. As the Court explained in reversing the trial court's single-subject analysis, while that 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. *Id.*

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

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– is untenable and tellingly unsupported by any authority. Indeed, it is contrary to existing Nevada law, which provides that the "primary" is just a step – the first step – in the selection process. After all, if there is not more than one candidate who has filed for nomination in a partisan race, their names "must be omitted" from any primary election and instead placed only on the general election ballot. NRS 293.260(3). In that instance, the primary's purpose — winnowing the number of candidates — is unnecessary and the primary (the first step) is skipped. Likewise, for a non-partisan race, if one candidate secures over 50% of the vote in the primary then he or she is declared the winner – *i.e.*, the traditional rule – and there is no need for a general election for that office. NRS 293.260(5). Plainly, the "primary" and "general" elections are not "separate" standalone subjects. Instead, they are intertwined steps in the process for how officeholders are 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).

The Alaska Supreme Court's recent decision in *Meyer v. Alaskans for Better Elections*, 465 P.3d 477 (Alaska 2020) concerned a similar, albeit broader, 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. Just like here, partisan political interests sought to stop Alaska voters from considering the initiative. 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.*

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). The court

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

Plaintiff ignores Nevada law and how the primary and general elections are interrelated steps in the selection process. His near-singular reliance upon *Las Vegas Taxpayer Accountability v. City Council*, 125 Nev. 165, 208 P.3d 429 (2009) wildly misses the mark. 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.*

Plaintiff confesses his lack of serious substance when he characterizes the present Initiative as engaging in "log rolling" because the changes to the primary election process and ranked-choice voting for the general election are separate subjects since "either could stand on its own without the other." (Pl.'s Memo., at 10:21-22.) Plaintiff either misunderstands the law or knowingly misrepresents it. 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.*

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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, Plaintiff cannot seriously pretend that nonpartisan primaries do not functionally relate to the effectiveness of ranked-choice voting.[6] After all, the benefits of ranked-choice voting in the general election are much negated if the primary election outcome results in a general election between just two candidates. Changing the closed primary system and providing that the top-five finishers advance to the general election is what makes ranked-choice voting most effective. These two aspects plainly function together so as to achieve the Initiative's purpose.[7]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contrast that with *Herbst Gaming* where the initiative in question did "not make an appropriation or required the expenditure of money. It simply expand[ed] the statutory list of public places in which smoking [wa]s unlawful and le[ft] untouched provisions that set forth the penalty 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.

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

Here, the Initiative does not impose a new requirement of funding elections, nor a specific level. 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. Holding 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. Having existing elections conducted in a way so as to maximize the way in which ***all*** voters can have a say is not a mandate calling for a separate funding mechanism.

Second, 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* Ex. 2, RCV0006, RCV0008) *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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CONCLUSION

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

AFFIRMATION

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

DATED this 22nd day of December, 2021.

PISANELLI BICE PLLC

By: _____

Todd L. Bice, Esq., Bar No. 4534
Jordan T. Smith, Esq., Bar No. 12097
John A. Fortin, Esq., Bar No. 15221
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Attorneys for Defendants
Nevada Voters First PAC and Todd Bice

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

CERTIFICATE OF SERVICE

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

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

Craig A. Newby
Deputy Solicitor General
Nevada Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
CNewby@ag.nv.gov

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

Bradley S. Schrager
John Samberg
Eric Levinrad
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Pkwy #590 South
Las Vegas, NV 89169
bschrager@wrslawyers.com
jsamberg@wrslawyers.com
elevinrad@wrslawyers.com
dbravo@wrslawyers.com

Attorneys for Plaintiff

Marc E. Elias
Spencer McCandless
Elias Law Group LLP
10 G St. NE Suite 600
Washington, DC 20002
melias@elias.law
smccandless@elias.law

Lindsay McAleer
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
lmcaleer@elias.law

Attorneys for Plaintiff

An employee of PISANELLI BICE PLLC

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

EXHIBIT A

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

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

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

Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

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

PLAINTIFF'S PROPOSED DESCRIPTION OF EFFECT

PLAINTIFF'S PROPOSED DESCRIPTION OF EFFECT

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

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DATED this 20th day of December, 2021.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: _____

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice forthcoming)*
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169

MARC E. ELIAS, ESQ. (*pro hac vice forthcoming*)
SPENCER MCCANDLESS, ESQ. (*pro hac vice forthcoming*)
ELIAS LAW GROUP LLP
10 G St. NE Suite 600
Washington, DC 20002

LINDSAY MCALEER, ESQ. (*pro hac vice forthcoming*)
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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

Craig A. Newby, Esq.
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite #3900
Las Vegas, NV 89101
CNewby@ag.nv.gov

Attorney for Barbara Cegavske

Todd Bice, Esq.
Jordan T. Smith, Esq.
PISANELLI BICE, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
tlb@pisanellibice.com
JTS@pisanellibice.com

Attorneys for Nevada Voters First PAC and Todd L. Bice

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

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

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

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

ORDER FOLLOWING TELEPHONIC CONFERENCE HELD ON DECEMBER 15, 2021

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

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

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

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

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

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

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

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

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

7. All pleadings and papers shall be mailed to or filed at the Court, and shall also be e-mailed to chambers to Ms. Billie Shadron at BShadron@carson.org.

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

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

10. Hearing on this matter shall be on **January 5, 2022**, starting at 10:30 a.m. PST and ending at approximately 12:00 p.m. PST. As the parties have agreed that this is a legal challenge not including evidence, there shall be no

presentation of evidence by the parties at the hearing, which shall consist only of oral argument. The hearing will be held remotely via video and telephonic-conferencing.

IT IS SO ORDERED this 29 day of December, 2021.

DISTRICT COURT JUDGE

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

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

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

Attorneys for Plaintiff Nathaniel Helton

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

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

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

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

I. INTRODUCTION

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

II. ARGUMENT

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

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

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

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

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

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

give general election voters more "choices."

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

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

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

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

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

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

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

B. The Petition Violates the Nevada Constitution's Prohibition on Initiatives that Mandate Unfunded Expenditures.

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

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

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

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

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

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

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

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

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

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

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

C. The Petition's Description of Effect Is Legally Insufficient

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

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

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

had been enacted through the initiative process in which the electorate had made an informed choice and thus was likely to know of this effect. *Id.*

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

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

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

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

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

III. CONCLUSION

For reasons discussed, the Petition is legally deficient. Plaintiff's requested relief should be granted.

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[8] That Defendants consider these voters to be properly left out of the final tally stands in marked contrast to their view of voters who choose not to participate in partisan primaries.

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

AFFIRMATION

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

DATED this 30th day of December, 2021

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: _____

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice pending)*
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
(702) 341-5200/Fax: (702) 341-5300
bschrager@wrslawyers.com
jsamberg@wrslawyers.com
elevinrad@wrslawyers.com
dbravo@wrslawyers.com

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

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

Attorneys for Plaintiff Nathaniel Helton

CERTIFICATE OF SERVICE

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

Craig A. Newby, Esq.
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite #3900
Las Vegas, NV 89101
CNewby@ag.nv.gov

Attorney for Barbara Cegavske

Todd Bice, Esq.
Jordan T. Smith, Esq.
PISANELLI BICE, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
tlb@pisanellibice.com
JTS@pisanellibice.com

Attorneys for Nevada Voters First PAC and Todd L. Bice

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

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

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

A. FINDINGS OF FACT

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

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

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

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

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

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

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

(*Id.* ¶ 6.)

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

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

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

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

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

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

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

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

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

[2] *See* NRAP 36(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. In comparison, *Herbst Gaming* involved an initiative that did "not make an appropriation or required the expenditure of money. It simply expand[ed] the statutory list of public places in which smoking [wa]s unlawful and le[ft] untouched provisions that set forth the penalty 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

January 6, 2022

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

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

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

Billie Shadron
Judicial Assistant

Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com
John A. Fortin, Esq., Bar No. 15221
JAF@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101
Attorneys for Defendants
Nevada Voters First PAC and Todd Bice

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiffs,

v.

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

Defendants.

Case No.: 21 OC 00172 1B

Dept. No.: II

NOTICE OF 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: _____

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

Attorneys for Defendants
Nevada Voters First PAC and Todd Bice

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

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

Craig A. Newby
Deputy Solicitor General
Nevada Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
CNewby@ag.nv.gov

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

Bradley S. Schrager
John Samberg
Eric Levinrad
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Pkwy #590 South
Las Vegas, NV 89169
bschrager@wrslawyers.com
jsamberg@wrslawyers.com
elevinrad@wrslawyers.com
dbravo@wrslawyers.com

Attorneys for Plaintiff

Marc E. Elias
Spencer McCandless
Elias Law Group LLP
10 G St. NE Suite 600
Washington, DC 20002
melias@elias.law
smccandless@elias.law

Lindsay McAleer
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
lmcaleer@elias.law

Attorneys for Plaintiff

An employee of PISANELLI BICE PLLC

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

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

A. FINDINGS OF FACT

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

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

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

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

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

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

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

(*Id.* ¶ 6.)

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

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

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

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

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

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

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

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

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

[2] *See* NRAP 36(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. In comparison, *Herbst Gaming* involved an initiative that did "not make an appropriation or required the expenditure of money. It simply expand[ed] the statutory list of public places in which smoking [wa]s unlawful and le[ft] untouched provisions that set forth the penalty 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

January 6, 2022

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

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

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

Billie Shadron
Judicial Assistant

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

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

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

Attorneys for Plaintiff

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

NATHANIEL HELTON, an individual,

Plaintiff,

vs.

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

Defendants.

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

NOTICE OF APPEAL

NOTICE OF APPEAL

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

DATED this 14th day of January, 2022.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: _____

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
ERIC LEVINRAD, ESQ. (*pro hac vice*)
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169

MARC E. ELIAS, ESQ. (*pro hac vice*)
SPENCER MCCANDLESS, ESQ. (*pro hac vice*)
ELISABETH FROST, ESQ. (*pro hac vice forthcoming*)
ELIAS LAW GROUP LLP
10 G St. NE Suite 600
Washington, DC 20002

LINDSAY MCALEER, ESQ. (*pro hac vice*)
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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

Craig A. Newby, Esq.
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite #3900
Las Vegas, NV 89101
CNewby@ag.nv.gov

Attorney for Barbara Cegavske

Todd Bice, Esq.
Jordan T. Smith, Esq.
PISANELLI BICE, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
tlb@pisanellibice.com
JTS@pisanellibice.com

Attorneys for Nevada Voters First PAC and Todd L. Bice

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

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

INDEX OF EXHIBITS

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

EXHIBIT 1

EXHIBIT 1

Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com
John A. Fortin, Esq., Bar No. 15221
JAF@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101
Attorneys for Defendants
Nevada Voters First PAC and Todd Bice

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NATHANIEL HELTON, an individual,

Plaintiffs,

v.

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

Defendants.

Case No.: 21 OC 00172 1B

Dept. No.: II

NOTICE OF 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.

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

AFFIRMATION

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

DATED this 12th day of January, 2022.

PISANELLI BICE PLLC

By: _____

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

Attorneys for Defendants
Nevada Voters First PAC and Todd Bice

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

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

Craig A. Newby
Deputy Solicitor General
Nevada Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
CNewby@ag.nv.gov

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

Bradley S. Schrager
John Samberg
Eric Levinrad
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Pkwy #590 South
Las Vegas, NV 89169
bschrager@wrslawyers.com
jsamberg@wrslawyers.com
elevinrad@wrslawyers.com
dbravo@wrslawyers.com

Attorneys for Plaintiff

Marc E. Elias
Spencer McCandless
Elias Law Group LLP
10 G St. NE Suite 600
Washington, DC 20002
melias@elias.law
smccandless@elias.law

Lindsay McAleer
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
lmcaleer@elias.law

Attorneys for Plaintiff

An employee of PISANELLI BICE PLLC

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

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

A. FINDINGS OF FACT

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

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

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

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

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

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

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

(*Id.* ¶ 6.)

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

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

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

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

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

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

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

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

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

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[2] *See* NRAP 36(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. In comparison, *Herbst Gaming* involved an initiative that did "not make an appropriation or required the expenditure of money. It simply expand[ed] the statutory list of public places in which smoking [wa]s unlawful and le[ft] untouched provisions that set forth the penalty 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

January 6, 2022

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

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

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

Billie Shadron
Judicial Assistant