

**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.

Electronically Filed
May 27 2022 02:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANT'S REQUEST FOR JUDICIAL NOTICE

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 pending*)

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

Pursuant to NRS 47.150(2), Appellant Nathaniel Helton requests that the Court take judicial notice of the following:

On or around May 20, 2022, the Fiscal Analysis Division of the Legislative Counsel Bureau published the financial impact statement for the Petition at issue in this appeal and it was posted on the website of Secretary of State Barbara Cegavske. *See Financial Impact of the Initiative Petition to Amend the Nevada Constitution – Identifier: C-01-2021 <https://www.nvsos.gov/sos/home/showpublisheddocument/10568/637886493853600000>* (last visited May 24, 2022) and attached as **Exhibit A**. The financial impact statement estimates that the Petition, if enacted, would cost the state over \$3.2 million in upfront costs to implement and \$57,000 annually in ongoing spending. *Id.* The statement further specifies the specific kinds of expenditures that will be required if the Petition is enacted. *Id.*

As noted in Mr. Helton’s briefing, at the time of his filings, the Secretary had not yet posted a fiscal impact statement describing the costs associated with implementing the Petition. *See* Appellant’s Opening Brief at 32, n.7; Appellant’s Reply Brief at 14. This statement is now publicly available and pertinent to the issues in this case, particularly

whether the reforms in the Petition would require the state to spend money to implement them.

The Court may take judicial notice of facts “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” NRS 47.130(2)(b). This includes public records, including records of the Secretary of State. *See Jory v. Bennight*, 91 Nev. 763, 766, 542 P.2d 1400, 1403 (1975) (citing NRS 47.130(2)(b)).

///

///

///

///

///

///

///

///

///

///

///

///

Thus, Mr. Helton respectfully requests that the Court exercise its discretion to take judicial notice of the Fiscal Analysis Division's statement of financial impact attached as Exhibit A, including its conclusion that the Petition at issue would cost over \$3.2 million to implement. *See* NRS 47.150 (2).

DATED this 27th day of May, 2022.

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

By: */s/ Bradley S. Schragger*

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 pending*)
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 27th day of May, 2022, a true and correct copy of the **REQUEST FOR JUDICIAL NOTICE** 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/ Melissa Shield

Melissa Shield, an Employee of
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

EXHIBIT A

EXHIBIT A

**FINANCIAL IMPACT OF THE INITIATIVE PETITION TO AMEND THE
NEVADA CONSTITUTION – IDENTIFIER: C-01-2021**

FINANCIAL IMPACT – YES

OVERVIEW

The Statewide Constitutional Initiative Petition – Identifier: C-01-2021 (Initiative) proposes to amend various sections of the *Nevada Constitution* to make the following changes to the state’s election process:

1. All primary elections for partisan offices shall be held as open primaries.
2. The five candidates receiving the most votes at the primary election shall advance to the general election, regardless of the candidate’s party affiliation.
3. General elections for partisan offices, which include United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and state legislators, but excludes the offices of President and Vice President of the United States, shall be conducted by a ranked-choice ballot.

FINANCIAL IMPACT OF THE INITIATIVE

Pursuant to Article 19, Section 2 of the *Nevada Constitution*, an initiative proposing to amend the *Nevada Constitution* must be approved by the voters at two successive general elections in order to become a part of the *Constitution*. If this Initiative is approved by voters at the November 2022 and November 2024 General Elections, the provisions of the Initiative would become effective on the fourth Tuesday of November 2024 (November 26, 2024), when the votes are canvassed by the Supreme Court pursuant to NRS 293.395.

The following provisions of the Initiative have been identified as having a potential financial impact upon the state and local governments:

1. The provisions of the Initiative requiring that all primary elections for partisan offices be held as open primaries will result in a single sample ballot being produced for all registered voters for each primary election, irrespective of party affiliation, rather than separate sample ballots for voters of each political party. Although these provisions will eliminate the need for local governments to prepare separate sample ballots for each major political party, the addition of all candidates for each partisan race to all ballots, regardless of party affiliation, may result in an increase in the number of pages required to print each sample ballot, thereby potentially increasing the costs borne by local governments to provide those sample ballots.

Because the number of candidates who may choose to run for each partisan office in future primary elections cannot be predicted, the size of the sample ballot sent to each registered voter, and the resultant financial impact upon local governments, cannot be determined with any reasonable degree of certainty.

2. The provisions of the Initiative requiring that the five candidates receiving the most votes at the primary election shall advance to the general election, regardless of the candidate’s party affiliation, may also affect the number of candidates appearing on the sample ballot produced for registered voters at each general election and, therefore, may increase the number of pages required to print each sample ballot for registered voters at any general election held in this state.

Because the number of candidates who may choose to run for each office in future elections cannot be predicted, the potential increase to the size of the sample ballot that is sent to each registered voter before each general election, as well as the potential financial impact upon local governments that may result from these changes to the size of the sample ballot, cannot be determined with any reasonable degree of certainty.

3. The provisions that require general elections for certain partisan offices specified within the Initiative be conducted using a ranked-choice ballot will increase costs for the state and local governments, beginning with the general election that would be held in November 2026, if the Initiative is approved by voters at the November 2022 and November 2024 general elections.

In December 2021, the Secretary of State's Office provided information to the Fiscal Analysis Division relating to potential costs relating to the implementation of ranked-choice voting. This information, which was obtained with the cooperation of local governments, estimated one-time expenditures by the state and local governments of approximately \$3.2 million beginning in FY 2025, prior to the November 2026 General Election, relating to voter outreach and education, increased ballot stock costs, personnel expenses, equipment, software and programming costs for voting machines, and updates to training materials.

The Secretary of State's Office additionally estimated ongoing expenditures relating to the implementation of ranked-choice voting of approximately \$57,000 per fiscal year, relating to the payment of license fees to the vendors supplying election software to each of Nevada's seventeen counties. The information provided also indicated that there may be additional ongoing expenditures relating to increased ballot stock that would need to be used by the counties for each primary and general election, depending on the number of individuals who run for the offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and the State Legislature. However, because the number of individuals who may run for these offices in any given election cannot be predicted, the resultant impact upon ongoing expenditures for the state and local governments cannot be determined with any reasonable degree of certainty.

Based on the information provided by the Secretary of State's Office, in cooperation with affected local governments, the Fiscal Analysis Division has determined that the implementation of the Initiative will result in additional one-time and ongoing expenditures for the state and local governments following its effective date. However, the Secretary of State's estimates of these costs outlined in this financial impact statement were based on information available in December 2021. The Fiscal Analysis Division cannot easily estimate the costs associated with the implementation and administration of the Initiative beginning with the 2026 election cycle; therefore, the actual impacts upon one-time and ongoing expenditures that would be borne by the state and local governments in FY 2025 and future fiscal years cannot be determined with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – May 20, 2022