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 K. CEGAVSKE, IN HER CAPACITY AS NEVADA SECRETARY OF STATE, Respondents,	Case No. 84110 **RESPONSE AND OBJECTION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE**

Through the guise of a "Request for Judicial Notice," Appellant seeks to supplement the record after judgment with contested facts that have not been subject to cross-examination. This back-door effort is not only contrary to law, it is also contrary to Appellant's stipulation before the district court that no discovery or fact-finding is necessary to resolve the purely legal issues involved in this dispute.

The district court specifically asked Appellant whether he intended to present any evidence outside of the Initiative itself. Obviously, Respondents would have had an opportunity to contest any supposed facts or evidence. The Appellant informed the district court that he would be presenting no evidence concerning what he claimed were purely legal questions and thus stipulated that no evidence would be presented. (*See* JA0116-17 ¶10.) Simply put, Appellant stipulated away any ability to offer supposed costs as constituting an unfunded mandate, rationally

recognizing that election costs are a preexisting governmental obligation. Following his stipulation, the district court entered judgment in Respondents' favor thus closing the evidentiary record.

Under NRS 47.130(b), courts may only take judicial notice of facts that are "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." So-called "public documents" are not automatically subject to judicial notice. Courts cannot take judicial notice of *contested facts* contained in public documents. *Doe v. Regents of Univ. of California*, 23 F.4th 930, 941 n.15 (9th Cir. 2022) ("We cannot take judicial notice of disputed facts contained in public records, which is what it appears the Regents asks us to do here.").

The facts Appellant belatedly tries to shoehorn into this case are hardly beyond reproach. The LCB's "Financial Impact of the Initiative Petition to Amend the Nevada Constitution" is littered with speculation and missing obvious information. After observing that the Initiative "will eliminate the need for local governments to prepare separate sample ballots for each major political party," the LCB guesses that the Initiative "*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." The LCB continues that the provisions related to the open primary "*may* increase the number of pages required

to print each sample ballot for registered voters at any general election held in this state." Of course, the LCB omits how many pages it customarily prints for sample ballots and its fails to disclose the baseline cost for that printing. The LCB concedes that the cost of printing sample ballots "cannot be determined with any reasonable degree of certainty."

The largest line item comes from the LCB's speculation that it would need to spend approximately $3.2 million "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 LCB surmises that there would be ongoing costs of about $57,000 per fiscal year to pay vendor license fees. Again, the LCB does not reveal how much governmental entities already spend on each of these items every year to fulfill the preexisting constitutional obligation to hold elections. The LCB is careful not to suggest that the Initiative would actually cost the State one more cent than it already spends. Instead, the LCB demurs that "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*."

The LCB's conjecture would have been subject to vigorous cross-examination and competing evidence if the Appellant had attempted to offer such matters, which

he declined to do and acknowledged that such matters are not material to the claims Appellant has brought.

Appellant's Requests for Judicial Notice is really a request to expand the evidentiary record. But NRAP 10(c) only permits the trial court to "correct" or "modify" the record. "The purpose of [NRAP 10] is to allow the [ ] court to correct omissions from or misstatements in the record for appeal, *not to introduce new evidence in the court of appeals*." *United States v. Smith*, 344 F.3d 479, 486 (6th Cir. 2003) (quotations omitted; emphasis added).

"Judicial notice is 'not [a] talisman[ ] by which gaps in a litigant's evidentiary presentation ... may be repaired on appeal.'" *Am. Stores Co. v. Comm'r*, 170 F.3d 1267, 1270 (10th Cir. 1999) (quoting *City of New Brunswick v. Borough of Milltown,* 686 F.2d 120, 131 n. 15 (3d Cir. 1982); *see also Melong v. Micronesian Claims Comm'n,* 643 F.2d 10, 12 n.5 (D.C. Cir. 1980)). This Court has denied requests for judicial notice aimed at supplementing the record with materials that were never presented to the district court. *See, e.g.*, *Marvin v. Fitch*, 126 Nev. 168, 171 n.3, 232 P.3d 425, 427 n.3 (2010) ("We denied the requested relief and do not consider the supplemental material from either party because neither the transcript nor the subject of the request for judicial notice were presented to or considered by the district court.").

The Court should not permit Appellant to inject contested facts into this appeal that were not presented to the district court and which violate his prior stipulation. Appellant's Request for Judicial Notice fails.

DATED this 2nd day of June 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Pisanelli Bice PLLC, and that on the 2nd day of June 2022, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **RESPONSE AND OBJECTION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE** to:

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