IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

BARBARA CEGAVSKE, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE, Appellant, vs. ROBERT HOLLOWOOD, et al. Respondents.	**Supreme Court Case No. 84420** District Court No.: 21 OC 00182 1B

JOINT APPENDIX
VOLUME I of II

Appeal from the First Judicial District Court
Judge James E. Wilson Jr., Case No. 21 OC 00182 1B.

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Writ of Prohibition	3/9/22	II	JA 293

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CERTIFICATE OF SERVICE

I hereby certify that on this date, the foregoing **JOINT APPENDIX VOLUME I of II** was served on the individuals registered to receive service pursuant to the Court's electronic filing system. Service was also completed via electronic mail pursuant to a stipulation of the parties, and completed on the following individuals as shown:

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Dated: April 5, 2022.

/s/ Wayne Klomp
Wayne Klomp

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Attorneys for Petitioners

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

vs.

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Respondent.

Case No.: 21OC00182 1B
Dept.: ~~II~~

PETITION FOR WRITS OF MANDAMUS AND PROHIBITION

Petitioners Robert Hollowood, Kenneth Belknap, Nevadans for Fair Gaming Taxes PAC, and Fund Our Schools PAC petition this Court to issue writs of mandamus and prohibition against the Nevada Secretary of State, Barbara Cegavske, and allege as follows:

1. On or about January 14, 2020, and amended on or about March 30, 2020, Petitioner Hollowood, on behalf of Petitioner Nevadans for Fair Gaming Taxes PAC, submitted and filed with the Nevada Secretary of State Statutory Initiative Petition S-01-2020. *See* **Exhibits 1 and 2** to Petitioners' Appendix ("P.App."), filed concurrently herewith, true and accurate copies of the submitted initiative petition and its subsequent amendment. *See also* **Exhibit 3** to P.App., a true and accurate copy of the Notice of Intent to Circulate, in Petitioner Hollowood's name, for Statutory Initiative Petition S-01-2020.

2. On or about January 15, 2020, and amended on or about March 24, 2020, amended again on March 30, 2020, and amended a third time on June 19, 2020, Petitioner Belknap, on behalf of Petitioners Fund Our Schools PAC, submitted and filed with the Nevada Secretary of State the Statutory Initiative Petition S-02-2020. *See* **Exhibits 4, 5, 6, and 7** to P.App., true and accurate copies of the submitted initiative petition and its subsequent amendments. *See also* **Exhibit 8** to P.App., a true and accurate copy of the Notice of Intent to Circulate, in Petitioner Belknap's name, for Statutory Initiative Petition S-02-2020.

3. On or about June 2, 2021, Petitioner Hollowood, as the individual charged with the authority to do so under NRS 295.015(1)(b)(3), submitted to the Nevada Secretary of State a fully-executed Petition Withdrawal Form, withdrawing Statutory Initiative Petition S-01-2020 and directing no further action be taken on it,

pursuant to NRS 295.026.[1] *See* **Exhibit 9** to P.App., a true and accurate copy of the Petition Withdrawal Form associated with S-01-2020. *See* Exhibit 3 to P.App.

4. On or about July 20, 2021, the Nevada Secretary of State issued a request for legal opinion from the Nevada Attorney General on the question of whether there was a conflict between Article 19, Section 2 of the Nevada Constitution and NRS 295.026 on the question of the withdrawal of ballot initiative petitions by their proponents. On or about July 28, 2021, the Nevada Attorney General responded with Attorney General Opinion ("AGO") 2021-04, answering that, in the opinion of the Attorney General's Office, there was no such conflict preventing withdrawal of initiative petitions by proponents. *See* **Exhibit 10** to P.App., a true and accurate copy of AGO 2021-04.

5. On or about October 6, 2021, Petitioner Belknap, as the individual charged with the authority to do so under NRS 295.015(1)(b)(3), submitted to the Nevada Secretary of State a fully-executed Petition Withdrawal Form, withdrawing Statutory Initiative Petition S-02-2020 and directing no further action be taken on it, pursuant to NRS 295.026. *See* **Exhibit** 11 to P.App., a true and accurate copy of the Petition Withdrawal Form associated with S-02-2020. *See* Exhibit 8 to P.App.

6. On or about September 7, 2021, Nevada Secretary of State Barbara Cegavske issued a letter addressed to the Nevada Attorney General, indicating that her office would decline to permit Petitioners to withdraw their statutory initiative petitions and would place Statutory Initiative Petition S-01-2020 and, presumably,

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[1] **NRS 295.026 Withdrawal of petition.**

1. A petition for initiative or referendum may be withdrawn if a person authorized pursuant to NRS 295.015 to withdraw the petition submits a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State.

2. Once a petition for initiative or referendum is withdrawn pursuant to subsection 1, no further action may be taken on that petition.

Statutory Initiative Petition S-02-2020, on the 2022 General Election ballot. *See* **Exhibit 12** to P.App., a true and accurate copy of the Secretary's correspondence indicating her intentions.

7. The Secretary of State has no discretion under law to refuse to permit Petitioners to withdraw their respective initiative petitions, and therefore Petitioners are entitled to writs of mandamus directing her to do so.

8. Under pertinent law, the Secretary of State must be prohibited from placing the subject initiative petitions on the 2022 General Election ballot.

WHEREFORE, Petitioners ask for the following relief:

A. That the Court issue a writ of mandamus directing the Secretary of State to permit Petitioners to withdraw Statutory Initiative Petitions S-01-2020 and S-02-2020, per the terms of NRS 295.026 and her non-discretionary duty under law, and that no further action be taken with respect to those petitions;

B. That the Court issue a writ of prohibition directing the Secretary of State to desist from placing Statutory Initiative Petitions S-01-2020 and S-02-2020 on the 2022 General Election ballot in Nevada;

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C. That the Court grant such other and further relief as may be just, equitable, and proper, to effect the necessary result required in this action.

AFFIRMATION

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

DATED this 27 day of December, 2021

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

By: _____

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Petitioners,

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Respondent.

Case No.: 21OC00182 1B
Dept.: ~~1~~

PETITIONERS' AFFIRMATION

PETITIONERS' AFFIRMATION
Pursuant to NRS 239B.030/603A.040 (Initial Appearance)

The undersigned does hereby affirm that the document entitled **PETITION FOR WRITS OF MANDAMUS AND WRIT AND PROHIBITION** does not contain *"Personal Information"* and agrees that upon the filing of additional documents in the above matter, an Affirmation will be provided **ONLY** if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040), which means a natural person's first name or first initial and last name in combination with any one or more of the following data elements:

1. Social Security number.
2. Driver's license number, driver authorization card number or identification card number.
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.
4. A medical identification number or a health insurance identification number.
5. A user name, unique identifier or electronic mail address in combination with a password, access code or security question and answer that would permit access to an online account.

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The term does not include publicly available information that is lawfully made available to the general public.

DATED this 27 day of December, 2021

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

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Respondent.

Case No.: 21OC01821B
Dept.: II

PETITIONERS' APPENDIX OF EXHIBITS

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DATED this 21 day of December, 2021

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By: _____

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Attorneys for Petitioners

EXHIBIT 1

EXHIBIT 1

Initiative Petition – Statewide Measure ***State of Nevada***

Explanation – Matter in ***bolded Italics*** is new; matter between brackets [~~omitted material~~] is language to be omitted.

(S-01-2020)

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. This act provides for the imposition of a nine and three quarters percent license fee on nonrestricted gaming licensees' gross revenue in excess of $250,000 per calendar month.

Section 2. Subsection 1 of NRS 463.370 is hereby amended to read as follows:

1. Except as otherwise provided in NRS 463.373, the Commission shall charge and collect from each licensee a license fee based upon all the gross revenue of the licensee as follows:

(a) Three and one-half percent of all the gross revenue of the licensee which does not exceed $50,000 per calendar month;

(b) Four and one-half percent of all the gross revenue of the licensee which exceeds $50,000 per calendar month and does not exceed $134,000 per calendar month;~~ and~~

(c) Six and three-quarters percent of all the gross revenue of the licensee which exceeds $134,000 per calendar month ***and does not exceed $250,000 per calendar month; and***

(d) Nine and three-quarters percent of all the gross revenue of the licensee which exceeds $250,000 per calendar month.

Section 3. Severability. If any provision of this act, or the application thereof to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Section 4. Effective Date. This act shall become effective on July 1, 2021 if enacted by the Legislature and approved by the Governor, and on January 1, 2023 if approved by voters in the 2022 general election.

DESCRIPTION OF EFFECT

The Nevada Gaming Commission collects a monthly fee based on the licensee's monthly gross gaming revenue. Currently, for nonrestricted licensees, the maximum percentage collected is 6 ¾ percent of any monthly gross gaming revenue over $134,000. This initiative would increase that percentage to 9 ¾ percent for any monthly gross gaming revenue over $250,000. The fee increase proposed by this initiative would not affect gaming licensees whose monthly gross gaming revenue is less than $250,000. The initiative would not affect restricted licensees, *i.e.* those consisting of 15 or fewer slot machines. The initiative will increase the potential bond amount the Commission can require for licensure under NRS 463.225(2). The initiative may increase the amount of money that goes to augment stakes of pari-mutuel horse racing in counties with populations of under 100,000 under NRS 463.320(2)(c)-(d). The initiative will go into effect on July 1, 2021 if enacted by the Legislature and approved by the Governor, and on January 1, 2023 if approved by voters in the 2022 general election.

County of _____ (Only registered voters of this county may sign below)

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

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AFFIDAVIT OF CIRCULATOR
(To be signed by the circulator in the presence of a notary public)

STATE OF NEVADA)
: ss.
COUNTY OF _____)

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

_____
Signature of Circulator

Subscribed and sworn to or affirmed before me this _____ day of _____ (month), 2020.

_____
Notary Public

EXHIBIT 2

EXHIBIT 2

Explanation – Matter in ***bolded Italics*** is new; matter between brackets [~~omitted material~~] is language to be omitted.

(S-01-2020)

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. This act provides for the imposition of a nine and three quarters percent license fee on nonrestricted gaming licensees' gross revenue in excess of $250,000 per calendar month.

Section 2. Subsection 1 of NRS 463.370 is hereby amended to read as follows:

1. Except as otherwise provided in NRS 463.373, the Commission shall charge and collect from each licensee a license fee based upon all the gross revenue of the licensee as follows:

(a) Three and one-half percent of all the gross revenue of the licensee which does not exceed $50,000 per calendar month;

(b) Four and one-half percent of all the gross revenue of the licensee which exceeds $50,000 per calendar month and does not exceed $134,000 per calendar month;~~ and~~

(c) Six and three-quarters percent of all the gross revenue of the licensee which exceeds $134,000 per calendar month ***and does not exceed $250,000 per calendar month; and***

(d) Nine and three-quarters percent of all the gross revenue of the licensee which exceeds $250,000 per calendar month.

Section 3. Severability. If any provision of this act, or the application thereof to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Section 4. Effective Date. This act shall become effective on July 1, 2021 if enacted by the Legislature and approved by the Governor, or on November 22, 2022 if approved by voters in the 2022 general election.

Initiative Petition – Statewide Measure ***State of Nevada***

DESCRIPTION OF EFFECT

The Nevada Gaming Commission collects a monthly fee based on the licensee's monthly gross gaming revenue. Currently, for nonrestricted licensees, the maximum percentage collected is 6 ¾ percent of any monthly gross gaming revenue over $134,000. This initiative would increase that percentage to 9 ¾ percent for any monthly gross gaming revenue over $250,000. The fee increase proposed by this initiative would not affect gaming licensees whose monthly gross gaming revenue is less than $250,000. The initiative would not affect restricted licensees, *i.e.* those consisting of 15 or fewer slot machines. The initiative will increase the potential bond amount the Commission can require for licensure under NRS 463.225(2). The initiative may increase the amount of money that goes to augment stakes of pari-mutuel horse racing in counties with populations of under 100,000 under NRS 463.320(1)(c)-(d). The remaining revenue would be credited to the State General Fund. The initiative will go into effect on July 1, 2021 if enacted by the Legislature and approved by the Governor, or on November 22, 2022 if approved by voters in the 2022 general election.

County of _____ (Only registered voters of this county may sign below)

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DESCRIPTION OF EFFECT

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Initiative Petition – Statewide Measure ***State of Nevada***

DESCRIPTION OF EFFECT

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	YOUR SIGNATURE DATE / /	CITY COUNTY PETITION DISTRICT	

AFFIDAVIT OF CIRCULATOR
(To be signed by the circulator in the presence of a notary public)

STATE OF NEVADA)
: ss.
COUNTY OF _____)

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

_____
Signature of Circulator

Subscribed and sworn to or affirmed before me this _____ day of _____ (month), 2020.

_____
Notary Public

EXHIBIT 3

EXHIBIT 3

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

JStokes
1/14/2020 S-01-2020

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

State of Nevada — *Secretary of State Barbara K. Cegavske*

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

NAME OF PERSON FILING THE PETITION

Robert Hollowood

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

1. Robert Hollowood
2. Karl Byrd
3. Dan Price

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

Nevadans for Fair Gaming Taxes

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

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

X _____
Signature of Petition Filer

1/13/2020
Date

EL500
NRS 295.009; NRS 295.015
Revised: 07-24-2017

HOLL00017

EXHIBIT 4

EXHIBIT 4

S-02-2020

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

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

Section 1. Chapter 374 of NRS (the Local School Support Tax) is hereby amended to read as follows:

SALES TAX

NRS 374.110 Imposition and rate. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of **[~~2.25~~]** **3.75** percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in a county.

Section 2. Chapter 374 of NRS is hereby amended to read as follows:

USE TAX

NRS 374.190 Imposition and rate.

1. An excise tax is hereby imposed on the storage, use or other consumption in a county of tangible personal property purchased from any retailer for storage, use or other consumption in the county at the rate of **[~~2.25~~]** **3.75** percent of the sales price of the property.

Section 3. Severability. If any provision of this act, or the application therefore to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Section 4. This act shall become effective on July 1, 2021 if approved by the legislature, or on January 1, 2023 if approved by the voters.

DESCRIPTION OF EFFECT

The Nevada Revised Statutes currently set the total Local School Support Tax sales and use tax rates at 2.6%. This initiative proposes an amendment to the Nevada Revised Statutes to provide for an increase in the total Local School Support Tax sales and use tax rates from 2.6% to 4.1%. Proceeds of the Local School Support Tax support Nevada's public schools.

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

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DESCRIPTION OF EFFECT

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THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
County of _____)

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

_____
Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____day of_____, _____, by_____.

_____
Notary Public or person authorized to administer oath

EXHIBIT 5

EXHIBIT 5

Amended

FILED.NV.SOS
2020 MAR 24 PM 2:57

Initiative Petition – Statewide Statutory Measure *State of Nevada*

S-02-2020

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

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

Section 1. Chapter 374 of NRS (the Local School Support Tax) is hereby amended to read as follows:

SALES TAX

NRS 374.110 Imposition and rate. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of [~~2.25~~] **3.75** percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in a county.

Section 2. Chapter 374 of NRS is hereby amended to read as follows:

USE TAX

NRS 374.190 Imposition and rate.

1. An excise tax is hereby imposed on the storage, use or other consumption in a county of tangible personal property purchased from any retailer for storage, use or other consumption in the county at the rate of [~~2.25~~] **3.75** percent of the sales price of the property.

Section 3. Severability. If any provision of this act, or the application therefore to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Section 4. This act shall become effective on July 1, 2021 if approved by the legislature, or on January 1, 2023 if approved by the voters.

DESCRIPTION OF EFFECT

The Nevada Revised Statute currently set the total Local School Support Tax sales and use tax rates at 2.6%. The Local School Support Tax sales and use tax is one part of Nevada's combined state and local sales tax. This initiative proposes an amendment to the Nevada Revised Statutes to provide for an increase in the total Local School Support Tax sales and use tax rates, which would increase Nevada's combined statewide average sales tax from 8.35% to 9.75%. Proceeds of the Local School Support Tax support Nevada's public schools and tourism and economic development in city and county Tourism Improvement Districts.

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

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EXHIBIT 6

EXHIBIT 6

S-02-2020

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

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

Section 1. Chapter 374 of NRS (the Local School Support Tax) is hereby amended to read as follows:

SALES TAX

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Section 3. Severability. If any provision of this act, or the application thereforc to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Section 4. This act shall become effective on July 1, 2021 if approved by the legislature, or on January 1, 2023 if approved by the voters.

RECEIVED

MAR 30 2020

SECRETARY OF STATE
ELECTIONS DIVISIONS

Amended

HOLL00026

DESCRIPTION OF EFFECT

The Nevada Revised Statute currently set the total Local School Support Tax sales and use tax rates at 2.6%. The Local School Support Tax sales and use tax is one part of Nevada's combined state and local sales tax. This initiative proposes an amendment to the Nevada Revised Statutes to provide for an increase in the total Local School Support Tax sales and use tax rates, which would increase Nevada's combined statewide average sales tax from 8.32% to 9.73%. Proceeds of the Local School Support Tax support Nevada's public schools and tourism and economic development in city and county Tourism Improvement Districts.

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DESCRIPTION OF EFFECT

The Nevada Revised Statute currently set the total Local School Support Tax sales and use tax rates at 2.6%. The Local School Support Tax sales and use tax is one part of Nevada's combined state and local sales tax. This initiative proposes an amendment to the Nevada Revised Statutes to provide for an increase in the total Local School Support Tax sales and use tax rates, which would increase Nevada's combined statewide average sales tax from 8.32% to 9.73%. Proceeds of the Local School Support Tax support Nevada's public schools and tourism and economic development in city and county Tourism Improvement Districts.

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

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THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
County of _____)

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

_____
Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____day of_____, _____, by_____.

_____
Notary Public or person authorized to administer oath

EXHIBIT 7

EXHIBIT 7

FILED

JUN 19 2020

SECRETARY OF STATE
ELECTIONS DIVISIONS

Initiative Petition – Statewide Statutory Measure *State of Nevada*

S-02-2020

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

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

Section 1. Chapter 374 of NRS (the Local School Support Tax) is hereby amended to read as follows:

SALES TAX

NRS 374.110 Imposition and rate. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of [~~2.25~~] **3.75** percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in a county.

Section 2. Chapter 374 of NRS is hereby amended to read as follows:

USE TAX

NRS 374.190 Imposition and rate.

1. An excise tax is hereby imposed on the storage, use or other consumption in a county of tangible personal property purchased from any retailer for storage, use or other consumption in the county at the rate of [~~2.25~~] **3.75** percent of the sales price of the property.

Section 3. Severability. If any provision of this act, or the application therefore to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Section 4. This act shall become effective on July 1, 2021 if approved by the legislature, or on January 1, 2023 if approved by the voters.

DESCRIPTION OF EFFECT

The Nevada Revised Statutes currently set the total Local School Support Tax sales and use tax rates at 2.6%. The Local School Support Tax sales and use tax is one part of Nevada's combined state and local sales tax. This initiative proposes an amendment to the Nevada Revised Statutes to provide for an increase in the total Local School Support Tax sales and use tax rates, which would increase Nevada's combined statewide average sales tax from 8.32% to 9.73%. Proceeds of the Local School Support Tax support Nevada's public schools and tourism and economic development in city and county Tourism Improvement Districts.

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HOLL00036

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
County of _____)

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

_____
Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____day of_____, _____, by_____.

_____
Notary Public or person authorized to administer oath

EXHIBIT 8

EXHIBIT 8

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

State of Nevada — *Secretary of State Barbara K. Cegavske*

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

NAME OF PERSON FILING THE PETITION

Kenny Belknap

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

1. Kenny Belknap
2. James Frazee
3. Marie Neisess

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

Fund Our Schools

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

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

X _____ 1/15/20

Signature of Petition Filer — **Date**

HOLL00038

EL500
NRS 295.009, NRS 295.015
Revised: 07-24-2017

EXHIBIT 9

EXHIBIT 9

PETITION WITHDRAWAL FORM

State of Nevada — Secretary of State Barbara K. Cegavske

Pursuant to NRS Chapter 295, an authorized person may request to withdraw an initiative or referendum petition by submitting this form to the Secretary of State. Once a petition for initative or referendum is withdrawn, no further action may be taken on that petition.

TITLE OF PETITION

S-01-2020

NAME OF AUTHORIZED PERSON WITHDRAWING PETITION

Robert Hollowood

X _____
Signature of Person Withdrawing Petition

06/02/2021
Date

EL499
NRS Chapter 295
Revised: 08-21-2017

HOLL00039

EXHIBIT 10

EXHIBIT 10

AARON D. FORD
Attorney General

KYLE E. N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General

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

JESSICA L. ADAIR
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

July 28, 2021

OPINION NO. 2021-04

OFFICE OF THE GOVERNOR; POPULAR INITIATIVE - PETITION WITHDRAWAL; WAIVER OF PERFORMANCE OF MINISTERIAL DUTIES: Article 19, Section 2 of the Nevada Constitution imposes upon the Secretary of State ministerial duties that are owed to the proponents of an initiative petition, including the duty to place an initiative proposal on the ballot after the Nevada Legislature declines to adopt it. Because those duties run to the proponents of the petition, the proponents may waive performance of those duties. Consequently, the proponents may withdraw their petition pursuant to NRS 295.026.

Kevin Benson, General Counsel
Office of Governor Steve Sisolak
100 North Carson Street
Carson City, NV 89701

Dear General Counsel Benson:

By letter dated July 20, 2021, you requested an opinion concerning a perceived conflict between NRS 295.026 (as amended in 2021) and Article 19, Section 2 of the Nevada Constitution.[1]

[1] NRS 295.026 was amended by Section 84.5 of Assembly Bill No. 321 of the 81st Session of the Nevada Legislature (2021). Assembly Bill No. 321 (AB 321) amended NRS 295.026 to include a deadline by which the proponents of an

You have asked the following question:

> "[D]oes Article 19, Section 2 of the Nevada Constitution prevent the proponents of an initiative petition from withdrawing the petition pursuant to NRS 295.026?"

This letter provides a formal opinion in response to your question, made pursuant to NRS 228.150.

NRS 295.026 was enacted in 2017 with the support of the Secretary of State. *See* Act of June 9, 2017, ch. 505, § 30, 2017 Nev. Stat. 3369; *Hearing on A.B. 45 Before the Assembly Committee on Legislative Operations and Elections*, 2017 Leg., 79th Sess. 8-16 (testimony of Secretary of State Barbara K. Cegavske). As originally enacted, NRS 295.026 afforded the proponents of a petition for initiative or referendum an unqualified right to withdraw their petition.[2] That version stated:

> 1. A petition for initiative or referendum may be withdrawn if a person authorized pursuant to NRS 295.015 to withdraw the petition submits a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State.
>
> 2. Once a petition for initiative or referendum is withdrawn pursuant to subsection 1, no further action may be taken on that petition.

---

initiative petition must submit their request to withdraw their petition. Previously, NRS 295.026 contained no such deadline.

[2] There are different statutory and constitutional deadlines for filing a petition with the Secretary of State depending on whether the petition proposes (1) a statutory amendment, (2) a constitutional amendment, or (3) the ratification or repeal of an existing statute. The third type of petition is referred to as a "petition for referendum." *See* Nev. Const. Art. 19, § 1. Although the filing deadlines vary, NRS 295.026 establishes a uniform deadline for withdrawing any petition for initiative or referendum regardless of type.

Act of June 9, 2017, ch. 505, § 30, 2017 Nev. Stat. 3369. The 2021 amendment to NRS 295.026 restricts the proponents' ability to withdraw an initiative petition within 90 days of an election.[3]

QUESTION

Does Article 19, Section 2 of the Nevada Constitution prevent the proponents of an initiative petition from withdrawing the petition pursuant to NRS 295.026?

SHORT ANSWER

Article 19, Section 2 of the Nevada Constitution does not prevent the proponents of an initiative petition from withdrawing the petition. NRS 295.026 can and should be read harmoniously with the requirements of the Constitution.

NRS 295.026 imposes upon the Secretary of State an enforceable ministerial duty to honor a timely notice of withdrawal that the Secretary has no discretion to disregard. The Nevada Constitution contains no express language affecting this duty, and the Secretary's constitutional duty to submit an existing petition to the voters at the first general election after the Legislature declines to adopt the petition does not conflict with the Secretary's duty to honor a withdrawal under NRS 295.026.

The 2021 amendment to NRS 295.026 does not change this analysis. As amended by Section 84.5 of AB 321, NRS 295.026 allows the proponents of an initiative petition to withdraw their petition "not later than 90 days before the election at which the question of approval or disapproval of the initiative will appear on the ballot." Prior to the 2021 amendment, NRS 295.026 contained no deadline for withdrawing an initiative petition. NRS 295.026 was constitutional when it was enacted in 2017, and it remains constitutional in 2021.

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[3] As used herein, "proponent" means a person described in NRS 295.015(1).

BACKGROUND

Article 19, Section 2 of the Nevada Constitution governs Nevada's popular initiative. Nev. Const. Art. 19, § 2. This provision allows Nevada's voters to propose and enact law by gathering signatures in support of a proposed statute, statutory amendment, or constitutional amendment.[4] The process must be initiated by one or more persons who formalize a legislative proposal and circulate it by way of a petition that includes the text of the proposal and a description of its effect. *See* NRS 295.009-.015. Such persons are commonly referred to as the "proponents" of the petition.

To qualify their petition for the ballot, the proponents must gather signatures from registered voters "equal to 10 percent or more of the number of voters who voted at the last preceding general election in not less than 75 percent of the counties in the State." Nev. Const. Art. 19, § 2(2). If successful, the proponents must submit the signatures gathered in each county to the clerk of that county for counting and verification. NRS 295.296. When each of the county clerks has tallied and verified the signatures, the clerk must transmit the certified results to the Secretary of State, who reviews them for accuracy. *See* NRS 293.1276-.1279; NAC 293.1825.

Once the Secretary of State determines that the proponents of an initiative petition have gathered enough signatures statewide to qualify their proposal for inclusion on the ballot, the Secretary of State must transmit the petition to the Nevada Legislature. *See* Nev. Const. Art. 19, § 2(3). This affords the members of the Nevada Legislature an opportunity to adopt the proposed

---

[4] The process for proposing new statutes and statutory amendments is described in Article 19, Section 2(3), and the process for proposing amendments to the Nevada Constitution is described in Article 19, Section 2(4). *See* Nev. Const. Art. 19, §§ 2(3) and 2(4). The processes are substantially the same. As relevant to this opinion, the processes differ only insofar as proposed constitutional amendments must be approved by the voters at two successive elections as opposed to one election. For purposes of convenience and ease of reference, this opinion cites only to Nev. Const. Art. 19, § 2(3).

statute, statutory amendment, or constitutional amendment as drafted by the proponents of the petition. Article 19, Section 2(3) states that if the Legislature declines to adopt the proposal as written, the Secretary of State shall submit it to a vote of the voters at the next succeeding general election.

Some have argued that the Nevada Constitution forecloses the proponents' ability to withdraw their initiative petition after the Secretary incurs a duty to act on the petition in some manner required by Article 19, Section 2(3). According to this argument, the possible procedural bars to withdrawal include the filing of the petition with the Secretary of State, the Secretary's final certification of the signatures as to authenticity and number, the Secretary's transmission of the petition to the Nevada Legislature, and/or the Nevada Legislature's failure to adopt the legislative proposal set forth in the petition. As discussed below, none of these duties forecloses the proponents' ability to withdraw their petition pursuant to NRS 295.026.

ANALYSIS

Article 19, Section 2 of the Nevada Constitution contains several general directives governing the initiative process. It states that the petition, once circulated by its proponents, "shall be filed with the Secretary of State not less than 30 days prior to any regular session of the Legislature." *Id.* Section 2 then provides a directive stating that the Secretary of State "shall transmit such petition to the Legislature as soon as the Legislature convenes and organizes." *Id.* And, finally, it states that once the Nevada Legislature has reviewed and rejected a proposed statute, statutory amendment, or constitutional amendment proffered by way of the initiative process, "the Secretary of State shall submit. . . [the proposal] to a vote of the voters at the next succeeding general election." *Id.*

None of these general directives expressly forecloses the proponents' ability to withdraw their initiative petition. The Constitution contains no language limiting or foreclosing withdrawal of a petition at any point in the process. There is thus no direct conflict between the plain language of Article 19, Section 2 and that of NRS 295.026. The provisions can, and should, be read and interpreted in harmony.

Legislative intent dictates our conclusion.

Our interpretation of the statute and Constitutional provision at issue here begins with an examination of legislative intent, as revealed in their plain language. Legislative intent is the most important driver of statutory interpretation. A statute or constitutional provision must ultimately be construed according to its purpose. *Thomas v. State*, 88 Nev. 382, 384, 498 P.2d 1314, 1315 (1972).

In particular, legislative intent—and not word use—controls statutory interpretation. Thus, while Article 19, Section 2 uses the word "shall" to describe the Secretary of State's duties, "shall" is not presumed to be mandatory if such an interpretation would undermine Legislative intent. *State v. American Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990) ("In construing statutes [or constitutional provisions], 'shall' is presumptively mandatory and 'may' is construed as permissive *unless legislative intent demands another construction.*") (citations omitted) (emphasis added). "The word 'shall' in a statute may be construed as 'may' where the connection in which it is used or the relation into which it is put with other parts of the same statute indicates that the legislature intended that it should receive such a construction." *Ballou v. Kemp*, 92 F.2d 556, 559 (D.C. Cir. 1937). *See also U.S. v. St. Regis Paper Co.*, 355 F.2d 688, 695 (2d. Cir. 1966) (holding that court should examine the nature and objectives of a provision when determining whether it is mandatory or directory); *Nunn v. State of California*, 35 Cal.3d 616, 625, 200 Cal.Rptr. 440, 445, 677 P.2d 846, 851 (1984) ("We cautioned. . . that it should not be assumed that every statute that uses the word 'shall' is necessarily obligatory).

The plain language of Article 19, Section 2 indicates that initiative petitions are to be subject to an orderly and timely process of submission and acceptance. This provision does not concern itself with the potential withdrawal of a petition from that process. The plain language of NRS 295.026 provides a straightforward mechanism for the proponents of an initiative petition to withdraw it—thus removing it from the procedural processes of Article 19, Section 2. Statutes and constitutional provisions that relate to the same subject matter should be interpreted harmoniously. *Washington v. State*,

117 Nev. 735, 738, 30 P.3d 1134, 1136 (2001) ("Statutes within a scheme. . . must be interpreted harmoniously with one another in accordance with the general purpose of those statutes and should not be read to produce unreasonable or absurd results."). Here, Article 19, Section 2 and NRS 295.026 can be read harmoniously to provide a seamless process both for submitting and withdrawing initiative petitions.

In promulgating NRS 295.026, the Legislature is presumed to have acted constitutionally. *List v. Whistler*, 99 Nev. 133, 137, 660 P.2d 104, 106 (1983) ("All acts passed by the Legislature are presumed to be valid until the contrary is clearly established."). Even if there is doubt as to a statute's constitutionality, that doubt should be resolved in favor of upholding the statute. *Caton v. Frank*, 56 Nev. 56, 44 P.2d 521, 523 (1935). This is particularly true where the provisions purported to be in conflict effectuate related policy objectives. *See Benegas v. State Indus. Ins. Sys.*, 117 Nev. 222, 231, 19 P.3d 245, 251 (2001); *Welfare Div. of State Dep't of Health, Welfare and Rehabilitation v. Washoe Cnty. Welfare Dep't*, 88 Nev. 635, 638, 503 P.2d 457, 459 (1972). Here, there is no basis to question the presumption of constitutionality. Regarding the initiative process in particular, the Nevada Supreme Court has stated:

> Although the Nevada Constitution provides that the power to propose amendments to the Constitution by initiative petition is reserved to "the people," it also provides that the Legislature may enact laws that provide procedures to facilitate the initiative and referendum process. Additionally, the legislative power includes the broad power to frame and enact laws, unless there is a specific constitutional limitation to the contrary.

Nevadans for Nevada v. Beers, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006).

NRS 295.026 reflects a determination by the Nevada Legislature that the proponents of an initiative petition have a superseding procedural right, within specified limits, to control the ultimate disposition of their initiative petition. As indicated by *Nevadans for Nevada*, the Nevada Legislature

lawfully exercised its power to facilitate the initiative process. *Id.* As a presumptively constitutional exercise of the power to facilitate the operation of the initiative process, NRS 295.026 requires that the Secretary of State honor a notice of withdrawal timely submitted by the proponents of an initiative petition.

The Secretary of State's Constitutional duties under Article 19, Section 2 are directory, not mandatory.

Whether the Secretary of State's ministerial duties are mandatory or directory in the context of initiative petitions is a legal question of first impression in Nevada. *See Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 665, 310 P.3d 569, 572 (2013) ("Deciding whether a rule is intended to impose a mandatory or directory obligation is a question of statutory interpretation.")

In general, however, where language is directed to a public officer carrying out public duties, and no sanction is provided for failure to comply, the prescribed duties are considered directory. *See Corbett v. Bradley*, 7 Nev. 106, 1871 WL 3382 (1871) ("If it be clear that no penalty was intended to be imposed for a non-compliance, then, as a matter of course, it is but carrying out the will of the legislature to declare the statute in that respect to be simply directory'). Here, Article 19, Section 2 guides the Secretary of State's actions under the circumstances specified in its language, but it does not mandate that action or provide consequences for inaction. Because the nature and object of Article 19, Section 2 is directory, "shall" should be interpreted as a directive rather than a mandate.[5] *See State v. Wichman*, 52 Nev. 17, __, 279 P. 937, 938 (1929)("[W]hether a word is to be construed as mandatory or directory depends upon the intention to be gathered from the statute, if such intention can be ascertained.")

---

[5] Language providing time limits and guidelines for accomplishing ministerial tasks are also generally considered directory. *See Village League to Save Incline Assets, Inc. v. State ex rel. Bd. Of Equalization*, 124 Nev. 1079, 1087, 194 P.3d 1254, 1260 (2008) ("Generally, . . . statutory deadlines that provide tax officials with guidelines for the performance of their duties are directory").

Determining whether a duty is mandatory or directory under a specific set of circumstances requires asking whether the statute or constitutional provision creates a privately enforceable right. If a statute or constitutional provision creates a privately enforceable right, that right can be waived. *See Broadhead v. Sheriff, Clark County*, 87 Nev. 219, 223, 484 P.2d 1092, 1094 (1972) (holding that right to a speedy trial may be waived). Thus, while seemingly mandatory language appears in many state and federal statutes, these texts do not all create enforceable individual rights and are not all actually mandatory in context. *See Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748, 757-61 (2005).

Here, Article 19, Section 2 of the Nevada Constitution imposes upon the Secretary of State a duty to perform specified ministerial tasks associated with the initiative process. Even though the provision uses language that appears to be mandatory, (e.g. "shall"), if the Secretary's duty is owed to the proponents of the initiative petition, they may waive performance of the duty by, for example, withdrawal of their petition pursuant to NRS 295.026. The language of Article 19, Section 2, all available Nevada law, and the circumstances surrounding the initiative petition process support a finding that the Secretary's duty is owed to the proponents of the petition. As such, the Secretary's constitutional duties are directory, not mandatory. The proponents of a petition may therefore withdraw it, notwithstanding the Secretary of State's ostensible duties to file the petition, verify the signatures on the petition, transmit the petition to the Nevada Legislature, and/or include it on the ballot.[6]

---

[6] Like the Nevada Constitution, the Colorado Constitution states that "[t]he secretary of state shall submit all measures initiated by or referred to the people for adoption or rejection at the polls." Colo. Const. art. V, § 1(7). Although the Colorado Constitution contains no provision authorizing the proponents to withdraw their initiative petition, the Colorado Legislature has enacted such a provision. This statutory provision authorizes the proponents to withdraw their petition not later than 60 days before the election. § 1-40-134, C.R.S. (2009). The statute reflects a determination by the Colorado Legislature that the word "shall" is directory, not mandatory, as it pertains to the secretary of state's constitutional duty to place initiative proposals on the ballot. The Nevada Legislature has made a similar determination.

In *We People Nevada ex rel. Angle v. Miller*, the Nevada Supreme Court indirectly spoke to this question—determining that the proponents of an initiative petition had a privately enforceable right to submit their signatures for verification after the statutory deadline for submitting them had passed. 124 Nev. 874, 891, 192 P.3d 1166, 1177 (2008) (noting that "a statutory provision will not be enforced when to do so would infringe upon rights guaranteed by our state constitution"). Such a statutory or constitutional right may generally be waived if the waiver is knowing and voluntary. *See Lowe Enter. Residential Partners, L.P. v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 118 Nev. 92, 97-101, 40 P.3d 405, 408-11 (2002) (discussing the enforceability of contractual waivers of the right to a jury trial).

We People Nevada suggests that the Secretary of State's duties run to the proponents of the initiative petition. It logically follows that authorized proponents may withdraw their petition pursuant to NRS 295.026 and that enforcement of NRS 295.026 does not violate their rights under the Nevada Constitution.[7]

Herbst Gaming, Inc. v. Heller, likewise suggests that the rights of persons with an interest in the application of governing processes and procedures take precedence over the pre-election rights of voters.[8] 122 Nev. 877, 141 P.3d 1224 (2006). In *Herbst Gaming*, persons opposed to an initiative petition filed suit to prevent the petition from appearing on the ballot at the 2006 election. They filed their suit after the Secretary of State had certified the petition and transmitted it to the Nevada Legislature pursuant to Article 19, Section 2 of the Nevada Constitution. *See* 122 Nev. at 881. In other words, they filed suit after the Secretary had incurred a duty to act on the petition pursuant to Article 19, Section 2.

---

[7] Whether enforcement of NRS 295.026 will potentially violate the rights of the public to vote on an initiative petition is an open question. It is unlikely, however, that a Nevada court would recognize a pre-election right to vote on an initiative petition over the objection of the proponents, as the proponents have a superseding right to control the ultimate disposition of their initiative petition.

[8] Persons who sign the initiative petition, as opposed to voters generally, appoint the proponents to act as their proxy for matters concerning the initiative petition. *See* NRS 295.015.

Nonetheless, the court recognized that when the opponents of an initiative petition "allege procedural defects or assert that a measure does not satisfy an explicit constitutional or statutory requirement for initiatives", they may bring a pre-election lawsuit to prevent the initiative from appearing on the ballot. *Id.* at 892. By this rationale, a procedural defect may be used to deny the electorate an opportunity to vote on an initiative petition after the Secretary of State has incurred a duty to transmit the petition to the Nevada Legislature and/or place the initiative proposal on the ballot. This indicates that voters do not acquire pre-election rights to vote on initiative petitions. In other words, if persons opposed to an initiative petition can effectively cause its withdrawal on procedural grounds even after the petition has cleared numerous procedural hurdles, then the proponents of an initiative petition should logically have a right to withdraw the petition within a reasonable time prior to the election.

The Secretary of State does not violate any duty by honoring a notice of withdrawal.

As applied to an elected official, a directive to perform a specified task may be mandatory only to the extent that an omission to perform that task will violate a duty owed to an individual, a class of individuals, or the public at large. *See, e.g., Coty v. Washoe County*, 108 Nev. 757, 760, 839 P.2d 97, 98-99 (1992) ("[T]he duty of fire and police departments 'is one owed to the public, but not to individuals.'") (quoting *Frye v. Clark County*, 97 Nev. 632, 633, 637 P.2d 1215, 1216 (1981)). "This rule is often referred to as the public duty doctrine." *Id.* These public duties are not mandatory in the sense that they must be carried out at the request of any individual citizen, without regard to circumstances such as available resources and public safety priorities.

The operation of a public, directory duty in Nevada is illustrated in *Thomas*. There, the Nevada Supreme Court acknowledged that the word "shall" imposed upon the Department of Parole and Probation a duty to include criminal history information in the presentence report that it submitted to a sentencing judge pursuant to NRS 176.145. 88 Nev. at 384-85. The Department's failure to include that information did not, however, preclude the judge from sentencing the defendant. *Id.* The Department owed a duty to

the sentencing judge, not to the public. The sentencing judge thus had the discretion to proceed with sentencing despite the Department's failure to perform its duty. The judge's statutory duty to review a defendant's criminal history prior to sentencing was directory, not mandatory.

Here, the Secretary of State owes no mandatory duty to the general public or any individual in carrying out the requirements of Article 19, Section 2. The Secretary thus does not violate any duties or impinge on any rights by honoring a notice of withdrawal pursuant to NRS 295.026.

CONCLUSION

Article 19, Section 2 of the Nevada Constitution imposes upon the Secretary of State ministerial duties that are owed to the proponents of an initiative petition. Because those duties run to the proponents of a petition, the proponents may waive performance of those duties. Specifically, the proponents may withdraw their initiative petition before or after its certification and transmission to the Nevada Legislature pursuant to NRS 295.026, provided they submit their withdrawal request not later than 90 days before the election. By law, the Secretary of State must honor any such request notwithstanding general constitutional directives to file the petition, verify the signatures on the petition, transmit the petition to the Nevada Legislature, and/or place it on the ballot. These duties are directory and should not be performed over the proponents' objection.

Sincerely,

AARON D. FORD
Attorney General

By: _____
Gregory L. Zunino
Deputy Solicitor General

GLZ/klr

EXHIBIT 11

EXHIBIT 11

HUTCHISON & STEFFEN
ATTORNEYS

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October 6, 2021

Via Electronic Mail

Barbara Cegavske
Nevada Secretary of State
c/o Mark Wlaschin
Deputy Secretary of State for Elections
mwlaschin@sos.nv.gov

Re: **Withdrawal of Initiative Petition S-02-2020**

Secretary Cegavske:

Please see Fund Our Schools' signed withdrawal of Initiative Petition S-02-2020 (the "Petition"). As detailed by the July 28, 2021 Opinion of the Nevada Attorney General (2021-04), NRS 295.026 affords my clients the right to withdraw the Petition not later than 90 days before the 2022 General Election. Fund Our Schools now exercises that right.

Thank you for your time, hard work, and consideration.

Sincere regards,

HUTCHISON & STEFFEN, PLLC

Daniel H. Stewart
For the Firm

Encl.

PETITION WITHDRAWAL FORM

State of Nevada — *Secretary of State Barbara K. Cegavske*

Pursuant to NRS Chapter 295, an authorized person may request to withdraw an initiative or referendum petition by submitting this form to the Secretary of State. Once a petition for initative or referendum is withdrawn, no further action may be taken on that petition.

TITLE OF PETITION

S-02-2020

NAME OF AUTHORIZED PERSON WITHDRAWING PETITION

Kenneth Belknap

X _____
Signature of Person Withdrawing Petition

10/6/21
Date

EL499
NRS Chapter 295
Revised: 08-21-2017

EXHIBIT 12

EXHIBIT 12

BARBARA K. CEGAVSKE
Secretary of State

STATE OF NEVADA

MARK A. WLASCHIN
Deputy Secretary for Elections

OFFICE OF THE
SECRETARY OF STATE

September 7, 2021

Re: Submission of Initiative Petition on General Election Ballot

Dear Attorney General Ford,

The Office of the Secretary of State was made aware of an Attorney General's Opinion ("Opinion") dated July 28, 2021, that purported to address the conflicts between Article 19 Section 2 of the Nevada Constitution and NRS 295.026. The Office has reviewed the Opinion and considered both the state Constitution and the statute in an effort to resolve this discrepancy.

After the review, the Office has concluded that the Opinion fails to address the Constitutional imperative and compels the Secretary to act in a certain manner. Our Office maintains a different position than the Opinion with respect to the nature of the affirmative obligations imposed on the Secretary of State by the Nevada Constitution specifically with respect to initiative petitions that have been filed, verified, and submitted to the Legislature.

For example, Article 19 subsection 3 of Section 2 states that, for a petition which has obtained the required number of signatures, the Secretary of State "shall transmit such petition to the Legislature as soon as the Legislature convenes and organizes." It provides that "the petition shall take precedence over all other measures except appropriations bills." Once the petition has been submitted, the Legislature has 40 days to enact the statutory alteration without change or reject it. If the Legislature rejects the petition or fails to act upon it within those 40 days, "the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election."

The use of the word "shall" in ordinary language imposes a mandatory, not discretionary, obligation. Merriam-Webster defines "shall" as "used in laws, regulations, or directives to express what is mandatory." Even the Nevada Legislature recognizes "shall" as imposing a mandatory duty by stating that the word "imposes a duty to act." NRS 0.025(1)(d). Although the Nevada Legislature can adopt statutes "for procedures to facilitate the operation" of the initiative process as provided in Article 19 Section 5, the affirmative duty imposed by the Nevada Constitution on the Secretary supersedes any statutory enactments by the Nevada Legislature that contradict the affirmative duty.

The Nevada Constitution requires the Secretary of State to follow a procedure once an initiative petition has obtained the required number of verified signatures. As such, a statute cannot interfere with that duty. Thus, when the Legislature rejects or fails to act on any initiative petition within the first 40 days of

NEVADA STATE CAPITOL
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-3714

MEYERS ANNEX
COMMERCIAL RECORDINGS
202 N. Carson Street
Carson City, Nevada 89701-4201

LAS VEGAS OFFICE
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, Nevada 89030-5873

NVSOS.GOV

the session, "the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election."

Although our Office received a request to withdraw a petition which obtained the required number of signatures, and we submitted it to the Legislature in accordance with Article 19 Section 2, the Secretary of State anticipates following her duty to act as outlined in the Nevada Constitution by placing the initiative petition on the ballot during the 2022 general election for adoption or rejection by the voters.

If you have any questions, please contact the Elections Division at (775) 684-5705 or NVElect@sos.nv.gov.

Respectfully,

Barbara K. Cegavske

Barbara K. Cegavske
Secretary of State

BARBARA K. CEGAVSKE
Secretary of State

GAIL J. ANDERSON
Deputy Secretary for Southern Nevada

DEBBIE BOWMAN
Deputy Secretary for Operations

MARK WLASCHIN
Deputy Secretary for Elections

STATE OF NEVADA

OFFICE OF THE
SECRETARY OF STATE

SCOTT W. ANDERSON
Chief Deputy Secretary of State

ERIN HOUSTON
Deputy Secretary for Securities

KIMBERLEY PERONDI
Deputy Secretary for Commercial Recordings

December 29, 2021,

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP
3773 Howard Hughes Parkway Suite 590 South
Las Vegas, NV 89169

RE: Service of Process

Entity being served: Barbara Cegavske in her official capacity as Nevada Secretary of State
Case:# 210C001821B
Authority(ies) cited
Description: Robert Hollowood, Kenneth Belknap, Nevadans for Fair Gaming Taxes PAC, a Nevada Committee for Political action; and fund our schools PAC a Nevada committee for Political action, VS. Barbara Cegavske in her official capacity as Nevada Sectary of State.
Method received: Summons, Petition for Writs of Mandamus and Prohibition, Petitioners' Affirmation, Petitioners Initial appearance fee Disclosure
Payment Received:
Date/Time received: 12/29/2021 @2:30/ Counter

By Rhonda Tuin

Rhonda Tuin, Administrative Assistant III
Commercial Recordings Division
Office of Nevada Secretary of State Barbara K. Cegavske

Wayne Klomp, Esq.
Nevada Bar No. 10109
GREAT BASIN LAW
1783 Trek Trail
Reno, Nevada 89521
Phone: (775) 770-0386
wayne@greatbasinlawyer.com

Attorney for Respondent
Barbara Cegavske in her official capacity as Nevada Secretary of State

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

vs.

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

Respondent.

Case No.: 21 OC 00182 1B

Dept. No.: 2

ANSWER TO PETITION FOR WRITS OF MANDAMUS AND PROHIBITION

COMES NOW Respondent, Barbara Cegavske in her official capacity as Nevada Secretary of State, and hereby responds to the allegations in the Petition for Writs of Mandamus and Prohibition.

Affirmation – Undersigned counsel affirms that the following document does not contain the personal information as defined in NRS 239B.030. Counsel will inform the Court if any future

documents filed in this action contain personal information.

1. Respondent admits that a petition was filed and amended on or about the dates described, and further states that the documents referenced will speak for themselves. Respondent is without knowledge or information sufficient to form the basis for a response to the remaining allegations in Paragraph 1 and on that basis denies the allegations.

2. Respondent admits that a petition was filed and amended on or about the dates described, and further states that the documents referenced will speak for themselves. Respondent is without knowledge or information sufficient to form the basis for a response to the remaining allegations in Paragraph 2 and on that basis denies the allegations.

3. Respondent admits that a Petition Withdrawal Form was submitted on or about the dates described, and further states that the documents referenced will speak for themselves. Respondent is without knowledge or information sufficient to form the basis for a response to the remaining allegations in Paragraph 3 and on that basis denies the allegations.

4. Respondent denies the allegations in Paragraph 4.

5. Respondent admits that a Petition Withdrawal Form was submitted on or about the dates described, and further states that the documents referenced will speak for themselves. Respondent is without knowledge or information sufficient to form the basis for a response to the remaining allegations in Paragraph 5 and on that basis denies the allegations.

6. Defendant admits the allegations in Paragraph 6, and further states that the document referenced will speak for itself.

7. Respondent denies the allegations in Paragraph 7.

8. Respondent denies the allegations in Paragraph 8.

AFFIRMATIVE DEFENSES

1. The Nevada Constitution, not any conflicting statute, controls the Secretary of State's actions with respect to initiative petitions.

2. The statutory basis upon which Petitioners rely to withdraw their Statutory Initiative Petitions conflicts with the Nevada Constitution.

3. Respondent reserves all legal and affirmative defenses and reserves the right to amend this Answer to include such defenses as may be applicable and necessary under NRCP Rules 8 and 12 or other applicable rule.

WHEREFORE, Respondent prays for relief as follows:

1. That Petitioners Writs for Mandamus and Prohibition be denied in their entirety.
2. For other such relief as may be just and equitable.

Dated: January 19, 2022.

GREAT BASIN LAW

Wayne Klomp
Nevada Bar No. 10109
1783 Trek Trail
Reno, Nevada 89521

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this date, I served the foregoing **ANSWER TO PETITION FOR WRITS OF MANDAMUS AND PROHIBITION** on the following individual(s) by email service pursuant to NRCP 5(b)(2)(F) and consent by the Parties at the email addresses listed below:

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
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MCLETCHIE LAW
Margaret A. McLetchie
maggie@nvlitigation.com

Attorneys for Petitioners

Dated: January 19, 2022

An employee of Great Basin Law

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Attorneys for Petitioners

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

vs.

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

Respondent.

Case No.: 21 OC 00182 1B

Dept. No.: II

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONS FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioners Robert Hollowood, Kenneth Belknap, Nevadans for Fair Gaming Taxes PAC, and Fund Our Schools PAC (collectively, "Petitioners") here submit their memorandum of points and authorities in support of their Petition for Writs of Mandamus and Prohibition to be issued against Nevada Secretary of State Barbara Cegavske (the "Secretary"), in her official capacity.

As described in the Petition filed on December 29, 2021, Petitioners are the responsible parties for two initiative petitions filed with the Nevada Secretary of State's office in 2020 (S-01-2020, the "Gaming Tax Initiative," and S-02-2020, the "Sales Tax Initiative," collectively the "Initiatives"). Now, Petitioners seek to exercise their statutory right to withdraw the Initiatives and prevent their placement on the 2022 General Election ballot. The Secretary has stated that she will place the Initiatives on the ballot, in derogation of Petitioners' rights.

I. PROCEDURAL SETTING AND PERTINENT FACTS

As alleged in the Petition, Petitioners submitted to the Secretary their requests to withdraw the Initiatives, pursuant to NRS 295.026. *See* Petitioners' Appendix ("P.App."), at HOLL00039, HOLL00052-53.[1] Petitioners maintain that the Secretary, therefore, has a nondiscretionary duty to permit Petitioners to withdraw the Initiatives, and they are thus entitled to writs of mandamus under NRS 34.150 *et seq*.

---

[1] It is important to note, at the very outset, that withdrawal forms are prepared and provided by the office of the Secretary of State, for use by initiative proponents like Petitioners. Nowhere on the form is there any mention of a reason why, deadline by which, or legal argument under which the Secretary would refuse to permit withdrawal.

Neither is there, as of the time of this writing, any guidance on any page of the Nevada Secretary of State's website (www.nvsos.gov/sos/elections) indicating a legal limitation on the withdrawal of an initiative petition, other than the fact that A.B. 45 (2017) requires "the names of up to three individuals who are authorized to withdraw or amend the petition[.]" *See* https://www.nvsos.gov/sos/elections/initiatives-referenda (last visited Jan. 25, 2022).

directing withdrawal. Furthermore, the Secretary has announced her intention to place the Initiatives on the 2022 General Election ballot, in excess of her jurisdiction, entitling Petitioners to writs of prohibition, under NRS 34.320 *et seq.,* in order to prevent her doing so. This Court has jurisdiction pursuant to NRS Chapter 34, and venue is proper due to the Office of the Secretary of State's location in Carson City, Nevada. *See* NRS 13.040.

II. APPROPRIATE LEGAL STANDARD

This matter requires, effectively, an interpretation and determination of the constitutionality of NRS 295.026. Per Article 19, Section 5 of the Nevada Constitution, "the legislature may provide by law for procedures to facilitate the operation" of the constitution's provisions establishing Nevada's initiative and referendum processes. Nev. Const. art. 19, § 5. In determining the appropriate standard of review here, as the Supreme Court of a neighboring sister state with a similarly-active popular initiative culture has stated, "[i]t is axiomatic that laws enacted by the legislature are presumed to be constitutional and that the legislature is accorded wide latitude in complying with constitutional directives such as the one contained in [Article 19, Section 5]." *Owens v. Hunt*, 882 P.2d 660, 661 (Utah 1994).

> The essential task for a court … is to determine whether the enactment unduly burdens the right to initiative. In making this determination, a court should assess whether the enactment is reasonable, whether it has a legitimate legislative purpose, and whether the enactment reasonably tends to further that legislative purpose. In evaluating the reasonableness of the challenged enactment and its relation to the legislative purpose, courts should weigh the extent to which the right of initiative is burdened against the importance of the legislative purpose.

Utah Safe to Learn-Safe To Worship Coal., Inc. v. State, 94 P.3d 217, 228 (Utah 2004). Here, Petitioners' right to withdraw an initiative does not burden the voters' right to legislate through initiative, in fact it adds to the tools which a measure's proponents may employ, and therefore no heightened standard of review should apply. Ordinary interpretative canons will suffice.

In Nevada, the language of a statute should be given its plain meaning. *We the People Nevada v. Secretary of State*, 124 Nev. 874, 881, 192 P.3d 1166, 1170-71 (2008). When facially clear, a court should not go beyond the language of the statute in determining its meaning. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986); *see also Las Vegas Taxpayer Comm. v. City Council*, 125 Nev. 17, 208 P.3d 429, 437 (2009) (explaining that a statute's meaning is plain when it is "facially clear"). A statute is ambiguous if it "is capable of being understood in two or more senses by reasonably informed persons." *McKay*, 102 Nev. at 649, 730 P.2d at 442. If a statute is ambiguous or lacks plain meaning, "a court should consult other sources such as legislative history, legislative intent and analogous statutory provisions." *State, Div. of Insurance v. State Farm*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000).

Here, there is no ambiguity. The language of NRS 295.026 is clear and express. The same is true of the text of Article 19, Section 2. Therefore, in sum, if there is a rational legislative purpose to NRS 295.026, and the duties under their terms may be complied with while avoiding constitutional conflict, the Court should determine that NRS 295.026 is valid as a measure enacted in facilitation of the initiative process.

III. HISTORY OF NRS 295.026 AND THE RIGHT OF PETITIONERS TO WITHDRAW THE INITIATIVES

At the time Petitioners filed the Initiatives, there was no controversy regarding their ability to withdraw the measures. During the entirety of their participation in the initiative process—from the moment of submission of their first Initiative on January 14, 2020, until the issuance of the Secretary's letter announcing she would reject any attempt to withdraw the measures, on September 7, 2021—there was no indication that the rights of Petitioners to withdraw, as clearly described in Nevada law, were somehow susceptible to denial by the Secretary of State. In fact, the

Secretary was the *sponsor* of the legislation that codified Petitioners' right to withdraw filed initiative petitions, in 2017, as described below. Furthermore, despite more than four years during which the Secretary could have either proposed and enacted regulations regarding NRS 295.026, or brought this matter to the attention of three successive Regular Sessions of the Nevada Legislature, she did none of these things. Petitioners, therefore, relied and still rely upon their express statutory right to withdraw the Initiatives and have no further action taken upon them.

The right of Nevada's citizens to engage in direct democracy is an old one; the state constitution was amended in 1912 to permit statutory initiatives, constitutional amendments, and referenda. *See, generally,* Nev. Const. art. 19. Section 5 of that article states that "[t]he provisions of this article are self-executing but the legislature may provide by law for procedures to facilitate the operation thereof." Nev. Const. art. 19, § 5. Pursuant to that section, and in facilitation of the initiative process, the Nevada Legislature has enacted many, many statutes that regulate every stage of initiatives in this state, adding requirements like the single-subject and description of effect rules (NRS 295.009); the need to gather voter signatures from petition districts across the state (NRS 295.012); or requirements for the format of petitions or challenges to them in court (NRS 295.055-295.061), to name a few. Apart from the period in which the appropriately-sized petition districts were being determined, each of these statutes has been determined to be a lawful and proper exercise of the Legislature's discretion to regulate and facilitate the initiative process in Nevada.

A. Assembly Bill 45 (2017)

Through the General Election cycle of 2016, there existed no express legal mechanism by which proponents of a particular initiative or referendum could formally withdraw their petitions after initial filing. At the 2017 Regular Session of the Nevada Legislature, the Secretary of State identified this gap in the law and encouraged the Legislature to adopt Sections 30 – 33 of Assembly Bill 45 (2017), a

true and accurate copy of the version as introduced in the Nevada Assembly that year is found at Exhibit 13, Petitioners' Supplemental Appendix (P.Supp.App.), at HOLL00056-88. A.B. 45 was, in fact, the Secretary's bill. The addition of a withdrawal provision was necessary, the Secretary's office testified,

> [B]ecause, right now, there is no formal process in law to withdraw an initiative or referendum petition that is filed with the Secretary of State's Office. There have been petitions filed with our office in the past to which we granted a withdrawal when the petition sponsors asked for it. There is no formal mechanism in law to do that. What we wanted to do with sections 30 and 31 was include an official mechanism whereby a person who submitted a referendum or initiative petition with our office could then officially withdraw it.

Testimony of Wayne Thorley, Deputy Secretary of State, in support of A.B. 45, Assembly Committee on Legislative Operations and Elections, April 11, 2017, a true and accurate copy of which is found at Exhibit 14, P.Supp.App., at HOLL00095. On the Senate side, Mr. Thorley repeated this sentiment:

> We have had in the past, even in this last election cycle, a person file a petition and request it to be withdrawn. We did withdraw the petition, but we do not have an official mechanism to withdraw it. We would like to have that kind of guidance in statute.

Mr. Thorley, again in support of A.B. 45, Senate Committee on Legislative Operations and Elections, May 3, 2017, **a** true and accurate copy of which is found at Exhibit 15, P.Supp.App., at HOLL00137.

The exact statutory language sought by the Secretary in 2017, which was eventually enacted in the same form as drafted and submitted in the bill she sponsored, was as follows:

> Sec. 30. Chapter 295 of NRS is hereby amended by adding thereto a new section to read as follows:
>
> ***1. A petition for initiative or referendum may be withdrawn if a person authorized pursuant to NRS 295.015 to withdraw the petition submits a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State.***
>
> ***2. Once a petition for initiative or referendum is withdrawn pursuant to subsection 1, no further action may be taken on***

that petition.

See Enrolled Text of A.B. 45 (2017), page 56, available at https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB45_EN.pdf (last visited Jan. 11, 2022). As part of this legislation, initiative proponents were required, under NRS 295.015, to authorize up to three persons who could legally withdraw a filed petition upon notification to the Secretary's office. The Secretary prescribed a form for just this purpose, a 2017 executed example of which is here found at Exhibit 16, P.Supp.App., at HOLL00147.

As is demonstrated by the clear text of the statute, no time restrictions existed limiting the right of an initiative proponent to withdraw his or her measure under new NRS 295.026. Neither, at any juncture, did the Secretary or representatives of her office testifying before the Legislature comment upon a need for any such restriction, or request any such amendment, or make reference in any way to a conflict or tension between the language the Secretary encouraged the Legislature to enact and Article 19, Section 2 of the Nevada Constitution. Neither does the form the Secretary prescribed for the use of proponents wishing to withdraw their initiative petitions make any mention of a period within which such a request must be made in order to comport with the Nevada Constitution, in the Secretary's eyes. Legislatively, the Secretary received exactly what she had requested: official, express guidance from the Legislature regarding the ability of initiative proponents to withdraw their measure so that they need not proceed informally, as her office had been doing, and at that point, at least, there existed no limits on the right of withdrawal of a filed initiative. In the wake of the passage and enactment of A.B. 45, and its codification at NRS 295.026, the Secretary neither proposed nor enacted any regulations addressing any shortcomings, limitations, or gaps—constitutional or otherwise—in the new law.

B. Assembly Bill 321 (2021)

Under A.B. 45 (2017), the only limitation on the date by which the proponents of an initiative petition would need to withdraw their petition and still comply with the law would, presumably, be connected to the finalization and printing of general election ballots. This stands to reason. There is a point at which, with a general election on the immediate horizon, ballots must be locked and unchangeable, no matter the circumstances, because of preparations for production of the ballots, the sending out of overseas and military ballots, and a general requirement of political finality to avoid voter confusion. The Nevada Legislature has recognized this, by enacting, for example, the requirement that as of 5:00 p.m. on the fourth Friday of July, even death will not cause a general election candidate's name to come off the November ballot. NRS 293.368(3).

At the 2021 Regular Session of the Nevada Legislature, the silence regarding the timing of initiative petition withdrawal—or, more properly stated, the date by which an initiative proponent may exercise their already-existing right to withdraw an initiative petition—was addressed in Assembly Bill 321 (2021). In it, at Section 84.5, the right to withdraw initiative petitions was modified to limit it in time and provide a hard deadline for doing so:

> Sec. 84.5. NRS 295.026 is hereby amended to read as follows:
>
> 295.026 1. A petition for initiative or referendum may be withdrawn if a person authorized pursuant to NRS 295.015 to withdraw the petition submits a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State.
>
> ***Any such notice of withdrawal of:***
>
> ***(a) A petition for initiative that proposes a statute or an amendment to a statute must be submitted to the Secretary of State not later than 90 days before the election at which the question of approval or disapproval of the initiative will appear on the ballot;***
>
> ***(b) A petition for initiative that proposes an amendment to the Constitution must be submitted to the Secretary of State not later than 90 days before the first election at which the***

> ***question of approval or disapproval of the initiative will appear on the ballot; or***
>
> ***(c) A petition for referendum must be submitted to the Secretary of State not later than 90 days before the election at which the question of approval or disapproval of the referendum will appear on the ballot.***
>
> 2. Once a petition for initiative or referendum is withdrawn pursuant to subsection 1, no further action may be taken on that petition.

See Enrolled Text of A.B. 321 (2021), page 65, available at https://www.leg.state.nv.us/Session/81st2021/Bills/AB/AB321_EN.pdf (last visited Jan. 11, 2022).

The amendment meant that the Legislature directed initiative proponents to withdraw, if they desired to do so, by early August of the election year in which the measure was to be put to the voters, presumably (like other ballot finalization statutes) to ensure that step was taken before printing and preparation of the general election ballot materials.[2]

While A.B. 321 (2021) was not sponsored directly by the Secretary's office, as A.B. 45 (2017) had been, the Deputy Secretary of State attended the committee hearings and testified on other aspects of the bill. No mention was made of the amendment to NRS 295.026 regarding time limitations on withdrawal, and no request to be heard on any matter of constitutional concern was recorded. In fact, the amendment was so unremarkable that no legislator, agency representative, or attendee made mention of it at any hearing. The bill was approved and enacted, and the amendment to NRS 295.026 codified as law.

In summary, in 2017 the Nevada Legislature established the right of initiative

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[2] The 2022 General Election will be held on Tuesday, November 8, 2022. The deadline for withdrawal of these particular Initiatives, therefore, will be Wednesday, August 10, 2022, meaning Petitioners have requested their withdrawals far in advance of the expiration of the statutory period.

proponents to withdraw their petitions, and in 2021 it further refined that right by limiting it in time so that ballot indeterminacy and voter confusion was avoided, all with both the cooperation and assent of the Secretary of State during the legislative process—a process upon which Petitioners here were entitled to rely.

IV. ARGUMENT

The Secretary's argument, determined through the letter stating her office is rejecting attempts by the Petitioners to withdraw the Initiatives and instead plans to place the measures on the 2022 statewide General Election ballot, is essentially that NRS 295.026 is unconstitutional. *See* P.App., at HOLL00054-55. In fact, by her actions, she has effectively deemed the statute of no effect, declaring it unconstitutional, with neither a judicial opinion nor the agreement of her institutional attorney, the Nevada Attorney General.[3] But it is an absolutely fundamental aspect of our system of government that, while input of an agency may retain some persuasive value for a reviewing court, it is solely this Court's duty to interpret the constitution. *See, e.g., MDC Rest., LLC. v. Eighth Judicial Dist. Court*, 134 Nev. 315, 320, 419 P.3d 148, 152-53 (2018) (recognizing that interpretation of "the meaning of a provision in the Nevada constitution … is a responsibility that [the court] cannot abdicate to an agency").

To be exact, the Secretary's appears to consider only the 2021 amendment to NRS 295.026—the sections establishing the 90-day pre-election deadlines for submission of withdrawal requests—to be unconstitutional. She likely would concede that there is a lawful window within which to withdraw an initiative petition and, in

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[3] This circumstance presents further sets of questions regarding the authority of the Secretary to refuse to enforce the law as written, even apart from her attempt to deem the law unconstitutional. Going back to *Marbury v. Madison*, 5 U.S. 137 (1803), of course, it is emphatically the duty of the judiciary to determine what the law is, and the concomitant duty of the executive branch to enforce its terms.

fact, as her deputy's testimony in support of the bills that enacted 295.026 indicated, her office has had an informal practice of permitting withdrawal of initiative petitions for years. For a statutory initiative, that lawful window, she argues, closes not at the 90-day deadline found in the statute, but rather at the moment(s) during a legislative session in which the Legislature either rejects the petition submitted to it, or at the expiration of the 40-day period within which the Legislature is required to act upon qualified initiatives. At whichever of those points occurs first, her argument goes, the die is cast: the Secretary "shall" submit the question to the voters at the next general election, and no statute may affect the duty imposed upon her to do so.

The problem with this approach—apart from the history of the statutory right found in NRS 295.026 and the reliance Petitioners were justified in placing upon it—is that it is far too crabbed a reading of Article 19 of the Nevada Constitution, of the ability of the Legislature to enact measures facilitating and regulating the initiative process, and of the duty of the Secretary of State to place measures on the statewide ballot that have complied with the law. Furthermore, this approach makes no attempt to harmonize NRS 295.026 with the constitutional text, while respecting the role of the Legislature in enacting statutes that facilitate the ballot initiative process. The absolutist interpretation the Secretary places on the term "shall" in determining her role in the initiative process is, in the current circumstances, textually unjustified and legally unsustainable.

A. Constitutionality Of NRS 295.026

In promulgating NRS 295.026, the Legislature is presumed to have acted constitutionally. *See Schwartz v. Lopez*, 132 Nev. 732, 745, 382 886 (2016) ("In considering a constitutional challenge to a statute, we must start with the presumption in favor of constitutionality, and therefore we will interfere only when the Constitution is clearly violated.") (internal citations omitted). Moreover, where a statute is susceptible to both a constitutional and an unconstitutional interpretation,

courts are obliged to construe the statute so that it does not violate the constitution. *Sheriff v. Wu*, 101 Nev. 687, 708 P.2d 305 (1985).

This Court can and should read NRS 295.026 in harmony with the Nevada Constitution. Under NRS 295.026, the Secretary must accept and act upon a duly-submitted notice of withdrawal of an initiative, such as those submitted here by Petitioners. *See* P.App., at HOLL00039, HOLL00052-53. Article 19 of the Nevada Constitution evinces no contrary command, and her duty to submit an initiative petition to the voters upon its compliance with all laws and procedures enacted to establish and facilitate the process is not thereby affected.

Nothing in Article 19 appears to contravene the Legislature's ability to enact a provision permitting proponents such as Petitioners from deciding to withdraw their initiative measures. The Secretary need not submit any of the petitions at issue here to the voters until November of 2022. NRS 295.026 builds in ninety days prior to that time, before which a petition proponents may notice the decision to withdraw. Petitioners here submitted their withdrawal notices 16 and 13 months before the general election, respectively. In harmonizing the statute with the constitutional provision, any initiative petition that is not withdrawn before the deadline in 295.026 is submitted to the voters at the general election, and any measure withdrawn under its terms in no way prevents the Secretary from submitting to the electorate any measures that have met all legal requirements. The Secretary "shall," in this construction, submit to the voters of Nevada initiative petitions that have met all requirements under law for her to do so; the absence of withdrawal is, in the wisdom of the Nevada Legislature, among those legal requirements.

There are any number of requirements for initiative measures to meet before the Secretary may submit them to the voters at an election, and only a few of them are contemplated expressly by the Nevada Constitution; most fall under the category of facilitating legislation pursuant to Article 19, Section 5. For example, the

Legislature has determined that a prima facie showing of statewide support for a particular measure is a useful manner of facilitating the initiative process, and to that end it requires signatures to be collected equally from four petition districts. *See* NRS 295.012. Nothing in the Nevada Constitution requires such, but surely the Secretary would not accept and place upon the ballot any measure—statutory, constitutional, or in the nature of a referendum—that had not complied with these geographical signature gathering, despite the use of "shall" in Article 19. Nothing in Article 19 describes the formal requirements of petition documents—failures to comply with which can mean disqualification of an entire initiative[4]—but the Legislature has enacted statutory provisions regarding those subjects and the Secretary has promulgated regulations fleshing out and enforcing their details. Likewise, the ability of voters to remove their names from petitions after signing is not a right afforded by the Nevada Constitution, but the Legislature determined it was wise to permit by statute as a facilitation of the process (NRS 295.055), and the Secretary enacted regulations governing the procedure (NAC 295.050).

Similarly, it is the sense and determination of the Nevada Legislature, also pursuant to Article 19, Section 5, that a process whereby proponents of statutory initiatives, constitutional initiatives, and referenda can withdraw their Petitions—with plenty time before the general election, so prejudice or confusion are avoided—all in aid of the process of direct democracy generally in this state. It is not the province of the Secretary of State to gainsay that determination. Her duties remain intact, and no express charge to her by the state constitution is violated or offended.

The Legislature, when it enacted both successive versions of NRS 295.026, is

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[4] *See Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 191 P.3d 1138 (2008) (affirming district court's decision to disqualify initiatives based on defective circulator affidavit relied upon by proponents and found on a publication prepared by the Secretary of State).

presumed not only to know its own legal limitations and the boundaries of the state constitution, but also to have knowledge of the Nevada judiciary's decisions regarding facilitating legislation under Article 19. Certainly, "although the Legislature may enact laws to facilitate the operation of the initiative process such as NRS 295.009, [courts], in interpreting and applying such laws, must make every effort to sustain and preserve the people's constitutional right to amend their constitution through the initiative process." *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006) (internal quotation marks and citations omitted). The single-subject rule and the requirement of a description of effect (NRS 295.009) are, themselves, examples of extra-constitutional requirements adopted in facilitation of the initiative process. *See Education Init. v. Comm. to Protect Jobs*, 129 Nev. 35, 37-38, 293 P.3d 874 (2013) (discussing "facilitation" versus "obstruction" of people's right to initiative).[5] And although they create limitations that bind petition proponents, in some ways making the process more difficult, they still are considered to be "facilitating" the process because they clarify, make less confusing, expedite, or otherwise make the initiative procedure more intelligible and accessible to Nevadans.

Here, unlike the single-subject rule, or the description of effect requirement, or the petition district signature mandate—all of which are valid exercises of the legislative prerogative to facilitate the initiative process but which appear on their faces to restrict some aspects of a petition proponent's freedom in the process (to present multiple-subject measures, to offer lengthy or argumentative descriptions, or to gather signatures from, for example, a single county), NRS 295.026 actually expands the rights of Petitioners. Previously, as the Secretary's staff described in legislative hearings, there was no formal process for withdrawal of an initiative

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[5] *See also Nevadans for Nevada v. Beers*, 122 Nev. 930, 939, 142 P.3d 339 (2006); *Las Vegas Taxpayer Accountability Committee v. City Council of the City of Las Vegas*, 125 Nev. 165, 177, 208 P.3d 429 (2009).

petition; withdrawal was achieved *ad hoc*, informally, and at the Secretary's own discretion. Now, with enactment of 295.026, proponents like Petitioners know throughout the process—from formulation through to election season—that they have a clear deadline and process for withdrawal. This, in the judgment of the elected Legislature, is a useful innovation facilitating the process as a whole.[6]

B. Reliance By Petitioners, And Deference To The Secretary

At every moment of the initiative petition process—from conception of the petitions, to their filing, through the signature gathering period, and finally during and after the 2021 Regular Session of the Nevada Legislature—Petitioners had the right, and were correct to believe they had the right, to withdraw the Petitions. The texts of the successive versions of NRS 295.026 establishing that right were clear, and there was no contraindication from any quarter that Petitioners did not have such a right. Until issuing her letter-ruling, the Secretary had made no comment, decision, or order to the contrary; had, in fact, sponsored, helped craft, and explicitly approved the legislation establishing the right of withdrawal; and at no time did she draft, propose, or enact any regulation that would limit or circumscribe Petitioners' rights to withdraw.

Even if the Secretary's argument regarding the textual interaction of NRS 295.026 and Article 19, Section 2 had merit, the particular procedural progress and setting of this matter argues for the grant of the writ relief sought by Petitioners. Clearly, by their actions, it is abundantly obvious that Petitioners relied upon their

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[6] Furthermore, as the Attorney General points out in his AGO 2021-04 (P.App., at HOLL00041 n. 2), the Secretary's position would result in differing and sliding deadlines for withdrawal of petitions depending on whether they are statutory, constitutional, or are referenda. This is unworkable and potentially confusing. NRS 295.026 brings all types of popular ballot measures within a uniform withdrawal calendar. Again, this is a useful innovation facilitating and streamlining the initiative process.

rights as laid out in statutes—a reliance the Secretary herself fostered. There is no scenario in which the Secretary's September 7, 2021, letter indicating her decision to reject Petitioners' attempts to withdraw the Petitions should receive deference from this Court under these circumstances.[7]

The intent of the Nevada Legislature in enacting NRS 295.026 is abundantly clear, and it meshes with the Secretary's own request in legislative hearings to set out, formally, the process by which petition proponents may withdraw their measures. In any event, when interpreting a statute, the Nevada Supreme Court has said that it will "resolve any doubt as to legislative intent in favor of what is reasonable, as against what is unreasonable." *Desert Valley Water Co. v. State Engineer*, 104 Nev. 718, 720, 766 P.2d 866, 866 (1988). Even a reasonable agency interpretation of a statute will be undone by a court when it determines that the agency's interpretation conflicts with legislative intent. *State v. State Farm*, 116 Nev. 290, 293, 995 P.2d 482, 484 (2000) ("[A] court will not hesitate to declare a regulation invalid when the regulation violates the constitution, conflicts with existing statutory provisions or exceeds the statutory authority of the agency or is otherwise arbitrary and capricious."). Here, of course, we are not even dealing with an enacted regulation, but merely a declaration of intention and a brief interpretation by the Secretary, issued as a letter and not even as a formal public pronouncement.

The Nevada Supreme Court has noted that it will decline to apply deference to a Secretary of State's interpretation of a statute, especially where no regulation has issued. Regulations, of course, undergo drafting, vetting, and discussion, public comment, and ultimately approval by the Legislative Commission in public meetings;

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[7] "The district court may decide purely legal questions without deference to an agencies determination." *Bacher v. State Engineer*, 122 Nev. 1110, 146 P.3d 793, 789 (2006).

ad hoc interpretations of statutes affecting the rights of Nevadans in the initiative process go through no such procedures, and therefore will not receive deference from courts. *Nevada State Democratic Party v. Nevada Republican Party*, 256 P.3d 1, 7 (Nev. 2011) (No deference owed to the Secretary of State's interpretation of NRS 304.240, where regulations could have been but were never promulgated or enacted);[8] *Independent American Party v. Lau*, 110 Nev. 1151, 1154-55, 880 P.2d 1391, 1393 (1994) (noting deference to the Secretary of State as a constitutional officer in the interpretation of an ambiguous election statute but declining to apply deference when the plain language of the election statute contradicted the Secretary's interpretation).

The decision in *Nevada State Democratic Party v. Nevada Republican Party* is particularly instructive here. It was the last time, for instance, in which a major election law decision by a Nevada Secretary of State was challenged as contrary to both existing statutes and the authority of the Secretary in the circumstances. In that case, at stake were the rules under which individuals and major political parties would be able to nominate candidates in a special election to replace former Representative Dean Heller, who had resigned upon his appointment to the United States Senate. The Secretary at the time, issued an interpretation—after the resignation of Congressman Heller—that was judged to be contrary to statutory

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[8] *See, especially, Nevada State Democratic Party*, 256 P.3d at 7 n. 4: "When regulations are adopted … certain procedural protections must be followed. *See, e.g.,* NRS 233B.040 (requiring agency regulations to include a citation of the authority pursuant to which it was adopted and the address of the agency along with a brief explanation of the procedures for obtaining a clarification of or relief from the regulation); NRS 233B.060–.0609 (providing notice requirements before the adoption of regulations); NRS 233B.061 (providing the opportunity for public comment with respect to proposed regulations). In our view, these procedures, which are more extensive than those accompanying the Secretary's statutory authority to issue interpretations of Nevada's election laws, could have provided a more thorough review of the issues presented by NRS Chapter 304."

authority, but was also deemed unworthy of deference by the Supreme Court because there had been no attempt to enact regulations that would have provided guidance to the parties, as the Secretary was required to do.

Here, in a similar vein, the Secretary had multiple opportunities over the years to voice her view of the intersection of NRS 295.026 and the Nevada Constitution, but chose not to do so until a withdrawal notice had been submitted, and chose not to address this matter through her regulatory powers. In fact, the Secretary not only asked the Legislature to establish procedures for withdrawing initiative petitions, she participated in the development of the legislation, but at no time made clear her apparent constitutional objections. As such, the Secretary is now acting to the detriment of Petitioners' clear reliance, and in a manner not in keeping with her authority. Her argument that there exists an irreconcilable conflict between NRS 295.026 and Article 19, Section 2 regarding her duties, therefore, should be granted no deference by the Court.

V. CONCLUSION

The Nevada Legislature has determined that Petitioners shall have the right to withdraw their Petitions, subject to certain limitations of timing. No necessary reading of the Nevada Constitution requires the Secretary to deny this right and reject the properly-filed withdrawal notices. Based upon the foregoing, Petitioners ask this Court to issue the requested writs so that the Initiatives are withdrawn and may not be placed on the 2022 General Election ballot.

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AFFIRMATION

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

DATED this 26th day of January, 2022

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SCHULMAN & RABKIN, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2022, a true and correct copy of the **MEMORANDUM OF POINTS OF AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION** was served upon all parties via electronic mail to the following:

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; and FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

vs.

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

Respondent.

Case No.: 21 OC 00182 1B

Dept. No.: II

PETITIONERS' SUPPLEMENTAL APPENDIX OF EXHIBITS

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DATED this 26th day of January, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January 2022, a true and correct copy of the **PETITIONERS' SUPPLEMENTAL APPENDIX OF EXHIBITS** was served upon all parties via electronic mailing to the following:

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EXHIBIT 13

EXHIBIT 13

ASSEMBLY BILL NO. 45–COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE SECRETARY OF STATE)

PREFILED NOVEMBER 17, 2016

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to public office. (BDR 24-426)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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

AN ACT relating to public office; defining the term "voter registration drive"; establishing the deadline for a major political party to file a certificate of nomination for the offices of President and Vice President of the United States; requiring a nongovernmental entity that sends a notice relating to voter registration to include certain information in the notice; authorizing the Secretary of State to adopt by regulation qualifications to assist in a voter registration drive; amending the deadline for a minor political party to file a certificate of nomination for the offices of President and Vice President of the United States; updating citations in Nevada Revised Statutes to certain provisions of federal law; setting forth the duties of persons who participate in a voter registration drive; revising the campaign finance reporting requirements for certain candidates, persons, committees and parties relating to a special election to recall a public officer; authorizing the Secretary of State to adopt by regulation qualifications for a person to circulate a petition for initiative or referendum; setting forth the requirements to withdraw a petition for initiative or referendum; requiring a person who intends to circulate a petition for initiative or referendum to submit certain information to the Secretary of State; extending, under certain circumstances, the deadline for submitting for verification certain petitions for initiative; clarifying that a copy of a petition of candidacy of an independent candidate for the office of President of the United States must be filed with the Secretary of State before the petition is circulated for signatures; authorizing the Secretary of State to investigate and impose civil penalties for certain violations of law relating to financial disclosure statements; requiring a financial disclosure statement to be signed under an oath to God or penalty of perjury; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill defines a "voter registration drive" as an effort undertaken to: (1) distribute applications to register to vote; or (2) assist persons to complete or submit applications to register to vote or update or correct their voter registration information. **Section 5** of this bill authorizes the Secretary of State to adopt by regulation qualifications for a person to assist in a voter registration drive.

Existing law prohibits a person who assists other persons in registering to vote from: (1) delegating duties to another person; (2) refusing to register a person to vote on account of that person's political party affiliation; (3) registering persons who are not qualified electors or who fail to provide proof of identification and residence; or (4) failing to deliver to county clerks by certain deadlines completed applications to register to vote. (NRS 293.505) **Section 14** of this bill provides that such acts are also prohibited of persons who assist in voter registration drives.

Section 4 of this bill requires a nongovernmental entity that sends a notice to a person indicating the person is not or may not be registered to vote or requesting the person to register to vote to indicate on the notice that it is not official elections mail from the Secretary of State or a county or city clerk.

Existing law requires a minor political party that wishes to place candidates for President and Vice President of the United States on the ballot to file with the Secretary of State a certificate of nomination for these offices not later than the last Tuesday in August. (NRS 293.1725) **Section 7** of this bill moves that deadline to the first Tuesday in August preceding the general election. **Section 3** of this bill applies the same deadline to major political parties, and **section 33** of this bill makes a conforming change.

Existing law relating to elections cites to various provisions of federal law, including the Voting Rights Act of 1965 (52 U.S.C. §§ 10101 to 10301 et seq.), the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. §§ 20301 et seq.), the Military and Overseas Voter Empowerment Act (52 U.S.C. §§ 20302 et seq.) and the Help America Vote Act (52 U.S.C. §§ 15482 et seq.). (NRS 293.208, 293.2699, 293.309, 293.4685, 293.502, 293.504, 293.505, 293C.305, 293D.050, 293D.110, 293D.200, 293D.230, 293D.300, 293D.320, 293D.410, 293D.530) **Sections 8-13 and 15-23** of this bill update the citations to these federal laws.

Existing law sets forth campaign finance reporting requirements for candidates and certain persons and committees that accept contributions and make expenditures related to a special election to recall a public officer. (NRS 294A.120, 294A.140, 294A.200, 294A.210) **Sections 24-27** of this bill set forth the reporting requirements that apply where no such special election is held because the petition for recall is not submitted for verification or is submitted for verification but is legally insufficient.

Section 29 of this bill authorizes the Secretary of State to adopt by regulation qualifications for a person to circulate a petition for initiative or referendum.

Existing law requires a copy of a petition for initiative or referendum to be placed on file with the Secretary of State before it may be circulated for signatures. (NRS 295.015) **Section 31** of this bill requires that the person who intends to circulate the petition must also submit to the Secretary of State a form that includes: (1) the person's name and signature; (2) the name of any committee for political action formed by the person to advocate the passage of the initiative or referendum; and (3) the names of persons who are authorized to withdraw the petition or submit a revised petition. **Section 30** of this bill provides that a petition may be withdrawn if one of those authorized persons submits a notice of withdrawal to the Secretary of State.

Existing law provides that if a petition for initiative proposes a statute or an amendment to a statute, the petition must be submitted for verification not later than the second Tuesday in November of an even-numbered year. (NRS 295.056) **Section 32** of this bill provides that if the second Tuesday in November of an

even-numbered year is the day of the general election, that deadline is instead the next working day after the election.

Existing law requires that if a person desires to be an independent candidate for President of the United States, the person must circulate a nominating petition and obtain a certain number of signatures. Existing law also requires that a copy of that petition be filed with the Secretary of State. (NRS 298.109) **Section 34** of this bill clarifies that the copy must be filed with the Secretary of State before the petition is circulated for signatures.

Existing law requires certain candidates and public officers to submit financial disclosure statements to the Secretary of State. (NRS 281.556-281.581) **Section 37** of this bill requires that a financial disclosure statement be signed by the candidate or public officer under an oath to God or penalty of perjury. **Section 35** of this bill authorizes the Secretary of State to conduct investigations and impose civil penalties on candidates and public officers who do not comply with the statutory requirements applicable to financial disclosure statements.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 293 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. ***"Voter registration drive" means an effort undertaken by a person to:***

1. Distribute applications to register to vote; or

2. Assist:

(a) Electors to complete or submit applications to register to vote; or

(b) Registered voters to update or correct their existing voter registration information.

Sec. 3. ***A major political party that wishes to place candidates for the offices of President and Vice President of the United States on the ballot for the general election must file with the Secretary of State a certificate of nomination for these offices not later than the first Tuesday in August preceding the general election.***

Sec. 4. ***Any nongovernmental entity that sends a notice to a person:***

1. Indicating that the person is not or may not be registered to vote in this State; or

2. Requesting that the person register to vote in this State,

➥ must indicate clearly on the notice that it is not official elections mail from the Secretary of State or a county or city clerk.

Sec. 5. ***The Secretary of State may adopt by regulation qualifications for a person to assist in a voter registration drive.***

Sec. 6. NRS 293.010 is hereby amended to read as follows:

293.010 As used in this title, unless the context otherwise requires, the words and terms defined in NRS 293.013 to 293.121,

inclusive, ***and section 2 of this act*** have the meanings ascribed to them in those sections.

Sec. 7. NRS 293.1725 is hereby amended to read as follows:

293.1725 1. Except as otherwise provided in subsection 4, a minor political party that wishes to place its candidates for partisan office on the ballot for a general election and:

(a) Is entitled to do so pursuant to paragraph (a) or (b) of subsection 2 of NRS 293.1715; or

(b) Files or will file a petition pursuant to paragraph (c) of subsection 2 of NRS 293.1715,

➥ must file with the Secretary of State a list of its candidates for partisan office not earlier than the first Monday in March preceding the election nor later than 5 p.m. on the second Friday after the first Monday in March. The list must be signed by the person so authorized in the certificate of existence of the minor political party before a notary public or other person authorized to take acknowledgments. The list may be amended not later than 5 p.m. on the second Friday after the first Monday in March.

2. The Secretary of State shall immediately forward a certified copy of the list of candidates for partisan office of each minor political party to the filing officer with whom each candidate must file his or her declaration of candidacy.

3. Each candidate on the list must file his or her declaration of candidacy with the appropriate filing officer and pay the fee required by NRS 293.193 not earlier than the date on which the list of candidates for partisan office of the minor political party is filed with the Secretary of State nor later than 5 p.m. on the second Friday after the first Monday in March.

4. A minor political party that wishes to place candidates for the offices of President and Vice President of the United States on the ballot and has qualified to place the names of its candidates for partisan office on the ballot for the general election pursuant to subsection 2 of NRS 293.1715 must file with the Secretary of State a certificate of nomination for these offices not later than the ~~[~~last~~]~~ ***first*** Tuesday in August ~~[.]~~ ***preceding the general election.***

Sec. 8. NRS 293.208 is hereby amended to read as follows:

293.208 1. Except as otherwise provided in subsections 2, 3 and 5 and in NRS 293.206, no election precinct may be created, divided, abolished or consolidated, or the boundaries thereof changed, during the period between the third Wednesday in March of any year whose last digit is 6 and the time when the Legislature has been redistricted in a year whose last digit is 1, unless the creation, division, abolishment or consolidation of the precinct, or the change in boundaries thereof, is:

(a) Ordered by a court of competent jurisdiction;

(b) Required to meet objections to a precinct by the Attorney General of the United States pursuant to the Voting Rights Act of 1965, ~~[42 U.S.C. §§ 1971 and 1973]~~ ***52 U.S.C. §§ 10101 and 10301*** et seq., and any amendments thereto;

(c) Required to comply with subsection 2 of NRS 293.205;

(d) Required by the incorporation of a new city; or

(e) Required by the creation of or change in the boundaries of a special district.

➥ As used in this subsection, "special district" means any general improvement district or any other quasi-municipal corporation organized under the local improvement and service district laws of this State as enumerated in title 25 of NRS which is required by law to hold elections or any fire protection district which is required by law to hold elections.

2. If a city annexes an unincorporated area located in the same county as the city and adjacent to the corporate boundary, the annexed area may be included in an election precinct immediately adjacent to it.

3. A new election precinct may be established at any time if it lies entirely within the boundaries of any existing precinct.

4. If a change in the boundaries of an election precinct is made pursuant to this section during the time specified in subsection 1, the county clerk must:

(a) Within 15 days after the change to the boundary of a precinct is established by the county clerk or ordered by a court, send to the Director of the Legislative Counsel Bureau and the Secretary of State a copy or electronic file of a map showing the new boundaries of the precinct; and

(b) Maintain in his or her office an index providing the name of the precinct and describing all changes which were made, including any change in the name of the precinct and the name of any new precinct created within the boundaries of an existing precinct.

5. Cities of population categories two and three are exempt from the provisions of subsection 1.

6. As used in this section, "electronic file" includes, without limitation, an electronic data file of a geographic information system.

Sec. 9. NRS 293.2699 is hereby amended to read as follows:

293.2699 1. Each voting system used by a county or city shall provide voting materials in English and other languages in compliance with the provisions of ~~[42 U.S.C. § 1973aa-1a.]~~ ***52 U.S.C. § 10503.***

2. As used in this section, the term "voting materials" has the meaning ascribed to it in ~~[42 U.S.C. § 1973aa-1a.]~~ ***52 U.S.C. § 10503.***

Sec. 10. NRS 293.309 is hereby amended to read as follows:

293.309 1. The county clerk of each county shall prepare an absent ballot for the use of registered voters who have requested absent ballots. The county clerk shall make reasonable accommodations for the use of the absent ballot by a person who is elderly or disabled, including, without limitation, by providing, upon request, the absent ballot in 12-point type to a person who is elderly or disabled.

2. The ballot must be prepared and ready for distribution to a registered voter who:

(a) Resides within the State, not later than 20 days before the election in which it is to be used;

(b) Except as otherwise provided in paragraph (c), resides outside the State, not later than 40 days before a primary or general election, if possible; or

(c) Requested an absent ballot pursuant to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. §§ 1973ff]~~ ***52 U.S.C. §§ 20301*** et seq., not later than 45 days before the election.

3. Any legal action which would prevent the ballot from being issued pursuant to subsection 2 is moot and of no effect.

Sec. 11. NRS 293.4685 is hereby amended to read as follows:

293.4685 1. The Secretary of State shall:

(a) Provide information regarding voter registration and absentee voting by Armed Forces personnel and overseas voters;

(b) Within 90 days after the date of each general election and general city election in which electors voted for federal offices, submit to the Election Assistance Commission established pursuant to ~~[42 U.S.C. § 15321]~~ ***52 U.S.C. § 20921*** a report of the combined number of absentee ballots transmitted to absent Armed Forces personnel and overseas voters for the election and the combined number of such ballots that were returned by such voters and cast in the election;

(c) Make each report submitted pursuant to paragraph (b) available to the public; and

(d) Adopt any regulations which are necessary to comply with the provisions of the Help America Vote Act of 2002, Public Law 107-252, and which are not inconsistent with the provisions of this chapter to the extent the provisions of this chapter are consistent with the Help America Vote Act of 2002, Public Law 107-252.

2. Each county and city clerk shall provide such information as is requested by the Secretary of State to comply with the provisions of this section.

Sec. 12. NRS 293.502 is hereby amended to read as follows:

293.502 1. An elector:

(a) Who complies with the requirements for registration set forth in the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. §§ 1973ff]~~ ***52 U.S.C. §§ 20301*** et seq.;

(b) Who, not more than 60 days before an election:

(1) Is discharged from the Armed Forces of the United States or is the spouse or dependent of an elector who is discharged from the Armed Forces; or

(2) Is separated from employment outside the territorial limits of the United States or is the spouse or dependent of an elector who is separated from employment outside the territorial limits of the United States;

(c) Who presents evidence of the discharge from the Armed Forces or separation from employment described in paragraph (b) to the county clerk; and

(d) Is not registered to vote at the close of registration for that election,

➥ must be allowed to register to vote in the election.

2. Such an elector must:

(a) Register in person; and

(b) Vote in the office of the county clerk unless the elector is otherwise entitled to vote an absent ballot pursuant to federal law.

3. The Secretary of State shall adopt regulations to carry out a program of registration for such electors.

Sec. 13. NRS 293.504 is hereby amended to read as follows:

293.504 1. The following offices shall serve as voter registration agencies:

(a) Such offices that provide public assistance as are designated by the Secretary of State;

(b) Each office that receives money from the State of Nevada to provide services to persons with disabilities in this State;

(c) The offices of the Department of Motor Vehicles;

(d) The offices of the city and county clerks;

(e) Such other county and municipal facilities as a county clerk or city clerk may designate pursuant to NRS 293.5035 or 293C.520, as applicable;

(f) Recruitment offices of the United States Armed Forces; and

(g) Such other offices as the Secretary of State deems appropriate.

2. Each voter registration agency shall:

(a) Post in a conspicuous place, in at least 12-point type, instructions for registering to vote;

(b) Except as otherwise provided in subsection 3, distribute applications to register to vote which may be returned by mail with any application for services or assistance from the agency or submitted for any other purpose and with each application for

recertification, renewal or change of address submitted to the agency that relates to such services, assistance or other purpose;

(c) Provide the same amount of assistance to an applicant in completing an application to register to vote as the agency provides to a person completing any other forms for the agency; and

(d) Accept completed applications to register to vote.

3. A voter registration agency is not required to provide an application to register to vote pursuant to paragraph (b) of subsection 2 to a person who applies for or receives services or assistance from the agency or submits an application for any other purpose if the person declines to register to vote and submits to the agency a written form that meets the requirements of ~~[42 U.S.C. § 1973gg-5(a)(6).]~~ ***52 U.S.C. § 20506(a)(6).*** No information related to the declination to register to vote may be used for any purpose other than voter registration.

4. Except as otherwise provided in this subsection and NRS 293.524, any application to register to vote accepted by a voter registration agency must be transmitted to the county clerk not later than 10 days after the application is accepted. The applications must be forwarded daily during the 2 weeks immediately preceding the fifth Sunday preceding an election. The county clerk shall accept any application to register to vote which is obtained from a voter registration agency pursuant to this section and completed by the fifth Sunday preceding an election if the county clerk receives the application not later than 5 days after that date.

5. The Secretary of State shall cooperate with the Secretary of Defense to develop and carry out procedures to enable persons in this State to apply to register to vote at recruitment offices of the United States Armed Forces.

Sec. 14. NRS 293.505 is hereby amended to read as follows:

293.505 1. All justices of the peace, except those located in county seats, are ex officio field registrars to carry out the provisions of this chapter.

2. The county clerk shall appoint at least one registered voter to serve as a field registrar of voters who, except as otherwise provided in NRS 293.5055, shall register voters within the county for which the field registrar is appointed. Except as otherwise provided in subsection 1, a candidate for any office may not be appointed or serve as a field registrar. A field registrar serves at the pleasure of the county clerk and shall perform such duties as the county clerk may direct. The county clerk shall not knowingly appoint any person as a field registrar who has been convicted of a felony involving theft or fraud. The Secretary of State may bring an action against a county clerk to collect a civil penalty of not more than $5,000 for each person who is appointed as a field registrar in

violation of this subsection. Any civil penalty collected pursuant to this subsection must be deposited with the State Treasurer for credit to the State General Fund.

3. A field registrar shall demand of any person who applies for registration all information required by the application to register to vote and shall administer all oaths required by this chapter.

4. When a field registrar has in his or her possession five or more completed applications to register to vote, the field registrar shall forward them to the county clerk, but in no case may the field registrar hold any number of them for more than 10 days.

5. Each field registrar shall forward to the county clerk all completed applications in his or her possession immediately after the fifth Sunday preceding an election. Within 5 days after the fifth Sunday preceding any general election or general city election, a field registrar shall return all unused applications in his or her possession to the county clerk. If all of the unused applications are not returned to the county clerk, the field registrar shall account for the unreturned applications.

6. Each field registrar shall submit to the county clerk a list of the serial numbers of the completed applications to register to vote and the names of the electors on those applications. The serial numbers must be listed in numerical order.

7. Each field registrar shall post notices sent to him or her by the county clerk for posting in accordance with the election laws of this State.

8. A field registrar, employee of a voter registration agency or person assisting a voter pursuant to subsection 13 of NRS 293.5235 ***or as part of a voter registration drive*** shall not:

(a) Delegate any of his or her duties to another person; or

(b) Refuse to register a person on account of that person's political party affiliation.

9. A person shall not hold himself or herself out to be or attempt to exercise the duties of a field registrar unless the person has been so appointed.

10. A county clerk, field registrar, employee of a voter registration agency or person assisting a voter pursuant to subsection 13 of NRS 293.5235 shall not:

(a) Solicit a vote for or against a particular question or candidate;

(b) Speak to a voter on the subject of marking his or her ballot for or against a particular question or candidate; or

(c) Distribute any petition or other material concerning a candidate or question which will be on the ballot for the ensuing election,

➥ while registering an elector.

11. When the county clerk receives applications to register to vote from a field registrar, the county clerk shall issue a receipt to the field registrar. The receipt must include:

(a) The number of persons registered; and

(b) The political party of the persons registered.

12. A county clerk, field registrar, employee of a voter registration agency or person assisting a voter pursuant to subsection 13 of NRS 293.5235 ***or as part of a voter registration drive*** shall not:

(a) Knowingly register a person who is not a qualified elector or a person who has filed a false or misleading application to register to vote; or

(b) Register a person who fails to provide satisfactory proof of identification and the address at which the person actually resides.

13. A county clerk, field registrar, employee of a voter registration agency, person assisting a voter pursuant to subsection 13 of NRS 293.5235 ***or as part of a voter registration drive*** or any other person providing a form for the application to register to vote to an elector for the purpose of registering to vote:

(a) If the person who assists an elector with completing the form for the application to register to vote retains the form, shall enter his or her name on the duplicate copy or receipt retained by the voter upon completion of the form; and

(b) Shall not alter, deface or destroy an application to register to vote that has been signed by an elector except to correct information contained in the application after receiving notice from the elector that a change in or addition to the information is required.

14. ***A person who as part of a voter registration drive accepts a completed application to register to vote from an elector during the 2 weeks immediately preceding the fifth Sunday preceding an election shall:***

(a) Deliver the completed application in person to the county clerk not later than the fifth Sunday preceding the election; or

(b) Mail the completed application to the county clerk not later than the fifth Sunday preceding the election as indicated by the date of the postmark dated by the post office on the envelope in which it is was mailed.

15. If a field registrar violates any of the provisions of this section, the county clerk shall immediately suspend the field registrar and notify the district attorney of the county in which the violation occurred.

~~[15.]~~ ***16.*** A person who violates any of the provisions of subsection 8, 9, 10, 12 ***,*** ~~[or]~~ 13 ***or 14*** is guilty of a category E felony and shall be punished as provided in NRS 193.130.

Sec. 15. NRS 293C.305 is hereby amended to read as follows:

293C.305 1. The city clerk shall prepare an absent ballot for the use of registered voters who have requested absent ballots. The city clerk shall make reasonable accommodations for the use of the absent ballot by a person who is elderly or disabled, including, without limitation, by providing, upon request, the absent ballot in 12-point type to a person who is elderly or disabled.

2. The ballot must be prepared and ready for distribution to a registered voter who:

(a) Except as otherwise provided in paragraph (b), resides within or outside this State, not later than 20 days before the election in which it will be used.

(b) Requested an absent ballot pursuant to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. §§ 1973ff]~~ ***52 U.S.C. §§ 20301*** et seq., not later than 45 days before the election.

3. Any legal action that would prevent the ballot from being issued pursuant to subsection 2 is moot and of no effect.

Sec. 16. NRS 293D.050 is hereby amended to read as follows:

293D.050 "Military-overseas ballot" means:

1. A federal write-in absentee ballot described in section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. § 1973ff-2;]~~ ***52 U.S.C. § 20303;***

2. A ballot specifically prepared or distributed for use by a covered voter in accordance with this chapter; or

3. Any other ballot cast by a covered voter in accordance with this chapter.

Sec. 17. NRS 293D.110 is hereby amended to read as follows:

293D.110 In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that have enacted the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. § 1973ff]~~ ***52 U.S.C. §§ 20301*** et seq.

Sec. 18. NRS 293D.200 is hereby amended to read as follows:

293D.200 1. The Secretary of State shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots.

2. The Secretary of State shall establish a system of approved electronic transmission through which covered voters may apply for, receive and send documents and other information pursuant to this chapter. The system of approved electronic transmission must include, without limitation, a method by which a covered voter may provide his or her digital signature or electronic signature on any document or other material that is necessary for the covered voter to

register to vote, apply for a military-overseas ballot or cast a military-overseas ballot pursuant to this chapter.

3. The Secretary of State shall develop standardized absentee-voting materials, including, without limitation, privacy and transmission envelopes and their electronic equivalents, authentication materials and voting instructions, to be used with the military-overseas ballot of a covered voter authorized to vote in any jurisdiction in this State and, to the extent reasonably possible, shall do so in coordination with other states.

4. The Secretary of State shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the covered voter's identity, eligibility to vote, status as a covered voter and timely and proper completion of a military-overseas ballot. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot under section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. § 1973ff-2,]~~ ***52 U.S.C. § 20303,*** as modified to be consistent with this chapter. The Secretary of State shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

5. The Secretary of State shall prescribe by regulation the duties of a local elections official upon receipt of a military-overseas ballot, including, without limitation, the procedures to be used by a local elections official in accepting, handling and counting a military-overseas ballot.

Sec. 19. NRS 293D.230 is hereby amended to read as follows:

293D.230 1. In addition to any other method of registering to vote set forth in chapter 293 of NRS, a covered voter may use a federal postcard application, as prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. § 1973ff(b)(2),]~~ ***52 U.S.C. § 20301(b)(2),*** or the application's electronic equivalent, to apply to register to vote.

2. A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. § 1973ff-2,]~~ ***52 U.S.C. § 20303,*** to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the seventh day before the election. If the declaration is received after the seventh day before the election, it must be treated as an application to register to vote for subsequent elections.

3. The Secretary of State shall ensure that the system of approved electronic transmission described in subsection 2 of NRS 293D.200 is capable of accepting:

(a) Both a federal postcard application and any other approved electronic registration application sent to the appropriate local elections official; and

(b) A digital signature or an electronic signature of a covered voter on the documents described in paragraph (a).

4. The covered voter may use the system of approved electronic transmission or any other method set forth in chapter 293 of NRS to register to vote.

Sec. 20. NRS 293D.300 is hereby amended to read as follows:

293D.300 1. A covered voter who is registered to vote in this State may apply for a military-overseas ballot by submitting a federal postcard application, as prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. § 1973ff(b)(2),]~~ ***52 U.S.C. § 20301(b)(2),*** or the application's electronic equivalent, pursuant to this section.

2. A covered voter who is not registered to vote in this State may use the federal postcard application or the application's electronic equivalent simultaneously to apply to register to vote pursuant to NRS 293D.230 and to apply for a military-overseas ballot.

3. The Secretary of State shall ensure that the system of approved electronic transmission described in subsection 2 of NRS 293D.200 is capable of accepting the submission of:

(a) Both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate local elections official; and

(b) A digital signature or an electronic signature of a covered voter on the documents described in paragraph (a).

4. A covered voter may use approved electronic transmission or any other method approved by the Secretary of State to apply for a military-overseas ballot.

5. A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. § 1973ff-2,]~~ ***52 U.S.C. § 20303,*** as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate local elections official by the seventh day before the election.

6. To receive the benefits of this chapter, a covered voter must inform the appropriate local elections official that he or she is a

covered voter. Methods of informing the appropriate local elections official that a person is a covered voter include, without limitation:

(a) The use of a federal postcard application or federal write-in absentee ballot;

(b) The use of an overseas address on an approved voting registration application or ballot application; and

(c) The inclusion on an application to register to vote or an application for a military-overseas ballot of other information sufficient to identify that the person is a covered voter.

7. This chapter does not prohibit a covered voter from applying for an absent ballot pursuant to the provisions of NRS 293.315 or voting in person.

Sec. 21. NRS 293D.320 is hereby amended to read as follows:

293D.320 1. For all covered elections for which this State has not received a waiver pursuant to section 579 of the Military and Overseas Voter Empowerment Act, ~~[42 U.S.C. § 1973ff-1(g)(2),]~~ ***52 U.S.C. § 20302(g)(2),*** not later than 45 days before the election or, if the 45th day before the election is a weekend or holiday, not later than the business day preceding the 45th day, the local elections official in each jurisdiction charged with distributing military-overseas ballots and balloting materials shall transmit military-overseas ballots and balloting materials to all covered voters who by that date submit a valid application for military-overseas ballots.

2. A covered voter who requests that a military-overseas ballot and balloting materials be sent to the covered voter by approved electronic transmission may choose to receive the military-overseas ballot and balloting materials by:

(a) Facsimile transmission;

(b) Electronic mail delivery; or

(c) The system of approved electronic transmission that is established by the Secretary of State pursuant to subsection 2 of NRS 293D.200.

➥ The local elections official in each jurisdiction shall transmit the military-overseas ballot and balloting materials to the covered voter using the means of approved electronic transmission chosen by the covered voter.

3. If an application for a military-overseas ballot from a covered voter arrives after the jurisdiction begins transmitting ballots and balloting materials to other voters, the local elections official shall transmit the military-overseas ballot and balloting materials to the covered voter not later than 2 business days after the application arrives.

Sec. 22. NRS 293D.410 is hereby amended to read as follows:

293D.410 1. Except as otherwise provided in subsection 2, a covered voter may use the federal write-in absentee ballot, in

accordance with section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, ~~[42 U.S.C. § 1973ff-2,]~~ ***52 U.S.C. § 20303,*** to vote for all offices and ballot measures in an election.

2. If the covered voter indicates on the federal write-in absentee ballot that he or she is residing overseas indefinitely, the covered voter may only use the federal write-in absentee ballot to vote for federal offices.

Sec. 23. NRS 293D.530 is hereby amended to read as follows:

293D.530 If a covered voter's mistake or omission in the completion of a document under this chapter does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonessential requirement, including, without limitation, using paper or envelopes of a specified size or weight, does not invalidate any document submitted under this chapter. In any write-in ballot authorized by this chapter, if the intention of the covered voter is discernable under this State's uniform definition of what constitutes a vote, as required by the Help America Vote Act of 2002, ~~[42 U.S.C. § 15481(a)(6),]~~ ***52 U.S.C. § 21081(a)(6),*** an abbreviation, misspelling or other minor variation in the form of the name of a candidate or a political party must be accepted as a valid vote.

Sec. 24. NRS 294A.120 is hereby amended to read as follows:

294A.120 1. Every candidate for office at a primary election or general election shall, not later than January 15 of each year, for the period from January 1 of the previous year through December 31 of the previous year, report:

(a) Each contribution in excess of $100 received during the period;

(b) Contributions received during the period from a contributor which cumulatively exceed $100; and

(c) The total of all contributions received during the period which are $100 or less and which are not otherwise required to be reported pursuant to paragraph (b).

➥ The provisions of this subsection apply to the candidate beginning the year of the general election for that office through the year immediately preceding the next general election for that office.

2. Every candidate for office at a primary election or general election shall, not later than:

(a) Twenty-one days before the primary election for that office, for the period from the January 1 immediately preceding the primary election through 25 days before the primary election;

(b) Four days before the primary election for that office, for the period from 24 days before the primary election through 5 days before the primary election;

(c) Twenty-one days before the general election for that office, for the period from 4 days before the primary election through 25 days before the general election; and

(d) Four days before the general election for that office, for the period from 24 days before the general election through 5 days before the general election,

➥ report each contribution described in subsection 1 received during the period.

3. Except as otherwise provided in subsections 4 **,** ~~[and]~~ 5 ***and 6,*** and NRS 294A.223, every candidate for office at a special election shall, not later than:

(a) Four days before the beginning of early voting by personal appearance for the special election, for the period from the candidate's nomination through 5 days before the beginning of early voting by personal appearance for the special election;

(b) Four days before the special election, for the period from 4 days before the beginning of early voting by personal appearance for the special election through 5 days before the special election; and

(c) Thirty days after the special election, for the remaining period through the date of the special election,

➥ report each contribution described in subsection 1 received during the period.

4. Except as otherwise provided in ~~[subsection]~~ ***subsections*** 5 ***and 6*** and NRS 294A.223, every candidate for office at a special election to determine whether a public officer will be recalled shall, not later than:

(a) Four days before the beginning of early voting by personal appearance for the special election, for the period from the date the notice of intent to circulate the petition for recall is filed pursuant to NRS 306.015 through the 5 days before the beginning of early voting by personal appearance for the special election;

(b) Four days before the special election, for the period from 4 days before the beginning of early voting by personal appearance for the special election through 5 days before the special election; and

(c) Thirty days after the special election, for the remaining period through the date of the special election,

➥ report each contribution described in subsection 1 received during the period.

5. ***Except as otherwise provided in subsection 6, if a petition for recall is not submitted to the filing officer before the expiration of the notice of intent pursuant to the provisions of chapter 306 of NRS or is otherwise legally insufficient when submitted to the filing officer pursuant to the provisions of that chapter, every***

candidate for office at a special election to determine whether a public officer will be recalled shall, not later than 30 days after the expiration of the notice of intent, for the period from the filing of the notice of intent through the date that the notice of intent expires or the petition is determined to be legally insufficient, report each contribution described in subsection 1. The provisions of this subsection apply to the candidate for office at a special election if the petition for recall:

(a) Is not submitted to the filing officer as required by chapter 306 of NRS;

(b) Is submitted to the filing officer without any valid signatures or with fewer than the necessary number of valid signatures required by chapter 306 of NRS; or

(c) Is otherwise legally insufficient or efforts to obtain the necessary number of valid signatures required by chapter 306 of NRS are suspended or discontinued.

6. If a district court determines that a petition for recall is legally insufficient pursuant to subsection 6 of NRS 306.040, every candidate for office at a special election to determine whether a public officer will be recalled shall, not later than 30 days after the district court orders the officer with whom the petition is filed to cease any further proceedings regarding the petition, for the period from the filing of the notice of intent to circulate the petition for recall through the date of the district court's order, report each contribution described in subsection 1 received during the period.

~~[6.]~~ ***7.*** Except as otherwise provided in NRS 294A.3733, reports of contributions must be filed electronically with the Secretary of State.

~~[7.]~~ ***8.*** A report shall be deemed to be filed on the date that it was received by the Secretary of State.

~~[8.]~~ ***9.*** The name and address of the contributor and the date on which the contribution was received must be included on the report for each contribution in excess of $100 and contributions which a contributor has made cumulatively in excess of that amount since the beginning of the current reporting period.

Sec. 25. NRS 294A.140 is hereby amended to read as follows:

294A.140 1. The provisions of this section apply to:

(a) Every person who makes an independent expenditure in excess of $1,000; and

(b) Every committee for political action, political party and committee sponsored by a political party which receives contributions in excess of $1,000 or makes an expenditure for or against a candidate for office or a group of such candidates.

2. Every person, committee and political party described in subsection 1 shall, not later than January 15 of each year that the

provisions of this subsection apply, for the period from January 1 of the previous year through December 31 of the previous year, report each contribution in excess of $1,000 received during the period and contributions received during the period from a contributor which cumulatively exceed $1,000. The provisions of this subsection apply to the person, committee or political party beginning the year of the general election for that office through the year immediately preceding the next general election for that office.

3. Every person, committee and political party described in subsection 1 shall, not later than:

(a) Twenty-one days before the primary election for that office, for the period from the January 1 immediately preceding the primary election through 25 days before the primary election;

(b) Four days before the primary election for that office, for the period from 24 days before the primary election through 5 days before the primary election;

(c) Twenty-one days before the general election for that office, for the period from 4 days before the primary election through 25 days before the general election; and

(d) Four days before the general election for that office, for the period from 24 days before the general election through 5 days before the general election,

➥ report each contribution in excess of $1,000 received during the period and contributions received during the period from a contributor which cumulatively exceed $1,000.

4. Except as otherwise provided in subsections 5 ***,*** ~~[and]~~ 6 ***and 7*** and NRS 294A.223, every person, committee and political party described in subsection 1 which makes an independent expenditure or other expenditure, as applicable, for or against a candidate for office at a special election or for or against a group of such candidates shall, not later than:

(a) Four days before the beginning of early voting by personal appearance for the special election, for the period from the nomination of the candidate through 5 days before the beginning of early voting by personal appearance for the special election;

(b) Four days before the special election, for the period from 4 days before the beginning of early voting by personal appearance for the special election through 5 days before the special election; and

(c) Thirty days after the special election, for the remaining period through the date of the special election,

➥ report each contribution in excess of $1,000 received during the period and contributions received during the period from a contributor which cumulatively exceed $1,000.

5. Except as otherwise provided in ~~[subsection]~~ ***subsections*** 6 ***and 7*** and NRS 294A.223, every person, committee and political party described in subsection 1 which makes an independent expenditure or other expenditure, as applicable, for or against a candidate for office at a special election to determine whether a public officer will be recalled or for or against a group of candidates for offices at such special elections shall, not later than:

(a) Four days before the beginning of early voting by personal appearance for the special election, for the period from the date the notice of intent to circulate a petition to recall is filed pursuant to NRS 306.015 through 5 days before the beginning of early voting by personal appearance for the special election;

(b) Four days before the special election, for the period from 4 days before the beginning of early voting by personal appearance for the special election through 5 days before the special election; and

(c) Thirty days after the special election, for the remaining period through the date of the special election,

➥ report each contribution in excess of $1,000 received during the period and contributions received during the period from a contributor which cumulatively exceed $1,000.

6. Except as otherwise provided in subsection 7, if a petition for recall is not submitted to the filing officer before the expiration of the notice of intent pursuant to the provisions of chapter 306 of NRS or is otherwise legally insufficient when submitted to the filing officer pursuant to the provisions of that chapter, every person, committee and political party described in subsection 1 which makes an independent expenditure or other expenditure, as applicable, for or against a candidate for office at a special election to determine whether a public officer will be recalled or for or against a group of such candidates shall, not later than 30 days after the expiration of the notice of intent, for the period from the filing of the notice of intent through the date that the notice of intent expires or the petition is determined to be legally insufficient, report each contribution in excess of $1,000 received and contributions received which cumulatively exceed $1,000. The provisions of this subsection apply to the person, committee and political party if the petition for recall:

(a) Is not submitted to the filing officer as required by chapter 306 of NRS;

(b) Is submitted to the filing officer without any valid signatures or with fewer than the necessary number of valid signatures required by chapter 306 of NRS; or

(c) Is otherwise legally insufficient or efforts to obtain the necessary number of valid signatures required by chapter 306 of NRS are suspended or discontinued.

7. If a district court determines that a petition for recall is legally insufficient pursuant to subsection 6 of NRS 306.040, every person, committee and political party described in subsection 1 which makes an independent expenditure or other expenditure, as applicable, for or against a candidate for office at a special election to determine whether a public officer will be recalled or for or against a group of candidates for offices at such a special election shall, not later than 30 days after the district court orders the officer with whom the petition is filed to cease any further proceedings regarding the petition, for the period from the filing of the notice of intent to circulate the petition for recall through the date of the district court's order, report each contribution in excess of $1,000 received during the period and contributions received during the period which cumulatively exceed $1,000.

~~[7.]~~ ***8.*** Except as otherwise provided in NRS 294A.3737, the reports of contributions required pursuant to this section must be filed electronically with the Secretary of State.

~~[8.]~~ ***9.*** A report shall be deemed to be filed on the date that it was received by the Secretary of State.

~~[9.]~~ ***10.*** Every person, committee and political party described in this section shall file a report required by this section even if the person, committee or political party receives no contributions.

~~[10.]~~ ***11.*** The name and address of the contributor and the date on which the contribution was received must be included on the report for each contribution in excess of $1,000 and contributions which a contributor has made cumulatively in excess of $1,000 since the beginning of the current reporting period.

Sec. 26. NRS 294A.200 is hereby amended to read as follows:

294A.200 1. Every candidate for office at a primary election or general election shall, not later than January 15 of each year, for the period from January 1 of the previous year through December 31 of the previous year, report:

(a) Each of the campaign expenses in excess of $100 incurred during the period;

(b) Each amount in excess of $100 disposed of pursuant to NRS 294A.160 or subsection 3 of NRS 294A.286 during the period;

(c) The total of all campaign expenses incurred during the period which are $100 or less; and

(d) The total of all amounts disposed of during the period pursuant to NRS 294A.160 or subsection 3 of NRS 294A.286 which are $100 or less.

2. The provisions of subsection 1 apply to the candidate:

(a) Beginning the year of the general election for that office through the year immediately preceding the next general election for that office; and

(b) Each year immediately succeeding a calendar year during which the candidate disposes of contributions pursuant to NRS 294A.160 or 294A.286.

3. Every candidate for office at a primary election or general election shall, not later than:

(a) Twenty-one days before the primary election for that office, for the period from the January 1 immediately preceding the primary election through 25 days before the primary election;

(b) Four days before the primary election for that office, for the period from 24 days before the primary election through 5 days before the primary election;

(c) Twenty-one days before the general election for that office, for the period from 4 days before the primary election through 25 days before the general election; and

(d) Four days before the general election for that office, for the period from 24 days before the general election through 5 days before the general election,

➥ report each of the campaign expenses described in subsection 1 incurred during the period.

4. Except as otherwise provided in subsections 5 ***,*** ~~[and]~~ 6 ***and 7*** and NRS 294A.223, every candidate for office at a special election shall, not later than:

(a) Four days before the beginning of early voting by personal appearance for the special election, for the period from the candidate's nomination through 5 days before the beginning of early voting by personal appearance for the special election;

(b) Four days before the special election, for the period from 4 days before the beginning of early voting by personal appearance for the special election through 5 days before the special election; and

(c) Thirty days after the special election, for the remaining period through the date of the special election,

➥ report each of the campaign expenses described in subsection 1 incurred during the period.

5. Except as otherwise provided in ~~[subsection]~~ ***subsections*** 6 ***and 7*** and NRS 294A.223, every candidate for office at a special election to determine whether a public officer will be recalled shall, not later than:

(a) Four days before the beginning of early voting by personal appearance for the special election, for the period from the date the notice of intent to circulate the petition for recall is filed pursuant to

NRS 306.015 through 5 days before the beginning of early voting by personal appearance for the special election;

(b) Four days before the special election, for the period from 4 days before the beginning of early voting by personal appearance for the special election through 5 days before the special election; and

(c) Thirty days after the special election, for the remaining period through the date of the special election,

➥ report each of the campaign expenses described in subsection 1 incurred during the period.

6. ***Except as otherwise provided in subsection 7, if a petition for recall is not submitted to the filing officer before the expiration of the notice of intent pursuant to the provisions of chapter 306 of NRS or is otherwise legally insufficient when submitted to the filing officer pursuant to the provisions of that chapter, every candidate for office at a special election to determine whether a public officer will be recalled shall, not later than 30 days after the expiration of the notice of intent, for the period from the filing of the notice of intent through the date that the notice of intent expires or the petition is determined to be legally insufficient, report each of the campaign expenses described in subsection 1 incurred during the period. The provisions of this subsection apply to the candidate for office at a special election if the petition for recall:***

(a) Is not submitted to the filing officer as required by chapter 306 of NRS;

(b) Is submitted to the filing officer without any valid signatures or with fewer than the necessary number of valid signatures required by chapter 306 of NRS; or

(c) Is otherwise legally insufficient or efforts to obtain the necessary number of valid signatures required by chapter 306 of NRS are suspended or discontinued.

7. If a district court determines that a petition for recall is legally insufficient pursuant to subsection 6 of NRS 306.040, every candidate for office at a special election to determine whether a public officer will be recalled shall, not later than 30 days after the district orders the officer with whom the petition is filed to cease any further proceedings regarding the petition, for the period from the filing of the notice of intent to circulate the petition for recall through the date of the district court's order, report each of the campaign expenses described in subsection 1 incurred during the period.

~~[7.]~~ ***8.*** Except as otherwise provided in NRS 294A.3733, reports of campaign expenses must be filed electronically with the Secretary of State.

~~[8.]~~ ***9.*** A report shall be deemed to be filed on the date that it was received by the Secretary of State.

Sec. 27. NRS 294A.210 is hereby amended to read as follows:

294A.210 1. The provisions of this section apply to:

(a) Every person who makes an independent expenditure in excess of $1,000; and

(b) Every committee for political action, political party and committee sponsored by a political party which receives contributions in excess of $1,000 or makes an expenditure for or against a candidate for office or a group of such candidates.

2. Every person, committee and political party described in subsection 1 shall, not later than January 15 of each year that the provisions of this subsection apply to the person, committee or political party, for the period from January 1 of the previous year through December 31 of the previous year, report each independent expenditure or other expenditure, as applicable, made during the period in excess of $1,000 and independent expenditures or other expenditures, as applicable, made during the period to one recipient which cumulatively exceed $1,000. The provisions of this subsection apply to the person, committee or political party beginning the year of the general election for that office through the year immediately preceding the next general election for that office.

3. Every person, committee and political party described in subsection 1 shall, not later than:

(a) Twenty-one days before the primary election for that office, for the period from the January 1 immediately preceding the primary election through 25 days before the primary election;

(b) Four days before the primary election for that office, for the period from 24 days before the primary election through 5 days before the primary election;

(c) Twenty-one days before the general election for that office, for the period from 4 days before the primary election through 25 days before the general election; and

(d) Four days before the general election for that office, for the period from 24 days before the general election through 5 days before the general election,

➥ report each independent expenditure or other expenditure, as applicable, in excess of $1,000 made during the period and independent expenditures or other expenditures, as applicable, made during the period to one recipient which cumulatively exceed $1,000.

4. Except as otherwise provided in subsections 5 ***,*** ~~[and]~~ 6 ***and 7*** and NRS 294A.223, every person, committee and political party described in subsection 1 which makes an independent expenditure or other expenditure, as applicable, for or against a candidate for

office at a special election or for or against a group of such candidates shall, not later than:

(a) Four days before the beginning of early voting by personal appearance for the special election, for the period from the nomination of the candidate through 5 days before the beginning of early voting by personal appearance for the special election;

(b) Four days before the special election, for the period from 4 days before the beginning of early voting by personal appearance for the special election through 5 days before the special election; and

(c) Thirty days after the special election, for the remaining period through the date of the special election,

➥ report each independent expenditure or other expenditure, as applicable, in excess of $1,000 made during the period and independent expenditures or other expenditures, as applicable, made during the period to one recipient which cumulatively exceed $1,000.

5. Except as otherwise provided in ~~[subsection]~~ ***subsections*** 6 ***and 7*** and NRS 294A.223, every person, committee and political party described in subsection 1 which makes an independent expenditure or other expenditure, as applicable, for or against a candidate for office at a special election to determine whether a public officer will be recalled or for or against a group of such candidates shall, not later than:

(a) Four days before the beginning of early voting by personal appearance for the special election, for the period from the date the notice of intent to circulate the petition for recall is filed pursuant to NRS 306.015 through 5 days before the beginning of early voting by personal appearance for the special election;

(b) Four days before the special election, for the period from 4 days before the beginning of early voting by personal appearance for the special election through 5 days before the special election; and

(c) Thirty days after the special election, for the remaining period through the date of the special election,

➥ report each independent expenditure or other expenditure, as applicable, in excess of $1,000 made during the period and independent expenditures or other expenditures, as applicable, made during the period to one recipient which cumulatively exceed $1,000.

6. ***Except as otherwise provided in subsection 7, if a petition for recall is not submitted to the filing officer before the expiration of the notice of intent pursuant to the provisions of chapter 306 of NRS or is otherwise legally insufficient when submitted to the filing officer pursuant to the provisions of that chapter, every***

person, committee and political party described in subsection 1 which makes an independent expenditure or other expenditure, as applicable, for or against a candidate for office at a special election to determine whether a public officer will be recalled or for or against a group of such candidates shall, not later than 30 days after the expiration of the notice of intent, for the period from the filing of the notice of intent through the date that the notice of intent expires or the petition is determined to be legally insufficient, report each of the campaign expenses described in subsection 1 incurred during the period. The provisions of this subsection apply to the person, committee and political party if the petition for recall:

(a) Is not submitted to the filing officer as required by chapter 306 of NRS;

(b) Is submitted to the filing officer without any valid signatures or with fewer than the necessary number of valid signatures required by chapter 306 of NRS; or

(c) Is otherwise legally insufficient or efforts to obtain the necessary number of valid signatures required by chapter 306 of NRS are suspended or discontinued.

7. If a district court determines that the petition for recall is legally insufficient pursuant to subsection 6 of NRS 306.040, every person, committee and ***political*** party described in subsection 1 which makes an independent expenditure or other expenditure, as applicable, for or against a candidate for office at a special election to determine whether a public officer will be recalled or for or against a group of such candidates shall, not later than 30 days after the district court orders the officer with whom the petition is filed to cease any further proceedings regarding the petition, for the period from the filing of the notice of intent to circulate the petition for recall through the date of the district court's order, report each independent expenditure or other expenditure, as applicable, in excess of $1,000 made during the period and independent expenditures or expenditures, as applicable, made during the period to one recipient which cumulatively exceed $1,000.

~~[7.]~~ ***8.*** Independent expenditures and other expenditures made within the State or made elsewhere but for use within the State, including independent expenditures and other expenditures made outside the State for printing, television and radio broadcasting or other production of the media, must be included in the report.

~~[8.]~~ ***9.*** Except as otherwise provided in NRS 294A.3737, the reports must be filed electronically with the Secretary of State.

~~[9.]~~ ***10.*** If an independent expenditure or other expenditure, as applicable, is made for or against a group of candidates, the reports must be itemized by the candidate.

~~[10.]~~ ***11.*** A report shall be deemed to be filed on the date that it was received by the Secretary of State. Every person, committee or political party described in subsection 1 shall file a report required by this section even if the person, committee or political party receives no contributions.

Sec. 28. Chapter 295 of NRS is hereby amended by adding thereto the provisions set forth as sections 29 and 30 of this act.

Sec. 29. ***The Secretary of State may adopt by regulation qualifications for a person to circulate a petition for initiative or referendum.***

Sec. 30. ***1. A petition for initiative or referendum may be withdrawn if a person authorized pursuant to NRS 295.015 to withdraw the petition submits a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State.***

2. Once a petition for initiative or referendum is withdrawn pursuant to subsection 1, no further action may be taken on that petition.

Sec. 31. NRS 295.015 is hereby amended to read as follows:

295.015 1. Before a petition for initiative or referendum may be presented to the registered voters for their signatures, ***the person who intends to circulate the petition must:***

(a) File a copy of the petition for initiative or referendum, including the description required pursuant to NRS 295.009, ~~[must be placed on file]~~ with the Secretary of State.

(b) Submit to the Secretary of State on a form prescribed by the Secretary of State:

(1) The name and signature of the person.

(2) If the person has formed a committee for political action for the purposes of advocating the passage of the initiative or referendum, the name of that committee for political action.

(3) The names of not more than three persons who are authorized to withdraw the petition or submit an amended petition.

2. If a petition for initiative or referendum or a description of the effect of an initiative or referendum required pursuant to NRS 295.009 is amended after the petition is placed on file with the Secretary of State pursuant to subsection 1:

(a) The revised petition must be placed on file with the Secretary of State before it is presented to the registered voters for their signatures;

(b) Any signatures that were collected on the original petition before it was amended are not valid; and

(c) The requirements for submission of the petition to each county clerk set forth in NRS 295.056 apply to the revised petition.

3. Upon receipt of a petition for initiative or referendum placed on file pursuant to subsection 1 or 2:

(a) The Secretary of State shall consult with the Fiscal Analysis Division of the Legislative Counsel Bureau to determine if the initiative or referendum may have any anticipated financial effect on the State or local governments if the initiative or referendum is approved by the voters. If the Fiscal Analysis Division determines that the initiative or referendum may have an anticipated financial effect on the State or local governments if the initiative or referendum is approved by the voters, the Division must prepare a fiscal note that includes an explanation of any such effect.

(b) The Secretary of State shall consult with the Legislative Counsel regarding the petition for initiative or referendum. The Legislative Counsel may provide technical suggestions regarding the petition for initiative or referendum.

4. Not later than 10 business days after the Secretary of State receives a petition for initiative or referendum filed pursuant to subsection 1 or 2, the Secretary of State shall post a copy of the petition, including the description required pursuant to NRS 295.009, any fiscal note prepared pursuant to subsection 3 and any suggestions made by the Legislative Counsel pursuant to subsection 3, on the Secretary of State's Internet website.

Sec. 32. NRS 295.056 is hereby amended to read as follows:

295.056 1. Before a petition for initiative or referendum is filed with the Secretary of State, the petitioners must submit to each county clerk for verification pursuant to NRS 293.1276 to 293.1279, inclusive, the document or documents which were circulated for signature within the clerk's county. The clerks shall give the person submitting a document or documents a receipt stating the number of documents and pages and the person's statement of the number of signatures contained therein.

2. If a petition for initiative proposes a statute or an amendment to a statute, the document or documents must be submitted not later than ***:***

(a) Except as otherwise provided in paragraph (b), the second Tuesday in November of an even-numbered year.

(b) If the second Tuesday in November of an even-numbered year is the day of the general election, the next working day after the general election.

3. If a petition for initiative proposes an amendment to the Constitution, the document or documents must be submitted not later than the third Tuesday in June of an even-numbered year.

4. If the petition is for referendum, the document or documents must be submitted not later than the third Tuesday in June of an even-numbered year.

5. All documents which are submitted to a county clerk for verification must be submitted at the same time. If documents

concerning the same petition are submitted for verification to more than one county clerk, the documents must be submitted to each county clerk on the same day. At the time that the petition is submitted to a county clerk for verification, the petitioners may designate a contact person who is authorized by the petitioners to address questions or issues relating to the petition.

Sec. 33. NRS 298.035 is hereby amended to read as follows:

298.035 1. Each major political party shall, at the state convention of the major political party held in that year, select from the qualified electors who are legally registered members of the major political party:

(a) A nominee to the position of presidential elector; and

(b) An alternate to the nominee for presidential elector,

➥ for each position of presidential elector required by law.

2. Each minor political party shall choose from the qualified electors who are legally registered members of the minor political party:

(a) A nominee to the position of presidential elector; and

(b) An alternate to the nominee for presidential elector,

➥ for each position of presidential elector required by law. The person who is authorized to file the list of candidates for partisan office of the minor political party with the Secretary of State pursuant to NRS 293.1725 shall, not later than the ~~[last]~~ ***first*** Tuesday in August ~~[,]~~ ***preceding the general election,*** submit to the Secretary of State the list of nominees for presidential elector and alternates.

3. Each independent candidate nominated for the office of President pursuant to NRS 298.109 shall, at the time of filing the petition as required pursuant to subsection 1 of NRS 298.109, or within 10 days thereafter, choose from the qualified electors:

(a) A nominee to the position of presidential elector; and

(b) An alternate to the nominee for presidential elector,

➥ for each position of presidential elector required by law.

Sec. 34. NRS 298.109 is hereby amended to read as follows:

298.109 1. A person who desires to be an independent candidate for the office of President of the United States must, not later than 5 p.m. on the second Friday in August in each year in which a presidential election is to be held, pay a filing fee of $250 and file with the Secretary of State a declaration of candidacy and a petition of candidacy, in which the person must also designate a nominee for Vice President. The petition must be signed by a number of registered voters equal to not less than 1 percent of the total number of votes cast at the last preceding general election for candidates for the offices of Representative in Congress and must request that the names of the proposed candidates be placed on the

ballot at the general election that year. The candidate shall file a copy of the petition the person intends to circulate for signatures with the Secretary of State ~~[.]~~ ***before the petition may be circulated for signatures.***

2. The petition may consist of more than one document. Each document must bear the name of a county and only registered voters of that county may sign the document. The documents which are circulated for signature in a county must be submitted to that county clerk for verification in the manner prescribed in NRS 293.1276 to 293.1279, inclusive, not later than 25 working days before the last day to file the petition of candidacy with the Secretary of State pursuant to subsection 1. Each person signing shall add to his or her signature the address of the place at which he or she resides, the date that he or she signs and the name of the county wherein he or she is registered to vote. Each document of the petition must also contain the affidavit of the person who circulated the document that all signatures thereon are genuine to the best of the person's knowledge and belief and were signed in his or her presence by persons registered to vote in that county.

3. If the candidacy of any person who seeks to qualify pursuant to this section is challenged, all affidavits and documents in support of the challenge must be filed with the First Judicial District Court not later than 5 p.m. on the fourth Tuesday in August. Any judicial proceeding relating to the challenge must be set for hearing not later than 5 days after the fourth Tuesday in August.

4. The county clerk shall not disqualify the signature of a voter who fails to provide all the information required by this section if the voter is registered in the county named on the document.

Sec. 35. Chapter 281 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in NRS 281.581, if it appears that a violation of any provision of this section and NRS 281.556 to 281.581, inclusive, has occurred, the Secretary of State may conduct an investigation concerning the alleged violation and cause the appropriate proceedings to be instituted in the First Judicial District Court.

2. A person who believes that a violation of any provision of this section and NRS 281.556 to 281.581, inclusive, has occurred may notify the Secretary of State, in writing, of the alleged violation. The notice must be signed by the person alleging the violation and include:

(a) The full name and address of the person alleging the violation;

(b) A clear and concise statement of facts sufficient to establish that the alleged violation occurred;

(c) Any evidence substantiating the alleged violation;

(d) A certification by the person alleging the violation that the facts alleged in the notice are true to the best knowledge and belief of that person; and

(e) Any other information in support of the alleged violation.

3. As soon as practicable after receiving a notice of an alleged violation pursuant to subsection 2, the Secretary of State shall provide a copy of the notice and any accompanying information to the person, if any, alleged in the notice to have committed the violation.

4. If the Secretary of State determines, based on a notice of an alleged violation received pursuant to subsection 2, that reasonable suspicion exists that a violation of this chapter has occurred, the Secretary of State may conduct an investigation of the alleged violation.

5. If a notice of an alleged violation is received pursuant to subsection 2 not later than 180 days after the submission of the financial disclosure statement to which the notice pertains, the Secretary of State, when conducting an investigation of the alleged violation pursuant to subsection 4, may subpoena witnesses and require by subpoena the production of any books, papers, correspondence, memoranda, agreements or other documents or records that the Secretary of State or a designated officer or employee of the Secretary of State determines are relevant or material to the investigation and are in the possession of:

(a) Any person alleged in the notice to have committed the violation; or

(b) If the notice does not include the name of a person alleged to have committed the violation, any person whom the Secretary of State or a designated officer or employee of the Secretary of State has reasonable cause to believe produced or disseminated the materials that are the subject of the notice.

6. If a person fails to testify or produce any documents or records in accordance with a subpoena issued pursuant to subsection 5, the Secretary of State or designated officer or employee may apply to the court for an order compelling compliance. A request for an order of compliance may be addressed to:

(a) The district court in and for the county where service may be obtained on the person refusing to testify or produce the documents or records, if the person is subject to service of process in this State; or

(b) A court of another state having jurisdiction over the person refusing to testify or produce the documents or records, if the person is not subject to service of process in this State.

7. Except as otherwise provided in this section and NRS 281.581, a person who violates an applicable provision of this section and NRS 281.556 to 281.581, inclusive, is subject to a civil penalty of not more than $5,000 for each violation and payment of court costs and attorney's fees. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the Secretary of State in the First Judicial District Court and deposited by the Secretary of State for credit to the State General Fund in the bank designated by the State Treasurer.

8. For good cause shown, the Secretary of State may waive a civil penalty that would otherwise be imposed pursuant to this section. When considering whether to waive a civil penalty that would otherwise be imposed pursuant to subsection 7, the Secretary of State may consider, without limitation:

(a) The seriousness of the violation, including, without limitation, the nature, circumstances and extent of the violation;

(b) Any history of violations committed by the person against whom the civil penalty would otherwise be imposed;

(c) Any mitigating factors, including, without limitation, whether the person against whom the civil penalty would otherwise be imposed reported the violation, corrected the violation in a timely manner, attempted to correct the violation or cooperated with the Secretary of State in resolving the situation that led to the violation;

(d) Whether the violation was inadvertent;

(e) Any knowledge or experience the person has with the provisions of this section and NRS 281.556 to 281.581, inclusive; and

(f) Any other factor that the Secretary of State deems to be relevant.

9. If the Secretary of State waives a civil penalty pursuant to subsection 8, the Secretary of State shall:

(a) Create a record which sets forth that the civil penalty has been waived and describes the circumstances that constitute good cause for the waiver; and

(b) Ensure that the record created pursuant to paragraph (a) is available for review by the general public.

10. The remedies and penalties provided by this section and NRS 281.556 to 281.581, inclusive, are cumulative, do not abrogate and are in addition to any other remedies and penalties that may exist at law or in equity, including, without limitation, any criminal penalty that may be imposed pursuant to NRS 199.120, 199.145 or 239.330.

Sec. 36. NRS 281.556 is hereby amended to read as follows:

281.556 As used in NRS 281.556 to 281.581, inclusive, ***and section 35 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 281.558 to 281.5587, inclusive, have the meanings ascribed to them in those sections.

Sec. 37. NRS 281.571 is hereby amended to read as follows:

281.571 ***1.*** Each financial disclosure statement must contain the following information concerning the public officer or candidate:

~~[1.]~~ ***(a)*** The public officer's or candidate's length of residence in the State of Nevada and the district in which the public officer or candidate is registered to vote.

~~[2.]~~ ***(b)*** Each source of the public officer's or candidate's income, or that of any member of the public officer's or candidate's household who is 18 years of age or older. No listing of individual clients, customers or patients is required, but if that is the case, a general source such as "professional services" must be disclosed.

~~[3.]~~ ***(c)*** A list of the specific location and particular use of real estate, other than a personal residence:

~~[(a)]~~ ***(1)*** In which the public officer or candidate or a member of the public officer's or candidate's household has a legal or beneficial interest;

~~[(b)]~~ ***(2)*** Whose fair market value is $2,500 or more; and

~~[(c)]~~ ***(3)*** That is located in this State or an adjacent state.

~~[4.]~~ ***(d)*** The name of each creditor to whom the public officer or candidate or a member of the public officer's or candidate's household owes $5,000 or more, except for:

~~[(a)]~~ ***(1)*** A debt secured by a mortgage or deed of trust of real property which is not required to be listed pursuant to ***paragraph (c) of*** subsection ~~[3;]~~ ***1;*** and

~~[(b)]~~ ***(2)*** A debt for which a security interest in a motor vehicle for personal use was retained by the seller.

~~[5.]~~ ***(e)*** If the public officer or candidate has undertaken or attended any educational or informational meetings, events or trips during the immediately preceding calendar year or other period for which the public officer or candidate is filing the financial disclosure statement, a list of all such meetings, events or trips, including:

~~[(a)]~~ ***(1)*** The purpose and location of the meeting, event or trip and the name of the organization conducting, sponsoring, hosting or requesting the meeting, event or trip;

~~[(b)]~~ ***(2)*** The identity of each interested person providing anything of value to the public officer or candidate or a member of the public officer's or candidate's household to undertake or attend the meeting, event or trip; and

~~[(c)]~~ ***(3)*** The aggregate value of everything provided by those interested persons to the public officer or candidate or a member of the public officer's or candidate's household to undertake or attend the meeting, event or trip.

~~[6.]~~ ***(f)*** If the public officer or candidate has received any gifts in excess of an aggregate value of $200 from a donor during the immediately preceding calendar year or other period for which the public officer or candidate is filing the financial disclosure statement, a list of all such gifts, including the identity of the donor and the value of each gift.

~~[7.]~~ ***(g)*** A list of each business entity with which the public officer or candidate or a member of the public officer's or candidate's household is involved as a trustee, beneficiary of a trust, director, officer, owner in whole or in part, limited or general partner, or holder of a class of stock or security representing 1 percent or more of the total outstanding stock or securities issued by the business entity.

~~[8.]~~ ***(h)*** A list of all public offices presently held by the public officer or candidate for which this financial disclosure statement is required.

2. A financial disclosure statement must be signed by the public officer or candidate under an oath to God or penalty of perjury. The public officer or candidate who signs the affidavit under an oath to God is subject to the same penalties as if the public officer or candidate had signed the affidavit under penalty of perjury.

Sec. 38. NRS 281.5745 is hereby amended to read as follows:

281.5745 The Secretary of State may adopt regulations necessary to carry out the provisions of NRS 281.556 to 281.581, inclusive ~~.~~ ***, and section 35 of this act.***

Sec. 39. 1. This section and sections 1, 3, 4, 7 to 13, inclusive, 15 to 28, inclusive, and 30 to 38, inclusive, of this act become effective on July 1, 2017.

2. Sections 2, 5, 6, 14 and 29 of this act become effective on:

(a) July 1, 2017, for purposes of adopting any regulations and performing any other preparatory tasks necessary to carry out the provisions of this act; and

(b) January 1, 2018, for all other purposes.

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EXHIBIT 14

EXHIBIT 14

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-Ninth Session
April 11, 2017

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 1:38 p.m. on Tuesday, April 11, 2017, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Olivia Diaz, Chairwoman
Assemblyman Nelson Araujo, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Skip Daly
Assemblyman John Hambrick
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman James Ohrenschall
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Carol Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Julianne King, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Barbara K. Cegavske, Secretary of State
Wayne Thorley, Deputy Secretary for Elections, Office of the Secretary of State
Maureen Schafer, Executive Director, Council for a Better Nevada
Matt Griffin, representing Michael J. Brown, Barrick Gold, North America; and Council for a Better Nevada
Luanne Cutler, Registrar of Voters, Washoe County
Susan Merriwether, Clerk-Recorder, Carson City
Kathy Lewis, Clerk-Treasurer, Douglas County
Sondra Cosgrove, Chair, Legislative Advocacy Committee, League of Women Voters of Nevada
Maud Naroll, Member, Legislative Advocacy Committee, League of Women Voters of Nevada
Greg Esposito, Private Citizen, Las Vegas, Nevada
Kermitt L. Waters, Private Citizen, Las Vegas, Nevada
Bradley Schrager, Attorney, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, Las Vegas, Nevada
Janine Hansen, State President, Nevada Families for Freedom
Julie Hereford, representing Nevadans CAN
John Wagner, Carson City Vice Chairman, Independent American Party
Les Lee Shell, Director, Office of Risk Management, Department of Finance, Clark County

Chairwoman Diaz:
[Roll was taken. Committee rules and protocol were explained.] I had intended to start with the work session; however, there are many dynamics and members who have not made it to Committee yet, so we are going to start hearing some of the bills on the agenda. I would like to invite the Secretary of State to the table and open the hearing on Assembly Bill 478. This is a proposal concerning deadlines by which a person may register to vote by mail.

Assembly Bill 478: Changes the deadline by which a person may register to vote by mail for certain elections. (BDR 24-463)

Barbara K. Cegavske, Secretary of State:
Assembly Bill 478 seeks to bring Nevada into compliance with federal laws as it relates to the deadline to register to vote by mail. Under current state law, the deadline to register to vote by mail is 31 days prior to a primary or a general election. However, the National Voter Registration Act of 1993 (NVRA) says that the deadline imposed by states to register to vote by mail can be no more than 30 days prior to an election.

Assembly Bill 478 simply changes the deadline to register to vote by mail in Nevada to 29 days before a primary or general election. Twenty-nine days was chosen instead of 30 days because thirty days before Election Day is always a Sunday. The United States Post Office is not open on Sundays. By changing the deadline to register to vote by mail to

29 days before a primary or general election, voters will have until the fifth Monday before an election to register to vote by mail. This change will bring Nevada into compliance with the federal law. That is my presentation. Thank you for your consideration of this bill.

Chairwoman Diaz:
Are there any questions from the Committee? I see none. If there are no further questions, I will open it up for testimony in support of A.B. 478. Seeing none, is there anyone opposed to A.B. 478? Seeing none, is there anyone wishing to testify in the neutral position? [There was no one.] Are there any closing remarks?

Barbara Cegavske:
That is probably the shortest bill I have presented in my entire career, but I am very grateful for it. Thank you for listening to us.

Chairwoman Diaz:
With that, I will close the hearing on A.B. 478. I will now open the hearing on Assembly Bill 45. This bill relates to voter registration drives, circulating petitions, and financial disclosure statements.

Assembly Bill 45: Revises provisions relating to public office. (BDR 24-426)

Barbara K. Cegavske, Secretary of State:
I believe this is a very important piece of legislation that will enhance the integrity of the voter registration process in Nevada. My Deputy Secretary for Elections, Wayne Thorley, will walk the Committee through the bill.

Wayne Thorley, Deputy Secretary for Elections, Office of the Secretary of State:
I will be presenting Assembly Bill 45. It is somewhat lengthy; however, many of the provisions in the bill are cleanup in nature. The main portions of A.B. 45 relate to voter registration drives and the qualifications of individuals who participate in a voter registration drive. Section 2 of the bill defines the term voter registration drive. Section 5 authorizes the Secretary of State to adopt regulations regarding the qualifications of people assisting in a voter registration drive. Section 14 prohibits a person assisting in a voter registration drive from: (1) delegating duties to another person; (2) refusing to register a person to vote on account of the person's political party affiliation; (3) knowingly registering persons who are not qualified electors who have filed a false or misleading application or who fail to provide proof of identification and residence; or (4) failing to deliver completed applications to register to vote to county clerks and registrars of voters by certain deadlines.

Based on our experience leading up to the 2016 presidential election, the Secretary of State's Office believes the voter registration drive provisions in this bill are necessary to address the many complaints we received. We received complaints that voter registration drive workers never turned in their forms or turned them in after the deadline. People were given incorrect instructions on how to fill out the form, and there was outright fraud, such as changing information on the form after it had been signed by the voter. Many groups that conduct

voter registration drives in this state do an excellent job, but there are some that do not. In many instances, it comes down to a lack of training and understanding of Nevada's laws. We want people participating in voter registration drives to know what they are talking about when they assist voters and know what their responsibilities are under the law.

The remainder of A.B. 45 is generally cleanup language, so I will quickly go through the remaining sections of the bill. Sections 3, 7, and 33 require major and minor political parties that wish to place candidates on the ballot for president and vice president to file a certificate of nomination with the Office of the Secretary of State by the first Tuesday in August preceding the general election. Section 4 requires a nongovernmental entity that sends a notice to a person indicating that the person is not or may not be registered to vote or requesting the person to register to vote to indicate on the notice that it is not official elections mail from the Secretary of State or a local election official.

Sections 8 through 13 and 15 through 23 update citations to federal election laws that are found in the *Nevada Revised Statutes* (NRS). Sections 24 through 27 clarify that certain people who accept campaign contributions related to a recall election are required to file Contributions and Expenses (C&E) Reports, even if the recall election is not held because the petition for recall is not submitted on time or is legally insufficient. Section 29 authorizes the Secretary of State to adopt regulations regarding the qualifications of people gathering signatures for an initiative or referendum petition. Section 30 allows an authorized person officially to withdraw an initiative or referendum petition after it has been filed with the Secretary of State's Office.

Section 31 requires a person who files an initiative or referendum petition with the Secretary of State's Office to fill out a form with certain information, including: (1) the person's name and signature; (2) the name of any committee for political action formed by the person to advocate for the passage of the initiative or referendum; and (3) the names of not more than three persons who are authorized to withdraw the petition or submit a revised petition. Section 32 moves the date initiative petitions must be submitted for signature verification to the day after the general election if the due date falls on the day of the general election. Section 34 clarifies that a petition for an independent candidate for U.S. President must be filed with the Secretary of State's Office prior to the candidate circulating the petition for signatures.

Section 35 authorizes the Secretary of State to conduct investigations and impose civil penalties on candidates and public officers who do not comply with the statutory requirements applicable to Financial Disclosure Statements. Lastly, section 37 requires that a Financial Disclosure Statement be signed by the candidate or public officer under an oath to God or penalty of perjury. That concludes my overview of A.B. 45. I will now turn it back to Secretary Cegavske for some closing comments.

Barbara Cegavske:
We are aware of one amendment that has been submitted by the Council for a Better Nevada, and we are fully supportive of the amendment (Exhibit C). Maureen Schafer, Executive Director of the Council for a Better Nevada, is in Las Vegas and can provide the Committee information on the amendment. Mr. Thorley and I are available to answer questions from the Committee now or after Ms. Schafer discusses the amendment.

Chairwoman Diaz:
We will go to Ms. Schafer to offer the Committee insight on that amendment proposal. After that, we will take questions.

Maureen Schafer, Executive Director, Council for a Better Nevada:
I represent a community-based, chief executive officer (CEO) and community leader organization in southern Nevada whose mission is to engage in issues where progress in those matters positively impacts the quality of life for all Nevadans. The Council for a Better Nevada (CBN) pledges its support for A.B. 45 and is deeply engaged in ways to improve the transparency and integrity of the initiative petition process. The Council for a Better Nevada has a long bipartisan history of working with the Legislature and the Secretary of State's Office to strengthen the state's initiative petition process. When the initiative petition approaches the pursuit to create public policy, the CBN believes the process should work with transparency, integrity, and accountability. Assembly Bill 45 contains some measures that offer improvements to the process.

As the Secretary of State has noted, the CBN proposes an amendment to A.B. 45 regarding the categorization of expenditures and expenses in required campaign reports. We all live in an increasingly transparent world, both by accessibility of more clear and concise data and the simultaneous increased demand by the public for more detailed information for faster and more efficient decision making. Specifically, the amendment asks for two provisions in this area. It asks to include in the report the total amount of money the candidate has in their campaign account at the end of the applicable reporting period; secondly, if the candidate or committee uses a debit or credit card for any expenditure, the candidate or entity must report as the payee the entity paid with the credit card, not the credit card company. The date of each transaction is the date the credit card was used—and thus, reported—and not the single date the credit card company was paid.

With respect to campaign reporting, corporations today—which are represented by many of my own CBN members—and the community at large are facing greater pressures for more transparency in their political activities. The available required revenue and expense reports become critical to a donating entity to be able to rely on the safe and appropriate use of their contribution. The proposed amendment to A.B. 45 places increased accountability and transparency measures on reporting, benefitting this escalating corporate area of concern around Nevada's current campaign reporting laws. Furthermore, Nevada's AURORA system, an online election reporting system created by the Secretary of State's Office and the Legislature, is today a very effective method for the submittal and viewing of current election

reports. The recommendations put forward today within the proposed amendment would easily be adopted within the state's AURORA system.

Chairwoman Diaz:
At this time, I will open it up for questions from the Committee.

Assemblyman Ohrenschall:
Section 29 says, "The Secretary of State may adopt by regulation qualifications for a person to circulate a petition for initiative or referendum." Are you envisioning those qualifications to be for the people who are trying to gather the signatures? If that is so, what kind of qualifications are you considering? Is it a residency qualification? Is it criminal history or an age issue? I am wondering what the Secretary of State's Office is thinking with that.

Wayne Thorley:
What we are getting at with this section is training for those who will be in the field actually meeting face-to-face with those who are signing an initiative or referendum petition. What we envision with these regulations is training related to provisions in statute that require public buildings in Nevada to offer a location for petition signature gatherers. There are restrictions in statute related to gathering signatures near polling locations. What we are envisioning is training for those who may be coming in. Many of these groups operate in multiple states, so they move around from various states and gather signatures in many states. It is training on laws specific to Nevada related to the initiative and referendum petition process. What we have run into in the past is that those out in the field did not necessarily understand or know Nevada's law as it relates to gathering and collecting signatures.

Assemblyman Ohrenschall:
Would this training be offered by the Secretary of State's Office or by a vendor?

Wayne Thorley:
We envision the training would be done by the Secretary of State's Office. These initiative petition signature gatherers operate in multiple counties in the state. We imagine doing the training on a state level through our office and potentially through online training. It is not necessarily face-to-face training, but an online video they could watch and then answer a few quick questions at the end to ensure they actually paid attention to the presentation.

Assemblyman Ohrenschall:
That certainly seems a lot more user-friendly than having a bricks-and-mortar-type class. Will this training be a couple of hours or all day? Would there be a fee associated for the people who want to work as signature gatherers?

Wayne Thorley:
We do not anticipate a fee related to the training. The idea is not to raise revenue or discourage people from gathering signatures in the state. It is just to provide training. We have not had any discussions on the length of time it would take to complete this training, but we are not envisioning that it would take all day or require a lot of the person's time.

Assemblyman Ohrenschall:
In section 30, if someone wants to withdraw their petition for initiative or referendum, can you describe what happens under current law? Let us say section 30 passes, there is an initiative petition, and there is litigation. The judge in the First Judicial District Court says that it needs to be rewritten. If they have to file a notice to withdraw it, it says that no further action may be taken. Let us say there is an error in the initiative that is curable by some wordsmithing. Would they still be able to refile the initiative or would they be prohibited until the next cycle? That is a concern I have.

Wayne Thorley:
Sections 30 and 31 were put into the bill because, right now, there is no formal process in law to withdraw an initiative or referendum petition that is filed with the Secretary of State's Office. There have been petitions filed with our office in the past to which we granted a withdrawal when the petition sponsors asked for it. There is no formal mechanism in law to do that. What we wanted to do with sections 30 and 31 was include an official mechanism whereby a person who submitted a referendum or initiative petition with our office could then officially withdraw it.

With section 31 specifically, we wanted information on the group or person supporting or filing the initiative or referendum petition so we knew who was authorized to withdraw the petition at a later date. Now, since we have no formal process, there are concerns about a person not associated with the initiative or referendum petition requesting that it be withdrawn. That is what sections 30 and 31 are trying to do. We are not seeking to prohibit a group from refiling a petition with an amended description of effect. If a judge rules that it violates the single-subject law, we certainly do not want to discourage or prohibit them from refiling an initiative or referendum petition that meets the requirements that the judge has set. That is not the intent of sections 30 and 31. If we need to make an amendment to potentially clean up some of the language, we are open to that.

Assemblyman Ohrenschall:
Under current law, you said there is no process to withdraw an initiative. If someone requests an initiative to be withdrawn, would they have to start from scratch or could they try to come back under current law? If this passes into law, and someone files this notice to withdraw the initiative, that petition cannot be resuscitated under this statute. If the same person wants to gather signatures on something similar or even the same, then that would still be permitted. Are you not envisioning that that would be precluded under section 30?

Wayne Thorley:
That is correct. We are not attempting to prohibit them from refiling a similar petition. It is just the one petition that they filed at the time that would be withdrawn, and no further action could be taken on that particular petition. If they wanted to refile one on the same subject matter or even the same exact petition at a later date, it would be a new petition that would be filed with our office. They would be able to take action on that one.

Assemblyman Daly:
I have a couple of different questions in regard to the new definition for a voter registration drive. I have heard some of the same stories that the Secretary of State's Office has heard, and they are trying to address the issue of people screening who they register to vote and not turning the forms in. By this definition, what other rules might be applied to that? There is a difference between a field registrar who has gone, filed, and taken the training and a volunteer at a voter registration drive who did something inadvertently such as failed to turn a form in because it got lost in the car. The volunteer is potentially subject to a felony. I do not know how to address the bad actors, but I do not want to cast the net so wide that it is catching people who are just trying to volunteer and do the right thing.

You talk about "a person" in other sections, such as 4 and 6. If people send out a notice in a newsletter and they say, hey, we encourage you to register to vote, is that the notice you are talking about? I do not think so. It says if a person does that they have to put this other language into their communication. I am just trying to narrow it down so you hit the people you are trying to hit, and not hit a volunteer or someone who is making an honest mistake. This bill is potentially putting people at risk of committing a felony over something that they did not do.

Let us say someone is distributing this at a voter registration drive for a fraternal organization, and they are only doing a registration drive amongst the organization's members. I think that is different from going to the general public. I do not know if you can address those issues. Those are my concerns around voter registration drives and how wide the net is cast. We will catch the bad guys, but we will catch the good guys too.

Wayne Thorley:
I will address your specific question on section 4 that would require nongovernmental entities that send out certain notices to include a disclosure saying it is not official elections mail from the election officials. What the Secretary of State's Office is trying to capture with section 4 is not an advertisement in a magazine that encourages people to register to vote and maybe provides the link to our online voter registration site.

Section 4 is trying to address groups that send targeted mail pieces to people who they believe are either not registered to vote or have moved and were registered at a prior address. They include a voter registration form. What we have found is that the lists these groups use when they send out these mailers is not very accurate. Many people in Nevada who are registered to vote get a piece of mail that says, "Our records indicate that you are not or may not be registered to vote and should really think about registering. By the way, here is a form

that you can fill out and turn in." That causes alarm for registered voters in Nevada. The Secretary of State's Office, but especially the local election officials, get many phone calls from voters who are sometimes angry and sometimes scared because they believe, for whatever reason, that their voter registration has been cancelled, and they are no longer eligible to participate in elections.

Barbara Cegavske:
I received one of those notices. I have lived in my home for 28 years, and the form stated that they did not believe I was a registered voter and asked me to fill out the form. That is what started us on that trail in addition to the multiple phone calls we received, because people believed the mailers came from the Secretary of State's Office. You can imagine my surprise when I saw that the mailers said to return them to my office in Carson City and had the Secretary of State's name on them, and we did not put those out. What we are trying to accomplish is to educate those individuals who are sending those out. To Deputy Secretary Wayne Thorley's credit, he corresponded with one of the groups we had multiple problems with, and he got them to correct it. It still is an issue with other groups. This is an issue with the national group that is sending them out and targeting different states and areas. There are many Nevadans who received that notice.

Assemblyman Daly:
They are not making their own voter registration form. They are getting that form from the state somewhere. I do not know if the state charges them for it. When people get them in small enough numbers, the forms are given to them. They all have a number. I know every time I receive them, the registrar signs out those numbers and says, "We gave number X to this person." We are able to trace that backward. Does that not happen universally?

Wayne Thorley:
Generally, these mailers use the federal form, and not the state form. All state forms must include an application control number on them. The federal forms do not. However, when they are accepted and returned to the local election official, they generally put a number on them. What section 4 is getting at is just a requirement that these groups provide an easily identifiable disclaimer on the mail piece that it does not come from the Secretary of State's Office or the local election officials.

People who encourage voter registration do great work, and we do not want to discourage people from encouraging people to register to vote in Nevada. We appreciate the efforts of all the groups that encourage voter registration. With this particular issue, we just want voters to know that when they get this piece in the mail, it is not official mail from our office. If they believe they are registered to vote, and the mail piece says they are not, they know it is not coming from the Secretary of State's Office or a local election official. It is coming from a third-party, nongovernmental entity. Voters are aware that they may not have accurate information. It will hopefully cut down on the phone calls we receive once these mailers go out.

Assemblyman Daly:
Can you speak to the voter registration drive, and someone who is doing that to the general public versus within a group? The Committee knows my regular job. I work for the Laborers' Union Local 169. In our newsletter, we encourage our members to vote. We also have some of our people who go out and try to register our members, but we are not a "registration drive," except with our members. It is a very limited group. We do not go to the general public. You will not see us outside of the Department of Motor Vehicles (DMV) trying to wrangle up unregistered voters. If we did, we would make sure we followed these rules. We know what they are, and we have no interest in violating them.

I do not want to cast a net so wide that it catches someone who makes an inadvertent error. It is just an issue. There are other groups that do the same thing within their membership, so it is not just one issue.

Wayne Thorley:
The term "voter registration drive" is defined broadly on purpose to apply to the efforts within, say, a union group that is doing a voter registration drive for a couple of reasons. Every two years the Legislature meets, and laws can change. If a law changes related to voter registration, we want to make sure those engaging in voter registration drives are trained on the changes in the law.

There are other issues. For example, under current state law, if a person has a driver's license, they are required to put their driver's license number on their voter registration application. If they do not have a driver's license, but they have a social security number, they are required to put the last four digits of their social security number on their voter registration application. If they do not have either, they can still register to vote, but they have to submit an affidavit affirming that the person does not have either form of identification. People generally have the last four digits of their social security number memorized, but they do not have their driver's license number memorized. When it comes time to fill out the box that asks for a person's driver's license or social security number, a lot of the time, those who are assisting voters in a voter registration drive just tell voters to put the last four digits of their social security number on the application. That way, the person does not have to get their wallet out and look up their driver's license number. However, state law requires those registering to put their driver's license number on the form if they have one, even if someone has both a driver's license and a social security number. The Secretary of State's Office wants those participating in voter registration drives to be aware of what those laws are. That is why we would want it applied pretty broadly.

Assemblyman Elliot T. Anderson:
I wanted to ask about section 35, subsection 1, and the venue provisions. We have this dialed in there in a number of election-related chapters and statutes that create venue positions in the First Judicial District Court. I have a problem with always doing things in one court, especially when 75 percent of the population lives in one county. I think this should be done in a court of competent jurisdiction and phrase it that way. I understand that all the attorneys for the state are in Carson City, but if the state is going to institute a civil action against

people, I do not think that they should be treated any differently than any other defendant in a civil proceeding. The state should not haul people up to Carson City to defend an action when they are living all across the state. Does that make sense?

Wayne Thorley:
That makes perfect sense. The language in section 35 was borrowed from language that already exists in Chapter 294A of NRS, which relates to C&E reports. We are not opposed to changing that to a court of competent jurisdiction instead of First Judicial District Court.

Assemblyman Elliot T. Anderson:
We need to start thinking about doing that in other chapters to move from one or two departments that determine every single election issue in the state, which is always persuasive when it goes before the Nevada Supreme Court. I think that is something we ought to look at in a number of different areas going forward.

Assemblywoman Bilbray-Axelrod:
This is a friendly amendment. I have a couple of concerns with the amendment. In sections 3 and 4 (Exhibit C), it talks about reporting the amount that the campaign has at the end of the applicable reporting period. As many legislators know, there are still many outstanding balances and invoices coming in. How would that reconcile at the end?

Matt Griffin, representing Michael J. Brown, Barrick Gold, North America; and Council for a Better Nevada:
I am here on behalf of Michael J. Brown of Barrick Gold, who is a board member in CBN and assisted in drafting this amendment. To answer your question specifically, the state law has a regulation that provides a cutoff of whether someone has outstanding debt or an obligation they have to pay. It provides a regulation as to whether that should be in the report they are submitting now or the report for the next period. This amendment is not designed to change any of that. If the obligation is required to be reported before the deadline, it would just be calculated in the ending fund balance. If not, it would carry over to the next report. I do not have that regulation off the top of my head, but I can provide it for you.

Assemblywoman Bilbray-Axelrod:
In the second part of section 5, it talks about the candidate or committee using a credit or debit card. It was unclear if that would be a campaign credit card or someone's personal card. It spells out that a candidate does not put the statement date, which I do not think anyone does typically. We put the day that we used the card. The last two lines say, "The candidate does not report any payments made directly to the credit card company. Any interest, credit card fees or late payment penalties are reportable expenditure transactions." Can you walk me through the thought behind that?

Matt Griffin:
There are two different issues included in here. This was language taken from the state of Oregon. The first part of the question would deal with a credit card issued to the

campaign. Of course, it would be handled separately if it were an individual's. If I am the candidate who is running and I want to use my personal credit card, I can report it the same way I report a loan, whether I want to forgive the loan. I can report it that way. This deals with a campaign credit card issued on behalf of the campaign.

With respect to the second part of the question regarding the interest and credit card fees, that was added in after looking at the issue of credit card charges. What this is designed to go after is a $30,000 or $40,000 payment to Visa on a C&E report without any recognition as to who the actual recipients were of that money. That is what this is designed to do. The last part is a separate issue. When you carry balances, there has always been a question under Nevada campaign finance law as to whether those balances and the interest earned on them or the interest you have to pay on them should be reported or not reported if it hits a certain threshold. This just clarifies that if it does hit that threshold, it is reported accordingly as either an expense or a contribution.

Chairwoman Diaz:
Are there any further questions from the Committee members? I see none. I will now switch to testimony in support of A.B. 45.

Luanne Cutler, Registrar of Voters, Washoe County:
I am here in support of A.B. 45. I wanted to make a couple of comments on a couple of sections that most directly affect the registrar of voters and county clerks. Section 4 discusses the matter of mailings that look to be official mailings from an election department or the Secretary of State's Office that come to Nevada's voters, but they are not. In the last two presidential election cycles, an organization with a return mailing address in Carson City sent thousands of mailings to the voters of Washoe County and others in the state that look very much like official materials from a government agency. Portions of the form that is sent out are pre-filled with information about the voter. Quite often, it is the voter's name or a variation thereof and an address they may not have lived at in ten years. They send these mailings to people who are deceased. I cannot express how many calls we get when these mailings go out. People are thinking they come from us and wonder why we cannot do a better job of keeping the records updated. They look very much like official mailings and they create a problem for us.

The other section I wanted to comment on was in relation to the voter registration drives. I understand Assemblyman Daly's concerns. Unfortunately, we get large numbers of workers from organizations that most likely pay their people to be out in the field registering others. In the last general election, we received literally thousands of forms at the very last minute. Whether they contained valid information or not, we had to go through the process of attempting to validate each one of those forms. There were a great many that were not valid, did not have good information, or were ineligible. It would be helpful to have some sort of accountability from those types of groups. Whether a little training will completely solve the problem remains to be seen, but it is a step in the right direction to try to get some sort of accountability from the groups that bring folks in from outside the state to register

people. We appreciate the Secretary of State's Office bringing forth this bill in order to try to help us with these issues.

Susan Merriwether, Clerk-Recorder, Carson City:
These past few elections have been quite the burden on my office regarding phone calls and complaints. People would actually walk into our office with the forms, showing us they received multiple requests to register to vote when they have been registered voters for over ten years. One of the concerns my office tossed around is where these groups are getting these lists of the public. They are not getting voter registration lists from us and comparing them, which I believe would help. I believe the Office of the Secretary of State's bill will help clean up many of the problems, and I fully support it.

Kathy Lewis, Clerk-Treasurer, Douglas County:
I am here to support the Secretary of State's bill and echo my colleagues' comments.

Sondra Cosgrove, Chair, Legislative Advocacy Committee, League of Women Voters of Nevada:
The League of Women Voters of Nevada supports A.B. 45. We specifically support training all groups who register Nevada voters. We support the requirement that private mailers, which inform voters they are no longer registered to vote, be clearly marked as not coming from county elections departments or the Secretary of State's Office. I also heard from many angry voters who received those mailers. Eligible voters have the right to securely register to vote and to be able to differentiate between official voter registration information and spam mailers. The League of Women Voters of Nevada takes voter registration very seriously. Voter registration is the election process; whereby, we assist eligible voters to gain access to the ballot, so we strongly believe every eligible voter should feel secure that their registration form will be completed correctly and returned properly.

Maud Naroll, Member, Legislative Advocacy Committee, League of Women Voters of Nevada:
I am also with the Legislative Advocacy Committee for the League of Women Voters of Nevada. I say ditto to everything Ms. Cosgrove said.

Chairwoman Diaz:
We will now go to testimony in opposition.

Greg Esposito, Private Citizen, Las Vegas, Nevada:
I own GE Consulting, and we do voter registration drives and initiative petition signature gathering. We are not opposed to A.B. 45 as a whole. There are simply two sections and two sentences that we have a problem with. Section 5 says, "The Secretary of State may adopt by regulation qualifications for a person to assist in a voter registration drive." There is an almost identical sentence regarding people who gather signatures on a petition in section 29. I feel that these two sentences are dangerously broad. It is too wide open.

I would never suggest that Secretary Cegavske would introduce any onerous regulations, but across the country, there are certain secretaries of state who have restricted the way things work as far as voter registration drives and voting. Ten or fifteen years from now, someone may take office who does not approve of the initiative petition process. With these sentences, they could write regulations that could make the process very difficult to move forward with. We have no problems with writing regulations that make people aware of the law. I could probably give the training I give to my signature gatherers to Mr. Thorley, and he could use it to teach signature gatherers the proper way to operate. These two broad sentences are dangerous in what could happen in the future.

Assemblyman Ohrenschall:
If one of your signature gatherers or your company violates current law, are there fines that can be imposed?

Greg Esposito:
I do not know the answer to that question. I have never been accused of violating the law, so I do not know.

Assemblyman Ohrenschall:
Do you try to train your signature gatherers right now under existing law and regulations?

Greg Esposito:
I have an extensive training program that I insist every signature gatherer that contracts with me go through. This is for two reasons. First of all, it is a touchy legal issue. For example, I make sure they understand that they may not misrepresent the issue. Every petition has to have the issue written out and a summary at the top of every signature page. I make sure that they understand that they may not misrepresent the issue. If they are caught doing so, they will be released from duty. There is also the very nature of what makes a signature valid. There are a couple of hours of training before I let them go out on the street. It saves me a lot of hassle.

Assemblyman Hansen:
One big concern I have had is that in Nevada, because of the single-subject rule, we have made it so difficult to get initiative petitions and referendums on the ballot. In my opinion, it is abused in California, but it is underutilized in some cases in Nevada to get around this body. When you go out and gather signatures, especially when it is to register people to vote, what is the incentive? Why would these companies use fake Secretary of State mailings or forms? Are they paid X amount of dollars for every person that they reregister? What is their motivation to try to appear like the Secretary of State's Office is officially doing this when that is not accurate?

Greg Esposito:
Unfortunately, I cannot answer that question, because that is not how I do voter registration drives. I do not do mailings. I do not do bulk mailings that say, "Hey, you are not registered to vote." I stand in front of the person and let them know that if they are not registered

to vote, or if they moved since they last voted, they may need to fill out this form in order to correct their information. I cannot tell you why someone would be disingenuous or put out those bulk mailings.

To answer another question about the initiative petition process, there is compensation for an accurate signature, but not on voter registration. That is illegal. People are not allowed to do a pay-per-voter registration, but there is compensation on an accurate signature on an initiative petition. That is why I am motivated to train my people to get that signature right the first time.

Assemblyman Hansen:
I did not know it was against the law to pay people to register others to vote. They can be paid for collecting signatures on an initiative or referendum, but not to register to vote?

Greg Esposito:
If I understand the law correctly, someone is not allowed to pay what they would call a bounty—if they hand in ten voter registration forms, they get ten dollars. They are not allowed to do that. They can be paid by the hour or the project, but they are not allowed to be paid by voter registration.

Assemblyman Hansen:
What I am looking for is the incentive. Why are people trying to fake people into reregistering when they are already registered? There must be some motive there somewhere.

Kermitt L. Waters, Private Citizen, Las Vegas, Nevada:
I want to oppose any portion of this that applies to the citizens' initiative. I am in the middle of a federal case right now to knock out the single-subject rule and all the problems that come with it, including description and effect. It has become a nightmare to get a petition on the ballot. Through discovery, I have found out that since Senate Bill 224 of the 73rd Session was passed, there have been 34 initiatives that were content-based. Attorneys understand what I mean when I say content-based. There were 34 initiatives that have been filed since 2005 that were content-based that have been challenged under that statute, because the statute also gives authority to anyone to sue and challenge a single-subject, its would-be description and effect, no matter how frivolous it is, and run them out of time.

There is a constitutional amendment that provides 247 days to get signatures. When someone gets sued, and it goes to district court in Carson City, people in Las Vegas have to come up to Carson City and defend it in court. If they lose it, it is appealed to the Nevada Supreme Court. This bill is a further restriction and restatement of the laws that are currently pending in federal court right now. I would hate for the federal court to rule on this statute, have it come back, and say it is a duplicate of it. It is another restriction on the initiative process.

It is an attempt to cure a problem that does not exist. I have not had any problems with anyone doing anything illegal when I received signatures for the People's Initiative to Stop the Taking of Our Land (PISTOL). I do not know why they are trying to do this, and I agree with Mr. Esposito that giving the Secretary of State unlimited, unrestricted authority to make any regulation is too broad. We do not want to have to fight that. I urge the Committee at least to knock out the portion of this that has to do with the citizens' initiative and referendums. That day is coming shortly.

Chairwoman Diaz:
I do not see any questions. Is there anyone else wishing to testify in opposition to A.B. 45? I am not seeing any. Is there anyone wishing to testify in neutral to A.B. 45? Seeing none, I will invite the Secretary of State to come up with her closing comments.

Barbara Cegavske:
We want to thank the Committee for hearing us. We are here to answer any questions.

Chairwoman Diaz:
We will now close the hearing on A.B. 45. We will go ahead and hear the last bill on the agenda for today. I will invite our colleague, Assemblyman Ohrenschall, to present Assembly Bill 418. Mr. Bradley Schrager is also joining us in Las Vegas. I will open the hearing on Assembly Bill 418. This is a proposal relating to recounting ballots in contested elections. Assemblyman Ohrenschall will present the bill for the Committee's consideration.

Assembly Bill 418: Revises provisions relating to elections. (BDR 24-750)

Assemblyman James Ohrenschall, Assembly District No. 12:
As Chairwoman Diaz noted, Mr. Bradley Schrager is down at the Grant Sawyer Building in Las Vegas. He is an expert in election law and has been practicing for many years. I am very lucky he is down there to be my lifeline and help me with questions.

The main purpose of Assembly Bill 418 is to eliminate the 5 percent sampling of precincts prior to a full recount. Under existing law, if a recount is sought, an initial recount is done to ballots from 5 percent of the total number of precincts that voted in that election or a minimum of three precincts that voted in that election. If the initial recount shows a discrepancy of at least 1 percent, or 5 votes—whichever is greater—a full recount of all ballots is triggered. Section 3 of A.B. 418 provides instead that all recounts must include a count and inspection of all ballots. Section 3 also provides that paper ballots must be recounted by hand and that all absentee ballots, mail ballots, and the ballots that are contained on a cartridge from a touchscreen machine shall be tabulated in the same manner as originally cast—electronically.

Section 4 revises the grounds upon which an election may be contested. In addition to malfeasance on the part of an election board member or the ineligibility of the winner of an election to hold office, A.B. 418 adds the following: Illegal or improper votes that were cast in sufficient number to raise doubt on the outcome of the election; the defendant or someone

acting on behalf of the defendant gave something of value for the purpose of manipulating the outcome of the election; and a possible malfunction of the device in a manner sufficient to raise doubt as to the outcome of the election. Additionally, existing law provides that ballots and other records relating to an election must be deposited in the vaults of the county clerk and are not subject to inspection by anyone except in the case of a contested election.

Section 2 clarifies that voting records that are printed on paper ballots showing votes cast on mechanical devices are also not subject to inspection unless they are relevant to a contested election.

Finally, there has been some litigation. In North Las Vegas, there was an election that was decided by one vote. Protecting someone's privacy is another big goal in this bill. The new language that is added to Chapter 293 of *Nevada Revised Statutes* (NRS) is in section 1. It says, "No person may be compelled under oath to reveal how he or she voted in any election." While outcomes like the one vote outcome in North Las Vegas are rare, they do happen. Close elections like that can happen, and we want to protect our voters' privacy.

This concludes my presentation. I am happy to answer questions.

Chairwoman Diaz:
We will ask Mr. Schrager to give us some comments as to why A.B. 418 is needed. After that, we will open it up for questions from the Committee.

Bradley Schrager, Attorney, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, Las Vegas, Nevada:
I am an election lawyer in Las Vegas. The aim of A.B. 418 is to make fairly technical and nonpartisan upgrades and clarifications in the portion of the NRS that deals with contested or close elections. It is exceptionally important in the end to get elections right. Every aspect of this bill is aimed at improving the ability to get elections right and to recount so elections can be corrected if there were issues, all of which ought to increase the view that Nevada's elections maintain a certain integrity—which is very important. Assemblyman Ohrenschall ran down most of the important aspects of the bill.

Speaking to the elimination of the 5 percent sampling, it is my recollection that two things converge to create our current recount code. It was the recount in the *Bush v. Gore* 531 U.S. 98 (2000) election in 2000 and the advent of electronic voting machines here and elsewhere. In the wake of those two things, many states revisited and tried to remake their recount codes in ways that would be useful, accurate, and maintain a certain integrity.

We did the same thing. The experience of 15 or 17 years' worth of contested elections and recounts is that the 5 percent sampling does not actually achieve anything. It does not get Nevadans any closer to knowing that the election results are accurate. Nevada's counting mechanisms are very accurate as far as how ballots are counted from the electronic voting machines and how the paper ballots are scanned.

The elections being discussed are the ones that are very close. Assemblyman Ohrenschall brought up the 2011 city council race in North Las Vegas that came down to one vote. There have been other elections that have been less than ten votes. There is nothing about choosing 5 percent of the precincts to recount that would be sufficient to capture those 2, 5, or 12 votes that might change the result. It is sort of a random sampling as opposed to a truly useful way of recounting the votes. Even the language regarding what would trigger a full recount after a discrepancy is not very clear. Our manner of recounting votes now with the cartridges or scanning machines makes it pretty simple to run all 100 percent of the votes again in a way that is not much more expensive or time-consuming than the 5 percent of ballots under current law. It is thought that if a losing candidate wants to do so, he or she should be able to request and post a bond for a full recount. After that, he or she has the opportunity under the expanded grounds now listed in section 4 to contest the election. That is really the basis for the bill.

In consultation with the Clark County Registrar of Voters, Mr. Joseph Gloria, it is requested that A.B. 418 revisit the notion that all paper ballots must be recounted by hand. Mr. Gloria points out that in a congressional or statewide election, that could amount to tens of thousands of ballots at the county level. Therefore, it is suggested that an amendment emerge that all ballots must be recounted in the same way they were originally tabulated (Exhibit D). This means the registrar does not have to hand count each paper ballot but will run them through again in the same manner that the cartridges are run through again to arrive at the second count after the recount.

Chairwoman Diaz:
Are there any questions from the Committee?

Assemblywoman Bilbray-Axelrod:
I had a question about the amendments. It sounded like Mr. Schrager indicated that the Clark County amendment is friendly. Moreover, there is a Washoe County amendment (Exhibit E). There was also a fiscal note. Could you address those issues?

Assemblyman Ohrenschall:
I have yet to see the amendment. I am certainly willing to work with Clark County and try to make it friendly if it is not friendly now. As to the fiscal note, I saw a small fiscal note that was online. Neither of them seems particularly large.

Chairwoman Diaz:
I am bringing up a fiscal note that was submitted by Washoe County for A.B. 418 (Exhibit F). It is an estimate for the hand counting of ballots. We really will not know until there is a contested race, so it is not as if this is something that is going to happen. If it were to happen, it gives some insight as to how much money they have to pay per person; how many people are involved; and the estimated cost. Mr. Schrager, did you have a conversation with anyone from Washoe County?

Bradley Schrager:
I did not have a conversation with anyone from Washoe County, but I did with Clark County. If I could piece those two together, it seems to me that the fiscal note submitted by Washoe County would be for having to hand count every paper ballot. That is exactly the concern that I think will be addressed by the Clark County Registrar's amendment, so under the amended bill, neither Washoe County nor Clark County would have to recount every paper ballot by hand. It should wipe out the fiscal note as well.

Assemblyman Ohrenschall:
Washoe County's fiscal note over the biennium is projected to be $24,000. The other local governments are all at zero, as is the Secretary of State. I agree with Mr. Schrager that if that Clark County amendment were processed by the Committee, it would address that.

Chairwoman Diaz:
Are there any other questions?

Assemblyman Daly:
In section 4, subsection 2(c), line 19, it says, "illegal or improper." Can you explain to me what we have been missing? The only thing I can think of is that a person was in the wrong district or something like that. What were you trying to hit on with the word "improper?"

Assemblyman Ohrenschall:
As I understand "improper," that would be someone who was erroneously allowed to vote in a voting district that they are not allowed to vote in. That vote may have been counted or tabulated for the total amount.

Bradley Schrager:
I think "improper" was meant to expand the universe of possible challenges that someone could make to a set of votes in an election. A vote could be improper, meaning it should not have been cast in that race on that ballot, for whatever reason. It was not necessarily illegal; there was no illegal intent; there was no misdemeanor or crime. It can sometimes happen because, even within a particular precinct, someone is allowed to vote for whatever reason, and they should have voted across at the other machine or at the other table. There are many reasons why a vote could be improper but not necessarily illegal. This is meant to encompass all of that for the benefit of someone challenging an election and gathering evidence as to why the result should be different from what was announced on election night.

Chairwoman Diaz:
Do you agree with that interpretation, Mr. Powers?

Kevin Powers, Committee Counsel:
Yes, I believe that is the intent of the language. One example could be if someone marked their ballot in one particular race for two candidates when they are only supposed to mark one. By marking for two candidates, their ballot would be improper. It would not be illegal. Maybe they did that mistakenly or inadvertently. That would be an improper ballot because

you could not choose which candidate was actually chosen. It would be an improper ballot, not an illegal ballot, but it would not be counted.

Chairwoman Diaz:
Are there any questions? [There were none.]

Assemblyman Ohrenschall:
Thank you for hearing this bill. I will certainly look at that amendment from Clark County.

Chairwoman Diaz:
I look forward to seeing this bill worked on so everyone is happy with the final outcome. Is there anyone wishing to testify in support of A.B. 418? [There was no one.] Is there anyone wishing to testify in opposition to A.B. 418?

Janine Hansen, State President, Nevada Families for Freedom:
I am not sure opposition is the right place for me, because I support most of the bill. I had a couple of concerns. I think the idea of not having the 5 percent recount instead of using the whole recount is a very good idea. I certainly support that.

One of the things I have been concerned about for a long time is when voters vote on electronic voting machines. There is a paper record that is initiated, but it has no force in law. It does not mean anything. I believe that most voters believe that that is a record of their vote when, in actuality, under the state law, it does not have any meaning. That was initiated under former Secretary of State Dean Heller, because people were so uncomfortable that there was no backup for a vote on an electronic voting machine. I think that should be clarified. It is deceptive for voters to believe that there is a paper backup of the electronic voting machine when there actually is not. It is not utilized in law for recounts or anything else.

I believe that is true in this bill. On page 4, line 5, it says, "Paper ballots must be recounted by hand. Ballots which were cast using a mechanical voting system . . . ." All of the following is marked out until line 16, where it says, ". . . must be recounted in the same manner in which the ballots were originally tabulated." In other words, it would be recounted through the electronic count. There is no use in a recount for the actual paper record. I think that is somewhat deceptive to voters, because they believe that their vote is also recorded in a paper record. I would like that to be clarified. I think it would be good if those paper records could be used as part of the recount.

One other concern I had in the bill is on page 5, line 33. It marks out "possible" in the line, "That there was a possible malfunction of any voting device . . . ." How does someone know until they have actually done a recount or checked whether there was a malfunction? It might only be a possible malfunction until they have actually checked it. I think the word "possible" needs to be maintained there, so it does not call into question the integrity of the whole voting system. You have to start somewhere, and you would probably start with the fact that there is a possible malfunction. The people outside the actual system,

the county clerk, would not have access to knowing if it was an actual malfunction unless they were the voter, and they saw it malfunction while they were there. That might be a possibility. Other people challenging for a recount or other things would not know that. They would only know it was a possible malfunction.

Those are my two concerns. I still have concerns about the paper record. It ought to be part of the recount, and it ought to have legal standing. Otherwise, why do we have it? We need to eliminate it, because it is deceptive.

Julie Hereford, representing Nevadans CAN:
I am not opposing the bill. I want to echo what Ms. Hansen said. I just have another clarification. I would like to see if anyone can help. It is the last point Ms. Hansen made about striking the "possible" malfunction of any voting device. Even with the "possible" back in there, I am wondering who has the right to check the possible malfunction of any voting device. For instance, if I am a candidate and I would like to challenge the outcome of the election result, will I be allowed to check the possible malfunction of any voting device? Can only the election department or a judge authorize that?

Chairwoman Diaz:
I do not know the answer to that question, but maybe someone from the Secretary of State's Office would have the answer to that question.

Wayne Thorley, Deputy Secretary for Elections, Office of the Secretary of State:
Can you please restate the question?

Chairwoman Diaz:
Ms. Hereford, can you please restate your question? I think the essence of the question was who would be ultimately responsible for looking into the malfunction of the voting machines.

Julie Hereford:
I agree with Ms. Hansen's question that we should not take the "possible malfunction" out. The follow-up question to that is, even if we add the "possible" back into the malfunction, if I am a candidate, and I would like to recount or contest my election result, would I be allowed to check the possible malfunction of the voting device? Do I need to obtain a court order? Is the election department going to perform that function in front of the contesting candidate?

Wayne Thorley:
In section 4, subsection 2, paragraphs (a) through (f), that is just setting forth the reasons that a person may file a contest of an election. Ultimately, if an election contest is filed and a judge determines that there is merit to that contest, the judge may require the election official or someone else to inspect the machine as part of the court proceedings.

Just so everyone knows, our voting equipment and all the components undergo rigorous testing, both before and immediately after the election. We do a pre-election logic

and accuracy testing (LAT) certification. We test the tabulation equipment 24 hours before an election and within 24 hours after an election. We do post-LAT. That is done by a certification board. The results of the pre-LAT and post-LAT mean they are done and that all the machines function properly. That is signed off by that board. There is a very rigorous process that goes into making sure that our equipment functions properly.

Chairwoman Diaz:
Thank you, Mr. Thorley. Are there any further comments?

Julie Hereford:
This section says ". . . possible malfunction of any voting device . . . ." As perfect as the Secretary of State's Office likes to think the voting machines are, there are also possible malfunctions. My question was whether the candidate is allowed to be part of the inspection after a possible malfunction was detected.

Kevin Powers:
An election contest is an action filed in court challenging the results of the election. It can be filed by a candidate or any registered voter in the political subdivision where the challenge is being made. Like any other court action, the plaintiff—in that case, the voter or the candidate—would have the burden to prove that there was an irregularity in the election based on the grounds set forth in section 4 of the bill, which amends NRS 293.410. Like any other civil action, the plaintiff candidate would have the opportunity to engage in discovery and inspect the machines and take deposition testimony. There would be an opportunity for the candidate as a plaintiff in a civil action to use the ordinary principles and practices of discovery to obtain the information necessary to build their case that there was an irregularity in the election and the election results should be nullified.

Assemblyman Hansen:
Are the paper ballots the samples that voters get after they vote? A voter hits a button, and it shows how they voted. Is that considered a legally binding document? If someone came and challenged an election by saying they voted for Kevin Powers, but the ballot shows they voted for Richard McArthur, I can show that it says your name on it. Is that a legally binding instrument?

Kevin Powers:
I think that maybe the election officials or the Secretary of State's Office may want to weigh in on this. As the law currently exists, the language is that during a recount, the ballots have to be recounted in the same manner in which the ballots were originally tabulated. If they were tabulated using a mechanical voting device, that is how they are recounted. The paper ballots generated by that mechanical voting device are not used in a recount. They are only using the mechanical voting device in the same manner to recount those documents.

Assemblyman Ohrenschall:
I had a similar question to Assemblyman Hansen's. I had to discuss it with Mr. Schrager. Perhaps Mr. Schrager can comment on this.

Bradley Schrager:
One thing we may be overlooking is section 2, subsection 5 of A.B. 418. Mr. Powers is exactly right. At the moment, when ballots are recounted, they are recounted the same way as on election night. Therefore, the receipts and records attached to the voting machines are not included. Those are there to assure the voter that his or her vote is being recorded properly. However, for the first time in Nevada law, subsection 5 of section 2 of this bill will allow a judge to order the parties to be allowed to inspect those receipts as part of the lawsuit underpinning a challenge to election results during an election contest. For the first time, it will be possible for those receipts to have legal value in an election contest. That should be good news for Ms. Hansen. I think it is good news, generally, for the integrity of Nevada's elections.

Assemblyman Ohrenschall:
Prior to my discussion with Mr. Schrager about this bill and the current state of Nevada law, I was under the assumption that if someone had the resources, they could seek an actual hand count of those paper printouts. This is not currently allowed in Nevada law, but this bill would allow that. We hear a lot about computer malfunctions, cyberattacks, and software not working the way it should. I think in this day and age, many people would take a lot of comfort knowing that there could be an actual hand count if an election was that close and a candidate who felt they were wrongly defeated wanted that. I think that is a huge move forward with this bill, and it should give everyone a lot more comfort.

Chairwoman Diaz:
I wanted to clarify that the records printed on paper would not necessarily have to happen. It would only happen in circumstances or situations in which the judge considered it prudent because of an anomaly in that certain election contest. Is that correct? I have many people losing it because they are going to have to recount all of these receipts every single time. I just want to assure them that it is not for every recount, but where it is deemed necessary.

Bradley Schrager:
The intent in the bill is for it to be an option in the court case, under an election contest, for the judge to order that those are considered. It would have to be for good cause. It would not be something available to everyone in a recount, or even everyone in an election contest. It would have to be necessary and relevant under the pleading and the evidentiary standards of an election law contest lawsuit.

Assemblyman Daly:
I just wanted to make sure one thing was clear on the record with regard to Assemblyman Hansen saying that someone may say they voted for this candidate, and the piece of paper showed they did not. The ballot does not show who voted for whom. You are just going to be able to count how many votes were for each candidate, and it would be matched up to the computer data. This is the only thing you would be able to see. How anyone voted is not going to be able to be determined by that. It is not on the piece of paper. There are no numbers. If there were 100 votes on the paper, you would count that there were 100 votes on the computer to see if the number of votes on the paper matches the

number of votes on the computer. You would not be able to tell how anyone voted. I did not want anyone to think that you could, because you cannot.

Assemblyman Ohrenschall:
I think that any recount, whether mechanical or a hand recount, preserves the voter's anonymity. This bill tries to ensure we go the extra mile to protect the voter's anonymity.

Assemblyman Hambrick:
If there is a challenge, who pays for it? If an individual challenges an election and brings it to the county government, would the individual who is challenging it be liable for the expenses, or would that cost go back on to the county government? I think that would be improper. If there is a challenger, I would hope that the challenger would be required to put up a bond of some type to go forward with the cost of the recount.

Assemblyman Ohrenschall:
Nevada Revised Statutes (NRS) 293.405 discusses the cost of the recount. It talks about a bond being deposited by the person who is asking for the recount. However, pursuant to NRS 293.405, subsection 2, there is a refund if the person who demanded the recount prevails. The sum deposited with the Secretary of State's Office, county clerk, or city clerk must be refunded to that person. The cost of the recount would be paid for by the taxpayers of that jurisdiction if it was successful. If it is not, then it is the candidate demanding the recount who must deposit a sum.

Wayne Thorley:
In a recount, the person asking for the recount is required to make a deposit of the estimated cost of the recount. If the cost of the recount turns out to be less than that, they are refunded their money. If they are successful in their recount, they would also be refunded. In the instance of a contested election, which is different than a recount, an election contest would be similar to any other civil proceedings in which the parties would be permitted to retain counsel, if they wish. At the end of the proceeding, there could be an opportunity for the judge to grant fees to the prevailing party. It would be like any other civil proceeding brought against the jurisdiction.

Chairwoman Diaz:
We are going to switch to testimony in the neutral position.

Luanne Cutler, Registrar of Voters, Washoe County:
We are testifying in the neutral position, especially with the suggested amendment from Clark County. I participated in the Ensign-Reid recount in Washoe County in 1998 whereby we counted all of the ballots by hand. It took days, and we were literally recruiting people off the street to make that happen. It really results in chaos, and there is no question a machine is going to be more accurate than a human being, because judgement comes into play when talking about humans. We are very much in support of that amendment.

I wanted to mention something regarding prior testimony about the voter-verified paper audit trail (VVPAT) paper. This is a tool to assure the voter that what they are choosing on the screen is what is being recorded by the machine. It is not completely true, however, that the paper holds no weight. I am not 100 percent sure what it means legally, but there is a required audit that we do with those VVPAT rolls. We bring the certification board back in, and we compare the votes on a certain number of paper rolls to what is recorded off of the cartridge in the back of the machine to make sure that they match up, so we know there are no anomalies. I think that is an important point that everyone needs to be made aware of. We are neutral with the suggested amendment.

Susan Merriwether, Clerk-Recorder, Carson City:
I would like to indicate that I support Clark County's and Washoe County's amendments to the bill. Regarding the paper trail that the voters verify when they are voting, there are many people in Carson City who will look at the paper and think they are getting a receipt from the machine. We have all of our workers trained to know that it is used for an audit. We compare what is on the paper to the voting machine. We do not do that with each one; we do a random sample. It is to verify that the machines are working and counting the votes properly. We do the pre-LAT and post-LAT, so it is just another way. I also wanted to mention that one of the vendors at the demonstration in the State Capitol on April 26 uses VeriFone paper. You will be able to see the new equipment and how they verify on the paper rolls.

John Wagner, Carson City Vice Chairman, Independent American Party:
I signed in as being in favor of the bill, but after hearing all the testimony, I probably should have signed in as neutral. I like the idea of putting back the word "possible." How is someone supposed to prove there is a malfunction if they do not say they suspect there is one? There has to be some suspicion in order for anyone to be able to take a look at it. There is no way for a private individual who is voting to say that it is defective. How can they prove it?

As far as machines being hacked, years ago, we had floppy disks. A friend of mine in the United Kingdom put a program on a computer called Drain. It was a cute, little program. When he powered it up, it said that water had been detected in floppy drive A. It would start to spin the drive, and he could hear a drain. It would then say that the drain is now clear, and it is rebooting his system. It would erase the file and the procedure to do this, and then restore the thing as normal and do a normal boot up. You would never know. You could find it if you knew what you were doing; otherwise, it erased the record of it.

It caused a great panic in the United Kingdom, because they are about eight hours ahead of us. By the time they found out what happened, they lost a day's worth of work. We are all aware of WikiLeaks and other things. It is very possible for them to print the same thing on the screen and the paper. What does it put on the disk? It can be completely different. Something can be loaded in there at the very start to make it good for the first 100 votes, and then suddenly, switch it back again. This is all possible, but not by me, because I do not have

that kind of programming experience. I know enough about computers to know that it could be done.

Chairwoman Diaz:
Is there anyone else wishing to testify in neutral on A.B. 418?

Les Lee Shell, Director, Office of Risk Management, Department of Finance, Clark County:
I apologize. Mr. Gloria is not here today, so I am standing in for him. I apologize to Assemblyman Ohrenschall. We reached out to the Vice Chair and Mr. Schrager, but we left him out of the loop. That amendment was submitted, and we wish for you to consider it (Exhibit D).

Wayne Thorley:
With the Clark County amendment, we have no issues with this bill, which is similar to the testimony provided by the local election officials. I would like to add a few more comments about the VVPAT and the function it serves. As it says in its name, it is an audit tool that allows us to take the electronic vote off a random sample of machines and compare it to the printed record after every election. We believe we have great procedures and securities on the machine, but if someone was able to change the electronic vote through malicious means, we would have that audit trail that we compare it to.

Since we have had the VVPAT printers and have been doing this random sample audit, we have never once found a discrepancy between the electronic vote and the paper vote. There are instances when the electronic voting machine will completely malfunction and the electronic vote may be lost. In those instances, the current regulation lets us use the VVPAT, the printed record of the votes, as the actual ballots cast for tabulation purposes. It also serves that purpose in rare instances when we lose the electronic vote. There are multiple redundancies built into these machines. The vote is stored in at least three separate locations. They are very robust, so we have the ability to get the vote off the machine in the case of any sort of malfunction.

Chairwoman Diaz:
I do not see anyone else wishing to testify in the neutral position, so we will invite the bill sponsor to provide his closing remarks.

Assemblyman Ohrenschall:
I apologize. I had not seen the two amendments from Washoe County and Clark County, but they are friendly. I think some of the concerns some of the others brought up can be addressed if the Committee might consider another amendment. I think preserving someone's anonymity is huge and is what this bill does. Mr. Schrager spoke to allowing that extra security if a court feels there is good reason for a hand recount. It is not in Nevada law now, which I was mistaken about, and it will give voters a lot more comfort. I hope the Committee will consider processing this bill.

Chairwoman Diaz:
We look forward to the forthcoming amendment, so we can move the bill. With that, I will close the hearing on A.B. 418. Before I open the work session, I would be remiss if I did not acknowledge former Senator Valerie Wiener. It is great to see you back here after so many years of service. We also have the Nevada Youth Legislature, of which Senator Wiener is a number one supporter.

Our next order of business is to begin the work session. I am going to pull Assembly Concurrent Resolution 7. We still do not have the amendment language where some members would like to see it, so we will continue working on that.

Assembly Concurrent Resolution 7: Directs the Legislative Commission to conduct an interim study concerning property taxes. (BDR R-1049)

We will pick up with Assembly Concurrent Resolution 8.

Assembly Concurrent Resolution 8: Directs the Legislative Commission to create an interim study concerning reports relating to public education. (BDR R-337)

Carol Stonefield, Committee Policy Analyst:
I am with the Research Division of the Legislative Counsel Bureau (LCB). The members have the work session document in their binders (Exhibit G). It is loaded on the Nevada Electronic Legislative Information System (NELIS), and there should be copies at the back of the room. Skipping Assembly Concurrent Resolution 7, the first bill before the Committee is Assembly Concurrent Resolution 8.

This was heard in this Committee on April 4, 2017. It was presented by Mr. Ray Bacon of the Nevada Manufacturers Association on behalf of the Legislative Committee on Education. This concurrent resolution proposes a study of reports to public education. The interim committee, consisting of six legislators, must analyze the reporting requirements relating to accountability, pupils, teachers, administrators, and any other reports required by federal law. They must also analyze strategies to modernize and streamline those reporting requirements, and the manner in which the information in those reports is used. The committee must consult with experts in education reporting and make a report to the 2019 Legislative Session. No amendments were offered.

Chairwoman Diaz:
I will entertain a motion to adopt A.C.R. 8.

> ASSEMBLYMAN ARAUJO MADE A MOTION TO ADOPT ASSEMBLY CONCURRENT RESOLUTION 8.
>
> ASSEMBLYMAN DALY SECONDED THE MOTION.
>
> THE MOTION WAS ADOPTED UNANIMOUSLY.

Assemblyman Araujo was on the interim Legislative Committee on Education. I think it would be prudent for you to carry it on the floor. You will have that floor assignment. We will go on to Assembly Concurrent Resolution 9.

Assembly Concurrent Resolution 9: Directs the Legislative Commission to conduct an interim study concerning treating certain traffic and related violations as civil infractions. (BDR R-1064)

Carol Stonefield, Committee Policy Analyst:
Assembly Concurrent Resolution 9 was heard in this Committee on March 30, 2017. It was presented by Assemblyman Yeager. It proposes an interim study concerning certain traffic and related violations. A committee of six legislators must consider the existing laws concerning the violation of traffic laws and laws relating to driver's licenses and to the registration of and insurance for motor vehicles (Exhibit H).

In conducting the study, the Committee shall consider laws in other states, elements of a system that would treat violations of such laws as civil infractions, and the fiscal effect of treating such violations as civil infractions. Assemblyman Yeager submitted a conceptual amendment. There is a copy of it behind the bill document. He would suggest revising the membership of the committee to require that one member of the Senate and one member of the Assembly represent areas outside of Clark County, and at least one of those legislators must be from a rural county that is not Clark or Washoe.

Chairwoman Diaz:
I will entertain a motion to amend and adopt A.C.R. 9.

> ASSEMBLYWOMAN MONROE-MORENO MADE A MOTION TO AMEND AND ADOPT ASSEMBLY CONCURRENT RESOLUTION 9.
>
> ASSEMBLYMAN DALY SECONDED THE MOTION.
>
> THE MOTION WAS ADOPTED UNANIMOUSLY.

I will give the floor statement to Assemblyman Yeager, but I will have Assemblyman Ohrenschall be his back up in case he is not able to have that. We will move on to Assembly Bill 272.

Assembly Bill 272: Revises provisions relating to elections. (BDR 24-851)

Carol Stonefield, Committee Policy Analyst:
Assembly Bill 272 was heard in this Committee on April 4, 2017. It was presented by Assemblyman Frierson. The bill contains a number of proposals relating to the administration of county and city elections. Each city or county clerk shall establish at least one voting center where any person entitled to vote may do so in person on the day of a primary or general election. Election rosters shall be in electronic form. Voting materials

shall be provided in Mandarin and Cantonese languages. Polls shall close at 9 p.m. on Election Day. County or city clerks shall establish at least one permanent polling place for early voting. Early voting shall be extended until the Sunday before Election Day. A county or city clerk shall establish at least one polling place within the boundaries of an Indian reservation or colony at a location approved by the Indian tribe. The county or city clerk must also establish at least one temporary polling place for early voting as approved by the Indian tribe (Exhibit I).

Speaker Frierson presented the mock-up, which is behind the bill page. It is proposed amendment 3656. He proposes the following revisions: (1) establishing the voting centers would become permissive; (2) at least one polling place must be designated on an Indian reservation or colony if the tribe submits a request, and deadlines for submitting the request are provided in the amendment; (3) a city or county clerk shall prepare election materials in a language of a minority group. The specific languages of Mandarin and Cantonese are deleted by this amendment. The amendment further provides that a minority group must have been the subject of historical discrimination and unequal educational opportunity; (4) the proposal to extend the opening hours of polls until 9 p.m. is deleted; therefore, the existing 7 p.m. closing time would be returned to the law; and (5) the extension of early voting through the Sunday prior to the election would become permissive. If a clerk chooses to open voting sites on that Sunday, the clerk may establish the hours of operation.

Chairwoman Diaz:
I will now entertain a motion to amend and do pass A.B. 272.

> ASSEMBLYWOMAN BILBRAY-AXELROD MOVED TO AMEND AND DO PASS ASSEMBLY BILL 272.
>
> ASSEMBLYWOMAN MONROE-MORENO SECONDED THE MOTION.

Chairwoman Diaz:
Is there any discussion on the motion?

Assemblyman Oscarson:
In light of the amendments that make it permissive, I am going to support this in Committee but reserve my right to change my vote on the floor if there are any other changes, or I need to do so.

Assemblyman Hansen:
In light of the amendments, I will do the same. I will support it, but I am not totally sure what is in it now. It sounds much better with it being permissive. I was a strong no on the original bill. This seems like it has been worked out. Does anyone know if the clerks have been consulted? They were in opposition to a lot of it.

Chairwoman Diaz:
My understanding is that Assemblyman Frierson worked with the clerks and their concerns in the amendment language that is being provided. They are nodding their heads yes in the audience.

[Chairwoman Diaz designated (Exhibit J) as presented but not discussed. It will be made part of the record.]

Assemblyman Hambrick:
I ditto the comments of my colleagues.

Chairwoman Diaz:
I will call for the vote.

THE MOTION PASSED. (ASSEMBLYMAN McARTHUR VOTED NO.)

I will assign the floor statement to myself unless Assemblyman Frierson wants to have it himself. We will move on to Assembly Bill 392.

Assembly Bill 392: Revises provisions concerning certain communications relating to elections. (BDR 23-85)

Carol Stonefield, Committee Policy Analyst:
Assembly Bill 392 was heard in this Committee on April 4, 2017. It was presented by Assemblyman Oscarson. The bill concerns the use of official stationery from a state or local governmental entity for purposes relating to elections. One portion of the bill proposes to amend the Nevada Ethics in Government Law to prohibit the use of official stationery for purposes of expressing support for or opposition to a candidate, a political action committee, a political party, or a ballot question. Further, official stationery cannot be used to solicit contributions for any political purpose. The other portion of the bill amends campaign practices to provide that if a communication is published in support of or in opposition to a candidate, and it includes the name of a governmental entity, the communication must disclose that it was not published by the governmental entity. There is a mock-up proposed by the sponsor. It is behind the bill page (Exhibit K). The mock-up proposes to delete section 1 from the bill, which would have amended the Ethics in Government Law. It clarifies that if a communication includes contact information, the communication must disclose that it was not published by the governmental entity. The amendment further provides definitions for contact information and further defines governmental entity.

Assemblyman Elliot T. Anderson:
I have a question for Committee counsel, Mr. Powers. I am looking at the amendment to the definition of a "governmental entity," in section 2, subsection 2(b). It includes "public officer." I believe that is a defined term in *Nevada Revised Statutes* (NRS) 294A. It occurred to me that that would potentially loop in any campaign literature that legislators do on behalf of themselves. I wanted to check and see if our existing disclosures that say

it is paid for by our committee would be sufficient to satisfy subsection 1 of section 2 as it is proposed to be amended.

Kevin Powers, Committee Counsel:
I will start by clarifying that this provision of the bill that applies to a public officer is intended to ensure that if a public officer was engaged in this type of communication, that disclosure must indicate that the communication is not on behalf of the governmental entity. They are supporting or opposing a candidate on behalf of themselves, not on behalf of the governmental entity of which they are a public officer.

Second, if the disclosure that is required in campaign communications now under NRS Chapter 294A is sufficiently drafted to make it clear that the communication was not published by a governmental entity, it would qualify with regard to this section. I know the disclosure in NRS 294A deals with indicating that the campaign material was paid for by a campaign committee. That would be sufficient to indicate that it was not being published on behalf of the governmental entity.

Assemblyman Hansen:
I have an example from a race. An Assembly candidate from Reno got a letter endorsing him from the Governor. He used that extensively in his brochures and so forth, saying, Join Governor Brian Sandoval in supporting candidate A, B, or C. Under this law, what would the requirements be for that individual to use that communication from the Governor?

Kevin Powers:
The candidate would have to indicate that the communication he is sending out is not a communication from that governmental entity. It would have to include some disclosure saying that this communication is not being published by the State of Nevada and, therefore, is not being published by a governmental entity. It would have to include some disclosure revealing that it was not a governmental entity that was sending this particular letter.

Assemblyman Hansen:
In other words, let us say I received a letter from Governor Sandoval saying that he endorses Ira Hansen for Assembly District No. 32. I then turn around and want to use that, and it is on his official letterhead. What do I have to put on my mailer or email blast to make sure that I do not get either the Governor or myself in trouble?

Kevin Powers:
This can be clarified in the regulations with the Secretary of State's Office, but I think the simplest way to approach this is that the disclosure says, This letter was not published by the State of Nevada.

Assemblyman Hansen:
I could endorse a candidate or an individual on my official letterhead, but that individual would have to put a disclaimer that this was not officially published by the State of Nevada on the reuse of that?

Kevin Powers:
The starting point is that if you are using your official letterhead that includes the name, address, or other contact information of a governmental entity, and it is a communication that is published in support of or in opposition to a candidate, you would have to indicate that your letter supporting that candidate is not coming from the State of Nevada. If another candidate reused that letter, they would have to indicate in their letter that it was not coming from the State of Nevada.

Chairwoman Diaz:
Mr. Powers, would it not be more prudent to stay away from using governmental letterhead and titles and endorse them in another manner? Is that not a more prudent move given this change to the statute and the law? I am trying to figure out why we would want to continue to put things on our governmental letterhead versus doing it in another way that this is trying to limit.

Kevin Powers:
I think the key is that the triggering mechanism is if the communication includes the name and address or other contact information of a governmental entity. A letterhead, almost by necessity, has the name, address, and contact information of a governmental entity. By using that letterhead, you are probably going to fall into the triggering provision that would make the requirements of this section apply. To answer your question, if you do not use official letterhead or otherwise indicate the name, address, or other contact information of a governmental entity, then you would not have to make any disclosure.

Assemblyman Hansen:
This is a lot broader than that in the amendment. This says any communication that includes any of the contact information at all. If I sent out an email that is officially from Ira Hansen who, by this definition, is a public officer, and I include in that email return contact information, would I not be violating this section if I did not include a disclaimer in something as simple as an email?

Kevin Powers:
It is quite possible that if you are using the name of a governmental entity, which includes a public officer, and any contact information, you have to indicate a disclosure that says the publication or communication is not from the State of Nevada.

Assemblyman Hansen:
That means, because I am a public officer, that every single thing I do, every act of communication that includes some form of contact information would have to have a disclaimer.

Kevin Powers:
It has to fall within the scope of the provision. It has to be a communication published in support of or in opposition to a candidate. That is part of the triggering mechanism. That is the underlying theme. It is not any communication; only a communication that meets that threshold.

Assemblyman Hansen:
That is way too broad for my taste.

Assemblyman Elliot T. Anderson:
When I am sending out emails that relate to campaign activity, I make it a habit to use my campaign account, which has that disclaimer on it. I think that going forward, that would be prudent to keep that in your signature block. Keeping those things segregated is generally a good idea. As long as that disclaimer is appropriate, it should not significantly change business as usual related to campaign activity, which was my concern. This bill covers that.

Chairwoman Diaz:
The amendment language addresses your concerns?

Assemblyman Elliot T. Anderson:
It does, in addition to Mr. Powers' explanation that the disclosure we already use would comply with this.

Chairwoman Diaz:
Is there any further discussion? [There was none.] I will entertain a motion to amend and do pass Assembly Bill 392.

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 392.
>
> ASSEMBLYMAN ELLIOT T. ANDERSON SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN DALY, HANSEN, AND McARTHUR VOTED NO.)

I will have Assemblyman Oscarson give the floor statement for his own measure. We will move on to Assembly Joint Resolution 11.

Assembly Joint Resolution 11: Urges Congress to ensure that the Intermountain West Corridor does not bypass Mineral County. (BDR R-561)

Carol Stonefield, Committee Policy Analyst:
The last bill before the Committee today is Assembly Joint Resolution 11. It was heard in this Committee on March 30, 2017. It was presented by Assemblyman Hansen. The resolution urges Congress to ensure that the Intermountain West Corridor will follow the existing U.S. Highway 95 corridor through Mineral County. It should be noted that in December 2015, Congress passed the Fixing America's Surface Transportation Act, which designates the Intermountain West Corridor as following the route of Highway 95 north from Las Vegas to Interstate 80 (Exhibit L). There were no amendments.

Chairwoman Diaz:
I will entertain a motion to do pass Assembly Joint Resolution 11.

> ASSEMBLYMAN OHRENSCHALL MADE A MOTION TO DO PASS ASSEMBLY JOINT RESOLUTION 11.
>
> ASSEMBLYMAN HANSEN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblyman Hansen will have the floor statement.

With that, I will close the work session and open it up for public comment. Seeing none, this meeting is adjourned [at 3:41 p.m.].

RESPECTFULLY SUBMITTED:

_____
Julianne King
Committee Secretary

APPROVED BY:

_____
Assemblywoman Olivia Diaz, Chairwoman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed amendment to Assembly Bill 45, presented by Maureen Schafer, Executive Director, Council for a Better Nevada.

Exhibit D is a proposed amendment to Assembly Bill 418, submitted by Les Lee Shell, Director, Office of Risk Management, Department of Finance, Clark County.

Exhibit E is a proposed amendment to Assembly Bill 418, submitted by Deanna Spikula, Assistant Registrar, Washoe County.

Exhibit F is a document titled "AB 418 Washoe County Fiscal Note," submitted by Deanna Spikula, Assistant Registrar, Washoe County.

Exhibit G is a Work Session Document for Assembly Concurrent Resolution 8, presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit H is a Work Session Document for Assembly Concurrent Resolution 9, presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit I is a Work Session Document for Assembly Bill 272, presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit J is a proposed amendment to Assembly Bill 272, dated April 6, 2017, prepared and submitted by Susan Merriwether, Clerk-Recorder, Carson City.

Exhibit K is a Work Session Document for Assembly Bill 392, presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit L is a Work Session Document for Assembly Joint Resolution 11, presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

EXHIBIT 15

EXHIBIT 15

MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-ninth Session
May 3, 2017

The Senate Committee on Legislative Operations and Elections was called to order by Chair Nicole J. Cannizzaro at 4:17 p.m. on Wednesday, May 3, 2017, in Room 2144 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Tick Segerblom, Vice Chair
Senator Kelvin Atkinson
Senator James A. Settelmeyer
Senator Heidi S. Gansert

GUEST LEGISLATORS PRESENT:

Senator Pat Spearman, Senatorial District No. 1
Assemblywoman Olivia Diaz, Assembly District No. 11
Assemblyman Ozzie Fumo, Assembly District No. 21
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Kevin Powers, Counsel
Janae Johnson, Committee Secretary

OTHERS PRESENT:

Bradley Schrager
John Wagner, Independent American Party
Janine Hansen, Nevada Families for Freedom
Wayne Thorley, Deputy for Elections, Office of the Secretary of State
Priscilla Maloney, Retiree Chapter, American Federation of State, County and Municipal Employees Local 4041, AFL-CIO
Michael Sean Giurlani, Nevada State Law Enforcement Officers' Association

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers CWA Local 9110 AFL-CIO
Carter Bundy, American Federation of State, County and Municipal Employees Local 4041, AFL-CIO
Fran Almaraz, American Federation of State, County and Municipal Employees Local 4041, AFL-CIO
Barbara K. Cegavske, Secretary of State
Sue Merriwether, Clerk-Recorder, Carson City

CHAIR CANNIZZARO:
We will open the hearing on Assembly Bill (A.B.) 418.

ASSEMBLY BILL 418 (1st Reprint): Revises provisions relating to elections. (BDR 24-750)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
Assembly Bill 418 is a Committee bill and did pass out of the Assembly unanimously. The purpose of A.B. 418 is to eliminate the 5 percent sampling precincts prior to a full recount. Under law, if a recount is demanded, an initial recount is done of ballots from 5 percent of the total number of precincts that voted in the election or a minimum of three precincts that voted in that election. If the initial recount shows a discrepancy of at least 1 percent or 5 votes, whichever is greater, a full recount of all ballots is done. Section 3 in the bill provides that all recounts must include a full count and inspection of all ballots. Section 3 was amended by the Assembly to provide that all ballots must be recounted in the same matter in which the ballots were originally tabulated, whether that was done with a mechanical device or electronically. Section 4 revises the grounds in which an election may be contested in addition to malfeasance on the part of the election board member or ineligibility of the winner of the election to hold office.

Assembly Bill 418 adds the following as grounds of an election contest: illegal or improper votes that were cast in a sufficient number to cast doubt on the result of the election. The defendant is the person who won. The contestant is a person who believes there was error in the tabulation of votes, believes that someone working on behalf of the reported winner of the election acted improperly, for example, a person giving something of value for the purpose of manipulating the outcome of the election, or believes there was a malfunction of a device in a manner sufficient to raise doubt as to the outcome of the

election. The law provides that ballots and other records relating to the election must be deposited in the vaults of the county clerk and are not subjected to an inspection by anyone except in a case of a contested election.

Section 2 clarifies the voting records that are printed on paper ballots showing votes cast on mechanical devices are not subject to inspection unless they are relevant to a contested election. Section 1 provides no person may be compelled under oath to reveal how he or she voted at any election. This is significant, for we had a municipal election about three or four years ago in North Las Vegas that was decided by one vote, and there were questions as to the outcome. We want to maintain voter privacy when the election is close.

This is a short bill, and it improves the election process. It improves our right to know that, if there is a close election or a question, it can be looked into and decided in the terms of whether there could be a recount or contest.

SENATOR SETTELMEYER:
Concerning a recount in the same manner as on Election Day, votes are counted by a ballot machine. A general improvement district (GID) vote is small and done at a regular election. If the GID wants a recount but rather than using a machine for the entire election, you only recount the GID, which has about 50 to 60 ballots. Do you see that as a potential problem?

ASSEMBLYMAN OHRENSCHALL:
That was an issue in the original version of the bill before we amended it in the Assembly. We did provide a hand recount to address some of the concerns brought up by the registrars. We amended the bill to provide if there was a recount, it would be done in the same manner that it was done on Election Day, whether that is mechanical, electronic or done by hand. Pursuant to this bill, if a measure passes, a manual inspection can still happen, but it would have to be ordered by a judge under section 4. As I understand, in A.B. 418 the possibility is still there, but it would have to come as a result of an election challenge or contest.

SENATOR GANSERT:
It also precludes inspection except if it is contested. If they are going to be tabulating the votes, and the documents do not look right and you intuitively know something went wrong when you are gathering the materials from an

election, what do you do then? There will be a process before you actually count them where someone would be transferring information.

ASSEMBLYMAN OHRENSCHALL:
Section 2 amends *Nevada Revised Statutes* (NRS) 293.391, and provides that the records in subsections 1, 2 and 3, regarding the rosters of people who voted, are open to any elector who wishes to inspect them. Under law in section 2, subsection 5, the voted ballots deposited with the county clerk are not subject to the inspection of anyone except in cases of a contested election. In my opinion it is to protect voter privacy.

What this bill does is add the records to voted ballots. These are the records printed on paper of voted ballots that I think we are all familiar with when we go to vote on the electronic machines and the paper prints out so you can check to make sure it correctly reflects your decision. That would be subject to being looked at for a recount in section 4 of the bill. That would now be added to the provision in section 2, subsection 5 of voted ballots that are not open to general inspection. They are only available for a recount. If someone meets the threshold pursuant to section 4, then a court can order those to be inspected. If you believe somehow there has been machine error or a software malfunction and you are able to meet that burden in front of a court, you could get that recount and pursuant to section 4, even with the paper ballots. You would have to meet that burden.

SENATOR GANSERT:
Looking at section 2, subsection 4, a contestant of an election may inspect all of the material regarding that election which is preserved pursuant to subsection 1 or 2 except the voted ballots. I understand that you have to maintain the confidentiality of how somebody voted, but if it is not printed and it is electronic, it sounds like there is still access to them to make sure things are working properly. Will you have to maintain the confidentiality?

ASSEMBLYMAN OHRENSCHALL:
As I understand, sections 2 and 4 work together, and those paper printouts would not be subject to a general inspection unless it was ordered by the court, pursuant to NRS 293.410, in section 4 of the bill.

BRADLEY SCHRAGER:
I support A.B. 418 and can assist Assemblyman Ohrenschall on questions or any technical issues. This is an important revamping and is an improvement for our integrity of postelection and election procedures.

JOHN WAGNER (Independent American Party):
There are a couple of considerations we do not like about this bill. It is calling for a total recount. Who is going to pay for that total recount? Page 5, lines 38 to 41, they removed the word "possible" malfunction. I think we need to leave the word "possible" in the bill. For example, if I go to someone and say this machine does not work, but he or she says it is fine—I have to prove that there was a malfunction. How can I prove it without the paper being read in there? Otherwise, why do we even have the paper printout? Otherwise we are just killing a tree. I think we need to have the paper recount and "possible" should be left there because a malfunction can happen. It happens all of the time with hackers. As an example, a hacker caused problems at my work making us think there was a virus planted in the machine, but there was no virus.

JANINE HANSEN (Nevada Families for Freedom):
I have a couple of issues with this bill. I support page 3, line 4 where the paper printed record can be accessed if contested. In the past, in terms of a recount, it has been inaccessible. The provision was first put in place by former Secretary of State Dean Heller because people were unhappy about an electronic ballot with nothing to back it up. He added it, but it did not have any legality in law. It did not determine anything regarding a recount. I am glad to see there is some access in this bill for a recount, and it needs to be expanded. We are interested in having that ability and, in fact, there was a lawsuit last year in Las Vegas, where contestants were refused the opportunity to see those paper records. It is very important that this information is available in a contested election.

Another question I have is on page 4, where all the percentages are taken out for initiating a recount. Will that suppress someone if that person thinks we should have a recount? Are they paying for it? If there is a statewide race or large congressional race, will that suppress your opportunity to ask for a recount? If you do not win in a recount, I believe that you have to pay for the recount. This would increase the cost of doing a recount significantly if every time an entire district or statewide recount has to be done. This is something

that should be considered. People do have some concerns, and we should not suppress their opportunity to have a recount because of excessive cost.

Another concern I have is on page 5, line 38, the same thing that Mr. Wagner brought up on the "possible" malfunction. You do not know if there is a malfunction unless you check it. We think that "possible" should be left in there so that you can address that issue of saying there was a possibility of a malfunction.

ASSEMBLYMAN OHRENSCHALL:
Ms. Hansen made an excellent point on page 3, the fact that the voted ballots and records printed on paper can now be considered as part of an election contest. That is something that a lot of us had assumed could be considered. The law did not really reflect that, and now with this change, it will. As for the concerns for deleting the word "possible" on page 5, I am not an expert in statutory construction but I believe if a contest was filed even without that word, the court would consider the possibility of malfunction of a voting device. If it makes people feel more secure having that word, I have no objection. I do think this bill moves the law forward in making sure the integrity of our elections is even stronger, particularly with the language on page 3, lines 4 and 5. I do hope the Committee will consider A.B. 418.

SENATOR GANSERT:
The cost of a recount was brought up, 5 percent versus an entire election. Do you have estimates on what the difference would be?

ASSEMBLYMAN OHRENSCHALL:
I do not have that right now. It would be depend on the jurisdiction and district you are running in, whether you are running for an Assembly seat, a countywide seat or a statewide seat. I believe that it is a lot different than it was 20 years ago now that things are tabulated electronically.

WAYNE THORLEY (Deputy for Elections, Office of the Secretary of State):
We had a recount on the presidential election this last year that was requested under the 5 percent standard that is now law. It was a sampling of 5 percent; the person requesting the recount gets to select the precincts, and the person selected a group of precincts in about five of the counties, costing $7,000.

SENATOR GANSERT:
So that was 5 percent of counties or 5 percent of the total count of votes?

MR. THORLEY:
The person requesting the recount selected 5 precincts within 5 counties out of the 17 counties. The 5 counties conducted the recount and the cost added up to around $7,000. If they had to do a full recount, the cost would not increase by much because of the way the recounting is done. For example, all the early voting ballots have to be recounted anyway because early voting is done in voting election centers and not by precinct, so they have to recount them as part of the normal process.

SENATOR GANSERT:
So they picked five precincts in five different counties?

MR. THORLEY:
They selected 5 percent of the roughly 1,800 precincts statewide. The 5 percent fell within 5 counties, and Clark County, Carson City and Douglas County were among those in the recount. The cost was spread among those 5 counties to do the 5 percent of precincts.

SENATOR GANSERT:
That is getting to the root of the question. Say a million people voted, was it 5 percent of a million people whose ballots were recounted? It sounds like it was 5 percent of total number of precincts? Did you say it was 1,800 precincts?

MR. THORLEY:
Right around 1,800 precincts.

SENATOR GANSERT:
So 5 percent of the 1,800 was not a count of votes but a count of precincts? It happened to be in five counties.

MR. THORLEY:
Correct.

CHAIR CANNIZZARO:
We will close the hearing on A.B. 418 and open the hearing on A.B. 350.

ASSEMBLY BILL 350 (1st Reprint): Revises provisions relating to state employment. (BDR 23-932)

ASSEMBLYMAN OZZIE FUMO (Assembly District No. 21):
The policy and purpose behind A.B. 350 is to codify what I consider good business practices. Some of you know when I am not here at the Legislature and in Las Vegas, I practice and help those who have misunderstandings with the law. Some of those people I have helped out in the past have been State employees who have not been properly informed as to what their ethics requirements were. They were not given an orientation program when they entered the State agencies. Most states, like California and Arizona, already have laws like this one on the books. I would like to codify it for Nevada.

Section 1 of the bill is standard definitions. Section 2 is the meat of the bill. In part one of section 2, State employers must give or provide an orientation within 30 days of hiring a State employee or as soon as practical thereafter. The training shall include personnel policies, rules concerning ethics and any benefits program that the State employee is entitled to. Orientation must be in person and during work hours. If the employee is eligible to be represented by an employee organization which has at least 100 members, the employer shall allow the organization to present or make a presentation to the employees. The organization may designate a member of the State employer organization to attend the orientation unless that would cause a disruption in the State agency business. In subsection 5, 7 days after the new hire, the organization shall be given basic information about the new employee.

Section 3 requires that information be given to the employee organization regarding any member who was unable to attend the orientation. In section 4, the employee who was not able to attend the orientation should meet with the organization during breaks and a location designated by the employer State agency. The final section of the bill protects private information of public officers, police officers and employees like that.

SENATOR SEGERBLOM:
Could we add the right to belong to a union?

ASSEMBLYMAN FUMO:
Yes, that would be the intent of that. Businesses like Aflac and unions would come in to give their presentations.

SENATOR SEGERBLOM:
Not a presentation; it is part of the union, and they can join one?

ASSEMBLYMAN FUMO:
That is correct.

PRISCILLA MALONEY (Retiree Chapter, American Federation of State, County and Municipal Employees Local 4041, AFL-CIO):
We support A.B. 350. From May or March of 2011 to June 2013, I was on staff with American Federation of State County and Municipal Employees as a labor representative. Unfortunately, under the law we would hold an open forum on Saturdays to know your rights and responsibilities as a State worker, but it was completely voluntary. We would try to go through the personnel manual and inform people and answer questions about what their rights and responsibilities were as State employees. That was a poor substitute for what is capsulated in this bill.

MICHAEL SEAN GIURLANI (Nevada State Law Enforcement Officers' Association):
We support A.B. 350 and thank Assemblyman Fumo for bringing this bill forward.

RICHARD P. MCCANN (Executive Director, Nevada Association of Public Safety Officers CWA Local 9110 AFL-CIO):
The bill is to ensure that State employees receive prompt, comprehensive training regarding personnel policies, ethics, conflicts of interests, benefit programs, etc. I represent employees in my position. Unfortunately, they claim they were not trained in such concerns, and sadly that is often the case. This bill frankly prevents these assertions from being made in the future. We are going to make everyone trained and trained promptly, trained comprehensively and done right. This bill ensures the new workers are administratively trained at essentially the inception of their employment. We support A.B. 350.

CARTER BUNDY (American Federation of State, County and Municipal Employees Local 4041, AFL-CIO):
We would like to say this bill suggests good professional practice and limits mistakes by employees early on in their careers. It reduces conflict and results in better performance. Taxpayers invest a lot of money in recruiting and retaining these employees. We think this makes them better at their jobs. We thank Assemblyman Fumo for bringing this bill forward. We support A.B. 350.

FRAN ALMARAZ (American Federation of State, County and Municipal Employees Local 4041, AFL-CIO):
Many of the complaints that the State employees have said is that they do not understand from the beginning on what they are supposed to do. They know what their job is, but without training they do not understand the ethics or some of the other things that later on they are being accused of, then it leads to suspension and sometimes to a firing. We believe this bill will bring training across the board for all State employees. We support A.B. 350.

CHAIR CANNIZZARO:
We will close the hearing on A.B. 350 and open the hearing on A.B. 45.

ASSEMBLY BILL 45 (1st Reprint): Revises provisions relating to public office. (BDR 24-426)

ASSEMBLYWOMAN OLIVIA DIAZ (Assembly District No. 11):
Assembly Bill 45 revises provisions relating to an election and its administration, including voter registration and campaign practices. I amended part of A.B. 45 before it came out of the Assembly Legislative Operations and Elections Committee. As we have all heard, over the Interim for many Nevadans campaign finance reform is one of the most popular and important pieces of legislation. As Legislators, we can enact new provisions into law, especially serving in this Committee. Nevadans want a more transparent campaign process that opens our books and expenses so they can hold us accountable.

As dubbed in my Committee, the Diaz amendment, which was adopted to A.B. 45, is focused on bringing just that, transparency to campaign finance reports. There are two focuses of the amendment. In section 27.2, it requires candidates to delineate the charges of their credit cards. Sections 24 and 24.5 require all candidates to disclose end-of-reporting period of cash-on-hand numbers. Neither of these requirements are very onerous or revolutionary. Candidates for federal office and across many states have to comply with this already. Nevada politicians should have to as well. I would like to recognize the Council for a Better Nevada for bringing this idea to my attention and working with me on this amendment.

SENATOR SEGERBLOM:
I think the cash-on-hand provision is really important. When would that start?

ASSEMBLYWOMAN DIAZ:
I believe the act becomes effective July 1. I did hear from some colleagues that it might be a little crazy to be in two worlds, when this year for Legislators, we just do one comprehensive report. It would be prudent to think out the start date for that piece.

SENATOR SEGERBLOM:
Next January or when the next time we file.

ASSEMBLYWOMAN DIAZ:
Exactly.

BARBARA K. CEGAVSKE (Secretary of State):
In its current form, A.B. 45 is the result of collaboration and cooperation with the Assembly, local election officials and other stakeholders. Assembly Bill 45 received nearly unanimous support in the Assembly, and I am hopeful to earn your support here in the Senate. Assembly Bill 45 is lengthy; however, many of the provisions of the bill are cleanup in nature.

Section 1 requires a nongovernmental entity that sends a notice to a person indicating the person is not or may not be registered to vote, or requesting the person register to vote, to indicate on the notice that it is not official election mail from the Secretary of State or a local election official. Prior to each election, national groups send mailers to people in Nevada they believe are not registered to vote to encourage them to register. While we appreciate the efforts of those seeking to increase the number of registered voters in Nevada, these mailers often cause problems for voters and election officials. The mailing lists used by these groups are not always accurate, and many registered voters end up receiving mailers that say they are not or have not been registered to vote. I have been registered to vote at the same address for 29 years, and even I received one of these mailers prior to the 2016 election.

When these mailers go out, our Office and the local election officials get hundreds of calls and emails from voters who are understandably concerned that their voter registration may have been cancelled or changed. Voters think the mailers come from the Secretary of State's Office or the local election officials. We spend a considerable amount of staff time assisting people who are currently registered yet received a mailer that made them believe they are not. Section 1 seeks to address this issue so that these mailers include

information that makes it clear to the voter that the mailer is not official election mail and did not come from an official source.

Sections 8, 9, 13, 15, 16 and 23 update citations to federal election laws that are in State statute. Federal election laws found in the United States Code have all been recodified from Title 42 to Title 52, and these sections simply update the references found in NRS.

Sections 13, 14, 14.2, 14.4, 14.6, and 15.5 extend the mail-in voter registration deadline from the fifth Saturday before a primary or general election to the fourth Tuesday. This change gives people three additional days in which they can register to vote by mail prior to an election. These sections also extend the deadline to register to vote using online voter registration by two days, giving people two extra days in which they can register to vote prior to a primary or general election. Under the provisions of A.B. 45, the deadline to register to vote by mail would be 28 days prior to an election; the deadline to register to vote in person at the local election official's office would be 21 days prior to an election; and the deadline to register to vote online would be 19 days before an election. Identical language is included in A.B. 478.

ASSEMBLY BILL 478 (1st Reprint): Revises provisions relating to elections. (BDR 24-463)

Sections 8.5, 14.8 and 15.7 deal with sample ballots for regular and city elections. One problem with giving people more time to register to vote prior to an election is the difficulty of ensuring these late registrants receive a sample ballot in accordance with current law. Accordingly, these sections exempt local election officials from the requirement to send a voter a sample ballot if the person registered to vote less than 20 days before an election.

Sections 24 and 24.5 require all candidates to include the balance in their campaign accounts at the end of the reporting period on each Contributions and Expenses report they file with the Secretary of State's Office. There is no requirement to report ending fund balance, so it is difficult for the public to know how much cash on hand a candidate has at the end of a reporting period. The only way to do this currently is to go through all the Contributions and Expenses reports the candidate has ever filed and create a running total. This provision will increase transparency in the financial reporting process. We thank

the Council for a Better Nevada for bringing it forward as a friendly amendment on the original version of A.B. 45.

Sections 24 and 25 through 27 clarify that certain people who accept campaign contributions related to a recall election are required to file Contributions and Expenses reports even if the recall election is not held because the petition for recall is not submitted on time or is legally insufficient. This provision will close a loophole that came to light last year. A candidate who was raising money to run against an incumbent in a recall election did not have to file a Contributions and Expenses report because the recall election was never held.

Section 27.2 is another friendly amendment that was added to the bill at the request of the Council for a Better Nevada. The section adds a new expenditure category to Contributions and Expenses reports for interest, credit card fees, debit card fees and penalty fees incurred in relation to campaign expenses paid for by a credit or debit card. The provision also requires itemization of campaign expenses paid for using a credit or debit card, including the name of the business or other entity from which the purchase of the campaign expense was made. This provision will increase transparency in the financial reporting process.

Section 30 allows an authorized person to officially withdraw an initiative or referendum petition after it has been filed with the Secretary of State's Office. Likewise, section 31 requires a person who files an initiative or referendum petition with the Secretary of State's Office to fill out a form with certain information, including the person's name and signature; the name of any committee for political action formed by the person to advocate for the passage of the initiative or referendum; and the names of persons who are authorized to withdraw the petition or submit a revised petition. There is no legal mechanism by which a person or group can formally withdraw an initiative or referendum petition after it has been filed with the Secretary of State's Office. We have had people request to withdraw petitions in the past, and this has raised questions about who is able to withdraw a petition on behalf of a group. These sections will resolve this issue.

Section 32 moves the date initiative petitions that propose a statute or an amendment to existing statute must be submitted for signature verification to the day after the general election if the due date falls on the day of the general election. This section is included in the bill so that in the future we avoid what

happened on November 8, 2016, which was both the day of the 2016 general election and the last day to submit statutory initiative petitions to the local election officials. Election Day is stressful enough for election administrators without also having to deal with petitions being turned in.

Lastly, section 34 clarifies that a petition for independent candidates for U.S. President must be filed with the Secretary of State's Office prior to the candidates circulating petitions for signatures. This section is included in the bill to address an issue from the 2016 presidential election in which an independent candidate for U.S. President began circulating a petition in Nevada in order to gain ballot access before the petition was officially on file with the Secretary of State's Office. Because of all the laws surrounding the petition process, it is imperative that the Secretary of State's Office be aware of all petitions before they are circulated.

SENATOR SETTELMEYER:
On the concept of who can withdraw the petition, there have been previous discussions on bills from the past. I think it was Danny Thompson who mentioned there could be a question on having that ability to withdraw a petition. Are you worried about it being used incorrectly? Mr. Thompson indicated he could foresee a situation where someone is paid for extortion, where they put in a petition to recall somebody, then accept donations and decide not to go forward with the petition. I am a little bit concerned with that concept.

MR. THORLEY:
I guess that is potentially a concern. We have had in the past, even in this last election cycle, a person file a petition and request it to be withdrawn. We did withdraw the petition, but we do not have an official mechanism to withdraw it. We would like to have that kind of guidance in statute. If there is an issue of extortion, it is something that I have not heard of. It potentially could be going on right now, but is something we are willing to look at and work with you on that language to be strengthened or changed.

SUE MERRIWETHER (Clerk-Recorder, Carson City):
All the county clerks have worked with the Assembly and the Secretary of State to make sure that the dates for voter registration will work for all of the counties. We did get that cleaned up. We appreciate the presentation on section 1 in the bill and believe it will help clarify some the issues we had with various

voter registration applications and information going out. These implied that they were coming from us, and I believe this will help out. We do support the changes of A.B. 45.

SENATOR SETTELMEYER:
I was curious about outside voter registration. There were some problems in the last election in different areas. Maybe there should be a concept to make sure individuals who are doing this type of registration have some type of training, so that they understand what our laws are.

MS. MERRIWETHER:
We were going to do voter registration training for different voter registration drives, but that was removed from the bill.

SENATOR SETTELMEYER:
I will ask Assemblywoman Diaz why that was taken out because I think that is a pretty good idea.

CHAIR CANNIZZARO:
We will close the hearing on A.B. 45 and open the hearing on A.B. 21.

ASSEMBLY BILL 21 (1st Reprint): Makes various changes relating to elections. (BDR 24-2)

BARBARA K. CEGAVSKE (Secretary of State):
I will go through the provisions of Assembly Bill 21. With me today at the table is Wayne Thorley, Deputy Secretary for Elections, and I also have my Chief Deputy Scott Anderson in the audience. Assembly Bill 21 addresses an issue that seems to occur each election cycle, and that is whether candidates live where they say they live or whether they are eligible for the office they are seeking based on their residency. We are hopeful that with this bill we will be able to provide some clarification on the residency requirement and hold candidates accountable who violate the residency requirement. The bill also contains one a small section on campaign finance.

For the purpose of determining eligibility for office, the law defines "actual residence" as the place where a candidate is legally domiciled and maintains a permanent habitation. When a candidate maintains more than one place of permanent habitation, the law states that the place designated by the candidate

as his or her principal permanent habitation is deemed to be the candidate's actual residence. The Nevada Supreme Court has held that the place designated by the candidate as his or her principal permanent habitation must be the place where the candidate actually resides and is legally domiciled in order for the candidate to be eligible for the office. Assembly Bill 21 amends the statutory definition of "actual residence" to reflect the Nevada Supreme Court's holding, including the codification of legal principles that can be used to determine whether a place of permanent habitation is the place where the candidate actually resides and is legally domiciled.

Assembly Bill 21 requires candidates for office to present two types of identification and documentation as proof of the candidate's identity and residency. One type of acceptable identification would be a card issued by a governmental entity that contains a photograph of the candidate and the candidate's residential address. The other type of acceptable identification required is a current utility bill, bank statement, paycheck or document issued by a governmental entity that contains the candidate's name and residential address. In circumstances where a candidate is unable to provide the filing officer with two types of identification because of the rural or remote location of the candidate's residence, the candidate would be required to sign an oath or affirmation under the penalty of perjury indicating that he or she is unable to comply with the requirements. The candidate would then be required to provide alternate proof of identification.

The law states that a person who knowingly and willfully files a declaration of candidacy that contains a false statement is guilty of a gross misdemeanor. This bill does not change that penalty, but it clarifies the statutory language regarding the penalty. Assembly Bill 21 adds new language to the declaration of candidacy form and the declaration of residency form in order to more clearly inform candidates of the gross misdemeanor penalty and the other provisions of this bill.

Assembly Bill 21 provides that if during a preelection challenge the court finds a candidate failed to meet any qualification required for office, the candidate is disqualified from taking office. The candidate's name is prohibited from appearing on the ballot, and the court may order the candidate to pay the attorney's fees and costs of the party who brought the action, other than the Attorney General or a district or city attorney.

Lastly, A.B. 21 deals with two campaign finance issues. First, the bill requires that a candidate's campaign bank account be in a financial institution located in the United States. Second, the bill requires political action committees and other political committees that receive contributions to open a separate account in a financial institution located in the United States. The bill gives candidates and committees until June 30, 2018, to comply with these campaign finance provisions.

It is important to note that nothing in A.B. 21 is designed to remove or eliminate the Assembly and Senate's constitutional authority as it relates to the qualifications and elections of members of the Legislature. So that this is clear, language is included in the bill to this effect. In conclusion, we believe that A.B. 21 is a simple solution to a problem affecting the integrity of Nevada's election process.

MS. HANSEN:
I discussed this issue in the Assembly. The bill has been amended in order to reflect that. On the bottom of page 9 and continuing on page 10, a valid driver's license or identification card issued by a government agency that contains a photograph and alternative proof. When someone from a rural county wants to file, they have to come into Carson City or to Las Vegas to file. With this change, some of them might come and will not have two pieces of identification in order to file and prove where they live. For example, I have my driver's license. It does not have my residential address on it but does have my mailing address on it. When I came to file, I had a concealed weapons permit that does have my residential address on it. But under this requirement, I would come 325 miles, as other people have had to come long distances, and end up with only one or no ID for the second form of identification.

I am not opposed to the concept of people having to affirm where they live. This could create some complications, especially for people who do not live close to cities. What about the last day for filing for office and people come in at the last minute and do not have two pieces of identification? For instance my utility bill is not in my name but is in my husband's name. I was trying to go through what else I would have to prove that I was living there and that was my address. I think there will be candidates from all parties who may come in from the rural counties or even locally and do not have the information needed to prove where they live in order to file. I do not know if the parties should take it upon themselves to let people know they need two pieces of identification and

what they are or how to avoid what almost happened to me. A lot of the times in the rural areas people do not have a regular street address in the rural counties.

The resolution by the Assembly was to add that the Secretary of State could pass regulations. But what I heard Secretary of State Barbara K. Cegavske say, it did not change the kind of identification officials would take. I want to put this on the record and make you aware that this may be a potential issue, especially people filing from the rural counties.

CHAIR CANNIZZARO:
It is incumbent upon the candidate who is going to run for office and put themselves out there, to have filled out all of these forms and to at least look up what they have to bring with them so when they go to file, they have all of those documents.

MS. HANSEN:
I think most candidates try to do that. I guess they should have to do that. It just concerns me when someone has to travel a long way and is not able to file. I certainly think it would be better if they look everything up, but I doubt that they all have done that or it would happen.

CHAIR CANNIZZARO:
We will close the hearing on A.B. 21 and open the hearing on A.B. 478.

BARBARA K. CEGAVSKE (Secretary of State):
Assembly Bill 478, which contains some of the same language as A.B. 45, seeks to bring Nevada into compliance with federal law as it relates to the deadline to register to vote by mail. Under State law, the deadline to register to vote by mail is 31 days prior to a primary or general election. However, the National Voter Registration Act says that the deadline imposed by states to register to vote by mail can be no more than 30 days prior to an election.

Assembly Bill 478 changes the deadline to register to vote by mail in Nevada to 28 days before a primary or general election. This change will bring Nevada into compliance with federal law. The bill extends the deadline to register to vote using online voter registration by two days, giving people two additional days to register to vote prior to any primary or general election. Lastly, A.B. 478 exempts local election officials from the requirement to send a voter a sample

ballot if the person registered to vote less than 20 days before an election. One of the concerns with giving people more time to register to vote was the difficulty of providing late registrants with sample ballots. This provision gives local election officials flexibility in this area.

SUE MERRIWETHER (Clerk-Recorder, Carson City):
I am representing the county clerks of Nevada, and we support A.B. 478. Thank you, Secretary Cegavske for working with us on these dates and making it work for us.

CHAIR CANNIZZARO:
We will close the hearing on A.B. 478 and move into work session on Senate Concurrent Resolution (S.C.R.) 4. Senator Spearman proposed some conceptual amendments.

SENATE CONCURRENT RESOLUTION 4: Directs the Legislative Commission to create an interim study concerning the development of renewable energy resources in this State. (BDR R-1130)

MICHAEL STEWART (Policy Analyst):
We heard S.C.R. 4 on April 19. As the Chair noted, it relates to renewable energy resources. It directs the Legislative Commission to create an Interim study concerning the development of renewable energy resources in Nevada. I have submitted the work session document (Exhibit C).

SENATOR GANSERT:
I work for the University of Nevada, Reno, (UNR) when I am not at the Legislature. But this legislation and conceptual amendments will not affect me any differently than anyone else. I will participate in the discussion.

SENATOR PAT SPEARMAN (Senatorial District No. 1):
We have come across a lot of additional information that is germane to the conversation. I particularly had some conversations with members of Frontier Observatory of Research in Geothermal Energy (FORGE), UNR and the University of Nevada, Las Vegas, (UNLV) had agreed to participate. It is important for this Committee to understand the economic impact of proceeding with the study and moving forward with FORGE. Right now, there are two states that are in contention for this research project, Nevada and Utah. The economic impact numbers are staggering. For the last three Sessions, we

have struggled to make sure we do forward-thinking things with science, technology, engineering and mathematics (STEM); FORGE has a component that will promote STEM among high school students. There are representatives from UNR, UNLV and the Desert Research Institute available to speak as well as Assemblywoman Jill Tolles.

CHAIR CANNIZZARO:
We do appreciate everyone being here for this study because I know the conceptual amendments change some of the items the study will be conducted on, but we will move forward with a motion.

> SENATOR SETTELMEYER MOVED TO AMEND AND BE ADOPTED AS AMENDED S.C.R. 4.
>
> SENATOR ATKINSON SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATOR GANSERT VOTED NO.)

* * * * *

CHAIR CANNIZZARO:
We will move to the last item in the work session A.B. 452.

ASSEMBLY BILL 452: Directs the Legislative Committee on Energy to conduct an interim study concerning energy choice. (BDR S-1113)

MR. STEWART:
Assembly Bill 452 was heard on Monday and requires the Legislative Committee on Energy to conduct a study during the 2017-2018 Interim concerning energy choice. I have submitted the work session document (Exhibit D).

> SENATOR SEGERBLOM MOVED TO DO PASS A.B. 452.
>
> SENATOR ATKINSON SECONDED THE MOTION.

SENATOR SETTELMEYER:
I accept the concept of looking over what the people have voted on for energy choice. As disclosure, I am on the Governor's Energy Task Force, and I do not think it affects me in any shape or form. I do not believe we should be

reviewing what Governor Brian Sandoval does. I think it is a separation of powers issue. The Task Force members are going to come up with their findings, and we will come up with our findings. In that respect, I will be voting no.

THE MOTION CARRIED. (SENATOR SETTELMEYER VOTED NO.)

* * * * *

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CHAIR CANNIZZARO:
Seeing no further business, I will adjourn the meeting at 5:28 p.m.

RESPECTFULLY SUBMITTED:

_____
Janae Johnson,
Committee Secretary

APPROVED BY:

_____
Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	2		Agenda
	B	4		Attendance Roster
S.C.R. 4	C	2	Michael Stewart	Work Session Document
A.B. 452	D	1	Michael Stewart	Work Session Document

EXHIBIT 16

EXHIBIT 16

Office of the
Secretary of State

Barbara Cegavske

Barbara Cegavske
Elections Division

JStokes
8/21/2017

PETITION WITHDRAWAL FORM

State of Nevada

Secretary of State Barbara K. Cegavske

Pursuant to NRS Chapter 295, an authorized person may request to withdraw an initiative or referendum petition by submitting this form to the Secretary of State. Once a petition for initative or referendum is withdrawn, no further action may be taken on that petition.

TITLE OF PETITION

COMMERCE TAX REPEAL (filed August 2, 2017)

NAME OF AUTHORIZED PERSON WITHDRAWING PETITION

RON KNECHT

X Ronald A Knecht
Signature of Person Withdrawing Petition

08/21/17
Date

EL499
NRS Chapter 295
Revised: 08-21-2017

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARBARA CEGAVSKE, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE, Appellant, vs. ROBERT HOLLOWOOD, et al. Respondents.	**Supreme Court Case No. 84420** District Court No.: 21 OC 00182 1B

JOINT APPENDIX
VOLUME II of II

Appeal from the First Judicial District Court
Judge James E. Wilson Jr., Case No. 21 OC 00182 1B.

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ALPHABETICAL INDEX OF JOINT APPENDIX

Document Title/Description	Date	Volume	Page
Answer to Petition for Writs of Mandamus and Prohibition	1/19/22	I	JA 079
Correspondence re Service of Process	12/29/21	I	JA 078
Intervenors-Petitioners' Memorandum of Points & Authorities in Support of Petition for Writ of Mandamus and Prohibition	2/15/22	II	JA 205
Intervenors-Petitioners' Reply in Support of Petition for Mandamus and Prohibition	3/4/22	II	JA 272
Notice of Appeal	3/18/22	II	JA 309
Notice of Entry of Order That Writs of Mandamus and Prohibition Issue	3/10/22	II	JA 294
Notice of Service of Writ of Mandate and Writ of Prohibition	3/16/22	II	JA 306
Order Granting Nevada Resort Association and the Vegas Chamber's Motion to Intervene	2/7/22	II	JA 202
Order That Writs of Mandamus and Prohibition Should Issue	3/9/22	II	JA 284
Petition for Writs of Mandamus and Prohibition	12/28/21	I	JA 001
Petitioners' Appendix of Exhibits to Petition for Writs	12/28/21	I	JA 009
Petitioners' Memorandum of Points & Authorities in Support of Petitions for Writs	1/26/22	I	JA 083
Petitioners' Reply in Support of Petitions for Writ of Mandamus and Writ of Prohibition	3/4/22	II	JA 261
Petitioners' Supplemental Appendix of Exhibits	1/26/22	I	JA 103
Respondent's Answering Brief	2/22/22	II	JA 225

CHRONOLOGICAL INDEX OF JOINT APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that on this date, the foregoing **JOINT APPENDIX VOLUME II of II** was served on the individuals registered to receive service pursuant to the Court's electronic filing system. Service was also completed via electronic mail pursuant to a stipulation of the parties, and completed on the following individuals as shown:

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Dated: April 5, 2022.

/s/ Wayne Klomp
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FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action, Petitioners, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Respondent.	Case No.: 21 OC 00182 1B Dept. No.: II

~~PROPOSED~~ ORDER GRANTING NEVADA RESORT ASSOCIATION AND THE VEGAS CHAMBER'S MOTION TO INTERVENE

Having considered the Nevada Resort Association and the Vegas Chamber's Motion to Intervene or Alternatively for Leave to Appear as Amici, the Secretary of State's Limited Opposition, and oral argument on the same, the Court hereby finds:

1. The Nevada Resort Association ("NRA") and the Vegas Chamber have a sufficient and particular interest in the claims raised in this proceeding, because the proposed ballot initiatives are designed to raise taxes that directly affect the NRA's and Vegas Chamber's members to the exclusion of all other Nevadans.

2. The NRA and Vegas Chamber further have an interest in this proceeding because the burden to oppose these initiatives in the next general election will fall upon the NRA, the Vegas Chamber, and the interests that they represent.

3. The NRA and Vegas Chamber's ability to protect their interests will be impaired if they are not allowed to intervene in this proceeding. In particular, their ability in the future to assert that the Secretary of State lacks the authority to place the at-issue initiative petitions on the ballot in the next general election based on the proponents' withdrawal of those initiative petitions may be jeopardized, as the Secretary of State's authority on this issue may be conclusively determined through these proceedings.

4. Although the petitioners currently seek the same result as the NRA and Vegas Chamber—to prevent the Secretary of State from placing the initiative petitions on the ballot—their interests are distinct from the NRA and Vegas Chamber's interests. The NRA and Vegas

Chambers are the only potential parties to this proceeding that have an inherent self-interest in preventing the proposed initiative petitions from being placed on the ballot in the next general election. Conversely, the existing petitioners are the proponents of the initiative petitions who originally sought for these initiative petitions to be placed on the ballot.

5. The motion to intervene was timely filed.

It is therefore ordered that the Nevada Resort Association and Vegas Chamber's motion to intervene is **GRANTED**.

Dated this 7 day of February 2022.

James Wilson

The Hon. James Wilson

The hearing for oral argument on February 8, 2022 at 2:00 p.m. is vacated. JW

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ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

NEVADA RESORT ASSOCIATION, a Nevada non-profit corporation; GREATER LAS VEGAS CHAMBER OF COMMERCE, d/b/a VEGAS CHAMBER, a Nevada non-profit corporation,

Intervenors-Petitioners,

vs.

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

Respondent.

Case No.: 21 OC 00182 1B

Dept. No.: II

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONS FOR WRIT OF MANDAMUS AND PROHIBITION

As intervening parties to this action, the Nevada Resort Association and Vegas Chamber hereby join the Petitioners' petitions for writ of mandamus and writ of prohibition as co-petitioners and submit the following memorandum of points and authorities in support of the Nevada Resort Association's and Vegas Chamber's requests for relief.[1]

[1] The Memorandum of Points and Authorities are identical to the Legal Argument section in the Brief of the Amici Curiae previously attached to the motion to intervene.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

The Secretary of State's analysis of Nev. Const. Art. 19 Sec. 2 creates an artificial constitutional conflict by ignoring how the provisions of Art. 19 Sec. 2 must work in harmony with initiative petition procedures enacted by the Legislature under Art. 19 Sec. 5. Art. 19 Sec. 5 of the Constitution authorizes the Legislature to enact laws to facilitate the initiative petition process, which would include allowing the proponent of an initiative petition to withdraw the petition. The Legislature has done just that in NRS 295.026. Under NRS 295.026, an initiative petition becomes void when its proponent withdraws the petition and no further action may be taken on that petition.

In this case, the proponents of the petitions submitted their notices of withdrawal to the Secretary of State on the form prescribed by the Secretary of State, which is all that is required to withdraw an initiative petition. Upon submission of the notices of withdrawal, those petitions became void and there is no "petition" or proposed statute for the Secretary of State to submit to the voters in the next general election under Art. 19 Sec. 2. Any other interpretation of the issues involved in this case improperly awards the Secretary of State power over the petition process that was explicitly reserved to the people and the Legislature by the constitution. When the people approved the provisions in Art. 19, it cannot be reasonably said that they intended that the Secretary of State's ministerial duty to transmit initiative petitions would subvert the substantive rights explicitly reserved to the people to propose initiative petitions, *see* Art. 19 Sec. 2(1), and the right of the Legislature to enact procedural rules to facilitate that process, *see* Art. 19 Sec. 5.

A. The Constitution Authorizes the Legislature to Enact Laws to Facilitate the Operation of the Initiative Petition Process

Article 19 Section 2 of the Nevada Constitution reserves the right of the people to enact a statute through initiative petition. Art. 19 Sec. 2(1) ("[T]he people reserve to themselves the power

to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls.").[2] The process is one of indirect action, meaning an initiative petition does not go directly to the people for a vote after a proponent gathers the required number of signatures. *See* Art. 19 Sec. 2(2) (outlining signature requirement); Art. 19 Sec. 2(3) (providing procedure for initiative petition involving a statute). Instead, the petition is transmitted to the Legislature, where the Legislature must either enact or reject the petition as presented and without amendment. Art. 19 Sec. 2(3). This process allows the Legislature to address an initiative petition before it goes to the vote of the people. If the Legislature takes no action or rejects the petition, then it is submitted to the voters at the next general election. Art. 19 Sec. 2(3).

The Nevada Constitution also empowers the Legislature to enact laws to facilitate the initiative petition process. Although Article 19 Section 2 is self-executing—meaning the initiative petition process is implemented by the Constitution itself, not the Legislature—, Section 5 authorizes the Legislature to "provide by law for procedures to facilitate the operation" of initiative petitions. *See also Nevadans for the Prot. Of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006) ("[T]he Nevada Constitution explicitly authorizes the Legislature to enact laws regulating the initiative process, so long as those laws facilitate the provision of Article 19.").

A statute facilitates the operation of initiative petitions if the statute's purpose is to safeguard the process of initiative petitions. *Cf. Fiannaca v. Gill*, 78 Nev. 337, 345, 372 P.2d 683, 687 (1962) ("[A]ny statutory provision intended to safeguard the operation of recall procedures aids in

[2]According to the National Conference of State Legislatures, Nevada is one of 24 states with a citizen initiative process. *See* National Conference of State Legislatures, Initiative and Referendum Processes, https://www.ncsl.org/research/elections-and-campaigns/initiative-and-referendum-processes.aspx#/.

the operation thereof."). In addition to the purpose of the statute, a court may also consider the actual effect it has on the operation of the initiative petition process when determining if it facilitates the operation thereof. *Cf. Citizens for Honest & Responsible Government v. Secretary of State*, 116 Nev. 939, 947-48, 11 P.3d 121, 126-27 (2000) (considering "the actual effect of the statutory provisions" in the similar context of the self-executing constitutional right to recall). A restrictive effect on the number of petitions that reach the ballot, however, is not dispositive of whether a statute facilitates the operation of the initiative process. *See, e.g., Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. at 903, 141 P.3d at 1241 (recognizing the Legislature's right to enact the single-subject rule under Art. 19 Sec. 5, which can result in petitions not being placed on the ballot). Ultimately, "[a]ny legislation which tends to ensure a fair, intelligent and impartial accomplishment may be said to aid or facilitate the purpose intended by the constitution." *State ex rel. McPherson v. Snell*, 121 P.2d 930, 934 (Or. 1942). The statute must not, however, "curtail[ ] the right or plac[e] any undue burdens upon [the] exercise" of the constitutional right. *McPherson v. Snell*, 121 P.2d at 934.

B. The Secretary of State's Ministerial Duty Regarding a Withdrawn Petition is Clear: Take No Further Action

An initiative petition becomes void when it is properly withdrawn by a proponent under NRS 295.026. NRS 295.026 allows the proponent of an initiative petition to withdraw the petition by submitting a notice of withdrawal to the Secretary of State no later than 90 days before the election in which the initiative will appear on the ballot. NRS 295.026(1)(a). NRS 295.026(1) itself provides the only requirement to withdraw a petition, which is to "submit[ ] a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State." Once a proponent submits a notice of withdrawal on the form prescribed by the Secretary of State, "no further action may be taken on that petition." NRS 295.026(2).

In this case, both petitioners submitted notice of withdrawal to the Secretary of State, on the form prescribed by the Secretary of State, earlier than 90 days before the next general election. Accordingly, under NRS 295.026(2), those petitions have been withdrawn and no further action may be taken on those petitions.

1. A Withdrawn Petition is Void and Submission to the Voters Would Be Ineffective

The Secretary of State's transmittal of a void initiative is ineffective. *See Rogers v. Heller*, 117 Nev. 169, 171, 18 P.3d 1034, 1035 (2001). For example, in *Rogers v. Heller*, the court considered an initiative to increase funding for public schools. 117 Nev. at 171, 18 P.3d at 1035. The initiative had the requisite number of signatures and the Secretary of State transmitted it to the Legislature under Article 19 Sec. 2(3). Various business entities then sought injunctive relief, arguing, among other things, that the initiative was unconstitutional because it required a legislative appropriation without also raising a sufficient tax. *Rogers*, 117 Nev. at 172, 18 P.3d at 1036. The Nevada Supreme Court ultimately agreed that the initiative was unconstitutional. *Rogers*, 117 Nev. 178, 18 P.3d at 1040. The court held that the constitutional deficiency rendered the initiative "void" and therefore "the Secretary of State's transmittal of the Initiative to the Legislature was ineffective." *Rogers*, 117 Nev. at 178, 18 P.3d at 1034; *see also Cain v. Robbins*, 61 Nev. 416, 131 P.2d 516, 518-20 (1942) (holding that an initiative transmitted to the Legislature and then to county clerks for publication was "wholly void" for lack of an enacting clause); *Glover v. Concerned Citizens for Fuji Park and Fairgrounds*, 118 nev. 488, 498, 50 P.3d 546, 552 (2002) (initiative petition that concerned administrative act was "void"); *but see Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 911, 141 P.3d 1235, 1246 (2006) (violation of single subject statute did not render entire initiative void where provisions could be severed).

Because no further action can be taken on a withdrawn initiative under the plain terms of NRS 295.026, it becomes void and the Secretary of State's submission of the initiatives at issue in this case would be ineffective. *Cf. Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. at 911, 131 P.3d at 1246 (considering legislative history when determining whether failure to comply with a statutory requirement for an initiative petition rendered the petition void).

2. Art. 19 Sec. 2(3) Must be Read Together with Art. 19 Sec. 5

Despite the proponents notice of withdrawal of the petitions in this case, and the clear process provided by NRS 295.026, the Secretary of State has claimed that the following language in Art. 19 Sec. 2(3) requires her to submit these initiatives to the voters in the general election:

> If the statute or amendment to a statute is rejected by the legislature, or if no action is taken thereon within 40 days, the secretary of state shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election.

The Secretary of State's letter to the Attorney General interprets Article 19 Section 2 in a vacuum and completely ignores the existence of Article 19 Section 5. Notably, Section 5 authorizes the Legislature to set procedural requirements for initiative petitions that are not found directly in the constitution. *See, e.g., Nevadans for Nevada v. Beers*, 122 Nev. 930, 938-39, 142 P.3d 339, 344-45 (2006) (holding additional legislative requirements for description of effect of initiative was constitutional even though the constitution's requirement was less burdensome). If we take the Secretary of State's published interpretation to its logical extent, however, the word "shall" would unconditionally require the Secretary of State to transmit an initiative petition to the Legislature (after collection of signatures) and then to the voters (after the Legislature has rejected or not acted on the initiative) regardless of any procedural requirements enacted by the Legislature.

That would be an absurd interpretation, because initiative petitions are explicitly subject to procedural requirements enacted by the Legislature under Article 19 Sec. 5. Indeed, the Secretary

of State's ministerial duty to transmit or submit an initiative petition has always been subject to the fulfillment of procedural conditions, both constitutional and statutory. Statutory examples include the single subject rule and the description of effect requirement. *See* NRS 295.009. Under the Secretary of State's interpretation of "shall," these statutes would be unenforceable, because they are not enumerated considerations for the Secretary of State under Article 19 Sec. 2(3).

That interpretation has already been considered and rejected in *Nevadans for the Prot. of Prop. Rights*, 122 Nev. at 901, 141 P.3d at 1240 (single subject) and in *Nevadans for Nevada*, 122 Nev. at 938-39, 142 P.3d at 344-45 (description of effect). In both cases, the Nevada Supreme Court recognized that the statutory provisions were constitutional exercises of the power given to the Legislature in Art. 19 Sec. 5. *See Nevadans for the Prot. of Prop. Rights*, 122 Nev. at 902, 141 P.3d at 1241 ("[U]nder Article 19, Section 5, the Legislature had the authority to enact this requirement for initiative petitions."); *Nevadans for Nevada*, 122 Nev. at 938-39, 142 P.3d at 344-45 ("[T]he plain language of Nevada Constitution Article 19, Section 5 imparts in the Legislature authority to enact laws to facilitate the initiative process, such as requiring a description of effect and allowing challenges on this basis.").

In light of these cases, the Secretary of State must recognize, at a minimum, that Art. 19 Sec. 2(3)'s use of "shall" is not unconditional and the Secretary's duties must be considered in a broader context. In this instance, NRS 295.026 provides the context. And no reasonable interpretation of the Secretary of State's ministerial duties would require the Secretary of State to transmit an initiative petition that had been validly withdrawn by the petition's proponent under NRS 295.026.

In reaching the opposite conclusion in this case, the Secretary of State has done the legal analysis backward. The Secretary of State begins with her ministerial duty, and presumes from that duty that the proponents of these initiative petitions have no right to withdraw their petitions. But

the threshold question is actually whether there is a valid initiative petition for the Secretary of State to submit at the next general election. By the plain terms of NRS 295.026, there is not. So, by utterly failing to grasp the implications of Art. 19 Sec. 5, the Secretary of State started her analysis in the wrong place and inevitably came to the wrong conclusion.

3. Alternatively, the Secretary of State's Interpretation Elevates Her Own Ministerial Duty Over the People's Constitutional Right and the Legislature's Explicit Authority

The Secretary of State's ministerial duty to transmit a petition should not be read to usurp the people's authority to propose initiatives and the Legislature's authority to regulate the process. The practical consequence of the Secretary of State's interpretation is that her ministerial duty to submit or transmit an initiative petition would take priority over the people's right to propose initiatives and the Legislature's right to make laws regarding the procedures for doing so. Such an interpretation assigns more substantive weight to "shall" and the Secretary of State's duty under Art. 19 Sec. 2(3) than the provision can hold. Indeed, a provision that was undoubtedly meant to prevent a Secretary of State from running roughshod over the initiative process—by refusing to place an initiative on the ballot—is now being misinterpreted to allow the Secretary of State to do just that—by placing an invalid initiative on the ballot.

In contrast to the substantive rights regarding initiative petitions given directly to the people and the Legislature, the constitution places an obligation on the Secretary of State. The people reserve the right to propose and enact statutes, *see* Art. 19 Sec. 2(1), and the Legislature is authorized to enact laws to facilitate the operation of that process, *see* Art. 19 Sec. 5. The Secretary of State, on the other hand, "shall" make sure those initiatives get to the places they need to go. The Secretary of State's position in this case amounts to an argument that her perfunctory obligation somehow contravenes the rights reserved by the people and the power delegated to the Legislature when

it comes to initiative petitions. This gives the Secretary of State more substantive import in the initiative petition process than the language of the Constitution intended to.

4. Conclusion: The Secretary of State's Duty is to Take No Further Action

Accordingly, the Secretary of State's ministerial duty to submit a petition to the voters at a general election assumes the existence of a valid petition that has complied with procedural requirements enacted by the Legislature. But the Legislature, through NRS 295.026, has provided that a petition withdrawn by its proponent is void and cannot be acted upon. Reading the relevant constitutional and statutory provisions in harmony, the Secretary of State's ministerial duty in this instance becomes clear: take no further action on the petitions.

C. NRS 295.026 Facilitates the Operation of Initiative Petitions by Allowing a Proponent to Withdraw an Initiative Petition

NRS 295.026 is a constitutional enactment under the authority given to the Legislature in Art. 19 Sec. 5, because it is a valid and important provision in Nevada's initiative petition process.

1. The Secretary of State Urged the Legislature to Recognize the Ability of a Proponent to Withdraw an Initiative Petition

The ability to withdraw an initiative petition was actually a measure advocated for by the Secretary of State in 2017. In the 2017 legislative session, the Secretary of State proposed and urged the Legislature to pass Assembly Bill 45, which, among other things, "allowe[d] an authorized person to officially withdraw an initiative or referendum petition after it has been filed with the Secretary of State's Office." *See* Senate Committee on Legislative Operations and Elections, May 3, 2017, at 13 (Secretary of State, Barbara K. Cegavske, describing A.B. 45 to the senate committee); Senate Committee on Legislative Operations an Elections, May 3, 2017, at 11 (Barbara K. Cegavske testifying, that "I am hopeful to earn your support here in the senate"). At that time, the

Secretary of State's office advocated for a withdrawal provision because there was "no formal process in law to withdraw an initiative or referendum petition that is filed with the Secretary of State's Office." *Assembly Committee on Legislative Operations and Elections*, April 11, 2017, at 7 (Deputy Secretary of State Wayne Thorley answering questions about A.B. 45's withdrawal provision). The Secretary of State had allowed persons in the past to withdraw a filed petition, but sought an official mechanism for proponents of a petition to do so. *See* Senate Committee on Legislative Operations and Elections, May 3, 2017, at 14 (Deputy Secretary of State Wayne Thorley noting in the past that their office had withdrawn petitions at the request of the proponent, but that there was "no official mechanism to withdraw it").

In the 2021 legislative session, as part of an elections measure, the Legislature added the requirement that withdrawal be "submitted to the Secretary of State not later than 90 days before the election at which the question of approval or disapproval of the initiative will appear on the ballot." NRS 295.026(1)(a); 2021 Nevada Laws Ch. 248 (A.B. 321).

2. There Are Good Policy Reasons to Allow Withdrawal of a Petition After Signatures Are Collected

Although there was not much discussion by the Legislature when enacting NRS 295.026, we know that there are good policies for allowing withdrawal of an initiative petition. Those include the ability of proponents to negotiate or compromise with the legislature, to abandon unconstitutional or inefficient initiatives, and to adapt to changed circumstances. The ability to withdraw a petition can also save valuable time and resources for Nevadans, including proponents, opponents, the courts, the Secretary of State, and the Legislature.

a. NRS 295.026 Facilitates the Initiative Process by Allowing Withdrawal When the Legislature Addresses the Substance of the Initiative

"The purpose of initiative and referendum is to allow the people to enact laws directly without being thwarted by an unresponsive legislature." 42 Am. Jur. 2d Initiative and Referendum § 1. With this purpose in mind, it makes sense that the people should be permitted to withdraw their initiative if the Legislature responds to it. The fact that Nevada's Constitution provides for an indirect initiative process—meaning that there is a legislative session between proposal of an initiative and a public vote on the initiative—indicates that there is an opportunity for the Legislature to address an initiative proponent's concerns. Further, Art. 19 Sec. 2 itself requires the Legislature to take up the initiative and either reject or adopt it. Art. 19 Sec. 2(3). It therefore furthers the purpose of the initiative process to allow a proponent to withdraw an initiative petition when the petition's underling concerns are addressed by an intervening legislature.

In California, the code explicitly recognizes that proponents of an initiative may withdraw the measure as a result of negotiations and good faith bargaining to secure legislative approval of matters embraced in an initiative. *See* Cal. Elec. Code § 9604(a)-(b) ("[A]ny person may engage in good faith bargaining between competing interests to secure legislative approval of matters embraced in a statewide or local initiative or referendum measure, and the proponents may, as a result of these negotiations, withdraw the measure at any time . . . before the Secretary of State certifies that the measure has qualified for the ballot."). California only recently authorized the withdrawal of an initiative in 2014. Before then, there was no mechanism to withdraw initiative petitions after it qualified with signatures, which led to undesirable results. In particular, the legislature was concerned about a proponent's ability to withdraw an initiative when the proponent "pursues an alternative path to solving an issue—specifically through compromise through the legislative process."

See California 2013-2014 Regular Session, Senate Committee Report, Hearing on S.B. 1253 on August 27, 2014, at 8-9.

Similarly, South Dakota, who was the first state to approve an initiative process in 1898, *see* S.D. Art. 3, Sec. 1, amended their initiative process in 2009 to allow for a legislative session before an initiative is placed on the ballot. *See* South Dakota Legislative Research Council 2009 Bills, Hearing on House Bill 1184, February 4, 2009, beginning at 9:13, (last visited January 12, 2022) https://www.sdlegislature.gov/Session/Bill/889. In doing so, South Dakota's legislature recognized that withdrawal of an initiative is particularly appropriate when the Legislature acts in response to an initiative and there is no reason for the measure to be on the ballot. *Id.* at 40:00 to 41:45.

b. NRS 295.026 ALLOWS A PROPONENT TO SAVE RESOURCES BY WITHDRAWING A NON-VIABLE INITIATIVE

An initiative may become nonviable for a variety of reasons. The legislature may address the petition in a way that is sufficient, or even better than the petition anticipated. Rather than expend hundreds of thousands of dollars in resources to oppose a bill that the proponent originally proposed, the proponent can simply withdraw the initiative. Similarly, if it becomes clear that an initiative is unconstitutional or can be amended to resolve issues, a proponent should be able to avoid needless expenditure of resources pursuing the initiative. *See* California 2013-2014 Regular Session, California Committee Report, Hearing on S.B. 1253 on May 27, 2014, at 6 (recognizing that California's provision would allow proponents to withdraw an initiative that uses incorrect language or has flaws). Or, maybe the circumstances have changed since the initiative was circulated and there is no longer an appetite for the proposed statute. In any of those circumstances, the Legislature has recognized that, so long as it happens 90 days before the general election, the proponent of the initiative can withdraw the petition.

When enacting its withdrawal provision, the California Legislature cited to a 2004 example involving an absurd outcome because proponents were prohibited from withdrawing their petition. *See* Assembly Committee on Elections and Redistricting, California 2013-2014 Regular Session, June 23, 2014 Hearing on S.B. 1253, at 12-13. In 2004, a group qualified a local government protection initiative in California. But, before the election, the California governor and legislature came to a compromise in a separate measure that was put on the same ballot. This was before California authorized withdrawal of an initiative after collection of signatures. Because the group could not withdraw their own initiative, they ended up actively opposing their own initiative and supporting the initiative put forward by the governor and the legislature. A withdrawal provision is a common-sense solution to such an issue.

Further, because an initiative petition makes its way to the voters indirectly, a lot can happen between the time a proponent files a copy of an initiative petition with the Secretary of State and when a petition is submitted to the voters in a general election. Most prominently, the petition must go through a legislative session. During that session, the Legislature may take action that directly or indirectly addresses the petition. Theoretically, the Legislature could do something better for the proponents than what the petition requested and the proponents would not want to put it to the vote in a general election. Under each of these circumstances, it is good policy to allow a proponent to withdraw an initiative petition. Indeed, the Legislature chose to enact such a policy in NRS 295.026, as have other states with initiative processes.

c. FIVE OTHER STATES SIMILARLY ALLOW WITHDRAWAL AFTER SUBMISSION OF SIGNATURES WITH THE SECRETARY OF STATE

Five other states—California, Colorado, Missouri, Ohio, and South Dakota—have found wisdom in enacting similar statutes that allow for withdrawal of an initiative petition, even after signatures have been collected and submitted to the Secretary of State. *See* Cal. Elec. Cod. § 9604;

Colo. Rev. Stat. § 1-40-134; Mo. Ann. Stat. § 116.115; Ohio Rev. Code § 3519.08; S.D. Codified Laws § 2-1-2.3. Of those five states, Colorado, Ohio, and California contain similar language in their constitutions that the Secretary of State "shall" forward an initiative petition. *See* Cal. Const. art. II, § 8(c) ("The Secretary of State shall then submit the measure at the next general election . . . ."); Co. Const. Art. 5, § 1(7) ("The secretary of state shall submit all measures initiated by or referred to the people for adoption or rejection at the polls, in compliance with this section."); Ohio Const. Art. II, Sec. 1g ("The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted."). As far as we have been able to tell, the courts in those states have not encountered a similar situation where the Secretary of State refused to withdraw an initiative based on their ministerial duty under the constitution. This particular issue involving a withdrawal of an initiative petition appears to be the first of its kind.

D. The Particular Initiative Petitions Involved in This Case Illustrate How NRS 295.026 Facilitates the Operation of Initiative Petitions

The proponents of these petitions agreed to withdraw the petitions in exchange for historic legislation passed in the 2021 Legislative Session. The goal of these initiative petitions was to raise funding for public education. Ultimately, these petitions did just that. Not because they will be approved by the public in the next general election, but because they will be withdrawn by their proponents.

1. Assembly Bill 495 was an Historic Compromise Founded on the Withdrawal of These Petitions

Assembly Bill 495 passed on the last day of the 2021 legislative session. Nevada Legislature, 81st Regular Session 2021, Senate Daily Journal, The One Hundred and Twentieth Day, May

31, 2021, at p. 159 (16 Yeas and 5 Nays); Nevada Legislature, 81st Regular Session 2021, Assembly Daily Journal, The One Hundred and Twentieth Day, May 31, 2021, at p. 266 (28 Yeas and 14 Nays). In short, the law taxes mining on gold and silver and in the long term will place that money directly in the state's education fund. When the law passed, lawmakers from both sides of the aisle commented on its unprecedented nature and the compromise it took to achieve it.

When voting for the law, Assemblywoman Tolles, a Republican, lauded "bipartisan efforts to come together" and take an "historic step to create dedicated and sustainable funding" to education. Nevada Legislature, 81st Regular Session 2021, Assembly Daily Journal, The One Hundred and Twentieth Day, May 31, 2021, at p. 264 (Statement of Assemblyman Roberts in Support of Assembly Bill 495). Assemblyman Roberts, also a Republican, addressed the compromises made with these initiative petitions:

> There are three mining resolutions and two ballot initiatives headed to the 2022 midterm ballot. Working with stakeholders, we helped negotiate a compromise in lieu of these initiatives. That is going to be a win for everyone involved and minimize the impact felt by Nevada workers in our rebounding economy.

Nevada Legislature, 81st Regular Session 2021, Assembly Daily Journal, The One Hundred and Twentieth Day, May 31, 2021, at p. 265 (Statement of Assemblyman Roberts in Support of Assembly Bill 495).

In the Senate, Senator Kieckhefer, also a Republican, noted "[t]hc bill before us tonight is a compromise. It is the art of legislating in a single bill." Nevada Legislature, 81st Regular Session 2021, Senate Daily Journal, The One Hundred and Twentieth Day, May 31, 2021, at p. 156. Democrat Senator Cannizzaro thanked "partners in the community, the mining industry, [the] teachers and education advocates and [the] business community", and agreed that the bill was "the art of legislating" by those interests coming together to "find solutions" to fund education. Nevada Legislature,

81st Regular Session 2021, Senate Daily Journal, The One Hundred and Twentieth Day, May 31, 2021, at p. 157.

The day before the bill passed, Senator Chris Brooks, a Democrat, commented that the legislation "reflects the art of compromise," and detailed the "historic" nature of the different parties that came together to support the legislation. *See* Nevada Legislature 81st Regular Session, Joint Meeting of the Assembly Committee on Ways and Means and Senate Committee on Finance, May 30, 2019, 6:14:10 p.m. to 6:15:31 p.m, (last viewed January 14, 2022) https://sg001-harmony.sliq.net/00324/Harmony/en/PowerBrowser/PowerBrowserV2/20210530/-1/?fk=8996&viewmode=1. Indeed, at that same hearing, representatives of mining, education, environmental groups, progressive groups, school choice groups, charter schools, planned parenthood, and a women's rights group all spoke in support of the bill. *See* Nevada Legislature 81st Regular Session, Joint Meeting of the Assembly Committee on Ways and Means and Senate Committee on Finance, May 30, 2019, 6:26:48 p.m. to 6:55:43 p.m, (last viewed January 14, 2022) https://sg001-harmony.sliq.net/00324/Harmony/en/PowerBrowser/PowerBrowserV2/20210530/-1/?fk=8996&viewmode=1. Because the legislation raised taxes, it required a bipartisan two-thirds majority vote in both houses, which it obtained.

Importantly, the legislation was passed as part of an agreement with the proponents of these initiatives to withdraw the initiatives. *See* Las Vegas Review-Journal, Steve Sebelius, *Cegavske won't allow tax petitions off 2022 ballot*, October 11, 2021, https://www.reviewjournal.com/news/politics-and-government/nevada/cegavske-wont-allow-tax-petitions-off-2022-ballot-2457654/. Contemporaneous reporting recognized that A.B. 495 was meant to address the three mining resolutions and two initiative petitions that were referenced by Assemblyman Roberts. *See* Nevada Current, April Corbin Girnus, *With constitutional amendments scuttled, mining agrees to*

tax deal, May 30, 2021, (last visited January 14, 2022) https://www.nevadacurrent.com/2021/05/30/with-constitutional-amendments-scuttled-mining-agrees-to-tax-deal/ ("The bill's potential passage will likely determine the fate of five potential ballot questions . . . ."); The Nevada Independent, Riley Snyder, Michelle Rindels, Tabitha Mueller, *Mining tax bill starts advancing through Legislature, with industry, progressives, teacher's union in support*, May 30, 2021, https://thenevadaindependent.com/article/mining-tax-bill-starts-advancing-through-legislature-with-industry-progressives-teachers-union-in-support (noting the bill aimed at "staving off politically perilous 2022 ballot questions"). Those two initiative petitions, of course, are the ones at issue in this case. *See* Nevada Current, April Corbin Girnus, *With constitutional amendments scuttled, mining agrees to tax deal*, May 30, 2021 (reporting that, "in play are two initiative petitions spearheaded by the Clark county Education Association," which would "raise[ ] the gaming tax rate" and raise the sales tax).

2. *The Secretary of State's Actions are Preventing the Initiative Petition Process from Working as Intended*

A.B. 495 is an example of the initiative petition process working. Or at least it will be once this Court finds that the proponents of these two initiative petitions have validly withdrawn their initiative petitions and the Secretary of State may take no further action on those petitions.

When the proponents sought more funding for public education, they began the initiative petition process and qualified their respective initiative petitions for transmittal to the Legislature. Their petitions then caught the attention of the Legislature and the business community, just as an initiative petition is designed to do. *See* 42 Am. Jur. 2d Initiative and Referendum § 1 (recognizing the purpose of the initiative process is to enact laws when the legislature is "unresponsive"). In response, the Legislature and the business community came together to reach a compromise; again, furthering the purpose of the initiative process. *Cf.* Cal. Elec. Code § 9604(a)-(b) (contemplating

"good faith bargaining" between competing interests); *See* South Dakota Legislative Research Council 2009 Bills, Hearing on House Bill 1184, February 4, 2009, beginning at 9:13, (last visited January 12, 2022) https://www.sdlegislature.gov/Session/Bill/889 (allowing for a legislative session before an initiative is placed on the ballot so that the legislature can address the issue). Given the Legislature's and business community's responsiveness to their petitions, the proponents decided the best way to further the goal of their petitions was to strike a deal. But the compromise of the mining and business community was facilitated, and indeed premised, on the ability of the proponents of these initiatives to withdraw their petitions.

Now, despite the Legislature's clear intent that the proponents have withdrawn their petitions once they submit a notice of withdrawal to the Secretary of State, the Secretary of State is acting to substantively hamper the functioning of the initiative process based on her ministerial obligations outlined in the Nevada Constitution. If the Secretary of State succeeds, it will undermine the very policies that support withdrawal of an initiative petition and prevent similar "historic" compromises from being reached in the future. The rigidity of such an interpretation will also cost future initiative proponents, opponents, and taxpayers substantial amounts of money by prohibiting withdrawal of initiatives, even if they are no longer viable, or unconstitutional, or have simply become irrelevant or unsound. Surely that is not what the people intended when they approved a constitution that required the Secretary of State to transmit an initiative to the Legislature and then to the voters at a general election.

CONCLUSION

The conflict presented by the Secretary of State is completely avoidable when the issue is considered in its correct context. The Secretary of State puts the cart before the horse by assuming

that we should begin with her ministerial duty in Art. 19 Sec. 2(3). In reality, however, the threshold question is whether a valid petition exists in the first place for the Secretary of State to submit to the voters under Art. 19 Sec. 2(3). Under NRS 295.026, which is an appropriate use of the Legislature's authority to facilitate the initiative process under Art. 19 Sec. 5, the petitions at issue in this case have already been withdrawn. Because the initiative petitions were withdrawn, they are void and no further action may be taken by the Secretary of State. It is not reasonable to believe that because the Secretary of State has an obligation to transmit a valid initiative petition to the voters, that the people no longer have the right to withdraw their own initiative petitions.

Dated this 15th day of February, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: _____ 15877 tov

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2022, a true and correct copy of the foregoing "Memorandum of Points and Authorities in Support of Petitions For Writ of Mandamus and Prohibition" was served upon all parties by United States mail, postage prepaid, at Reno, Nevada, as follows:

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FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action, Petitioners, NEVADA RESORT ASSOCIATION, a Nevada non-profit corporation; GREATER LAS VEGAS CHAMBER OF COMMERCE, d/b/a VEGAS CHAMBER, a Nevada non-profit corporation, Intervenors-Petitioners, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Respondent.	Case No.: 21 OC 00182 1B Dept. No.: 2

RESPONDENT'S ANSWERING BRIEF

Respondent Barbara Cegavske, in her official capacity as Nevada Secretary of State ("Respondent" or the "Secretary of State") hereby responds to the Petitioners' Memorandum of

Points and Authorities in Support of Petitions for Writ of Mandamus and Writ of Prohibition ("Petitioners' Memorandum") filed by Robert Hollowood, Kenneth Belknap, Nevadans for Fair Gaming Taxes PAC, and Fund our Schools PAC (jointly "Petitioners") and Memorandum of Points and Authorities in Support of Petitions for Writ of Mandamus and Prohibition ("Intervenors' Memorandum") filed by Intervenors Nevada Resort Association ("NRA") and the Greater Las Vegas Chamber of Commerce dba Vegas Chamber ("Vegas Chamber" and with NRA, the "Intervenors"). This Answering Brief is based on the following memorandum of points and authorities, the pleadings and papers on file herein, the exhibits attached hereto, and any oral argument this Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Respondent is bound by the Nevada Constitution to perform certain tasks to preserve the rights of the people to legislate by initiative petitions, including placing verified initiative petitions on the ballot. No statute of the Nevada Legislature can interfere with the "self-executing" operation of the Nevada Constitution as it pertains to the duties and obligations of the Secretary of State in fulfilling her mandatory duties. *See* Nev. Const. art. 19, § 5. Once an entity circulates a petition, collects sufficient signatures, and submits the petition for verification, the County Clerks verify the signatures and the Secretary of State tenders the initiative petition to the Nevada Legislature—this is known as a "verified initiative petition." At that point, the Nevada Constitution, not any contrary statute, governs the Secretary of State's duties, the initiative petition process, and the rights of the proponents or signatories. The Legislature cannot alter this constitutional process.

Specifically, once an initiative petition is filed for verification of signatures,[1] the Nevada

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[1] The Nevada Constitution contemplates that initiative petitions are filed twice with the Secretary of State—once before circulation begins and once after circulation for verification of signatures. The person who intends to circulate a petition must "file a copy with the Secretary of State before beginning circulation . . . . After its circulation, it shall be filed with the Secretary of State not less than 30 days prior to any regular session of the Legislature." Nev.

Constitution mandates certain actions by the Secretary to preserve the rights of the electorate. If the Legislature takes no action on the verified initiative petition within the first 40 days of the legislative session, "the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election." Nev. Const. art. 19, § 2(3). Any statute that interferes with this right the voters "reserve to themselves" exceeds the authority of the Nevada Legislature and conflicts with the express provisions of the Nevada Constitution.

Moreover, before submission to the Secretary of State for verification, "the petition is in the power of the signers." *State v. Scott*, 52 Nev. 216, 230, 285 P. 511 (1930). And once signed and submitted, "[t]he public has now become interested in it." *Id.* The right of the public to vote on the petition vests when the signors propose an initiative petition by filing with the Secretary of State after signatures are collected. Once the public becomes interested in the initiative petition, one individual who circulates the petition cannot override the rights of all other signers who propose a petition or the rights of the public to "enact or reject" the petition. Even if, as here, the Legislature enacts a statute authorizing withdrawal, the individual or individuals responsible for circulating the petition cannot withdraw a verified petition any more than an individual who signed the petition can remove her verified signature—this the Nevada Constitution does not allow. *Scott*, 52 Nev. at 230. For these reasons, the Petition for Writs of Mandamus and Prohibition must be denied in their entirety and this action dismissed with prejudice.

STATEMENT OF FACTS

Constitutional History and Procedure of Initiative Petitions

The initiative process gives "the people more direct control over the Legislature. . . . Through the initiative, the people can pass legislation which the Legislature has failed to enact for one reason or another; . . ." The Constitution of the State of Nevada: A Commentary,

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Const. art 19, § 2(3). This Answering Brief attempts to make clear which "filing" is referenced by referring to filing for circulation and filing or submission for verification.

NEVADA STUDIES IN HISTORY & POLITICAL SCIENCE—NO. I, 77 (Univ. of Nev. Press 1961). The power of the initiative process is one of "a specified number of the electorate to unite in proposing laws to the legislative body, which, after due consideration must submit the same to the vote of the people for their approval or disapproval." *Rea v. Mayor*, 76 Nev. 483, 486, 357 P.2d 585 (1960), *citing* Bouvier's Law Dictionary at 1569 (Rawle's 3d Rev.).

In 1912, the people ratified an amendment to Article 19 of the Nevada Constitution. *Wilson v. Koontz*, 76 Nev. 33, 35, 348 P.2d 231, 231 (1960).[2] That amendment "for the first time provided for the initiative whereby the people were empowered to propose amendments to the constitution and to enact or reject the same at the polls **independent of the legislature**, and similarly were empowered to propose laws." *Id.* at 36-37, 348 P.2d at 232 (emphasis added). Since its inception, Article 19, Section 2(3) has been "self-executing, but legislation may be specially enacted to facilitate its operation." *Id.* at 36, 348 P.2d at 232.[3]

Although an individual can "circulate" an initiative petition, only "a number of registered voters equal to 10 percent or more of the number of voters who voted in the last preceding general election" can propose an initiative. Nev. Const. art. 19, § 2(2). This means that no action is taken on an initiative by the Legislature or electorate until after the requisite number of registered voters have signed the petition. Following circulation of the initiative petition, it must be submitted for verification of signatures to the County Clerks and ultimately to the Secretary of State. *Id.* at art. 19, § 2(3). Once the signature verification process is complete, the Secretary of State "shall transmit such petition to the Legislature as soon as the Legislature convenes and organizes." *Id.*

Before a petition is signed and filed for verification of signatures, "the petition is in the power of the signers." *Scott*, 52 Nev. at 230, quoting *Bordwell v. Dills*, 66 S.W. 646, 647 (Ark.

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[2] Initially this amendment was ratified as Section 3 to Article 19. In an additional amendment ratified in 1962, this section was moved to its current location as Article 19, Section 2(3). *See* 1961 Nev. Stat. 813-17.

[3] That phrase was amended in 1962 to read "[t]he provisions of this article are self-executing but the legislature may provide by law for procedures to facilitate the operation thereof." Nev. Const. art 19, § 5.

1902); *Educ. Initiative PAC v. Comm. to Protect Jobs*, 129 Nev. 35, 37-38, 293 P.3d 874, 877-78 (2013) (signatures collected by voters "who likewise support the initiative's ideas").[4] But after signors propose a petition by filing for signature verification, the "public has become interested in it." *Id.* Once a signature has been verified, signatures cannot be withdrawn—the power to act on the petition cannot be impaired by the petitioners. *Id.*; *see also* Attorney General's Opinion No. 379 (July 14, 1930) (petitioners who sign their names cannot withdraw their names from a petition to which jurisdiction has attached by filing).

The Nevada Constitution contains the remaining process for initiative petitions once verified, and that process depends on the actions taken by the Legislature. If the Legislature fails to take action on or rejects the petition, "the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election." Nev. Const. art 19, § 2(3). But if the Legislature enacts the petition, and the Governor approves it "in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law . . . ." *Id.* Only if the Legislature and Governor approve a verified initiative petition does the Constitution permit the petition not to go on the ballot for "approval or disapproval."

The Initiative Petitions at Issue

On January 14, 2020, Petitioner Nevadans for Fair Gaming Taxes PAC filed initiative petition S-01-2020 with the Secretary of State and identified Petitioner Robert Hollowood as the authorized representative. Petition at Ex. 1. Initiative S-01-2020 proposed to amend statutes raising the fees on the gaming industry. Petition at Ex. 2. On January 15, 2020, Petitioner Fund Our Schools PAC filed an initiative petition No. S-02-2020 with the Secretary of State and identified Kenneth Belknap as an authorized representative. Petition at Ex. 4. Initiative 2020-02 proposed to amend NRS Chapter 374 to raise the retail sales tax in Nevada from 2.25% to

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[4] *Education Initiative PAC* also summarizes the initiative process and notes that if the Legislature "fails to take action on it during the first 40 days of the session, the Secretary must then place the initiative on the next general election ballot . . . ." 129 Nev. at 38, 293 P.3d at 877.

3.75% in order to provide additional funds for education. Petition at Ex. 7.

Petitioners circulated both Initiative Petitions and obtained the support of a number of registered voters required to "propose" the Initiative Petitions to the Legislature and the electorate.

Pursuant to her duties under the Nevada Constitution's initiative process, the Secretary of State verified the signatures and submitted the Initiative Petitions to the Legislature on the first day of the 2021 session. The Legislature failed to act on the Initiative Petitions within the first 40 days of the Legislative Session as required by the Nevada Constitution. Instead, on the 120th day of the Legislative Session, the Legislature struck a bargain with various industries, including the Petitioners, to increase other taxes to support education. A.B. 495 (2021); *see also* Las Vegas Review-Journal, Colton Lochhead, *'Monumental compromise:' Mining tax bill would fund schools*, May 29, 2021 *available at* https://www.reviewjournal.com/news/politics-and-government/2021-legislature/monumental-compromise-mining-tax-bill-would-fund-schools-2366919/ (last visited Feb. 18, 2022). As part of that bargain, Petitioners agreed to withdraw the Initiative Petitions. *Id.* To avoid the self-executing provisions of Article 19, the Nevada Legislature amended NRS 295.026 to provide withdrawal timelines which did not exist in the statute as enacted in 2017. The Secretary of State's Office was not consulted during the process to amend NRS 295.026 in 2021. Declaration of B. Cegavske ("Cegavske Decl.") at ¶ 9, attached as **Exhibit 1**.

On or about June 2, 2021, a request for withdrawal of Petition S-01-2020 was sent to the Secretary of State's Office seeking to prevent the voters from considering Petition S-02-2020 in the November 2022 general election. *See* Corresp. dated June 8, 2021, from M. Wlaschin to M. McLetchie, attached as **Exhibit 3**. The Secretary of State responded that her office was reviewing the withdrawal "and considering Article 19, Section 2 of the Nevada Constitution and NRS 295.026." *Id.*

Thereafter, the Office of Governor Sisolak requested an opinion from the Office of the Attorney General regarding whether the language in Article 19 acted to prevent an initiative

petition from being withdrawn.[5] Petition at Ex. 10, AGO 2021-04. The Attorney General issued Opinion No. 2021-04 on July 28, 2021. *Id.* Neither the Legislature nor the Governor's Office sought input from the Office of the Secretary of State on the withdrawal of verified initiative petitions or the development of Opinion No. 2021-04. Cegavske Decl. at ¶¶ 10-12, **Exhibit 1**. On September 7, 2021, the Secretary of State sent a letter to Attorney General Ford expressing her constitutional obligation to place verified initiative petitions on the general election ballot. Petition at Ex. 12.

On October 6, 2021, Mr. Belknap submitted a withdrawal form to the Secretary of State seeking to prevent the voters from considering the petition S-02-2020 in the November 2022 general election. Petition at Ex. 11. The Secretary of State then advised Petitioners that, due to the constitutional mandate to place the Initiative Petitions on the ballot, she could not withdraw the Initiatives and intended to place them on the general election ballot for the November 2022 election as required by the Nevada Constitution. This Petition for Writs of Mandamus and Prohibition followed.

Subsequently, the Nevada Resort Association ("NRA") and Vegas Chamber ("Chamber" and with NRA, the "Intervenors") filed a motion to intervene or to be heard as amici curiae. This Court granted Intervenors' motion to intervene on February 7, 2022, and Intervenors filed a brief supporting the Petition on February 15, 2022.

LEGAL STANDARDS

Standard for Extraordinary Writs.

A writ of mandamus will only issue "when the respondent has a clear, present legal duty to act." *Round Hill Gen. Imp. Dist. v Newman*, 97 Nev. 601, 603, 637 P.2d 534, 536 (1981). The petitioner must not have any plain, speedy, and adequate remedy at law in order to compel the performance of such an act. NRS 34.170. Contrarily, a writ of prohibition "arrests the

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[5] The Petition for Writs of Mandamus and Prohibition suggest that the Secretary of State requested the Attorney General's opinion. Petition at ¶ 4. This is not correct as expressed in the Opinion itself—the Opinion was addressed to the requesting party, the Office of Governor Sisolak. Petition at Ex. 10.

proceedings of any tribunal, corporation, board or person **exercising judicial functions**, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." NRS 34.320 (emphasis added). A writ of prohibition is available only to restrain courts, tribunals, or others "who are exercising or attempting to exercise judicial or quasi-judicial functions beyond their powers." *Mineral Cnty. v. State Dep't of Conservancy*, 117 Nev. 235, 243-44, 20 P.3d 800, 805-06 (2001).

Because the Secretary of State has a constitutional duty to place the Initiative Petitions on the ballot in the November 2022 election, and since the rights of a petition's sponsor does not supersede the rights of signors of the Initiative Petitions to propose laws or the electorate to "enact or reject" those laws as provided in the Nevada Constitution, neither Petitioners nor Intervenors are entitled to any extraordinary relief of a writ to compel the Secretary to violate the Nevada Constitution.[6]

Standards for Constitutional Construction.

When interpreting the Nevada Constitution, the court's primary task is to ascertain the intent of those who enacted the constitutional provision and to adopt an interpretation that best captures their objective. *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 538, 26 P.3d 753, 757 (2001). Constitutional interpretations "are guided by the principle that '[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.'" *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235 P.3d 605, 608 (2010), *quoting Dist. of Columbia v. Heller*, 544 U.S. 570, 576 (2008). First, a court turns to the constitutional language and gives that language its plain effect to determine a constitutional meaning. *Miller v. Burk*, 124 Nev. 579, 590-91, 188 P.3d 1112, 1119-20 (2008). Where a constitutional provision is clear on its face, courts need not go beyond the face of the constitution to determine the voters' intent. *Strickland*, 235 P.3d at 608. A court

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[6] Neither Petitioners nor Intervenors have alleged that the Secretary was performing judicial or quasi-judicial functions in excess of her jurisdiction as required for issuance of a writ of prohibition. NRS 34.320. Therefore, this request for relief can be dismissed without further analysis.

must give words their plain meaning unless doing so would violate the spirit of the provision. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986).

Only if the language is ambiguous will the court then look to the provision's history, public policy, and rationale to determine what voters intended. *Miller*, 124 Nev. at 590-91, 188 P.3d at 1119-20. Nor will the court create an ambiguity when none exists. *Id.* A provision is ambiguous if "it is susceptible to two or more reasonable but inconsistent interpretations . . . ." *Id.* (internal citation omitted). The court's interpretation of a constitutional provision may not violate the spirit of the provision. *Id.*

ARGUMENT

The Nevada Constitution is clear on its face regarding the initiative process and the duties of the Secretary of State in that process. First, in enacting the initiative process, "the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to [the] Constitution, and to enact or reject them at the polls." Nev. Const. art. 19, § 2(1). And the Secretary of State's mandatory obligations under the Constitution reflect the rights reserved "to the people:"

> If the statute or amendment to a statute is rejected by the Legislature, or if no action is taken thereon within 40 days, the Secretary of State **shall submit the question of approval or disapproval** of such statute or amendment to a statute to a vote of the voters at the next succeeding general election.

Nev. Const. art. 19, § 2(3) (emphasis added). This obligation is unequivocal and clear—the verified initiative petition must go to the voters if rejected or passed over by the Legislature. This is the end of the inquiry.

Although the Nevada Legislature can "facilitate" the constitutional initiative petition process, it cannot alter the self-executing process set forth in the Nevada Constitution. Nev. Const. art. 19, § 5. Further, the Legislature cannot remove the rights of the electorate to "enact or reject" initiative petitions where jurisdiction has attached through the filing and verification process. *Cf. State v. Scott*, 52 Nev. 216, 230, 285 P. 511 (1930); *see also Rea v. City of Reno*,

76 Nev. 483, 486, 357 P.2d 585, 586 (1960) (striking down statute "because it failed to provide therein for the submission of proposed charter amendments to the decision of the voters at the polls.").

Regardless of how this case is approached, whether by a plain reading of the Constitution, cannons of constitutional and statutory interpretation, legislative history and intent, or any other legal analysis, the result is always the same—statutes cannot supersede the Nevada Constitution. And statutory law can neither (1) alter the constitutional duties of the Secretary of State to place a verified initiative petition on the ballot as required by Article 19, Section 2(3) of the Constitution; nor (2) inhibit the rights of the people expressly reserved to themselves to both propose and consider initiative petitions. Creating a new right specific to a few individuals to withdraw a verified petition fundamentally alters the Constitution and the petition process because "the constitution does not contemplate the initiative without a ballot." *Rea*, 76 Nev. at 486, 357 P. at 586. And the creation of a right by one sponsor of an initiative petition ignores the rights of both the signors to propose a petition and the public to "enact or reject" a petition. Those rights are reserved to the people. For those reasons, the Petition for Writs of Mandamus and Prohibition must be denied.

I. The Plain Language of Article 19, Section 2 of the Nevada Constitution Governs the Initiative Petition Process and the Nevada Secretary of State's Mandatory, Constitutional Duties to Protect the Rights of the People.

The "people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution and to enact or reject them at the polls." Nev. Const. art. 19, § 2(1). This right belongs to the people, not to the Legislature and not to a few people who circulate an initiative petition. That the Constitution mandates placement of initiative petitions, once verified, on the ballot "at the next succeeding general election," is evidence of the nature of the right and the jurisdiction of the people once the requisite number of signors (or proponents) "propose" an initiative petition. The Legislature cannot interfere with this right of the signors or the electorate by allowing a circulator of an initiative petition to withdraw it after the verified petition has been submitted and the

Legislature has failed to take action on it within 40 days or is rejected by the Legislature.

A. THE INITIATIVE PROCESS IS A RIGHT THE PEOPLE "RESERVE TO THEMSELVES."

The Constitution is the "paramount law of the state," and is designed to define and separate powers of government "as well as to secure and protect private rights . . . ." *King v. Bd. of Regents*, 65 Nev. 533, 556, 200 P.2d 221 (1948). "[W]hen the Constitution defines the circumstances under which a right may be exercised, the specification is an implied prohibition against the right of the Legislature to add to the condition." *Id.* at 546 (internal citation omitted).

Here, the plain language of the Nevada Constitution states that the initiative process is one the people "reserve to themselves . . . ." Nev. Const. art. 19, § 2(1). Arguably, there are three groups of people who have rights in the initiative process: (1) the entity who drafts the petition and files it with the Secretary of State for circulation; (2) the 10 percent or more of voters who sign and thereby "propose" the petition; and (3) the electorate who "reserve to themselves the power . . . to enact or reject [petitions] at the polls." *Id.* When those rights arise and how they are exercised are constitutional principles left to a plain interpretation of the text as would be understood by the voters.

First, if a petition "proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the Secretary of State . . . ." Nev. Const. art 19, § 2(2). This provision recognizes the first right of an individual to draft and circulate a petition. The circulator maintains the rights to the initiative petition until sufficient signatures are obtained and the petition is submitted for verification.

Second, an initiative petition "shall be proposed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election in not less than 75 percent of the counties in the State . . . ." Nev. Const. art. 19, § 2(2). Only the required number of voters can "propose" an initiative petition to the general electorate. *Id.* "This power consists of the power to *propose* laws which thereafter must be enacted or rejected

at the polls as distinguished from a power which would effect a legislative act without an election." *Rea*, 76 Nev. at 486, 357 P.2d at 586. Before the petition is filed, the petition is in the power of the signors. "Each signor may control his signature. It is not yet a petition in which the public is interested." *Scott*, 52 Nev. at 230 (internal citation omitted).

Once the requisite number of signatures are obtained and the petition is submitted to County Clerks and the Secretary of State, signature collection ceases and the signatures are verified to ensure the number and type of signatures meet the constitutional standards. Nev. Const. art. 19, § 2(3). At this point when the petition has been filed with the Secretary of State:

> The public has now become interested in it. The jurisdiction of the subject matter has now attached. In the absence of something in the statute permitting it, no individual signer, nor indeed, all the signers, could thereafter withdraw or erase their names from the petition. * * * He who voluntarily sets on foot a proceeding for the enforcement of a salutary police regulation in any community should not be permitted to capriciously undo his work. He should not be allowed to play fast and loose with the interests of society. The law makes no provision for protests and remonstrances, for signing and countersigning. It only provides for the petition.

Scott, 52 Nev. at 230-31 (internal citation omitted). In *Scott*, the Court considered whether a signor could withdraw his signature after the signed petition had been filed with the Secretary of State so as to defeat the petition by reducing the number of signors below the constitutional requirement. *Id.* at 224. The court concluded that no signor could withdraw a signature because the rights had passed to the electorate to enact or reject the petition. *See id.* at 231. The rights of the signors was to "*propose* laws **which must thereafter be enacted or rejected at the polls** as distinguished from a power which would effect a legislative act without an election." *Rea*, 76 Nev. at 486, 357 P.2d at 586 (emphasis added).

Thus, the "right of a specified number of the electorate to unite in proposing laws to the legislative body, which, after due consideration **must submit the same to a vote of the people for their approval or disapproval.**" *Id.* (emphasis added). The Constitution does not provide for withdrawal of a verified initiative petition by the circulating entity. Doing so would interfere with the rights of the 10 percent of the electorate who propose an initiative and the

rights of the electorate who reserve the right to "enact or reject" the petition.

B. THE MANDATORY DUTY OF THE SECRETARY OF STATE TO PLACE THE INITIATIVE PETITION ON THE BALLOT IS CONSISTENT WITH THE RIGHTS RESERVED TO THE PEOPLE TO "ENACT OR REJECT" THE PETITION.

The rights of the signors and the rights of the electorate are further demonstrated by the express language of Article 19, Section 2(3) which is clear on its face regarding the duties of the Secretary of State. A straightforward reading of the applicable constitutional requirements reveals the meaning of the constitutional phrase:

> If the statute or amendment to a statute is rejected by the Legislature, or if no action is taken thereon within 40 days, the Secretary of State **shall submit the question of approval or disapproval** of such statute or amendment to a statute to a vote of the voters at the next succeeding general election.

Nev. Const. art. 19, § 2(3)[7] (emphasis added).

The duty of the Secretary of State is unambiguous—she "shall submit the question of approval or disapproval" to the voters. The word "shall" means "has a duty to, more broadly is required to" and is meant in "the mandatory sense that drafters typically intend and that courts typically uphold." BLACK'S LAW DICTIONARY 1653 (11th Ed. 2019). The Nevada Legislature agrees: "'Shall' imposes a duty to act." NRS 0.025(1)(d). Therefore, the duty of the Secretary of State to submit a verified initiative petition to the voters on the ballot is mandatory, not permissive and not subject to legislative interference or alternative interpretation.

Moreover, this interpretation is consistent with the whole of Article 19. The provisions of the Nevada Constitution governing the initiative petition process are self-executing. Nev. Const. art. 19, § 5. Self-executing provisions of the Constitution "need no legislative aid to put them into effect." *State v. District Court*, 52 Nev. 379, 381, 287 P. 957 (1930). Provisions which are not self-executing require "the legislature to enact legislation carrying the provisions of the constitution into effect." *Goldfield Con. M. Co. v. State*, 60 Nev. 241, 245, 106 P.2d 613

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[7] The history of Article 19 is set forth in *Wilson v. Koontz*, 76 Nev. 33, 348 P.2d 231 (1960).

(1940).

The Nevada Supreme Court has already recognized that the procedures in Article 19, Section 2 are complete, self-executing, and relate "to *all* initiative petitions." *Wilson v. Koontz*, 76 Nev. 33, 38, 348 P.2d 231, 233 (1960). In *Wilson*, the petitioners asked the court to compel the Secretary of State to file an initiative petition to amend the Constitution. *Id.* at 34, 348 P.2d at 231. In compelling the Secretary of State to file the initiative petition, the Supreme Court specifically interpreted Article 19, Section 2, finding that provision:

> is specific in the requirements necessary to effectuate the change or changes desired. The section provides the number of signatures required on any petition, who may sign the petition, what the petition shall contain, where and when the petition must be filed, and the detailed disposition of the same after its filing. **If any election must follow because of the legislature's rejection or nonaction thereon, or because of the referendum, the procedure therefor is fully covered by general law**.

Id. at 38, 348 P.2d at 233 (emphasis added). Critically, that court recognized that the "wisdom of making it part of the organic law is no concern for the courts." *Id.* In other words, the court could not read into the initiative process elements that did not already exist in the Constitution.

Moreover, Article 19 of the Constitution "does not contemplate the initiative without a ballot." *Rea*, 76 Nev. at 486, 357 P.2d at 586. Although the court in *Rea* was considering municipal legislation, "the initiative power given to the electors of a municipality with respect to municipal legislation is no different from the initiative power given to the people as a whole with respect to state matters." *Id.* The Supreme Court concluded that the initiative process "consists of the power to *propose* laws which thereafter **must be enacted or rejected at the polls as distinguished from a power which would effect a legislative act without an election**." *Id.* (emphasis added).

In *Rea*, the court considered a statute which did not provide for the submission of an initiative to the voters. *Id.* at 485, 357 P.2d at 586. Instead, the statute allowed the city or town to "adopt such amendment or amendments by resolution without further proceeding." *Id.* In declaring that the statute violated Article 19, Section 2, the Nevada Supreme Court concluded that "the legislature . . . went beyond the said powers granted to it by the constitution, because it

failed to provide therein for the submission of proposed charter amendments to the decision of the voters at the polls." *Id.* at 486, 357 P.2d at 586. In deciding that the initiative must be submitted to the voters (and not simply decided by the municipality), the *Rea* court foreclosed the possibility that an initiative petition need not be submitted to the voters.

But that is exactly what Petitioners want—an initiative process without a ballot. The plain language of the Nevada Constitution does not contemplate this. Petitioners are asking this Court to ignore the Legislature's failure to act on the Initiative Petitions—the circumstance which expressly triggers a mandatory, constitutional duty to place the Initiative Petitions on the ballot. Petitioners are asking this Court to implement a process which allows for bargaining outside of the constitutional process and which ignores the rights of the electorate to consider a verified initiative petition.

Here, Petitioners would have the Court read the Nevada Constitution to include an exception to submitting a verified petition to the voters and employ a different meaning to the word "shall" other than a mandatory obligation. But the Constitution does not say "the Secretary of State shall submit the question to the voters **unless**" some unidentified criteria are met. The Constitution does not provide a right for the entity responsible for circulating a petition to withdraw the petition once the signors propose the petition, it has been verified, submitted to the Legislature, and either acted upon or not acted upon by the Legislature. The Constitution could have provided for this process or used language other than "shall" to describe how a verified initiative petition proceeds or does not proceed. Neither the Legislature nor the voters who enacted Article 19 saw fit to include a provision for withdrawal once the signatures are verified and Secretary submits the petition to the Legislature. Neither should this Court.

II. Neither NRS 295.026 nor Any Bargain Struck by the Legislature Can Interfere with Constitutional Rights or Obligations.

Provisions of the Nevada Constitution "constitute the supreme law of the state and control over any conflicting statutory provisions . . . ." *Goldman v. Bryan*, 106 Nev. 30, 37, 787 P.2d 372, 377 (1990). "The constitution may not be construed according to a statute enacted

pursuant thereto; rather, statutes must be construed consistent with the constitution and, where necessary, in a manner supportive of their constitutionality." *Foley v. Kennedy*, 110 Nev. 1295, 1300, 885 P.2d 583, 586 (1995).

Not only is the Nevada Constitution the supreme law, the self-executing nature of constitutional law further dictates that where a statute conflicts with the constitutional provisions, the constitutional article should be followed and not the provisions of the statute. *E.g.*, *Foley*, 110 Nev. at 1301 & n.5, 885 P.2d 586. Here, the "withdrawal" of a verified initiative petition violates the rights of the people specifically reserved to themselves to both propose and "enact or reject" laws as well as the duties of the Secretary of State to facilitate those rights by placing petitions on the ballot.

A. Statutes to "Facilitate" the Initiative Process Cannot Terminate the Rights of the People.

Petitioners and Intervenors suggest that, because the Legislature is authorized to enact laws to "facilitate" the initiative process, the Legislature can authorize the withdrawal of a filed and verified petition that the Legislature failed to act on within 40 days. Petitioners' Memorandum at 11-15; Intervenors' Memorandum at 2-4. This is incorrect.

The Legislature can only adopt laws "so long as those laws facilitate the provisions of Article 19." *Nevadans for the Protection of Property Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). In that case, the Court found that the single-subject requirement for initiative petitions facilitate the initiative process by preventing voter confusion and promoting informed decisions by voters. *Id.* The single-subject requirement also does not "impermissibly limit the people's ability to legislate or amend the constitution" because any second subject can be addressed by creating a second initiative petition. *Id.* Similarly, the court upheld statutes requiring a description of the petition because those rules "facilitate the people's right to meaningfully engage in the initiative process." *Nevadans for Nevada v. Beers*, 122 Nev. 930, 940, 141 P.3d 339, 345 (2006).

But where a statute curtails the power of initiative or places an undue burden on an

exercise of the right, the statute will be struck down. "[T]he procedural laws enacted by the Legislature may not unreasonably inhibit the powers reserved to the people in Article 19." *We The People ex rel. Angle v. Miller*, 124 Nev. 874, 887, 192 P.3d 1166, 1174 (2008). "[A] statutory provision will not be enforced when to do so would infringe upon rights guaranteed by our state constitution." *Id.* at 891, 192 P.3d at 1177 (striking down a statutory provision shortening the time for circulation of a petition because the Legislature "may not directly inhibit the powers reserved to the people under Article 19.").

Here, the statute authorizing one individual to withdraw a verified initiative petition after the Legislature has failed to act on the petition within 40 days violates the powers reserved both to the signors of an initiative petition to propose laws as well as the rights reserved to the people to "enact or reject" those proposed laws.

B. Statutes to "Facilitate" the Initiative Process Cannot Interfere with the Secretary of State's Affirmative Duty to Protect the People's Rights.

Critical to the legal equation is whether the legislators of Nevada can create a different policy by statute and alter the constitutional duties of the Secretary of State to protect the rights of the people to propose or "enact or reject" laws. Petitioners argue that nothing in the Constitution "appears to contravene the Legislature's ability to enact a provision permitting such proponents as Petitioners from deciding to withdraw their initiative measures." Petitioners' Memorandum at 12:10-12. But this position is undermined by the maxim *expression unius est exclusion*, the expression of one thing is the exclusion of another. *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967). In constitutional interpretation, this maxim means that "[e]very positive direction contains an implication against anything contrary to it which would frustrate or disappoint the purpose of that provision." *Id.* Such expressions of positive direction "*create implied limitations upon the law-making authority as strong as though a negative was expressed in each instance.*" *Id.*

Here, the Constitution expressly provides that the Secretary of State "shall" submit the initiative to the voters unless the Legislature and Governor adopt the petition. Nev. Const. art.

19, § 2(3). The Legislature did not consider the Initiative Petitions within the first 40 days of the 2021 Legislative Session. Instead, the Legislature struck a bargain with Petitioners to increase taxes elsewhere in exchange for withdrawal of the Initiative Petitions on the 120th day of the 2021 Legislative Session. The Legislature then amended the statute for withdrawal of initiative petitions to stop the initiative process explicitly set forth in the Constitution.[8] But the Constitution prohibits the adoption of any statute that alters the mandatory duty to place the Initiative Petitions on the ballot. That express duty contained in the Constitution prohibits any legislation to the contrary. The Constitution is clear that when a verified petition is submitted to the Legislature, and the Legislature fails to act upon it, the Initiative Petitions must then go to the voters. Nev. Const. art. 19, § 2(3). This is a right the people have reserved. And the Constitution preserves this right by creating a mandatory obligation upon the Secretary of State to place this question on the ballot.

Further, contrary to Petitioners' arguments, NRS 295.026 was amended to specifically stop the initiative process. That statute cannot be described as an appropriate use of the Legislature's authority to facilitate the initiative process under Article 19, Section 5 of the Constitution. The amendment to NRS 295.026 was adopted to admittedly obstruct the initiative process required by Article 19, Section 2(3). This violates the case law cited by Intervenors which actually provides: "Nor may it 'hamper or render ineffective the power reserved by the people'. . . ." *State ex rel. McPherson v. Snell*, 131 P.2d 930, 934 (Or. 1942); Intervenors' Memorandum at 4:13-16.

Legislative measures facilitating the initiative process that have been upheld by the Nevada Supreme Court, such as single-subject and description of effect, are measures on the front end of the initiative process and not measures that interfered with the initiative process once the petition had gone through the constitutional verification process. Tellingly,

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[8] Petitioners and Intervenors also argue that the Secretary of State supported the original enactment of NRS 295.026. For a discussion of the original intent and legislative history, see § III, *infra*.

Intervenors do not claim any constitutional deficiency which render the Initiative Petitions in this case "void," and therefore the Secretary's transmittal of the initiative petition to the Legislature was effective, unlike the scenario they cite to in *Rogers v. Heller*, 117 Nev. 169, 178, 18 P.3d 1034 (2001). Intervenors' Memorandum at 4.

In this case, Petitioners and Intervenors plainly argue the Legislature can stop initiative process by the amendment to NRS 295.026 based on the bargain struck and amendment to NRS 295.026 on the 120th day of the Legislative Session, long after the Legislature failed to act within 40 days as required by the Nevada Constitution. Petitioners' and Intervenors' construction of Article 19, Section 2(3) of the Constitution renders that 40-day time period meaningless. Petitioners and Intervenors admit as much in their "good policy" arguments that during the Legislative Session, the Legislature may take action outside the 40-day time period that directly or indirectly addresses the petition and theoretically do something "better" for the proponents than what the petition requested.

The right to vote on a verified petition is a right reserved to the people. It is not a right that can be negated by the Legislature or an individual such as the Petitioners. As the Petitioners put it, NRS 295.026 "actually expands the rights of the Petitioners." Petitioners' Memorandum at 14:22-23. But it does so only by denying the electorate and the signors of the Initiative Petitions their own constitutional rights.

Intervenors' reliance on California, Colorado and Ohio withdrawal statutes and Constitutional provisions are misplaced. Intervenors' Memorandum at 12-13. For example, the California law requires the withdrawal of the measure "at any time before filing the petition with the appropriate elections official" or for a statewide initiative or referendum, "at any time before the Secretary of State certifies that the measure has qualified for the ballot pursuant to Section 9033." Cal. Elec. Cod. § 9604 (a) & (b). The California, Colorado and Ohio constitutional provisions have no 40-day legislative action requirement before the secretary of state is required to submit the question to a vote. Further, the Colorado Constitution merely requires "[i]n submitting the same and in all matters pertaining to the form of all petitions, the

secretary of state and all other officers shall be guided by the general laws." Colo. Const. art. V, § 1(7). The Colorado general withdrawal statute allows withdrawal of an initiative petition within 60 days prior to the election. Colo. Rev. Stat. § 1-40-134.

Because the Constitution is clear on its face and expressly spells out the process for legislative consideration of the initiative and subsequent placement of the initiative on the ballot, the Legislature cannot engage in law-making that contravenes the provisions of the Constitution. To the extent Petitioners suggest that NRS 295.026 permits them to withdraw a verified initiative petition that has been submitted to the Legislature, that reading of NRS 295.026 contradicts the Nevada Constitution and cannot stand. Therefore, Petitioners are not entitled to any writs compelling such unconstitutional actions by the Secretary of State and their Petition should be dismissed in its entirety.

III. The Legislative History of Statutes Allowing Withdrawal of Verified Initiative Petitions Is Misconstrued and Inapposite.

Because the plain language of NRS 295.026 contradicts the initiative petition process expressed in the Constitution, this Court need not refer to legislative history to interpret the statute. However, there is some confusion in the legislative history regarding the nature of the withdrawal of initiative petitions previously recognized by the Secretary of State. But like the plain interpretation of the Constitution and statutes, reference to the legislative history of NRS 295.026 and withdrawal of initiative petitions are unavailing to Petitioners. Although the Petitioners correctly recognize that the original adoption of NRS 295.026 was supported by the Secretary of State in 2017, they misapprehend the purpose of the statute as proposed and the use to which withdrawal is being used now.

The Legislature initially enacted NRS 295.026 in 2017, and amended the statute on May 31, 2021, the last day of the 2021 Legislative Session. *Compare* A.B. 45 (2017), *with* A.B. 321 (2021). The original version of NRS 295.026 was proposed with the intent of providing a statutory mechanism for a petitioner to withdraw an initiative with insufficient signatures or one that was invalid for some other reason, before it was a verified petition submitted to the

Legislature. Cegavske Decl. at ¶¶ 4-5, **Exhibit 1**; Declaration of J. Settelmeyer ("Settelmeyer Decl.") at ¶ 3, attached hereto as **Exhibit 2**. This purpose is reflected in the legislative history of Assembly Bill 45 when Wayne Thorley, Deputy Secretary for Elections noted that "[t]here have been petitions filed with our office in the past to which we granted a withdrawal when the petition sponsors asked for it." Assembly Comm. on Legislative Operations & Elections, Minutes dated April 11, 2017, at 7 (W. Thorley). This was in response to a question about defective or unconstitutional petitions, and the concern over whether the petition could be refiled with the Secretary of State. *Id.* (Assemblyman Ohrenschall). The discussion surrounded petitions filed for circulation, not petitions submitted for signature verification.

Critically, once the Secretary of State's office has verified signatures on a petition, no petition has been permitted to be withdrawn. Cegavske Decl. at ¶ 7, **Exhibit 1**. This comports with the intention of NRS 295.026 as enacted in 2017—to allow for withdrawal of a petition filed for circulation but not yet filed for verification of signatures. Because no other verified petition has ever been withdrawn, that is the only logical meaning of Mr. Thorley's statements during the adoption process—petitions were permitted to be withdrawn where they were unconstitutional, incomplete, violated statute, or were otherwise unverified. Neither the Legislature nor the Secretary of State must take action on those unverified petitions in any event—the statutes don't require it and the Constitution prohibits it. No unverified petition is submitted to the Legislature or put on the ballot. *See* Nev. Const. art. 19, § 2(3). The statute was proposed as a housekeeping tool to correct defective petitions before verification of signatures or to eliminate failed petitions. Cegavske Decl. at ¶ 4, **Exhibit 1**; Settelmeyer Decl. at ¶¶ 4-6. Therefore, the legislative history for NRS 295.026 actually supports the Nevada Constitution and cannot be used to compel the Secretary of State to avoid constitutional duties. Furthermore, the Secretary of State did not participate in the crafting of AB 321 amending NRS 295.026 in the 2021 Legislative Session. Cegavske Decl. at ¶ 9, **Exhibit 1**.

The legislative history of NRS 295.026 supports the Secretary of State's mandatory duty to protect the rights of the voters by placing a verified initiative petition on the ballot for the

people to "enact or reject" the proposed law. To the extent NRS 295.026 or its legislative history is inconsistent with the Nevada Constitution, the Constitution supersedes contrary statute.

IV. The Rights of the People to Vote on a Verified Petition Are Constitutional and Inviolate—Any Alternative Violates Voting Rights Reserved in the Constitution.

Petitioners attempt to make hay from the fact that they believed they had the right to withdraw the Initiative Petitions at any time. Petitioners' Memorandum at 15. Petitioners argue that they "had the right, and were correct to believe they had the right, to withdraw the Petitions." *Id.* at 15:9-10. They state, without support, that they relied to their detriment on the Secretary's silence on the issue of withdrawal. *Id.* at 18. Not only is that argument incorrect as a matter of law as set forth above, it ignores the rights of the many individuals who signed the Initiative Petitions so that they could be presented to the Legislature and ultimately the electorate. Petitioners essentially argue that regardless of the other supporters of the Initiative Petitions, they alone have the power to determine to withdraw. Petitioners cannot bring an initiative without the electorate to support them.

Petitioners' argument conflicts with constitutional integrity as well. "The people reserve to themselves the power to propose laws . . . and to enact or reject the same at the polls." Nev. Const. art 19, § 2(3). Nevada recognizes that "'initiative' is the right of a specified number of the electorate to unite in proposing laws to the legislative body, which, after due consideration must submit the same to the vote of the people for their approval or disapproval." *Rea*, 76 Nev. at 486, 357 P.2d at 586. The court in *Rea* recognized that the initiative process is not a personal right—it is a right of the electorate both to support submission of an initiative to the Legislature by signing the petition, and to consider "the approval or disapproval of such statute or amendment to a statute . . . at the next succeeding general election." Nev. Const. art 19, § 2(3).

The withdrawal of a verified petition which is submitted to the Legislature would "expand the rights of the Petitioner" but it would do so at the cost of the rights of the people and the electorate. *Compare* Petitioners' Memorandum at 14:22-23, *with* Nev. Const. art 19, § 2(1).

In developing the initiative process, "[t]he people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution, **and to enact or reject them at the polls**." Nev. Const. art. 19, § 2(1). Any bargain struck or statute adopted by the Legislature to the contrary violates the peoples' reservation of rights and cannot stand.

V. Petitioners Cannot Assert a Legal Claim of Estoppel or Reliance in a Proceeding for Extraordinary Writ Relief.

Finally, Petitioners appear to argue that they relied on NRS 295.026 and the Secretary of State's silence on the issue of withdrawal.[9] Petitioners' Memorandum at 15-16. This argument is problematic for many reasons including that the Secretary of State provided express direction to Petitioners that she had to consider her constitutional obligations. **Exhibit 3**, Corresp. to Petitioners; *see* discussion in § IV, *supra*. Moreover, Petitioners' claim fails as matter of law because: (1) there is no "justifiable reliance" exception for enforcement of the Constitution; (2) any legal claim for estoppel or reliance would require a legal action and processing of evidence, discovery, and a trial; and (3) availability of a viable legal claim would negate this action for extraordinary writ relief.

To the extent Petitioners are making an argument that the Secretary of State should be estopped from fulfilling her constitutional duties, that argument fails both because estoppel is a claim at law and would undermine any petition for extraordinary writ and because estoppel does not apply here. Estoppel does not apply against the State in matters affecting governmental functions. *Foley*, 110 Nev. at 1302; 885 P.2d at 587.

For those reasons, Petitioners have not stated any claim for relief and cannot assert any claim related to reliance on the "right to withdraw" their Initiative Petitions.

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[9] As set forth in the Cegavske Declaration, the Secretary of State was never consulted about the amendments to NRS 295.026 adopted the last day of the 2021 Legislative Session. Therefore, any argument based upon the purported "silence" of the Secretary of State as to Petitioners' bargain with the Legislature is demonstrably incorrect.

VI. The Initiative Process Cannot Be Relegated to Another Legislative Tool.

Intervenors suggest that allowing withdrawal of an initiative petition facilitates good public policy because it allows the circulators of a petition to negotiate with the Legislature or otherwise adapt to changed circumstances. They argue that "the Legislature could do something better for the proponents than what the petition requested and the proponents would not want to put it to the vote in a general election." Intervenors' Memorandum at 13:17-18. In addition to ignoring the constitutional rights reserved to the people to enact or reject a petition, Intervenors and Petitioners fail to recognize both the purpose of the initiative process and the potential for misuse of the petition process.

A. By Permitting Withdrawal, the Legislature Turns the Petition Process into Just Another Legislative Tool—Not a Right of the People.

Intervenors further argue that the result of this petition process was a historic compromise. Perhaps it was, but the petition process cannot be fundamentally altered for the withdrawal of one petition because the result is described by those with a significant amount to lose as "better."

There is no doubt that taxing the mining industry to support education is "better" for the gaming industry. But whether that is what the people want is a determination to be made by allowing the initiative petition process to complete—the reason for the initiative process in the first place. The initiative petition process was proposed and designed to allow the electorate to adopt or amend statutes without or despite the Legislature. Allowing the very Legislature that the initiative petition process was designed to circumvent to now circumvent the "approval or disapproval" of initiatives by the electorate is an ironic—and impermissible—development. If permitted to be withdrawn by compromise with the Legislature outside the 40 days given in the Constitution for the Nevada Legislature to act rather than enacted or rejected by the electorate independent of the Legislature, the initiative process becomes just another legislative tool rather than a right reserved the people. This would negate the reason the initiative process was

adopted in the first place.

B. By Permitting Withdrawal, the Legislature Opens the Petition Process for Abuse.

By pointing out the potential for abuse, the Respondent certainly does not mean to imply that any impropriety took place here. Rather, the Secretary's obligation to protect constitutional rights of the people by arguing to fulfill her constitutional mandate compels the Secretary to point out that withdrawal of Petitions opens a door for misuse and abuse. Withdrawal allows circulators of a petition to propose something that may be extremely unfavorable to an industry or government agency and then threaten to go forward to the ballot "unless" the industry or agency take some action. At least one commentator has recognized and described more thoroughly this potential for extortive action. Las Vegas Review-Journal, Steve Sebelius, Legislature should repeal extortion-by-initiative law, Jan. 22, 2022, https://www.reviewjournal.com/opinion/opinion-columns/steve-sebelius/steve-sebelius-legislature-should-repeal-extortion-by-initiative-law-2510288/ (last visited Feb. 20, 2022). The circulator could even pursue an initiative petition for personal gain at the expense of the signors to unite and propose a petition and the electorate to "enact or reject" the initiative. The integrity of the initiative petition process cannot be compromised by one "historic compromise" no matter how much better that compromise may be than the proposed petition.

CONCLUSION

The rights of a petition circulator are impermissible enlarged by the ability to withdraw an initiative petition at the expense of the signors who unite to propose a new law or amendment to existing law. And the constitutional rights of the electorate to "enact or reject" a petition are impermissibly terminated by withdrawal—a procedure not contemplated in the Nevada Constitution. Because the duties of the Secretary of State are express and clear in the Nevada Constitution, she is duty bound to uphold the Constitution and place the Initiative Petitions on the ballot in the November 2022 election. No law-making of the Legislature can negate or alter those express duties under the guise of "facilitating" the petition process. The Legislature

cannot deprive the electorate of the rights they have expressly reserved to themselves in the initiative process to "enact or reject" an initiative petition. Petitioners are not entitled to any extraordinary writs, and their Petition for Writs of Mandamus and Prohibition must be dismissed with prejudice.

Dated: February 22, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I served the foregoing **RESPONDENT'S ANSWERING BRIEF** on the following individual(s) by email service pursuant to NRCP 5(b)(2)(F) and consent by the Parties at the email addresses listed below:

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An employee of Great Basin Law

EXHIBIT 1

EXHIBIT 1

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Barbara Cegavske in her official capacity as
Nevada Secretary of State

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action, Petitioners, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Respondent.	Case No.: 21 OC 00182 1B Dept. No.: 2

DECLARATION OF BARBARA CEGAVSKE

I, Barbara Cegavske, declare as follows:

1. I have personal knowledge of the matters stated herein by virtue of my position as Nevada Secretary of State, a position I have held since January 2015 following the election of November 2014.

2. This Declaration is being filed in support of Respondent's Answering Brief in this litigation and is based on personal and first-hand knowledge of the facts stated herein.

3. During the 2017 Legislative Session, the Office of the Secretary of State proposed legislation in the form of Assembly Bill 45 ("AB 45"). Among other things, section 30 of AB 45 was intended to provide a mechanism for sponsors of initiative petitions to withdraw those petitions after they had been filed with my Office. Section 30 was adopted and later codified as NRS 295.026.

4. The concept of withdrawal of filed initiative petitions arose as a housekeeping tool to eliminate defective, incomplete, or unused petitions from the active records. Withdrawal was only intended to be permitted after filing but before submission of signatures for verification. AB 45 was intended to allow a petition sponsor to withdraw the petition for various reasons including that the petition does not obtain sufficient signatures, the petition is constitutionally defective, the petition violates a statute or the Nevada Constitution, to avoid duplicative petitions, or for other procedural reasons.

5. The concept of withdrawal of an initiative petition was never intended to permit withdrawal by the petition sponsor once the signatures had been verified and the Secretary of State had sent the petition to the legislature.

6. My Office had received several withdrawal requests similar to those described above, but had no formal mechanism for withdrawal of filed initiative petitions.

7. In my time as Secretary of State prior to this litigation, no petition sponsor has ever requested withdrawal of an initiative petition once the signatures have been verified. In fact, my Office did not locate a single initiative petition that the petition sponsor has withdrawn once the required signatures have been submitted for verification.

8. Several members of the Nevada Legislature expressed concern over the improper withdrawal of an initiative petition once signatures had been verified and the petition had been sent to the Legislature. But because NRS 295.026 was intended to allow the withdrawal of only filed initiative petitions, those concerns were alleviated.

9. Before and during the 2021 Legislative Session, no one contacted my Office regarding any amendments to NRS 295.026 or imposition of deadlines for withdrawal of

initiative petitions prior to an election.

10. I spoke with the Attorney General's Office prior to the bargain that was struck in the 2021 Legislative Session, and I advised them that I would follow the Nevada Constitution regarding the Secretary of State's duties regarding initiative petitions.

11. I was further advised that the Attorney General's Office was looking into Colorado statutes regarding the withdrawal of initiative petitions, and I reiterated that I intended to perform my duties under the Nevada Constitution.

12. My Office did not request an opinion regarding initiative petitions from the Nevada Attorney General, nor was my Office consulted in the development of Attorney General Opinion No. 2021-04.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22nd, 2022.

Barbara K. Cegavske

Barbara K. Cegavske
Secretary of State

EXHIBIT 2

EXHIBIT 2

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FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, AN INDIVIDUAL; KENNETH BELKNAP, AN INDIVIDUAL; NEVADANS FOR FAIR GAMING TAXES PAC, A NEVADA COMMITTEE FOR POLITICAL ACTION; FUND OUR SCHOOLS PAC, A NEVADA COMMITTEE FOR POLITICAL ACTION, Petitioners, vs. BARBARA CEGAVSKE, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE, Respondent.	Case No.: 21 OC 00182 1B Dept. No.: 2

DECLARATION OF JAMES A. SETTELMEYER

I, James A. Settelmeyer, declare as follows:

1. I have personal knowledge of the matters stated herein by virtue of my position as Nevada State Senator, District 17, a position I have held since being elected in the November 2010 election, and also by virtue of serving on the Senate Committee on Legislative Operations and Elections (the "Committee").

2. In 2017, Assembly Bill 45 ("AB 45") came before the Committee for consideration. AB 45 included a section on withdrawal of initiative petitions, which concerned me and other legislators because withdrawal of an initiative could be used for improper purposes, such as to extort groups or individuals until they acquiesced to demands leading to withdrawal of a petition.

3. I expressed those concerns both on the record on May 3, 2017 in a Committee hearing and in private conversations with members of the Secretary of State's staff. I was assured that this withdrawal provision in AB 45 was intended to allow petition sponsors to withdraw initiative petitions which were defective, duplicative, unconstitutional, contained inadequate signatures, or for other procedural errors and omissions.

4. I further understood that withdrawal was for initiative petitions that had been filed with the Secretary of State's Office, but not initiative petitions that had been signed by the electorate and submitted for verification.

5. The Secretary of State's staff also confirmed that they had granted withdrawals

process was on "autopilot," meaning the procedures set forth in the Nevada Constitution were followed.

6. AB 45 was presented as a "technical bill" brought to clean up the election and voter registration process, not as a bill brought by activists to substantially alter the initiative petition process.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 17, 2022.

James A. Settelmeyer

Nevada State Senator, District 17

EXHIBIT 3

EXHIBIT 3

BARBARA K. CEGAVSKE
Secretary of State

STATE OF NEVADA

MARK A. WLASCHIN
Deputy Secretary for Elections

OFFICE OF THE
SECRETARY OF STATE

June 8, 2021

Ms. Maggie McLetchie
maggie@nvlitigation.com

via Email

Re: Petition Withdrawal

Ms. McLetchie,

I am in receipt of your petition withdrawal dated June 2, 2021.

We are currently reviewing it and considering Article 19, Section 2 of the Nevada Constitution and NRS 295.026. We will contact you as soon as our review is complete.

If you have any questions, please contact the Elections Division at (775) 684-5705 or NVElect@sos.nv.gov.

Respectfully,

Barbara K. Cegavske
Secretary of State

By: Mark Wlaschin
Mark Wlaschin, Deputy Secretary for Elections

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Attorneys for Petitioners

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

vs.

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

Respondent.

Case No.: 21 OC 00182 1B

Dept. No.: II

PETITIONERS' REPLY IN SUPPORT OF PETITIONS FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The legal questions at issue in this action may be stated concisely. It does not matter, in any pertinent analysis, what either the Nevada Secretary of State (the "Secretary") or a lone, non-sponsoring state senator of the minority party, thinks may have been the intent either of Assembly Bill ("A.B.") 45 (2017) or A.B. 321 (2021); no party has claimed that the text of either piece of legislation is ambiguous or is susceptible of multiple, plausible interpretations. The law, codified as amended in NRS 295.026, says exactly what it says, its text speaks for itself, and "when the words of the statute have a definite and ordinary meaning, this court will not look beyond the plain language, unless it is clear that this meaning was not intended." *Carson-Tahoe Hosp. v. Building & Const. Trades Council of Northern Nevada*, 122 Nev. 218, 220, 128 P.3d 1065, 1066-1067 (2006) (internal quotations omitted). What decides this matter is whether NRS 295.026 facilitates the initiative process and therefore is constitutionally proper, or whether it does not, and is thus invalid. Every other issue raised by the parties leads, finally, to that determination.

In her brief responding to the writ petition, the Secretary relies, primarily, upon a textual reading of Article 19, Section 2 of the Nevada Constitution, arguing that provision mandates that she "shall" place the Petitions on the general election ballot; that she has no discretion to do otherwise; that the constitutional command is so clear that no Legislative direction may interfere with that process; that her duties to the People mandate this interpretation; and that, consequently, NRS 295.026 is unconstitutional and unenforceable. This approach, however, disregards the express authority given to the Legislature by Article 19, Section 5 to "provide by law for procedures to facilitate the operation" of the people's initiative power, and in fact undermines and contravenes the constitutional and statutory initiative regime in Nevada. In her role as the State's chief elections officer, the Secretary undertakes all

manner of duties and conduct that regulate, shape, foster, permit, and facilitate the rights of Nevadans to the initiative process—all of which (and much of it pursuant to regulations authored, enacted, and enforced by the Secretary herself) functions to facilitate that process under Article 19, Section 5.

In short, the Nevada Legislature has determined, in its wisdom, that the ability to withdraw filed initiative petitions, during a particular interval long before a general election, is a useful right to be bestowed upon proponents of measures—who are also, themselves, the Secretary shall be reminded, "the People"—and assists in facilitating the process by which citizens act in their legislative capacities under the Nevada Constitution. The Secretary's unilateral declaration that the Legislature's determination is unconstitutional is unsustainable and beyond her authority, and NRS 295.026 requires her to permit withdrawal of the Petitions here. The requested writs of mandamus and prohibition should issue in this action.

II. ARGUMENT

A. Under A Basic Separation of Powers Analysis The Secretary Does Not Have the Authority To Disregard the Mandate of NRS 295.026 and To Force Her Constitutional Interpretation Upon Petitioners

Even apart from the legal substance of the disagreement between the parties, it must be made clear that even if the Secretary currently harbors the constitutional doubts about NRS 295.026 that she discusses in her brief, she has not acted upon those concerns in an appropriate way. "Legislation is presumed constitutional absent a clear showing to the contrary," and "[a] party attacking a statute's validity is faced with a formidable task." *Universal Elec., Inc. v. State, ex rel. Office of the Labor Comm.*, 109 Nev. 127, 129, 847 P.2d 1372, 1373-1374 (1993) (internal quotations

omitted).[1] Furthermore,

> In case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated. Further, the presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional.

Id. (quoting *List v. Whisler*, 99 Nev. 133, 137, 660 P.2d 104, 106 (1983)).

Here, in the guise of constitutional fealty, the Secretary is claiming that NRS 295.026 is unconstitutional; there can be no legitimate doubt about that. So the burden is not Petitioners' to establish the validity of the law, but rather the Secretary's to, essentially, ask this Court to strike it down. And the burden, is per above, a formidable one, in which she must establish the correctness of her position clearly. It matters not that the Secretary did not initiate this lawsuit, or that she is listed as "Respondent" in its caption. It is the legal positions of the respective parties, and not the formalities of the case title, that determines the rights and obligations of the litigants.[2] Petitioner's only burden is to demonstrate that the law as written places a non-discretionary duty upon the Secretary to permit them to withdraw the Petitions, and they have certainly done so.

It is undisputed that her office sponsored A.B. 45 in 2017, and that her staff

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[1] This is true in every context—civil jurisprudence, criminal jurisprudence, administrative law, etc. "All statutes are presumed constitutional, and the party attacking the statute has the burden of establishing that the statute is invalid." *Williams v. State*, 118 Nev. 536, 542, 50 P.3d 1116, 1120 (2002).

[2] *See e.g. N. Nev. Ass'n of Injured Workers v. Nev. State Indus. Ins. Sys.,* 107 Nev. 108, 115 n.13, 807 P.2d 728, 732 n.13 (1991) (explaining that the complaint's caption "should not be determinative as to whether a state official has been sued in his or her official or individual capacity," and that the court should look to the substance of the allegations to determine if the alleged conduct was within the scope of the official's capacities).

testified in support of it, even voicing support for a statutory mechanism for withdrawal of filed initiative petitions. At no time did she or her representatives state any constitutional concerns regarding the provisions that would establish the right of initiative proponents to withdraw their measures. *See* Petitioners' Memorandum, at 5-7. It is also undisputed that in 2021, when the Legislature considered A.B 321, again, at no time did the Secretary make known her constitutional position, this time that the entire amendment establishing the withdrawal deadlines was somehow entirely unconstitutional and invalid—despite ample opportunity to do so. *See* Petitioners' Memorandum, at 7-10. To the contrary, the Secretary's office even prepared a form for initiative proponents to use to request the withdrawal of an initiative pursuant to NRS 295.026. *See* Petitioners' Supplemental Appendix ("P. Supp. App."), at HOLL00147. It is not so much an estoppel argument Petitioners are making, as it is a recognition that a constitutional officer permitted them to rely upon state statutes, the enactment of which she requested and assisted, now only to act unilaterally and beyond her powers to frustrate the lawful purposes of withdrawal of the initiative petitions.

The presumption of constitutionality of legislation respects the authority of the Legislature to act on behalf of the people as its elected representative body. As for the courts, it is "emphatically the province and duty of the judicial department to say what the law is," and "Nevada courts are the ultimate interpreter of the Nevada Constitution." *Legislature v. Settelmeyer*, 137 Nev. Adv. Op. 21, 486 P.3d 1276, 1280 (2021). "The executive power," which the Secretary wields within the functions of her office, "extends to the carrying out and enforcing the laws enacted by the legislature." *Del Papa v. Steffen*, 112 Nev. 369, 377, 915 P.2d 245, 250 (1996). While it is certain that executive officers must act constitutionally, which entails the same sorts of interpretations of the state constitution to guide conduct as any municipal, county, or state official or employee must undertake on a daily basis, the same being true of

everyday citizens, law enforcement officers, attorneys, etc. The Secretary's official functions simply do not include the ability to unilaterally declare lawfully-enacted state statutes to be in violation of the Constitution – only the judiciary has that ability – and her response to these writ petitions do not appear to evince an understanding of the seriousness of this breach of the separation of powers.

B. NRS 295.026 Facilitates The Initiative Process

1. The Secretary's citation to *Scott* demonstrates that NRS 295.026 is a proper exercise of the Legislature's authority to establish procedures facilitating the initiative process

In her response, the Secretary refutes her own argument regarding the ability of the Legislature to facilitate the initiative process. As part of her conception of a tripartite set of groups who have rights in the initiative process—the proponents first, the signatories thereafter, and finally the electorate—which are passed among them in succession in a scheme of evolving and transferring "jurisdiction," the Secretary analogizes the lack of constitutional provision for removal of a voter's petition signature after verification of the submitted petition to the lack of textual constitutional allowance for withdrawal.[3] The Secretary cites to *State v. Scott*, 52 Nev. 216, 285 P. 511 (1930), in support of the assertion that "verification" is the moment when "jurisdiction" over a proposed initiative petition passes, irreversibly, to the "electorate," indicating that here, too, after the Secretary verified the Petitions' signatures, there had lit a fuse that cannot be extinguished. Response, at 12.

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[3] No authority is offered to support this scheme, which the Secretary considers key to her entire conception of the constitutional initiative process. It appears to be a *post-hoc* justification of the Secretary's actions.

Nothing in law supports the Secretary's notion that the "rights to" or "jurisdiction over" a particular initiative petition belong to—, exclusively, in order, and on the Secretary's announced schedule of events—"(1) the entity who drafts the petition…; (2) the 10 percent or more of voters who sign…; and (3) the electorate…." Response, at 11.

But this is immediately rebutted by the text of the *Scott* decision itself. The Secretary's selected case quotation states that "*[i]n the absence of something in statute permitting it*, no individual signer, nor indeed, all the signers, could thereafter withdraw or erase their names from the petition." *Id*. (emphasis added). The Nevada Supreme Court in *Scott,* therefore, assumed that the Legislature could, if it considered it to be a necessary or beneficial facilitation of the initiative process, enact statutory provisions permitting post-verification withdrawal. That it had not done so by 1930 meant, in *Scott*, that petition signatures could not be withdrawn. That does not mean it could not be done; clearly it could, as the *Scott* Court plainly recognized.

The implications for the present case are too obvious to belabor. Here, the important distinction is that we do, in fact, have "something in statute permitting [withdrawal]" of an initiative after the verification process—NRS 295.026. If, a century ago, the *Scott* court (in the best case the Secretary could locate to establish her position) understood that the Legislature could legislate constitutionally regarding the initiative process, and that the process of signature verification was no impermeable barrier to lawmaking in furtherance of the initiative process, so should the Secretary understand that, and so should the Court.

2. NRS 295.026 does not obstruct the initiative process

Of course, the Legislature could have enacted such a statute in 1930, and of course it had constitutional authority to enact both A.B. 45 in 2017 and A.B. 321 in 2021. Once again, "Nevada's Constitution permits the Legislature to provide procedures to facilitate the initiative process." *Educ. Init. v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013). As the Secretary rightly points out, such procedures may not "obstruct, rather than facilitate, the people's right to the initiative process." *Id.*, 129 Nev. at 38. Here, the Secretary claims that NRS 295.026 does, indeed, obstruct the people's rights to the initiative process, but she has a strange conception of both how it does that and exactly whom are the "people."

The Secretary's argument is that the withdrawal statute creates rights in the proposers and circulators of a particular initiative that violate the rights of the people as a whole—the electorate, the populace of Nevada, however one wants to state it.

This does not make a lot of legal sense. There would be no initiative proposal without the original ideas, time, money, and tireless efforts of the individuals or groups that draft, defend (and here it took an expensive and time-consuming lawsuit to get to the signature-gathering phase), circulate, and finalize the measure in order to get it before 1) the Nevada Legislature, and 2) the electorate. Yet at the moment when the rubber begins to hit the road, and the Legislature will consider the proposal, and the prospect now of an expensive campaign for passage at a contested general election—at that moment, the Secretary insists not only that the important rights now belong wholly to the ten percent of voters who signed the petitions or to the "people" as a whole, so that nothing can come between the measure and the ballot box, but that the Legislature has no power whatsoever to recognize the rights of proponents like Petitioners any longer. This moment occurs, by the Secretary's signature verification calendar, **twenty-three months** before the ensuing general election. And yet, the claim is that the Legislature may not consider it to be a facilitation of the process, when viewed as a whole, that some intervening social, cultural, political events, subsequent legislation, good faith negotiations—or a war, or a recession, or a worldwide pandemic, or the collapse of a tax-targeted industry, nothing—can justify a statute permitting the proponents to withdraw their measure once the Secretary has verified the signatures, a rule the Secretary has cobbled from disparate shards of discrete constitutional provisions but that appears nowhere in law itself. This is bad legal reasoning, and bad public policy.

The rights of the people to the initiative process are important and to be protected, certainly. But it does no good to imagine Petitioners, the ones who are actually taking advantage of the rights contained in Article 19, as somehow separate

from "the people." The electorate has the right to consider measures that appear on the ballot; it is proponents, acting in the legislative capacity afforded them by direct democracy, who create the measures and steer them—or not—onto that ballot.[4] The single-subject rule (NRS 295.009) or the petition-district rule (NRS 295.012) appear, on their faces, to make it more difficult for proponents to propose initiative measures, impinging on the ease of actually bringing measures to the people in the exercise of Article 19 rights, yet they stand as legislation facilitating the *process*. The Secretary argues, however, that NRS 295.026 obstructs and burdens the rights of the people to "enact or reject" proposed legislation that the people, writ large, did not draft, cannot amend, did not support financially through signature gathering, and will not bear the task of the political campaign that everyone knows is necessary in order to have an initiative succeed at a general election. This is an empty appeal to an illusory "people," and the Court should correct this executive overreach by the Secretary. NRS 295.026, in the judgment of the elected representatives of the people, is a useful addition to the initiative process and a positive expansion of proponents' rights to engage in the fullness of direct democracy.[5] It should be upheld.

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[4] The distinct role that the proponents of an initiative have in the process has been recognized by the California Supreme Court. *See Perry v. Brown*, 52 Cal. 4th 1116, 1142, 265 P.3d 1002, 1017-18 (2011) ("the official proponents of an initiative measure are recognized as having a distinct role—involving both authority and responsibilities that differ from other supporters of the measure—with regard to the initiative measure the proponents have sponsored.").

[5] It could also be argued that without the statutory right to withdraw an initiative if circumstances make such withdrawal appropriate or necessary, prospective initiative proponents may be less inclined to attempt qualify initiatives for the ballot. By making withdrawal rights clear, NRS 295.026 further facilitates, rather than obstructs, the initiative process.

III. CONCLUSION

Based upon the foregoing, Petitioners ask this Court to issue the requested writs of mandamus and prohibition.

AFFIRMATION

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

DATED this 4th day of March, 2022.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2022, a true and correct copy of the **PETITIONERS' REPLY IN SUPPORT OF PETITIONS FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION** was served upon all parties via electronic mail to the following:

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FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

NEVADA RESORT ASSOCIATION, a Nevada non-profit corporation; GREATER LAS VEGAS CHAMBER OF COMMERCE, d/b/a VEGAS CHAMBER, a Nevada non-profit corporation,

Intervenors-Petitioners,

vs.

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

Respondent.

Case No.: 21 OC 00182 1B

Dept. No.: II

INTERVENORS-PETITIONERS' REPLY IN SUPPORT OF PETITIONS FOR MANDAMUS AND PROHIBITION

The Secretary of State unlawfully refuses to recognize that these two initiative petitions have been withdrawn under NRS 295.026. The Secretary claims that she is justified in her refusal because Art. 19 § 2(3) says she "shall" submit the proposed initiatives to a vote in the next general election

given that the Legislature took no action on the petitions within the 40 days required by the Constitution. The Secretary also argues that Art. 19 § 2(1) grants a right to the people to vote on an initiative petition, which vests once the petition is filed with the Secretary with the requisite signatures. Neither of those arguments account for the fact that the Constitution itself left the process for initiative petitions open to legislative enactment. *See* Nev. Const. Art. 19 § 5. And the Secretary's argument regarding a vested right of the people to vote on an initiative once it has been proposed is one that the Secretary has created out of whole cloth. The Petitioners-Intervenors therefore ask this Court to issue a writ of mandamus, declaring that these initiative petitions have been validly withdrawn and directing the Secretary of State to take no further action on them.

I.

THE CONSTITUTION DOES NOT PREVENT WITHDRAWAL OF AN INITIATIVE PETITION

The majority of the Secretary's arguments in this case are premised on a belief that the proponent of a ballot initiative cannot withdraw a proposed initiative after signatures are submitted to the Secretary. That, however, is the very point of contention in this case. Only one of the Secretary's arguments appears to actually challenge whether NRS 295.026 is a constitutionally valid enactment: the Secretary claims that withdrawal of an initiative petition conflicts with a vested right of the people to enact or reject a proposed initiative after the petition has met the signature requirements. But that argument is based on a flawed constitutional analysis and misleading quotes.

A. The Secretary Relies on Unavailing Authority for Her Position in this Case

The Secretary repeatedly cites to *State v. Scott* and *Rea v. City of Reno* as the primary support for her position. In part of her brief, she fluidly cites to those cases and leaves the impression that they provide a coherent rule of law that applies directly to this case. *See* Respondent's Answering Brief ("RAB") at 11-12. The Secretary's selective use of language from two separate cases, yet nonetheless presented as one coherent rule of law, masks her unsound reasoning and the inapplicability of those cases to this situation.

1. *Scott* Does Not Hold that Withdrawal is Constitutionally Impermissible

The Secretary quotes *State v. Scott*, 52 Nev. 216, 285 P. 511 (1930) to argue that a petition cannot be withdrawn after signatures are collected. *Scott* involved a writ of mandamus to the Las Vegas city clerk and city commissioners to call a special recall election for the Las Vegas city mayor. 52 Nev. at 216, 285 P. at 512. The clerk refused to call the special election, arguing that one hundred signatures were withdrawn from the petitions, "which left the petitions without the required number of signers and thereby deprived the clerk of authority to call an election." *Id.* at 514. The court rejected the clerk's position, holding that "[n]either the recall amendment nor the statute enacted pursuant thereto make any provision" for the withdrawal of signatures. *Id.* Instead, the petitions met the legal requirements, were signed by a sufficient number of qualified electors, and were filed with the clerk. *Id.* Under those circumstances, where "nothing further ha[d] been prescribed by the Constitution or statute as a condition precedent to the calling of an election by the clerk," the clerk's "power and duty to act in conformity with the mandate of the law attached when the petitions were filed." *Id.*

The court reasoned that "[b]efore filing with the clerk[,] the petition is in the power of the signers." *Id.* at 515. But after the petition is filed, "[t]he public has now become interested in it" and "[i]n the absence of something in the statute permitting it, no individual signer, nor, indeed, all the signers, could thereafter withdraw or erase their names from the petition." *Id.* at 515. Accordingly, because "no provision ha[d] been made for withdrawals, nor [was] there anything in the Constitution or aiding statute from which such a right [could] be implied" the court held that "[t]he withdrawals were therefore ineffectual." *Id.* In short, individual signers could not withdraw their names from a recall petition after it was filed with the clerk, because nothing in the law allowed for it.

The Secretary's use of *Scott* ignores that *Scott* itself contemplated that the Legislature might enact a statute that would permit withdrawal of signatures. Indeed, the Nevada Supreme Court specifically based its ruling on "the absence of something in the statute permitting" withdrawal of signatures. *Id.* at 515. In this instance, the Legislature has expressly allowed for withdrawal under NRS 295.026. As a result, *Scott* does not support the Secretary's argument that an initiative petition cannot be withdrawn after it is filed with the Secretary; it actually implicitly acknowledges the opposite possibility, which is that a statute like NRS 295.026 could permit withdrawal.

2. The Secretary's Argument Erroneously Invents a New Constitutional Right

The Secretary quotes *Rea v. City of Reno*, 76 Nev. 483, 357 P.2d 585 (1960) to argue that once an initiative has been proposed, it cannot be withdrawn because there must be a vote at the polls. *See* RAB at 12:19-26. But the premise that there must be a vote already assumes that the petitions cannot be withdrawn. To support that assumption, the Secretary quotes *Scott*, which, for the reasons explained above, is not applicable when there is a statute permitting withdrawal. Further, just like *Scott*, an analysis of *Rea* shows that it does not actually support the Secretary's position, because *Rea* was not addressing whether a proposed initiative can be withdrawn before an election. *Rea* was about whether a proposed initiative can become a law without a vote at the polls.

a. *Rea* Does Not Recognize a Constitutional Right of the People that Vests Upon Verification of Signatures

In *Rea*, the legislature passed a statute that required a city to adopt an amendment by resolution if at least 60% of the registered voters signed a petition proposing the amendment. *Id.* at 485, 357 P.2d at 586. That is, if enough voters signed an initiative petition, the statute effectively required that the city adopt the initiative as law without any further vote. *See id.* The Nevada Supreme Court held that such a procedure violated the Constitution, which instead provides for a process in which laws are *proposed* by the initiative process, but can only be enacted *at the polls*. So when the *Rea* court said "the constitution does not contemplate the initiative without a ballot"—which is the language that the Secretary relies on—it was just recognizing that an initiative cannot become law unless approved by a vote. *Id.* at 486, 357 P.2d at 586.

The Secretary characterizes *Rea* as "deciding that the initiative must be submitted to the voters (and not simply decided by the municipality)" and therefore "the *Rea* court foreclosed the possibility that an initiative petition need not be submitted to the voters." RAB at 15:2-3. The Secretary goes on to claim that the petitioners want the same thing that what was rejected in *Rea*: "an initiative process without a ballot." RAB at 15. This characterization of *Rea* is blatantly misleading, however, because *Rea* was not a case about withdrawal, or even about a legislative body *choosing* to enact law in response to an initiative. Instead, the statute at issue *required* the city to adopt a proposed petition

if the petition contained at least 60% of the voters' signatures; it did not just not "allow", as the Secretary describes it, the city to enact a similar provision addressing the same subject. *See* RAB at 14:23-25. Indeed, if the statute at issue would have been enforceable, the proposed initiative would have become law without any substantive vote at all (whether by a legislative body or by the people). *Rea* simply recognized that there was no mechanism permitted by the Constitution by which the people could enact a law without a vote at the polls or by requiring a legislative body to enact an initiative without any discretion.

The Secretary, on page 12 of her brief, also emphasizes in bold two other quotes from *Rea* to imply that the court held that once an initiative is proposed it "must be enacted or rejected at the polls" and "must submit the same to a vote of the people for their approval or disapproval." RAB at 12:19-26. The Secretary is effectively asking this Court to ignore all context and simply read that *Rea* said a proposed initiative "thereafter must be enacted or rejected at the polls." What *Rea* really meant, however, is that a proposed initiative, *in order to become law*, must be enacted at the polls; the initiative process itself cannot enact a law unless there is a vote. The court acknowledged this context when it contrasted the "power" to propose an initiative with the power to enact law: "This power consists of the power to *propose* laws which thereafter must be enacted or rejected at the polls as distinguished from a power which would effect a legislative act without an election." *Id.*[1]

b. Art. 19 § 2(3)'s Use of "Shall" Does Not Justify the Secretary's Actions

Although the Secretary feigns a conservative approach to this issue by relying on Art. 19 § 2(3)'s use of "shall", she has really taken a radical approach by unilaterally declaring that a popularly enacted statute is unconstitutional. When "shall" and the Secretary's ministerial duty is actually considered in the broader context of the initiative process, as it must be, it becomes clear that her duty presumes a valid initiative petition. *See* Intervenors-Petitioners Memorandum of Points and Authorities, at 3-8. Once an initiative petition has been withdrawn, however, there is no longer a valid

[1] The plain language of Art. 19 § 2(1) does not establish the nebulous right of the public to vote an initiative petition that is asserted by the Secretary either. Art. 19 § 2(1) is broadly about the people reserving the "power" to enact laws through the initiative process, because the Constitution otherwise delegates that power to the Legislature. The Secretary just assumes, rather than establishes, that Art. 19 § 2(1) gives the public a vested right, and bases her conclusion on circular reasoning that already assumes a petition cannot be withdrawn. RAB at 10:22-25.

petition that would invoke the Secretary's ministerial duty in Art. 19 § 2(3). *Id.* Accordingly, the Secretary's reliance on Art. 19 § 2(3)'s use of "shall" to argue that she must submit these proposed amendments to the voters assumes that the petitions cannot be validly withdrawn, which is the very legal point that she has the burden to establish in this case.

The Nevada Supreme Court has rejected the sort of narrow interpretation of constitutional language that the Secretary urges. In *State ex rel. Doyle v. Koontz*, the secretary of state and a petitioner disagreed about whether the full text of a proposed initiative must go on the ballot or if, as prescribed by statute, it could be submitted "by title accompanied with a brief statement of the purport thereof." 69 Nev. 247, 248, 248 P.2d 412, 412 (1952). At that time, the constitutional provision read: "If *said initiative measure* be rejected by the legislature, or if no action be taken thereon within said fort[y] (40) days, the secretary of state shall *submit the same* to the qualified electors for approval or rejection at the next ensuing general election." *Id.* at 249, 248 P.2d at 413 (emphasis added). The petitioner argued that the full text of the initiative was required by the Constitution's use of "said initiative" in combination with "shall submit the same," as italicized in the quote above. *Id.* The court rejected that argument, noting that it was not supported in light of other authorities and there was no express requirement that the full text of the initiative petition be put on the ballot. *Id.* at 252-53, 248 P.2d at 414. The court further noted "[t]hat such requirement is however *implied* by the provision that the secretary of state 'submit the same' to the electors and that the antecedent of 'the same' is 'said initiative measure' is not convincing." *Id.* at 253, 248 P.2d at 414.

In this case, the Secretary's argument is similarly unconvincing. This Court should not accept the Secretary's bold invitation to declare a statute unconstitutional by reading "shall" out of context and by inventing an implied Constitutional right of the public to vote on an initiative petition after signatures are collected. Instead, this Court should take the approach that avoids the Secretary's artificially-created constitutional conflict and find that the Legislature validly enacted NRS 295.026 under Art. 19 § 5, that the petitioners validly withdrew their initiative petitions under NRS 295.026, and that there is therefore no longer a valid initiative petition that would invoke the Secretary's duty to submit any measure in the upcoming election.

B. "Self-Executing" Does Not Mean Other Procedures Are Preempted by the Constitution

The Secretary argues that if an initiative procedure is not in the Constitution, then it is prohibited by the Constitution. RAB at 3 (citing to *Scott* to argue that "this the Nevada Constitution does not allow"). The Secretary asserts that, because Art. 19 is self-executing, a court cannot "read into the initiative process elements that did not already exist in the Constitution," (RAB at 14:14-15), and that "[n]either the Legislature nor the voters who enacted Article 19 saw fit to include a provision for withdrawal once the signatures are verified," (RAB at 15:19-21). But that is exactly what Art. 19 § 5 does—leave the door open to further procedures not contemplated by the Constitution. The Constitution says that Art. 19 is self-executing, not that the entire process is self-contained in Art. 19.

The Secretary's argument wrongly implies that self-executing means that the Legislature cannot add to what is provided for in the constitution. Self-executing simply means that "no legislation is necessary to give effect to it." 16 Am. Jur. 2d Constitutional Law § 102. Self-executing does not mean that further legislation is preempted or prohibited. 16 Am. Jur. 2d Constitutional Law § 104 ("A self-executing provision of a constitution does not necessarily exhaust legislative power on the subject."). As long as a legislative act is in harmony with the self-executing provision and does not curtail the right provided by the constitution, the legislature may enact laws to facilitate a self-executing constitutional provision. 16 Am. Jur. 2d Constitutional Law § 104; *see also* 16 C.J.S. Constitutional Law § 128 ("Although constitutional provisions that are self-executing require no implementing legislation, implementing legislation is permissible as long as it does not directly or indirectly impair, limit, or destroy the rights that the self-executing constitutional provision provides."). Indeed, Art. 19 § 5 expressly authorizes the Legislature to implement legislation to "facilitate" the initiative petition process. Accordingly, a statutory provision does not conflict with the constitution just because it adds a procedure to what is set forth in the constitution. Instead, the statutory procedure must actually conflict with the constitutional procedure by curtailing the constitutionally-given right.

The Secretary cites to *Wilson v. Koontz* to support her argument that Art. 19 is an entirely self-contained process that cannot be added to. Much like the other cases she cites to, the Secretary takes the language from *Wilson* out of its context and gives more effect to it than was intended. *Wilson*

considered whether Art. 19 is actually self-executing or not. *Wilson*, 76 Nev. at 34, 348 P.2d at 231 (stating that the respondent's argument was that Art. 19 § 3 was not self-executing as to proposed constitutional amendments). Part of the test to determine whether a constitutional provision is self-executing is to consider whether the provision "enacts a sufficient rule by means of which the right given may be enjoyed and protected" or whether it "contemplate[s] subsequent legislation to carry it into effect". *Id.* at 39, 348 P.2d at 234. In determining that Art. 19 § 3 was self-executing as it relates to constitutional amendments, the court noted—which is the language the Secretary now relies on—that "the procedure therefor [sic] is fully covered by general law." *Id.* at 38, 348 P.2d at 233. In other words, Art. 19 is self-executing because no further legislation is *necessary* to give effect to it. That does not, however, mean that no further legislation is *permitted* to expand upon the process provided by the Constitution. The constitutionality analysis must still be about whether the statute facilitates the power reserved by Art. 19.[2]

1. There is No Conflict Between NRS 295.026 and Art. 19 § 2

One of the cases cited by the Secretary is a good example of an actual conflict between a statute and the Constitution's initiative process. In *We the People Nevada ex rel. Angle v. Miller*, the petitioners sought to put a proposed constitutional amendment on the ballot in the upcoming election. 124 Nev. 874, 878, 192 P.3d 1166, 1169 (2008). Under a statute enacted by the legislature, the deadline to submit an initiative petition for signature verification was no later than the third Tuesday in May, which would have been May 20, 2008. *Id.* at 882, 192 P.3d at 1171. But, as the court ultimately found, the Constitution itself set the outer limits of the deadline at not more than 155 days before the next general election, which would have been June 17, 2008. *See id.* at 889, 192 P.3d at 889. The court held that the statute was unconstitutional because it shortened the time for collection of signatures that was provided by Art. 19. The statute "directly contravene[d] Article 19" because

[2] The Secretary argues that "[l]egislative measures facilitating the initiative process that have been upheld by the Nevada Supreme Court, such as the single subject and description of effect, are measures on the front end of the initiative process and not measures that interfered with the initiative process once the petition had gone through the constitutional verification process." RAB at 18:21-24. This argument is also based on the Secretary's misunderstanding of what it means for a constitutional provision to be self-executing. Nothing in Art. 19 limits the Legislature's authority to enact procedures that facilitate the process after signatures have been verified.

it required a submission of signatures by a date earlier than what the Constitution authorized the legislature to set. *Id.* at 891, 192 P.3d at 1177.

Unlike the timing to gather signatures, the Nevada Constitution is silent regarding whether a proposed initiative petition may be withdrawn. Indeed, the only constitutional language that the Secretary claims is directly contravened by NRS 295.026 is the word "shall" in Art. 19 § 2(3).[3] But, as argued in the Intervenor-Petitioners memorandum of points and authorities, a withdrawal under NRS 295.026 pulls an initiative petition entirely out of the process set forth in Art. 19 § 2.

2. NRS 295.026 Facilitates the Rights in Art. 19 § 2

Ultimately, the primary purpose of reserving the power to propose and enact initiative petitions was to give the people the ability to enact laws "without being thwarted by an unresponsive legislature." 42 Am. Jur. 2d Initiative and Referendum § 1; *see, e.g., Turley v. Bolin*, 554 P.2d 1288, 1292 (Ariz. Ct. App. 1976) (noting "the right of the people of initiat[ing] legislation when disappointed by the failure of their elected representatives to pass desired legislation"). There is nothing constitutionally untoward about allowing a proponent to withdraw an initiative petition when the Legislature has addressed those concerns and the proponents no longer desire to enact the initiative. Simply put, the initiative process reserves legislative authority for the people for when the Legislature is not responsive; if the Legislature becomes responsive to the people on an issue, then the initiative process is no longer needed and withdrawal is a valuable tool. Conversely, providing the ability to withdraw an initiative petition does not hinder or make it more difficult for the people to exercise their right to propose initiative petitions when the legislature is failing to respond to their concerns.

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[3] The Secretary argues that "the Constitution does not say 'the Secretary of State shall submit the question to the voters **unless**' some unidentified criteria are met." RAB at 15:13-15. Yet, this is precisely what the Constitution requires when considered in context with Art. 19 § 5; the Legislature is authorized to set the criteria.

The Secretary also argues that withdrawal should not be permitted because it would render meaningless the 40-day requirement for the Legislature to act upon an initiative petition. RAB at 19:8-10. The Secretary's 40-day requirement arguments demonstrate just how badly the Secretary misunderstands the purpose of the initiative process and Art. 19 § 5. The 40-day requirement ensures that an initiative petition gets "preference" in the legislative session. Nev. Const. Art. 19 § 2(3). But, without the ability to withdraw an initiative, it also severely limits the ability of the Legislature to consider the substance of an initiative petition after those 40 days have passed. The Secretary does not explain how allowing withdrawal of a petition, which could additionally incentivize the Legislature to take up an issue raised by a petition even if it missed the 40-day deadline, would hinder the initiative process rather than facilitate it. Instead, she takes a rigid interpretive approach to Art. 19 § 2(3) that ignores the purpose of the initiative process, which is to enact law when the Legislature is being unresponsive.

Accordingly, the withdrawal provision, as illustrated by the very facts of this case, does not hinder the purpose for which the people reserved the power to propose initiatives but instead facilitates it. It is inapposite that the Secretary and one lawmaker, from who she submits a declaration, apparently disagree with the Legislature's policy decision to allow withdrawal after a petition is verified. Concerns about misuse of the withdrawal statute are policy issues for the Legislature, not a basis for this Court to find that NRS 295.026 is unconstitutional.

C. The Proponents of an Initiative Represent the Signers

The Secretary argues that an individual proponent cannot withdraw an initiative petition that 10 percent of the voters have "proposed" under Art. 19 § 2(2). RAB at 3-5, 10-12. But the person who circulates a petition has special import under Nevada law as a representative of the petition; the circulator is granted special rights and responsibilities that other signers do not possess. *See* NRS 295.015; *cf. Perry v. Brown*, 265 P.3d 1002, 1017-18 (Cal. 2011) ([T]he official proponents of an initiative measure are recognized as having a distinct role—involving both authority and responsibilities that differ from other supporters of the measure—with regard to the initiative measure the proponents have sponsored."). As relevant here, the circulator has the authority to designate who may withdraw the petition. Indeed, before a petition is ever presented to voters for their signatures, the circulator must submit to the Secretary "[t]he names of not more than three persons who are authorized to withdraw the petition or submit an amended petition." NRS 295.015(1)(b)(3). This provision was part of the 2017 bill that the Secretary herself supported. Accordingly, before any voter signs an initiative petition—that is, before any registered voter ever takes a purported interest in the petition under the Secretary's theory—the names of the persons who can withdraw that petition are already established under Nevada law.

Dated this 4th day of March, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2022, a true and correct copy of the foregoing "Intervenors-Petitioners' Reply in Support of Mandamus and Prohibition" was served upon all parties by United States mail, postage prepaid, at Reno, Nevada, as follows:

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action, Petitioners, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Respondent.	Case No.: 21 OC 00182 1B Dept. No.: 2

ORDER THAT WRITS OF MANDAMUS

AND PROHIBITION ISSUE

This matter having come before this Court pursuant to Petitioners Robert Hollowood, Kenneth Belknap, Nevadans for Fair Gaming Taxes PAC, and Fund Our Schools PAC (collectively, "Petitioners") Petition For Writ Of Mandamus and Writ Of Prohibition ("Petition") to be issued against Nevada Secretary of State Barbara Cegavske ("Secretary Cegavske"), in her official capacity, and Petitioners' Memorandum of Points and Authorities in Support of the Petition, and having

considered Secretary Cegavske's Memorandum of Points and Authorities in Response to Petitioners' Petition, Petitioners' Reply in Support of the Petition, as well as the Nevada Resort Association and the Vegas Chamber's (collectively, "Petitioners in Intervention") Memorandum of Points and Authorities in Support of the Petition, and the Court having determined that oral argument will not assist the Court (See FJDCR 3.12), the Court finds and orders as follows:

STATEMENT OF FACTS

On January 14, 2020, and amended on March 30, 2020, Petitioner Robert Hollowood, on behalf of Petitioner Nevadans for Fair Gaming Taxes PAC, submitted and filed with the Nevada Secretary of State's office Statutory Initiative Petition S-01-2020.

On January 15, 2020, and amended on March 24, 2020, amended again on March 30, 2020, and amended a third time on June 19, 2020, Petitioner Kenneth Belknap, on behalf of Petitioners Fund Our Schools PAC, submitted and filed with the Nevada Secretary of State's office Statutory Initiative Petition S-02-2020.

On June 2, 2021, Petitioner Robert Hollowood, as the individual charged with the authority to do so under NRS 295.015(1)(b)(3), submitted to the Nevada Secretary of State's office a fully-executed Petition Withdrawal Form, pursuant to NRS 295.026, withdrawing Statutory Initiative Petition S-01-2020 and directing no further action be taken on it as provided in NRS 295.026(1)(a).

On July 20, 2021, the Office of Governor Sisolak requested a legal opinion from the Nevada Attorney General on the question of whether there was a conflict between Article 19, Section 2 of the Nevada Constitution and NRS 295.026 with respect to the withdrawal of ballot initiative petitions by their proponents. On July 28, 2021, the Nevada Attorney General responded with Attorney General Opinion ("AGO") 2021-04, answering that, in the opinion of the Attorney General's Office, there was no such conflict preventing withdrawal of initiative petitions by proponents.

On September 7, 2021, Secretary Cegavske issued a letter addressed to the Nevada Attorney General, indicating that her office would decline to permit Petitioners to withdraw their statutory initiative petitions and would place them on the 2022 General Election ballot for adoption or rejection by the voters.

On October 6, 2021, Petitioner Kenneth Belknap, as the individual charged with the authority to do so under NRS 295.015(1)(b)(3), submitted to the Nevada Secretary of State's office a fully-executed Petition Withdrawal Form, pursuant to NRS 295.026, withdrawing Statutory Initiative Petition S-02-2020 and directing no further action be taken on it.

STANDARD OF LAW

A writ of mandamus is proper "to compel the performance of an act which the law especially enjoins as a duty resulting from office, trust or station." NRS 34.160. The writ "shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. *See also Shoen v. State Bar of Nevada*, 136 Nev. 258, 259, 464 P.3d 402, 404 (2020). The "counterpart of the writ of mandate" is a writ of prohibition. NRS 34.320. A writ of prohibition may be issued to compel a person or body exercising judicial functions to cease performing beyond its legal authority. NRS 34.320. *See also Halverson v. Sec'y of State*, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008). The issuance of a writ of mandamus or prohibition is purely discretionary with this Court. *Smith v. Eighth Jud. Dist. Ct. In & For Cty. of Clark*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

This matter requires an interpretation and determination of the constitutionality of NRS 295.026. In Nevada, the language of a statute should be given its plain meaning. *We the People Nevada v. Secretary of State*, 124 Nev. 874, 881, 192 P.3d 1166, 1170-71 (2008). When facially clear, a court should not go beyond the language of the statute in determining its meaning. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986); *see also Las Vegas Taxpayer Comm. v.*

City Council, 125 Nev. 17, 208 P.3d 429, 437 (2009) (explaining that a statute's meaning is plain when it is "facially clear"). A statute is ambiguous if it "is capable of being understood in two or more senses by reasonably informed persons." *McKay*, 102 Nev. at 649, 730 P.2d at 442. If a statute is ambiguous or lacks plain meaning, "a court should consult other sources such as legislative history, legislative intent and analogous statutory provisions." *State, Div. of Insurance v. State Farm*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000).

"Legislation is presumed constitutional absent a clear showing to the contrary," and "[a] party attacking a statute's validity is faced with a formidable task." *Universal Elec., Inc. v. State, ex rel. Office of the Labor Comm.*, 109 Nev. 127, 129, 847 P.2d 1372, 1373-1374 (1993) (internal quotations omitted). In case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated. Further, the presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional. *List v. Whisler*, 99 Nev. 133, 137, 660 P.2d 104, 106 (1983).

ANALYSIS AND CONCLUSIONS OF LAW

Article 19 Section 2 of the Nevada Constitution reserves the right of the people to enact a statute through initiative petition. Nev. Const. art. 19, § 2 ("[T]he people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, to enact or reject them at the polls."). Per Article 19, Section 5, "the legislature may provide by law for procedures to facilitate the operation" of the constitution's provisions establishing Nevada's initiative and referendum processes. Nev. Const. art. 19, § 5. *See also Nevadans for the Prot. Of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006) ("[T]he Nevada Constitution explicitly authorizes the Legislature to enact laws regulating the initiative process, so long as those laws facilitate the

provision of Article 19.").

A statute facilitates the operation of initiative petitions if the statute's purpose is to safeguard the process of initiative petitions. *Cf. Fiannaca v. Gill*, 78 Nev. 337, 345, 372 P.2d 683, 687 (1962) ("[A]ny statutory provision intended to safeguard the operation of recall procedures aids in the operation thereof."). In addition to the purpose of the statute, a court may also consider the actual effect it has on the operation of the initiative petition process when determining if it facilitates the operation thereof. *Cf. Citizens for Honest & Responsible Government v. Secretary of State*, 116 Nev. 939, 947-48, 11 P.3d 121, 126-27 (2000) (considering "the actual effect of the statutory provisions" in the similar context of the self-executing constitutional right to recall). A restrictive effect on the number of petitions that reach the ballot, however, is not dispositive of whether a statute facilitates the operation of the initiative process. *See, e.g., Nevadans for the Prot. Of Prop. Rights, Inc.*, 122 Nev. at 903, 141 P.3d at 1241 (recognizing the Legislature's right to enact the single-subject rule under Article 19, Section 5, which can result in petitions not being placed on the ballot). Ultimately, "[a]ny legislation which tends to ensure a fair, intelligent and impartial accomplishment may be said to aid or facilitate the purpose intended by the constitution." *State ex rel. McPherson v. Snell*, 121 P.2d 930, 934 (Or. 1942). The statute must not, however, "curtail[ ] the right or plac[e] any undue burdens upon [the] exercise" of the constitutional right. *Id.*, 121 P.2d at 934.

In promulgating NRS 295.026, the Legislature is presumed to have acted constitutionally. *See Schwartz v. Lopez*, 132 Nev. 732, 745, 382 886 (2016). When a statute is susceptible to both a constitutional and an unconstitutional interpretation, courts are obliged to construe the statute so that it does not violate the constitution. *Sheriff v. Wu*, 101 Nev. 687, 708 P.2d 305 (1985). NRS 295.026 allows the proponent of an initiative petition to withdraw the petition by submitting a notice of withdrawal to the Secretary of State no later than 90 days before the election in which the

initiative will appear on the ballot. NRS 295.026(1)(a). NRS 295.026(1) itself provides the only requirement to withdraw a petition, which is to "submit[ ] a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State." Once a proponent submits a notice of withdrawal on the form prescribed by the Secretary of State, "no further action may be taken on that petition." NRS 295.026(2).

The language of NRS 295.026 is clear and express, and NRS 295.026 can and must be read in harmony with Article 19 of the Nevada Constitution. Article 19, Section 5 authorizes the Legislature to set procedural requirements for initiative petitions that are not found directly in the constitution. *See, e.g., Nevadans for Nevada v. Beers*, 122 Nev. 930, 938-39, 142 P.3d 339, 344-45 (2006) (holding additional legislative requirements for description of effect of initiative was constitutional even though the constitution's requirement was less burdensome). Statutory examples include the single-subject rule and the description of effect requirement. *See* NRS 295.009. Nothing in Article 19 appears to contravene the Legislature's ability to enact a provision permitting proponents such as Petitioners from deciding to withdraw their initiative measures.

Here, unlike the single-subject rule or the description of effect requirement, NRS 295.026 expands the rights of initiative proponents such as Petitioners. With enactment of NRS 295.026, proponents like Petitioners know throughout the process—from formulation through to election season—that they have a clear deadline and process for withdrawal of a petition. The ability to withdraw a petition can also save valuable time and resources for Nevadans, including proponents, opponents, the courts, the Secretary of State, and the Legislature.

The Court is not convinced by Secretary Cegavske's interpretation that "shall," as used in Article 19, Section 2, requires Secretary Cegavske to submit these initiative petitions to the voters at the 2022 General Election. Under Secretary Cegavske's interpretation of "shall," requirements like the single-subject and

description of effect rules (NRS 295.009) or the need to gather voter signatures from petition districts across the state (NRS 295.012) would be unenforceable because they are not enumerated considerations for the Secretary of State under Article 19, Section 2(3).

Accordingly, the Secretary Cegavske's ministerial duty to submit a petition to the voters at a general election assumes the existence of a valid petition that has complied with procedural requirements enacted by the Legislature. But the Legislature, through NRS 295.026, has provided that a petition withdrawn by its proponent is void and cannot be acted upon. Petitioners here submitted a notice of withdrawal for each initiative petition in question to the Secretary of State, on the form prescribed by the Secretary of State, earlier than 90 days before the next general election. Reading the relevant constitutional and statutory provisions in harmony, the Secretary of State's ministerial duty in this instance becomes clear: take no further action on these initiative petitions.

Accordingly, under NRS 295.026(2), Statutory Initiative Petitions S-01-2020 and S-02-2020 have been withdrawn and no further action may be taken on these initiative petitions.

THE COURT ORDERS:

A Writ of Mandate issue herein, directing Nevada Secretary of State Barbara Cegavske, in her official capacity, to withdraw Statutory Initiative Petitions S-01-2020 and S-02-2020, per the terms of NRS 295.026 and her non-discretionary duty under law, and that no further action be taken with respect to these initiative petitions.

A Writ of Prohibition issue herein, and Nevada Secretary of State Barbara Cegavske, in her official capacity, is ordered to halt from placing Statutory Initiative Petitions S-01-2020 and S-02-2020 on the 2022 General Election ballot in Nevada.

Petitioner immediately provide a proposed Writ of Mandate and Writ of Prohibition.

The oral argument set for Friday, March 11, 2022 is VACATED.

Dated this 9 day of March, 2022.

James E. Wilson Jr.
District Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 9 day of March 2022, I served a copy of this document by placing a true copy in an envelope addressed to:

Bradley S. Schrager, Esq. 3773 Howard Hughes Pkwy., Ste. 590 South Las Vegas, NV 89169 Margaret A. McLetchie, Esq. 602 South Tenth St. Las Vegas, NV 89101	Wayne Klomp, Esq. 1783 Trek Trail Reno, NV 89521 Joel D. Henroid, Esq. 3993 Howard Hughes Pkwy., Ste. 600 Las Vegas, NV 89169-5996

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

Billie Shadron
Judicial Assistant

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action, Petitioners, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Respondent.	Case No.: 21 OC 00182 1B Dept. No.: II **WRIT OF MANDATE**

TO: BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE

WHEREAS, on March 9, 2022, this Court having made and filed its written decision and order that a writ of mandate should issue and that Petitioners have no other plain, speedy or adequate remedy in the ordinary court of law;

YOU ARE HEREBY COMMANDED to withdraw Statutory Initiative Petitions S-01-2020 and S-02-2020, and that no further action be taken with respect to these initiative petitions.

WITNESS, the Honorable James E. Wilson Jr., of the First Judicial District Court of the State of Nevada, and attested by my hand and seal this 9 day of March, 2022.

James Wilson

Hon. James E. Wilson Jr., District Judge

Aubrey Rowlatt

District Court Clerk

By: KJ Deputy Clerk

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action, Petitioners, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Respondent.	Case No.: 21 OC 00182 1B Dept. No.: II **WRIT OF PROHIBITION**

TO: BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE

WHEREAS, on March 9, 2022, this Court having made and filed its written decision and order that a writ of prohibition should issue and that Petitioners have no other plain, speedy or adequate remedy in the ordinary court of law;

NOW, THEREFORE, you are ordered to halt from placing Statutory Initiative Petitions S-01-2020 and S-02-2020 on the 2022 General Election ballot in Nevada.

WITNESS, the Honorable James E. Wilson Jr., of the First Judicial District Court of the State of Nevada, and attested by my hand and seal this 9 day of March, 2022.

James Wilson

Hon. James E. Wilson Jr., District Judge

Aubrey Rowlatt

District Court Clerk

By: KR Deputy Clerk

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

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; and FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

vs.

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

Respondent.

Case No.: 21 OC 00182 1B
Dept.: II

NOTICE OF ENTRY OF ORDER

///

NOTICE IS HEREBY GIVEN that an ORDER THAT WRITS OF MANDAMUS AND PROHIBITION ISSUE was entered in the above-captioned matter on the 9th day of March, 2022. A true and correct copy of the order is attached hereto as Exhibit 1.

AFFIRMATION

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

DATED this 10 day of March, 2022

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March 2022, a true and correct copy of the **NOTICE OF ENTRY OF ORDER** was served upon all parties via electronic mailing to the following:

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EXHIBIT 1

EXHIBIT 1

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action, Petitioners, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Respondent.	Case No.: 21 OC 00182 1B Dept. No.: 2

ORDER THAT WRITS OF MANDAMUS

AND PROHIBITION ISSUE

This matter having come before this Court pursuant to Petitioners Robert Hollowood, Kenneth Belknap, Nevadans for Fair Gaming Taxes PAC, and Fund Our Schools PAC (collectively, "Petitioners") Petition For Writ Of Mandamus and Writ Of Prohibition ("Petition") to be issued against Nevada Secretary of State Barbara Cegavske ("Secretary Cegavske"), in her official capacity, and Petitioners' Memorandum of Points and Authorities in Support of the Petition, and having

considered Secretary Cegavske's Memorandum of Points and Authorities in Response to Petitioners' Petition, Petitioners' Reply in Support of the Petition, as well as the Nevada Resort Association and the Vegas Chamber's (collectively, "Petitioners in Intervention") Memorandum of Points and Authorities in Support of the Petition, and the Court having determined that oral argument will not assist the Court (See FJDCR 3.12), the Court finds and orders as follows:

STATEMENT OF FACTS

On January 14, 2020, and amended on March 30, 2020, Petitioner Robert Hollowood, on behalf of Petitioner Nevadans for Fair Gaming Taxes PAC, submitted and filed with the Nevada Secretary of State's office Statutory Initiative Petition S-01-2020.

On January 15, 2020, and amended on March 24, 2020, amended again on March 30, 2020, and amended a third time on June 19, 2020, Petitioner Kenneth Belknap, on behalf of Petitioners Fund Our Schools PAC, submitted and filed with the Nevada Secretary of State's office Statutory Initiative Petition S-02-2020.

On June 2, 2021, Petitioner Robert Hollowood, as the individual charged with the authority to do so under NRS 295.015(1)(b)(3), submitted to the Nevada Secretary of State's office a fully-executed Petition Withdrawal Form, pursuant to NRS 295.026, withdrawing Statutory Initiative Petition S-01-2020 and directing no further action be taken on it as provided in NRS 295.026(1)(a).

On July 20, 2021, the Office of Governor Sisolak requested a legal opinion from the Nevada Attorney General on the question of whether there was a conflict between Article 19, Section 2 of the Nevada Constitution and NRS 295.026 with respect to the withdrawal of ballot initiative petitions by their proponents. On July 28, 2021, the Nevada Attorney General responded with Attorney General Opinion ("AGO") 2021-04, answering that, in the opinion of the Attorney General's Office, there was no such conflict preventing withdrawal of initiative petitions by proponents.

On September 7, 2021, Secretary Cegavske issued a letter addressed to the Nevada Attorney General, indicating that her office would decline to permit Petitioners to withdraw their statutory initiative petitions and would place them on the 2022 General Election ballot for adoption or rejection by the voters.

On October 6, 2021, Petitioner Kenneth Belknap, as the individual charged with the authority to do so under NRS 295.015(1)(b)(3), submitted to the Nevada Secretary of State's office a fully-executed Petition Withdrawal Form, pursuant to NRS 295.026, withdrawing Statutory Initiative Petition S-02-2020 and directing no further action be taken on it.

STANDARD OF LAW

A writ of mandamus is proper "to compel the performance of an act which the law especially enjoins as a duty resulting from office, trust or station." NRS 34.160. The writ "shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. *See also Shoen v. State Bar of Nevada*, 136 Nev. 258, 259, 464 P.3d 402, 404 (2020). The "counterpart of the writ of mandate" is a writ of prohibition. NRS 34.320. A writ of prohibition may be issued to compel a person or body exercising judicial functions to cease performing beyond its legal authority. NRS 34.320. *See also Halverson v. Sec'y of State*, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008). The issuance of a writ of mandamus or prohibition is purely discretionary with this Court. *Smith v. Eighth Jud. Dist. Ct. In & For Cty. of Clark*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

This matter requires an interpretation and determination of the constitutionality of NRS 295.026. In Nevada, the language of a statute should be given its plain meaning. *We the People Nevada v. Secretary of State*, 124 Nev. 874, 881, 192 P.3d 1166, 1170-71 (2008). When facially clear, a court should not go beyond the language of the statute in determining its meaning. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986); *see also Las Vegas Taxpayer Comm. v.*

City Council, 125 Nev. 17, 208 P.3d 429, 437 (2009) (explaining that a statute's meaning is plain when it is "facially clear"). A statute is ambiguous if it "is capable of being understood in two or more senses by reasonably informed persons." *McKay*, 102 Nev. at 649, 730 P.2d at 442. If a statute is ambiguous or lacks plain meaning, "a court should consult other sources such as legislative history, legislative intent and analogous statutory provisions." *State, Div. of Insurance v. State Farm*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000).

"Legislation is presumed constitutional absent a clear showing to the contrary," and "[a] party attacking a statute's validity is faced with a formidable task." *Universal Elec., Inc. v. State, ex rel. Office of the Labor Comm.*, 109 Nev. 127, 129, 847 P.2d 1372, 1373-1374 (1993) (internal quotations omitted). In case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated. Further, the presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional. *List v. Whisler,* 99 Nev. 133, 137, 660 P.2d 104, 106 (1983).

ANALYSIS AND CONCLUSIONS OF LAW

Article 19 Section 2 of the Nevada Constitution reserves the right of the people to enact a statute through initiative petition. Nev. Const. art. 19, § 2 ("[T]he people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, to enact or reject them at the polls."). Per Article 19, Section 5, "the legislature may provide by law for procedures to facilitate the operation" of the constitution's provisions establishing Nevada's initiative and referendum processes. Nev. Const. art. 19, § 5. *See also Nevadans for the Prot. Of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006) ("[T]he Nevada Constitution explicitly authorizes the Legislature to enact laws regulating the initiative process, so long as those laws facilitate the

provision of Article 19.").

A statute facilitates the operation of initiative petitions if the statute's purpose is to safeguard the process of initiative petitions. *Cf. Fiannaca v. Gill*, 78 Nev. 337, 345, 372 P.2d 683, 687 (1962) ("[A]ny statutory provision intended to safeguard the operation of recall procedures aids in the operation thereof."). In addition to the purpose of the statute, a court may also consider the actual effect it has on the operation of the initiative petition process when determining if it facilitates the operation thereof. *Cf. Citizens for Honest & Responsible Government v. Secretary of State*, 116 Nev. 939, 947-48, 11 P.3d 121, 126-27 (2000) (considering "the actual effect of the statutory provisions" in the similar context of the self-executing constitutional right to recall). A restrictive effect on the number of petitions that reach the ballot, however, is not dispositive of whether a statute facilitates the operation of the initiative process. *See, e.g., Nevadans for the Prot. Of Prop. Rights, Inc.*, 122 Nev. at 903, 141 P.3d at 1241 (recognizing the Legislature's right to enact the single-subject rule under Article 19, Section 5, which can result in petitions not being placed on the ballot). Ultimately, "[a]ny legislation which tends to ensure a fair, intelligent and impartial accomplishment may be said to aid or facilitate the purpose intended by the constitution." *State ex rel. McPherson v. Snell*, 121 P.2d 930, 934 (Or. 1942). The statute must not, however, "curtail[ ] the right or plac[e] any undue burdens upon [the] exercise" of the constitutional right. *Id.*, 121 P.2d at 934.

In promulgating NRS 295.026, the Legislature is presumed to have acted constitutionally. *See Schwartz v. Lopez*, 132 Nev. 732, 745, 382 886 (2016). When a statute is susceptible to both a constitutional and an unconstitutional interpretation, courts are obliged to construe the statute so that it does not violate the constitution. *Sheriff v. Wu*, 101 Nev. 687, 708 P.2d 305 (1985). NRS 295.026 allows the proponent of an initiative petition to withdraw the petition by submitting a notice of withdrawal to the Secretary of State no later than 90 days before the election in which the

initiative will appear on the ballot. NRS 295.026(1)(a). NRS 295.026(1) itself provides the only requirement to withdraw a petition, which is to "submit[ ] a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State." Once a proponent submits a notice of withdrawal on the form prescribed by the Secretary of State, "no further action may be taken on that petition." NRS 295.026(2).

The language of NRS 295.026 is clear and express, and NRS 295.026 can and must be read in harmony with Article 19 of the Nevada Constitution. Article 19, Section 5 authorizes the Legislature to set procedural requirements for initiative petitions that are not found directly in the constitution. *See, e.g., Nevadans for Nevada v. Beers*, 122 Nev. 930, 938-39, 142 P.3d 339, 344-45 (2006) (holding additional legislative requirements for description of effect of initiative was constitutional even though the constitution's requirement was less burdensome). Statutory examples include the single-subject rule and the description of effect requirement. *See* NRS 295.009. Nothing in Article 19 appears to contravene the Legislature's ability to enact a provision permitting proponents such as Petitioners from deciding to withdraw their initiative measures.

Here, unlike the single-subject rule or the description of effect requirement, NRS 295.026 expands the rights of initiative proponents such as Petitioners. With enactment of NRS 295.026, proponents like Petitioners know throughout the process—from formulation through to election season—that they have a clear deadline and process for withdrawal of a petition. The ability to withdraw a petition can also save valuable time and resources for Nevadans, including proponents, opponents, the courts, the Secretary of State, and the Legislature.

The Court is not convinced by Secretary Cegavske's interpretation that "shall," as used in Article 19, Section 2, requires Secretary Cegavske to submit these initiative petitions to the voters at the 2022 General Election. Under Secretary Cegavske's interpretation of "shall," requirements like the single-subject and

description of effect rules (NRS 295.009) or the need to gather voter signatures from petition districts across the state (NRS 295.012) would be unenforceable because they are not enumerated considerations for the Secretary of State under Article 19, Section 2(3).

Accordingly, the Secretary Cegavske's ministerial duty to submit a petition to the voters at a general election assumes the existence of a valid petition that has complied with procedural requirements enacted by the Legislature. But the Legislature, through NRS 295.026, has provided that a petition withdrawn by its proponent is void and cannot be acted upon. Petitioners here submitted a notice of withdrawal for each initiative petition in question to the Secretary of State, on the form prescribed by the Secretary of State, earlier than 90 days before the next general election. Reading the relevant constitutional and statutory provisions in harmony, the Secretary of State's ministerial duty in this instance becomes clear: take no further action on these initiative petitions.

Accordingly, under NRS 295.026(2), Statutory Initiative Petitions S-01-2020 and S-02-2020 have been withdrawn and no further action may be taken on these initiative petitions.

THE COURT ORDERS:

A Writ of Mandate issue herein, directing Nevada Secretary of State Barbara Cegavske, in her official capacity, to withdraw Statutory Initiative Petitions S-01-2020 and S-02-2020, per the terms of NRS 295.026 and her non-discretionary duty under law, and that no further action be taken with respect to these initiative petitions.

A Writ of Prohibition issue herein, and Nevada Secretary of State Barbara Cegavske, in her official capacity, is ordered to halt from placing Statutory Initiative Petitions S-01-2020 and S-02-2020 on the 2022 General Election ballot in Nevada.

Petitioner immediately provide a proposed Writ of Mandate and Writ of Prohibition.

The oral argument set for Friday, March 11, 2022 is VACATED.

Dated this 9 day of March, 2022.

James E. Wilson Jr.
District Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 9 day of March 2022, I served a copy of this document by placing a true copy in an envelope addressed to:

Bradley S. Schrager, Esq. 3773 Howard Hughes Pkwy., Ste. 590 South Las Vegas, NV 89169 Margaret A. McLetchie, Esq. 602 South Tenth St. Las Vegas, NV 89101	Wayne Klomp, Esq. 1783 Trek Trail Reno, NV 89521 Joel D. Henroid, Esq. 3993 Howard Hughes Pkwy., Ste. 600 Las Vegas, NV 89169-5996

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

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

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; and FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

vs.

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

Respondent.

Case No.: 21 OC 00182 1B
Dept.: II

NOTICE OF SERVICE OF WRIT OF MANDATE AND WRIT OF PROHIBITION

///

///

I hereby certify that on this 14th day of March 2022, a true and correct copy of the **WRIT OF MANDATE and WRIT OF PROHIBITION** was received by our office via U.S. Mail and on the 15th day of March, 2022, was served upon all parties by an employee of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP via electronic mailing pursuant to NRCP 5(b)(2)(F) and the January 24, 2022, Stipulation.

AFFIRMATION

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

DATED this 16th day of March, 2022

WOLF, RIFKIN, SHAPIRO,
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FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

ROBERT HOLLOWOOD, an individual; KENNETH BELKNAP, an individual; NEVADANS FOR FAIR GAMING TAXES PAC, a Nevada committee for political action; FUND OUR SCHOOLS PAC, a Nevada committee for political action,

Petitioners,

NEVADA RESORT ASSOCIATION, a Nevada non-profit corporation; GREATER LAS VEGAS CHAMBER OF COMMERCE, d/b/a VEGAS CHAMBER, a Nevada non-profit corporation,

Intervenors-Petitioners,

vs.

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

Respondent.

Case No.: 21 OC 00182 1B

Dept. No.: 2

NOTICE OF APPEAL

Notice is hereby given that Barbara Cegavske, in her official capacity as Nevada Secretary of State, Respondent named above, hereby appeals to the Supreme Court of Nevada

from the final judgment in this case including the Order That Writs of Mandamus and Prohibition Issue issued on March 9, 2022, the Writ of Mandamus issued and served on March 14, 2022, and the Writ of Prohibition issued and served on March 14, 2022.

Dated: March 16, 2022.

GREAT BASIN LAW

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I hereby certify that on this date, I served the foregoing **NOTICE OF APPEAL** on the following individual(s) by email service pursuant to NRCP 5(b)(2)(F), NRAP 3(d)(1), and consent by the Parties at the email addresses listed below:

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Dated: March 16, 2022

An employee of Great Basin Law