

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  
CAPACTY AS NEVADA SECRETARY  
OF STATE,  
Respondents.

Electronically Filed  
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District Court Case No. 22OC000271B  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S SUPPLEMENTAL APPENDIX, VOLUME ONE OF ONE**

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**CHRONOLOGICAL INDEX TO APPENDIX**

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**ALPHABETICAL INDEX TO APPENDIX**

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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 25<sup>th</sup> day of July, 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 25, 2022, APPELLANT'S SUPPLEMENTAL 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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**In the Matter Of:**

Audio Transcription: Education Freedom PAC

**FIRST JUDICIAL DISTRICT, SECOND HEARING**

*Job Number: 891552*

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TRANSCRIPT OF AUDIO-RECORDED  
HEARING IN THE FIRST JUDICIAL DISTRICT  
IN RE: FREEDOM EDUCATION PAC

SECOND HEARING

CASE NO. 22 OC 00027 1B

Litigation Services Job Number: 891552

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2 MR. FOLETTA: [inaudible].

3 THE COURT: Okay. Thank you both. I, uh -- is  
4 there anything further [inaudible]?

5 MR. SCHRAGER: No, Your Honor. Thank you.

6 THE COURT: Um, I [inaudible] give some thought  
7 [inaudible] because of the importance of the issue  
8 somewhat. You guys have piqued my curiosity. And this  
9 is not in my normal wheelhouse, this kind of, uh,  
10 litigation.

11 I want to go back over your excellent briefs and  
12 your arguments before I render a decision. I am going  
13 to maintain some kind of bifurcation between the two  
14 cases, um, whether that's keeping the same case and  
15 caption number and just administering them different  
16 or just keeping them separate. I don't know. It  
17 doesn't matter too much, I think.

18 But I -- so that means that I'm going to rule on  
19 the constitutional, uh, issue first. And I won't take  
20 very long in doing so. I appreciate the quality, the  
21 amicacy [sic] that I've seen here this afternoon from  
22 both of you.

23 MR. SCHRAGER: Thank you for your time, Your  
24 Honor.

25 MR. FOLETTA: Your Honor, can I ask a point of

1 order?

2 THE COURT: Sure.

3 MR. FOLETTA: Are -- are we going to have -- hold  
4 the hearing on the second case?

5 THE COURT: Yes.

6 MR. FOLETTA: Right now, after we're concluded  
7 here?

8 THE COURT: No. Unless you want one.

9 MR. FOLETTA: I do want one.

10 THE COURT: [inaudible].

11 MR. FOLETTA: We're supposed to have a hearing  
12 within 15 days. And Your Honor issued an order,  
13 setting hearing for today at 1:30 in that case, as I  
14 understand it.

15 THE COURT: Okay. Go -- wha- -- what do you want  
16 to say on that case?

17 MR. FOLETTA: Well, Your Honor, if -- if -- I-- I  
18 think we need to open the hearing on the second case,  
19 if that's -- if that -- that -- I understood Your  
20 Honor's orders to be -- to set both cases for hearing  
21 today.

22 THE COURT: Fine.

23 MR. FOLETTA: Are -- are you not setting both  
24 cases for hearing today?

25 THE COURT: I recall the language that was used.

1 I wanted to listen to how intertwined they were before  
2 brewing that they are to be treated as one case  
3 together. But the outcomes is substantially different.  
4 Right?

5 MR. FOLETTA: Uh --

6 MR. SCHRAGER: Yes, sir. Potentially.

7 MR. FOLETTA: -- well, no -- no. The -- the  
8 question presented is the same. D- -- do -- do  
9 petitions, including the description of the fact meet  
10 the procedural requirements such that my client can  
11 circulate the petitions to the voters at state?

12 And the requirements of the law are the same as  
13 to both. We are supposed to have a hearing on both  
14 within 15 days of the filing of the complaint. And  
15 Your Honor's orders says -- sets, uh, that second case  
16 for an evidentiary hearing, March 29th at 1:00.

17 THE COURT: Do you have a preference?

18 MR. SCHRAGER: I didn't prepare to go forward.  
19 Uh, I obviously prefer that -- that your -- more  
20 importantly, that Your Honor feels prepared to go  
21 forward.

22 MR. FOLETTA: Yeah. We're -- we're entitled to a  
23 hearing many, many days ago. Uh, uh, the court did not  
24 set it. I'm not blaming Your Honor, but we're -- we  
25 are supposed to have a hearing on our case within 15



1 days.

2 THE COURT: No, I know -- did I --

3 MR. FOLETTA: We're -- we're five weeks, six  
4 weeks in --

5 THE COURT: -- in deference to that I set it. I  
6 truncated the time and set it now.

7 MR. FOLETTA: But -- but if we don't hear it  
8 today, if we don't hear the second case today, then we  
9 will not have -- he- -- held a hearing within the 15-  
10 -- w- -- we -- we still would not have held a hearing.

11 THE COURT: How soon can you, um, leave out the  
12 second case if we don't do it today?

13 MR. FOLETTA: Well, Mr. Schrager and I were  
14 prepared to argue today. As I -- I- -- I'm sure we  
15 were interpreting your orders the same way, that  
16 that's what we would be doing.

17 THE COURT: Okay. What time is it? All right. Go  
18 ahead.

19 MR. SCHRAGER: Thank you, Your Honor. Opening the  
20 hearing on, what I refer to as, uh, Rogers v.  
21 Cegavske, uh, case number 220-C-000271B. Correct, Your  
22 Honor?

23 THE COURT: Yes.

24 MR. SCHRAGER: Very good. Your Honor, this is a  
25 different animal. This is a statutory petition. And

1 the questions presented are not the same. I mean, they  
2 are the same in the sense at any murder trial, uh, you  
3 -- you know, two murder cases -- the -- the questions  
4 are, "Did you murder him?" But they are not the same.  
5 They are different cases.

6 This, however, I think will take less time. Less,  
7 I think. And the questions, I think, we could focus.  
8 Because I don't think it's -- we -- we -- we obviously  
9 made lengthy complaints about the description of  
10 effect, uh, contained in the petition that -- that the  
11 proponents put forward.

12 They have rather helpfully, sort of admitted  
13 everything we said and submitted alternative  
14 description of effect. That is very helpful. Now,  
15 they'll say, "Well, if it will make things faster,  
16 we'll do it." What they're really doing is saying,  
17 "Okay, you got us. It should be written like this."  
18 And we are largely in agreement with the description  
19 of effect that they've proposed, the alternative  
20 description of effect.

21 There are some things we're not perfect with. We  
22 don't get everything perfectly. We would like to say  
23 that, you know, just as in the other one, it's not --  
24 there could be attacks or there could be a diminution  
25 of services, but rather, obviously, the same thing is

1 true of this, as is true of the constitutional  
2 amendment, which is one of those three things has to  
3 happen.

4 So if the order was to say, okay, we can more or  
5 less work with this alternative description -- and I'm  
6 -- I'm sure you have already looked at it. It's the  
7 exhibit to their -- to their, uh, uh, uh, to their  
8 answering [inaudible, technical difficulty]. We  
9 understand that. Um, they have a solemn duty to get it  
10 right, not to get it quickly.

11 So the fact that they're like, "Okay, fine.  
12 Whatever you want, put it in there. Let's do it."  
13 Right? That's not how we're doing this. We were right  
14 to bring our challenge. Only by bringing our  
15 challenge, are we going to have a description of  
16 effect on this second statutory provision. This is in  
17 fact closer to what's necessary under the rules.

18 So, you know, with some alterations that we can  
19 talk about, the alternative description of effect,  
20 which is at the back of their -- of their submission,  
21 is more or less okay.

22 But we've made two other claims, and one of them  
23 is completely different from any of the ones you've  
24 heard today, which is another aspect, something you  
25 cannot do in any initiative petition, constitutional,

1 statutory, any kind of initiative petition in which  
2 the people are acting in their legislative capacity,  
3 you cannot include administrative details.

4 Now, there's only been a couple of cases in  
5 Nevada as to what that means. But if you look at  
6 Nevadans for the Production of Property Rights and  
7 Garvin, the simple answer to that is, don't tell  
8 agencies how to be agencies. That's for agencies to  
9 do. That's their expertise. That's what they do for a  
10 living. That's why we have them.

11 So for example, in Nevadans for, uh, uh, Private  
12 Property Rights [sic], the initiative tried to tell  
13 courts which cases they could and couldn't publish,  
14 and how they were to handle specific categories or  
15 cases. Supreme Court said, no, you can't do that. You  
16 can do everything else and this, can't do that. That's  
17 administrative. That's for the court's purview, uh, as  
18 a judicial system to handle.

19 In this initiative, there are a slew of  
20 provisions. They try to tell the treasurer how to do  
21 his job, how to be a treasurer. And we've listened to  
22 our brief. I won't go through them right now. They  
23 were complaints, they were in our brief. Those are the  
24 kinds of things you can't do.

25 Now, proponents are in luck because it's not

1 necessarily utterly disqualified. We can sever those  
2 out. The initiative could in fact go forward. Several  
3 of -- of those provisions, and with an alternative  
4 description of effect. We could have probably work it  
5 out, where they could be on the streets, having  
6 signatures in some future capacity before too long.  
7 Right?

8         So this one isn't going to detain us in the way  
9 that the first one will, because essentially, other  
10 than the administrative details, which they very much  
11 need to let go of, or the Supreme Court will tell them  
12 they need to let go of them, uh, they have conceded  
13 other description of effect infirmities, and we more  
14 or less accept those.

15         The other aspect of it is again, in Article 19,  
16 Section 6, unfunded mandate. Because once again,  
17 there's a bit of a shell game going on, which is, yes,  
18 this is a statue, yes, it's -- there's -- there's --  
19 there's an unfunded mandate maybe, but we're also  
20 telling the legislator they don't have to do it. They  
21 don't have to do it. Is it -- obviously, if the -- if  
22 the constitutional passes, legislator has to go do it.

23         But -- if -- if -- if the statutory passes,  
24 nothing in the statute says legislator has to go fund  
25 it. So they're sort of dancing around the program.

1 I mean, it's -- it's, uh -- I think, a delicate  
2 way to put it, is they are telling people, there's  
3 going to be a program when they have no idea whether  
4 there's going to be a program, which is really the  
5 only real problem left with the description effect  
6 because it says things like, um,  
7 parents will be able -- let's see -- uh, maybe --  
8 account funds may be used to pay, establishes the  
9 program, may establish an account.

10 All those things are going to leave people who  
11 read it, to believe that these things are going to  
12 happen. And they sort of buried the lead down in the -  
13 - d- -- down in the bottom they say nothing in the  
14 issue that requires the legislator to appropriate  
15 money for the accounts. And if no money is  
16 appropriated, then there won't be any program. Right?  
17 Well, that's absolutely true. That's true of any  
18 program.

19 But it kind of buries the lead because you've  
20 gone through a paragraph and a half of, isn't this  
21 great, we're going to get all this money. This will be  
22 wonderful. You may get this money. You may do this.  
23 You may establish an account, when in fact, they've  
24 done nothing in the statute to -- to -- to make that  
25 any kind of reality.

1           So I -- so -- I -- I -- I guess I would say it's  
2   not entirely a solid 196 claim because they haven't  
3   made the statutory mandate, but they haven't exactly  
4   made a statute either. Because they're -- because --  
5   because they off- -- at the very least, they should be  
6   made to describe what they're offering to people --

7           THE COURT:   Playing the devil's advocate  
8   [inaudible] --

9           MR. SCHRAGER:  -- as a loser.

10          THE COURT:   Why -- why does it make a difference?  
11   In other words, um, if the legislator is free to  
12   choose whether to adopt any of the guidelines of a  
13   non-mandatory di- -- um, direct [inaudible] --

14          MR. SCHRAGER:  Uh, yeah.

15          THE COURT:   -- then who cares?

16          MR. SCHRAGER:  The only thing that's  
17   discretionary in the statute is the money. Everything  
18   else -- I mean, it's a -- it's a -- it's a lengthy,  
19   highly technical, in-depth statute that they graphed,  
20   which has every other aspect of the program set out.  
21   So those details will absolutely matter. The only  
22   thing that -- in the end is discretionary with the  
23   legislator in the statute is, will there be any money.

24          So it's -- so in essence, they are laying out  
25   this complex statute, telling people they're going to

1 be able to do this and parents are going to have this,  
2 and -- and children and students are going to have  
3 that and they can leave public schools. Oh, but by the  
4 way, none of it may happen.

5 It seems to me that, as I said, that's going to  
6 bury in the lead. But that's for Your Honor's, you  
7 know, consideration regarding the description of  
8 effect.

9 THE COURT: Thank you. But once again, if you can  
10 redline one of the provisions or all of them, isn't  
11 the ultimate discretion left to the legislator?

12 MR. SCHRAGER: Well, no. The court could redline  
13 some of the provisions now.

14 THE COURT: Right.

15 MR. SCHRAGER: Once it gets the signatures and  
16 goes -- see -- let me just lay out briefly the  
17 difference between what happens to a constitutional  
18 amendment, what happens to a statutory.

19 A constitutional amendment, proposed by  
20 initiative, needs to have signatures by the middle of  
21 the summer, and it will go on the ballot this fall, if  
22 they get it, this November, will go right to the  
23 people and then it has to pass twice. But there's no  
24 way to interact with it. There's no -- there's no  
25 amending, there's no interference with the text of the



1 thing.

2 If it passes this year and it passes again in the  
3 exact same form two years from now, it will become  
4 law. Right? That's the constitutional one.

5 A statutory, if it gets the signatures, and  
6 doesn't have to have them until November, right, after  
7 the elections, so they've got plenty of time to get  
8 the signatures, um, there will be a, uh, uh, it's goes  
9 to the legislator, in the form --

10 THE COURT: Is that the same --

11 MR. SCHRAGER: -- it's been adopted.

12 THE COURT: -- is it the same 140,000 signatures  
13 is [inaudible]?

14 MR. SCHRAGER: That's correct. That's correct.  
15 Because it's based on the last election.

16 THE COURT: Oh yeah.

17 MR. SCHRAGER: So it goes to the legislator. And  
18 the legislator has a number of options. It can adopt  
19 it immediately as law as is. It can propose its own  
20 version, and both of those go to the best ballot; or  
21 it can ignore it entirely, do nothing, and then just  
22 this would go to the ballot.

23 So once it is -- um, um, once the signatures are  
24 garnered, there is no amending the provision, there's  
25 no redlining. The only ability to redline it, is now,

1 for the court to be able to say, "You can't have this  
2 and this, and this administrative detail in it," that  
3 can't come out later. So that's where the process  
4 there.

5 THE COURT: This is probably --

6 MR. SCHRAGER: And --

7 THE COURT: -- overdicting a little bit, but one  
8 of the leading candidates of governor's -- one of the  
9 planks of his political platform are to eliminate  
10 harvesting ballots. I think it's the word [inaudible].

11 MR. SCHRAGER: I've heard that. Yes, sir.

12 THE COURT: Um, I've seen in earlier initiatives  
13 substantial efforts to harvest ballots when they  
14 advertise [inaudible]. In one case there was even  
15 money paid. It's probably, you know, reason to, uh,  
16 look for corruption. Is -- is that process still  
17 permitted in Nevada, with these -- this initiative?

18 MR. SCHRAGER: You mean, can -- can -- ca- -- ca-  
19 -- can someone assist someone in handing in their  
20 ballot?

21 THE COURT: Can someone stand in front of the  
22 [inaudible] with a peg board and a whole list of  
23 things and get signatures? Is what I mean. [inaudible]

24 MR. SCHRAGER: Yes. That's the signature  
25 gathering process for getting something onto the

1 ballot. That's not the voting process.

2 THE COURT: Right.

3 MR. SCHRAGER: But -- but yes. What -- what would  
4 typically happen, is there's a -- the -- you actually  
5 have the form. This format here that is in the --

6 THE COURT: Yeah. I saw it.

7 MR. SCHRAGER: -- that is in it. Right? Someone  
8 would go to an -- an -- an -- an event or a shopping  
9 mall or -- or a baseball game and will go up to people  
10 with the clipboard and give them the opportunity to  
11 read the description of effect.

12 The actual petition must also be there. So they  
13 have to add it if they want to read it. And then if  
14 they approve, they can affix their name, um, and their  
15 -- and their address. And there will be a signatory of  
16 the -- of -- of the petition. So yes.

17 THE COURT: I'm just trying to anticipate  
18 whether, um, there are any new laws or proposals that  
19 would, uh, discourage the petition gathering process.  
20 Apparently not [inaudible] --

21 MR. SCHRAGER: You know what, recently -- and I  
22 don't know what this discourage is because it was  
23 upheld because of the -- because it -- it -- it -- it  
24 was adjudged to, uh, to carry with an -- an important  
25 state interest, is that, you can't just go to one

1 place. You have to get your signatures from all four  
2 petition districts, which are coequal with our -- with  
3 our congressional districts.

4 THE COURT: Right.

5 MR. SCHRAGER: So you have to get an equal number  
6 from each of those, to demonstrate that you have  
7 support from all of the state.

8 So, I mean, I ju- -- I mean, I assume that some  
9 people might see that as daunting because it's harder  
10 than -- than going to, for example, Las Vegas and  
11 doing it in one place.

12 But that would also mean that people who approved  
13 to something in Las Vegas, would be able to run  
14 roughshod over the rest of the state, just for  
15 signatures from that area.

16 So I think it's a -- it's a -- it's -- it -- it  
17 makes it more difficult but it's good for the process  
18 overall.

19 THE COURT: And fi- -- finally, if legislation  
20 does emerge or if the initiative emerges on its own,  
21 becomes the law, uh, does it have any greater strength  
22 or weakness than a normal legislative enactment? No?

23 MR. SCHRAGER: Not in a substantive, not in a,  
24 hey -- hey this will -- okay, let me answer it this  
25 way. Legally, no. It does -- once you pass something

1 by initiative and it's a statute, it cannot be amended  
2 for three years.

3 So it is locked in for three years. So that's at  
4 least two legislative sessions. So it has that  
5 strength. It is essentially protected. The -- the --  
6 the, uh, uh, the constitution gives people who have  
7 passed an initiative, time to see how it works. Right?

8 So -- so a legislator can't immediately say, no,  
9 we're striking that down. Now, from the political  
10 standpoint, obviously, if something passes with 70  
11 percent of the vote, that is a signal to legislators  
12 regarding the su- -- the statewide support.

13 You had essentially a public plebiscite on -- on  
14 the subject. So there may be informally, some  
15 political strength that an initiative has that is not  
16 immediately available for legislation. But that's, I  
17 think, how I would describe fully what you're asking.

18 THE COURT: Yeah. Thank you. Let me hear from  
19 counsel.

20 MR. FOLETTA: Thank you, Your Honor. Um, so, uh,  
21 similar to the -- to the last case, uh, Mr. Schrager's  
22 client's is making a number of arguments here. And as  
23 he pointed out, some of them are related to the  
24 description of effect and some of them relate to other  
25 procedural and supplementary requirements.

1           Um, he opened by indicating that maybe with some  
2   tweaks, that, uh, you know, they could accept the  
3   alternative that we've proposed. I would just note  
4   that w- -- we are certainly not saying, okay, you got  
5   us. Uh, we are looking for an, uh, expeditious path  
6   forward to circulate our petition, given the fact that  
7   we have to, uh, secure a hu- -- over 140,000  
8   signatures, uh, near the end of the year.

9           That is a -- that is a burdensome process. We are  
10   no way conceding the points they're making. And I'll  
11   also note that although he said with a few tweaks it  
12   could be acceptable to them, it's not clear to me what  
13   those tweaks are. Uh, he's not volunteered them,  
14   either in argument or in the filing with the court. So  
15   I'm not sure, uh, what his invitation is.

16           I'd certainly happy to talk to him offline of  
17   what they might be. But it -- it shouldn't just sway  
18   the from, uh, reaching the merits, uh, because there's  
19   obviously no, uh, uh, indication that we wouldn't  
20   necessarily agree with what those changes are.

21           Uh, we -- that -- that said, we obviously have,  
22   uh, articulated an alternative. And the point there is  
23   to try to adjust the concerns that they've raised.

24           That said, uh, the one point that Mr. Schrager  
25   seem to argue here, uh, orally, uh, with respect to

1 the description of effect, is to, uh, contend that we  
2 should have specially told voters, or excuse me,  
3 potential signatories, of the petition, um, that in  
4 the absence of a legislative appropriation, the  
5 provisions, uh, of this, uh -- the provisions of this  
6 measure do not come into effect.

7 Um, uh, you know, we -- we responded to that in  
8 our briefing. And I -- I think it is, uh, kind of a  
9 curious thing to say, because none of the other  
10 provisions, uh, really -- we -- well all the -- mo- -  
11 - most of the provisions in the petition itself  
12 support the main substantive provision which is, that  
13 the legislator, uh -- or excuse me -- that the people  
14 would have established this Education Funding, uh,  
15 Freedom Program by statute.

16 Um, and so it -- it is unclear to me why, uh,  
17 people would -- would need to know what the, um --  
18 what -- what -- what the balance of all these  
19 provisions are conditioned upon, uh, when the  
20 description of effect, um, describes in a non-  
21 argumentative straightforward way, exactly what it's  
22 trying to do. And -- and I'll propose.

23 Again, I resort back to the -- to the test that  
24 the court, um, should apply. Um, and -- and I should  
25 also say that the description of effects specifically

1 does say that nothing requires the legislator to  
2 appropriate money to fund the accounts.

3 So the question is: Am I going to get money or  
4 not? That question is answered. Whether that sta- --  
5 that statute is technically, uh, effective, uh, or  
6 what the conditions are of that, is irrelevant. Um, or  
7 -- or it's not as relevant as to whether there will be  
8 money available, which is described.

9 The -- the other point I would -- I would like to  
10 rebut, is this idea that we haven't proposed a statute  
11 at all because it's conditioned on some future  
12 occurrence. Well, as we pointed out in our briefing,  
13 there are a number of statutes that are conditioned on  
14 -- upon future occurrences that had not yet occurred.

15 And in fact, there's an entire statutory scheme  
16 around, uh, the -- the so-called Nevada Regional, uh,  
17 the -- the Nevada re- -- title -- regional title plan  
18 agency, um, that only take effect if certain things  
19 are -- if certain things occur, none of which have.

20 The governor hasn't certified that. TRPA is not  
21 doing its job nor is the governor of California  
22 withdrawing his state from the compact. So this is  
23 just one example of a statute that no one debates a  
24 statute, uh, being in existence, notwithstanding the  
25 fact that its effectiveness is conditioned on



1 something that happens in the future.

2 Um, the -- the other point I wanted to address is  
3 the administrative details argument, the idea that we  
4 have page after page of administrative details,  
5 telling the treasurer how to do his or her job. Um, we  
6 disagree with that characterization.

7 I think it's important to state the rule; um, "A  
8 policy enactment originates or enacts a permanent law  
9 or lays down a rule of conduct or course of policy for  
10 the guidance of the citizens or their offices.

11 Whereas, impermissible administrative matters simply  
12 put into execution, previously declared policies or  
13 previously enacted laws, or direct a decision that has  
14 been delegated, um, to --" this is my paraphrase -- a  
15 governmental body without authority.

16 Um, this -- this administrative details point of  
17 law came out of a case involving a train trench in  
18 Reno, which you may recall, where there was a valid  
19 question to, uh, essentially prohibit the city from  
20 building a train trench in a specific -- a specific  
21 trench in a specific, uh, city right of way.

22 And the court, uh -- Nevada Supreme Court said  
23 no, that's administrative details. You're not telling  
24 -- you're not enacting a policy about building train  
25 trenches. You're dictating a -- an administrative

1 outcome with respect to a particular train trench. Uh,  
2 in this case, we're not doing that.

3 Yes, the petition describes duties that the  
4 treasurer will have and will have to effectuate if  
5 it's in en- -- enacted. But that is -- we're not, uh -  
6 - we're not directing, uh, the execution of authority  
7 previously granted to the treasurer. We're merely  
8 giving him, uh -- giving him responsibility pursuant  
9 to the policy. And as such, he- -- he's --

10 THE COURT: How -- how does he tell whi- --  
11 which, uh, provisions are precatory and which are  
12 mandatory?

13 MR. FOLETTA: Well, they are mandatory. We're not  
14 debating that. What we're saying is that the -- the  
15 test for administrative detail is not whether, uh, a  
16 condition on a government office is mandatory. It's  
17 whether you are, uh -- whether you are putting into  
18 execution, previously declared policies or previously  
19 enacted laws or directed decisions that has been  
20 delegated to a government body.

21 The state treasurer has not been delegated  
22 authority to -- to -- to fund Education Freedom  
23 accounts. If the program existed, as it did at one  
24 time, and we were to pass a petition that says, um,  
25 okay treasurer, um, you will send money to -- to --

1 you, uh, you will fund the following three Education  
2 Freesum- -- Freedom accounts, John Smith, Joe Smith,  
3 and Josh Smith. We will be directing administrative  
4 details, but we're not doing that.

5 We're creating a policy, which includes  
6 providing, um, uh -- providing authority and requiring  
7 government action in a particular way. And that is not  
8 an administrative detail.

9 Um, the only other point I wanted to make is the  
10 unfunded mandate, uh, argument. I want to address  
11 that. Um, the Rogers v. Heller, which is a case that  
12 we cite, and, uh, Mr. Schrager cites it, too, uh, says  
13 that; "An appropriation is the setting aside of funds,  
14 and an expenditure of money is the payment of funds."

15 The petition on its face does not set aside  
16 funds. As we pointed out, as Mr. Schrager, uh,  
17 concedes, there are multiple provisions, which say  
18 that the -- a legislator does not have to provide  
19 funding for the -- for the accounts, um, and in fact,  
20 the entire scheme is conditioned on the existence of  
21 an appropriation. And therefore, it does not include,  
22 uh, an appropriation because it does not set aside  
23 funds, um, and include, it doesn't spend any money  
24 either.

25 Because the spending money in the accounts,

1 giving them -- parents access to them, uh, can only  
2 occur if the funds -- if -- if the accounts are  
3 funded, which requires appropriation of the  
4 legislator. So there is no outlay.

5 Again, um, thank you, Your Honor. I'll just  
6 reserve my time for rebuttal if necessary.

7 MR. SCHRAGER: Nothing further, Your Honor.

8 THE COURT: Nothing further? Anything further  
9 from your side?

10 MR. FOLETTA: No, Your Honor.

11 THE COURT: Okay. One of the reasons why  
12 [inaudible] jump again to the Beverly half of this,  
13 um, litigation this afternoon, was that on a quick  
14 count, I did not have a complete file -- where's  
15 Jackie [ph] -- on -- on the Beverly case.

16 So Jackie, before we leave here today, it almost  
17 might be better for them to just do it overnight.

18 MS. TUCKER: What?

19 THE COURT: It might be better for them to just  
20 xerox it and copy everything. I -- I want complete  
21 files on both, because there- -- there's even one  
22 briefing in the Beverly case that I haven't read, that  
23 they've been referring to.

24 MS. TUCKER: Okay.

25 THE COURT: Okay. Thank you.

1 MR. SCHRAGER: If, uh -- if it would help you,  
2 Your Honor, we can also make sure that Ms. Tucker has  
3 a completed list. We could email it to her if you'd  
4 like.

5 THE COURT: Okay. That would be good, too.

6 MS. TUCKER: I just think I've, um -- I think  
7 I've got them --

8 MR. SCHRAGER: We just want --

9 MS. TUCKER: -- I just haven't printed them.

10 MR. SCHRAGER: Yeah. Okay.

11 THE COURT: Okay.

12 MR. FOLETTA: That will be all for me.

13 THE COURT: Okay. Court will stand in recess.  
14 Thank you, gentlemen.

15 MR. SCHRAGER: Thank you, Your Honor.

16 MR. FOLETTA: Thank you, Your Honor.

17 MS. SCHRAGER: Thank you for coming down to talk  
18 to us.

19 THE COURT: [inaudible] would you go and check  
20 these with the clerk? Jackie?

21 MS. TUCKER: [inaudible]. What?

22 THE COURT: I just want you to go check to see  
23 [inaudible].

24 MS. TUCKER: You're ready for [inaudible]?

25 THE COURT: Yeah.

1 MS. TUCKER: Are we going to set another time?  
2 Are we going do it by Zoom? What are we going to do,  
3 on the other case?

4 THE COURT: I'm going to decide it.

5 MS. TUCKER: Oh, you're going to decide it?

6 THE COURT: Yeah.

7 MS. TUCKER: [inaudible].  
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I further declare that I have no interest in the event of the action.

July 6, 2022

Chris Naaden



(First Judicial District, Freedom Education PAC second hearing)

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