

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUCATION FREEDOM PAC,
Appellant,

vs.

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

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APPELLANT'S APPENDIX, VOLUME ONE OF ONE

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AFFIRMATION

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

DATED this 8th day of June 2022.

HUTCHISON & STEFFEN, PLLC

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hutchison & Steffen, PLLC and that on July 8, 2022, APPELLANT'S APPENDIX, VOLUME ONE OF ONE was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system. Pursuant to NRAP 30(f)(2), all Participants in the case will be served and provided an electronic copy.

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BY

CLERK

DEPUTY

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ROGERS and RORY REID*

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.: 22-00002713
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.

AA0001

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.

1 The maximum available grant is 90 percent of the
2 statewide base per pupil funding amount. For Fiscal Year
3 2021-2022, that statewide base per pupil funding amount
4 is \$6,980 per pupil, and for Fiscal Year 2022-2023 it is
5 \$7,074 per pupil. That said, nothing in the initiative
6 requires the Legislature to appropriate money to fund the
7 accounts. If no money is appropriated, no funding will be
8 available for the accounts. Funding the accounts, however,
9 could necessitate a tax increase or reduction of government
10 services.

11 See Exhibit 1, at 21.

12 8. The Petition seeks to effectuate a wholesale amendment of Title 34 of
13 Nevada's revised statutes, which relates to education, by adding seventeen new
14 sections to Chapter 385 of the NRS and by amending NRS 835.007, 219A.150,
15 385B.060, 385B.150, 385B.160, 385B.170, 388A.471, 388.850, 392, 392.033, 392.070,
16 392.074, and 392.466. The apparent purpose of this broad-reaching statutory revision
17 to Nevada's education statutes is to divert state funds from public to private
18 education by creating a scheme which would permit parents of school age children to
19 establish education savings accounts which would be funded by the State of Nevada.

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

28 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.

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

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

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

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

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

3 15. Moreover, under the Nevada constitution, the initiative power only
4 extends to actual statutes which impose real obligations. The initiative power does
5 not extend to purported pronouncements of law that only come into effect upon the
6 happening of some future event, such as the Legislature enacting the necessary
7 funding for the EFA grants. See Nev. Const., Art. 19, § 1 (“the people reserve to
8 themselves the power to propose, by initiative petition, statutes and amendments to
9 statutes and amendments to this Constitution, and to enact or reject them at the
10 polls.”). By providing that the statutory scheme contemplated in the Petition only
11 becomes effective upon the Legislature appropriating funding for the EFA grants,
12 which may or may not happen, the proposed initiative cannot properly be considered
13 to be a proposed statute and is therefore beyond the initiative power granted by the
14 Constitution.

15 FIRST CAUSE OF ACTION

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

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

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

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

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

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

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

- 6 • The very first sentence of the Decision of Effect states that "[t]he Petition
7 establishes an education freedom account program under which parents
8 will be authorized to establish an account for their child's education,"
9 misleadingly suggesting that parents are precluded from establishing an
10 account under existing law, which is of course not the case. The Description
11 of Effect thus misleadingly suggests that if the proposed initiative did not
12 pass, parents would be precluded from setting up savings accounts to be
13 used to fund their children's education, which, again, is not the case.
- 14 • The Description of Effect goes on to state that "The parent of any child
15 required to attend public school who has been enrolled in a public school in
16 Nevada during the entirety of the immediately preceding school year or
17 whose child is eligible to enroll in kindergarten may establish an account
18 for the child.. Money in the accounts may be used to pay certain educational
19 expenses including, but not limited to, tuition and fees at participating
20 entities. Participating entities may include eligible private schools, a
21 program of distance education not operated by a public school and parents,
22 among others." This makes it seem that if passed, parents would be able to
23 establish an EFA to supplement their child's public education, by, for
24 example, signing their child up for after-school tutoring. In fact, this is not
25 the case, because section 10 of the proposed initiative provides that "[a]
26 parent may not establish [an EFA] ... for a child ... who will remain enrolled
27 full-time in a public school, regardless of whether such child receives
28

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

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

26 21. Collectively, these misleading statement and omissions render it
27 impossible for a potential signatory to make an informed decision whether to sign the
28

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

3 **SECOND CAUSE OF ACTION**

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

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

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

11 24. When an initiative violates this “threshold content restriction” by
12 mandating unfunded expenditures, it is void *ab initio*, and pre-election intervention
13 by Nevada courts is warranted. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 891, 141
14 P.3d 1224, 1233 (2006) (quoting *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034,
15 1036 (2001)).

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

24 26. First, by its plain language, the proposed initiative does not provide for
25 any taxes or other means of raising revenue to fund the grants deposited into the
26 EFAs established pursuant to the initiative. Instead, the appropriation of these
27 funds, without which the program cannot proceed or function, is left to the
28

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

- 3 • “. . . if a parent enters into or renews an agreement pursuant to section 9 of
4 this act and the Legislature has appropriated money to fund grants
5 described in this section, a grant of money on behalf of the child must be
6 deposited in the education freedom account of the child.” **Exhibit 1** at 3,
7 § 10.1.
- 8 • “Nothing herein shall require the Legislature to appropriate money to fund
9 the grants described in this section. The availability of grants is subject to
10 the availability of funds as determined by the Legislature.” *Id.*, ¶ 10.2.
- 11 • “Nothing herein shall require the Legislature to appropriate money to fund
12 education freedom accounts or any expenses related thereto.” *Id.* at 20, § 35.
- 13 • “The provisions of this act become effective upon an appropriation by the
14 Legislature to fund the education freedom accounts.” *Id.*, § 37.

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

- 21 • The State Treasurer would be required to develop an application process
22 for parents to enter into an agreement with the State Treasurer to establish
23 an EFA, and to “make the application available on the Internet website of
24 the State Treasurer.” **Exhibit 1**, at 3, § 9.8.
- 25 • The State Treasurer would be required to “provide to the parent who enters
26 into or renews the agreement a written explanation of the authorized uses
27 . . . of the money in an [EFA] and the responsibilities of the parent and the
28

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

- 3 • The State Treasurer would be required to “qualify one or more private
4 financial management firms to manage education freedom accounts and
5 shall establish reasonable fees, based on market rates, for the management
6 of education freedom accounts.” *Id.*, at 5, § 12.1.
- 7 • EFAs established pursuant to this proposed initiative would be required to
8 be “audited randomly each year by a certified or licensed public accountant.
9 The State Treasurer may provide for additional audits of an education
10 freedom account as it determines necessary.” *Id.*, §12.2.
- 11 • The State Treasurer would be required to receive and evaluate applications
12 for institutions to become “participating entities” under the program and to
13 “approve an application submitted pursuant to subsection 1 or request
14 additional information to demonstrate that the person meets the criteria to
15 serve as a participating entity.” *Id.*, §§ 13.1, 13.2.
- 16 • The State Treasurer would be required to prescribe regulations for any
17 participating entities that are “reasonably expected . . . [to] receive, from
18 payments made from [EFAs], more than \$50,000 during any school year” to
19 post surety bonds in the amounts expected to be received, or to “[p]rovide
20 evidence satisfactory to the State Treasurer that the participating entity
21 otherwise has unencumbered assets sufficient to pay to the State
22 Treasurer” such amounts. *Id.*, § 13.3.
- 23 • The State Treasurer would be required to police the participating entities
24 to ensure that they do not engage in improper conduct, and, if they do, may
25 refuse them to continue to participate in the program. *Id.*, at 6, § 13.5.
- 26 • The State Treasurer would be required to “provide immediate notice” of
27 any participating entities not permitted to continue participating in the
28

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

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

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

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

1 **THIRD CAUSE OF ACTION**

2 **Impermissible Inclusion of Administrative Details**

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

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

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

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

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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 initiative 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

A handwritten signature in black ink, appearing to read "Erin Phillips".

Signature of Petition Filer

01/27/2022

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^[5] **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^[5] **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 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
	YOUR SIGNATURE	DATE / /	CITY COUNTY
3	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY
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4	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY
	YOUR SIGNATURE	DATE / /	CITY COUNTY
5	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY
	YOUR SIGNATURE	DATE / /	CITY COUNTY

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County of _____
Petition District _____

(Only registered voters of this county may sign below)
(Only registered voters of this petition district may sign below)

This Space For
Office Use Only

6	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	
7	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	

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

ORIGINAL

REC'D & FILED

2022 FEB 22 PM 1:36

AUBREY ROWLATT
CLERK

DEPUTY

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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.:
Dept.:

MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION S-02-2022 PURSUANT
TO NRS 295.061(1)

1 **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Beverly Rogers and Rory Reid, (collectively "Plaintiffs") submit this
3 Memorandum of Points and Authorities in Support of the Complaint in this action.

4 **I. INTRODUCTION**

5 Nevada Statutory Initiative Petition S-02-2022 (the "Petition") seeks to enact
6 a statute that would upend Nevada's public education system by using state money
7 to fund education savings accounts—referred to as "education freedom accounts"
8 ("EFAs")—diverting the State's education resources away from Nevada's public
9 school system. This Petition is legally flawed, however, and cannot be presented to
10 voters for signature, for the following reasons:

11 First, the Petition's statutorily-required description of effect is misleading,
12 confusing, and deceptive, in that it fails to fairly present enough information for a
13 potential signer to make an informed decision about whether to support the initiative.
14 The description, among other things, erroneously suggests that under existing law,
15 parents are precluded from setting up savings accounts to be used to fund their
16 children's education; fails to inform signatories that certain children could be barred
17 from attending public school as a result of their parents' early termination of an EFA
18 agreement; misleadingly suggests that EFA funds can be used to supplement a child's
19 public school education, when in fact the initiative expressly bars parents from using
20 EFA funds in this manner; and fails to inform potential signatories that any funds
21 appropriated for these EFA's would inevitably be diverted from Nevada's public
22 school system.

23 Second, the Petition fails to impose taxes or otherwise raise revenue to pay for
24 the grants used to fund the EFA's or the numerous regulatory and administrative
25 obligations placed on the State Treasurer and other agencies by the initiative, and
26 therefore runs afoul of Article 19, Section 6 of the Nevada Constitution.

27 Third, while initiatives may propose policy, it is beyond the initiative power
28 reserved under the Constitution for such initiatives to dictate administrative details.

1 Here, however, the Petition improperly seeks to dictate a host of administrative
2 details (page after page of them), rendering the Petition invalid.

3 **II. THE INITIATIVE PETITION**

4 **A. The EFAs Contemplated By The Petition**

5 On or about January 31, 2022, the Petition was filed with the Nevada
6 Secretary of State. See **Exhibit 1**, a true and accurate copy of Notice of Intent to
7 Circulate Statewide Initiative or Referendum Petition associated with Statutory
8 Initiative Petition S-02-2022. If passed, this initiative would cause a wholesale
9 revision of Nevada's education finance system by permitting parents of school age
10 children to establish EFAs, funded by the State and then used to pay for educational
11 expenses outside Nevada's constitutional uniform system of common public schools.

12 An EFA would be established when a parent enters into an agreement with
13 the State Treasurer. If a parent enters into an agreement with the State Treasurer
14 for the creation of an EFA, and if the Legislature has appropriated money to fund
15 grants to such EFAs, a grant of money on behalf of the child is to be deposited into
16 the child's EFA in an amount equal to 90 percent of the statewide base per pupil
17 funding amount. *Id.* at 3, §§ 10.1-10.3. An EFA agreement is valid for one school year
18 but may be terminated early. *Id.* at 3, § 8.4. When a parent terminates an EFA
19 agreement before the end of a school year, that parent's child "may not receive
20 instruction from a public school in this state until the end of the period for which the
21 last deposit was made into the [EFA]." *Id.*, at 3, § 4.

22 The EFA program requires participating students to receive instruction from
23 one or more "participating entities," which include private schools, universities,
24 programs of distance education, tutors, and parents. *Id.* at 2,5, §§ 4, 13.1 Under the
25 proposed initiative, the EFA funds may be spent on authorized educational expenses,
26 such as private school tuition and fees, textbooks, tutoring, etc. *Id.* at 4, § 11.1.

1 **B. The State Treasurer And Other Agencies And Officials Are**
2 **Required To Set Up, Administer And Monitor The Contemplated**
3 **EFA Program**

4 The proposed initiative purports to impose numerous regulatory and
5 administrative obligations on the State Treasurer, as well as other state and local
6 governmental entities, in order to effectuate the Petition's EFA program. For
7 example, if enacted, the State Treasurer would be required to develop an application
8 process for parents to enter into EFA agreements with the State Treasurer and make
9 the applications available online, (**Exhibit 1**, at 3, § 9.8), and provide parents with
10 "a written explanation of the authorized uses... of the money in an [EFA] and the
responsibilities of the parent and the State Treasurer." *Id.*, § 9.9. Additionally:

11 • The State Treasurer would be required to "qualify one or more private
12 financial management firms to manage EFAs," and establish fees for the
13 management of EFAs education freedom accounts." *Id.*, at 5, § 12.1. These
14 EFAs would be required to be "audited randomly each year by a certified or
15 licensed public accountant," and may be subject to additional audits, as
16 determined by the State Treasurer. *Id.*, §12.2.

17 • The State Treasurer would be required to receive and evaluate applications
18 for institutions to become "participating entities" under the program and to
19 "approve an application... or request additional information to demonstrate
20 that the person meets the criteria to serve as a participating entity." *Id.*,
21 §§ 13.1, 13.2. The State Treasurer would also be required to "annually make
22 available a list of participating entities, other than any parent of a child." *Id.*,
23 at 7, § 15.1.

24 • The State Treasurer would also be required to prescribe regulations for
25 participating entities that are "reasonably expected... [to] receive, from
26 payments made from [EFAs], more than \$50,000 during any school year" to
27 post surety bonds in the amounts expected to be received, or to "[p]rovide
28 evidence satisfactory to the State Treasurer that the participating entity

1 otherwise has unencumbered assets sufficient to pay to the State Treasurer
2 such amounts. *Id.*, at 5-6, § 13.3.

3 • The State Treasurer would be required to police the participating entities to
4 ensure that they do not engage in improper conduct, and, if they do, may refuse
5 them to continue to participate in the program. *Id.*, at 6, § 13.5. The State
6 Treasurer would be required to “provide immediate notice” of any participating
7 entities not permitted to continue participating in the program “to each parent
8 of a child receiving instruction from” such entities. *Id.*, § 13.6.

9 • The State Treasurer would be required to “administer an annual survey of
10 parents who enter into or renew an agreement,” to determine their relative
11 satisfaction with and opinions regarding the program. *Id.*, § 14.3. Separately,
12 the Department of Education would be required to aggregate the results of
13 examinations taken by children participating in the program and make such
14 aggregated data available on the internet. *Id.*, § 14.2.

15 **C. The Proposed Initiative Does Not Impose Any Taxes Or**
16 **Otherwise Generate Revenue To Pay For The Contemplated**
Program

17 The proposed initiative does not provide for any taxes or other means of raising
18 revenue to fund the grants deposited into the EFAs. Instead, the appropriation of
19 these funds—without which the program cannot exist—is left entirely to the
20 Legislature’s discretion. “Nothing herein shall require the Legislature to appropriate
21 money to fund the grants described in this section. *The availability of grants is*
22 *subject to the availability of funds as determined by the Legislature.*” *Id.*, at
23 3, § 10.2 (emphasis added). *See also id.* at 20, § 35 (“Nothing herein shall require the
24 Legislature to appropriate money to fund education freedom accounts or any
25 expenses related thereto.”). Neither does the proposed initiative impose any taxes or
26 otherwise raise any revenue to pay for the significant expenses that will necessarily
27 have to be incurred in carrying out the initiative’s numerous regulatory and
28 administrative obligations.

1 **III. ARGUMENT**

2 **A. The Petition's Description Of Effect Is Legally Insufficient**

3 Nevada law requires that every initiative “[s]et forth, in not more than 200
4 words, a description of the effect of the initiative or referendum if the initiative or
5 referendum is approved by the voters.” NRS 295.009(1)(b). The purpose of the
6 description is to “prevent voter confusion and promote informed decisions.” *Nevadans*
7 *for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006). “The importance of the
8 description of effect cannot be minimized, as it is what the voters see when deciding
9 whether to even sign a petition.” *Coalition for Nevada's Future v. RIP Commerce Tax,*
10 *Inc.*, 132 Nev. 956 (2016) (unpublished disposition) (citing *Educ. Initiative PAC v.*
11 *Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)).

12 Although a description of effect need not “explain hypothetical effects” or
13 “mention every possible effect” of the initiative, “a description of effect must be
14 straightforward, succinct, and non-argumentative, and it must not be deceptive or
15 misleading.” *Educ. Initiative PAC*, 129 Nev. at 37. In reviewing the description of
16 effect, the Court must analyze “whether the information contained in the description
17 is correct and does not misrepresent what the initiative will accomplish and how it
18 intends to achieve those goals.” *Id.*, 129 Nev. at 35. At the very least, the description
19 of effect must fairly present enough information for a potential signer to make an
20 informed decision about whether to support the initiative. *See Nev. Judges Ass'n v.*
21 *Lau*, 112 Nev. 51, 59, 910 P.2 898, 903 (1996) (rejecting initiative description for
22 “failure to explain [certain] ramifications of the proposed amendment,” which
23 “renders the initiative and its explanation potentially misleading”).

24 Here, the Petition's description of effect is deceptive, confusing, *and*
25 misleading. Most importantly, the description fails to alert potential signatories of an
26 important lack of flexibility in the terms of the measure: Under section 4 of the
27 proposed initiative, when a parent terminates an EFA agreement before the end of a
28 school year, that parent's child “may not receive instruction from a public school in

1 this state until the end of the period for which the last deposit was made into the
2 EFA. *Id.*, at 3, § 4. Nowhere does the Description inform potential signatories that
3 if passed, Nevada children would be **barred from attending public school** under
4 certain circumstances. The rights of school-age children to receive public education
5 in Nevada is inviolate, and the notion that this Petition would—under circumstance
6 of financial stress or calamity, for example—deny that right to a child and his or her
7 family is, one would think, a crucial aspect of its proposed operation. This omission
8 is highly misleading, and, if disclosed, would likely deter a number of potential
9 signatories from signing the petition or, at the very least, inform one’s decision to sign
10 the Petition.

11 The Description further misleadingly informs potential signatories that
12 “Money in the accounts may be used to pay certain educational expenses including,
13 but not limited to, tuition and fees at participating entities.” This makes it seem that
14 if passed, parents would be able to establish an EFA to supplement their child’s public
15 education, by, for example, signing their child up for after-school tutoring, when, in
16 fact, an EFA cannot be established for any child “who will remain enrolled full-time
17 in a public school.” *Id.*, § 10. Again, this omission is highly misleading.

18 While stating that “nothing in the initiative requires the Legislature to
19 appropriate money to fund the accounts[, and] [i]f no money is appropriated, no
20 funding will be available for the accounts,” the description fails to inform potential
21 signatories that **none** of the provisions of the proposed initiative come into effect
22 unless the Legislature makes an appropriation to fund the EFA. *See id.*, at 20, § 37.
23 This is a clear bait-and-switch, also not appropriate for a description.

24 The Description also misleadingly fails to inform potential signatories that any
25 funding appropriated for this program will inevitably reduce the funding otherwise
26 available to public schools. This follows from the provisions of the proposed initiative,
27 which bases the amount of the grants on “the statewide base per pupil funding
28 amount (*id.*, at 3, § 3). Given that these grants are required to be used for educational

1 expenses, it is far from hypothetical to conclude that if funds were to be appropriated
2 by the Legislature for this purpose, they would inevitably result in a reduction of
3 public school funding (as was the case with the proposed initiative's predecessor, SB
4 320, which resulted in its invalidation by the Nevada Supreme Court in *Schwartz v.*
5 *Lopez*, 132 Nev. 732, 382 P.3d 886 (2016)). Certainly, many potential signatories
6 would refrain from signing the Petition if the description informed them of its impact
7 on Nevada's public school system.

8 Because the description of effect is therefore misleading and confusing, it is
9 legally insufficient, and this Court should not permit the Petition to proceed.

10 **B. The Petition Violates The Nevada Constitution's Prohibition On**
11 **Initiatives That Mandate Unfunded Expenditures**

12 The Petition is also invalid because it mandates numerous expenditures
13 without providing reciprocal revenues in violation of Article 19, Section 6 of the
14 Nevada Constitution. That provision prohibits any initiative that "makes an
15 appropriation or otherwise requires the expenditure of money, unless such statute or
16 amendment also imposes a sufficient tax, not prohibited by the Constitution, or
17 otherwise constitutionally provides for raising the necessary revenue." Nev. Const.
18 art. 19, § 6. "Section 6 applies to all proposed initiatives, without exception, and does
19 not permit any initiative that fails to comply with the stated conditions." *Rogers*,
20 *supra* at 173. "If the Initiative does not comply with section 6, then the Initiative is
21 void" in its entirety, and the offending provision cannot be severed to render it
22 constitutional. *Id.* at 173, 177-78. Compliance with Article 19, Section 6's
23 appropriation or expenditure provision is a "threshold content restriction" that may
24 be raised in a pre-election challenge. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877,
25 884, 890, n. 38 141 P.3d 1224, 1229 (2006)(quoting *Rogers*, 117 Nev. at 173).

26 The proposed initiative fails to impose any taxes or otherwise provide for
27 funding to pay for the grants to be used to fund the EFAs on which the entire
28 contemplated statutory amendment is premised. "Nevada Constitution article 19,

1 section 6 states that the initiative must impose ‘a sufficient tax ... or otherwise
2 constitutionally provide[] for raising the necessary revenue.’ We must give this
3 provision its plain meaning unless the language is ambiguous.” *Rogers, supra* at 176.
4 Under a plain reading of this constitutional prohibition, the proposed initiative’s
5 failure to raise moneys for the grants on which the entire statutory scheme
6 contemplated by the initiative is premised is a fatal flaw, rendering the Petition void
7 in its entirety.

8 It may be argued that the proposed initiative does not create an unfunded
9 mandate, because it only comes into effect if the Legislature appropriates funding for
10 the grants. But this argument fails for several reasons. With some small exceptions,
11 the proposed initiative largely tracks the provisions of Senate Bill (SB) 302 (2015),
12 which the Nevada Supreme Court struck down in *Schwartz v. Lopez*, 132 Nev. 732
13 (2016) on the grounds that SB 302 failed to appropriate funds for the EFAs
14 contemplated by the bill and that moneys appropriated for K–12 public education
15 could not properly be used for this purpose. The Petition’s proponents are obviously
16 attempting to circumvent the lack of funding which led to SB 302 being struck down
17 by sidestepping this issue and passing the buck to the Legislature to appropriate the
18 necessary funding for the EFA grants. In doing so, however, the proponents have
19 plainly run afoul of Article 19, section 6 of the Constitution, which prohibits any
20 initiative which requires the expenditure of money, without providing for the
21 necessary revenue to cover such expenditures. This proposed initiative, like its
22 predecessor SB 302, is thus doomed to invalidity.

23 Separately, under the Nevada constitution the initiative power only extends to
24 actual statutes which impose real obligations. The initiative power does not extend
25 to purported pronouncements of law that only come into effect upon the happening of
26 some future event, such as the Legislature enacting the necessary funding for the
27 EFA grants. *See Nev. Const. art. 19, § 1* (“the people reserve to themselves the power
28 to propose, by initiative petition, statutes and amendments to statutes and

1 amendments to this Constitution, and to enact or reject them at the polls.”) By
2 providing that the statutory scheme contemplated only becomes effective upon the
3 Legislature appropriating funding for the EFA grants, which may or may not happen,
4 the proposed initiative cannot properly be considered to be a “statute” and is therefore
5 beyond the initiative power granted by the Constitution.

6 Putting aside its failure to provide for the appropriation of moneys to pay the
7 grants contemplated by the initiative—itsself a fatal defect—the initiative, if passed,
8 would obligate the State Treasurer to essentially set up, administer, run the program,
9 and monitor the use of the EFAs and the performance of the financial institutions
10 managing such EFAs. *See* § II.B, *supra*. The initiative does not impose any taxes or
11 otherwise raise any revenue to pay for the substantial expenses that will necessarily
12 be incurred in carrying out these foregoing numerous and burdensome tasks.

13 **C. The Proposed Initiative Improperly Includes Administrative**
14 **Details**

15 “[R]egardless whether an initiative proposes enactment of a new statute or
16 ordinance, or a new provision in the constitution or city charter, or an amendment to
17 any of these types of laws, it must propose policy—it may not dictate administrative
18 details.” *Nevadans for the Prot. of Prop. Rts., Inc. v. Heller*, 122 Nev. 894, 913, 141
19 P.3d 1235, 1248 (2006). This is because “[t]he people’s initiative power is ‘coequal,
20 coextensive, and concurrent’ with that of the Legislature; thus, the people have power
21 that is legislative in nature,” (*id.* at 914), and administrative details are determined
22 not by the Legislature, “but by [other] entities with rule-making authority, which fill
23 in administrative details pertaining to the policy articulated in legislation.” *Id.*

24 The proposed initiative goes far beyond the articulation of policy, and, as laid
25 out in detail both in section II.B, above and in Paragraph 27 of the Complaint, it
26 imposes a host of administrative duties on the State Treasurer and Department of
27 Education. Those details are here incorporated, for purposes of brevity under FJDCR
28 3.23(b). This is well beyond the initiative power, and renders the Petition invalid.

1 **IV. CONCLUSION**

2 Based upon the foregoing, the Court should grant Plaintiffs' requested relief,
3 striking Initiative Petition C-04-2022 and issuing an injunction prohibiting the Secretary
4 from taking further action upon it.

5
6 **AFFIRMATION**

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

9
10 DATED this 22d day of February, 2022

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

13 By: 

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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.

4. If the Treasurer determines that there are not sufficient funds to provide grants in the amounts described in subsection 3, the Treasurer shall apportion the amount of available grants equally in relation to the amount of available funds and the number of agreements entered into pursuant to Section 9. If the Legislature declines to appropriate money to fund the grants described in subsection 1, no grants shall be made.

5. If a child receives a portion of his or her instruction from a participating entity and a portion of his or her instruction from a public school, for the school year for which the grant is made, the grant required by subsection 1 must be in a pro rata based on amount the percentage of the total instruction provided to the child by the participating entity in proportion to the total instruction provided to the child.

6. The State Treasurer may deduct not more than 4 percent of each grant for the administrative costs of implementing the provisions of sections 2 to 17, inclusive, of this act.

7. The State Treasurer shall deposit the money for each grant in quarterly installments pursuant to a schedule determined by the State Treasurer.

8. Any money remaining in an education freedom account:

(a) At the end of a school year may be carried forward to the next school year if the agreement entered into pursuant to section 9 of this act is renewed.

(b) When an agreement entered into pursuant to section 9 of this act is not renewed or is terminated, because the child for whom the account was established graduates from high school or for any other reason, reverts to the State General Fund at the end of the last day of the agreement.

Sec. 11. 1. Money deposited in an education freedom account must be used only to pay for:

(a) Tuition and fees at a school that is a participating entity in which the child is enrolled;

(b) Textbooks required for a child who enrolls in a school that is a participating entity;

(c) Tutoring or other teaching services provided by a tutor or tutoring facility that is a participating entity;

(d) Tuition and fees for a program of distance education that is a participating entity;

(e) Fees for any national norm-referenced achievement examination, advanced placement or similar examination or standardized examination required for admission to a college or university;

(f) If the child is a pupil with a disability, as that term is defined in NRS 388.417, fees for any special instruction or special services provided to the child;

(g) Tuition and fees at an eligible institution that is a participating entity;

(h) Textbooks required for the child at an eligible institution that is a participating entity or to receive instruction from any other participating entity;

(i) Fees for the management of the education freedom account, as described in section 12 of this act;

(j) Transportation required for the child to travel to and from a participating entity or any combination of participating entities up to but not to exceed \$750 per school year; or

(k) Purchasing a curriculum or any supplemental materials required to administer the curriculum.

2. A participating entity that receives a payment authorized by subsection 1 shall not:

(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.

[40] 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.

[44] 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.

[42] 13. "State Board" means the State Board of Education.

[43] 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^[7] **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 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.

[The remainder of this page is blank.]

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
	YOUR SIGNATURE	DATE / /	CITY COUNTY
3	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY
	YOUR SIGNATURE	DATE / /	CITY COUNTY
4	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY
	YOUR SIGNATURE	DATE / /	CITY COUNTY
5	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY
	YOUR SIGNATURE	DATE / /	CITY COUNTY

DESCRIPTION OF EFFECT

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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

6	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
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

1 Case No.: 22 OC 00027 1B

2 Dept. No.: 1

REC'D & FILED ✓

2022 FEB 22 PM 2: 56

AUBREY ROWLATT
CLERK

BY H. Russell
DEPUTY

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4
5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY

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

10 Plaintiffs,

11 vs.

12 BARBARA CEGAVSKE, in her official capacity
13 as NEVADA SECRETARY OF STATE,
14 Defendant.

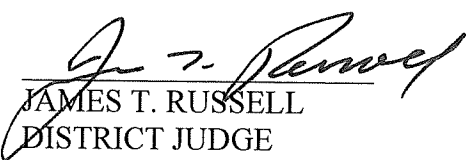
ORDER TRANSFERRING CASE TO
DEPARTMENT 2

15 This case, upon filing, was assigned to Department One of the First Judicial District
16 Court of the State of Nevada, in and for Carson City, in which said department District Judge
17 James T. Russell presides.

18 A conflict exists due to Jennifer Russell, the Public Information Officer for the Nevada
19 Secretary of State, being Judge Russell's niece. Therefore, good cause appearing;

20 IT IS HEREBY ORDERED that the above-entitled matter be transferred to the
21 Honorable JAMES E. WILSON, JR., District Judge, Department 2, for all further proceedings.

22 Dated this 22 day of February, 2022.

23
24 
25 JAMES T. RUSSELL
26 DISTRICT JUDGE
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Julie Harkleroad
Judicial Assistant, Dept. 1

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JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
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Attorneys for Plaintiffs

RECD & FILED
2022 MAR -1 PM 3:28
AUBREY POWELL ATT
CLERK
BY [Signature]
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

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

Case No. 22-OC-00027 1B

Plaintiff,

Dept. No. I

vs.

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

Defendants.

DECLARATION OF SERVICE


I, **Dawn Calhoun**, declare: That at all time herein Declarant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under NV PILB LIC #2602, and not a party to or interested in the proceeding in which this declaration is made. The Declarant received 1 copy of the Summons, Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-02-2022 Pursuant to NRS 295.061(1), Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-02-2022 Pursuant to NRS 295.061(1), on the 22nd day of February, 2022 and served the same on the 22nd day of February, 2022 at 4:07 pm by serving a copy on The State of Nevada Office of the Attorney General by personally delivering and leaving a copy at The Office of the Attorney General, 100 N. Carson Street, Carson City, Nevada 89701 with Connie Salerno, Legal Researcher.

1 Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of
2 Nevada that the foregoing is true and correct.

3 Pursuant to NRS 239B.030 this document does not contain the social security number of
4 any person.

5 Dated February 23, 2022

C & H COURIERS/PROCESS SERVERS

6
7 

Affiant: DAWN CALHOUN
Process Server – NV PILB LIC #2602
301 Anderson Street
Carson City, Nevada 89701
(775) 219-2871

Work Order No. 387652

AARON D. FORD
Attorney General

KYLE E. N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

JESSICA L. ADAIR
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

DATE RECEIVED: 2-22-2022 RECEIVED BY: C. SAVERNO

NAME OF ENTITY/PERSON SERVING: DAWN C & H COURIERS

CASE NAME: BEVERLY ROGERS; RORY REID v. BARBARA
CEGAVSKE

CASE NUMBER: 2202 0002716 COURT: 1ST JD

DOCUMENT(S) RECEIVED: SUMMONS; COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION 5-02-2022
PURSUANT TO NRS 295.061(1); MEMORANDUM OF PLAINTIFF COMPLAINT;
PLAINTIFFS INITIAL APPEARANCE FEE DISCLOSURE

☐ Service of Process ☒ Courtesy copy only (not Service of Process)
PURSUANT TO STATUTE

NOTICE

☐ **COMPLAINT:** NRS 41.031(2) provides in part that, in any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the state whose actions are the basis for the suit. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon the Attorney General, at the Office of the Attorney General in Carson City and upon the person serving in the office of administrative head of the named agency. Service on the Attorney General or designee does not constitute service on any individual or administrative head.

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 41.031(2)(a). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

☐ **SUBPOENA:** Receipt of a subpoena by the Office of the Attorney General does not constitute valid service of the subpoena upon any individual or upon any state agency, with the exception of the Office of the Attorney General. Receipt of subpoena or any other process by the Attorney General or designee does not constitute service upon any individual, nor does it constitute service upon the administrative head of an agency pursuant to NRS 174.345.

☐ **PETITION FOR JUDICIAL REVIEW:** NRS 233B.130(2)(c)(1) provides in part that all Petitions for Judicial Review of state agency decisions/judgments/orders must be served upon, the Attorney General, a person designated by the Attorney General or the Office of the Attorney General in Carson City.

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 233B.130(2)(c)(1). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

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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jsamberg@wrslawyers.com
dbravo@wrslawyers.com

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.

Case No.: *2022 MAR 10*
Dept.: *I*

SUMMONS

BARBARA CEGAVSKE,
in her official capacity as Nevada Secretary of State
State Capitol Building
101 N. Carson Street, Suite 3
Carson City, Nevada 89701

**THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-
NAMED DEFENDANT:**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE
AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND
WITHIN 20 DAYS.**

REC'D & FILED

2022 MAR -1 PM 3: 27

AUBREY ROWLAND
CLERK

BY _____ DEPUTY

1 **RULES OF CIVIL PROCEDURE FOR THE NEVADA DISTRICT COURTS**

2 **Rule 4. Summons and Service**

3 (a) **Summons.**

4 (1) **Contents.** A summons must:

- 5 (A) name the court, the county, and the parties;
6 (B) be directed to the defendant;
7 (C) state the name and address of the plaintiff's attorney or — if
8 unrepresented — of the plaintiff;
9 (D) state the time within which the defendant must appear and defend
10 under Rule 12(a) or any other applicable rule or statute;
11 (E) notify the defendant that a failure to appear and defend will result in
12 a default judgment against the defendant for the relief demanded in the complaint;
13 (F) be signed by the clerk;
14 (G) bear the court's seal; and
15 (H) comply with Rule 4.4(c)(2)(C) when service is made by publication.

16 (2) **Amendments.** The court may permit a summons to be amended.

17 (b) **Issuance.** On or after filing a complaint, the plaintiff must present a
18 summons to the clerk for issuance under signature and seal. If a summons is properly
19 presented, the clerk must issue a summons under signature and seal to the plaintiff
20 for service on the defendant. A summons — or a copy of a summons that is addressed
21 to multiple defendants — must be issued for each defendant to be served.

22 (c) **Service.**

23 (1) **In General.** Unless a defendant voluntarily appears, the plaintiff is
24 responsible for:

- 25 (A) obtaining a waiver of service under Rule 4.1, if applicable; or
26 (B) having the summons and complaint served under Rule 4.2, 4.3, or 4.4
27 within the time allowed by Rule 4(e).

28 (2) **Service With a Copy of the Complaint.** A summons must be served
with a copy of the complaint. The plaintiff must furnish the necessary copies to the
person who makes service.

(3) **By Whom.** The summons and complaint may be served by the sheriff,
or a deputy sheriff, of the county where the defendant is found or by any person who
is at least 18 years old and not a party to the action.

(4) **Cumulative Service Methods.** The methods of service provided in
Rules 4.2, 4.3, and 4.4 are cumulative and may be utilized with, after, or
independently of any other methods of service.

(d) **Proof of Service.** Unless a defendant voluntarily appears or waives or
admits service, a plaintiff must file proof of service with the court stating the date,
place, and manner of service no later than the time permitted for the defendant to
respond to the summons.

(1) **Service Within the United States.** Proof of service within Nevada or
within the United States must be made by affidavit from the person who served the
summons and complaint.

(2) **Service Outside the United States.** Service not within the United
States must be proved as follows:

1 (A) if made under Rule 4.3(b)(1)(A), as provided in the applicable treaty
2 or convention; or

3 (B) if made under Rule 4.3(b)(1)(B) or (C), by a receipt signed by the
4 addressee, or by other evidence satisfying the court that the summons and complaint
5 were delivered to the addressee.

6 (3) **Service by Publication.** If service is made by publication, a copy of
7 the publication must be attached to the proof of service, and proof of service must be
8 made by affidavit from:

9 (A) the publisher or other designated employee having knowledge of the
10 publication; and

11 (B) if the summons and complaint were mailed to a person's last-known
12 address, the individual depositing the summons and complaint in the mail.

13 (4) **Amendments.** The court may permit proof of service to be amended.

14 (5) **Failure to Make Proof of Service.** Failure to make proof of service
15 does not affect the validity of the service.

16 (e) **Time Limit for Service.**

17 (1) **In General.** The summons and complaint must be served upon a
18 defendant no later than 120 days after the complaint is filed, unless the court grants
19 an extension of time under this rule.

20 (2) **Dismissal.** If service of the summons and complaint is not made upon
21 a defendant before the 120-day service period — or any extension thereof — expires,
22 the court must dismiss the action, without prejudice, as to that defendant upon
23 motion or upon the court's own order to show cause.

24 (3) **Timely Motion to Extend Time.** If a plaintiff files a motion for an
25 extension of time before the 120-day service period — or any extension thereof —
26 expires and shows that good cause exists for granting an extension of the service
27 period, the court must extend the service period and set a reasonable date by which
28 service should be made.

(4) **Failure to Make Timely Motion to Extend Time.** If a plaintiff files
a motion for an extension of time after the 120-day service period — or any extension
thereof — expires, the court must first determine whether good cause exists for the
plaintiff's failure to timely file the motion for an extension before the court considers
whether good cause exists for granting an extension of the service period. If the
plaintiff shows that good cause exists for the plaintiff's failure to timely file the
motion and for granting an extension of the service period, the court must extend the
time for service and set a reasonable date by which service should be made.

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Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
(775) 788-2000
(775) 788-2020
lfoletta@mcdonaldcarano.com

Attorneys for Education Freedom PAC

REC'D & FILED
2022 MAR 15 PM 2:14
AUBREY ROWLATT
BY C. COOPER
CLERK
DEPUTY

**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 00027 1B

Dept. No. II

ANSWER IN INTERVENTION TO COMPLAINT

COMES NOW, Intervenor EDUCATION FREEDOM PAC, a registered Nevada political action committee ("EFP"), by and through its attorney Lucas Foletta, Esq., of MCDONALD CARANO LLP, and hereby responds to the Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-02-2022 Pursuant to NRS 295.061(1) ("Complaint") of Plaintiffs as follows:

JURISDICTION AND VENUE

1. The allegations in Paragraph 1 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 1.

2. The allegations in Paragraph 2 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 2.

PARTIES

3. EFP is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and denies them on that basis.

4. EFP is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and denies them on that basis.

5. EFP is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and denies them on that basis.

GENERAL FACTUAL ALLEGATIONS

6. EFP denies the allegations in Paragraph 6, except admits that the statutory initiative petition designated as S-02-2022 ("Petition") and related Notice of Intent to Circulate Statewide Initiative or Referendum Petition ("Notice of Intent") was filed on January 31, 2022.

7. EFP denies the allegations in Paragraph 7, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

8. EFP denies the allegations in Paragraph 8, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

9. EFP denies the allegations in Paragraph 9, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

10. EFP denies the allegations in Paragraph 10, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

11. EFP denies the allegations in Paragraph 11, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

12. EFP denies the allegations in Paragraph 12, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

13. EFP denies the allegations in Paragraph 13, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

14. The allegations in Paragraph 14 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 14, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

15. The allegations in Paragraph 15 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 13, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

FIRST CAUSE OF ACTION

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

16. EFP repeats, re-alleges, and incorporates its responses in the foregoing paragraphs, as if fully set forth herein.

17. EFP denies the allegations in Paragraph 17, except admits that the full text of NRS 295.009 is as follows:

1. Each petition for initiative or referendum must:

(a) Embrace but one subject and matters necessarily connected therewith and pertaining thereto; and

(b) 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. The description must appear on each signature page of the petition.

2. For the purposes of paragraph (a) of subsection 1, a petition for initiative or referendum embraces but one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative or referendum are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative or referendum.

18. The allegations in Paragraph 18 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations of Paragraph 18.

19. EFP denies the allegations in Paragraph 19.

20. EFP denies the allegations in Paragraph 20.

21. EFP denies the allegations in Paragraph 21.

SECOND CAUSE OF ACTION

("Violation of Unfunded Expenditure Provision, Nev. Cost. Art. 19, Sec. 6")

22. EFP repeats, re-alleges, and incorporates its responses in the foregoing paragraphs, as if fully set forth herein.

23. EFP denies the allegations in Paragraph 23, except admits that the full text of Nev. Const. Art. 19, Sec. 6 is as follows:

Sec. 6. Limitation on initiative making appropriation or requiring expenditure of money. 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.

24. The allegations in Paragraph 24 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations of Paragraph 24.

25. EFP denies the allegations in Paragraph 25.

26. EFP denies the allegations in Paragraph 26.

27. EFP denies the allegations in Paragraph 27.

28. EFP denies the allegations in Paragraph 28.

29. EFP denies the allegations in Paragraph 29.

THIRD CAUSE OF ACTION

("Impermissible Inclusion of Administrative Details")

30. EFP repeats, re-alleges, and incorporates its responses in the foregoing paragraphs, as if fully set forth herein.

31. The allegations in Paragraph 31 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations of Paragraph 31.

32. EFP denies the allegations in Paragraph 32.

33. EFP denies the allegations in Paragraph 33.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses to the Complaint and to each cause of action, claim, and allegation therein, EFP alleges as follows:

1. Neither the Complaint nor any cause of action therein states a claim for which relief may be granted.

2. Estoppel and other equitable doctrines bar the allegations in the Complaint.

3. EFP may not have alleged all possible affirmative defenses herein insofar as sufficient facts were unavailable upon the filing of the Answer. Therefore, EFP reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

PRAYER FOR RELIEF


WHEREFORE, EFP prays as follows:

1. That the Petition is valid and complies with Nevada law;
2. That judgment be entered in favor of EFP;
3. That Plaintiffs take nothing by way of their Complaint and it be dismissed with prejudice;
4. For an award of attorney fees and costs incurred in the defense of this action; and
5. For such other and further relief as the Court deems just and proper under all the circumstances of this matter.

AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated: March 15, 2022

By: MCDONALD CARANO

Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
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Attorneys for Education Freedom PAC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and that on the on the 15th day of March, 2022, that I caused the foregoing document to be filed with the Clerk of the Court via hand-delivery and filing by a McDonald Carano runner. On the same date I deposited a copy of the foregoing for mailing with the U.S. Postal Service at Reno, Nevada, with postage prepaid thereon, addressed as follows:

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2022 MAR 15 PM 2:14

AUDREY ROWLATT
CLERK
BY: [Signature]
DEPUTY

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 00027 1B

Dept. No. II

EDUCATION FREEDOM PAC'S ANSWERING BRIEF IN RESPONSE TO
PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING
INITIATIVE PETITION S-02-2022 PURSUANT TO NRS 295.061(1)

Intervenor EDUCATION FREEDOM PAC, a registered Nevada political action committee ("EFP"), by and through its attorney Lucas Foletta Esq. of MCDONALD CARANO LLP, hereby submits its Answering Brief in Response to Plaintiffs' Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-02-2022 Pursuant to NRS 295.061(1) ("Opening Brief" or "Op. Br."). This Answering Brief is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file with the Court, and any oral argument entertained by the Court at a hearing in this matter.

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I. INTRODUCTION

In this case, EFP filed Initiative Petition S-02-2022 on (“Petition”) on January 31, 2022. Thereafter, Plaintiffs filed the instant suit. Plaintiffs’ complaint must be dismissed for four reasons. First, more than fifteen days have passed since the filing of the complaint without a hearing. Second, Plaintiffs’ description of effect challenge is an inappropriate attempt to hijack a clear and straightforward description and mutate it into an opposition advocacy piece focusing on unrealistic worst-case hypothetical scenarios. Third, Plaintiffs’ argument that the petition is an unfunded mandate is not supported by the plain language of the Petition; it does not go into effect unless the Nevada Legislature appropriates funding. Fourth, Plaintiffs’ argument that the petition pertains to administrative details fails because the petition proposes policy and reasonable and necessary measures to implement that policy.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Petition proposes to establish an education freedom account (“EFA”) program pursuant to which parents will be authorized to establish accounts for their child’s education.

Exhibit 1. If enacted, the Petition would authorize parents to spend money in the accounts to pay for certain educational expenses including, but not limited to, tuition and fees at participating entities, including private schools. *Id.* The Petition includes the following description of effect (“Description”):

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 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.

1 *Id.*

2
3 Plaintiffs filed their Complaint for Declaratory and Injunctive Relief Challenging Initiative
4 Petition S-02-2022 Pursuant to NRS 295.061(1) (“Complaint”) on February 22, 2022. Plaintiffs
5 included with their Complaint their Memorandum of Points and Authorities in Support of
6 Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-02-2022
7 Pursuant to NRS 295.061(1). Plaintiffs, however, did not name EFP as a defendant in the action,
8 necessitating EFP’s intervention in this matter. The failure to name EFP as a defendant caused
9 unnecessary delay in the administration of this case. What’s more, Plaintiffs filed a peremptory
10 challenge disqualifying Judge Wilson after Judge Russell recused, necessitating the appointment
11 of a substitute judge. This caused further delay. To date, no hearing has been held in this matter
12 despite the fact that NRS 295.061(1) requires that a hearing be held within fifteen days of the
13 complaint being filed.

14 **III. LEGAL STANDARD**

15 Article 19, Section 2(1), of the Nevada Constitution enshrines the people’s right to propose
16 statutes and amendments to statutes. Specifically it states that “the people reserve to themselves
17 the power to propose, by initiative petition, statutes and amendments to statutes . . . , and to enact
18 or reject them at the polls.” Nev. Const. art. 19, § (2)1. The Nevada Constitution further provides
19 that the provisions of Article 19 are “self-executing but the legislature may provide by law for
20 procedures to facilitate the operation thereof.” *Id.* at art. 19, § 5. NRS 295.009(1)(b) provides
21 that a petition must “[s]et forth, in not more than 200 words, a description of effect of the initiative
22 . . . if the initiative . . . is approved by the voters.” NRS 295.009(1)(a) provides that each petition
23 must “[e]mbrace but one subject and matters necessarily connected therewith and pertaining
24 thereto.”

25 **IV. ARGUMENT**

26 Plaintiffs attempt to frustrate EFA’s constitutional right to advance the Petition by making
27 misleading and hyperbolic policy attacks that are untethered to its text and based on an erroneous
28 reading of Nevada law. (Op. Br. at 1.) Indeed, Plaintiffs’ policy critiques are better suited for the

arguments against the Petition to be included in the ballot and for a political campaign against it than they are for a pre-election legal challenge.¹ As such, the Court must reject their arguments.

A. The Court failed to hold a hearing within the time required by law and therefore the case must be dismissed.

NRS 295.061(1) requires that in the case of ballot petition challenges “[t]he court shall set the matter for hearing not later than 15 days after the complaint is filed and shall give priority to such a complaint over all other matters pending with the court, except for criminal proceedings.”² In this case, Plaintiffs filed their challenge on February 22, 2022. (Compl. at 1.) The fifteen days in which to hold a hearing ran on March 9, 2022. To date, no hearing has been held.

The fact that no hearing has been held is partially the fault of Plaintiffs. Plaintiffs filed their suit on the last possible day. Under the statute, parties challenging ballot petitions have fifteen days from the date the petition is filed, excluding weekends and holidays, to file their challenge. NRS 295.061(1). The case was initially assigned to Judge Russell who recused resulting in the case being transferred to Judge Wilson the same day it was filed. Two days later, on February 24, 2022, Plaintiffs lodged a peremptory challenge of Judge Wilson. Plaintiffs did this with full knowledge that another judge of the First Judicial District Court was not available to hear the case. The peremptory challenge resulted in the need to appoint a substitute judge. Despite the 15-day hearing requirement, at no time has a hearing of any kind been held since Plaintiffs filed their complaint.

¹ Before an initiative petition can appear on the ballot, the Secretary of State must appoint two committees to draft arguments for and against the passage of the initiative petition. NRS 293.252(1). The arguments for and against the passage of the petition appear in sample ballots and are published prior to the election “in conspicuous display” in a newspaper of general circulation in each county. NRS 293.253(3).

² Prior to 2007, a complaint challenging an initiative petition could be filed within 30 after the petition was filed with the Secretary of State, and a hearing was to be held within 30 days thereafter. In 2007, the Legislature shortened both temporal limitations to 15 days. Senator Beers explained that the shortened time period arose from a concern that opponents were attempting to delay litigation as long as possible, which “appears as a deliberate strategic tactic not to file any objection until the last day to do so.” See Minutes of the Senate Committee on Legislative Operations and Elections, March 27, 2007, 28. The Deputy Secretary of State for Secretary Ross Miller supported the shortened time frames, noting that “the time for litigation is reduced from 30 to 15 days” which was important to ensure county clerks have adequate time to prepare ballots. Minutes of the Assembly Committee on Elections, Procedures, Ethics and Constitutional Amendments, May 1, 2007, 15.

1 This delay has resulted in significant detriment to EFP for whose protection the procedural
2 requirements of NRS 295.061 exist. EFP is on a tight timetable for gathering signatures to qualify
3 the Petition for the ballot. EFP needs to gather 140,777 valid signatures, *see* Nev. Const. art. 19,
4 § 2(2), by November 23, 2022, *see* NRS 295.056(2). Every day this matter is tied up in litigation
5 is a day EFP loses in circulating a court-approved Petition. Signatures gathered on a petition
6 deemed invalid by the courts are invalid. *See Nevadans for Nev. v. Beers*, 122 Nev. 930, 940, 142
7 P.3d 339, 345 (2006) (holding that an initiative petition without a compliant description of effect
8 is not operative).

9 That the delay has worked harm upon EFP is underscored by the fact that the statutory
10 scheme that governs ballot petition challenges contemplates expediency in all respects. Not only
11 does it require a hearing to be held within 15 days, but it also requires that the challenging party
12 include with its complaint “[a]ll affidavits and documents in support of the challenge.” *Id.* at
13 295.061(1). This requirement clearly reflects the Legislature’s intent that ballot petition
14 challenges be ready for hearing almost immediately after being filed.

15 It should be noted that Plaintiffs created delay not only in choosing to preempt Judge
16 Wilson knowing Judge Russell had already recused, but also by failing to name EFP as a
17 defendant. Customarily, the party that filed the petition at issue is named as a defendant. *See*
18 NRCP 19(a)(1) (required parties). In this case, Plaintiffs made the conscious decision not to name
19 EFP as a party notwithstanding the fact that it is the real party in interest in this litigation; it is also
20 well-known to Plaintiffs’ counsel that the Secretary of State generally maintains neutrally in ballot
21 petition litigation. Because Plaintiffs failed to name EFP as a defendant, EFP was forced to obtain
22 a stipulation to intervene in this matter. The Court’s own actions, respectfully, also contributed
23 to the hearing not being held. As of Friday, March 11, a judge has yet to be appointed. Because
24 a hearing was not held within the time allotted by statute, this matter must be dismissed.

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B. The Description is neither misleading nor confusing because it describes what it will achieve and how it will achieve it.

Plaintiffs contend that the Description is misleading. (Op. Br. at 5-7.) In doing so, Plaintiffs attempt to persuade the Court to include reference to both hypothetical and non-existent effects, both of which are improper under the law. The Court should reject this attempt. However, if the Court is persuaded that some of the effects described by Plaintiffs should be referenced, the Court can amend the Description. *See* NRS 295.061(3).

The Nevada Supreme Court has stated that “[a] description of effect serves a limited purpose to facilitate the initiative process,” *Educ. Initi. v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013), and that a description of effect should be reviewed with an eye toward that purpose, *see id.* Thus, while a description of effect need not “delineate every effect that an initiative will have,” it “must be a straightforward, succinct, and nonargumentative statement of what the initiative will accomplish and how it will achieve those goals.” *Id.* at 876. A description of effect cannot “be deceptive or misleading,” *id.* at 49, 293 P.3d at 879, but it need not explain “hypothetical effects,” *id.* at 43, 293 P.3d at 879.

In reviewing a description of effect, “it is inappropriate to parse the meanings of words and phrases used in a description of effect” as closely as a reviewing court would a statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it carries the risk of depriving the people of Nevada of their constitutional right to propose laws by initiative” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis. *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

Plaintiffs contend that the most important flaw in the Description is that it fails to inform parents that if a parent terminates an EFA agreement the child may not receive instruction from a public school until the end of the period for which the last EFA deposit was made. (Op. Br. at 5-6.) Plaintiffs then characterize this requirement as “barring” Nevada children from attending a public school and “denying” a right to a Nevada child. (*Id.* at 6.) This is not the case.

1 The Petition does not bar any child from attending a public school nor does it deny any
2 child the ability to enroll in a public school. The Petition does, however, describe a system
3 pursuant to which the State Treasurer will deposit EFA grant funds in individual EFAs on a
4 quarterly basis. (Exhibit 1 at § 10(7)) (“The State Treasurer shall deposit the money for each grant
5 in quarterly installments pursuant to a schedule determined by the State Treasurer.”) The Petition
6 further provides that if a parent establishes an EFA for their child by entering an EFA agreement,
7 the child for whose benefit the EFA was established may not receive instruction from a public
8 school until the end of the period for which the last deposit was made. (*Id.* at § 9(4).) However,
9 the Petition also provides that an EFA agreement may be terminated at any time. (*Id.*)

10 Thus, while it is true that a child for whose benefit an EFA has been established *and funded*
11 may not enroll in public school for the period for which the last EFA deposit was made, the
12 prohibition would at most apply for a period of one quarter. Furthermore, it would only be
13 triggered in the event the child’s parent terminates the EFA after receiving EFA funds. Thus, the
14 Petition does not bar any Nevada child from enrolling in a public school. Instead, it merely delays
15 enrollment for children whose parents established EFAs for their benefit and who take advantage
16 of funding available pursuant to the program. This approach reflects a common-sense policy of
17 not allowing program participants to receive EFA funds while at the same time taking advantage
18 of public funding available by way of a public education. Thus, Plaintiffs’ characterization of the
19 purported effect at issue is false and misleading.

20 More importantly, that the Description of effect does not specifically reference the impact
21 of terminating an EFA agreement as it relates to the enrolment does not render it invalid. As stated
22 above, the Description need not reference each and every possible effect. *Educ. Initi.*, 129 Nev.
23 at 42, 293 P.3d at 879. Instead, it must describe the objective of the Petition and how it will
24 achieve those objectives. *Id.* The mechanics of what occurs when a student’s parents terminate
25 an EFA is not the objective of the Petition, nor is it fundamental to how the Petition will achieve
26 its objective. The objective is to establish an EFA program to allow parents to access public funds
27 to pay for their child’s education. The Description says exactly that. It also describes how the
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1 parents will set up EFAs, how they will be funded, and what they can be used for. It even describes
2 the potential budgetary implications of funding them. It therefore clearly satisfies the law. *Id.*

3 Plaintiffs cannot avoid this conclusion by identifying all the possible implications of the
4 Petition and demanding they be referenced in the Description. *See id.* If they could, it would
5 make articulating a description of effect in no more than 200 words impossible and eliminate the
6 ability of initiative petition proponents to advance comprehensive policy measures to address
7 complex public problems. What's more, it would allow challengers to hijack descriptions of effect
8 and turn them into arguments against petitions. As Judge Wilson recently pointed out, it is
9 improper to "attempt to use the description as an advocacy piece." *Helton v. Nev. Voters First*
10 *PAC, et al.*, Case No. 21 OC 00172, at *13 (Nev. 1st Jud. Dist. Ct. Nev. Jan. 6, 2022). The Court
11 should similarly reject that attempt here.

12 The Court should also reject Plaintiffs' contention that the Description's assertion that
13 "[m]oney in the accounts may be used to pay certain educational expenses including, but not
14 limited to, tuition and fees at participating entities" is misleading because it implies that a parent
15 would be able to establish an EFA to pay for after-school tutoring while the child is enrolled full
16 time in a public school. (Op. Br. at 6.) This not the case. The Description does not suggest in
17 any way that a parent could establish an EFA to pay for after-school tutoring while their child is
18 enrolled full time in public school. Plaintiffs' contention is based on their own mischaracterization
19 of the Description.

20 The sentence cited by Plaintiffs is very specific, and it does not relate to the circumstances
21 under which an EFA may be established. It also does not speak to using EFA funds for tutoring.
22 Rather, it describes how money in an *established* EFA may be used. More importantly, it is
23 entirely accurate. Section 11 of the Petition describes the appropriate use of money in EFAs and
24 specifically provides that "[m]oney deposited in an education freedom account must be used only
25 to pay for," among other things "[t]uition and fees at a school that is a participating entity in which
26 the child is enrolled." (Exhibit 1 at § 11(1).) As such, the statement cited by Plaintiffs corresponds
27 to the plain language of the Petition.

1 Plaintiffs attempt to misconstrue this statement as suggesting that an EFA may be
2 established for an impermissible purpose (to pay for after school tutoring of a child enrolled full
3 time in a public school), but that is Plaintiffs' own misreading of the sentence. As stated above,
4 the sentence does not speak to who can establish an EFA, but rather how EFA funds in lawfully
5 established EFAs may be spent. So, while it is true that a parent cannot establish an EFA "for a
6 child . . . who will remain enrolled full-time in a public school," (*id.* at § 10), that fact is not
7 implicated by the sentence cited by Plaintiffs. Thus, Plaintiffs' assertion that the sentence is
8 misleading is unsupported.

9 Moreover, there is no need to include in the Description reference to the fact that parents
10 of children enrolled full-time in a public school are not eligible to establish an EFA. As stated
11 above, the Description properly describes its purpose and how it will achieve it within the space
12 allotted. Requiring more is merely to demand a recitation of the various mechanical details of the
13 Petition plaintiffs want voters to know about to advance their advocacy. That is not the law. *Educ.*
14 *Initi.*, 129 Nev. at 42, 293 P.3d at 876; *Helton*, Case No. 21 OC 00172 1B, at *13. Indeed, in this
15 regard, there is simply no way one can reasonably argue that the information in the Description is
16 anything other than "correct and does not misrepresent what the initiative will accomplish and
17 how it intends to achieve those goals." *Educ. Initi.*, 129 Nev. at 48, 293 P.3d at 883.

18 Plaintiffs also mischaracterize the Petition as reflecting a "bait-and-switch." (Op. Br. at
19 6.) Plaintiffs contend the Description should specifically state that effectiveness of its provisions
20 are conditioned on the Legislature appropriating money to fund EFAs. (Op. Br. at 6.) Plaintiffs
21 argue that the Description misleads on this point because it says that nothing requires the
22 Legislature to appropriate money to fund the accounts and if no money is appropriated "no funding
23 will be available for the accounts" (*Id.*) This argument is hard to understand.

24 It is true that the Petition provides that the EFA program is only effectuated if the
25 Legislature funds EFAs; however, it is also true that if the Legislature fails to appropriate funds
26 for EFAs, there will be no funding available for the accounts. (Exhibit 1 at §§ 37 and 10(4).)
27 Thus, here again Plaintiffs seize on a factually accurate statement that describes a material aspect
28

1 of the Petition as being misleading with respect to an aspect of the Petition that Plaintiffs
2 apparently feel is more important. Plaintiffs' position is disingenuous.

3 That the Description is not written as Plaintiffs would prefer does not mean the Description
4 effectuates a bait-and-switch. *Educ. Initi.*, 129 Nev. at 42, 293 P.3d at 876 (a description of
5 effect need not reference every possible effect). Here again Plaintiffs' effort boils down to an
6 attempt to have the Court order a description they prefer, not to fix legal deficiencies. The
7 Description is factual correct and does not misrepresent what the initiative will achieve and how
8 it will do it. What's more, Plaintiffs' argument as to the materiality of the fact that the EFA
9 program will not be effectuated in the absence of a legislative appropriation overstates the
10 importance of that facet of the Petition. Potential signatories are no doubt more interested in under
11 what conditions fundings will be available for EFAs than they are whether other provisions of the
12 Petition will come into effect, particularly where the other provisions have no relevance in the
13 absence of funding for the EFAs themselves. Therefore, the Court should reject this argument.

14 The Court should also reject the claim that the Description "misleadingly fails to inform
15 potential signatories that any funding appropriated for this program will inevitably reduce the
16 funding otherwise available to public schools." (Op. Br. at 6.) Plaintiffs anticipate the appropriate
17 response to this argument by contending that this claim is "far from hypothetical." (*Id.*) Yet that
18 is exactly what it is. Nothing in the Petition requires funding the EFA program from money used
19 to support the public schools. That this is the case is evidenced by the fact that Plaintiffs can point
20 to no provision of the Petition that requires it. Instead, they say this fact "follows from" the
21 Description's statement that grant amounts will be based on the statewide base per pupil funding
22 amount. (*Id.*) However, the fact that EFA grants may be equal to up to 90% of the statewide base
23 per pupil funding amount, (Exhibit 1 at § 10(3)), does not mean that money that would otherwise
24 go to funding public schools will necessarily be routed to EFAs. The statewide base per pupil
25 funding amount is merely the measuring stick by which the maximum available EFA grant amount
26 will be established.

27 Plaintiffs attempt to close the logical gap in their argument by suggesting that the Nevada
28 Supreme Court previously concluded that funding an EFA-like program would "inevitably result

1 in a reduction of public school funding” (Op. Br. at 7.) However, that is decidedly not the
2 case. At issue in *Schwartz v. Lopez* was the constitutionality of SB 302 (2015). 132 Nev. 732,
3 738, 382 P.3d 886, 891 (2016). The bill authorized the creation of education savings accounts.
4 *Id.*; SB 302 available at
5 <https://www.leg.state.nv.us/App/NELIS/REL/78th2015/Bill/1857/Overview>. SB 302 established a
6 program similar to that being proposed in the Petition with an entirely different funding
7 mechanism. *Id.* Under SB 302, once an education savings account was established, “the amount
8 of money deposited by the Treasurer into an account for a child within a particular school district
9 is deducted from that school district’s apportionment of legislatively appropriated funds in the
10 [Distributed School Account].” *Schwartz*, 132 Nev. at 741, 382 P.3d at 893. As the Supreme
11 Court pointed out, the Legislature accomplished this by including language in SB 302 that
12 specifically amended provisions of existing law to provide for a reduction in the apportionment to
13 consistent with the amount of funds deposited in education savings accounts. The Court stated as
14 follows:

15 Section 16 of SB 302 amended NRS 387.124(1) to provide that apportionment of funds
16 from the DSA to the school districts, computed on a yearly basis, equals the difference
17 between the basic support guarantee and the local funds available *minus* ‘all the funds
18 deposited in education savings accounts established on behalf of children who reside in
19 the county pursuant to NRS 353B.700 to NRS 353B.930.

18 *Id.*

19 Ultimately, the Nevada Supreme Court concluded the diversion of DSA funds to education
20 savings accounts violated Article 11, Section 2 of the Nevada Constitution because SB 515, which
21 contained the appropriation to fund the Distributed School Account, did not specifically authorize
22 the re-routing of funds. *Id.* at 755, 382 P.3d at 902. The Supreme Court then concluded that
23 “because SB 302 does not provide an independent basis to appropriate money from the State
24 General Fund and no other appropriation appears to exist, the education savings account program
25 is without an appropriation to support its operation.” *Id.* at 756, 382 P.3d at 902.

26 The Petition is different from SB 302 in that it does not require the diversion of DSA funds
27 to support EFAs. Unlike SB 302, the Petition contains no language amending the provisions of
28 law that apportion the DSA to account for funds appropriated to fund EFAs. To the contrary, SB

302 contemplates an entirely separate and discreet funding appropriation. (*See e.g.*, Exhibit 1 at § 37.) Thus, Plaintiffs' use of the *Schwartz* case to bolster their argument is misplaced. Plaintiffs' argument is in reality a policy critique they attempt to cloak as a criticism of the Description which seeks nothing more than an order from the Court requiring the proponents to describe a hypothetical effect to deter potential signatories from signing it. This is not appropriate. *Educ. Initi.*, 129 Nev. at 42, 293 P.3d at 876.

C. The Petition does not violate the prohibition on unfunded mandates because it contains neither an appropriation nor a requirement to expend funds.

Plaintiffs contend that the Petition constitutes an unfunded mandate and thus violates Article 19, Section 6, of the Nevada Constitution. (Op. Br. at 7-9.) This is plainly not the case. Article 19, Section 6, provides as follows: "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." In *Rogers v. Heller*, the Nevada Supreme Court stated that "an appropriation is the setting aside of funds, and an expenditure of money is the payment of funds." 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001).

The Petition neither contains an appropriation or an expenditure of money. As Plaintiffs themselves point out, the EFA program is contingent upon an appropriation by the Legislature to fund it; Section 37 of the Petition states specifically, "The provisions of this act become effective upon an appropriation by the Legislature to fund the education freedom accounts." (Exhibit 1 at § 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 § 35.) What's more, Section 10(2) states, "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.* at § 10(2).)

Thus, the Petition clearly does not contain an appropriation; there is no funding set aside to fund EFAs. It is also clear that the Petition does not contain an expenditure of funds. The

effectiveness of the Petition, including undertaking any administrative tasks to establish the program, is conditioned on the appropriation of funds by the Legislature. Furthermore, the Petition conditions the availability of EFA grants on the availability of funds appropriated by the Legislature. Thus, the Petition does not require an expenditure of funds in any way.

Plaintiffs attempt to avoid this conclusion by again misleadingly citing to *Schwartz*. (Op. Br. at 8.) Plaintiffs contend that SB 302 was struck down in part because SB 302 “failed to appropriate funds for the EFAs contemplated by the bill . . .” (*Id.*) Plaintiffs go on to claim that the Petition must fail as SB 302 did because it “run[s] afoul of Article 19, section 6 of the Constitution.” (*Id.*) Plaintiffs argument is baseless. While on the surface, Plaintiffs attempt to suggest that not including an appropriation with the Petition is similar to the constitutional defect identified in SB 302, they quickly pivot to claiming that the reason the Petition is unconstitutional is that it violates Article 19, Section 6, of the Constitution. This is misleading because SB 302 was not struck down for failure to satisfy Article 19, Section 6; indeed, it could not have been since SB 302 was not enacted by initiative petition. SB 302 was deemed unconstitutional because SB 515 did not specifically contemplate using DSA funds to fund education savings accounts *and* SB 302 itself did not contain a funding source. *Schwartz*, 382 P.3d at 902. However, the fact that SB 302 did not contain a funding source was deemed to fail to satisfy Article 4, Section 19 of the Nevada Constitution. *Id.* Article 4, Section 19 provides that “[n]o money shall be drawn from the treasury but in consequence of appropriations made by law.” Nev. Const. art. 4, § 19. Thus, the failing of SB 302 was not that it did not include an appropriation pursuant to Article 19, Section 6, but rather that it failed to include an appropriation while at the same time directing money to be drawn from the treasury, a violation of Article 4, Section 19. That is not the case with the Petition. Thus, Plaintiffs’ reference to *Schwartz* is inapplicable.

The Court should also reject Plaintiffs’ argument that the Petition does not constitute a “statute” within the meaning of Article 19, Section 1, of the Nevada Constitution. (Op. Br. at 8.) Plaintiffs support this argument with the unsupported assertion that “[t]he initiative power does not extend to purported pronouncements of law that only come into effect upon the happening of

1 some future event, such as the Legislature enacting the necessary funding for EFA grants.” (*Id.*)
2 But Article 19, Section 1, says nothing of the kind.

3 Article 19, Section 1, reserves to the people “the power to propose, by initiative petition,
4 statutes and amendments to statutes and amendments to this Constitution, and to enact or reject
5 them at the polls.” Nev. Const. art. 19, § 1. There is nothing in the article requiring or prohibiting
6 certain substantive requirements—e.g., conditions of effectiveness—relating to such statutes.
7 Moreover, the Petition is not a “purported pronouncement[] of law.” If enacted, it will be a law,
8 but a law the effectuation of which require an appropriation from the Legislature. This is not a
9 constitutional defect, but rather a policy decision that will be reflected in statute.

10 Indeed, contrary to Plaintiffs’ suggestion there are many statutes that are conditioned upon
11 the occurrence of some future event. For example, NRS 278.024 relating to the power of the
12 Nevada Tahoe Regional Planning Agency is “[e]ffective upon the proclamation by the Governor
13 of this State of the withdrawal by the State of California from the Tahoe Regional Planning
14 Compact or of a finding by the Governor of this State that the Tahoe Regional Planning Agency
15 has become unable to perform its duties or exercise its powers.” NRS 278.024 (emphasis added).
16 Neither of these things has occurred and whether they will occur is unknown. In fact, there is an
17 entire set of statutes establishing the “Nevada Tahoe Regional Planning Agency” all conditioned
18 on the same set of circumstances occurring. NRS 278.792-794. Thus, the contention that the
19 Petition is not a statute is meritless. *See Nevadans for the Protection of Prop. Rights, Inc. v.*
20 *Heller*, 122 Nev. 894, 914, 141 P.3d 1235, 1248 (2006) (explaining that “the
21 people’s initiative power is ‘coequal, coextensive, and concurrent’ with that of the Legislature”
22 (quoting *Gallivan v. Walker*, 54 P.3d 1069, 1080 (Utah 2002))). Presumably if conditioning the
23 effectiveness of a statute on a future occurrence was unconstitutional, the Legislative Counsel
24 Bureau would have refused to codify the various provisions of Nevada law that do just that.

25 The Court must also reject Plaintiffs’ claims that the Petition would “obligate” the State
26 Treasurer to “set up, administer, run the program, and monitor the use of the EFAs” without
27 imposing a tax or otherwise providing for revenue to pay those substantial expenses. (Op. Br. at
28 9.) This argument fails because, as stated above, the State Treasurer will not be required to take

any action unless the Legislature funds the EFAs themselves. (Exhibit 1 at § 37.) Again, Section 37 specifically says the provisions of the Petition are effective only upon appropriation of the Legislature. (*Id.*) That said, once the Legislature appropriates funds, the Petition provides that “the State Treasurer may deduct no more than 4 percent of each grant for the administrative costs of implementing” the Petition. (*Id.* at § 10(6)). Thus, once effective, the Petition contains a mechanism by which the State Treasurer may receive revenue support for administering the program.

D. The Court can amend the Description.

The proponent of an initiative is afforded the opportunity to amend a description of effect to resolve any inadequacies identified by the Court. *See* NRS 295.061(3) (“If a description of the effect of an initiative or referendum required pursuant to NRS 295.009 is challenged successfully pursuant to subsection 1 and such description is amended in compliance with the order of the court, the amended description may not be challenged.”). While the description of effect contained within the Petition is legally sufficient and holistically sound, in order to reach an amicable resolution and expedite the proceedings, EFP has proactively drafted alternative descriptions of effect for the Court’s consideration. **Exhibit 2.** Should the Court determine that the Petition’s description of effect requires amendment, EFP requests that the Court consider one of the alternative descriptions of effect or further revise the description of effect in accordance with the Court’s findings. In no event is Plaintiff entitled to the requested relief of prohibiting the Petition from appearing on the ballot. Such a result would deny the people’s right to propose amendments to their principal governing document may be honored.

E. The Petition does not include administrative details because it does not execute previously declared policies or enacted laws or direct a decision delegated to a governmental entity.

Plaintiffs contend that the Petition imposes administrative duties on the State Treasurer and Department of Education and therefore violates the rule against imposing administrative details by initiative petition. (Op. Br. at 9.) This is not the case.

1 The Nevada Supreme Court has broadly stated that “regardless of whether an initiative
2 proposes enactment of a new statute or ordinance, or a new provision in the constitution or city
3 charter, or an amendment to any of these types of laws, it must propose policy—it may not dictate
4 administrative details.” *Nevadans for the Protection of Prop. Rights, Inc. v. Heller*, 122 Nev. 894,
5 913, 141 P.3d 1235, 1248 (2006) (quoting *Citizens for Train Trench Vote v. Reno*, 118 Nev. 574,
6 583, 53 P.3d 387, 392 (2002) *overruled in part on other grounds by Gavin v. District Court*, 118
7 Nev. 749, 59 P.3d 1180 (2002)). The Supreme Court has also described the difference between
8 policy and administrative details. A policy enactment “‘originates or enacts a permanent law or
9 lays down a rule of conduct or course of policy for the guidance of the citizens or their offices,’
10 whereas impermissible administrative matters simply ‘put into execution previously-declared
11 policies or previously-enacted laws or direct [] a decision that has been delegated to [a
12 governmental body with that authority].” *Id.* (quoting *Train Trench*, 52 P.3d at 393-94).

13 In *Nevadans for the Protection of Property Rights*, the Nevada Supreme Court concluded
14 that the petition at issue (to amend the Nevada Constitution) at last arguably dictated
15 administrative details insofar as it directed decisions that were otherwise delegated to the courts.
16 122 Nev. at 916, 141 P.3d at 1249-50. The petition at issue dictated that “[u]npublished eminent
17 domain judicial opinions or orders shall be null and void,” declared that “[n]o Nevada state court
18 judge or justice who has not been elected to a current term of office shall have the authority to
19 issue any ruling in an eminent domain proceeding,” and it provided that “[i]n all eminent domain
20 actions, a property owner shall have the authority to preempt [sic] one judge at the district court
21 level and one justice at each appellate court level.” *Id.* at 916, 141 P.3d at 1249. The Nevada
22 Supreme Court concluded that “[t]hese provisions concern the day-to-day operations of Nevada’s
23 court system and therefore direct decisions that have been delegated to the judiciary.” *Id.* at 916,
24 141, P.3d at 1249-50.

25 In *Train Trench*, the petition at issue (a municipal initiative petition) specifically
26 prohibited the City of Reno from constructing “a depressed trainway (‘train trench’) within the
27 existing railroad right of way through the central portion of the City of Reno.” 118 Nev. at 580,
28 53 P.3d at 390. It was put forward in response to a memorandum of understanding between the

1 City of Reno and Union Pacific railroad that cleared the way for the construction of a railway
2 trench through Reno. *Id.* at 578, 53 P.3d at 389. The Nevada Supreme Court held that the petition
3 prohibited “the construction of a particular public work project, the train trench, in a particular
4 location, the existing right of way through the city.” *Id.* at 584, 53 P.3d at 393. It went on to say
5 that “[t]he initiative does not prohibit the construction of a train trench in general, or the
6 construction of a different type of grade separation project within the right of way. The initiative
7 relates to a subject of very special character, not one of general character.” *Id.*

8 The “administrative duties” Plaintiffs contend violate the rule against administrative
9 details includes requiring the State Treasurer to qualify one or more financial management firms
10 to manage EFAs and establish fees for the management of EFAs. (Op. Br. at 3.) They also include
11 requiring the State Treasurer to administer an annual survey of parents who enter or renew EFA
12 agreements regarding their satisfaction with the program, and the fact that the Department of
13 Education would be required to aggregate the results of certain exams taken by children
14 participating in the program. (*Id.* at 4.) However, these are not administrative details within the
15 meaning of the Nevada Supreme Court’s case law; they are part and parcel of the policy reflected
16 in the Petition.

17 As a threshold matter, it should be noted it does not appear the Nevada Supreme Court has
18 applied the administrative details rule in relation to a statutory petition, and therefore the
19 applicability of concept here is suspect. That said, even if it applies, the Petition clearly sets forth
20 policy. Specifically, it establishes an EFA program, including the various mechanics by which it
21 will function. Thus, it “enacts a permanent law” and “course of policy”—the EFA program itself.
22 Insofar as the administration of the program is concerned, the policy set forth in the Petition,
23 including the various obligations imposed on State actors and agencies, guides those entities in
24 the administration of the program. It does so, by among other things, speaking to the selection of
25 financial managers, the establishment of fees relating to the same, and the collection of certain
26 testing data.

27 This does not in any way “put into execution previously-declared policies or previously-
28 enacted laws or direct [] a decision that has been delegated to [a governmental body with that

authority].” *Nevadan for the Protection of Prop. Rights*, 122 Nev. at 915, 141 P.3d at 1249 (quoting *Train Trench*, 118 Nev. at 582, 53 P.3d at 392). Neither the State Treasurer nor Department of Education has authority to otherwise execute an EFA program in relation to which the Petition directs the exercise of their judgment. The actions required of the State Treasurer and Department of Education would not exist but for establishment of the program. Thus, the administration of the program by the State Treasurer and the Department of Education are part and parcel of the policy being enacted. The Petition, therefore, does not constitute the direction of pre-existing authority delegated to either entity or the execution of a pre-existing rule. Consequently, Plaintiffs’ argument fails.

V. CONCLUSION

For all of the above reasons, the Court should deny Plaintiffs’ attempt to keep the Petition off the ballot.

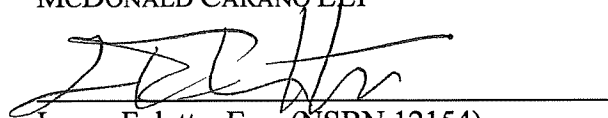
Dated this 15th day of March, 2022.

AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

MCDONALD CARANO LLP

By:



Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Education Freedom PAC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and that on the on the
15th day of March, 2022, that I caused the foregoing document to be filed with the Clerk of the
Court via hand-delivery and filing by a McDonald Carano runner. On the same date I deposited
a copy of the foregoing for mailing with the U.S. Postal Service at Reno, Nevada, with postage
prepaid thereon, addressed as follows:

Bradley Schrager, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP.
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


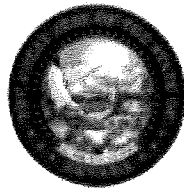

Employee of McDonald Carano LLP

EXHIBIT 1

EXHIBIT 1

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 initiative 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

A handwritten signature in black ink, appearing to read "Erin Phillips".

Signature of Petition Filer

01/27/2022

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.

4. If the Treasurer determines that there are not sufficient funds to provide grants in the amounts described in subsection 3, the Treasurer shall apportion the amount of available grants equally in relation to the amount of available funds and the number of agreements entered into pursuant to Section 9. If the Legislature declines to appropriate money to fund the grants described in subsection 1, no grants shall be made.

5. If a child receives a portion of his or her instruction from a participating entity and a portion of his or her instruction from a public school, for the school year for which the grant is made, the grant required by subsection 1 must be in a pro rata based on amount the percentage of the total instruction provided to the child by the participating entity in proportion to the total instruction provided to the child.

6. The State Treasurer may deduct not more than 4 percent of each grant for the administrative costs of implementing the provisions of sections 2 to 17, inclusive, of this act.

7. The State Treasurer shall deposit the money for each grant in quarterly installments pursuant to a schedule determined by the State Treasurer.

8. Any money remaining in an education freedom account:

(a) At the end of a school year may be carried forward to the next school year if the agreement entered into pursuant to section 9 of this act is renewed.

(b) When an agreement entered into pursuant to section 9 of this act is not renewed or is terminated, because the child for whom the account was established graduates from high school or for any other reason, reverts to the State General Fund at the end of the last day of the agreement.

Sec. 11. 1. Money deposited in an education freedom account must be used only to pay for:

(a) Tuition and fees at a school that is a participating entity in which the child is enrolled;

(b) Textbooks required for a child who enrolls in a school that is a participating entity;

(c) Tutoring or other teaching services provided by a tutor or tutoring facility that is a participating entity;

(d) Tuition and fees for a program of distance education that is a participating entity;

(e) Fees for any national norm-referenced achievement examination, advanced placement or similar examination or standardized examination required for admission to a college or university;

(f) If the child is a pupil with a disability, as that term is defined in NRS 388.417, fees for any special instruction or special services provided to the child;

(g) Tuition and fees at an eligible institution that is a participating entity;

(h) Textbooks required for the child at an eligible institution that is a participating entity or to receive instruction from any other participating entity;

(i) Fees for the management of the education freedom account, as described in section 12 of this act;

(j) Transportation required for the child to travel to and from a participating entity or any combination of participating entities up to but not to exceed \$750 per school year; or

(k) Purchasing a curriculum or any supplemental materials required to administer the curriculum.

2. A participating entity that receives a payment authorized by subsection 1 shall not:

(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.

[40] 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.

[44] 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.

[42] 13. "State Board" means the State Board of Education.

[43] 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; ~~[-]~~

(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 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.

[The remainder of this page is blank.]

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		
	YOUR SIGNATURE DATE / /		CITY COUNTY		
3	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE DATE / /		CITY COUNTY		
4	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE DATE / /		CITY COUNTY		
5	PRINT YOUR NAME (first name, initial, last name)		RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE DATE / /		CITY COUNTY		

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 _____
Petition District _____

(Only registered voters of this county may sign below)
(Only registered voters of this petition district may sign below)

This Space For
Office Use Only

6	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	
7	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	

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

EXHIBIT 2

EXHIBIT 2

Alternative 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 Nevada 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. Account funds 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 programs of distance education not operated by a public school and parents, among others. Parents may not use account funds if their child is in public school full time. If a parent receives funds then terminates their account agreement early, their child may not enroll in public school until the next quarter.

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 the initiative requires the Legislature to appropriate money for 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, depending on the prerogative of the Legislature.

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*Attorneys for Intervenor
Education Freedom PAC*

REC'D & FILED

2022 MAR 15 PM 2:14

AUDREY ROWLATT
CLERK

BY  DEPUTY

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 00027 1B

Dept. No. II

INTERVENOR'S EX PARTE MOTION FOR HEARING PURSUANT TO NRS 295.061

Intervenor EDUCATION FREEDOM PAC, a registered Nevada political action committee ("EFP"), by and through its attorney Lucas Foletta, Esq., of McDonald Carano LLP, hereby requests that the Court issue an order setting the Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-02-2022 Pursuant to NRS 295.061(1) ("Complaint") filed by Plaintiffs Beverly Rogers and Rory Reid ("Plaintiffs") in the above-captioned matter for hearing. This *ex parte* motion is made based upon the following memorandum of points and authorities, the pleadings and papers on file herein, and pursuant to NRS 295.061(2) and FJDCR 3.19 and 4.4.

///

///

POINTS AND AUTHORITIES

I. SHOWING OF EMERGENCY

This matter involves a challenge to Initiative Petition S-02-2022 ("Petition"). The Petition, filed by EFP on January 31, 2022, proposes to establish an education freedom account program under which parents will be authorized to establish accounts for their children's education. (See Exhibit 1 to Compl.) On February 22, 2022, Plaintiffs filed the Complaint, which was accompanied by a Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-02-2022 Pursuant to NRS 295.061(1). NRS 295.061(1) provides:

Except as otherwise provided in subsection 3, whether an initiative or referendum embraces but one subject and matters necessarily connected therewith and pertaining thereto, and the description of the effect of an initiative or referendum required pursuant to NRS 295.009, may be challenged by filing a complaint in the First Judicial District Court not later than 15 days, Saturdays, Sundays and holidays excluded, after a copy of the petition is placed on file with the Secretary of State pursuant to NRS 295.015. All affidavits and documents in support of the challenge must be filed with the complaint. **The court shall set the matter for hearing not later than 15 days after the complaint is filed and shall give priority to such a complaint over all other matters pending with the court, except for criminal proceedings.**

NRS 295.061(1) (emphasis added). Here, Plaintiffs waited until the last possible day to file their suit challenging the Petition under NRS 295.061(2). (See Declaration of Lucas Foletta ("L. Foletta Decl.") ¶ 6, attached hereto as **Exhibit 1**.) They failed to name EFP as a defendant, requiring EFP's intervention in this matter and causing an unnecessary delay in the administration of this case. (Id. ¶ 10.) Plaintiffs also filed a peremptory challenge disqualifying Judge Wilson after Judge Russell recused, requiring the appointment of a senior or traveling judge. (Id. ¶¶ 7-9.) This caused further delay. To date no senior or traveling judge has been appointed. (Id. ¶ 9.) No hearing has been held or even scheduled on this matter despite the fact that NRS 295.061(1) requires a hearing to be within 15 days of the Complaint's filing, thereby necessitating the instant *ex parte* motion for hearing. (Id. ¶ 12.)

Any further delay in setting a hearing on this matter will result in further harm to EFP, for whose protection the procedural requirements of NRS 295.061 exist. EFP has a limited timeframe in which to qualify the Petition for the ballot. (Id. ¶ 13.) EFP needs to gather 140,777

valid signatures by November 23, 2022, to do so. Nev. Const. Art. 19, § 2(2); NRS 295.056(2). Every day this matter is tied up in litigation is a day EFP loses in circulating a court-approved Petition. Signatures gathered on a petition deemed invalid by the courts are invalid. *See Nevadans for Nevada v. Beers*, 122 Nev. 930, 940, 142 P.3d 339, 345 (2006) (holding that an initiative petition without a compliant description of effect is not operative). Accordingly, an emergency now exists of Plaintiffs' own making and the Court must set a hearing on the Complaint without further delay.

II. LEGAL ARGUMENT

FJDCR 4.4(a) provides that an order is required to set a hearing in non-criminal and non-family matters. FJDCR 4.4(b) further provides that the court may initiate the hearing setting process on its own initiative, or a party may file a motion for a hearing. With respect to complaints challenging initiative petitions, NRS 295.061(1) requires that the Court "shall give priority to such a complaint over all other matters pending with the court, except for criminal proceedings," underscoring the critical importance of a timely hearing. Nevertheless, the 15 days for holding a hearing pursuant to NRS 295.061 ran on March 9, 2022, and the Court has not set a hearing.

For the reasons set forth above in Section I *supra*, under FJDCR 3.19(a), an emergency exists that justifies the court setting the requested hearing without Plaintiffs being given notice or opportunity to respond. As this hearing is statutorily required by NRS 295.061(1), under which Plaintiffs have challenged the Petition, justice requires that this matter not be further delayed by granting Plaintiffs an opportunity to respond to EFP's motion for hearing.

III. CONCLUSION

Because the 15-day deadline for holding a hearing pursuant to NRS 295.061(1) has already passed, EFP respectfully requests that the Court issue an order setting a hearing on this matter as soon as possible in accordance with FJDCR 4.4(a).

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///

AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated: March/5, 2022

MCDONALD CARANO

By: 

Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

*Attorneys for Intervenor
Education Freedom PAC*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and that on the on the
15th day of March, 2022, that I caused the foregoing document to be filed with the Clerk of
the Court via hand-delivery and filing by a McDonald Carano runner. On the same date I
deposited a copy of the foregoing for mailing with the U.S. Postal Service at Reno, Nevada, with
postage prepaid thereon, addressed as follows:

Bradley Schrager, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP.
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

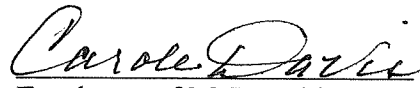

Employee of McDonald Carano LLP

EXHIBIT 1

EXHIBIT 1

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(775) 788-2020
lfoletta@mcdonaldcarano.com

*Attorneys for Intervenor
Education Freedom PAC*

**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 00027 1B

Dept. No. II

**DECLARATION OF LUCAS FOLETTA IN SUPPORT OF INTERVENOR'S EX PARTE
MOTION FOR HEARING PURSUANT TO NRS 295.061**

I, Lucas Foletta, declare as follows:

1. I am over the age of 18 years and a resident of Washoe County, Nevada. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration in a court of law, I am legally competent to do so.

2. I am an attorney duly licensed to practice law in the State of Nevada with McDonald Carano LLP, counsel of record for intervenor Education Freedom PAC ("EFP") in the above-captioned action.

3. I submit this Declaration in support of EFP's *Ex Parte* Motion for Hearing Pursuant to NRS 295.061.

4. This *ex parte* motion is made in good faith without dilatory motive.

5. EFP filed Initiative Petition S-02-2022 (the "Petition") on January 31, 2022.

6. Plaintiffs Beverly Rogers and Rory Reid ("Plaintiffs") waited until February 22, 2022, to file the Complaint in this matter, which was the last day possible day to challenge the Petition under NRS 295.061(1).

7. The case was initially assigned to Judge Russell, who recused, resulting in the case being transferred to Judge Wilson the same day it was filed.

8. Two days later, on February 24, 2022, Plaintiffs lodged a peremptory challenge of Judge Wilson. Upon information and belief, Plaintiffs did this with full knowledge that another judge of the First Judicial District Court was not available to hear the case.

9. Based upon information and belief, no senior or traveling judge has been appointed.

10. Plaintiffs also failed to name EFP as a defendant, notwithstanding the fact that it is the real part in interest in this litigation and that the Secretary of State, who was named, generally maintains neutrality in ballot petition litigation.

11. Because Plaintiffs failed to name EFP as a defendant, EFP was forced to obtain a stipulation to intervene in this matter, causing unnecessary confusion and delaying EFP's participation in the case. The stipulation has yet to be acted upon.

12. Despite the requirement under NRS 295.061(1) that a hearing on a complaint challenging an initiative petition be held within 15 days of filing the complaint, the 15 days ran on March 9, 2022, and no hearing of any kind has been held in this matter to date.


13. This delay has resulted in significant detriment to EFP, which must gather 140,777 valid signatures by November 23, 2022, to qualify the Petition for the ballot.

14. EFP cannot circulate a non-court approved petition, as signatures gathered on a petition deemed invalid by the courts are invalid.

15. Based on the risk to EFP that it will run out of time to circulate a court-approved Petition in time to gather the requisite signatures to qualify the Petition for the ballot, there is insufficient time to hear the Motion for Hearing in the ordinary course.

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

EXECUTED ON: March 5, 2022


Lucas Foletta, Esq.

Lucas Foletta, Esq.

McDONALD  **CARANO**

1000 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

EXHIBIT 1

EXHIBIT 1

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6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR CARSON CITY**

8 * * *

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

11 Plaintiffs,

12 vs.

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

16 Defendant.

Case No. 22 OC 00027 1B

Dept. No. II

17 **[PROPOSED] ORDER GRANTING INTERVENOR'S *EX PARTE* MOTION FOR**
18 **HEARING PURSUANT TO NRS 295.961**

19 Currently before the Court is Intervenor Education Freedom PAC's *Ex Parte* Motion
20 for Hearing Pursuant to NRS 295.961 filed on March 15, 2022.

21 Having considered the pleadings and papers filed therein, the Court finds as follows:


22 **THEREFORE**, good cause appearing, it is hereby:

23 **ORDERED** that Intervenor's *Ex Parte* Motion for Hearing Pursuant to NRS 295.061 is
24 GRANTED.

25 DATED this _____ day of _____, 2022.

26 _____
27 District Judge
28

1 Respectfully submitted by:
2 McDONALD CARANO LLP

3 
4 Lucas Foletta, Esq. (NSBN 12154)

5 100 West Liberty Street, 10th Floor

6 Reno, NV 89501

7 lfoletta@mcdonaldcarano.com

8 *Attorneys for Intervenor Education Freedom PAC*
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25 4873-1331-4070, v. 1
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Attorneys for Education Freedom PAC

REC'D & FILED

2022 MAR 15 PM 2:14

AUDREY ROWLATT
CLERK

BY 

DEPUTY

**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 00027 1B

Dept. No. II

ANSWER IN INTERVENTION TO COMPLAINT

COMES NOW, Intervenor EDUCATION FREEDOM PAC, a registered Nevada political action committee ("EFP"), by and through its attorney Lucas Foletta, Esq., of MCDONALD CARANO LLP, and hereby responds to the Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-02-2022 Pursuant to NRS 295.061(1) ("Complaint") of Plaintiffs as follows:

JURISDICTION AND VENUE

1. The allegations in Paragraph 1 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 1.

2. The allegations in Paragraph 2 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 2.

PARTIES

3. EFP is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and denies them on that basis.

4. EFP is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and denies them on that basis.

5. EFP is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and denies them on that basis.

GENERAL FACTUAL ALLEGATIONS

6. EFP denies the allegations in Paragraph 6, except admits that the statutory initiative petition designated as S-02-2022 ("Petition") and related Notice of Intent to Circulate Statewide Initiative or Referendum Petition ("Notice of Intent") was filed on January 31, 2022.

7. EFP denies the allegations in Paragraph 7, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

8. EFP denies the allegations in Paragraph 8, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

9. EFP denies the allegations in Paragraph 9, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

10. EFP denies the allegations in Paragraph 10, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

11. EFP denies the allegations in Paragraph 11, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

12. EFP denies the allegations in Paragraph 12, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

13. EFP denies the allegations in Paragraph 13, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

14. The allegations in Paragraph 14 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 14, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

15. The allegations in Paragraph 15 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 13, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

FIRST CAUSE OF ACTION

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

16. EFP repeats, re-alleges, and incorporates its responses in the foregoing paragraphs, as if fully set forth herein.

17. EFP denies the allegations in Paragraph 17, except admits that the full text of NRS 295.009 is as follows:

1. Each petition for initiative or referendum must:

(a) Embrace but one subject and matters necessarily connected therewith and pertaining thereto; and

(b) 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. The description must appear on each signature page of the petition.

2. For the purposes of paragraph (a) of subsection 1, a petition for initiative or referendum embraces but one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative or referendum are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative or referendum.

18. The allegations in Paragraph 18 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations of Paragraph 18.

19. EFP denies the allegations in Paragraph 19.

20. EFP denies the allegations in Paragraph 20.

21. EFP denies the allegations in Paragraph 21.

SECOND CAUSE OF ACTION

(“Violation of Unfunded Expenditure Provision, Nev. Const. Art. 19, Sec. 6”)

22. EFP repeats, re-alleges, and incorporates its responses in the foregoing paragraphs, as if fully set forth herein.

23. EFP denies the allegations in Paragraph 23, except admits that the full text of Nev. Const. Art. 19, Sec. 6 is as follows:

Sec. 6. Limitation on initiative making appropriation or requiring expenditure of money. 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.

24. The allegations in Paragraph 24 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations of Paragraph 24.

25. EFP denies the allegations in Paragraph 25.

26. EFP denies the allegations in Paragraph 26.

27. EFP denies the allegations in Paragraph 27.

28. EFP denies the allegations in Paragraph 28.

29. EFP denies the allegations in Paragraph 29.

THIRD CAUSE OF ACTION

("Impermissible Inclusion of Administrative Details")

30. EFP repeats, re-alleges, and incorporates its responses in the foregoing paragraphs, as if fully set forth herein.

31. The allegations in Paragraph 31 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations of Paragraph 31.

32. EFP denies the allegations in Paragraph 32.

33. EFP denies the allegations in Paragraph 33.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses to the Complaint and to each cause of action, claim, and allegation therein, EFP alleges as follows:

1. Neither the Complaint nor any cause of action therein states a claim for which relief may be granted.

2. Estoppel and other equitable doctrines bar the allegations in the Complaint.

3. EFP may not have alleged all possible affirmative defenses herein insofar as sufficient facts were unavailable upon the filing of the Answer. Therefore, EFP reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

PRAYER FOR RELIEF


WHEREFORE, EFP prays as follows:

1. That the Petition is valid and complies with Nevada law;
2. That judgment be entered in favor of EFP;
3. That Plaintiffs take nothing by way of their Complaint and it be dismissed with prejudice;
4. For an award of attorney fees and costs incurred in the defense of this action; and
5. For such other and further relief as the Court deems just and proper under all the circumstances of this matter.

AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated: March 15, 2022

MCDONALD CARANO
By: 
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Education Freedom PAC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and that on the on the 15th day of March, 2022, that I caused the foregoing document to be filed with the Clerk of the Court via hand-delivery and filing by a McDonald Carano runner. On the same date I deposited a copy of the foregoing for mailing with the U.S. Postal Service at Reno, Nevada, with postage prepaid thereon, addressed as follows:

Bradley Schrager, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP.
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


Employee of McDonald Carano LLP

--FILED--
Administrative Office of the Courts
Date: 3/23/2022

By: Armani Johnson

**SUPREME COURT OF THE STATE OF NEVADA
ADMINISTRATIVE OFFICE OF THE COURTS**

IN THE MATTER OF THE ASSIGNMENT OF
A SENIOR JUDGE

Order No. 22-00686

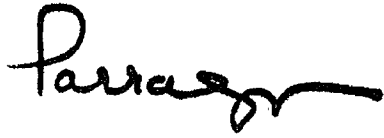
MEMORANDUM OF TEMPORARY ASSIGNMENT

WHEREAS, the Honorable James E. Wilson, District Judge, Department 2, First Judicial District Court, will be unavailable and no other Judge in the District is available, now therefore,

IT IS HEREBY ORDERED that the Honorable Charles McGee, Senior Judge, shall hear any and all matters in the matter of *Beverly Rogers, Rory Reid v. Barbara Cegasvke*, Case Number 22 OC 00027 1B, and shall have authority to sign any orders arising out of this assignment. During this time, the Honorable Charles McGee, Senior Judge, may preside over any other matters as requested by the Chief or Presiding Judge.

ENTERED this 23rd day of March 2022.

NEVADA SUPREME COURT

By: , Justice

Copy: The Honorable Charles McGee, Senior Judge
The Honorable James E. Wilson, District Judge, First Judicial District Court

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AUBREY NEWBY
CLERK

**In the First Judicial District Court of the State of Nevada
In and For Carson City
HEARING DATE MEMO**

Case No.: 22 OC 00027 1B

Set in Department 2
DEPUTY

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

Plaintiff

Bradley Schrager, Esq
Plaintiff's Counsel

vs.

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

Defendant(s)

Craig Newby Esq
Attorney for Barbara Cegavske

Lucas Foletta, Esq
Attorney for Education Freedom PAC

Other EVIDENTIARY HEARING

TO COMMENCE on the 29 day of MARCH, 2022 AT 1:00 o'clock P.M.

TIME ALLOWED 4 Hour(s)

Setting No 1

Written Consent
Plaintiff's Counsel

DATED March 24 2022

Written Consent
Defendant's Counsel

Charles McGee
Senior District Judge

Written Consent
Attorneys for Education Freedom PAC

CERTIFICATE OF SERVICE

The undersigned, an employee of the Carson City Clerk/District Judge, hereby certifies that on March 24 2022

() Handing a copy thereof to the ☒ Plaintiff's attorney (x) Defendant's attorney (x) DA () Pro per () Other

(X) Faxing and/or depositing a copy thereof in the U.S. Mail at Carson City, Nevada, postage paid, addressed as follows:

Bradley Schrager, Esq.
3773 Howard Hughes Parkway
Suite 590 South
Las Vegas, NV 89169

Craig Newby, Esq.
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Lucas Foletta, Esq.
McDonald Carano LLP
100 W. Liberty St., 10th Floor
Reno, NV 89501

SUBSCRIBED and SWORN to before me
this ___ day of _____, 2022
Aubrey Rowlett, Clerk

BY: _____ Deputy





ORIGINAL

AARON FORD
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CRAIG A. NEWBY (Bar No. 8591)
Deputy Solicitor General
LAENA ST-JULES (Bar No. 15156)
Deputy Attorney General
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Attorneys for Defendant Barbara Cegavske

REC'D & FILED

2022 MAR 24 AM 11:43

AUBREY ROWLATT
CLERK

BY [Signature] DEPUTY

**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 the NEVADA SECRETARY
OF STATE,

Defendant.

Case No. 22 OC 00027 1B

Dept. No. I

**LIMITED RESPONSE TO MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF CHALLENGING INITIATIVE PETITION S-02-2022
PURSUANT TO NRS 295.061(1)**

Defendant Barbara Cegavske, in her official capacity as the Nevada Secretary of State, submits the following Limited Response to Plaintiffs Beverly Rogers and Rory Reid's Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-02-2022 Pursuant to NRS 295.061(1).

The Secretary of State does not take a position on the legality of the proposed initiative. This case was brought prior to the Secretary of State having the opportunity to consider certifying the proposed initiative as sufficient pursuant to NRS 295.061(2).

1 Plaintiffs and any intervenors will make those arguments, and the Secretary of State will
2 comply with any final judgment in this case. The Secretary of State does not take a position
3 on the policy merits of the proposed initiative. If deemed legal and qualified for the 2022
4 general election ballot, Nevadan voters will have that debate and make that policy decision.

5 Under such circumstances, no award of attorneys' fees or costs is appropriate against
6 the Secretary of State.

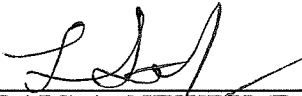
7 **AFFIRMATION**

8 The undersigned does hereby affirm that the preceding Limited Response to
9 Memorandum of Points and Authorities in Support of Complaint for Declaratory and
10 Injunctive Relief Challenging Initiative Petition S-02-2022 Pursuant to NRS 295.061(1)
11 does not contain the social security number of any person.

12 DATED this 24th day of March, 2022.

13 AARON D. FORD
14 Attorney General

15 By:

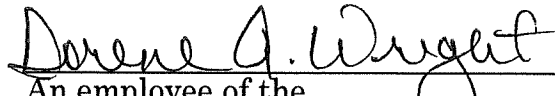

16 CRAIG A. NEWBY (Bar No. 8591)
17 Deputy Solicitor General
18 LAENA ST. JULES (Bar No. 15156)
19 Deputy Attorney General
20 *Attorneys for Defendant Barbara Cegavske*
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 24th day of March, 2022, I served a true and correct copy of the foregoing LIMITED RESPONSE TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION S-02-2022 PURSUANT TO NRS 295.061(1), by placing said document in the U.S. Mail, postage prepaid, addressed to:

Bradley S. Schrager, Esq.
John Sambert, Esq.
Daniel Bravo, Esq.
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Las Vegas, NV 89169

Lucas Foletta, Esq.
MCDONALD CARANO LLP
100 W. Liberty St., 10th Fl.
Reno, NV 89501


An employee of the
Office of the Nevada Attorney General

ORIGINAL

REC'D & FILED

2022 MAR 25 PM 4:57

AUBREY ROWLAND
CLERK

BY

OFPIW

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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.

Case No.: 22 OC 00027 IB
Dept.: II

**REPLY MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION S-02-2022 PURSUANT
TO NRS 295.061(1)**

1 **I. INTRODUCTION**

2 The Petition at issue cannot properly be presented to voters for signature,
3 because its description is confusing, deceptive and misleading; it improperly
4 mandates unfunded expenditures; and it improperly imposes administrative details.
5 Nothing submitted by intervenor Education Freedom PAC (“EFP”) in its Answering
6 Brief alters this conclusion.

7 First, there is no authority in NRS 295.061(1) or otherwise that supports EFP’s
8 request for the dismissal of the complaint because the Court did not set this matter
9 for hearing within 15 days of the complaint’s filing. This 15 day deadline is a
10 directory, rather than a mandatory deadline; and it would be patently absurd to deny
11 Plaintiffs the right to have their timely challenge heard on the merits, based on
12 something entirely outside of their control, namely the Court’s setting of the hearing.

13 Second, EFP fails to refute the numerous misleading and deceptive assertions
14 and omissions in the description of effect that render the Petition invalid. To the
15 contrary, EFP’s Answering Brief largely confirms the misleading nature of numerous
16 provisions of the description pointed to by Plaintiffs; and, in a tacit admission of the
17 deficiency of its petition, even submits an alternative description that addresses
18 some—but not all—of these deficiencies.

19 Third, the plain language of Article 19, Section 6 of the Nevada Constitution
20 makes clear that any initiative must appropriate funds for expenditures that it
21 mandates, and that this appropriation cannot be foisted on the Legislature as the
22 Petition seeks to do. The Petition is separately deficient, because, putting aside its
23 failure to appropriate grant moneys, it also fails to appropriate funds to cover the
24 numerous and substantial other expenses imposed by the Petition.

25 Finally, even a casual reading of the Petition makes clear that it imposes pages
26 and pages of improper administrative details and goes far beyond mere policy
27 proposals. EFP’s dismissal of these administrative details as mere proposals of policy
28 is refuted by the language of the Petition itself.

1 **II. ARGUMENT**

2 **A. It Would be Improper to Dismiss This Action Because a Hearing**
3 **Was Not Set Within the 15 Day Directory deadline of NRS 295.061.**

4 As a preliminary matter, Plaintiff's complaint cannot properly be dismissed as
5 a result of a hearing not being scheduled by the Court within the 15 day directory
6 deadline set forth in NRS 295.061(1). There is no authority supporting such dismissal
7 and NRS 295.061 itself does not provide for such a drastic remedy.

8 Absent a statutory provision requiring the dismissal of a complaint under these
9 circumstances—and here there is none—it is clear that the requirement that the
10 challenge be set for hearing within 15 days of the filing of the complaint is a
11 directory—rather than a mandatory—deadline which can and should be excused. A
12 “court may construe a statute as directory to prevent ‘harsh, unfair or absurd
13 consequences.’” *Vill. League to Save Incline Assets, Inc. v. State ex rel. Bd. of*
14 *Equalization*, 124 Nev. 1079, 1087, 194 P.3d 1254, 1260 (2008).

15 In this case, construing the fifteen day hearing deadline as mandatory rather
16 than directory would defeat the statutory intent and lead to the absurd consequence
17 where a timely challenge could be effectively denied by a Court through inaction,
18 without such challenge ever being addressed on its merits. This would be particularly
19 unfair and inequitable, given that Plaintiffs obviously have no control over when a
20 hearing on the Petition is set by the Court. As such, the fifteen day hearing deadline
21 should be construed as directory, not mandatory, and EFP's attempt to avoid having
22 Plaintiffs' timely challenge being heard on the merits should be denied.

23 **B. The Petition's Description of Effect Is Fatally Misleading**

24 For the reasons pointed out in Plaintiffs' supporting papers, the description of
25 effect is deceptive and misleading, because, among other things, it fails to inform
26 potential signers that under the proposed statute, children could be deprived of the
27 right to attend public school for a period of time. The best that EFP can do is attempt
28 to sugarcoat this harsh provision in an effort to excuse its glaring omission from the

1 description. But in doing so, EFP merely confirms that the proposed statute would
2 deny access to the public school system to certain Nevada children for a period of
3 time.

4 In this regard, EFP contends that “the Petition does not bar any Nevada child
5 from enrolling in a public school[, but] . . . merely delays enrollment for children
6 whose parents established EFAs for their benefit.” Answering Brief at 7. Put
7 differently, such children are barred from attending public school during the time of
8 such “delay.” Under applicable Nevada law, this important effect must be explained
9 to a potential signatory in the description of effect. Its exclusion renders the
10 description legally deficient.¹

11 Likewise, the description misleadingly informs potential signers that “[m]oney
12 in the accounts may be used to pay certain educational expenses including, but not
13 limited to, tuition and fees at participating entities.” In arguing that this portion of
14 the description is not misleading, EFP points to the language of the proposed statute
15 itself. *See* Answering Brief at 8. But that just makes clear why the description is
16 impermissibly misleading. It promises that EFA funds can be used “to pay certain
17 educational expenses including, but not limited to, tuition and fees at participating
18 entities,” without limitation, while the language of the proposed statute which EFP
19 points to makes clear that this is not the case. A potential signer reading just the
20 description might be misled into signing the petition based on a misunderstanding
21 fostered by this misleading statement in the description, which is contradicted by the
22 language of the proposed statute itself.²

23
24
25 ¹ In a tacit admission of the misleading nature of this omission, the
26 “alternative” description submitted by EFP with its Answering Brief adds language
stating that “[i]f a parent received funds then terminates their account agreement
early, their child may not enroll in public school until the next quarter.”

27 ² Again, in a tacit admission of the misleading nature of this statement in the
28 description, EFP’s “alternative description of effect explains that EFA funds cannot
be used if a parent’s child is in public school full time.

1 Finally, the description plainly does not inform potential signers of the impact
2 that this proposed statute would have on Nevada's public education system, by
3 drawing funding away from public schools and into private schools, as will necessarily
4 occur under the proposed statute. This omission, like the other deceptive and
5 misleading statements in the description, renders the Petition fatally flawed.
6 Notably, the "alternative" description of effect submitted by EFP fails to remedy this
7 misleading omission, and is therefore similarly deficient.

8 **C. The Petition Violates The Nevada Constitution's Prohibition On**
9 **Initiatives That Mandate Unfunded Expenditures**

10 Article 19, Section 6 of the Nevada Constitution "does not permit the proposal
11 of any statute or statutory amendment which makes an appropriation or otherwise
12 requires the expenditure of money, unless such statute or amendment also imposes
13 a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally
14 provides for raising the necessary revenue." Under the plain reading of this
15 constitutional provision, the same statute that requires the expenditure of moneys
16 must also appropriate the necessary moneys to fund such expenses. The necessary
17 appropriation cannot be severed from the statutory provision requiring the expenses
18 and foisted on the Legislature, as the Petition attempts to do, and the Petition is
19 defective for this reason alone.

20 But even if the appropriation could be foisted onto the Legislature in this
21 manner, as EFP argues, the Petition is still flawed, because it also fails to fund the
22 numerous expenditures required by the proposed statute apart from the grant
23 moneys themselves. In its Answering Brief, EFP relies on the provision of the statute
24 which provides that "the State Treasurer may deduct no more than 4 percent of each
25 grant for the administrative costs of implementing the program." See Answering Brief
26 at 15. But this provision does not save the Petition, because there is no basis to
27 conclude that 4% of the grant funds would be sufficient to cover the substantial costs
28 of the contemplated program. Accordingly, the Petition does not pass muster under

1 Article 19, section 6 of the Nevada Constitution.

2 **D. The Impermissible Administrative Details that Fill the Proposed**
3 **Initiative Cannot Plausibly be Dismissed as Proposals of Policy**

4 As noted in Plaintiffs' supporting papers, the proposed statute which is the
5 subject of the Petition includes pages and pages of impermissible administrative
6 details which the proposed statute purports to impose on the State Treasurer and
7 Department of Education. *See* Plaintiff's Memorandum, at 3-4.

8 EFP's contention that these are not impermissible details, but rather proposals
9 of policy, simply does not pass the smell test. In this regard, EFP contends that "the
10 administration of the program by the State Treasurer and the Department of
11 Education are part and parcel of the policy being enacted." Answering Brief at 18.
12 This demonstrates the problem with the Petition as written. The proposed statute
13 could have provided, for example, that "the program contemplated by this statute
14 shall be administrated by the State Treasure and the Department of Education."
15 That may well be an altogether proper proposal of policy. But that is not what the
16 Petition does. Instead, the Petition goes far beyond such proposal of policy, and
17 instead imposes on the State Treasurer and other government agencies pages and
18 pages of administrative details, which fall well outside the scope of the People's
19 administrative power, rendering the Petition invalid.

20 **V. CONCLUSION**

21 Based upon the foregoing, as well Plaintiffs' Memorandum in support of
22 Complaint, the Court should grant Plaintiffs' requested relief, striking Initiative
23 Petition C-04-2022 and issuing an injunction prohibiting the Secretary from taking
24 further action upon it.

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AFFIRMATION

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

DATED this 24 day of March, 2022

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

By: 

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Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 24th day of March, 2022, a true and correct copy
3 of the **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN**
4 **SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE**
5 **RELIEF CHALLENGING INITIATIVE PETITIONS S-02-2022 PURSUANT**
6 **TO NRS 295.061(1)** was served upon all parties via U.S. Mail Las Vegas, Nevada,
7 postage prepaid and via electronic mailing to the following:

8 Craig A. Newby, Esq.
9 **OFFICE OF THE ATTORNEY**
10 **GENERAL**
11 555 E. Washington Avenue, Suite #3900
12 Las Vegas, NV 89101
13 CNewby@ag.nv.gov

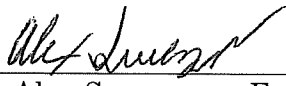
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12 *Attorney for Barbara Cegauske*

Attorneys for education Freedom PAC

13 Jackie Tucker
14 Judicial Assistant
15 Honorable Charles M. McGee
16 mcgeelegalassistant@gmail.com

16 BShadron@carson.org

17 By 
18 Alex Swezey, an Employee of
19 WOLF, RIFKIN, SHAPIRO, SCHULMAN
20 & RABKIN, LLP
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6 lfoletta@mdonaldcarano.com

7 *Attorneys for Education Freedom PAC*

8 **IN THE FIRST JUDICIAL DISTRICT COURT**
9 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

10 **BEVERLY ROGERS, an individual; RORY**
11 **REID, an individual,**

12 **Plaintiffs,**

13 **vs.**

14 **BARBARA CEGAVSKE, in her official**
15 **capacity as NEVADA SECRETARY OF**
16 **STATE,**

17 **Defendant.**

Case No.: 22OC00027 1B

Dept. No.: II

STIPULATION AND ORDER
REGARDING INTERVENTION

18 **Plaintiffs RORY REID and BEVERLY ROGERS, Defendant BARBARA CEGAVSKE**
19 **in her official capacity as NEVADA SECRETARY OF STATE, and EDUCATION FREEDOM**
20 **PAC ("EFP"), by and through their counsel, hereby submit this stipulation and order regarding**
21 **the intervention of EFP in the instant litigation. As the circulator of record of the Statutory**
22 **Initiative Petition S-02-2022 ("Initiative Petition") filed with the Nevada Secretary of State and**
23 **the subject of this litigation, EFP claims an interest relating to the property or transaction that is**
24 **the subject of the action and is so situated that disposing of the action may as a practical matter**
25 **impair or impede EFP's ability to protect its interest.**

26 **///**

27 **///**

28 **///**

///

///

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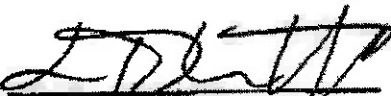
AUDREY K. WELLS
CLERK

BY DEPUTY

1 The parties therefore agree and stipulate that the Court should approve EFP's intervention in
2 this action.

3
4 Dated: February 28, 2022


5 McDONALD CARANO LLP

6
7
8 By: 
9 Lucas Foletta (NSBN 12154)
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15 *Attorneys for Education*
16 *Freedom PAC*

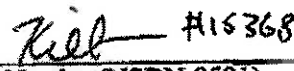
Dated: February 28, 2022

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*Attorneys for Rory Reid and Beverley
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Attorneys for Barbara Cegavske

1 The parties therefore agree and stipulate that the Court should approve EFP's intervention in
2 this action.

3
4 Dated: February 28, 2022

5 McDONALD CARANO LLP

Dated: February 28, 2022

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23 cnewby@ag.nv.gov

Attorneys for Barbara Cegavske

ORDER

IT IS ORDERED:

☒ Granted
☐ Granted in part:

and Denied in part:

☐ Denied
☐ Declined to consider ex parte
☐ Declined to consider without a hearing
☐ Other:

DATED:

March 30, 2022

Charles M. McG
DISTRICT COURT JUDGE

Respectfully submitted by:

McDONALD CARANO LLP

Lucas Foletta
Lucas Foletta (NSBN 12154)
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Attorneys for Education Freedom PAC

REC'D & FILED
2022 MAR 31 AM 10:54
AUBREY REID
CLERK
BY _____ DEPUTY

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 00027 1B

Dept. No. II

~~PROPOSED~~ ORDER GRANTING INTERVENOR'S *EX PARTE* MOTION FOR
HEARING PURSUANT TO NRS 295.961

Currently before the Court is Intervenor Education Freedom PAC's *Ex Parte* Motion
for Hearing Pursuant to NRS 295.961 filed on March 15, 2022.

Having considered the pleadings and papers filed therein, the Court finds as follows:

THEREFORE, good cause appearing, it is hereby:

ORDERED that Intervenor's *Ex Parte* Motion for Hearing Pursuant to NRS 295.061 is
GRANTED.

DATED this 30 day of March, 2022.

Charles M. McQueen

District Judge

REC'D & FILED

2022 APR 26 AM 10:30

AUBREY ROWLAND
CLERK

BY

**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,

CASE NO.: 220C0027 1B

Plaintiffs,

DEPT. NO. II

Vs.

PART A

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

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

Defendant,

EDUCATION FREEDOM PAC,

PART B

**Intervenor, aligned
as Defendant.**

**INJUNCTION PREVENTING THE
FORWARD PROGRESS OF THIS
INITIATIVE**

PART A:

DISCUSSION

This opinion presents the second of two Decisions addressing

1 two of three initiatives filed by the Intervenor, Education Freedom PAC
2 ("EFP"), who are proposing sweeping changes in the way public
3 education is administered here in the State of Nevada.
4

5 A Decision and Order has already been filed in the first case,
6 which is captioned RORY REID, an individual; BEVERLY ROGERS, an
7 individual, Plaintiffs versus BARBARA CEGAVSKE, in her official
8 capacity as NEVADA SECRETARY OF STATE, Defendant; Case No. 22
9 OC 00028 1B ("Reid I").
10
11

12 EFP intervened and was joined as a party defendant in both
13 cases.
14

15 The case at hand reverses the order of the Plaintiffs' names so
16 that Beverly Rogers' name appears first.
17

18 Like it did in Reid I, Intervenor sought dismissal for claimed
19 unnecessary delays which they attributed to the Plaintiffs. For the
20 reasons set forth in the Reid I Decision, that motion MAY BE AND
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10 2. Administrative Matters Excluded;

11 3. Schwartz Reviewed;

12 **PRE-ELECTION PETITION:**

13
14 The first issue addresses the caution contained in *Herbst Gaming*
15 *Inc. v Secretary of State*, 122 Nev. 877, 141 P.3d 1224 (2006) that
16
17 limits challenges available when contesting the scope of "pre-
18 election" initiatives – that is, challenges coming in front of the actual
19 ballot – which must implicate very narrow and specific constitutional
20 requirements.
21

22
23 Other due process and equal protection claims are not ripe for
24 challenge until the election itself has resulted in passage.

25
26 Here Article 6, Section 19, once again, legitimates a pre-emptive
27 limited constitutional challenge requiring up front that the initiative
28

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

3 **ADMINISTRATIVE ISSUES**

4
5 ***Herbst, supra*, can also be cited for the principle, urged by the**
6 **Plaintiffs, that initiatives like the one under scrutiny are not to involve**
7 **themselves in administrative matters as opposed to legislative acts,**
8 ***Id.* 122 Nev. Pp. 883 et seq.**

9
10
11 **The Plaintiffs are right. The 22-page bill under scrutiny is replete**
12 **with administrative criteria, which will have to be culled before going**
13 **to the ballot.**

14
15 **In that sense, it is similar to the DOE previously discussed, which**
16 **needs some serious editing to properly notice the financial impact**
17 **before it is tendered to prospective voters.**

18
19
20 **So, the Court suggests that those shortcomings are both**
21 **“curable” matters that require effort but can be “fixed”.**

22
23 **Unfixable is the revenue source component.**

24 **SCHWARTZ DISCUSSION**

25
26 **This case, which is factually closer to our case than any other,**
27 **was handed down by the Nevada Supreme Court on September 29,**
28

1 **2016. Although it goes by *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d**
2 **386 (2016), the opinion actually subsumes two cases; the second is**
3 ***Duncan v. State* which has almost identical issues.**
4

5 **In both cases, the Plaintiffs challenged the constitutionality of a**
6 **pair of bills enacted previously known as Senate Bill 302 and Senate**
7 **Bill 515.**
8

9 **This legislation appropriated a Two Billion Dollar lump sum to be**
10 **disbursed as in our case, through the office of the State Treasurer.**
11

12 **The State Treasurer took it all in, and on his own authority and**
13 **interpretation concluded that the funding was sufficient to fund not**
14 **only the earmarked public school system, but also could be available**
15 **to fund educational savings accounts for parents to subsidize non-**
16 **public educational opportunities similar to the ones in our case.**
17

18 **The High Court determined that Senate Bill 302 on its face, or in**
19 **combination with Senate Bill 515 -- by any inference --- cannot be**
20 **construed as an appropriation measure, specifically designed to be**
21 **used to serve private schooling, tutoring and other non-public**
22 **educational opportunities.**
23
24
25
26
27
28

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

5
6 **But an absolutely essential ingredient for inclusion in the statute**
7 **is the specific directive to identify a revenue source by the Legislature**
8 **contemporaneous with the establishment of the administrative**
9 **program to use the funding.**

10
11 **To this extent, *Schwartz* is entirely consistent and represents a**
12 **guidepost to come to a conclusion about essential issues that achieve**
13 **a budget balance.**

14
15 **A specific directive to appropriate revenue for the educational**
16 **programs proffered by the Intervenor/Defendants is essential to the**
17 **viability of the statute.**

18
19 **The *Schwartz* case has very recently been modified to recognize**
20 **that a “public importance” exception applies when a representative**
21 **citizen sues to protect public funds by challenging a legislative**
22 **appropriation.**

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

3 **Obviously, the issue in *Nevada Policy Research Institute, supra*,**
4
5 **involve standing issues and separation of power issues that are not**
6 **present in the instant case.**

7
8 **Accordingly, the *Schwartz* case is inapposite except that it may**
9 **imply a duty that confirms that both Plaintiffs and Defendant in our**
10 **case have been demonstrating a public-importance role that notches**
11 **up the level of scrutiny when considering a specific provision in the**
12 **Nevada Constitution.**

13
14
15 **The Intervenor/Defendant's challenge falls short of the mark.**
16
17 **The statute fails from the lack of a funding directive.**

18 **PART B**

19
20 **ORDER ENJOINING PETITION**

21 **Like its counterpart, REID I, the Intervenor has made an honest**
22 **and thoughtful effort to create an opportunity for a substantial public**
23 **forum to amend a statute that purports to administer and fund**
24 **educational opportunities for children across the State whose parents**
25
26
27
28

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

3
4 Unfortunately for the Intervenor, this initiative — the one they
5 rely upon---- impermissibly commands the Nevada Legislature to
6 amend a scheme of education “status-900” and install an unproven
7 program that violates the deliberative functions of the Legislature.
8

9
10 IT IS THEREFORE ORDERED and declared that Initiative Petition
11 C-04-2022 is legally deficient because of a glaring but curable
12 omission in the Declaration of Effect; and because it violates the
13 prohibition against imposing administrative functions, which also may
14 be curable.
15

16
17 What the Court finds and rules as incurable comes from the
18 patently obvious command in Section 6 of Article 19 of the Nevada
19 Constitution to contemporaneously link the proposal to a viable
20 identified funding source in order to have Constitutional footing to go
21 on with it.
22

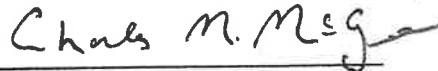
23
24 IT IS FURTHER ORDERED and declared that Intervenor-Defendant
25 Education Freedom PAC, its proponents, officers, or agents, are hereby
26 enjoined from collecting signatures in support of the Petition and from
27
28

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

3
4 IT IS FURTHER ORDERED and declared that Defendant Secretary
5 of State Barbara Cegavske is enjoined from placing the Petition on the
6 ballot.
7

8 IT IS SO ORDERED.

9 DATED this 25th day of April, 2022.

10
11
12 

13 CHARLES M. MCGEE
14 Senior Judge on Assignment
15
16
17
18
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28

1 **CERTIFICATE OF SERVICE**

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

5 Lucas Foletta, Esq.
6 100 West Liberty St. 10th Floor
7 Reno, NV 89501

8 Bradley Schrager, Esq.
9 3773 Howard Hughes Parkway,
10 Suite 590 South
11 Las Vegas, NV 89169

Craig Newby, Esq.
State of Nevada
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

12 the envelope sealed and then deposited in the Court's central mailing basket in the court
13 clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for
14 mailing.
15

16 

17 Devin Earl
18 Law Clerk
19
20
21
22
23
24
25
26
27

ORIGINAL

REC'D & FILED

2022 MAY 24 AM 10:42

ROBERT ROWLATT
CLERK

BY

DEPUTY

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

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.

AA0183

1 A true and correct copy is attached hereto as Exhibit 1.

2 **AFFIRMATION**

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

5
6 DATED this 30 day of April, 2022

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

9 By: 

10 **BRADLEY S. SCHRAGER, ESQ. (NSB 10217)**
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15 (702) 341-5200/Fax: (702) 341-5300
16 bschrager@wrslawyers.com
17 jsamberg@wrslawyers.com
18 dbravo@wrslawyers.com

19 *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

Lucas Foletta
McDONALD CARANO LLP
100 W. Liberty St., 10th Floor
Reno, Nevada 89501
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lfoletta@mdonaldcarano.com


Attorney for Barbara Cegauske

*Attorneys for Education
Freedom PAC*

Jackie Tucker
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By


Dannielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN
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INDEX OF EXHIBITS

Exhibit No.	Documents	Pages
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EXHIBIT 1

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REC'D & FILED

2022 APR 26 AM 10:30

AUDREY ROWLAND
CLERK

BY

[Signature]

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CASE NO.: 220C0027 1B

Plaintiffs,

DEPT. NO. II

Vs.

PART A

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Official capacity as NEVADA
SECRETARY OF STATE,**

**DECISION INVALIDATING
PETITION TO CREATE A
STATUTE TO GOVERN FUTURE
APPROPRIATIONS TO AN
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OUTSIDE THE SCHOOL
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Defendant,

EDUCATION FREEDOM PAC,

PART B

**Intervenor, aligned
as Defendant.**

**INJUNCTION PREVENTING THE
FORWARD PROGRESS OF THIS
INITIATIVE**

PART A:

DISCUSSION

This opinion presents the second of two Decisions addressing

1 two of three initiatives filed by the Intervenor, Education Freedom PAC
2 ("EFP"), who are proposing sweeping changes in the way public
3 education is administered here in the State of Nevada.
4

5 A Decision and Order has already been filed in the first case,
6 which is captioned RORY REID, an individual; BEVERLY ROGERS, an
7 individual, Plaintiffs versus BARBARA CEGAVSKE, in her official
8 capacity as NEVADA SECRETARY OF STATE, Defendant; Case No. 22
9 OC 00028 1B ("Reid I").
10

11 EFP intervened and was joined as a party defendant in both
12 cases.
13

14 The case at hand reverses the order of the Plaintiffs' names so
15 that Beverly Rogers' name appears first.
16

17 Like it did in Reid I, Intervenor sought dismissal for claimed
18 unnecessary delays which they attributed to the Plaintiffs. For the
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***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.

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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

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22

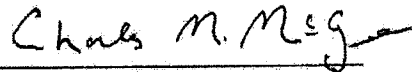
23
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25 Education Freedom PAC, its proponents, officers, or agents, are hereby
26 enjoined from collecting signatures in support of the Petition and from
27
28

1 submitting any signatures for verification pursuant to NRS 293.1276,
2 and any signatures previously collected are declared invalid.
3

4 **IT IS FURTHER ORDERED** and declared that Defendant Secretary
5 of State Barbara Cegavske is enjoined from placing the Petition on the
6 ballot.
7

8 **IT IS SO ORDERED.**
9

10 **DATED** this 25th day of April, 2022.
11

12 

13 **CHARLES M. MCGEE**
14 **Senior Judge on Assignment**
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1 **CERTIFICATE OF SERVICE**

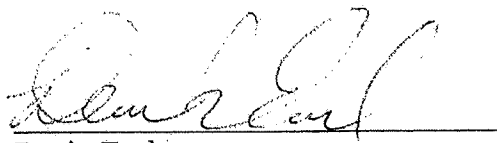
2 I certify that I am an employee of the First Judicial District Court of Nevada; that
3 on the 20 day of April 2022, I served a copy of this document by placing a true copy
4 in an envelope addressed to:

5 Lucas Foletta, Esq.
6 100 West Liberty St. 10th Floor
7 Reno, NV 89501

8 Bradley Schrager, Esq.
9 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

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

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16 
17 Devin Earl
18 Law Clerk
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REC'D & FILED

2022 APR 26 AM 10:30

AUBREY ROWLAND
CLERK

BY *[Signature]*

**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,

CASE NO.: 220C0027 1B

Plaintiffs,

DEPT. NO. II

Vs.

PART A

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

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

Defendant,

EDUCATION FREEDOM PAC,

**Intervenor, aligned
as Defendant.**

PART B

**INJUNCTION PREVENTING THE
FORWARD PROGRESS OF THIS
INITIATIVE**

PART A:

DISCUSSION

This opinion presents the second of two Decisions addressing

1 two of three initiatives filed by the Intervenor, Education Freedom PAC
2 ("EFP"), who are proposing sweeping changes in the way public
3 education is administered here in the State of Nevada.
4

5 A Decision and Order has already been filed in the first case,
6 which is captioned RORY REID, an individual; BEVERLY ROGERS, an
7 individual, Plaintiffs versus BARBARA CEGAVSKE, in her official
8 capacity as NEVADA SECRETARY OF STATE, Defendant; Case No. 22
9 OC 00028 1B ("Reid I").
10
11

12 EFP intervened and was joined as a party defendant in both
13 cases.
14

15 The case at hand reverses the order of the Plaintiffs' names so
16 that Beverly Rogers' name appears first.
17

18 Like it did in Reid I, Intervenor sought dismissal for claimed
19 unnecessary delays which they attributed to the Plaintiffs. For the
20 reasons set forth in the Reid I Decision, that motion MAY BE AND
21
22
23
24
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26
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28
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.

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

3
4 **By contrast, the instant case proposes by initiative to bring into**
5 **existence a very detailed statute and administrative plan which places**
6 **the State Treasurer in a position where he or she, in the future, may be**
7 **in charge of maintaining accounts and dispersing grants to educators**
8 **given standing by the statute.**

9
10
11 **The statute itself is a full twenty-two (22) pages, single spaced,**
12 **small font.**

13
14 **“EFP” filed the petition at the end of January and if eventually**
15 **funded, it would authorize parents to earmark accounts for**
16 **educational expenses outside the school district, including tuition and**
17 **fees for participating entities and private schools.**

18
19
20 **To demonstrate the breadth of this legislation, the Court has**
21 **edited more than a dozen of the headings by Section as follows:**

22
23 **Section 9.2 accounts maintained by a financial management firm;**

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

26 **Sec. 10.2 the funding is permissive within the Legislature;**
27
28

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

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

3 **Sec. 11 limitations on spending;**

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

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

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

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

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

11 **Sec. 34 Malfeasance and disciplines;**

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

13 ***“Nothing herein shall require the***
14 ***Legislature to appropriate money to***
15 ***fund education freedom accounts or***
16 ***any expenses related thereto.”***

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

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

3
4 Unlike Reid I, and with one glaring impasse, this Court believes
5 that if the Court and counsel would spend a day massaging the
6 language of the DOE, there is a very realistic probability that the
7 document could be revised in a manner that is satisfactory to both
8 sides.
9

10
11 However, the glaring impasse with the DOE in this case, as in
12 Reid I, is an insufficient explanation of the affect of the initiative on
13 the budgets of all the school districts in the State and/or the need to
14 draw revenues from the General Fund.
15

16
17 Before going further, the Court wishes to acknowledge that the
18 intervenor, EFP, used somebody, or more likely a whole bunch of
19 somebodies, who spent a heroic amount of time in an effort to forge a
20 non-public school learning program under the auspices of an amended
21 Chapter 385 of the Nevada Revised Statutes.
22

23
24 The Intervenor, EFP, feels that they have "sanitized" their
25 initiative from claimed defects causing confusion in the language in
26 the DOE, and should be allowed to proceed.
27
28

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

4
5 **As the argument goes, there cannot be an unfunded mandate**
6 **because there is no funding, period!**

7
8 **Funding is left to the Legislature.**

9
10 **Quoted directly from the language in the proposed order**
11 **submitted by EFP, on page 3, lines 7 through 15, EFP urges as follows:**

12 **“The Petition neither contains an appropriate or an**
13 **expenditure of money. The EFA program is contingent**
14 **upon an appropriation by the Legislature to fund it;**
15 **Section 37 of the Petition states specifically, “[t]he**
16 **provisions of this act become effective upon an**
17 **appropriation by the Legislature to fund the educational**
18 **freedom accounts.” (Exhibit 1 at Sec. 37.) And Section 35**
19 **states that “[n]othing herein shall require the**
20 **Legislature to appropriate money to fund education**
21 **freedom accounts or any expenses related thereto.”**
22 **(*Id.* At Sec. 35.) What’s more, Section 10(2) states**
23 **“[n]othing herein shall require the Legislature to**
24 **appropriate money to fund the grants described in this**
25 **section. The availability of grants is subject to the**
26 **availability of funds as determined by the Legislature.”**
27 **(*Id.* At Sec. 10(2).)**

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

1 Put another way, the fact that the funding is entirely
2 discretionary with a future Legislature, could mean that the State
3 Treasurer would not award a single grant and Nevada would have a
4 new law "on the books" so to speak, but also have a "toothless tiger,"
5 on the books, so to speak, because the plan goes nowhere without
6 funding.
7

8 Finally, EFP submits, that the scheme does not constitute an
9 unfunded mandate because there is no mandate at all.
10

11 And, if there isn't a mandate, it has to be "precatory", a wish or a
12 request.
13

14 This author thinks the entire conversation begs the question and
15 presents the very same kind of sleight of hand that was true for the
16 proposed Constitutional Amendment in Reid I.
17

18 The Court sees no interpretation other than that the initiative
19 contains the same defect posited in Reid I: it is a non-
20 contemporaneous directive to the Legislature to consider funding the
21 initiative at a later session, and, as such cannot withstand the scrutiny
22 of the Constitution.
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1 Once again, it is a literal read of Section 6, Article 9, of the
2 **Constitution which discloses the main flaw in the Petitioner's**
3 **argument. Consider removing a few words, and emphasizing one key**
4 **word, and Section 6 [the Constitution] reads like this:**

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

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

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

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

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

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

3
4 In this Judge's view, no other interpretation of the legislative
5 scheme is plausible.

6
7 Three final issues must be addressed:

8 1. Pre-election Petition;

9
10 2. Administrative Matters Excluded;

11 3. Schwartz Reviewed;

12
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14 The first issue addresses the caution contained in *Herbst Gaming*
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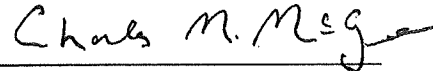
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7

8 IT IS SO ORDERED.

9
10 DATED this 25th day of April, 2022.

11
12 

13 CHARLES M. MCGEE
14 Senior Judge on Assignment
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1 **CERTIFICATE OF SERVICE**

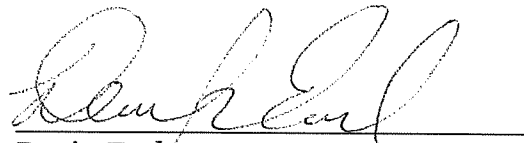
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6 100 West Liberty St. 10th Floor
7 Reno, NV 89501

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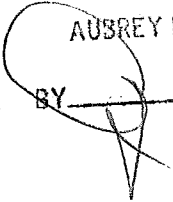
Case No.: 22 OC 00027 1B

Dept. No.: II

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2022 MAY -6 PM 3:52

AUBREY ROWLATT
CLERK

BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

RORY REID, AN INDIVIDUAL.

BEVERLY ROGERS, AN INDIVIDUAL,

Plaintiffs,

v.

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

Defendant,

EDUCATION FREEDOM PAC,
Intervenors, aligned
as Defendant.

NOTICE OF SUBSTITUTION OF
COUNSEL

PLEASE TAKE NOTICE Jason D. Guinasso, Esq., Alex R. Velto, Esq., and Astrid Perez, Esq., of Hutchison & Steffen are substituted as counsel for Intervenor, aligned as Defendant, EDUCATION FREEDOM PAC, in the place and stead of Lucas Foletta, Esq., of McDONALD CARANO.

DATED this 4 day of May, 2022.


EDUCATION FREEDOM PAC

I hereby consent to the above and foregoing substitution of counsel.

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DATED this 4 day of May, 2022.

McDONALD CARANO

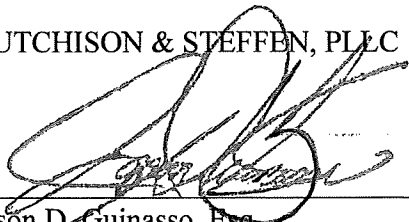


Lucas Foletta, Esq.
Nevada Bar No. 12154
100 W. Liberty Street, 10th Floor
Reno, NV 89501

I hereby accept the above and foregoing substitution of counsel for Intervenor aligned
as Defendant, EDUCATION FREEDOM PAC.

DATED this 6 day of May, 2022.

HUTCHISON & STEFFEN, PLLC



Jason D. Guinasso, Esq.
Nevada Bar No. 8478
Alex R. Velto, Esq.
Nevada Bar No. 14961
Astrid A Perez, Esq.
Nevada Bar No. 15977
500 Damonte Ranch Parkway, Suite 980
Reno, Nevada 89521
Attorneys for Intervenor, aligned as Defendant,
EDUCATION FREEDOM PAC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of HUTCHISON & STEFFEN, PLLC and that on the 6 day of May, 2022, I caused service a true and correct copy of the to be completed by US Mail:

John Samberg, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Schulman &
Rabkin, LLP
3773 Howard Hughes Pkway, Suite 590 South
Las Vegas, Nevada 89169

Lucas Foletta, Esq.
McDonald Carano
100 W. Liberty Street, 10th Floor
Reno, Nevada 89501



Employee of Hutchison & Steffen, PLLC



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2022 MAY 19 PM 12:14

K. PETERSON
CLERK

BY _____
DEPUTY

1 Jason D. Guinasso, Esq.
2 Nevada Bar No. 8478
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7 5371 Kietzke Ln
8 Reno, Nevada 89511
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12 Attorneys for Intervenor, *aligned as Defendant*,
13 *EDUCATION FREEDOM PAC*

14 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
15
16 IN AND FOR CARSON CITY

17 BEVERLY ROGERS, AN INDIVIDUAL,
18 RORY REID, AN INDIVIDUAL.

19 Plaintiffs,

20 v.

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

24 Defendant,

25 EDUCATION FREEDOM PAC,
26 Intervenor, aligned
27 as Defendant.

Case No.: 22 OC 00027 1B

Dept. No.: II

NOTICE OF APPEAL

28 **NOTICE IS HEREBY GIVEN THAT:** EDUCATION FREEDOM PAC,
Intervenor, aligned as Defendant above named, by and through their counsel of record Jason

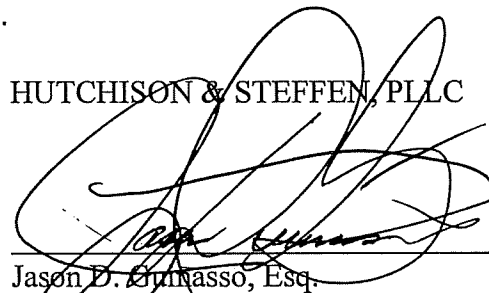
1 D. Guinasso, Esq., Alex R. Velto, Esq., and Astrid A. Perez, Esq., of HUTCHISON & STEFFEN,
2 PLLC, hereby appeals to the SUPREME COURT OF NEVADA the final judgment from the
3 *Decision Invalidating Petition to Create a Statute to Govern Future Appropriations to an*
4 *Educational System Outside the School Districts and Injunction Preventing the Forward*
5 *Progress of this Initiative*, entered in this action on April 26, 2022, attached hereto and
6 incorporated herein as **Exhibit "1."**

7 **AFFIRMATION**

8 The undersigned does hereby affirm that the preceding document, **NOTICE OF**
9 **APPEAL**, filed in the First Judicial District Court of the State of Nevada, County of Washoe,
10 does not contain the social security number of any person.

11 DATED this 18th day of May, 2022.

12 HUTCHISON & STEFFEN, PLLC

13 

15 Jason D. Guinasso, Esq.

16 Nevada Bar No. 8478

17 Alex R. Velto, Esq.

18 Nevada Bar No. 14961

19 Astrid A Perez, Esq.

20 Nevada Bar No. 15977

21 5371 Kietzke Ln

22 Reno, Nevada 89511

23 *Attorneys for Intervenor, aligned as Defendant,*

24 *EDUCATION FREEDOM PAC*

1 **CERTIFICATE OF SERVICE**

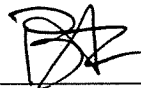
2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of
3 HUTCHISON & STEFFEN, PLLC and that on the 19th day of May, 2022, I caused service a
4 true and correct copy of the **NOTICE OF APPEAL** to be completed by US Mail to:

5 Bradley S. Schrager, Esq.
6 John Samberg, Esq.
7 Daniel Bravo, Esq.
8 Wolf, Rifkin, Shapiro, Schulman &
9 Rabkin, LLP
10 3773 Howard Hughes Pkway, Suite 590 South
11 Las Vegas, Nevada 89169
12 bschrager@wrslawyers.com
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15 Craig Newby, Esq.
16 State of Nevada
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18 Las Vegas, NV 89101
19 cnewby@ag.nv.gov

20 Jackie Tucker
21 Judicial Assistant
22 Honorable Charles M. McGee
23 mcgeelegalassistant@gmail.com
24 BShadron@carson.org

25
26
27
28



Employee of Hutchison & Steffen, PLLC

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EXHIBIT INDEX

Index No.	Document Title	No. of Pages*
Exhibit 1	<i>Notice of Entry of Order of 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</i>	21

* Includes exhibit cover page

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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

8
9 **IN THE FIRST JUDICIAL DISTRICT COURT**
10 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

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

13 Plaintiffs,

14 vs.

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

17 Defendant,

18 and

19 EDUCATION FREEDOM PAC

20 Intervenor Defendant.
21

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

NOTICE OF ENTRY OF ORDER

22
23 NOTICE IS HEREBY GIVEN that the DECISION INVALIDATING
24 PETITION TO CREATE A STATUTE TO GOVERN FUTURE APPROPRIATIONS
25 TO AN EDUCATIONAL SYSTEM OUTSIDE THE SCHOOL DISTRICTS and
26 INJUNCTION PREVENTING THE FORWARD PROGRESS OF THIS INITIATIVE
27 was entered in the above-captioned matter on the 26th day of April, 2022.
28

1 A true and correct copy is attached hereto as Exhibit 1.

2 **AFFIRMATION**

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

5
6 DATED this 30 day of April, 2022

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

9 By: 

10 **BRADLEY S. SCHRAGER, ESQ. (NSB 10217)**
11 **JOHN SAMBERG, ESQ. (NSB 10828)**
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18 dbravo@wrslawyers.com

19 *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.
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By

Dannielle Fresquez
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

EXHIBIT 1

REC'D & FILED

2022 APR 26 AM 10:30

AUDREY ROBERTS
CLERK

BY *[Signature]*

**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,

CASE NO.: 220C0027 1B

Plaintiffs,

DEPT. NO. II

Vs.

PART A

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

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

Defendant,

EDUCATION FREEDOM PAC,

**Intervenor, aligned
as Defendant.**

PART B

**INJUNCTION PREVENTING THE
FORWARD PROGRESS OF THIS
INITIATIVE**

PART A:

DISCUSSION

This opinion presents the second of two Decisions addressing

1 two of three Initiatives filed by the Intervenor, Education Freedom PAC
2 ("EFP"), who are proposing sweeping changes in the way public
3 education is administered here in the State of Nevada.
4

5 A Decision and Order has already been filed in the first case,
6 which is captioned RORY REID, an Individual; BEVERLY ROGERS, an
7 Individual, Plaintiffs versus BARBARA CEGAVSKE, in her official
8 capacity as NEVADA SECRETARY OF STATE, Defendant; Case No. 22
9 OC 00028 1B ("Reid I").
10

11 EFP Intervened and was joined as a party defendant in both
12 cases.
13

14 The case at hand reverses the order of the Plaintiffs' names so
15 that Beverly Rogers' name appears first.
16

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

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

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

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

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

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

16 **Section 9.2 accounts maintained by a financial management firm;**

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

19 **Sec. 10.2 the funding is permissive within the Legislature;**

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

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

3 **Sec. 11** limitations on spending;

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

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

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

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

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

11 **Sec. 34** Malfeasance and disciplines;

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

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

17 One striking similarity with Reid I is the arguments over the
18 language in the requisite Declaration of Effect ("DOE"). Once again,
19 the main stakeholders argue strenuously their respective opinions
20 over whether or not the DOE already provides legally sufficient clarity,
21
22
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1 or, as Plaintiffs argue, whether or not it should be amended to add
2 language making it clearer.

3
4 Unlike Reid I, and with one glaring impasse, this Court believes
5 that if the Court and counsel would spend a day massaging the
6 language of the DOE, there is a very realistic probability that the
7 document could be revised in a manner that is satisfactory to both
8 sides.
9

10
11 However, the glaring impasse with the DOE in this case, as in
12 Reid I, is an insufficient explanation of the affect of the initiative on
13 the budgets of all the school districts in the State and/or the need to
14 draw revenues from the General Fund.
15

16
17 Before going further, the Court wishes to acknowledge that the
18 intervenor, EFP, used somebody, or more likely a whole bunch of
19 somebodies, who spent a heroic amount of time in an effort to forge a
20 non-public school learning program under the auspices of an amended
21 Chapter 385 of the Nevada Revised Statutes.
22

23
24 The Intervenor, EFP, feels that they have "sanitized" their
25 initiative from claimed defects causing confusion in the language in
26 the DOE, and should be allowed to proceed.
27
28

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

4
5 **As the argument goes, there cannot be an unfunded mandate**
6 **because there is no funding, period!**

7
8 **Funding is left to the Legislature.**

9
10 **Quoted directly from the language in the proposed order**
11 **submitted by EFP, on page 3, lines 7 through 15, EFP urges as follows:**

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

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

1 Put another way, the fact that the funding is entirely
2 discretionary with a future Legislature, could mean that the State
3 Treasurer would not award a single grant and Nevada would have a
4 new law "on the books" so to speak, but also have a "toothless tiger,"
5 on the books, so to speak, because the plan goes nowhere without
6 funding.
7

8
9 Finally, EFP submits, that the scheme does not constitute an
10 unfunded mandate because there is no mandate at all.
11

12 And, if there isn't a mandate, it has to be "precatory", a wish or a
13 request.
14

15 This author thinks the entire conversation begs the question and
16 presents the very same kind of sleight of hand that was true for the
17 proposed Constitutional Amendment in Reid I.
18

19 The Court sees no interpretation other than that the initiative
20 contains the same defect posited in Reid I: it is a non-
21 contemporaneous directive to the Legislature to consider funding the
22 initiative at a later session, and, as such cannot withstand the scrutiny
23 of the Constitution.
24
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1 Once again, it is a literal read of Section 6, Article 9, of the
2 Constitution which discloses the main flaw in the Petitioner's
3 argument. Consider removing a few words, and emphasizing one key
4 word, and Section 6 [the Constitution] reads like this:
5

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

11 It says nothing about the right or latitude to postpone funding to
12 a date out in the future, which will require forging yet another statute.
13

14 What it does say, is that this Bill, any Bill, that creates a statute
15 **MUST** simultaneously, impose a tax, or identify a legal revenue
16 source!
17

18 The Intervenor's effort to amend Senate Bill 385 cannot be
19 permitted because there is no contemporaneous identification of a
20 finite revenue source to fund the proposal.
21

22 Put another way, Section 6 simply does not allow funding to be
23 postponed until a future Legislature convenes and then look for a
24 25
26
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1 revenue source, while it is trying to balance the rest of the State
2 budget.

3
4 In this Judge's view, no other interpretation of the legislative
5 scheme is plausible.

6 Three final issues must be addressed:

7
8 1. Pre-election Petition;

9
10 2. Administrative Matters Excluded;

11
12 3. Schwartz Reviewed;

13 **PRE-ELECTION PETITION:**

14 The first issue addresses the caution contained in *Herbst Gaming*
15 *Inc. v Secretary of State*, 122 Nev. 877, 141 P.3d 1224 (2006) that
16
17 limits challenges available when contesting the scope of "pre-
18 election" initiatives – that is, challenges coming in front of the actual
19 ballot – which must implicate very narrow and specific constitutional
20 requirements.
21

22
23 Other due process and equal protection claims are not ripe for
24 challenge until the election itself has resulted in passage.
25

26 Here Article 6, Section 19, once again, legitimates a pre-emptive
27 limited constitutional challenge requiring up front that the initiative
28

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

4 **ADMINISTRATIVE ISSUES**

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

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

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

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

23 **Unfixable is the revenue source component.**

25 **SCHWARTZ DISCUSSION**

26 **This case, which is factually closer to our case than any other,**
27 **was handed down by the Nevada Supreme Court on September 29,**
28

1 2016. Although it goes by *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d
2 386 (2016), the opinion actually subsumes two cases; the second is
3
4 *Duncan v. State* which has almost identical issues.

5 In both cases, the Plaintiffs challenged the constitutionality of a
6
7 pair of bills enacted previously known as Senate Bill 302 and Senate
8 Bill 515.

9
10 This legislation appropriated a Two Billion Dollar lump sum to be
11 disbursed as in our case, through the office of the State Treasurer.

12
13 The State Treasurer took it all in, and on his own authority and
14 interpretation concluded that the funding was sufficient to fund not
15
16 only the earmarked public school system, but also could be available
17
18 to fund educational savings accounts for parents to subsidize non-
19 public educational opportunities similar to the ones in our case.

20 The High Court determined that Senate Bill 302 on its face, or in
21
22 combination with Senate Bill 515 -- by any inference -- cannot be
23
24 construed as an appropriation measure, specifically designed to be
25
26 used to serve private schooling, tutoring and other non-public
27
28 educational opportunities.

1 Although the statutes under examination are markedly different
2 from Senate Bill 385 in our case, the *Schwartz* Decision suggests that
3 there is nothing impermissible about the Legislature funding a program
4 for a so-called "sectarian purpose", like private schooling.
5

6 But an absolutely essential ingredient for inclusion in the statute
7 is the specific directive to identify a revenue source by the Legislature
8 contemporaneous with the establishment of the administrative
9 program to use the funding.
10
11

12 To this extent, *Schwartz* is entirely consistent and represents a
13 guidepost to come to a conclusion about essential issues that achieve
14 a budget balance.
15
16

17 A specific directive to appropriate revenue for the educational
18 programs proffered by the Intervenor/Defendants is essential to the
19 viability of the statute.
20

21 The *Schwartz* case has very recently been modified to recognize
22 that a "public importance" exception applies when a representative
23 citizen sues to protect public funds by challenging a legislative
24 appropriation.
25
26
27
28

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

3 **Obviously, the issue in *Nevada Policy Research Institute, supra*,**
4
5 **involve standing issues and separation of power issues that are not**
6
7 **present in the instant case.**

8 **Accordingly, the *Schwartz* case is inapposite except that it may**
9
10 **imply a duty that confirms that both Plaintiffs and Defendant in our**
11 **case have been demonstrating a public-importance role that notches**
12 **up the level of scrutiny when considering a specific provision in the**
13 **Nevada Constitution.**

14 **The Intervenor/Defendant's challenge falls short of the mark.**
15
16 **The statute fails from the lack of a funding directive.**

17
18 **PART B**
19
20 **ORDER ENJOINING PETITION**

21 **Like its counterpart, REID I, the Intervenor has made an honest**
22
23 **and thoughtful effort to create an opportunity for a substantial public**
24 **forum to amend a statute that purports to administer and fund**
25 **educational opportunities for children across the State whose parents**
26

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

3
4 Unfortunately for the Intervenor, this Initiative — the one they
5 rely upon--- impermissibly commands the Nevada Legislature to
6 amend a scheme of education "status-900" and install an unproven
7 program that violates the deliberative functions of the Legislature.
8

9
10 IT IS THEREFORE ORDERED and declared that Initiative Petition
11 C-04-2022 is legally deficient because of a glaring but curable
12 omission in the Declaration of Effect; and because it violates the
13 prohibition against imposing administrative functions, which also may
14 be curable.
15

16
17 What the Court finds and rules as incurable comes from the
18 patently obvious command in Section 6 of Article 19 of the Nevada
19 Constitution to contemporaneously link the proposal to a viable
20 identified funding source in order to have Constitutional footing to go
21 on with it.
22

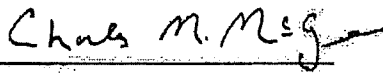
23
24 IT IS FURTHER ORDERED and declared that Intervenor-Defendant
25 Education Freedom PAC, its proponents, officers, or agents, are hereby
26 enjoined from collecting signatures in support of the Petition and from
27
28

1 submitting any signatures for verification pursuant to NRS 293.1276,
2 and any signatures previously collected are declared invalid.
3

4 IT IS FURTHER ORDERED and declared that Defendant Secretary
5 of State Barbara Cegavske is enjoined from placing the Petition on the
6 ballot.
7

8 IT IS SO ORDERED.
9

10 DATED this 25th day of April, 2022.
11

12 
13 **CHARLES M. McGEE**
14 **Senior Judge on Assignment**
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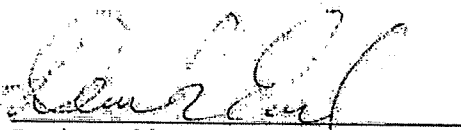
CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 5th 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. 10 th Floor Reno, NV 89501	Craig Newby, Esq. State of Nevada 555 E. Washington Ave., Suite 3900 Las Vegas, NV 89101
--	---

Bradley Schrager, Esq. 3773 Howard Hughes Parkway, Suite 590 South Las Vegas, NV 89169	
---	--

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