IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

EDUCATION FREEDOM PAC,
Appellant,

vs.

BEVERLY ROGERS, AN INDIVIDUAL; RORY REID, AN INDIVIDUAL, AND BARBARA CEGAVSKI, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE,
Respondents.

No. 84735

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District First Judicial District Department II

County Carson City Judge Sr. Judge Charles M. McGee

District Ct. Case No. 22 OC 00027 1B

2. Attorney filing this docketing statement:

Attorney Jason D. Guinasso, Esq Telephone 775) 853-8746

Firm Hutchison & Steffen, PLLC

Address 5371 Kietzke Lane
Reno, NV 89521

Client(s) Education Freedom PAC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

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Client(s) Barbara Cegavske

Attorney Bradley S. Schrager, Esq Telephone 702) 341-5200

Firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

Address 3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, NV 89169

Client(s) Beverly Rogers, Rory Reid

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☒ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original
  - ☐ Modification
- ☒ Other disposition (specify): Invalidated Petition

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Reid, et al. v. Cegavske, et al.
Docket No.: 84736

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Reid, et al. v. Cegavske, et al.
In the First Judicial District Court of the State of Nevada In and for Carson City
Case No.: 220C0044 1B / Dept. No.: II / Date of Disposition: Pending

8. Nature of the action. Briefly describe the nature of the action and the result below:

Appellant filed an Initiative Petition with the Secretary of State. The district court invalidated the Petition and issued an order enjoining Appellant from distributing the Petition.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether Education Freedom PAC's Description of Effect is a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals?
2. Whether the district court erred in requiring Education Freedom PAC's Description of Effect to contain subjective, argumentative language?
3. Whether the district court erred in finding that Education Freedom PAC's Initiative failed to abide by article 9, section 6 of the Nevada Constitution?
4. Whether NRS 295.061obligates a district court to dismiss a complaint if the district court cannot comply with the statutorily required timeline?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Reid, et al. v. Cegavske, et al.
Supreme Court Case No.: 84736
Similar issues: Validity of Initiative Petition

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☒ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☒ A ballot question

If so, explain: Appellant filed an Initiative Petition with the Secretary of State. The district court invalidated the Petition and issued an order enjoining Appellant from moving forward in the process of the initiative. The issue the Initiative Petition seeks to address involves a statutory initiative to amend Nevada's education system, which is an issue of public policy. Appellant also seeks to address whether NRS 295.061 obligates the district court to dismiss the complaint if it cannot comply with the required timeline which is an issue of first impression.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively retained by the Supreme Court: (1) pursuant to NRAP 17(a)(3) because it is a case involving a ballot or election issue; and (2) pursuant to NRAP 17(a)(12) because there is an issue of first impression. The district court concluded that Article 19, Section 6 of the Nevada Constitution applies to constitutional amendments, as well as statutes and statutory amendments. There is no opinion of this Court with a holding that supports this conclusion.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 26, 2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served May 3, 2022

Was service by:

☒ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. ***See*** **AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed May 19, 2022

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
☒ NRAP 3A(b)(3)	☐ NRS 703.376
☐ Other (specify)	

(b) Explain how each authority provides a basis for appeal from the judgment or order:
This Court has jurisdiction over this appeal pursuant to NRAP 3A(b)(1)because it is an appeal from a final order resolving all claims presented to the district court, and pursuant to NRAP 3A(b)(3)because it is an appeal from an order granting an injunction.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Education Freedom PAC
Rory Reid
Beverly Rogers
Barbara Cevaske

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Claim that Petition is invalid, disposition April 25, 2022.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Education Freedom PAC
Name of appellant

Jason D. Guinasso, Esq
Name of counsel of record

06/08/2022
Date

/s/ Jason D. Guinasso, Esq.
Signature of counsel of record

Washoe County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 8th day of June , 2022 , I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

☒ By serving it upon the below counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

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Dated this 8th day of June , 2022

/s/ Kaylee Conradi
Signature

ORIGINAL

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

BEVERLY ROGERS, an individual; RORY REID, an individual,

Plaintiffs,

vs.

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

Defendant.

Case No.: 22 OC 00071B
Dept.: F

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION S-02-2022 PURSUANT TO NRS 295.061(1)

Arbitration Exemption: Declaratory and Injunctive Relief

BEVERLY ROGERS and RORY REID (collectively, "Plaintiffs"), file this Complaint for declaratory and injunctive relief against Barbara Cegavske, in her official capacity as the Nevada Secretary of State, pursuant to NRS 295.061, NRS 30.030, and NRS 33.010. Plaintiff alleges and complains as follows:

JURISDICTION AND VENUE

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

2. Venue is proper under NRS 13.020 and 13.040 because this action is against a public officer acting in her official capacity, and also pursuant to NRS 295.061(1).

PARTIES

3. Plaintiff BEVERLY ROGERS is a resident of and registered voter in Clark County, Nevada.

4. Plaintiff RORY REID is a resident of and registered voter in Clark County, Nevada.

5. Defendant Barbara Cegavske is Nevada Secretary of State and is sued in her official capacity. As the Secretary of State, Ms. Cegavske is the Chief Officer of Elections for Nevada and is responsible for the execution, administration, and enforcement of the state's election laws. *See* NRS 293.124. Ms. Cegavske's duties also include qualifying initiatives for submission to the Nevada Legislature and/or the Nevada electorate and disqualifying initiatives that are determined to be invalid.

GENERAL FACTUAL ALLEGATIONS

6. On or about January 31, 2022, Nevada Statutory Initiative Petition S-02-2022 ("Petition") was filed with the Nevada Secretary of State. *See* **Exhibit 1**, a true and accurate copy of Notice of Intent to Circulate Statewide Initiative or Referendum Petition associated with Statutory Initiative Petition S-02-2022.

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

> The Petition establishes an education freedom account program under which parents will be authorized to establish an account for their child's education. The parent of any child required to attend public school who has been enrolled in a public school in Nevada during the entirety of the immediately preceding school year or whose child is eligible to enroll in kindergarten may establish an account for the child. Money in the accounts may be used to pay certain educational expenses including, but not limited to, tuition and fees at participating entities. Participating entities may include eligible private schools, a program of distance education not operated by a public school and parents, among others.

> The maximum available grant is 90 percent of the statewide base per pupil funding amount. For Fiscal Year 2021-2022, that statewide base per pupil funding amount is $6,980 per pupil, and for Fiscal Year 2022-2023 it is $7,074 per pupil. That said, nothing in the initiative requires the Legislature to appropriate money to fund the accounts. If no money is appropriated, no funding will be available for the accounts. Funding the accounts, however, could necessitate a tax increase or reduction of government services.

See **Exhibit 1**, at 21.

8. The Petition seeks to effectuate a wholesale amendment of Title 34 of Nevada's revised statutes, which relates to education, by adding seventeen new sections to Chapter 385 of the NRS and by amending NRS 835.007, 219A.150, 385B.060, 385B.150, 385B.160, 385B.170, 388A.471, 388.850, 392, 392.033, 392.070, 392.074, and 392.466. The apparent purpose of this broad-reaching statutory revision to Nevada's education statutes is to divert state funds from public to private education by creating a scheme which would permit parents of school age children to establish education savings accounts which would be funded by the State of Nevada.

9. Under this proposed statutory scheme, if funded by the Legislature, an education savings account, referred to as "education freedom accounts" ("EFAs") in the proposed initiative, is established when a parent enters into an agreement with the State Treasurer for the creation of the account. To be eligible for an account, a child must have been enrolled in public school during the entirety of the school year immediately preceding the establishment of the EFA. *Id.* at 2, ¶ 9. The accounts are administered by the Treasurer and must be maintained with a financial management firm chosen by the Treasurer. *Id.* at 5, § 12.1.

10. If a parent enters into an agreement with the State Treasurer for the creation of an EFA, and if the Legislature has appropriated money to fund grants to such EFAs, a grant of money on behalf of the child is to be deposited into the child's EFA in an amount equal to 90 percent of the statewide base per pupil funding amount. *Id.* at 3, §§ 10.1-10.3.

11. The money is to be deposited in quarterly installments and may be carried forward from year to year if the agreement is renewed for that student. *Id.* at 4, §§ 10.7, 10.8. An EFA agreement is valid for one school year but may be terminated early. *Id.* at 3, § 8.4. If the child's parent terminates the EFA agreement, or if the child graduates from high school or moves out of state after an account is created, unused funds revert to the State General Fund. *Id.* at 3-4, §§ 9.5, 10.8(b). If an EFA agreement is terminated early, "the child may not receive instruction from a public school in this State until the end of the period for which the last deposit was made into the [EFA]." *Id.* at 2, § 4.

12. The EFA program requires participating students to receive instruction from one or more "participating entities," which include private schools, universities, programs of distance education, tutors, and parents. *Id.* at 2, 5, §§ 4, 13.1.

13. The EFA funds may be spent by parents on authorized educational expenses, which include tuition and fees, textbooks, tutoring or teaching services, testing and assessment fees, disability services, and transportation to and from the participating entities. *Id.* at 4, § 11.1.

14. With some small exceptions, the proposed initiative largely tracks the provisions of Senate Bill (SB) 302 (2015), which the Nevada Supreme Court struck down in *Schwartz v. Lopez*, 132 Nev. 732 (2016). The Court ruled that the money that the Legislature had appropriated for K–12 public education could not be used in this manner, consistent with the constitutional mandates to fund public education. While attempting to circumvent this funding issue by passing the buck to the Legislature to appropriate the necessary funding for the EFAs contemplated by the proposed initiative, the proponents have plainly run afoul of Article 19, section 6 of the Constitution, which prohibits the "proposal of any statute or statutory amendment which makes an appropriation or otherwise requires the expenditure of money, unless such statute or amendment also imposes a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides for raising the

necessary revenue," with the result that this proposed initiative, like its predecessor SB 304, is fatally flawed.

15. Moreover, under the Nevada constitution, the initiative power only extends to actual statutes which impose real obligations. The initiative power does not extend to purported pronouncements of law that only come into effect upon the happening of some future event, such as the Legislature enacting the necessary funding for the EFA grants. *See* Nev. Const., Art. 19, § 1 ("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."). By providing that the statutory scheme contemplated in the Petition only becomes effective upon the Legislature appropriating funding for the EFA grants, which may or may not happen, the proposed initiative cannot properly be considered to be a proposed statute and is therefore beyond the initiative power granted by the Constitution.

FIRST CAUSE OF ACTION

Violation of Description of Effect Requirement, NRS 295.009(1)(b)

16. The foregoing paragraphs of this Complaint are re-alleged and fully incorporated as if set forth in full herein.

17. NRS 295.009(1)(b) requires that initiative petitions "set forth, in not more than 200 words, a description of the effect of the initiative or referendum if the initiative or referendum is approved by the voters."

18. "[A] description of effect . . . [can]not be deceptive or misleading." *Educ. Initiative PAC v. Comm. to Protect Nevada Jobs*, 293 P. 3d 874, 879 (Nev. 2013) (internal quotation marks and citation omitted). It must also "explain these ramifications of the proposed amendment" in order to allow voters to make an informed decision. *Nev. Judges Ass'n v. Lau*, 112 Nev. 51, 59 (1996).

19. Here, the description of effect is deficient, first, because it is deceptive or misleading, and second, because it fails to provide essential information regarding

the Petition's effects, including significant financial, legislative, and practical ramifications that are necessary for voters to make an informed decision as to whether to support the Petition.

20. The description of effect is deceptive (or at the very least, highly misleading) in numerous respects, including the following:

- The very first sentence of the Decision of Effect states that "[t]he Petition establishes an education freedom account program under which parents will be authorized to establish an account for their child's education," misleadingly suggesting that parents are precluded from establishing an account under existing law, which is of course not the case. The Description of Effect thus misleadingly suggests that if the proposed initiative did not pass, parents would be precluded from setting up savings accounts to be used to fund their children's education, which, again, is not the case.
- The Description of Effect goes on to state that "The parent of any child required to attend public school who has been enrolled in a public school in Nevada during the entirety of the immediately preceding school year or whose child is eligible to enroll in kindergarten may establish an account for the child.. Money in the accounts may be used to pay certain educational expenses including, but not limited to, tuition and fees at participating entities. Participating entities may include eligible private schools, a program of distance education not operated by a public school and parents, among others." This makes it seem that if passed, parents would be able to establish an EFA to supplement their child's public education, by, for example, signing their child up for after-school tutoring. In fact, this is not the case, because section 10 of the proposed initiative provides that "[a] parent may not establish [an EFA] ... for a child ... who will remain enrolled full-time in a public school, regardless of whether such child receives

instruction from a participating entity." *Id.*, at 3, § 10. Nowhere is this disclosed in the Description of Effect.

- Under section 4 of the proposed initiative, when a parent terminates an EFA agreement before the end of a school year, that parent's child "may not receive instruction from a public school in this state until the end of the period for which the last deposit was made into the EFA. *Id.*, at 3, § 4. The Description of Effect misleadingly fails to inform potential signatories that if passed, Nevada children could potentially be barred from attending public school for a portion of a school year, under certain circumstances.
- The Description of Effect does not disclose that the program would only come into effect if the Legislature appropriates funding for the accounts.
- The Description of Effect fails to disclose the significant financial burden placed on the State Treasurer and the Department of Education, or of the fact that no revenue source is established by the proposed initiative to pay for the substantial expenditures required by the proposed initiative.
- While stating (in the very last sentence) that "[f]unding the accounts, however, could necessitate a tax increase or reduction of government services," the Description of Effect misleadingly fails to disclose that any funding appropriated for the contemplated program would inevitably reduce the funding available funding for Nevada's public school system, leading to a deterioration in Nevada's public school system.
- The Description of Effect misleadingly fails to disclose that if passed, substantial state assets would be used to fund private schools who, unlike public schools, are not obligated to provide their educational services to any eligible Nevada students

21. Collectively, these misleading statement and omissions render it impossible for a potential signatory to make an informed decision whether to sign the

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

SECOND CAUSE OF ACTION

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

22. The foregoing paragraphs of this Complaint are re-alleged and fully incorporated as if set forth in full herein.

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

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

25. Here, the Petition seeks to institute a complex and elaborate system of EFAs to be funded by grants from the state and to be used to pay educational expenses provided by entities other than public schools. But this proposed initiative, on its face, fails to impose any taxes or otherwise raise the necessary revenue to either fund the grants for the EFAs contemplated by the initiative, or to pay for the substantial administrative expenses that would necessarily have to be incurred in creating, maintaining and administering the EFA scheme contemplated by the proposed initiative.

26. First, by its plain language, the proposed initiative does not provide for any taxes or other means of raising revenue to fund the grants deposited into the EFAs established pursuant to the initiative. Instead, the appropriation of these funds, without which the program cannot proceed or function, is left to the

Legislature to accomplish, if it chooses to do so at all, as the following provisions of the proposed initiative make clear:

- ". . . if a parent enters into or renews an agreement pursuant to section 9 of this act and the Legislature has appropriated money to fund grants described in this section, a grant of money on behalf of the child must be deposited in the education freedom account of the child." **Exhibit 1** at 3, § 10.1.
- "Nothing herein shall require the Legislature to appropriate money to fund the grants described in this section. The availability of grants is subject to the availability of funds as determined by the Legislature." *Id.*, ¶ 10.2.
- "Nothing herein shall require the Legislature to appropriate money to fund education freedom accounts or any expenses related thereto." *Id.* at 20, § 35.
- "The provisions of this act become effective upon an appropriation by the Legislature to fund the education freedom accounts." *Id.*, § 37.

27. Putting aside its failure to provide for the appropriation of moneys to pay the grants contemplated by the initiative – which, on its own, is a fatal defect – the initiative also purports to impose numerous regulatory obligations on the state Treasurer and other state and local governmental entities, but fails to impose any taxes or otherwise raise revenue to fund such necessary expenditures as Article 19, section 6 of the Constitution requires. For example, if enacted:

- The State Treasurer would be required to develop an application process for parents to enter into an agreement with the State Treasurer to establish an EFA, and to "make the application available on the Internet website of the State Treasurer." **Exhibit 1**, at 3, § 9.8.
- The State Treasurer would be required to "provide to the parent who enters into or renews the agreement a written explanation of the authorized uses . . . of the money in an [EFA] and the responsibilities of the parent and the

State Treasurer pursuant to the agreement and sections 2 to 17, inclusive." *Id.*, at 3, § 9.9.

- The State Treasurer would be required to "qualify one or more private financial management firms to manage education freedom accounts and shall establish reasonable fees, based on market rates, for the management of education freedom accounts." *Id.*, at 5, § 12.1.
- EFAs established pursuant to this proposed initiative would be required to be "audited randomly each year by a certified or licensed public accountant. The State Treasurer may provide for additional audits of an education freedom account as it determines necessary." *Id.*, §12.2.
- The State Treasurer would be required to receive and evaluate applications for institutions to become "participating entities" under the program and to "approve an application submitted pursuant to subsection 1 or request additional information to demonstrate that the person meets the criteria to serve as a participating entity." *Id.*, §§ 13.1, 13.2.
- The State Treasurer would be required to prescribe regulations for any participating entities that are "reasonably expected . . . [to] receive, from payments made from [EFAs], more than $50,000 during any school year" to post surety bonds in the amounts expected to be received, or to "[p]rovide evidence satisfactory to the State Treasurer that the participating entity otherwise has unencumbered assets sufficient to pay to the State Treasurer" such amounts. *Id.*, § 13.3.
- The State Treasurer would be required to police the participating entities to ensure that they do not engage in improper conduct, and, if they do, may refuse them to continue to participate in the program. *Id.*, at 6, § 13.5.
- The State Treasurer would be required to "provide immediate notice" of any participating entities not permitted to continue participating in the

program "to each parent of a child receiving instruction from" such entities. *Id.*, § 13.6.

- The Department of Education would be required to aggregate the results of examinations taken by children participating in the program and make such aggregated data available on the internet. *Id.*, § 14.2.
- The State Treasurer would be required to "administer an annual survey of parents who enter into or renew an agreement," under this program to determine their relative satisfaction with the program and their opinions "regarding any topics, items or issues that the State Treasurer determines may aid the State Treasurer in evaluating and improving the effectiveness of the grant program." of this act. *Id.*, § 14.3.
- The State Treasurer would be required to "annually make available a list of participating entities, other than any parent of a child." *Id.*, at 7, § 15.1.
- The State Treasurer would be required to "adopt any regulations necessary or convenient to carry out the provisions of" the proposed initiative.

28. Notably, the initiative does not raise any taxes or otherwise provide for the revenue necessary to carry out the foregoing numerous and burdensome tasks. Section 10.6 of the proposed initiative provides only that "[t]he State Treasurer may deduct not more than 4 percent of each grant for the administrative costs of implementing the provisions" of the proposed initiative. But this does not satisfy the constitutional mandate of Article 19, section 6, because: (1) the proposed initiative provides no taxes or other method of revenue necessary to fund the grants; and (2) even if it did, there is no basis to conclude that 4% of such grants (if appropriated) would be sufficient to cover the expenditures required by the proposed initiative.

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

THIRD CAUSE OF ACTION

Impermissible Inclusion of Administrative Details

30. The foregoing paragraphs of this Complaint are re-alleged and fully incorporated as if set forth in full herein.

31. It is well established that that "regardless whether an initiative proposes enactment of a new statute or ordinance, or a new provision in the constitution or city charter, or an amendment to any of these types of laws, it must propose policy—it may not dictate administrative details." *Nevadans for the Prot. of Prop. Rts., Inc. v. Heller*, 122 Nev. 894, 913, 141 P.3d 1235, 1248 (2006). This follows from the principle that "[t]he people's initiative power is 'coequal, coextensive, and concurrent' with that of the Legislature; thus, the people have power that is legislative in nature," (*Id.* at 914), and administrative details are determined not by the Legislature, "but by [other] entities with rule-making authority, which fill in administrative details pertaining to the policy articulated in legislation." *Id.*

32. The proposed initiative goes far beyond the articulation of policy, and improperly purports to mandate a host of administrative details, that are beyond the power of both the Legislature, and therefore of the people's co-extensive initiative power. The recitation of administrative details outlined above in Paragraph 27 and its subparts represent a sample of the instances of impermissible inclusion in the Petition.

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

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court to enter an order:

1. Declaring that the Petition does not comply with Article 19, Section 6 of the Nevada Constitution because it impermissibly mandates numerous unfunded expenditures;

2. Declaring that the Petition exceeds the people's initiative power by improperly dictating administrative details;

3. Declaring that the Petition's description of effect does not comply with NRS 295.009(1)(b) because it does not adequately inform voters of the Petition's effects, and is therefore invalid;

4. Enjoining and prohibiting the Nevada Secretary of State from placing the Petition on the 2022 general election ballot, or from taking further action upon it;

5. Awarding Plaintiff his reasonable costs and attorneys' fees;

6. Granting such other relief as the Court deems appropriate.

AFFIRMATION

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

DATED this 22d day of February, 2022

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

By: _____

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
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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

Education Freedom PAC

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

1. Erin Phillips
2.
3.

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

Education Freedom PAC

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 _____ 01/27/2022

Signature of Petition Filer **Date**

State of Nevada - Initiative Petition – Statewide Statutory Measure

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 385 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this act.

Sec. 2. ***As used in sections 2 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Education freedom account" means an account established for a child pursuant to section 9 of this act.***

Sec. 4. ***"Eligible institution" means: 1. A university, state college or community college within the Nevada System of Higher Education; or 2. Any other college or university that: (a) Was originally established in, and is organized under the laws of, this State; (b) Is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3); and (c) Is accredited by a regional accrediting agency recognized by the United States Department of Education.***

Sec. 5. ***"Parent" means the parent, custodial parent, legal guardian or other person in this State who has control or charge of a child and the legal right to direct the education of the child.***

Sec. 6. ***"Participating entity" means a private school that is licensed pursuant to chapter 394 of NRS or exempt from such licensing pursuant to NRS 394.211, an eligible institution, a program of distance education that is not offered by a public school or the Department, a tutor or tutoring agency or a parent that has provided to the State Treasurer the application described in subsection 1 of section 13 of this act.***

Sec. 7. ***"Program of distance education" has the meaning ascribed to it in NRS 388.829.***

Sec. 8. ***"Resident school district" means the school district in which a child would be enrolled based on his or her residence.***

Sec. 9. ***1. Except as otherwise provided in subsection 10, the parent of any child required by NRS 392.040 to attend a public school who was enrolled in a public school in this State during the entirety of the school year immediately preceding the establishment of an education freedom account pursuant to this section or is eligible to enroll in kindergarten may establish an education freedom account for the child by entering into a written agreement with the State Treasurer, in a manner and on a form provided by the State Treasurer. The agreement must provide that:***

(a) The child will receive instruction in this State from a participating entity for the school year for which the agreement applies;

(b) The child will receive a grant, in the form of money deposited pursuant to section 10 of this act in the education freedom account established for the child pursuant to subsection 2;

(c) The money in the education freedom account established for the child must be expended only as authorized by section 11 of this act; and

2. If an agreement is entered into pursuant to subsection 1, an education freedom account must be established by the parent on behalf of the child. The account must be maintained with a financial management firm qualified by the State Treasurer pursuant to section 12 of this act.

3. The failure to enter into an agreement pursuant to subsection 1 for any school year for which a child is required by NRS 392.040 to attend a public school does not preclude the parent of the child from entering into an agreement for a subsequent school year.

4. An agreement entered into pursuant to subsection 1 is valid for 1 school year but may be terminated early. If the agreement is terminated early, the child may not receive instruction from a public school in this State until the end of the period for which the last deposit was made into the education freedom account pursuant to section 10 of this act, except to the extent the pupil was allowed to receive instruction from a public school under the agreement or the participating entity providing education to the child ceases to lawfully operate.

5. An agreement terminates automatically if the child no longer resides in this State. In such a case, any money remaining in the education freedom account of the child reverts to the State General Fund.

6. An agreement may be renewed for any school year for which the child is required by NRS 392.040 to attend a public school. The failure to renew an agreement for any school year does not preclude the parent of the child from renewing the agreement for any subsequent school year.

7. A parent may enter into a separate agreement pursuant to subsection 1 for each child of the parent. Not more than one education freedom account may be established for a child.

8. Except as otherwise provided in subsection 10, the State Treasurer shall enter into or renew an agreement pursuant to this section with any parent of a child required by NRS 392.040 to attend a public school who applies to the State Treasurer in the manner provided by the State Treasurer. The State Treasurer shall make the application available on the Internet website of the State Treasurer.

9. Upon entering into or renewing an agreement pursuant to this section, the State Treasurer shall provide to the parent who enters into or renews the agreement a written explanation of the authorized uses, pursuant to section 11 of this act, of the money in an education freedom account and the responsibilities of the parent and the State Treasurer pursuant to the agreement and sections 2 to 17, inclusive, of this act.

10. A parent may not establish an education freedom account for a child who will be homeschooled, who will receive instruction outside this State or who will remain enrolled full-time in a public school, regardless of whether such a child receives instruction from a participating entity. A parent may establish an education freedom account for a child who receives a portion of his or her instruction from a public school and a portion of his or her instruction from a participating entity.

Sec. 10. *1. Subject to the limitations described in subsection 2, if a parent enters into or renews an agreement pursuant to section 9 of this act and the Legislature has appropriated money to fund grants described in this section, a grant of money on behalf of the child must be deposited in the education freedom account of the child.*

2. Nothing herein shall require the Legislature to appropriate money to fund the grants described in this section. The availability of grants is subject to the availability of funds as determined by the Legislature.

3. Except as otherwise provided in subsections 4, 5 and 6, the grant required by subsection 1 must, for the school year for which the grant is made, be in an amount equal to 90 percent of the statewide base per pupil funding amount.

(a) Refund any portion of the payment to the parent who made the payment, unless the refund is for an item that is being returned or an item or service that has not been provided; or

(b) Rebate or otherwise share any portion of the payment with the parent who made the payment.

3. A parent who receives a refund pursuant to subsection 2 shall deposit the refund in the education freedom account from which the money refunded was paid.

4. Nothing in this section shall be deemed to prohibit a parent or child from making a payment for any tuition, fee, service or product described in subsection 1 from a source other than the education freedom account of the child.

Sec. 12. *1. The State Treasurer shall qualify one or more private financial management firms to manage education freedom accounts and shall establish reasonable fees, based on market rates, for the management of education freedom accounts.*

2. An education freedom account must be audited randomly each year by a certified or licensed public accountant. The State Treasurer may provide for additional audits of an education freedom account as it determines necessary.

3. If the State Treasurer determines that there has been substantial misuse of the money in an education freedom account, the State Treasurer may:

(a) Freeze or dissolve the account, subject to any regulations adopted by the State Treasurer providing for notice of such action and opportunity to respond to the notice; and

(b) Give notice of his or her determination to the Attorney General or the district attorney of the county in which the parent resides.

Sec. 13. *1. The following persons may become a participating entity by submitting an application demonstrating that the person is:*

(a) A private school licensed pursuant to chapter 394 of NRS or exempt from such licensing pursuant to NRS 394.211;

(b) An eligible institution;

(c) A program of distance education that is not operated by a public school or the Department;

(d) A tutor or tutoring facility that is accredited by a state, regional or national accrediting organization; or

(e) The parent of a child.

2. The State Treasurer shall approve an application submitted pursuant to subsection 1 or request additional information to demonstrate that the person meets the criteria to serve as a participating entity. If the applicant is unable to provide such additional information, the State Treasurer may deny the application.

3. If it is reasonably expected that a participating entity will receive, from payments made from education freedom accounts, more than $50,000 during any school year, the participating entity shall annually, on or before the date prescribed by the State Treasurer by regulation:

(a) Post a surety bond in an amount equal to the amount reasonably expected to be paid to the participating entity from education freedom accounts during the school year; or

(b) Provide evidence satisfactory to the State Treasurer that the participating entity otherwise has unencumbered assets sufficient to pay to the State Treasurer an amount equal to the amount described in paragraph (a).

4. Each participating entity that accepts payments made from education freedom accounts shall provide a receipt for each such payment to the parent who makes the payment.

5. The State Treasurer may refuse to allow an entity described in subsection 1 to continue to participate in the grant program provided for in sections 2 to 17, inclusive, of this act if the State Treasurer determines that the entity:

(a) Has routinely failed to comply with the provisions of sections 2 to 17, inclusive, of this act; or

(b) Has failed to provide any educational services required by law to a child receiving instruction from the entity if the entity is accepting payments made from the education freedom account of the child.

6. If the State Treasurer takes an action described in subsection 5 against an entity described in subsection 1, the State Treasurer shall provide immediate notice of the action to each parent of a child receiving instruction from the entity who has entered into or renewed an agreement pursuant to section 9 of this act and on behalf of whose child a grant of money has been deposited pursuant to section 10 of this act.

Sec. 14. *1. Each participating entity that accepts payments for tuition and fees made from education freedom accounts shall:*

(a) Ensure that each child on whose behalf a grant of money has been deposited pursuant to section 10 of this act and who is receiving instruction from the participating entity takes:

(1) Any examinations in mathematics and English language arts required for pupils of the same grade pursuant to chapter 389 of NRS; or

(2) Norm-referenced achievement examinations in mathematics and English language arts each school year;

(b) Provide for value-added assessments of the results of the examinations described in paragraph (a); and

(c) Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, provide the results of the examinations described in paragraph (a) to the Department or an organization designated by the Department pursuant to subsection 4.

2. The Department shall:

(a) Aggregate the examination results provided pursuant to subsection 1 according to the grade level, gender, race and family income level of each child whose examination results are provided; and

(b) Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, make available on the Internet website of the Department:

(1) The aggregated results and any associated learning gains; and

(2) After 3 school years for which examination data has been collected, the graduation rates, as applicable, of children whose examination results are provided.

3. The State Treasurer shall administer an annual survey of parents who enter into or renew an agreement pursuant to section 9 of this act. The survey must ask each parent to indicate the number of years the parent has entered into or renewed such an agreement and to express:

(a) The relative satisfaction of the parent with the grant program established pursuant to sections 2 to 17, inclusive, of this act; and

(b) The opinions of the parent regarding any topics, items or issues that the State Treasurer determines may aid the State Treasurer in evaluating and improving the effectiveness of the grant program established pursuant to sections 2 to 17, inclusive, of this act.

4. Subject to available funding, the Department may arrange for a third-party organization to perform the duties of the Department prescribed by this section.

Sec. 15. ***1. The State Treasurer shall annually make available a list of participating entities, other than any parent of a child.***

2. Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, the Department shall annually require the resident school district of each child on whose behalf a grant of money is made pursuant to section 10 of this act to provide to the participating entity any educational records of the child.

Sec. 16. ***Except as otherwise provided in sections 2 to 17, inclusive, of this act, nothing in the provisions of sections 2 to 17, inclusive, of this act, shall be deemed to limit the independence or autonomy of a participating entity or to make the actions of a participating entity the actions of the State Government.***

Sec. 17. ***The State Treasurer shall adopt any regulations necessary or convenient to carry out the provisions of sections 2 to 17, inclusive, of this act.***

Sec. 18. NRS 385.007 is hereby amended to read as follows: As used in this title, unless the context otherwise requires:

1. "Challenge school" has the meaning ascribed to it in NRS 388D.305.

2. "Charter school" means a public school that is formed pursuant to the provisions of chapter 388A of NRS.

3. "Department" means the Department of Education.

4. "English learner" has the meaning ascribed to it in 20 U.S.C. § 7801(20).

5. "Homeschooled child" means a child who receives instruction at home and who is exempt from compulsory attendance pursuant to NRS 392.070.

6. "Local school precinct" has the meaning ascribed to it in NRS 388G.535.

7. "Opt-in child" means a child for whom an education freedom account has been established pursuant to section 9 of this act, who is not enrolled full-time in a public or private school and who receives all or a portion of his or her instruction from a participating entity, as defined in section 6 of this act.

[~~7~~] ***8.*** "Public schools" means all kindergartens and elementary schools, junior high schools and middle schools, high schools, charter schools and any other schools, classes and educational programs which receive their support through public taxation and, except for charter schools, whose textbooks and courses of study are under the control of the State Board.

[~~8~~] ***9.*** "School bus" has the meaning ascribed to it in NRS 484A.230.

[~~9~~] ***10.*** "School counselor" or "counselor" means a person who holds a license issued pursuant to chapter 391 of NRS and an endorsement to serve as a school counselor issued pursuant to regulations adopted by the

Commission on Professional Standards in Education or who is otherwise authorized by the Superintendent of Public Instruction to serve as a school counselor.

[~~10~~] ***11.*** "School psychologist" or "psychologist" means a person who holds a license issued pursuant to chapter 391 of NRS and an endorsement to serve as a school psychologist issued pursuant to regulations adopted by the Commission on Professional Standards in Education or who is otherwise authorized by the Superintendent of Public Instruction to serve as a school psychologist.

[~~11~~] ***12.*** "School social worker" or "social worker" means a social worker licensed pursuant to chapter 641B of NRS who holds a license issued pursuant to chapter 391 of NRS and an endorsement to serve as a school social worker issued pursuant to regulations adopted by the Commission on Professional Standards in Education or who is otherwise authorized by the Superintendent of Public Instruction to serve as a school social worker.

[~~12~~] ***13.*** "State Board" means the State Board of Education.

[~~13~~] ***14.*** "University school for profoundly gifted pupils" has the meaning ascribed to it in NRS 388C.040.

Sec. 19. NRS 219A.140 is hereby amended to read as follows: To be eligible to serve on the Youth Legislature, a person:

1. To be eligible to serve on the Youth Legislature, a person:

(a) Must be:

(1) A resident of the senatorial district of the Senator who appoints him or her;

(2) Enrolled in a public school or private school located in the senatorial district of the Senator who appoints him or her; or

(3) A homeschooled child who is otherwise eligible to be enrolled in a public school in the senatorial district of the Senator who appoints him or her;

(b) Except as otherwise provided in subsection 3 of NRS 219A.150, must be:

(1) Enrolled in a public school or private school in this State in grade 9, 10 or 11 for the first school year of the term for which he or she is appointed; or

(2) A homeschooled child who is otherwise eligible to enroll in a public school in this State in grade 9, 10 or 11 for the first school year of the term for which he or she is appointed; and

(c) Must not be related by blood, adoption or marriage within the third degree of consanguinity or affinity to the Senator who appoints him or her or to any member of the Assembly who collaborated to appoint him or her.

2. If, at any time, a person appointed to the Youth Legislature changes his or her residency or changes his or her school of enrollment in such a manner as to render the person ineligible under his or her original appointment, the person shall inform the Board, in writing, within 30 days after becoming aware of such changed facts.

3. A person who wishes to be appointed or reappointed to the Youth Legislature must submit an application on the form prescribed pursuant to subsection 4 to the Senator of the senatorial district in which the person resides, is enrolled in a public school or private school or, if the person is a homeschooled child[~~,~~] ***or opt-in child,*** the senatorial district in which he or she is otherwise eligible to be enrolled in a public school. A person may not submit an application to more than one Senator in a calendar year.

4. The Board shall prescribe a form for applications submitted pursuant to this section, which must require the signature of the principal of the school in which the applicant is enrolled or, if the applicant is a homeschooled child[,] ***or opt-in child,*** the signature of a member of the community in which the applicant resides other than a relative of the applicant.

Sec. 20 NRS 219A.150 is hereby amended to read as follows:

1. A position on the Youth Legislature becomes vacant upon:

(a) The death or resignation of a member.

(b) The determination of the Chair or Vice Chair of the Board, as applicable, that a member has accrued, for any reason, any combination of:

(1) Absences from meetings or event days of the Youth Legislature; or

(2) Incompletions of any other activities that are assigned to him or her by the Board as a member of the Youth Legislature,

→ if the combination of absences or incompletions amounts to three or more missed or unsuccessful activity credits during his or her term, unless the absences or incompletions are excused, in whole or in part, by the Chair or Vice Chair of the Board, as applicable.

(c) A change of residency or a change of the school of enrollment of a member which renders that member ineligible under his or her original appointment.

2. In addition to the provisions of subsection 1, a position on the Youth Legislature becomes vacant if:

(a) A member of the Youth Legislature graduates from high school or otherwise ceases to attend public school or private school for any reason other than to become a homeschooled child ***or opt-in child***; or

(b) A member of the Youth Legislature who is a homeschooled child ***or opt-in child*** completes an educational plan of instruction for grade 12 or otherwise ceases to be a homeschooled child ***or opt-in child*** for any reason other than to enroll in a public school or private school.

3. A vacancy on the Youth Legislature must be filled:

(a) For the remainder of the unexpired term in the same manner as the original appointment, except that, if the remainder of the unexpired term is less than 1 year, the member of the Senate who made the original appointment may appoint a person who:

(1) Is enrolled in a public school or private school in this State in grade 12 or who is a homeschooled child ***or opt-in child*** who is otherwise eligible to enroll in a public school in this State in grade 12; and

(2) Satisfies the qualifications set forth in paragraphs (a) and (c) of subsection 1 of NRS 219A.140.

(b) Insofar as is practicable, within 30 days after the date on which the vacancy occurs.

4. As used in this section:

(a) "Activity credit" means a credit, or any fractional portion thereof, that the Board has determined a member is eligible to earn for:

(1) Attending meetings or event days of the Youth Legislature; or

(2) Completing, in the manner required by the Board, any other activities that are assigned to him or her by the Board as a member of the Youth Legislature.

(b) "Event day" means any single calendar day on which an official, scheduled event of the Youth Legislature is held, including, without limitation, a course of instruction, a course of orientation, a meeting, a seminar or any other official, scheduled activity.

Sec. 21. NRS 385B.060 is hereby amended to read as follows:

1. The Nevada Interscholastic Activities Association shall adopt rules and regulations in the manner provided for state agencies by chapter 233B of NRS as may be necessary to carry out the provisions of this chapter. The regulations must include provisions governing the eligibility and participation of homeschooled children ***and opt-in children*** in interscholastic activities and events. In addition to the regulations governing eligibility, a homeschooled child who wishes to participate must have on file with the school district in which the child resides a current notice of intent of a homeschooled child to participate in programs and activities pursuant to NRS 388D.070.

2. An opt-in child who wishes to participate must have on file with the school district in which the child resides a current notice of intent of an opt-in child to participate in programs and activities pursuant to section 30 of this act.

[~~2~~] ***3.*** The Nevada Interscholastic Activities Association shall adopt regulations setting forth:

(a) The standards of safety for each event, competition or other activity engaged in by a spirit squad of a school that is a member of the Nevada Interscholastic Activities Association, which must substantially comply with the spirit rules of the National Federation of State High School Associations, or its successor organization; and

(b) The qualifications required for a person to become a coach of a spirit squad.

[~~3~~] ***4.*** If the Nevada Interscholastic Activities Association intends to adopt, repeal or amend a policy, rule or regulation concerning or affecting homeschooled children, the Association shall consult with the Northern Nevada Homeschool Advisory Council and the Southern Nevada Homeschool Advisory Council, or their successor organizations, to provide those Councils with a reasonable opportunity to submit data, opinions or arguments, orally or in writing, concerning the proposal or change. The Association shall consider all written and oral submissions respecting the proposal or change before taking final action.

[4] ***5.*** As used in this section, "spirit squad" means any team or other group of persons that is formed for the purpose of:

(a) Leading cheers or rallies to encourage support for a team that participates in a sport that is sanctioned by the Nevada Interscholastic Activities Association; or

(b) Participating in a competition against another team or other group of persons to determine the ability of each team or group of persons to engage in an activity specified in paragraph (a).

Sec. 22. NRS 385B.150 is hereby amended to read as follows:

1. A homeschooled child must be allowed to participate in interscholastic activities and events in accordance with the regulations adopted by the Nevada Interscholastic Activities Association pursuant to NRS 385B.060 if a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 388D.070.

2. An opt-in child must be allowed to participate in interscholastic activities and events in accordance with the regulations adopted by the Nevada Interscholastic Activities Association pursuant to NRS 385B.060 if a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to section 28 of this act.

[~~2~~] *3.* The provisions of this chapter and the regulations adopted pursuant thereto that apply to pupils enrolled in public schools who participate in interscholastic activities and events apply in the same manner to homeschooled ***and opt-in*** children who participate in interscholastic activities and events, including, without limitation, provisions governing:

(a) Eligibility and qualifications for participation;

(b) Fees for participation;

(c) Insurance;

(d) Transportation;

(e) Requirements of physical examination;

(f) Responsibilities of participants;

(g) Schedules of events;

(h) Safety and welfare of participants;

(i) Eligibility for awards, trophies and medals;

(j) Conduct of behavior and performance of participants; and

(k) Disciplinary procedures.

Sec. 23. NRS 385B.160 is hereby amended to read as follows:

No challenge may be brought by the Nevada Interscholastic Activities Association, a school district, a public school or a private school, a parent or guardian of a pupil enrolled in a public school or a private school, a pupil enrolled in a public school or private school, or any other entity or person claiming that an interscholastic activity or event is invalid because homeschooled ***or opt-in*** children or children of a military family who transferred schools pursuant to the provisions of chapter 388F of NRS are allowed to participate in the interscholastic activity or event.

Sec. 24. NRS 385B.170 is hereby amended to read as follows:

A school district, public school or private school shall not prescribe any regulations, rules, policies, procedures or requirements governing the:

1. Eligibility of homeschooled children, ***opt-in children*** or children of a military family who transferred schools pursuant to the provisions of chapter 388F of NRS to participate in interscholastic activities and events pursuant to this chapter; or

2. Participation of homeschooled children, ***opt-in children*** or children of a military family who transferred schools pursuant to the provisions of chapter 388F of NRS in interscholastic activities and events pursuant to this chapter,

→ that are more restrictive than the provisions governing eligibility and participation prescribed by the Nevada Interscholastic Activities Association pursuant to NRS 385B.060 and 385B.130.

Sec. 25. NRS 388A.471 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, upon the request of a parent or legal guardian of a child who is enrolled in a public school of a school district or a private school, or a parent or legal guardian of a homeschooled child ***or opt-in child***, the governing body of the charter school shall authorize the child to participate in a class that is not otherwise available to the child at his or her school or homeschool ***or from his or her participating entity, as defined in section 6 of this act,*** or participate in an extracurricular activity at the charter school if:

(a) Space for the child in the class or extracurricular activity is available;

(b) The parent or legal guardian demonstrates to the satisfaction of the governing body that the child is qualified to participate in the class or extracurricular activity; [~~and~~]

(c) The child is a homeschooled child and a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 388D.070[~~.~~]***; and***

(d) The child is an opt-in child and a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to section 30 of this act

2. If the governing body of a charter school authorizes a child to participate in a class or extracurricular activity pursuant to subsection 1, the governing body is not required to provide transportation for the child to attend the class or activity. A charter school shall not authorize such a child to participate in a class or activity through a program of distance education provided by the charter school pursuant to NRS 388.820 to 388.874, inclusive.

3. The governing body of a charter school may revoke its approval for a child to participate in a class or extracurricular activity at a charter school pursuant to subsection 1 if the governing body determines that the child has failed to comply with applicable statutes, or applicable rules and regulations. If the governing body so revokes its approval, neither the governing body nor the charter school is liable for any damages relating to the denial of services to the child.

4. The governing body of a charter school may, before authorizing a homeschooled child to participate in a class or extracurricular activity pursuant to subsection 1, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

Sec. 26. NRS 388.850 is hereby amended to read as follows:

1. A pupil may enroll in a program of distance education if:

(a) Pursuant to this section or other specific statute, the pupil is eligible for enrollment or the pupil's enrollment is not otherwise prohibited;

(b) The program of distance education in which the pupil wishes to enroll is offered by the school district in which the pupil resides or a charter school or, if the program of distance education

in which the pupil wishes to enroll is a full-time program of distance education offered by a school district other than the school district in which the pupil resides, the program is not the same or substantially similar to a program of distance education offered by the school district in which the pupil resides;

(c) The pupil satisfies the qualifications and conditions for enrollment adopted by the State Board pursuant to NRS 388.874; and

(d) The pupil satisfies the requirements of the program of distance education.

2. A child who is exempt from compulsory attendance and is enrolled in a private school pursuant to chapter 394 of NRS or is being homeschooled is not eligible to enroll in or otherwise attend a program of distance education, regardless of whether the child is otherwise eligible for enrollment pursuant to subsection 1.

3. If a pupil who is prohibited from attending public school pursuant to NRS 392.264 enrolls in a program of distance education, the enrollment and attendance of that pupil must comply with all requirements of NRS 62F.100 to 62F.150, inclusive, and 392.251 to 392.271, inclusive.

4. A pupil who is enrolled in grade 12 in a program of distance education and who moves out of this State is eligible to maintain enrollment in the program of distance education until the pupil graduates from high school.

5. ***An opt-in child who is exempt from compulsory attendance is not eligible to enroll in or otherwise attend a program of distance education, regardless of whether the child is otherwise eligible for enrollment pursuant to subsection 1, unless the opt-in child receives only a portion of his or her instruction from a participating entity as authorized pursuant to section 9 of this act.***

Sec. 27. Chapter 392 of NRS is hereby amended by adding thereto the provisions set forth as sections 28, 29 and 30 of this act.

Sec. 28. ***As used in this section and sections 29 and 30 of this act, unless the context otherwise requires, "parent" has the meaning ascribed to it in section 5 of this act.***

Sec. 29. ***1. The parent of an opt-in child shall provide notice to the school district where the child would otherwise attend that the child is an opt-in child as soon as practicable after entering into an agreement to establish an education freedom account pursuant to section 9 of this act. Such notice must also include:***

(a) The full name, age and gender of the child; and

(b) The name and address of each parent of the child.

2. The superintendent of schools of a school shall accept a notice provided pursuant to subsection 1 and shall not require any additional assurances from the parent who filed the notice.

3. The school district shall provide to a parent who files a notice pursuant to subsection 1, a written acknowledgement which clearly indicates that the parent has provided the notification required by law and that the child is an opt-in child. The written acknowledgment shall be deemed proof of compliance with Nevada's compulsory school attendance law.

4. The superintendent of schools of a school district shall process a written request for a copy of the records of the school district or any information contained therein relating to an opt-in child not later than 5 days after receiving the request. The superintendent of schools may only release such records or information:

(a) To the Department, the Budget Division of the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau for use in preparing the biennial budget;

(b) To a person or entity specified by the parent of the child, or by the child if the child is at least 18 years of age, upon suitable proof of identity of the parent or child; or

(c) If required by specific statute.

5. If an opt-in child seeks admittance or entrance to any public school in this State, the school may use only commonly used practices in determining the academic ability, placement or eligibility of the child. If the child enrolls in a charter school, the charter school shall, to the extent practicable, notify the board of trustees of the resident school district of the child's enrollment in the charter school. Regardless of whether the charter school provides such notification to the board of trustees, the charter school may count the child who is enrolled for the purposes of NRS 387.123. An opt-in child seeking admittance to public high school must comply with NRS 392.033.

6. A school shall not discriminate in any manner against an opt-in child or a child who was formerly an opt-in child.

7. Each school district shall allow an opt-in child to participate in all college entrance examinations offered in this State, including, without limitation, the SAT, the ACT, the Preliminary SAT and the National Merit Scholarship Qualifying Test. Each school district shall upon request, provide information to the parent of an opt-in child who resides in the school district has adequate notice of the availability of information concerning such examinations on the Internet website of the school district maintained pursuant to NRS 389.004.

Sec. 30. 1. The Department shall develop a standard form for the notice of intent of an opt-in child to participate in programs and activities. The board of trustees of each school district shall, in a timely manner, make only the form developed by the Department available to parents of opt-in children.

2. If an opt-in child wishes to participate in classes, activities, programs, sports or interscholastic activities and events at a public school or through a school district, or through the Nevada Interscholastic Activities Association, the parent of the child must file a current notice of intent to participate with the resident school district.

Sec. 31. NRS 392.033 is hereby amended to read as follows:

1. The State Board shall adopt regulations which prescribe the courses of study required for promotion to high school, including, without limitation, English, mathematics, science and social studies. The regulations may include the credits to be earned in each course.

2. Except as otherwise provided in subsection 4, the board of trustees of a school district shall not promote a pupil to high school if the pupil does not complete the course of study or credits required for promotion. The board of trustees of the school district in which the pupil is enrolled may provide programs of remedial study to complete the courses of study required for promotion to high school.

3. The board of trustees of each school district shall adopt a procedure for evaluating the course of study or credits completed by a pupil who transfers to a junior high or middle school from a junior high or middle school in this State or from a school outside of this State.

4. The board of trustees of each school district shall adopt a policy that allows a pupil who has not completed the courses of study or credits required for promotion to high school to be placed on academic probation and to

enroll in high school. A pupil who is on academic probation pursuant to this subsection shall complete appropriate remediation in the subject areas that the pupil failed to pass. The policy must include the criteria for eligibility of a pupil to be placed on academic probation. A parent or guardian may elect not to place his or her child on academic probation but to remain in grade 8.

5. A homeschooled child ***or opt-in child*** who enrolls in a public high school shall, upon initial enrollment:

(a) Provide documentation sufficient to prove that the child has successfully completed the courses of study required for promotion to high school through an accredited program of homeschool study recognized by the board of trustees of the school district ~~[,]~~ ***or from a participating entity, as applicable;***

(b) Demonstrate proficiency in the courses of study required for promotion to high school through an examination prescribed by the board of trustees of the school district; or

(c) Provide other proof satisfactory to the board of trustees of the school district demonstrating competency in the courses of study required for promotion to high school.

6. As used in this section, "participating entity" has the meaning ascribed to it in section 6 of this act.

Sec. 32. NRS 392.070 is hereby amended to read as follows:

1. Attendance of a child required by the provisions of NRS 392.040 must be excused when:

(a) The child is enrolled in a private school pursuant to chapter 394 of NRS; ~~[or]~~

(b) A parent of the child chooses to provide education to the child and files a notice of intent to homeschool the child with the superintendent of schools of the school district in which the child resides in accordance with NRS 392.700 ~~[.]~~ ; ***or***

(c) The child is an opt-in child and notice of such has been provided to the school district in which the child resides or the charter school in which the child was previously enrolled, as applicable, in accordance with section 29 of this act.

Sec. 33. NRS 392.074 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 1 of NRS 392.072 for programs of special education and related services, upon the request of a parent or legal guardian of a child who is enrolled in a private school or a parent or legal guardian of a homeschooled child ***or opt-in child***, the board of trustees of the school district in which the child resides shall authorize the child to participate in any classes and extracurricular activities, excluding sports, at a public school within the school district if:

(a) Space for the child in the class or extracurricular activity is available;

(b) The parent or legal guardian demonstrates to the satisfaction of the board of trustees that the child is qualified to participate in the class or extracurricular activity; [~~and~~]

(c) If the child is a homeschooled child, a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district for the current school year pursuant to NRS 388D.070[~~.~~]***; and***

(d) if the child is an opt-in child, a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district for the current school year pursuant to section 30 of this act.

→ If the board of trustees of a school district authorizes a child to participate in a class or extracurricular activity, excluding sports, pursuant to this subsection, the board of trustees is not required to provide transportation for the child to attend the class or activity. A homeschooled child ***or opt-in child*** must be allowed to participate in interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to chapter 385B of NRS and interscholastic activities and events, including sports, pursuant to subsection 3.

2. The board of trustees of a school district may revoke its approval for a pupil to participate in a class or extracurricular activity at a public school pursuant to subsection 1 if the board of trustees or the public school determines that the pupil has failed to comply with applicable statutes, or applicable rules and regulations of the board of trustees. If the board of trustees revokes its approval, neither the board of trustees nor the public school is liable for any damages relating to the denial of services to the pupil.

3. In addition to those interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to chapter 385B of NRS, a homeschooled child ***or opt-in child*** must be allowed to participate in interscholastic activities and events, including sports, if a notice of intent of a homeschooled child ***or opt-in child*** to participate in programs and activities is filed for the child with the school district for the current school year pursuant to NRS 388D.070 ***or section 30 of this act, as applicable***. A homeschooled child ***or opt-in child*** who participates in interscholastic activities and events at a public school pursuant to this subsection must participate within the school district of the child's residence through the public school which the child is otherwise zoned to attend. Any rules or regulations that apply to pupils enrolled in public schools who participate in interscholastic activities and events, including sports, apply in the same manner to homeschooled children ***and opt-in children*** who participate in interscholastic activities and events, including, without limitation, provisions governing:

(a) Eligibility and qualifications for participation;

(b) Fees for participation;

(c) Insurance;

(d) Transportation;

(e) Requirements of physical examination;

(f) Responsibilities of participants;

(g) Schedules of events;

(h) Safety and welfare of participants;

(i) Eligibility for awards, trophies and medals;

(j) Conduct of behavior and performance of participants; and

(k) Disciplinary procedures.

4. If a homeschooled child ***or opt-in child*** participates in interscholastic activities and events pursuant to subsection 3:

(a) No challenge may be brought by the Association, a school district, a public school or a private school, a parent or guardian of a pupil enrolled in a public school or a private school, a pupil enrolled in a public school

or a private school, or any other entity or person claiming that an interscholastic activity or event is invalid because the homeschooled child ***or opt-in child*** is allowed to participate.

(b) Neither the school district nor a public school may prescribe any regulations, rules, policies, procedures or requirements governing the eligibility or participation of the homeschooled child ***or opt-in child*** that are more restrictive than the provisions governing the eligibility and participation of pupils enrolled in public schools.

5. The board of trustees of a school district:

(a) May, before authorizing a homeschooled child ***or opt-in child*** to participate in a class or extracurricular activity, excluding sports, pursuant to subsection 1, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

(b) Shall, before allowing a homeschooled child ***or opt-in child*** to participate in interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to chapter 385B of NRS and interscholastic activities and events pursuant to subsection 3, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

Sec. 34. NRS 392.466 is hereby amended to read as follows:

1. Except as otherwise provided in this section, any pupil who commits a battery which results in the bodily injury of an employee of the school or who sells or distributes any controlled substance while on the premises of any public school, at an activity sponsored by a public school or on any school bus and who is at least 11 years of age shall meet with the school and his or her parent or legal guardian. The school shall provide a plan of action based on restorative justice to the parent or legal guardian of the pupil or if the pupil is an unaccompanied pupil, the pupil. The pupil may be suspended or expelled from the school, in which case the pupil shall:

(a) Enroll in a private school pursuant to chapter 394 of NRS or be homeschooled ***or an opt-in child***; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

2. An employee who is a victim of a battery which results in the bodily injury of an employee of the school may appeal to the school the plan of action provided pursuant to subsection 1 if:

(a) The employee feels any actions taken pursuant to such plan are inappropriate; and

(b) For a pupil with a disability who committed the battery, the board of trustees of the school district or its designee has reviewed the circumstances and determined that such an appeal is in compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq.

3. Except as otherwise provided in this section, any pupil of any age, including, without limitation, a pupil with a disability, who is found in possession of a firearm or a dangerous weapon while on the premises of any public school, at an activity sponsored by a public school or on any school bus must, for the first occurrence, be expelled from the school for a period of not less than 1 year, although the pupil may be placed in another kind of school for a period not to exceed the period of the expulsion. For a second occurrence, the pupil must be permanently expelled from the school.

4. If a school is unable to retain a pupil in the school pursuant to subsection 1 for the safety of any person or because doing so would not be in the best interest of the pupil, the pupil may be suspended, expelled or placed in another school. If a pupil is placed in another school, the current school of the pupil shall explain what services will be provided to the pupil at the new school that the current school is unable to provide to address the specific needs and behaviors of the pupil. The school district of the current school of the pupil shall coordinate with the new school to create a plan of action based on restorative justice for the pupil and to ensure that any resources required to execute the plan of action based on restorative justice are available at the new school.

5. Except as otherwise provided in this section, if a pupil is deemed a habitual disciplinary problem pursuant to NRS 392.4655, the pupil is at least 11 years of age and the school has made a reasonable effort to complete a plan of action based on restorative justice with the pupil, based on the seriousness of the acts which were the basis for the discipline, the pupil may be:

(a) Suspended from the school;

(b) Expelled from the school under extraordinary circumstances as determined by the principal of the school.

6. If the pupil is expelled, or the period of the pupil's suspension is for one school semester, the pupil must:

(a) Enroll in a private school pursuant to chapter 394 of NRS or be homeschooled ***or become an opt-in child***; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

7. The superintendent of schools of a school district may, for good cause shown in a particular case in that school district, allow a modification to a suspension or expulsion pursuant to subsections 1 to 5, inclusive, if such modification is set forth in writing. The superintendent shall allow such a modification if the superintendent determines that a plan of action based on restorative justice may be used successfully.

8. This section does not prohibit a pupil from having in his or her possession a knife or firearm with the approval of the principal of the school. A principal may grant such approval only in accordance with the policies or regulations adopted by the board of trustees of the school district.

9. Except as otherwise provided in this subsection and subsection 3, a pupil who is less than 11 years of age must not be permanently expelled from school. In extraordinary circumstances, a school may request an exception to this subsection from the board of trustees of the school district. A pupil who is at least 11 years of age may be suspended, expelled or permanently expelled from school pursuant to this section only after the board of trustees of the school district or its designee has reviewed the circumstances and approved this action in accordance with the procedural policy adopted by the board for such issues.

10. Except as otherwise provided in subsection 3, a pupil with a disability who is at least 11 years of age may, in accordance with the procedural policy adopted by the board of trustees of the school district for such matters and only after the board of trustees of the school district or its designee has reviewed the circumstances and determined that the action is in compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., be:

(a) Suspended from school pursuant to this section for not more than 5 days. Such a suspension may be imposed pursuant to this paragraph for each occurrence of conduct proscribed by subsection 1.

(b) Expelled from school pursuant to this section.

(c) Permanently expelled from school pursuant to this section.

11. A homeless pupil or a pupil in foster care who is at least 11 years of age may be suspended or expelled from school pursuant to this section only if a determination is made that the behavior that led to the consideration for suspension or expulsion was not caused by homelessness or being in foster care. The person responsible for making a determination of whether or not the behavior was caused by homelessness or being in foster care shall presume that the behavior was caused by homelessness or being in foster care unless the person determines that the behavior was not caused by homelessness or being in foster care pursuant to this subsection. A determination that the behavior was not caused by homelessness must be made in consultation with the local educational agency liaison for homeless pupils designated in accordance with the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. §§ 11301 et seq., or a contact person at a school, including, without limitation, a school counselor or school social worker. A determination that the behavior was not caused by being in foster care must be made in consultation with an advocate for pupils in foster care at the school in which the pupil is in enrolled or the school counselor of the pupil.

12. The provisions of chapter 241 of NRS do not apply to any hearing or proceeding conducted pursuant to this section. Such hearings or proceedings must be closed to the public.

13. As used in this section:

(a) "Battery" has the meaning ascribed to it in paragraph (a) of subsection 1 of NRS 200.481.

(b) "Dangerous weapon" includes, without limitation, a blackjack, slungshot, billy, sand-club, sandbag, metal knuckles, dirk or dagger, a nunchaku or trefoil, as defined in NRS 202.350, a butterfly knife or any other knife described in NRS 202.350, a switchblade knife as defined in NRS 202.265, or any other object which is used, or threatened to be used, in such a manner and under such circumstances as to pose a threat of, or cause, bodily injury to a person.

(c) "Firearm" includes, without limitation, any pistol, revolver, shotgun, explosive substance or device, and any other item included within the definition of a "firearm" in 18 U.S.C. § 921, as that section existed on July 1, 1995.

(d) "Foster care" has the meaning ascribed to it in 45 C.F.R. § 1355.20. (e) "Homeless pupil" has the meaning ascribed to the term.

(e) "Homeless children and youths" in 42 U.S.C. § 11434a(2).

(f) "Permanently expelled" means the disciplinary removal of a pupil from the school in which the pupil is currently enrolled:

(1) Except as otherwise provided in subparagraph (2), without the possibility of returning to the school in which the pupil is currently enrolled or another public school within the school district; and

(2) With the possibility of enrolling in a program or public school for alternative education for pupils who are expelled or permanently expelled after being permanently expelled.

(g) "Restorative justice" has the meaning ascribed to it in NRS 392.472.

(h) "Unaccompanied pupil" has the meaning ascribed to the term "unaccompanied youth" in 42 U.S.C. §1434a(6).

14. The provisions of this section do not prohibit a pupil who is suspended or expelled from enrolling in a charter school that is designed exclusively for the enrollment of pupils with disciplinary problems if the pupil is accepted for enrollment by the charter school pursuant to NRS 388A.453 or 388A.456. Upon request, the governing body of a charter school must be provided with access to the records of the pupil relating to the pupil's suspension or expulsion in accordance with applicable federal and state law before the governing body makes a decision concerning the enrollment of the pupil.

Sec. 35. ***Nothing herein shall require the Legislature to appropriate money to fund education freedom accounts or any expenses related thereto.***

Sec. 36. ***If any provision or part of this act be declared invalid, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the remaining provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. This subsection shall be construed broadly to preserve and effectuate the declared purpose of this act.***

Sec. 37. ***The provisions of this act become effective upon an appropriation by the Legislature to fund the education freedom accounts.***

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DESCRIPTION OF EFFECT

The Petition establishes an education freedom account program under which parents will be authorized to establish an account for their child's education. The parent of any child required to attend public school who has been enrolled in a public school in Nevada during the entirety of the immediately preceding school year or whose child is eligible to enroll in kindergarten may establish an account for the child. Money in the accounts may be used to pay certain educational expenses including, but not limited to, tuition and fees at participating entities. Participating entities may include eligible private schools, a program of distance education not operated by a public school and parents, among others.

The maximum available grant is 90 percent of the statewide base per pupil funding amount. For Fiscal Year 2021-2022, that statewide base per pupil funding amount is $6,980 per pupil, and for Fiscal Year 2022-2023 it is $7,074 per pupil. That said, nothing in the initiative requires the Legislature to appropriate money to fund the accounts. If no money is appropriated, no funding will be available for the accounts. Funding the accounts, however, could necessitate a tax increase or reduction of government services.

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

			This Space For Office Use Only
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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7	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	

Place Affidavit on last page of document.

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

EL501C
Revised 8/2019

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

BEVERLY ROGERS, AN INDIVIDUAL.

AND RORY REID, AN INDIVIDUAL,

Plaintiffs,

Vs.

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

Defendant,

EDUCATION FREEDOM PAC,

Intervenor, aligned as Defendant.

CASE NO.: 220C0027 1B

DEPT. NO. II

PART A

DECISION INVALIDATING PETITION TO CREATE A STATUTE TO GOVERN FUTURE APPROPRIATIONS TO AN EDUCATIONAL SYSTEM OUTSIDE THE SCHOOL DISTRICTS.

PART B

INJUNCTION PREVENTING THE FORWARD PROGRESS OF THIS INITIATIVE

PART A:

DISCUSSION

This opinion presents the second of two Decisions addressing

two of three initiatives filed by the Intervenor, Education Freedom PAC ("EFP"), who are proposing sweeping changes in the way public education is administered here in the State of Nevada.

A Decision and Order has already been filed in the first case, which is captioned RORY REID, an individual; BEVERLY ROGERS, an individual, Plaintiffs versus BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Defendant; Case No. 22 OC 00028 1B ("Reid I").

EFP intervened and was joined as a party defendant in both cases.

The case at hand reverses the order of the Plaintiffs' names so that Beverly Rogers' name appears first.

Like it did in Reid I, Intervenor sought dismissal for claimed unnecessary delays which they attributed to the Plaintiffs. For the reasons set forth in the Reid I Decision, that motion MAY BE AND HEREBY IS DENIED.

So, while there are a host of similarities, these two cases have not been consolidated because more important differences exist than similarities.

The biggest difference is that the Education Freedom PAC was seeking a full-blown Constitutional Amendment in Reid I.

By contrast, the instant case proposes by initiative to bring into existence a very detailed statute and administrative plan which places the State Treasurer in a position where he or she, in the future, may be in charge of maintaining accounts and dispersing grants to educators given standing by the statute.

The statute itself is a full twenty-two (22) pages, single spaced, small font.

"EFP" filed the petition at the end of January and if eventually funded, it would authorize parents to earmark accounts for educational expenses outside the school district, including tuition and fees for participating entities and private schools.

To demonstrate the breadth of this legislation, the Court has edited more than a dozen of the headings by Section as follows:

Section 9.2 accounts maintained by a financial management firm;

Sec. 9.10 bars funding for home schooling; however, under Section 13.1(e) a parent can be an eligible entity;

Sec. 10.2 the funding is permissive within the Legislature;

Sec. 10.3 **if funded the percent is 90%;**

Sec. 10.6 **4% set aside for administrative costs;**

Sec. 11 **limitations on spending;**

Sec. 14 **Testing and achievement examinations and Reporting;**

Sec. 16 **Questionably effective anti-liability provisions;**

Sec. 19 **an innovative proposal: Senate-centered Youth Legislature;**

Sec. 21 **Interscholastic Activities made workable;**

Sec. 29.7 **Eligibility for interscholastic activities;**

Sec. 34 **Malfeasance and disciplines;**

Sec. 35 **Yet another disclaimer, as follows:**

"Nothing herein shall require the Legislature to appropriate money to fund education freedom accounts or any expenses related thereto."

One striking similarity with Reid I is the arguments over the language in the requisite Declaration of Effect ("DOE"). Once again, the main stakeholders argue strenuously their respective opinions over whether or not the DOE already provides legally sufficient clarity,

or, as Plaintiffs argue, whether or not it should be amended to add language making it clearer.

Unlike Reid I, and with one glaring impasse, this Court believes that if the Court and counsel would spend a day massaging the language of the DOE, there is a very realistic probability that the document could be revised in a manner that is satisfactory to both sides.

However, the glaring impasse with the DOE in this case, as in Reid I, is an insufficient explanation of the affect of the initiative on the budgets of all the school districts in the State and/or the need to draw revenues from the General Fund.

Before going further, the Court wishes to acknowledge that the intervenor, EFP, used somebody, or more likely a whole bunch of somebodies, who spent a heroic amount of time in an effort to forge a non-public school learning program under the auspices of an amended Chapter 385 of the Nevada Revised Statutes.

The Intervenor, EFP, feels that they have "sanitized" their initiative from claimed defects causing confusion in the language in the DOE, and should be allowed to proceed.

A critical related factor, also found in Reid I, urges a conclusion that the scheme does not represent an unfunded mandate and, that it is self-proving.

As the argument goes, there cannot be an unfunded mandate because there is no funding, period!

Funding is left to the Legislature.

Quoted directly from the language in the proposed order submitted by EFP, on page 3, lines 7 through 15, EFP urges as follows:

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See page 4 above where Section 35 of the proposed statute is again quoted in full.

Put another way, the fact that the funding is entirely discretionary with a future Legislature, could mean that the State Treasurer would not award a single grant and Nevada would have a new law "on the books" so to speak, but also have a "toothless tiger," on the books, so to speak, because the plan goes nowhere without funding.

Finally, EFP submits, that the scheme does not constitute an unfunded mandate because there is no mandate at all.

And, if there isn't a mandate, it has to be "precatory", a wish or a request.

This author thinks the entire conversation begs the question and presents the very same kind of sleight of hand that was true for the proposed Constitutional Amendment in Reid I.

The Court sees no interpretation other than that the initiative contains the same defect posited in Reid I: it is a non-contemporaneous directive to the Legislature to consider funding the initiative at a later session, and, as such cannot withstand the scrutiny of the Constitution.

Once again, it is a literal read of Section 6, Article 9, of the Constitution which discloses the main flaw in the Petitioner's argument. Consider removing a few words, and emphasizing one key word, and Section 6 [the Constitution] reads like this:

> **"[This Section]...does not permit a proposal of any statute or statutory amendment which...recognizes the expenditure of money, unless *SUCH* statute...imposes a sufficient tax...or...otherwise...provides for raising the necessary revenues". (emphasis supplied)**

It says nothing about the right or latitude to postpone funding to a date out in the future, which will require forging yet another statute.

What it does say, is that this Bill, any Bill, that creates a statute MUST simultaneously, impose a tax, or identify a legal revenue source!

The Intervenor's effort to amend Senate Bill 385 cannot be permitted because there is no contemporaneous identification of a finite revenue source to fund the proposal.

Put another way, Section 6 simply does not allow funding to be postponed until a future Legislature convenes and then look for a

revenue source, while it is trying to balance the rest of the State budget.

In this Judge's view, no other interpretation of the legislative scheme is plausible.

Three final issues must be addressed:

1. **Pre-election Petition;**
2. **Administrative Matters Excluded;**
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PRE-ELECTION PETITION:

The first issue addresses the caution contained in *Herbst Gaming Inc. v Secretary of State,* 122 Nev. 877, 141 P.3d 1224 (2006) that limits challenges available when contesting the scope of "pre-election" initiatives – that is, challenges coming in front of the actual ballot – which must implicate very narrow and specific constitutional requirements.

Other due process and equal protection claims are not ripe for challenge until the election itself has resulted in passage.

Here Article 6, Section 19, once again, legitimates a pre-emptive limited constitutional challenge requiring up front that the initiative

must be tied to a revenue source to go forward. Thus, it falls into the range of permissible challenges.

ADMINISTRATIVE ISSUES

Herbst, supra, can also be cited for the principle, urged by the Plaintiffs, that initiatives like the one under scrutiny are not to involve themselves in administrative matters as opposed to legislative acts, *Id.* 122 Nev. Pp. 883 et seq.

The Plaintiffs are right. The 22-page bill under scrutiny is replete with administrative criteria, which will have to be culled before going to the ballot.

In that sense, it is similar to the DOE previously discussed, which needs some serious editing to properly notice the financial impact before it is tendered to prospective voters.

So, the Court suggests that those shortcomings are both "curable" matters that require effort but can be "fixed".

Unfixable is the revenue source component.

SCHWARTZ DISCUSSION

This case, which is factually closer to our case than any other, was handed down by the Nevada Supreme Court on September 29,

2016. Although it goes by *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 386 (2016), the opinion actually subsumes two cases; the second is *Duncan v. State* which has almost identical issues.

In both cases, the Plaintiffs challenged the constitutionality of a pair of bills enacted previously known as Senate Bill 302 and Senate Bill 515.

This legislation appropriated a Two Billion Dollar lump sun to be disbursed as in our case, through the office of the State Treasurer.

The State Treasurer took it all in, and on his own authority and interpretation concluded that the funding was sufficient to fund not only the earmarked public school system, but also could be available to fund educational savings accounts for parents to subsidize non-public educational opportunities similar to the ones in our case.

The High Court determined that Senate Bill 302 on its face, or in combination with Senate Bill 515 --- by any inference ---- cannot be construed as an appropriation measure, specifically designed to be used to serve private schooling, tutoring and other non-public educational opportunities.

Although the statutes under examination are markedly different from Senate Bill 385 in our case, the *Schwartz* Decision suggests that there is nothing impermissible about the Legislature funding a program for a so-called "sectarian purpose", like private schooling.

But an absolutely essential ingredient for inclusion in the statute is the specific directive to identify a revenue source by the Legislature contemporaneous with the establishment of the administrative program to use the funding.

To this extent, *Schwartz* is entirely consistent and represents a guidepost to come to a conclusion about <u>essential</u> issues that achieve a budget balance.

A specific directive to appropriate revenue for the educational programs proffered by the Intervenor/Defendants is essential to the viability of the statute.

The *Schwartz* case has very recently been modified to recognize that a "public importance" exception applies when a representative citizen sues to protect public funds by challenging a legislative appropriation.

***Nevada Policy Research Institution v. Cannizzaro*, 138 Nev. Adv. Op. 28, April 21, 2022.**

Obviously, the issue in *Nevada Policy Research Institute, supra*, involve standing issues and separation of power issues that are not present in the instant case.

Accordingly, the *Schwartz* case is inapposite except that it may imply a duty that confirms that both Plaintiffs and Defendant in our case have been demonstrating a public-importance role that notches up the level of scrutiny when considering a specific provision in the Nevada Constitution.

The Intervenor/Defendant's challenge falls short of the mark. The statute fails from the lack of a funding directive.

PART B

ORDER ENJOINING PETITION

Like its counterpart, REID I, the Intervenor has made an honest and thoughtful effort to create an opportunity for a substantial public forum to amend a statute that purports to administer and fund educational opportunities for children across the State whose parents

wish, for whatever reason, to eschew participation in the traditional school district.

Unfortunately for the Intervenor, this initiative -- the one they rely upon---- impermissibly commands the Nevada Legislature to amend a scheme of education "status-900" and install an unproven program that violates the deliberative functions of the Legislature.

IT IS THEREFORE ORDERED and declared that Initiative Petition C-04-2022 is legally deficient because of a glaring but curable omission in the Declaration of Effect; and because it violates the prohibition against imposing administrative functions, which also may be curable.

What the Court finds and rules as incurable comes from the patently obvious command in Section 6 of Article 19 of the Nevada Constitution to contemporaneously link the proposal to a viable identified funding source in order to have Constitutional footing to go on with it.

IT IS FURTHER ORDERED and declared that Intervenor-Defendant Education Freedom PAC, its proponents, officers, or agents, are hereby enjoined from collecting signatures in support of the Petition and from

submitting any signatures for verification pursuant to NRS 293.1276, and any signatures previously collected are declared invalid.

IT IS FURTHER ORDERED and declared that Defendant Secretary of State Barbara Cegavske is enjoined from placing the Petition on the ballot.

IT IS SO ORDERED.

DATED this 25th day of April, 2022.

Charles M. McGee

CHARLES M. McGEE
Senior Judge on Assignment

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 20 day of April 2022, I served a copy of this document by placing a true copy in an envelope addressed to:

Lucas Foletta, Esq. 100 West Liberty St. 10th Floor Reno, NV 89501 Bradley Schrager, Esq. 3773 Howard Hughes Parkway, Suite 590 South Las Vegas, NV 89169	Craig Newby, Esq. State of Nevada 555 E. Washington Ave., Suite 3900 Las Vegas, NV 89101

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

Devin Earl
Law Clerk

ORIGINAL

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
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Attorneys for Plaintiffs

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

BEVERLY ROGERS, an individual; RORY REID, an individual

Plaintiffs,

vs.

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

Defendant,

and

EDUCATION FREEDOM PAC

Intervenor Defendant.

Case No.: 22 OC 00027 1B
Dept.: II

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that the DECISION INVALIDATING PETITION TO CREATE A STATUTE TO GOVERN FUTURE APPROPRIATIONS TO AN EDUCATIONAL SYSTEM OUTSIDE THE SCHOOL DISTRICTS and INJUNCTION PREVENTING THE FORWARD PROGRESS OF THIS INITIATIVE was entered in the above-captioned matter on the 26th day of April, 2022.

A true and correct copy 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 30 day of April, 2022

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: _____

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

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2022, a true and correct copy of the **NOTICE OF ENTRY OF ORDER** was served upon all parties via U.S. Mail postage pre-paid, Las Vegas, Nevada and via electronic mailing to the following:

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

Attorney for Barbara Cegavske

Lucas Foletta
McDONALD CARANO LLP
100 W. Liberty St., 10th Floor
Reno, Nevada 89501
Telephone: (775) 788-2000
lfoletta@mdonaldcarano.com

Attorneys for Education Freedom PAC

Jackie Tucker
Judicial Assistant
Honorable Charles M. McGee
mcgeelegalassistant@gmail.com

BShadron@carson.org

By _____
Dannielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

INDEX OF EXHIBITS

Exhibit No.	Documents	Pages
1	Decision Invalidating Petition To Create A Statute To Govern Future Appropriations To An Educational System Outside The School Districts And Injunction Preventing The Forward Progress Of This Initiative	16

EXHIBIT 1

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

BEVERLY ROGERS, AN INDIVIDUAL.

AND RORY REID, AN INDIVIDUAL,

Plaintiffs,

Vs.

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

Defendant,

EDUCATION FREEDOM PAC,

Intervenor, aligned as Defendant.

CASE NO.: 220C0027 1B

DEPT. NO. II

PART A

DECISION INVALIDATING PETITION TO CREATE A STATUTE TO GOVERN FUTURE APPROPRIATIONS TO AN EDUCATIONAL SYSTEM OUTSIDE THE SCHOOL DISTRICTS.

PART B

INJUNCTION PREVENTING THE FORWARD PROGRESS OF THIS INITIATIVE

PART A:

DISCUSSION

This opinion presents the second of two Decisions addressing

two of three initiatives filed by the Intervenor, Education Freedom PAC ("EFP"), who are proposing sweeping changes in the way public education is administered here in the State of Nevada.

A Decision and Order has already been filed in the first case, which is captioned RORY REID, an individual; BEVERLY ROGERS, an individual, Plaintiffs versus BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Defendant; Case No. 22 OC 00028 1B ("Reid I").

EFP intervened and was joined as a party defendant in both cases.

The case at hand reverses the order of the Plaintiffs' names so that Beverly Rogers' name appears first.

Like it did in Reid I, Intervenor sought dismissal for claimed unnecessary delays which they attributed to the Plaintiffs. For the reasons set forth in the Reid I Decision, that motion MAY BE AND HEREBY IS DENIED.

So, while there are a host of similarities, these two cases have not been consolidated because more important differences exist than similarities.

The biggest difference is that the Education Freedom PAC was seeking a full-blown Constitutional Amendment in Reid I.

By contrast, the instant case proposes by initiative to bring into existence a very detailed statute and administrative plan which places the State Treasurer in a position where he or she, in the future, may be in charge of maintaining accounts and dispersing grants to educators given standing by the statute.

The statute itself is a full twenty-two (22) pages, single spaced, small font.

"EFP" filed the petition at the end of January and if eventually funded, it would authorize parents to earmark accounts for educational expenses outside the school district, including tuition and fees for participating entities and private schools.

To demonstrate the breadth of this legislation, the Court has edited more than a dozen of the headings by Section as follows:

Section 9.2 accounts maintained by a financial management firm;

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"Nothing herein shall require the Legislature to appropriate money to fund education freedom accounts or any expenses related thereto."

One striking similarity with Reid I is the arguments over the language in the requisite Declaration of Effect ("DOE"). Once again, the main stakeholders argue strenuously their respective opinions over whether or not the DOE already provides legally sufficient clarity,

or, as Plaintiffs argue, whether or not it should be amended to add language making it clearer.

Unlike Reid I, and with one glaring impasse, this Court believes that if the Court and counsel would spend a day massaging the language of the DOE, there is a very realistic probability that the document could be revised in a manner that is satisfactory to both sides.

However, the glaring impasse with the DOE in this case, as in Reid I, is an insufficient explanation of the affect of the initiative on the budgets of all the school districts in the State and/or the need to draw revenues from the General Fund.

Before going further, the Court wishes to acknowledge that the intervenor, EFP, used somebody, or more likely a whole bunch of somebodies, who spent a heroic amount of time in an effort to forge a non-public school learning program under the auspices of an amended Chapter 385 of the Nevada Revised Statutes.

The Intervenor, EFP, feels that they have "sanitized" their initiative from claimed defects causing confusion in the language in the DOE, and should be allowed to proceed.

A critical related factor, also found in Reid I, urges a conclusion that the scheme does not represent an unfunded mandate and, that it is self-proving.

As the argument goes, there cannot be an unfunded mandate because there is no funding, period!

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The Intervenor/Defendant's challenge falls short of the mark. The statute fails from the lack of a funding directive.

PART B

ORDER ENJOINING PETITION

Like its counterpart, REID I, the Intervenor has made an honest and thoughtful effort to create an opportunity for a substantial public forum to amend a statute that purports to administer and fund educational opportunities for children across the State whose parents

wish, for whatever reason, to eschew participation in the traditional school district.

Unfortunately for the Intervenor, this initiative -- the one they rely upon---- impermissibly commands the Nevada Legislature to amend a scheme of education "status-900" and install an unproven program that violates the deliberative functions of the Legislature.

IT IS THEREFORE ORDERED and declared that Initiative Petition C-04-2022 is legally deficient because of a glaring but curable omission in the Declaration of Effect; and because it violates the prohibition against imposing administrative functions, which also may be curable.

What the Court finds and rules as incurable comes from the patently obvious command in Section 6 of Article 19 of the Nevada Constitution to contemporaneously link the proposal to a viable identified funding source in order to have Constitutional footing to go on with it.

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submitting any signatures for verification pursuant to NRS 293.1276, and any signatures previously collected are declared invalid.

IT IS FURTHER ORDERED and declared that Defendant Secretary of State Barbara Cegavske is enjoined from placing the Petition on the ballot.

IT IS SO ORDERED.

DATED this 25th day of April, 2022.

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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CASE NO.: 220C0027 1B

DEPT. NO. II

PART A

DECISION INVALIDATING PETITION TO CREATE A STATUTE TO GOVERN FUTURE APPROPRIATIONS TO AN EDUCATIONAL SYSTEM OUTSIDE THE SCHOOL DISTRICTS.

PART B

INJUNCTION PREVENTING THE FORWARD PROGRESS OF THIS INITIATIVE

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Quoted directly from the language in the proposed order submitted by EFP, on page 3, lines 7 through 15, EFP urges as follows:

> **"The Petition neither contains an appropriate or an expenditure of money. The EFA program is contingent upon an appropriation by the Legislature to fund it; Section 37 of the Petition states specifically, "[t]he provisions of this act become effective upon an appropriation by the Legislature to fund the educational freedom accounts." (Exhibit 1 at Sec. 37.) And Section 35 states that "[n}othing herein shall require the Legislature to appropriate money to fund education freedom accounts or any expenses related thereto." (*Id.* At Sec. 35.) What's more, Section 10(2) states "[n]othing herein shall require the Legislature to appropriate money to fund the grants described in this section. The availability of grants is subject to the availability of funds as determined by the Legislature." *(Id.* At Sec. 10(2).)**

See page 4 above where Section 35 of the proposed statute is again quoted in full.

Put another way, the fact that the funding is entirely discretionary with a future Legislature, could mean that the State Treasurer would not award a single grant and Nevada would have a new law "on the books" so to speak, but also have a "toothless tiger," on the books, so to speak, because the plan goes nowhere without funding.

Finally, EFP submits, that the scheme does not constitute an unfunded mandate because there is no mandate at all.

And, if there isn't a mandate, it has to be "precatory", a wish or a request.

This author thinks the entire conversation begs the question and presents the very same kind of sleight of hand that was true for the proposed Constitutional Amendment in Reid I.

The Court sees no interpretation other than that the initiative contains the same defect posited in Reid I: it is a non-contemporaneous directive to the Legislature to consider funding the initiative at a later session, and, as such cannot withstand the scrutiny of the Constitution.

Once again, it is a literal read of Section 6, Article 9, of the Constitution which discloses the main flaw in the Petitioner's argument. Consider removing a few words, and emphasizing one key word, and Section 6 [the Constitution] reads like this:

> **"[This Section]...does not permit a proposal of any statute or statutory amendment which...recognizes the expenditure of money, unless *SUCH* statute...imposes a sufficient tax...or...otherwise...provides for raising the necessary revenues". (emphasis supplied)**

It says nothing about the right or latitude to postpone funding to a date out in the future, which will require forging yet another statute.

What it does say, is that this Bill, any Bill, that creates a statute MUST simultaneously, impose a tax, or identify a legal revenue source!

The Intervenor's effort to amend Senate Bill 385 cannot be permitted because there is no contemporaneous identification of a finite revenue source to fund the proposal.

Put another way, Section 6 simply does not allow funding to be postponed until a future Legislature convenes and then look for a

revenue source, while it is trying to balance the rest of the State budget.

In this Judge's view, no other interpretation of the legislative scheme is plausible.

Three final issues must be addressed:

1. **Pre-election Petition;**
2. **Administrative Matters Excluded;**
3. **Schwartz Reviewed;**

PRE-ELECTION PETITION:

The first issue addresses the caution contained in *Herbst Gaming Inc. v Secretary of State,* 122 Nev. 877, 141 P.3d 1224 (2006) that limits challenges available when contesting the scope of "pre-election" initiatives – that is, challenges coming in front of the actual ballot – which must implicate very narrow and specific constitutional requirements.

Other due process and equal protection claims are not ripe for challenge until the election itself has resulted in passage.

Here Article 6, Section 19, once again, legitimates a pre-emptive limited constitutional challenge requiring up front that the initiative

must be tied to a revenue source to go forward. Thus, it falls into the range of permissible challenges.

ADMINISTRATIVE ISSUES

Herbst, supra, can also be cited for the principle, urged by the Plaintiffs, that initiatives like the one under scrutiny are not to involve themselves in administrative matters as opposed to legislative acts, *Id.* 122 Nev. Pp. 883 et seq.

The Plaintiffs are right. The 22-page bill under scrutiny is replete with administrative criteria, which will have to be culled before going to the ballot.

In that sense, it is similar to the DOE previously discussed, which needs some serious editing to properly notice the financial impact before it is tendered to prospective voters.

So, the Court suggests that those shortcomings are both "curable" matters that require effort but can be "fixed".

Unfixable is the revenue source component.

SCHWARTZ DISCUSSION

This case, which is factually closer to our case than any other, was handed down by the Nevada Supreme Court on September 29,

2016. Although it goes by *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 386 (2016), the opinion actually subsumes two cases; the second is *Duncan v. State* which has almost identical issues.

In both cases, the Plaintiffs challenged the constitutionality of a pair of bills enacted previously known as Senate Bill 302 and Senate Bill 515.

This legislation appropriated a Two Billion Dollar lump sun to be disbursed as in our case, through the office of the State Treasurer.

The State Treasurer took it all in, and on his own authority and interpretation concluded that the funding was sufficient to fund not only the earmarked public school system, but also could be available to fund educational savings accounts for parents to subsidize non-public educational opportunities similar to the ones in our case.

The High Court determined that Senate Bill 302 on its face, or in combination with Senate Bill 515 --- by any inference ---- cannot be construed as an appropriation measure, specifically designed to be used to serve private schooling, tutoring and other non-public educational opportunities.

Although the statutes under examination are markedly different from Senate Bill 385 in our case, the *Schwartz* Decision suggests that there is nothing impermissible about the Legislature funding a program for a so-called "sectarian purpose", like private schooling.

But an absolutely essential ingredient for inclusion in the statute is the specific directive to identify a revenue source by the Legislature contemporaneous with the establishment of the administrative program to use the funding.

To this extent, *Schwartz* is entirely consistent and represents a guidepost to come to a conclusion about <u>essential</u> issues that achieve a budget balance.

A specific directive to appropriate revenue for the educational programs proffered by the Intervenor/Defendants is essential to the viability of the statute.

The *Schwartz* case has very recently been modified to recognize that a "public importance" exception applies when a representative citizen sues to protect public funds by challenging a legislative appropriation.

***Nevada Policy Research Institution v. Cannizzaro*, 138 Nev. Adv. Op. 28, April 21, 2022.**

Obviously, the issue in *Nevada Policy Research Institute, supra*, involve standing issues and separation of power issues that are not present in the instant case.

Accordingly, the *Schwartz* case is inapposite except that it may imply a duty that confirms that both Plaintiffs and Defendant in our case have been demonstrating a public-importance role that notches up the level of scrutiny when considering a specific provision in the Nevada Constitution.

The Intervenor/Defendant's challenge falls short of the mark. The statute fails from the lack of a funding directive.

PART B

ORDER ENJOINING PETITION

Like its counterpart, REID I, the Intervenor has made an honest and thoughtful effort to create an opportunity for a substantial public forum to amend a statute that purports to administer and fund educational opportunities for children across the State whose parents

wish, for whatever reason, to eschew participation in the traditional school district.

Unfortunately for the Intervenor, this initiative — the one they rely upon---- impermissibly commands the Nevada Legislature to amend a scheme of education "status-900" and install an unproven program that violates the deliberative functions of the Legislature.

IT IS THEREFORE ORDERED and declared that Initiative Petition C-04-2022 is legally deficient because of a glaring but curable omission in the Declaration of Effect; and because it violates the prohibition against imposing administrative functions, which also may be curable.

What the Court finds and rules as incurable comes from the patently obvious command in Section 6 of Article 19 of the Nevada Constitution to contemporaneously link the proposal to a viable identified funding source in order to have Constitutional footing to go on with it.

IT IS FURTHER ORDERED and declared that Intervenor-Defendant Education Freedom PAC, its proponents, officers, or agents, are hereby enjoined from collecting signatures in support of the Petition and from

submitting any signatures for verification pursuant to NRS 293.1276, and any signatures previously collected are declared invalid.

IT IS FURTHER ORDERED and declared that Defendant Secretary of State Barbara Cegavske is enjoined from placing the Petition on the ballot.

IT IS SO ORDERED.

DATED this 25th day of April, 2022.

Charles M. McGee

CHARLES M. McGEE
Senior Judge on Assignment

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 26 day of April 2022, I served a copy of this document by placing a true copy in an envelope addressed to:

Lucas Foletta, Esq. 100 West Liberty St. 10th Floor Reno, NV 89501 Bradley Schrager, Esq. 3773 Howard Hughes Parkway, Suite 590 South Las Vegas, NV 89169	Craig Newby, Esq. State of Nevada 555 E. Washington Ave., Suite 3900 Las Vegas, NV 89101

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

Devin Earl
Law Clerk