

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUCATION FREEDOM PAC,
Appellant,

vs.

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

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**APPEAL FROM ORDER OF THE FIRST JUDICIAL DISTRICT
COURT CARSON CITY, NV**

APPELLANT'S OPENING BRIEF

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DISCLOSURE STATEMENT IN COMPLIANCE WITH NRAP 26.1

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

1. Education Freedom PAC
2. Lucas Foletta, Esq. from McDonald Carano LLP was the prior attorney of record during the district court Proceedings.
3. Jason D. Guinasso, Esq., Alex R. Velto, Esq., and Astrid A. Perez, Esq. of Hutchison & Steffen, PLLC, are now and will be the current appeal the attorneys of record for Education Freedom PAC. No other attorneys from Hutchison & Steffen, PLLC are expected to appear before this Court with respect to the appeal now pending.

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APPELLANT'S OPENING BRIEF

Appellant, EDUCATION FREEDOM PAC hereby files this Opening Brief.

I. JURISDICTIONAL STATEMENT

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.

The final order was entered on April 12, 2022. The Second order was entered on April 26, 2022. Notice of entry of the order was served on May 4, 2022. The notice of appeal was filed on May 19, 2022. This appeal is timely because it was filed within 30 days after the entry of the final judgment as NRAP 4(a)(1) requires.

II. ROUTING STATEMENT

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.

III. ISSUES PRESENTED

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 Initiative Petition requires a funding source, when funding is not a mandate by the Petition?

4. Whether, as is the case with many other provisions of the Nevada Constitution, a Constitutional Amendment can force the Legislature to act?

5. Whether the Petition includes administrative details or is a policy directive?

IV. INTRODUCTION

This case is about a district court's outcome driven rejection of a lawfully compliant Initiative Petition for a Statutory amendment. The district court erred for multiple reasons. First, the district court erred when it evaluated its own subjective policy conclusion over Nevada's liberal standard

for Initiative Petitions. Second, the district court erred when it determined the description was vague and incomplete, even though the description was straightforward, succinct, and non-argumentative. Third, the district court erred when it concluded that the Petition contains an unfunded mandate, when it expressly states that the Legislature is not required to fund the program and that it is ineffective until it is funded. Fourth, the district court erred when it concluded the Petition is not a policy directive, but an administrative directive, because there is not currently a policy implementing or enacting the Petition.

V. STATEMENT OF THE CASE

This Initiative Petitions is much different than the one decided in *Education Freedom PAC v. Reid, et al., I*. Rather than creating a Constitutional mandate that this Court determined would require an expenditure of funds, and therefore violate the Constitution's preclusion on unfunded mandates, this Petition expressly does not allocate or authorize funding without future legislative action. In so doing, this Petition avoids Article 19, Section 6's prohibition on Petitions that require expenditures. Likewise, the Description of Effect does not succumb to concerns in the parallel case. Here, the description is non-argumentative. It is not subjective. It tells the reader that the Petition will create Education Freedom Accounts and how they will be

administered. Because it does not mandate funding, it does not trigger the unintended consequences this Court was concerned about.

This Court is presented with a well-thought-out and articulated Description of Effect for a Petition that does not require funding and adheres to its requirement that policy be at the forefront of Petitions, not administrative details. The district court elevated its opinion over this Court's precedent, removing the citizens' right to evaluate the proposal and choose to vote yes or no. When placing limits on initiative petitions, Nevada courts should never "judge the wisdom of a proposed initiative; such policy choices are solely for the voters." *Nevada Judges Assn. v. Lau*, 112 Nev. 51, 57, 910 P.2d 898, 902 (1996). The people alone own "the power to propose, by initiative petition . . . amendments to [the] Constitution, and to enact or reject them at the polls." Nev. Const. art. 19, § 2(1). Because the right to change our Constitution is fundamental to our democratic system, Nevada courts must "make every effort to sustain and preserve the people's constitutional rights to amend their constitution through the initiative process." *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247 (2006).

The district court disregarded settled Nevada law. Because it speculated that the Petition would result in a bad outcome, it struck down the Petition

since the Description did not tell the voters the Petition might be a bad idea to some people. This Court should lift the injunction and allow the Petition to proceed to the ballot.

VI. BACKGROUND

This appeal involves an Initiative Petition seeking a Statutory Amendment.

A. Statement of the Facts and Statement of the Case

1. Education Freedom PAC lawfully filed its Initiative Petitions

Education Freedom PAC is an organization committed to improving education in Nevada by providing access to educational opportunities Nevada students and parents otherwise would not have. It properly filed an Initiative Petition with the Nevada Secretary of State's Office on January 31, 2022, seeking a statutory amendment that would authorize the establishment of accounts for a child's education in Nevada. 1 AA 48-66. If enacted, the Petition would authorize parents to spend money in the account for educational expenses. *Id.* The Petition does not obligate the State to expend any money because it does not contain an appropriation or require the State to expend funds, rather, it allows the Legislature to eventually allocate funding if it so decides. *Id.* at. 66.

The Petition proposes amending NRS Chapter 385 to add multiple sections. It is a relatively lengthy proposal, so the changes are not quoted verbatim in this Brief. The Petition includes the following 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 amount is \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. That said, nothing in this initiative requires the Legislature to appropriate money to fund these 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.

Id. at 67.

2. Reid/Rodgers Challenge the Initiative

a. Respondents intentionally delayed the district court's ability to consider the Initiative Petitions—denying Education Freedom PAC its due process and using strategy to deny voters the right to vote.

Under statute, a party challenging an Initiative Petition has a set number of days to file a challenge. *See* NRS 295.061(2). Respondents took multiple actions before the district court to intentionally delay a court ruling. First, they waited until the last possible day to challenge the Petition. And on that last day—February 22, 2022—Respondents, Rory Reid and Beverly Rogers, filed a complaint for declaratory and injunctive relief against the Nevada Secretary of State that challenged the initiative petition under NRS 295.061(1). 1 JA 1-13. But Respondents failed to properly name Education Freedom PAC as a defendant, which caused unnecessary delay, forcing Education Freedom PAC to seek court approved intervention. *Id.* at 162.

Third, Respondents filed an unnecessary peremptory challenge. *Id.* at 148. The case was assigned to Judge Wilson due to a conflict for Judge Russell, *id.* at 70, however, Respondents recused Judge Wilson, *id.* The case was eventually assigned to Senior Judge McGee, *id.* Because of Respondents delays in district court, the lower court could not hold a hearing within 15 days as required under NRS 295.061(1).

b. The Parties briefed the issue before the district court before a hearing.

Accompanying Respondents filing was a memorandum and points of authorities in support of its complaint. *Id.* at 37-47. Respondents made three arguments. First, they argued that the Petition's Description of Effect is misleading and does not give voters an opportunity for an informed decision—applying a rigid reading of the Description more akin to statutory interpretation. *Id.* at 42-44. Second, they argued that the Petition is an unfunded mandate, claiming that it violates the Nevada Constitution. *Id.* at 44-46. And third, they argued that the Petition improperly includes administrative details. *Id.* at 46.

Education Freedom PAC filed its answering brief March 15, 2022. *Id.* at 85-103. It argued, first that the district court's failure to hold a hearing in the time required under NRS 295.061—at the fault of Respondents—prejudiced Education Freedom PAC and required the district court to dismiss the Complaint. *Id.* 88-89. Second, the description was not misleading or confusing. Education Freedom PAC argued extensively that Nevada law does not require the absurd level of subjective arguments that Respondents seek, including Respondent's proposed requirement that the Description include hypothetical and non-existent effects, especially considering it has merely 200

words available to write the Description. *Id.* at 90-96. Third, it argued the Petition does not violate Article 19, Section 6 because it is not an unfunded mandate. *Id.* at 96-99. The Petition does not require a disbursement of funds or mandate the Legislature fund anything. *Id.* Fourth, it argued that, at worst, the Court could amend the Description of Effect if the court determined it was inadequate. *Id.* at 99. Finally, it argued the Petition does not include administrative details because it does not execute policies or laws that were previously enacted; rather, it allows the Legislature to adopt a policy that is lawful. *Id.* at 99-102.

Education Freedom PAC also attached a proposed amended Description of Effect that addressed several the concerns identified by Respondents in their challenge to the Petition. *See Id.* at 129. This Amended Description removed reference to the language that Respondents claim disputes the ability of a parent to create a savings account for his or her children's education, clarifies further limits in the Petition on the use of funds, and magnifies the requirement the Legislature has the final prerogative to fund the Accounts. *Id.*

The Secretary of State filed a limited response on March 24, 2022. *Id.* at 151-52. It effectively stated a position of neutrality.

Respondents filed a reply on March 25, 2022. *Id.* at 154-60. They argued that their complaint complied with the requirements of NRS 295.061 and that the 15-day timeline is directory, not mandatory, therefore does not warrant dismissal. *Id.* at 156. Further, they argued the description was inaccurate because it fails to tell signatories that students could be precluded from attending a public school, something Education Freedom PAC disputes. *Id.* at 156. It argued the Legislative power of the purse precludes the initiative. *Id.* at 158-59. And finally, it argued the policy proposal contained too many administrative details to be considered solely policy. *Id.* at 160.

The district court heard the matter on March 29, 2022.¹

3. The district court incorrectly invalidated the petition.

The district court issued its order titled: “Part A: Decision Invalidating Petition to Create a Statute to Govern Future Appropriations to An Education System Outside the School District” and “Part B: Injunction Preventing the Forward Progress of this Initiative.” *Id.* 167-181. The district court, initially, commented that the statute was long and arduous to read and was critical of how detailed the proposal was. *Id.* at 169.

¹At the time of this filing, the transcripts have not yet been produced. Appellant is working swiftly to acquire the transcripts and will supplement the record when they are available.

In issuing its ruling, the district court concluded that Article 19, Section 6 precludes statutory amendments that even contemplate future expenditures may occur. *Id.* at 174. Simultaneously, the district court concluded, correctly, that the amendment does not require funding. *Id.* (“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”).

The district made multiple incorrect legal conclusions. First, it concluded that any Petition *must* be tied to a revenue source, regardless of whether it required funding. *Id.* at 175-76. Second, it concluded any administrative criteria precluded the Petition under *Herbst*. *Id.* at 176. And created, it concluded there is a higher level of scrutiny for Petitions when there is an issue of public importance. *Id.* at 175-79.

The district court did not allow an amendment to the Petition because it concluded there were too many errors in the Petition’s description and the Petition itself to resolve. *Id.* at 179-81.

VII. STANDARD OF REVIEW

Efforts to impede the voters’ initiative power is contrary “to the democratic process.” *Farley v. Healey*, 431 P.2d 650, 652 (1967). This Court reviews de novo a district court’s order granting injunctive and declaratory

relief. *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 41, 293 P.3d 874, 878 (2013).

VIII. ARGUMENT

A. Nevada voters are entitled to determine whether the Ballot measure is a good idea, not a district court.

A party seeking to invalidate a petition must make a “compelling showing” that the measure is “clearly invalid.” *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165, 176, 208 P.3d 429, 436 (2009) (hereinafter “*LVTAC*”). This is for good reason— “[p]lacing the burden on the challenger ensures that the ‘power of initiative [is] liberally construed to promote the democratic process.’” *Prevent Sanctuary Cities*, 2018 WL 2272955, at *2 (quoting *Farley v. Healey*, 431 P.2d 650, 652 (Cal. 1967)).

The district court failed to apply this high standard. In fact, it created a new standard that implied a higher level of scrutiny for Petitions when there are issues of “public importance.” *Id.* at 178. But all Petitions involved issues of public importance, so it makes little sense to adopt a higher standard. This standard does not exist in *Schwartz*. Nevada law requires that the district court have presumed the petition valid and for Respondents to have showed

compellingly that it was invalid. Respondents failed their burden in district court.

B. The district court incorrectly determined the description was vague and incomplete.

Education Freedom PAC provided a straightforward and non-argumentative description of the Petition and its intended effect. The district court erred by treating this description as the argument required for the ballot. Because it concluded the Petition was a bad idea, it demanded the Petition include a description that explained the district court judge's policy preference. It concluded there was "insufficient explanation of the affect of the initiative on the budgets of all schools." *Id.* at 5.

The seminal case on the adequacy of a Description of Effect is *Education Initiative PAC v. Community to Protect Nevada Jobs*, 129 Nev 35, 293 P.3d 874 (2013). There, the Court outlined the following standard:

A description of effect serves a limited purpose to facilitate the initiative process, and to that end, it must be a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals. Given that limited purpose and the 200-word restriction, the description of effect cannot constitutionally be required to delineate every effect that an initiative will have; to conclude otherwise could obstruct, rather than facilitate, the people's right to the initiative process. In reviewing an initiative's description of effect, a district court should

assess whether the description contains a straightforward, succinct, and nonargumentative statement of what the initiative will accomplish and how it will achieve those goals.

129 Nev. at 37, 293 P.3d at 876. When reviewing a Description, “it is inappropriate to parse the meanings of words and phrases used in a description of effect” as a court would when reviewing a statute. *Id.* at 48, 293 P. 3d at 883. A rigid approach to reading descriptions of effect “carr[y] the risk of depriving the people of Nevada of their constitutional rights to propose laws by initiative.” *Id.* A holistic approach is the preferred analysis. *Id.* This Court reaffirmed this standard in *Education Freedom PAC v. Reid, et al.*, 138 Nev. Adv. Op. 47 at *13-14, Case No. 84736 (June 28, 2022) and *Helton v. Nevada Voters First PAC, et al.*, 138 Nev. Adv. Op. 45 (June 28, 2022).

1. The Description for the Petition was sufficient as a matter of law.

The Petition’s Description is “a straightforward, succinct, and nonargumentative statement of what the initiative will accomplish and how it will achieve those goals.” *Education Initiative PAC*. 129 Nev. at 37, 293 P.3d at 876. It states the goal of the petition and how it will do it, describing the establishment of an Education Freedom Account, which requires legislative appropriation of funds—at the discretion of the Legislature—to become

effective. 1 AA 34. It also explains how a parent may use funds, in the event the Legislature were to eventually make them available, by requiring a student to attend public school before the child may receive funds. *Id.* The description also caps the amount of money the Legislature may make available to 90 percent of the base per-pupil funding, of which the amounts This is all explained in a simple and coherent way in less than the 200 words. As such, Respondents failed to overcome their burden to invalidate the petition. *Las Vegas Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165 176, 208 P.3d 429, 436 (2009) (The party seeking to invalidate the initiative must show that the initiative is “clearly invalid.”).

2. The district court erred when it determined the Petition was unclear, erroneously concluding the Description failed to discuss potential policy ramifications.

The district court’s analysis of the Description of Effect is not straight forward. This Court reviews the issue de novo, so this portion of the brief focuses on arguments made by Respondent before the district court, while also addresses the district court’s conclusions.

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- a. The Description is not misleading in its explanation of the requirements to receive EFA funding.

The Petition does not bar any child from attending a public school or preclude a child from enrolling in a public school. As such, the Description does not mislead a potential signatory in failing to inform them of that inaccurate claim. The Petition describes a system whereby the State Treasurer could deposit EFA grant funds in EFA on a quarterly basis. The petition provides further that if a parent establishes an EFA, the child may not then receive instruction from a public school until the end of the period during which the last deposit for the EFA was made. *Id.* at Section 9(4).

The Description is not misleading in the manner described by the district court or Respondents below. The Petition does not bar any child from enrolling in a Nevada public school. It merely delays enrollment for children whose parents established EFAs for their benefit and who are receiving funds under the program. If a child's EFA has been established and funded, that child may not enroll in public school only for a period of one quarter, at most. It would also only be triggered if the child's parents terminate the EFA after receiving EFA funds. This approach is a common-sense policy approach to

prevent recipients from both receiving funding while taking advantage of publicly funded education.

More importantly, any omitted reference to the effects of a parent violating an EFA agreement does not make it invalid. A description does not need to outline every repercussion, rather, it is a “straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals.” *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. at 37, 293 P.3d at 876. Nothing more is required under Nevada law. A “description of effect cannot constitutionally be required to delineate every effect that an initiative will have.” *See Educ. Initi. PAC*, 129 Nev. at 37, 293 P.3d at 876; *see also Helton*, 128 Nev. App. 45 at *11 (affirming this standard)

Here, there was no material omission because the Description sufficiently explains the objective of the Petition and how it will achieve those goals. The objective is the creation of an EFA program. The Description says how it will do that and describes how parents would set it up, how it will be funded, and what they can be used for.

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b. The Description is not misleading in its characterization of how the money could be spent.

Respondents argued below that the Description was misleading because parents may think they could pay for after-school tutoring. This is neither implied by the Description or a necessary outcome. The Description does not suggest a parent could establish an EFA to pay for after-school tutoring while their child is enrolled in a public school. The sentence in the Description says that EFA money may be “used to pay certain educational expenses including, but not limited to, tuition and fees at participating entities.” There is no inference that participating entities would be tutors, and they would not be under the Petition. *See* Section 11(1) (“Money deposited in an education freedom account must be used only to pay for,” among other things, “[t]uition and fees at a school that is a participating entity in which the child is enrolled.”

Further, this Court could, at worst, modify the Description to say that participating entities are schools that are enrolled in the EFA program. But there is simply no need to include in the Description any reference to that fact because the Description sufficiently describes its purpose and how it will achieve the Petition’s goal. This Court has never required more than a mere recitation of the details of an initiative petition.

- c. The Description is clear the program that the Petition creates is not guaranteed.

The Description is clear in its explanation that the Petition does not guarantee the program will be funded. The Description states in relevant part:

nothing in this initiative requires the Legislature to appropriate money to fund these accounts. If no money is appropriated, no funding will be available for the accounts.

Id. at 67. That portion of the description makes clear that if the Legislature fails to appropriate funding for EFAs, there will be no funding available. Respondents' objection seems to be that the Description was not written as they would have written it. That does not make it misleading. The Description is factually correct and does not represent what the Petition explains.

It is clear that the Petition does not require the re-direction of funding from public schools, so any argument that the Description should include this language goes beyond this Petition and what is required under Nevada law.

See Educ. Initi.PAC, 129 Nev. at 42, 293 P.3d at 879

The arguments that the district court and respondents seek to have placed in the Description are better suited for the ballot and public debate. Under NRS 293.252(1), the Secretary of State must appoint two committees

to draft arguments for and against passage of the Petition. This is the proper forum for the argument the district court incorrectly required to be included in the Initiative Petition Description. The arguments for and against passage are published prior to the election “in conspicuous display” in newspapers and included in sample ballots. This is to ensure there is debate about the merits of the Petition, however, it is improper to require this at the Description stage of the process.

3. The district court incorrectly determined the Petition is an unfunded mandate because it does not make an appropriation or expend money.

The district incorrectly concluded that Article 19, Section 6 applies to the Petition at-hand. Respondent’s argument that the Petition is barred by Article 19, Section 6 is a red herring. The Petition is not an “appropriation” or “expenditure.” Article 19, Section 6, provides:

This article does not permit the proposal of any statute or statutory amendment_which makes an appropriation or otherwise requires the expenditure of money, unless such statute or amendment also imposes a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides for raising the necessary revenue.

(emphasis added).

This Court explained further in *Rogers v. Heller* that an “appropriation of funds” is the “setting aside of funds, and an expenditure of money.” 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001). In order to qualify as this expenditure, the appropriation must be “a new requirement that does not otherwise exist.” *Id.*

Here, the Petition does not contain an appropriation or an expenditure of money. As is explained above, the EFA program’s implementation is contingent on the Nevada Legislature’s appropriation of funds. Section 37 of the Petition states specifically that the “act becomes effective upon an appropriation by the Legislature to fund the” EFAs. Further, Section 35 states that nothing “require[s] the Legislature to appropriate money to fund” EFAs “or any expense related thereto.” So, the Petition does not contain an appropriation nor does it set aside funds. It also does not contain an expenditure.

Put another way, the Initiative does not is the opposite of an expenditure. It expressly states that it does not allocate money and the funding implementation of the proposal is contingent on future action that is not a mandate of the Initiative. The Initiative does not compel an increase or reallocation of funding. The Initiative leaves the mechanics of funding to the

Legislature. Therefore, the Initiative does. Not warrant a revenue generating provision or expenditure to accomplish its purpose.

Further, any prior cases that addressed a statute that sought to achieve this goal is irrelevant. In *Schwartz v. Lopez*, the Court considered the constitutionality of SB 302 (2015). 132 Nev. 732, 739, 382 P.3d 886, 891 (2016). The Bill was different than the Initiative Petition. It required “the amount of money deposited by the Treasurer into an account for a child within a particular school district is deducted from the” school district’s budget. *Id.* at 741, 382 P.3d at 893. Because the Bill did not provide an independent basis to appropriate money from the general fund, “the education savings account program is without an appropriation to support its operation.” *Id.* at 756, 382 P.3d at 902.

SB 302 is in stark contrast to the Petition before this Court because the Petition does not require the diversion of any state funds to support Education Freedom Accounts. Unlike SB 302, the Petition does not contain language amending the provisions of the law that apportion DSA funding, nor does it require the Legislature to do that. The Petition merely creates a program that allows for future funding at the Legislatures discretion.

4. The district Court incorrectly determined the Petition overreaches by taking administrative action

Generally, a Petition may not dictate administrative details. *Nevada for the Protection of Prop. Rights, Inc. v. Heller*, 122 Nev 894, 913, 141 P.3d 1235, 1248 (2006). But a Petition may prescribe policy. *Id.* The Supreme Court has described these differences: a policy enactment “lays down a rule of conduct or course of policy for the guidance of citizens or their offices, whereas impermissible administrative matters simply ‘put into execution previously declared policies or previously enacted laws or direct [] a decision that has been delegated to [a governmental body with that authority].’” *Id.* (quoting *Train Trench*, 52 P.3d at 393-94).

Initially, this Court has never applied the administrative details rule—as far as Petitioner can tell—in a statutory context. It has been applied more in the Constitutional Amendment context. Therefore, it is unclear why a statute could not create administrative mandates.

Still, even if it applies, the Petition is focused solely on policy. It establishes an EFA program that includes mechanisms for its function. Accordingly, it “enacts a permanent law” and “course of policy.” Insofar as the administration is concerned, the policy set forth in the Petition guides the administering entities as much as any other law. It does not put into execution

a previously declared policy or enacted law because the State of Nevada has never implemented the policy or law behind the Petition.

The portions of the Petition Respondents claimed violated the rule against administrative details were those that require the State Treasurer to act in a certain way. But they are legislative obligations, not administrative directives, so the Petition, therefore, does not constitute an administrative delegation.

IX. CONCLUSION

The district court never should have enjoined Appellant from distributing its petition and never should have infused its own beliefs into a case that was better decided objectively. This Court should find legal error and permit the Petition to go forward.

DATED this 8th day of July, 2022.

By: /s/ Jason D. Guinasso

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AFFIRMATION

The undersigned does hereby affirm that **APPELLANT’S OPENING BRIEF** filed under Supreme Court Case No. 84735 does not contain the social security number of any person.

DATED this 8th day of July, 2022.

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ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2020 in 14 Point Times New Roman Font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

a. Proportionately spaced, has a typeface of 14 points or more and contains 6,176 words and

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is

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

DATED this 8th day of July, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this date I caused to be served a true and correct copy of **APPELLANT’S OPENING BRIEF** on the following as indicated below:

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(Via Electronic service through the Nevada Supreme Court’s Eflex system)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 8th, 2022, at Las Vegas, Nevada.

/s/ Kaylee Conradi
Kaylee Conradi