IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 84110

NATHANIEL HELTON, an Individual

Appellant,

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

Respondents.

ANSWERING BRIEF OF RESPONDENTS NEVADA VOTERS FIRST PAC, A NEVADA COMMITTEE FOR POLITICAL ACTION; AND TODD L. BICE, IN HIS CAPACITY AS THE PRESIDENT OF NEVADA VOTERS FIRST PAC.

Appeal from the First Judicial District Court, Carson City
The Honorable James E. Wilson, Jr., Department II
District Court Case No. 21 OC 00172 1B

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that judges and justices of this Court may evaluate possible disqualification or recusal.

Respondent Nevada Voters First PAC is a registered Nevada Committee for Political Action and its president is Respondent Todd L. Bice. The public reporting for Voters First, identifying its disclosures, is provided at https://www.nvsos.gov/SoSCandidateServices/AnonymousAccess/CEFDSearchUU/GroupDetails.aspx?o=7x%252bWosBIByXbZw3Nwr0l8Q%253d%253d.

The law firm whose partners or associates have or are expected to appear for Respondents is PISANELLI BICE PLLC.

DATED this 1st day of April 2022.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

ISSUES PRESENTED

(1) **Single Subject:** The Better Voting Nevada Initiative proposes to change how voters select their elected representative for Congress, executive branch constitutional offices, and state legislators. For the defined offices, the Initiative eliminates the closed primaries and provides for top-five ranked choice voting. As each of the Initiative's provisions functionally relate to how voters chose these officeholders, did the district court correctly conclude that the Initiative comports with NRS 295.009's single subject requirement?

(2) **Unfunded Mandate:** Nevada law already provides for primary and general elections, and long has. The Initiative neither compels a new election, the expenditure of new funds nor mandates how any particular dollars are spent. It changes who participates in the primary election and how the votes are tabulated in the general. Did the district court correctly conclude that the Initiative did not violate Article 19, Section 6 of the Nevada Constitution as an unfunded mandate, particularly where Appellant presented no evidence of any supposed expenditure?

(3) **Description of Effect:** The district court concluded that Respondents had appropriately used the description's allowed 200 words to accurately describe what the Initiative proposes in a straightforward and non-argumentative manner. Since Appellant challenged the description, the district court ordered him to provide a proposed alternative, which only then exposed Appellant's efforts to misuse the

description as a partisan advocacy piece. Did the district court correctly find that Appellant had failed in his burden under NRS 295.009(1)(b)?

I. INTRODUCTION AND SUMMARY OF ARGUMENT

There can be no serious debate about the increasing polarization of our current politics. Fewer and fewer Nevadans are choosing to identify or register with the two major political parties. The result is a plurality of the electorate being excluded from an effective voice in choosing of officeholders, due to the closed primary system and resulting take it-or-leave-it general election.

Under the current selection method, the incentives are not aligned with the interests of most voters. Candidates must first succeed in a closed partisan primary, where a shrinking number of voters participate. Thus, candidates are incentivized to appeal to just to those narrow voters who can and will participate in the closed primary process.

And, since many races for public office are not competitive – one party having a decided advantage, including by gerrymandered districts – the partisan voters who participate in the closed primaries play an oversized role. Besides, even in a race where the general election is competitive, the candidates have mostly been chosen by a small minority of voters and the general electorate is then typically left with a take it or leave it choice that were selected by that small minority in the primary.

Respondents Nevada Voters First and its President, Todd L. Bice (collectively "Voters First") propose to realign the incentives for candidates so that they correspond with the interest of a true majority of ***all*** voters through the Better Voting Nevada Initiative ("Initiative"). The Initiative proposes a different, more inclusive method for choosing the specified partisan officeholders. The Initiative would dispense with the closed primary system, allowing ***all*** Nevada voters to participate no matter their party affiliation. The top five finishers in the primary would then advance to the general election, where voters are allowed to choose, if they want, to rank the candidates in order of preference.

In this way, the incentives for a candidate and officeholder are now more aligned with the majority of ***all*** voters, not just the select few closed-primary participants. With the Initiative, the incentive structure will reward the candidate and officeholder who best addresses the interests of a true majority of the voters.

The district court correctly held that the Initiative's primary purpose – to change how voters choose these specified elected representatives – comports with NRS 295.009's single subject rule. Each of the Initiative's provisions – including eliminating closed primaries and providing for ranked choice voting – are "functionally related and germane to" this one subject. After all, each relates to how the voters select these representatives.

The primary election is the initial step where candidates are culled before moving to the general election's final choice. That there are two steps in the electoral-selection process does not make each election a separate "subject" for purposes of a constitutional initiative. The Initiative contains no "logrolling." As the district court held, "[c]hanging the closed primary 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." Contrary to Appellant Nathaniel Helton ("Helton's") wants, the elements of an initiative need not be "dependent" on each other or metaphysically inseparable to satisfy the single subject rule.

The district court also rightly determined that the Initiative does not constitute an unfunded mandate. Providing for elections is a basic government function, and State and local governments have provided for elections since Nevada's founding. The Initiative does not impose any new election, appropriation, or compel the expenditure of any new funds. There is no evidence that the Initiative would require any added expenditure to conduct these long-held elections. Although it is not a legal requirement, it is just as conceivable that a single nonpartisan primary – instead of two separate, closed primaries – would save taxpayer money. The Legislature and government officials retain the discretion to determine how to fund and spend the monies necessary to carry out elections, just as they do today.

Finally, the district court recognized that Helton had failed in his burden to challenge the Initiative's description of effect. Helton's voluminous kitchen-sink approach – urging this Court to change one word, any word, of the description – is a transparent attempt to invalidate the tens of thousands of signatures that have already been secured and thereby deprive voters of their right to be heard. Indeed, the district court's approach of forcing Helton to provide an alternative description exposed the lack of substance to Helton's quarreling.

Voters First's description is straightforward and succinctly summarizes what the Initiative does and how it intends to do it. Given its 200-word limitation, a description cannot, and need not, try to cram every detail or collateral effect. Nevada voters are intelligent and sophisticated enough to read the actual Initiative for more information if they have additional questions.

Helton's challenge to the Initiative does not stem from any genuine (little "d") democratic interests or ideals. Rather, he is a stalking horse for (big "D") Democratic partisan interests that do not want to lose their perceived stranglehold on Nevada's electoral process. Thus, Helton focuses on how the Initiative would impact private political parties, falsely asserting that it "'would do away with the parties' ability to select their candidates" and the party-affiliate notations on the ballot "would no longer indicate that the party had affiliated itself with the

candidate."[1] Helton untenably wants the Initiative's collateral effect on internal party politics – the vested interests of his partisan sponsors – to be the description's focus. But Nevada's initiative process is meant to give voters greater participation in government. It is not designed to protect or advance the self-interests of political party bosses.

While Voters First has assembled a broad and deep coalition across the ideological spectrum in support of changing how the specified officeholders are selected, it is ultimately for the Nevada voters to decide if they want this change. As the district court recognized, whether such a change is a good or bad idea is not for the judiciary. Nevada's voters are more than capable of deciding for themselves. At this stage, it is enough that the district court committed no error when it denied Helton's declaratory and injunctive relief and allowed the Initiative to promptly proceed with signature collection.

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[1] (*See*, *e.g.*, Appellant's Opening Br. ("AOB") 8.) Both of these contentions are simply false. Nothing in the Initiative stops any party from conducting their own nominating process and nothing in the Initiative bars a political party from designating their nominated candidate. This is just more misinformation by Helton's partisan sponsors, recognizing that they cannot defeat the actual Initiative on its merits with the voters.

II. STATEMENT OF FACTS AND STATEMENTS OF THE CASE

A. The Better Voting Nevada Initiative.

On November 12, 2021, Voters First filed the Initiative with the Nevada Secretary of State.[2] (Joint App. ("JA") 0149; *see also* JA0016-29 (citing to the Initiative).) Voters First's proposal is to change how certain partisan offices are elected in Nevada. (JA0150 ¶ 1.) The rationale for the Initiative is based on reporting over the last several years showing that a plurality of Nevadans are choosing to identify as non-partisan, as opposed to joining the two major political parties.[3] (*Id*.) The current method of selecting existing core officeholders

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[2] Voters First derive its foregoing Statement of Facts from the district court's Findings of Fact and Conclusions of Law; and Judgment contained in the district court's January 6, 2022, Order. (*See* JA0146-63.) Contrary to Helton's shot at the district court, it did not verbatim adopt Voters First Proposed Finding of Fact and Conclusions of Law. (*Cf*. AOB 3.) To be sure, the district court utilized the vast majority of what Voters First submitted to the court, since the court agreed with Voters First and Voters First prepared a factually-accurate and legally-correct proposal for Judge Wilson's consideration.

[3] (*See* JA0090 n.1 (citing to 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/.)

effectively excludes that plurality of Nevada voters from having a thoughtful and effective say in the election of their representatives. (*Id.*)

Voters First's proposal follows a similar initiative that Alaskan voters approved that ended that state's closed primaries and implemented ranked-choice voting. (JA0150 ¶ 2.) The Initiative provides that all Nevada 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 to the top-five vote getters. (*Id.*; *see also* JA0020-24 (Proposed Amendment to Article 15, Sections 4 and 14 adding Section 17 subparts 1-9 to implement an open primary); *see also* JA0021(Proposed Amendment to art. 15, § 17, ¶ 8 (defining the partisan offices to which the initiative applies).)

The Initiative explains to voters that candidates will be permitted to self-identify and the candidates can choose whether they wish to identify with any political party, 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.'" (JA0150-51 ¶ 4 (quoting JA0021 Proposed Amendment to art. 15, § 17, ¶ 5).) The Initiative tells voters that the state-run and

government-funded primary system will no longer be the means by which private political parties choose their 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 the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(*Id*. (quoting JA0021 Proposed Amendment to art. 15, § 17, ¶ 6).) Indeed, there is nothing in the Initiative that controls how political parties may choose their nominees.

If a top-five vote getter "'withdraws, is disqualified, dies, or is otherwise deemed ineligible'" between the primary and the general election, the Initiative permits "'the candidate receiving the next greatest number of votes at the primary election for partisan office'" to be included as one of the five candidates at the general election. (JA0151 ¶ 5 (quoting JA0021, Proposed Amendment to art. 15, § 17, ¶ 7.) The Initiative 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*. (quoting JA0022, Proposed Amendment to art. 15, § 17, ¶ 9(a)).)

Once the primary election whittles down the pool of candidates, the top five finishers proceed to the general election where voters are allowed to rank each candidate in order of preference. (*See* JA0151 ¶ 6 (citing to JA0022, Proposed

Amendment to art. 15, § 18, ¶¶ 1-2).) As the Initiative explains, voters may choose just one candidate, or may decide to rank all five. (*Id.*; *see also* JA0023, Proposed Amendment to art. 15, § 18, ¶ 8 (a)-(g)).)

The Initiative directs that when tabulating the ballots in the general election, "'[e]ach 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.'" (JA0151 ¶ 7 (quoting JA0022, Proposed Amendment to art. 15, § 18, ¶ 6).) Should the first round of tabulation end with no candidate obtaining over 50% of the first-place votes, "'tabulation proceeds in sequential rounds'" until the candidate after any round with the highest level of support (*i.e.* more than 50%) is determined the winner. (*Id.*; (quoting JA0022-23, Proposed Amendment to art. 15, § 18, ¶ 7).)

In accordance with NRS 295.009(1)(b), the Initiative includes 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.

(JA0152 ¶ 8 (quoting JA0025).).

B. Helton Challenges the Initiative.

Purporting to act alone, Helton filed a legal action in the First Judicial District on December 6, 2021, as an individual. (*See* JA0001-12 (Complaint); JA0033-53 (Memorandum of Points and Authorities in Support of Complaint).) Helton brought three claims against Voters First and Nevada's Secretary of State seeking declaratory and injunctive relief, claiming that: (1) the Initiative violated Nevada's single-subject rule under NRS 295.009(1)(a); (2) the Initiative violated Article 19, Section 6 of the Nevada Constitution because the Initiative is an unfunded mandate; and (3) the Initiative's 200-word description of effect violates NRS 295.009(1)(b).[4] (*Id*.)

[4] Before the district court, the Secretary of State did not take a position on the legality of the Initiative, nor did she take a position on the policy merits of the Initiative. (*See* JA0075-78.) Accordingly, no further discussion of the Secretary's position is necessary here. (*See id*.)

On December 15, 2021, the district court held a telephonic conference with all parties and set specific deadlines for the challenge in accordance with NRS 295.095. (*See* JA0115-17.) At the court's conference, Helton stipulated and agreed that he intended to present no evidence outside of the Initiative itself as part of his challenge. (JA0016-17 ¶ 10.) Along with setting deadlines, the district court ordered both sides to submit proposed Findings of Fact and Conclusions of Law and it further ordered Helton, because he challenged the Initiative's "description of effect", to "provide the Court and opposing counsel with a draft statement of effect that [Helton] believes accurately reflects the content of the petition." (JA0015-16 ¶ 2.)

On December 21, 2021, Helton furnished what he claimed is a compliant 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 not rank other candidates will have their ballots rejected. Making those 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.

(*See* JA0079-82.) Two days later, Voters First answered Helton's Complaint and opposed his Memorandum. (*See* JA0083-88 (Answer); JA0089-114 (Opposition).) Helton then filed his Reply. (JA118-30.)

After hearing extensive oral arguments of the parties (*see* Supp. App. ("SA") 0001-46.), the district court denied Helton's challenges. (*See* JA0131-45.) Helton now appeals.

III. ARGUMENT

A. Nevada Voters are Entitled to Determine How Their Elected Representatives are Chosen.

Article 19, Section 2(1) of Nevada's Constitution provides that "the people reserve to themselves the power to propose, by initiative petition, . . . amendments to this Constitution." This 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 democratic right to change our charter, Nevada courts must "make ***every effort*** to sustain and preserve the people's constitutional rights to amend their constitution through the initiative process." *Id*. at 912, 141 P.3d at 1247 (emphasis added). "[I]t 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).

Indeed, "[c]onsistent with the constitutional interests at stake, the law requires the challenger of the initiative, not its proponent, to bear the burden demonstrating that a proposed initiative is clearly invalid because it embraces more than one subject." *Prevent Sanctuary Cities v. Haley*, 2018 WL 2272955, at * (Unpublished Order Affirming in Part, Reversing in Part, and Remanding, May 16, 2018); NRAP 36(c)(3). Indeed, under Nevada's liberal approach preserving for the voters their right to make constitutional amendments, the opponent must make a "compelling showing" that the measure is "clearly invalid." *Las Vegas Taxpayer Accountability Comm. v. City Council of Cit of Las Vegas*, 125 Nev. 165, 176, 208 P.3d 429, 436 (2009) (hereinafter "*LVTAC*"). "Placing the burden on the challenger ensures that the 'power of initiative [is] liberally construed to promote the democratic process.'" *Prevent Sanctuary Cities*, 2018 WL 2272955, at *2**.** (quoting *Farley v. Healey*, 431 P.2d 650, 652 (Cal. 1967)).

Simply put, efforts to impede the voters' initiative power is contrary "to the democratic process." *Farley*, 431 P.2d at 652; *City of Firecrest v. Jensen*, 143 P.3d 776, 779 (Wash. 2006) (explaining that Washington disfavors limitations on proposed initiatives and they are "broadly construed in favor of upholding" the

initiative and challengers must establish its "unconstitutionality beyond a reasonable doubt").

Helton did not request, and the district court did not hold, an evidentiary hearing. (*See* SA0001-46.) Again, Helton expressly stipulated that his challenge presented purely legal questions and that he would not present any evidence outside of the Initiative itself. (*See* JA0116-17 ¶10.) Therefore, while this Court may facially review de novo aspects of Helton's challenge, *Nevadans for Nevada v. Beers*, 122 Nev. 930, 942, 142 P.3d 339, 347 (2006), the Court should review for substantial evidence his arguments (including on the alleged unfunded mandate) that rest on factual suppositions or anecdotes. *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). Likewise, the denial of injunctive relief is reviewed for abuse of discretion. *Id*.

B. The District Court Correctly Determined the Initiative Does Not Violate the Single Subject Rule.

While the Nevada Constitution confers on citizens the right to directly instigate laws through the initiative process, "[t]he constitution authorizes the Legislature to 'provide by law for procedures to facilitate' the people's power to legislate by initiative." *Education Initiative PAC v. Committee to Protect Nevada Jobs*, 129 Nev. 35, 40, 293 P.3d 874, 877-78 (2013) (quoting Nev. Const. art. 19 § 5).

Of those procedures, the Legislature directs that all initiatives "embrace only 'one subject.'" *Id*. at 40, 293 P.3d at 878 (quoting NRS 295.009(1)(a)). NRS 295.009(1)(a) states that "[e]ach petition for initiative … must [e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." NRS 295.009(2) further clarifies that an initiative complies with the single subject requirement "if the parts of the proposed 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."

Such a requirement in legislative matters – which is what the voters undertake with an initiative petition – is hardly unique. After all, the Nevada Constitution has long directed that when the Legislature exercises its legislative powers, each law "shall embrace but one subject, and matter, properly connected therewith . . . ." Nev. Const. Art. 4, §17. And it bears remembering that the people's power to enact legislation is coextensive with that of the Legislature itself. Nev. Const. Art. 19, § 2.

1. The Initiative's Subject is Hardly Excessively General.

The first step in the analysis is to identify the Initiative's subject or purpose from the petition's language and its proponents' arguments and then assess whether the subject is excessively broad or general. *See Prevent Sanctuary Cities*, 2018 WL 2272955, at *2-*3. The district court correctly recognized that the Initiative's single subject is to change the manner in which "the specified office

holders – defined in the Initiative as the 'Partisan Offices' – are chosen by votes." (JA0155 ¶ 18.) Helton contends that such a subject is too general and impermissibly vague under Nevada law. (AOB at 18, 23-24.) He posits that it "lacks a unified, central purpose." (*Id.* at 29.) Respectfully, Helton's assertions are unserious and ignore this Court's precedents.

This Court has had several occasions to apply the single subject rule 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." 122 Nev. at 907, 141 P.3d at 1244. This 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* the Court approved the proposed initiative's broad subject because the "primary purpose is clearly to fund education." 129 Nev. at 50-51, 293 P.3d at 884-85.

More recently, in the unpublished decision of *Prevent Sanctuary Cities*, this Court again rejected the same arguments that Helton offers here. 2018 WL 2272955,

at *2. 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. *Id*. 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 adhered to the single-subject requirement because they functionally related and were germane to the broad policy of immigration enforcement. *Id.*

Helton tries to distinguish these cases because, in his view, they did not seek "to solve two very distinct problems." (AOB at 28.) Yet, it is Helton, not the Initiative or its proponents, that characterizes the current selection process as involving two distinct problems. (*Id*.) The Initiative is about a single issue: changing how these representatives are elected, irrespective of Helton's failed math formulation. Recall, *Prevent Sanctuary Cities* addressed ***three*** different levels of government, 2018 WL 2272955, at *3, and *Education Initiative PAC* involved ***two*** distinct taxes. 129 Nev. at 50-51, 293 P.3d at 884-85. In both cases, this Court rejected the same math formulation that Helton offers here – that the three levels of government were three different subjects and the two different taxes are two different subjects. *Prevent Sanctuary Cities*, 2018 WL 2272955, at *2; *Education Initiative*, 129 Nev. at 50-51, 293 P.3d at 884-85.

Prevent Sanctuary Cities explains that "the initiative's components are 'functionally related' and 'germane' … as each component prohibits a different level of Nevada government (state, county, city) from enacting laws or adopting policies that interfere with the enforcement of federal immigration laws." 2018 WL 2272955, at *3. *Education Initiative* holds 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. *Educ. Initiative PAC*, 129 Nev. at 51, 293 P.3d at 885. Thus, addressing more than one sub-issue that is 'functionally related and germane to" the overarching theme does not render a subject impermissibly broad or general.

Helton's heavy reliance on *LVTAC* is likewise misplaced. (*See* AOB at 23.) There, an initiative contained two unrelated provisions: one to require voter approval of certain city lease-purchase agreements and the other to require voter approval for aspects of the redevelopment planning process. *LVTAC,* 125 Nev. at 170, 208 P.3d at 432. The proponents argued that the initiative'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.* at 181, 208 P.3d at 440. But the first provision limited the city's authority to enter all lease-purchase agreements, even those unrelated to the redevelopment process. *Id*. at 180-81, 208 P.3d at 439. And the second provision involved the authority of an entity unrelated

to the city, the Las Vegas Redevelopment Agency. *Id*. at 180-81, 208 P.3d at 439. It is unsurprising that the Court had difficultly discerning the initiative's overarching subject matter. *Id.* at 180, 208 P.3d at 439. The only way to tie the two provisions together was to recast the proponents' theme excessively generally as "voter approval." *Id.* at 181, 208 P.3d at 440. But voter approval of what? Anything and everything could be crammed into such a limitless topic.

Here, the Initiative has a singular subject and each of the provisions relates to that subject: changing how the specified officeholders acquire the jobs. If "eminent domain," *Heller*, 122 Nev. at 907, 141 P.3d at 1244, "funding public school education," *Educ. Initiative*, 129 Nev. at 50-51, 293 P.3d at 884-85, and "sanctuary cities," *Prevent Sanctuary Cities*, 2018 WL 2272955, at *3 satisfy the single subject rule, then this Initiative easily satisfies the requirement. It is far more narrow and tailored.

2. The Initiative's Provisions are "Functionally Related and Germane to [Its] General Subject."

The Initiative's provisions all functionally relate to the proposed method by which voters chose the specified officeholders. Again, the Initiative proposes an open primary with top-five finishers advancing to the general election where voters may rank each of the five candidates. The district court currently recognized that "the adoption of non-partisan primaries for these offices functionally relates to the effectiveness in ranked-choice voting." (JA0156 ¶ 23.) It observed that "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." (*Id.*) "Changing the closed primary system and providing that the top-five finishers advance to the general," the court continued, "is what makes ranked-choice voting most effective in conformity with the Initiative's purpose." (*Id.*)

Helton's assertion – that these two components "are discrete," "serve two distinct purposes," and "are wholly independent" – is just unsubstantive rhetoric. That there are two elections – the primary which culls the number of candidates down to no more than five, and the general which is for choosing the ultimate winner – does not diminish the fact that they are interrelated and "functionally related" steps in how officeholders are elected.

The district court accurately cut through Helton's spin and saw his position for what it is: an argument that "the 'primary' election is separate and distinct subject from the 'general' – insisting that no one initiative can simultaneously address both." (JA0155 ¶ 18.)[5] Helton now pretends that the district court misunderstood his position. (*See* AOB at 25.) But Helton betrays his true position again on appeal when he asserts that the single subject rule prevents a single initiative from making

[5] The district court also quoted Helton's claim where he "postulat[ed] that changes to the primary election process and rank-choice voting for the general election are separate and discrete subjects since 'either could stand on its own without the other.'" (JA0156:11-13 (quoting JA0043:21-22).)

more than one change to the primary and general elections at the same time. (*See*, *e.g.*, AOB 25-26.)

Under Nevada law, the primary and general elections are intertwined steps in the process for how officeholders are elected, which is the primary purpose of this Initiative. The "primary election" is a step – the first step – in the selection process. For instance, currently if there is only 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). There is no need for the primary election – the first step in the selection process – so it is skipped and the candidates proceed to the general election.

This interrelationship is again demonstrated for current nonpartisan races: 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). Indeed, Nevada voters have adopted initiative petitions that have simultaneously imposed provisions governing both primary and general elections. *See* Nev. Const. art. 2, § 10 (Constitutional amendment adopted by the voters in 1996, which simultaneously imposed campaign contribution limits on both the primary ***and*** general elections).[6] The "primary" and "general" elections

[6] Contrary to Helton's suggestion, it is immaterial that Article 2, Section 10 was enacted before the Legislature enacted NRS 295.009. (See AOB 25 n.5.) The

are intertwined steps for how officeholders are ultimately elected, not "separate" standalone subjects.

Helton stands on an overruled Colorado Supreme Court decision to criticize the district court's ruling. (AOB at 26.)[7] But he is wrong again. In *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 333 P.3d 76, 78 (Colo. 2014), an initiative sought to (1) revamp existing constitutional provisions allowing the recall of state and local officials and (2) create a brand-new constitutional right to recall non-elected state and local officers. That court held that the two changes were not part of a single subject because "a ***new*** constitutional right to recall non-elected officers has no necessary connection to the initiative's new recall petition, election, and vacancy provisions." *Id*. at 85 (emphasis added). As that court noted, one aspect

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Nevada Constitution already imposed a "one subject" limitation. *See Bell v. First Jud. Dist. Ct.*, 28 Nev. 280, 81 P. 875, 877 (1905); Nev. Const. art. 4, § 17. But Helton's efforts to sidestep this problem by arguing about timing is a tacit confession that under his view of the single subject rule, voters could not have even imposed campaign contribution limits in a single initiative, since both the primary and the general elections have to be treated separately.

[7] Helton states that *Matter of Title* (2014) was "disapproved of on other grounds" by a similarly named case from 2019. (AOB at 26 (citing a *Matter of Title, Ballot Title & Submission Clause for 2019-2020 #3*, 442 P.3d 867, 873 (Colo. 2019)). However, the 2019 case directly called the 2014 case dicta and stated parts of it were "incorrect." 422 P.3d at 872. The 2019 case relaxed Colorado's approach to the single-subject rule. *Id*. at 873 ("[W]e decline to adopt a rule that would presume that an initiative contains multiple subjects merely because it is aimed at repealing in its entirety a constitutional provision that contains multiple subjects. To the extent that any of our prior cases have suggested otherwise, we disapprove those cases.").

of that initiative petition proposed an entirely new election, not previously existing under Colorado law, concerning non-elected government officials. *Id*.

Helton's reference to Colorado authority that "electing officers is simply the inverse of recalling them" again misses the mark. (AOB at 26 (relying on *In re Title for 2013-2014 #76*, 333 P.3d at 81-83).) The Voters First Initiative does not create a brand new election, let alone for previously non-elected positions. The Initiative simply modifies the two existing steps in the process of electing representatives. That is why the Colorado Supreme Court ruled that the other litany of proposed changes to the ***existing*** recall process "constitute a single subject" even though they were "significant" and "substantial." *In re Title for 2013-2014 #76*, 333 P.3d at 81-83. Simply stated, the numerical number of modifications required to implement the Initiative does not determine whether it is a single subject. *See Heller,* 122 Nev. at 910, 141 P.3d at 1245 ("[T]he vast majority of the initiative's provisions – twelve of fourteen – address eminent domain."); (*cf.* AOB at 12, 18 (counting number of provisions in the Initiative).)

The Alaska Supreme Court's decision in *Meyer v. Alaskans for Better Elections*, 465 P.3d 477 (Alaska 2020) is more on point and supports the district court's ruling. *Meyer* 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).

Helton tries to distinguish *Meyer* and contends that Alaska "follows a ***much different*** single-subject standard than Nevada – one that is 'very liberal.'" (AOB at 27 (emphasis in original).) In fact, Helton characterizes Nevada's single-subject standard as being "strictly enforced." (AOB 12). But this Court has repeatedly endorsed a liberal approach of initiative petitions and the single subject rule to foster direct citizen participation in democracy. *See Prevent Sanctuary Cities*,

2018 WL 2272955, at *2 ([P]ower of initiative is ***liberally construed*** to promote the democratic process.") (emphasis added) (cleaned up)); *Wise v. Bechtel Corp*., 104 Nev. 750, 754, 766 P.2d 1317, 1319 (1988). (stating that the "one subject" rule in Nev. Const. art. 4, § 17 is "liberally construed") (citing *State v. Payne*, 53 Nev. 193, 197, 295 P. 770, 771-72 (1931)).[8] So, even though all matters must be "functionally related and germane to" a single subject, this Court utilizes a liberal view of that phrase to avoid hindering the democratic process.

3. Helton's "Depend Upon" Standard is Wrong.

Helton's real approach (and error) is exposed by his repeated emphasis that to satisfy the single-subject requirement, all elements of an initiative must "depend upon one another." (*See, e.g.*, AOB at 20, 7.) He points to Louisiana and California as exemplar states which have some, but not all, of the components set forth in this Initiative. Apparently, if another state has adopted any form of electoral change, no matter how small, that means that Nevada voters must consider each such change separately since that is what happened in another state.

Yet, Nevada law neither textually nor practically requires that parts of an initiative "depend upon one another" so that if one part is removed, the initiative falls

[8] *See also California Assn. of Retail Tobacconists v. State of California*, 109 Cal. App. 4th 792, 809, 135 Cal. Rptr. 2d 224, 237 (2003).

apart like a house of cards[9]. Textually, NRS 295.009(2) merely provides that "parts of the proposed initiative" "***functionally relate[]***" and be "***germane to***" the "general subject of … the proposed initiative." (emphasis added). As long as parts are "functionally related" and "germane," then they constitute a single subject under NRS 295.009.

Practically, if Helton's "depends upon" approach to the single subject rule were correct, 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 on 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. They did not "depend upon one another."

Perhaps some voters may have preferred the rights articulated in Sections 1-4 in that initiative, 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 theoretically stand alone. Doing so "would significantly hinder the people's power to legislate by

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[9] Indeed, before the district court, Helton argued that the Initiative's provisions were not severable. (JA00045-46.) As Voters First correctly noted, that very contention contradicted Helton's suggestion that the provisions were not germane to the subject of how officeholders are selected. (JA00999 n.7.) Tellingly, before this Court, Helton now makes no reference to his non-severability argument.

initiative and effectively bar all but the simplest ballot measures." *Educ. Initiative*, 129 Nev. at 45, 293 P.3d at 881.

It is immaterial that Helton speculates that "a Nevada voter could be in favor of open primaries but oppose ranked-choice voting or vice-versa." (AOB at 22.) 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. Under Helton's approach, each impacted office would constitute 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 while 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. How a governor is elected is not "dependent on" how a legislator is elected.

But initiative proponents need not propose separate initiatives simply because self-interested opponents hypothesize how some voters might prefer some choices over others. The law allows Nevada voters to propose to change how 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 unlike nonpartisan offices, like judges, and term

limits applying to partisan officeholders through a single initiative is allowed). The district court correctly recognized that non-partisan primaries functionally relate to the effectiveness of rank-choice voting and the benefits and effectiveness of one would be diluted or lost without the other. (JA0138-39 ¶ 23.)

4. The Initiative Does Not "Log Roll."

Although the Initiative's parts are all functionally related and germane to a single subject, Helton untenably contends that the Initiative engages in "log rolling." (AOB at 17-24.) 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). Justice Hardesty analogized a single-subject violation by comparing an initiative that included increased penalties to sex offenders while also including a provision abolishing the death penalty and explained that even if voters

> were aware of both provisions, the people would face a 'Hobson's choice'; they could either accomplish the goal of further protecting the public from sex offenders while simultaneously abolishing a law that they generally favor, or forgo the opportunity of increased sex offender protections in favor of preserving the death penalty. The single-subject requirement, then, is useful in focusing the petition signers' and voters' attention on the one subject to be advanced, without creating confusion over what that subject is, and without making them choose between competing policy goals.

Id. at 922-23, 141 P.3d at 1254 (footnote omitted).

The district court recognized that the Initiative does not engage in "log rolling" by proposing changes to the primary and general elections. (JA0138-39 ¶¶ 22-23.) After all, that is the process for how voters chose their representatives. It is not log rolling simply because each of an initiative's provisions "could" be theoretically 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 someone general subject'") (citations omitted).

As described above, the open primary and top five finishing functionally relate to ranked-choice voting in the general election – all of which are germane to how Nevadans elect their representatives. The Initiative's benefits and efficiencies will be lost if the parts are segregated.[10] Even so, the Initiative does not combine wholly divergent political issues – one popular and one unpopular – to corner the voters.[11]

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[10] Again, Helton's contention below that these two aspects of the Initiative are not severable underscores how and why each is intertwined to its purpose. (JA0045-46.)

[11] Helton also claims significance in the Institute for Political Innovation's reference to the fact that Final Five Voting ("FFV") involves ***two*** innovations. (AOB 20-21.) 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 more than two elected offices – congressional and multiple state-wide offices. That does not mean that it involves more than one subject.

Contrary to Helton's assertions, the Initiative does not force Nevada voters to make a Hobson's choice. Instead, the Initiative is seeking to remedy the Hobson's choice that Nevada voters practically face with every take-it-or-leave-it general election between candidates that have been selected by a narrow minority of voters as a result of closed primaries.

C. The Initiative does not Violate Article 19, Section 6.

Helton's efforts to keep the Initiative from the public by claiming that it is an unfunded mandate also fails. (AOB 29-38.) Article 19, Section 2(1) of the Nevada Constitution provides that the citizen's democratic initiative process is "subject to the limitation 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."

"[A]n appropriation is the setting aside of funds, and an expenditure of money is the payment of funds." *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001). "Stated differently, 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***." *Herbst Gaming,*

Inc. v. Heller, 122 Nev. 877, 890, 141 P.3d 1224, 1233 (2006) (emphases added). The classic example is when an initiative "sets aside a specified amount of money for a certain purpose and is executable in such a way that it requires no further legislative action." *Id.* at 890 n.39, 141 P.3d at 1233 n.39 (describing *Alaska Action Ctr., Inc. v. Municipality of Anchorage*, 84 P.3d 989, 993 (Alaska 2004)).

Helton claims that the "Petition mandates expenditures because it would leave Nevada officials no choice but to spend significant funds on a massive overhaul of the state's electoral systems." (AOB at 31.) He hypothesizes about the types of equipment, software, labor, and public relations that he guesses might be made to implement the Initiative, if passed. (*Id.*).

To begin, Helton presented no evidence to the district court about the supposed cost of the Initiative or the current governmental cost to hold elections. In fact, he agreed below that his challenge was purely legal and required no fact-finding. (JA0116-17 ¶ 10.) As a result, the district court found his unfunded mandate claims were "unsupported speculation." (JA0157 ¶ 25.)

On appeal, Helton concedes his evidentiary failure and, in footnotes, now cites to inadmissible websites with cost estimates for making election changes in other states, with no evidence of any comparison to Nevada. (AOB at 33 n.8-9.) With this sleight of hand, Helton then proclaims that "it is self-evident that [the changes] will not be free." (*Id.* at 32.) Trying to escape his stipulation as to not presenting outside

evidence to the district court, Helton resorts to pretending as though his claims of increased cost is subject to judicial notice. (*Id*. at 33 (citing NRS 47.150(2).)

But for obvious reasons a discussion about the Initiative's alleged costs will be "reasonably questioned" and will be "subject to reasonable dispute." *See* NRS 47.130(2) (stating requirements to judicially notice matters of fact). Helton stipulated to the district court that he would be presenting no actual evidence, and his efforts to renege on that now is a confession of his lack of substance.

Besides Helton's dearth of evidence, the inquiry is not whether conducting elections in the manner the Initiative sets forth will cost money, but whether the Initiative ***mandates a new expenditure that otherwise does not exist.*** *See Rogers v. Heller*, 117 Nev. at 176, 18 P.3d at 1038. For example, in *Rogers*, This Court invalidated an initiative that sought to raise funds as well as impose a funding threshold for Nevada's public elementary and secondary schools. 117 Nev. at 171-76, 18 P.3d at 1035-1038. The Court held,

> [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 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). The initiative impermissibly imposed "a new requirement" of a specific funding level that did not already exist

and improperly invaded the Legislature's traditional "broad discretion in determining education funding." Thus, the Court concluded that the initiative violated article 19, section 6 and was void. *Id*. at 177, 18 P.3d at 1039.

On the other hand, this Court upheld the initiative in *Herbst Gaming* because it did "not make an appropriation or require[] 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). The Court reasoned:

> 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).

Here, the Initiative does not impose a new requirement of funding elections or demand any funding level. The Initiative does not require any specific equipment, software, personnel, or training. The Initiative only seeks election reform to include all Nevada voters in a single non-closed primary which narrows the field to the top-five candidates who are then ranked by the voters. Nevada law already provides

for holding both primary and general elections. The Initiative simply changes who participates as a voter and a candidate in the primary and how the votes are tabulated in the general election.

The district court observed "[i]t 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." (JA0158 ¶ 27.) Just as this Court held in *Rogers*, the district court found that these types of preexisting "common burdens are not what Article 19, Section 6 concerns." (*Id.*) Even Helton concedes that an appropriation violates Section 6 when it "would require officials to spend even a dollar ***that they otherwise would not*** . . . ." (AOB at 35 (emphasis added).) The government must already fund and hold elections. There is a certain amount of updating election equipment, software, training, and public education every cycle. The Initiative does not order any official to spend a dollar more than they otherwise would. As Helton suggests, the modified elections could be held "using the exact same resources as previous" and "Nevada official maintain[] their discretion to decide whether to dedicate additional funds…" (AOB at 36 (discussing *Herbst*).)[12]

[12] Helton predicts that it is "impossible for the Legislature, the Secretary of State, or local election officials to comply with its provisions without spending additional money." (AOB at 37.) But of course, Helton offered no evidence of the current cost to hold an election or any evidence of the cost under the proposed Initiative.

The Initiative also does not remove the discretion of budgeting officials. NRS 293.442-NRS 293.460 provides discretion to the Nevada Secretary of State as well as local officials to incur expenses to 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. The Initiative leaves the "mechanics" of funding and administering the primary and general elections as it presently exists.

Helton contends 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 an initiative's aims, but whether it takes away their discretion to decide whether to spend the money in the first place." (*Id*.) The Legislature, however, has already determined that the government ***must*** hold elections and provided a method of funding them. *See* NRS 293.442-NRS 293.460. Government officials lack discretion to cancel elections. It is engrained in the Constitution. The Initiative does not require officials to spend any more money than already necessary to hold an election; just as in the initiative in *Herbst Gaming* did not compel government officials to spend more money to enforce the law.

D. The Initiative's Description is Straightforward, Succinct, and Nonargumentative – Unlike Helton's Proposal.

Helton's kitchen sink attack on the description of effect reinforces how such challenges have become routine in trying to interfere with the voters' rights. Helton epitomizes that abuse. He even resorts to a new contention never raised before the district court: The Initiative's effect on a candidate's ability to get on the general election ballot via signature gathering. (AOB 1.)[13] Yet, Helton's need for new contentions serves as a confession and, in any event, were waived. *Valley Health Sys., LLC v. Eighth Jud. Dist. Ct.* 127 Nev. 167, 172, 252 P.3d 676, 679 (2011) (points not presented to the district court are waived).[14]

NRS 295.009(1)(a) obligates and allows the Initiative's proponents to "[s]et forth, in not more than 200 words, a description of the effect of the initiative or

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[13] Although Helton raises this issue now in his question presented, that certainly was not one of his contentions before the district court (JA0048-51). Besides, the voters plainly understand that since all candidates will be allowed to participate in the primary – which is not the case with a closed primary – succeeding as one of the top five in the primary is the means by which all candidates ascend to the general election ballot.

[14] This is particularly important when someone challenges the description of effect. Signatures cannot be gathered until the district court challenge is resolved. And as the Legislature provides, the district court approval of the description has significant consequences. After all, if the district court changes any of the words of the description, no further challenges can be made so as to delay the signature gathering process. NRS 295.061 (specifying that if a description is amended to conform with a court's order, "the amended description may not be challenged.").

referendum if the initiative or referendum is approved by the voters. The description must appear on each signature page of the petition."

The description cannot and "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.

Descriptions are, by necessity, short summaries of what the initiative aims to achieve and how it intends to do so. *Id*. at Nev. at 49, 293 P.3d at 883-84. 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)).

The description of effect is assessed holistically to determine if it is straightforward, sufficient, and nonargumentative. *Educ. Initiative*, 129 Nev. at 48, 293 P.3d at 883. Courts should not take a "hyper-technical interpretation" because doing so "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." *Id*. 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)). In fact, due to the tight word limitation, it would frequently be impossible to describe every aspect.

As this Court has observed, "[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.[15] The burden lies with Helton to prove to that the description of effect is "clearly invalid." *LVTAC.*, 125 Nev. at 176, 208 P.3d at 436. As the district court found, Helton failed to do so.

1. The Description Need Not Detail the Secondary Effects on the Majority Political Parties.

After examining the Initiative's description, the district court found that "its plain language is straightforward, succinct, and non-argumentative." (JA0159-60 ¶ 32.) Unlike *Coalition for Nevada's Future v. RIP Commerce*

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[15] Helton disagrees with this Court's acknowledgment that voters can read the petition to supplement the description. (AOB at 42 n.12.) He states that it "swallows the description of effect requirement entirely." (*Id*.) Conversely, under Helton's view, ignoring the actual petition would effectively require an entire initiative to be written in 200 words so it all fits in the description of effect.

Tax, Inc., 132 Nev. 956, 2016 WL 2842925, at *4 (2016), the Initiative's description does not omit the practical ramifications and effects of the initiative. As the district court notes in its order:

> Within the 200 words allowed, the description informs voters what the Initiative proposes to 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.

(JA0160-61 ¶ 36 (emphasis added).)

Helton bemoans that only a few of the 200 words notes the knock-on effects to partisan political parties. He criticizes the description for failing to express his contention that "political parties would effectively no longer be capable of selecting their candidates for the general election" or controlling how candidates choose to identify themselves on the ballot." (AOB at 41.) But not only does Helton mischaracterize what the Initiative does in that regard, he ignores the holding of the United States Supreme Court on this very aspect of open primaries.

In *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 454 (2008) the court rejected the same partisan contentions that voters are too unsophisticated to understand the difference between a party nominee and a candidate's designation. That case involved a recently passed ballot initiative in

Washington addressing how candidates could designate themselves in an open primary. Because elections are a state-run process, private political parties – whether it is Republicans, Democrats, or others – have no right "to have their nominees designated as such on the ballot." *Id*. at 454. Elections are a process for choosing representatives, not a platform for partisan political expression. *Id*.

As the Supreme Court explained in addressing Washington's open primary system that allowed candidates to self-identify with the party of that candidate's choice: "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." *Id.* at 454.

The district court reasonably determined that the Initiative's description adequately puts voters on notice of "the reduced role of party control and party affiliation under the new process." (JA0161-62 ¶ 39.) The district court considered "[t]he specifics about how party designation appears on the printed ballot form [to be], 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 stage." (JA0161-62 ¶ 39.) The description "accurately states that the Initiative is ***'eliminating partisan primaries'*** and establishing a single top-five primary election and ranked-choice voting general

election." (JA0161 ¶ 39 (emphasis in original) (quoting JA0025).) It "continues, 'voters participate in a single primary election ***regardless of party affiliation or non-affiliation***.'" (*Id*. (emphasis in original) (quoting JA0025).)

The description puts any interested voter on notice about the tangential effects on political party identification. For more information, a voter is able to read the entire Initiative about partisan identification. (*See* AOB at 47-48.) Helton concedes that the Initiative will require a conspicuous disclaimer that "'[e]ach candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that a candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.'" (AOB at 43 (quoting JA0022, Proposed Amendment to art. 15, § 18, ¶ 5).)[16]

Helton's real complaint is that the description does not use its limited 200 words to advocate for his partisan political interests. Ironically, for this point, he now foists the ballot language of the similar Alaska initiative, touting it as being prepared by an "impartial government official." (AOB 45.) Going outside of the record yet again, Helton asserts that this supposedly disinterested and impartial

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[16] Helton's assertion that the very existence of this "conspicuous disclaimer" means that it is a central component to the Initiative which must be disclosed in the description is utterly disingenuous. Helton and his counsel know the source of this language. It is directly from the Supreme Court's decision in *Washington State Grange*, 552 U.S. at 454, and is directed at avoiding claims of voter confusion on the ballot itself. It does not mean the disclaimer is central to the Initiative.

government official devoted the first full paragraph of what Alaska refers to as its "ballot summary" to the effect upon partisan political parties. (AOB 44.) According to Helton, this is proof that an "impartial" party would use the description to highlight the interests of the partisan political parties.

But Helton's characterization of Alaska's process is not as he pretends. First, there is no such thing as an "impartial" elected official when it comes to voters seeking to change the way in which those very same partisan elected officials acquire and retain their offices. What Helton tries to pass off as a disinterested "impartial government official" was the very lieutenant governor who tried to stop Alaska voters from being allowed to consider the initiative to establish non-partisan primaries and ranked-choice voting. Because that lieutenant governor would not release the signature booklets for signature circulation – erroneously claiming that the initiative violated Alaska's single subject requirement – the initiative's sponsor had to file suit and compel the lieutenant governor's compliance. *See Alaskans for Better Elections v. Meyer*, 2019 WL 6499035 (Alaska Super., Oct. 28, 2019) (ordering that the lieutenant governor "must distribute petition signature booklets immediately by order of this Court"); *Meyer*, 465 P.3d 477.

That a partisan politician with a vested interest in defeating the Alaska initiative wanted to elevate partisan political parties is hardly the standard bearer for what Nevada law requires of the Voters First Initiative. Sorry Mr. Helton, but there

is no such thing as an "impartial" partisan elected official when it comes to voters seeking to change how that same official's election is going to be made more competitive.

Besides that, Nevada's process is different. In Alaska, what that state calls a "ballot summary" is essentially the same document for the signature gathering process as well as for what appears on the ballot itself. *See State of Alaska v. Vote Yes for Alaska's Fair Share*, 478 P.3d 679, 683 (Alaska 2021).[17] But in Nevada, the Legislature has vested the Initiative's proponents with the right to propose the description, limited to 200 words. Nevada provides a different process for a ballot summary after the initiative qualifies for the ballot. In Nevada, differing ballot committees are formed to present arguments for and against its passage. NRS 293.252.

Helton's efforts to co-op the description of effect and turn it into an advocacy piece for partisan political interests is not in accordance with Nevada law. There is no reason to take a dim view of the voters' comprehension skills after reading the Initiative and Helton possesses no evidence that circulators will somehow mislead potential signatories. (*See* AOB at 49-50.) With the limited 200 words allowed, the

[17] Notably, even in this case cited by Helton, the court partially invalidated the lieutenant governor's ballot summary – the person Helton calls an impartial governmental official – for improperly engaging in "partisan suasion." *Id.* at 681.

description prepared by Voters First accurately describes what the Initiative proposes in a non-argumentative fashion.

2. The Description is Not Misleading About the General Election System.

Besides complaining about the secondary impact upon political parties, Helton argues that including the phrase "as traditionally" and omitting unproven financial consequences render the description misleading. (AOB at 45-49.) But the Initiative's description accurately states that "as traditionally, a candidate receiving the first-choice votes of more than 50% wins." (JA0025.) Plainly, when a candidate receives more than 50% of all votes, they are the traditional winner. The description lays out what happens when no candidate receives more than 50% of the initial first-choice votes. (*Id*.) The tabulation process continues until eventually, as with traditional elections, one candidate obtains the most votes and is declared the winner. (*Id*.) By definition, the winner in ranked-choice voting is the candidate who receives the most votes.

Contrary to Helton's wordsmithing, it is the long-established "traditional" rule that any candidate who receives more than 50% is necessarily the declared winner. The fact that under the current system someone may still win with a plurality even if they receive less than 50% of the votes does not anyway change the well-understood traditional rule that a candidate with 50% plus 1 is necessarily the

victor. The district court agreed that the reference to "as traditionally" is accurate and not misleading or confusing. (JA0160-62 ¶¶ 36, 40.)

Equally dubious is Helton's assertion that the description needs to explain to the voters the concept of an "exhausted" ballot should a voter choose not to rank all five of the available candidates. (AOB 47.) With all due respect to Helton, his entire argument is predicated upon believing that voters are ignorant. Plainly, voters can understand that if they choose not to rank all of the candidates, which is their right, and their preferred candidate gets eliminated, they will have chosen not to cast any votes for the other available candidates. After all, it is called ranked-choice voting for a reason. Voters can understand that if they choose not to rank all the candidates, that choice may impact who ultimately wins. The voters are not stupid.

For all the reasons stated above about Helton's unfunded mandate argument, *supra* Part 1.C., no description of costs needs to be included in the Initiative. Without evidence of any costs beyond the existing budgets for elections, the description does not need to include made up fiscal impacts. Alluding to costs without evidence, as Helton does, is misleading and argumentative. As the district court recognized, the time and place for the types of arguments Helton wants to present are provided elsewhere under Nevada law. *See* NRS 293.252.

The conciseness and accuracy of Voters First's description is even more apparent when contrasted with Helton's competing version. Helton proposed

description reads like an argumentative advocacy piece for partisan political parties – not an informational summary. (*See* JA0161 at ¶ 38.) Because he sought to use the limited word count to peddle partisan talking points, the district court noted that Helton's version even "omits disclosing to which elective offices the Initiative would even apply." (*Id.* ¶ 37.) He then proposed to use the limited word space to address "the remote hypothetical of what happens should there be a tie between the fifth and sixth place candidates in the non-partisan primary." (*Id.*)

Helton criticizes the district court for requiring him to even prepare a proposed alternative, now emphasizing that it is Voters First's obligations to prepare the description. (AOB 39.) But the district court's requirement is as straightforward as it is appropriate: The Legislature has limited the description to 200 words. A party opposing an initiative that has a forthright issue with the description can and will present a forthright alternative. When Helton showed how he proposed to use the limited 200 words – outright misstating the offices the Initiative would even apply and engaging in other argumentative spin – he confirmed his lack of legitimate dispute as to how Voters First utilized the limited 200 words that are available.

The district court found that "[t]he 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." (JA0162 ¶ 42.) Helton has made no showing that the description is "clearly invalid" as Nevada law requires to permit him to deprive

voters of their rights to consider the Initiative or to make a change that would then invalidate the signatures that Voters First has already gathered.

IV. CONCLUSION

The district court should be affirmed.

DATED this 1st day of April 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface in size 14 font in Times New Roman.

I further certify that I have read this brief and it complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains approximately 11,600 words.

Finally, I hereby certify that to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 1st day of April, 2022, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **RESPONDENT'S ANSWERING BRIEF** properly addressed to the following:

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