

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUCATION FREEDOM PAC,
Appellant,

vs.

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

Electronically Filed
Supreme Court Case No. 84736
May 25, 2022 11:20 p.m.
District Court Case No. 22OC000281B
Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX, VOLUME ONE

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CHRONOLOGICAL INDEX TO APPENDIX

Document Name	Date Filed	Bates	Vol No.
<i>Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(01)</i> Case No. 22-OC-00028-1B	2/22/22	JA0001- JA0014	I
<i>Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(1)</i> Case No. 22-OC-00028-1B	2/22/22	JA0015- JA0031	I
<i>Order Transferring Case to Department 2 [to Honorable James E. Wilson]</i> Case No. 22-OC-00028-1B	2/22/22	JA0032- JA0033	I

<i>Summons (Returned)</i> [service of Summons, Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(01), and Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(1)) upon Barbara Cegavske on February 22, 2022] Case No. 22-OC-00028-1B	3/1/22	JA0034- JA0038	I
<i>Declaration of Service</i> [service of Summons, Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(01), and Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(1)) upon the Office of the Attorney General on February 22, 2022] Case No. 22-OC-00028-1B	3/1/22	JA0038- JA0040	I
<i>Memorandum of Temporary Assignment</i> [to the Honorable Charles McGee, Senior Judge] Case No. 22-OC-00028-1B	3/3/22	JA0041	I
<i>Stipulation and Order Regarding Intervention</i> [as to Education Freedom PAC] Case No. 22-OC-00028-1B	3/10/22	JA0042- JA0044	I
<i>Answer In Intervention to Complaint</i> filed by Intervenor Education Freedom PAC Case No. 22-OC-00028-1B	3/15/22	JA0045- JA0051	I
<i>Ex-Parte Motion for Hearing Pursuant to NRS 295.061</i> filed by Intervenor Education Freedom PAC Case No. 22-OC-00028-1B	3/15/22	JA0052- JA0063	I

<i>Answering Brief in Response to Plaintiff's Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(1)</i> filed by Intervenor Education Freedom PAC Case No. 22-OC-00028-1B	3/15/22	JA0064- JA0086	I
<i>Stipulation and Order regarding Intervention [as to Education Freedom PAC]</i> Case No. 22-OC-00028-1B	3/15/22	JA0087- JA0091	I
<i>Order Granting Joinder; Order for Hearing on the Merits and Order Shortening Time [temporarily denying motions to dismiss]</i> Case No. 22-OC-00028-1B	3/23/22	JA0092- JA0097	I
<i>Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061(01)</i> Case No. 22-OC-00044-1B	3/24/22	JA0098- JA0111	I
<i>Hearing Date Memo [setting Evidentiary Hearing to Commence on March 29, 2022 at 1:00 pm]</i> Case No. 22-OC-00028-1B	3/24/22	JA0112- JA0113	I
<i>Limited Response to Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(1)</i> filed by Defendant Barbara Cegavske Case No. 22-OC-00028-1B	3/24/22	JA0114- JA0116	I
<i>Memorandum of Points and Authorities in Support of Plaintiffs' Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061 (1)</i> Case No. 22-OC-00044-1B	3/24/22	JA0117- JA0131	I

<i>Reply in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(1) filed by Plaintiffs</i> Case No. 22-OC-00028-1B	3/25/22	JA0132- JA0144	I
<i>Response to Court's Order to Show Cause dated March 23, 2022 filed by Intervenor Education Freedom PAC</i> Case No. 22-OC-00028-1B	3/25/22	JA0145- JA0148	I
<i>Response to Court's Order to Show Cause dated March 23, 2022 filed by Plaintiff</i> Case No. 22-OC-00028-1B	3/25/22	JA0149- JA0152	I
<i>Order Temporarily Denying the Plaintiffs' Petition to Dismiss the Initiative; Order Maintaining the Non-Merging of this Case with the Beverly Rogers Case; Order Commanding All Parties to Prepare Hearing Briefs for Tuesday Not Exceeding Five Pages Which Pertain to the Facts and Support the Suggested Disposition</i> Case No. 22-OC-00028-1B	3/25/22	JA0153- JA0156	I
<i>Declaration of Service [service of Summons, Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061(01), and Memorandum of Points and Authorities in Support of Plaintiffs' Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061 (1) upon State of Nevada, Office of the Attorney General on March 25, 2022]</i> Case No. 22-OC-00044-1B	3/30/22	JA0157- JA0158	I

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<i>Motion to Consolidate Case No. 22 OC 00044 1B with Case No. 22 OC 00028 1B</i> filed by Plaintiffs Case No. 22-OC-00028-1B	4/4/22	JA0168- JA0173	I
<i>Opposition to Plaintiff's Motion to Consolidate Case No. 22-OC-00044 1B with Case No. 22-OC-00028 1B</i> filed by Intervenor Education Freedom PAC Case No. 22-OC-00028-1B	4/8/22	JA0174- JA0176	I
<i>Discussion of Decision Invalidating Petition to Amend the Nevada Constitution to Offer Sequestered Funding Alternatives Going Outside School Districts to Parents of School Age Children [Part A] Order Enjoining Petition [Part B]</i> Case No. 22-OC-00028-1B	4/12/22	JA0177- JA0202	I

<i>Order Transferring Case to Senior Judge</i> Case No. 22-OC-00044-1B	4/12/22	JA0203- JA0204	I
<i>Reply in Support of Motion to Consolidate Case No. 22-OC-00044 1B with Case No. 22-OC-00028 1B</i> filed by Plaintiffs Case No. 22-OC-00028-1B	4/13/22	JA0205- JA0208	I
<i>Opposition to Plaintiff's Motion to Consolidate Case No. 22 OC 00044 1B with Case No. 22 OC 00028 1B</i> filed by Intervenor Education Freedom PAC Case No. 22-OC-00044-1B	4/15/22	JA0209- JA0239	I
<i>Answer to Complaint</i> filed by Defendant Education Freedom PAC Case No. 22-OC-00044-1B	4/18/22	JA0240- JA0246	I
<i>Notice of Entry of Order [Discussion of Decision Invalidating Petition to Amend the Nevada Constitution to Offer Sequestered Funding Alternatives Going Outside School Districts to Parents of School Age Children [Part A]</i> filed by Plaintiffs <i>Order Enjoining Petition [Part B]</i> Case No. 22-OC-00028-1B	4/19/22	JA0247- JA0274	II
<i>Order Consolidating Case No. 22-OC-00044 1B with Case No. 22-OC-00028 1B</i> Case No. 22-OC-00028-1B	4/20/22	JA0275- JA0276	II
<i>Notice of Substitution of Counsel</i> Case No. 22-OC-00028-1B	5/6/22	JA0277- JA0279	II
<i>Memorandum of Temporary Assignment</i> [to the Honorable Charles McGee, Senior Judge] Case No. 22-OC-00044-1B	5/9/22	JA0280	II
<i>Request for Adjudication</i> filed by Plaintiffs[re: Case No. 22-OC-00044-1B] Case No. 22-OC-00028-1B	5/16/22	JA0281- JA0292	II

<i>Notice of Appeal</i> filed by Intervenor Education Freedom PAC Case No. 22-OC-00028-1B	5/19/22	JA0293- JA0317	II
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ALPHABETICAL INDEX TO APPENDIX

Document Name	Date Filed	Bates	Vol No.
<i>Answer In Intervention to Complaint</i> filed by Intervenor Education Freedom PAC Case No. 22-OC-00028-1B	3/15/22	JA0045- JA0051	I
<i>Answer to Complaint</i> filed by Defendant Education Freedom PAC Case No. 22-OC-00044-1B	4/18/22	JA0240- JA0246	I
<i>Answering Brief in Response to Plaintiff's Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04- 2022 Pursuant to NRS 295.061(1)</i> filed by Intervenor Education Freedom PAC Case No. 22-OC-00028-1B	3/15/22	JA0064- JA0086	I
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<i>Memorandum of Points and Authorities in Support of Plaintiffs' Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061 (1)</i> Case No. 22-OC-00044-1B	3/24/22	JA0117- JA0131	I
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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 25th day of May, 2022.

/s/ Jason D. Guinasso

Jason D. Guinasso, Esq.

Alex R. Velto, Esq.

Astrid A. Perez, Esq.

Attorneys for Education Freedom

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hutchison & Steffen, PLLC and that on May 25, 2022, JOINT APPENDIX, VOLUME 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 FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

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

Plaintiffs,

vs.

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

Defendant.

Case No.: 22000028 13

Dept. No.: I

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-04-2022 PURSUANT
TO NRS 295.061(1)**

**Priority Matter Pursuant to
NRS 295.061(1)**

Arbitration Exemption: Declaratory
and Injunctive Relief

Plaintiffs, RORY REID and BEVERLY ROGERS (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. Plaintiffs allege and complain as follows:

JURISDICTION AND VENUE

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

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

PARTIES

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

4. Plaintiff BEVERLY ROGERS is a resident of and a 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, Initiative Petition C-04-2022 (the “Petition”) to amend the Nevada Constitution 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 Initiative Petition C-04-2022.

7. The Petition seeks to amend the Nevada Constitution to require the Nevada Legislature to create an education savings account program for K-12 students to attend schools and educational programs other than public schools.

1 8. The Petition seeks to amend Article 11 of the Nevada Constitution by
2 adding a new section, which reads, in full:

3 No later than the school year commencing in 2025, and on an
4 ongoing basis thereafter, the Legislature shall provide by law for
5 the establishment of education freedom accounts by parents of
6 children being educated in Nevada. Parents shall be authorized to
7 use the funds in the accounts to pay for the education of their child
8 in full or in part in a school or educational environment that is not
9 a part of the uniform system of common schools established by the
Legislature. The Legislature shall appropriate money to fund each
account in an amount comparable to the amount of funding that
would otherwise be used to support the education of that child in
the uniform system of common schools. The Legislature shall
provide by law for an eligibility criteria for parents to establish an
education freedom account.

10 9. The Petition commands the Nevada Legislature to enact a statute or set
11 of statutes effecting its very specific terms. Specifically, the Petition commands the
12 Nevada Legislature to enact law, no later than the school year commencing in 2025,
13 that establishes a voucher-style program, or an education savings account that is
14 referred to as “education freedom accounts” (“EFA”) in the Petition, that would
15 authorize parents to use state money to pay for private school tuition.

16 10. The Petition impermissibly mandates a future Nevada Legislature to
17 appropriate money to fund each EFA in an amount comparable to the amount of
18 funding that would otherwise be used in the public school system.

19 11. The Petition commands the Nevada Legislature to enact law that creates
20 eligibility criteria for parents to establish an EFA. The Petition does not set forth the
21 eligibility criteria for the Nevada Legislature to then enact into law.

22 12. The constitutional amendment proposed by the Petition is not self-
23 executing—it requires the Nevada Legislature to provide by law during a future
24 legislative session for the establishment of the EFA.

25 13. The Petition is similar to the provisions of Senate Bill (S.B.) 302 (2015),
26 passed by the Nevada Legislature during the Regular Session in 2015, which the
27 Nevada Supreme Court struck down in *Schwartz v. Lopez*, 132 Nev. 732, 738, 382 P.3d
28 886, 891 (2016). The Nevada Supreme Court ruled that S.B. 302 had failed to

1 appropriate funds for the education savings accounts contemplated by the bill, and that
2 money that the Legislature had appropriated for K-12 public education could not be
3 used for that purpose, consistent with the constitutional mandates to fund public
4 education.

5 14. The Petition also runs afoul of Article 19, Section 6 of the Nevada
6 Constitution, which prohibits the "proposal of any statute or statutory amendment
7 which makes an appropriation or otherwise requires the expenditure of money, unless
8 such statute or amendment also imposes a sufficient tax, not prohibited by the
9 Constitution, or otherwise constitutionally provides for raising the necessary revenue."

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

12 The initiative will provide parents with the ability to use funds
13 appropriated by the Legislature to pay for the education of their
14 child in a school or educational environment that is not a part of
15 the public school system. The initiative requires the Legislature to
16 establish an education freedom account program under which
parents may spend money appropriated by the Legislature into
those accounts to pay for some or all of their child's education
outside the public school system. The Legislature must establish
an eligibility criteria for parents to establish an account.

17 The initiative will result in the expenditure of state funds to fund
18 the accounts in an amount comparable to the public support that
19 would be used to support the education of the child for whose
20 benefit the account has been established in a public school. For
21 Fiscal Year 2021-2022, the Legislature determined the statewide
22 base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-
2023, that amount is \$7,074 per pupil. Generating the revenue to
fund the accounts could necessitate a tax increase or a reduction in
government services. The Legislature must establish the program
by the start of the school year that commences in 2025.

23 See Exhibit 1, at 3.

24 FIRST CAUSE OF ACTION

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

26 16. The foregoing paragraphs of this Complaint are re-alleged and fully
27 incorporated as if set forth in full herein.
28

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

4 18. “[A] description of effect ... [can]not be deceptive or misleading.” *Educ.*
5 *Initiative PAC v. Comm. to Protect Nevada Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879
6 (2013) (internal quotation marks and citation omitted). It must also “explain these
7 ramifications of the proposed amendment” in order to allow voters to make an informed
8 decision. *Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996).

9 19. Here, the description of effect is deficient, first, because it is deceptive or
10 misleading, and second, because it fails to provide essential information regarding the
11 Petition’s effects, including significant financial, legislative, and practical ramifications
12 that are necessary for voters to make informed decisions as to whether to support the
13 Petition.

14 20. The description of effect fails to disclose the financial burden placed on
15 the State Treasurer and the Department of Education, or of the fact that no revenue
16 source is established by the proposed Petition to pay for the substantial expenditures
17 required by the Petition.

18 21. While stating that “[g]enerating the revenue to fund the accounts could
19 necessitate a tax increase or a reduction in government services[,]” the description of
20 effect misleadingly fails to disclose that any funding appropriated for the contemplated
21 program would inevitably reduce the funding available funding for Nevada’s public
22 school system, leading to a deterioration in Nevada’s public school system.

23 22. Collectively, these omissions render it impossible for a potential signatory
24 to make an informed decision whether to sign the Petition.

25 23. 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.

SECOND CAUSE OF ACTION

Impermissible Use of the Initiative Process

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

25. “The Legislative authority of this state shall be vested in a Senate and Assembly which shall be designated ‘The Legislature of the State of Nevada’ and the sessions of such legislature shall be held at the seat of the government of the state.” Nev. Const. art. IV, § 1.

26. “The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.” Nev. Const. art. III, § 1(1).

27. Pursuant to Article 19, Sections 1 and 2 of the Nevada Constitution, the people of Nevada “reserve to themselves” the power of referendum, as well as “the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution, and to enact or reject them at the polls.” Nev. Const. art. XIX, §§ 1, 2.

28. The people have reserved to themselves the initiative or referendum power, but all other legislative powers and authority reside with the Nevada Legislature, including the inherent ability of a duly-constituted Legislature to deliberate, to debate, to freely consider legislative enactments, and to vote upon them according to its members’ judgments—a power and function that cannot be impaired by the people’s exercise of the initiative or referendum power.

29. “Implicit in the plenary power of each legislature is the principle that one legislature cannot enact a statute that prevents a future legislature from exercising its law-making power,” and there is “a general rule that one legislature cannot abridge

1 the power of a succeeding legislature.” *Washington State Farm Bureau Fed’n v.*
2 *Gregoire*, 162 Wash. 2d 284, 301, 174 P.3d 1142, 1150 (2007). *See also Ex parte Collie*,
3 38 Cal. 2d 396, 398, 240 P.2d 275, 276 (1952) (“It is the general rule that one legislative
4 body cannot limit or restrict its own power or that of subsequent Legislatures and that
5 the act of one Legislature does not bind its successors.”).

6 30. The people acting through the initiative process can no more command
7 the Nevada Legislature to take specific legislative action than a current Legislature
8 can bind a future Legislature to act or deliberate or vote in a particular way.

9 31. The command to the Nevada Legislature contained in the Petition is
10 binding, and the deliberative function of the Legislature is impermissibly impaired.
11 The initiative process cannot be so employed.

12 32. Nevada legislators would not be free to deliberate and vote their own
13 considered judgment, being responsible to their own constituents, and they would no
14 longer be part of a deliberative body acting independently in exercising their individual
15 best judgments on the matters that come before them.

16 33. The Petition constitutes an impermissible use of the initiative process
17 because in commanding the Nevada Legislature to take specific action, it exceeds the
18 powers of direct democracy reserved to the people by the Nevada Constitution.

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

21 **THIRD CAUSE OF ACTION**

22 **Violation of Unfunded Expenditure Prohibition, Nev. Const. Art. XIX, Sec. 6**

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

25 36. Nevada Constitution Article 19, Section 6 prohibits any initiative that
26 “makes an appropriation or otherwise requires the expenditure of money, unless such
27 statute or amendment also imposes a sufficient tax, not prohibited by the Constitution,
28

1 or otherwise constitutionally provides for raising the necessary revenue.” Nev. Const.
2 art. XIX, § 6.

3 37. “Section 6 applies to *all* proposed initiatives, without exception, and *does*
4 *not permit* any initiative that fails to comply with the stated conditions.” *Rogers v.*
5 *Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001) (emphases in original).

6 38. When an initiative violates this “threshold content restriction” by
7 mandating unfunded expenditures, it is void ab initio, and pre-election intervention by
8 Nevada courts is warranted. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 891, 141 P.3d
9 1224, 1233 (2006) (quoting *Rogers*, 117 Nev. at 173, 18 P.3d at 1036).

10 39. Here, the Petition mandates the Nevada Legislature appropriate money
11 to fund each EFA in an amount comparable to the amount of funding that would
12 otherwise be used in the public school system.

13 40. The Petition fails to impose any taxes or otherwise raise the necessary
14 revenue to either fund each EFA contemplated by the Petition, or to pay for the
15 administrative expenses that would necessarily have to be incurred in creating,
16 maintaining and administering the EFA program.

17 41. Although the wide-ranging changes mandated by the Petition would
18 unquestionably require expenditures of money, the Petition contains no tax or other
19 provision for their funding, thereby violating Article 19, Section 6.

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

22 ///

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff asks this Court to enter an order:

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

6 B. Declaring that the Petition does not comply with Article 19, Section 6 of
7 the Nevada Constitution because it impermissibly mandates an unfunded
8 expenditure;

9 C. Declaring that the Petition represents an impermissible use of the
10 initiative process because it seeks to bind future Legislatures, in contravention of
11 laws;

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

14 E. Awarding Plaintiffs their reasonable costs and attorneys' fees; and

15 F. Granting such other relief as the Court deems appropriate.

16 **AFFIRMATION**

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

19
20 DATED this 22nd day of February, 2022

21
22 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**

23 By: 

24 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)

25 JOHN SAMBERG, ESQ. (NSB 10828)

26 DANIEL BRAVO, ESQ. (NSB 13078)

27 3773 Howard Hughes Parkway, Suite 590 South

28 Las Vegas, Nevada 89169

702) 341-5200/Fax: (702) 341-5300

Attorneys for Plaintiffs

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

DESCRIPTION OF EFFECT

The initiative will provide parents with the ability to use funds appropriated by the Legislature to pay for the education of their child in a school or educational environment that is not a part of the public school system. The initiative requires the Legislature to establish an education freedom account program under which parents may spend money appropriated by the Legislature into those accounts to pay for some or all of their child's education outside the public school system. The Legislature must establish an eligibility criteria for parents to establish an account.

The initiative will result in the expenditure of state funds to fund the accounts in an amount comparable to the public support that would be used to support the education of the child for whose benefit the account has been established in a public school. For Fiscal Year 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. Generating the revenue to fund the accounts could necessitate a tax increase or a reduction in government services. The Legislature must establish the program by the start of the school year that commences in 2025.

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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The initiative will result in the expenditure of state funds to fund the accounts in an amount comparable to the public support that would be used to support the education of the child for whose benefit the account has been established in a public school. For Fiscal Year 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. Generating the revenue to fund the accounts could necessitate a tax increase or a reduction in government services. The Legislature must establish the program by the start of the school year that commences in 2025.

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 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

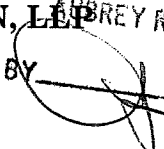
Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

REC'D & FILED

2022 FEB 22 PM 1:45

BY  AUDREY ROWLETT
CLERK
DEPUTY

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
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Attorneys for Plaintiffs

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,

vs.

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

Defendant.

Case No.: 2202 CW2017

Dept. No.: I

MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS'
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-04-2022 PURSUANT
TO NRS 295.061(1)

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs, RORY REID and BEVERLY ROGERS (collectively, "Plaintiffs"), by
and through their attorneys of record, and hereby submit this Memorandum of Points
and Authorities in Support of the Complaint for Declaratory and Injunctive Relief
Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(1).

I. INTRODUCTION

Initiative Petition C-04-2022 (the "Petition"), proposed by Erin Phillips, on
behalf of Education Freedom PAC, seeks to amend Article 11 of the Nevada
Constitution to require the Nevada Legislature to create an education savings account

1 program, known in the Petition as “education freedom accounts” (“EFAs”), for K-12
2 students to attend schools and educational programs outside of the uniform system of
3 common public schools established pursuant to the Nevada Constitution. The Petition,
4 however, is legally deficient because its description of effect is misleading and
5 deceptive, and fails to enable voters to make an informed decision whether to support
6 it. Further, the Petition constitutes an impermissible use of the initiative process
7 because it commands the Nevada Legislature to take specific legislative action, it
8 exceeding the constitutional powers of direct democracy reserved to the people of
9 Nevada. Finally, the Petition fails to impose any taxes or otherwise raise the necessary
10 revenue sufficient to fund its EFA program, which violates Article 19, Section 6 of the
11 Nevada Constitution.

12 The Petition does not comply with the requirements of Nevada law, and the
13 Court should enjoin the Secretary of State from taking any further action upon it..

14 **II. THE INITIATIVE PETITION**

15 On January 31, 2022, the Petition was filed with the Nevada Secretary of State.
16 See **Exhibit 1**, a true and accurate copy of Notice of Intent to Circulate Statewide
17 Initiative or Referendum Petition associated with Initiative Petition C-04-2022. The
18 Petition seeks to amend Article 11 of the Nevada Constitution by adding a new section,
19 which reads, in full:

20 No later than the school year commencing in 2025, and on an
21 ongoing basis thereafter, the Legislature shall provide by law for
22 the establishment of education freedom accounts by parents of
23 children being educated in Nevada. Parents shall be authorized to
24 use the funds in the accounts to pay for the education of their child
25 in full or in part in a school or educational environment that is not
26 a part of the uniform system of common schools established by the
Legislature. The Legislature shall appropriate money to fund each
account in an amount comparable to the amount of funding that
would otherwise be used to support the education of that child in
the uniform system of common schools. The Legislature shall
provide by law for an eligibility criteria for parents to establish an
education freedom account.

27 See **Exhibit 1**, at 2. The Petition includes a description of effect as required by
28 NRS 295.009(1)(b), which reads, in full:

1 The initiative will provide parents with the ability to use funds
2 appropriated by the Legislature to pay for the education of their
3 child in a school or educational environment that is not a part of
4 the public school system. The initiative requires the Legislature to
5 establish an education freedom account program under which
6 parents may spend money appropriated by the Legislature into
7 those accounts to pay for some or all of their child's education
8 outside the public school system. The Legislature must establish
9 an eligibility criteria for parents to establish an account.

10 The initiative will result in the expenditure of state funds to fund
11 the accounts in an amount comparable to the public support that
12 would be used to support the education of the child for whose
13 benefit the account has been established in a public school. For
14 Fiscal Year 2021-2022, the Legislature determined the statewide
15 base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-
16 2023, that amount is \$7,074 per pupil. Generating the revenue to
17 fund the accounts could necessitate a tax increase or a reduction in
18 government services. The Legislature must establish the program
19 by the start of the school year that commences in 2025.

20 See Exhibit 1, at 3.

21 The Petition commands the Nevada Legislature to enact law, no later than the
22 2025 school year,¹ establishing a voucher-style EFA program that would authorize
23 parents to use taxpayer monies disbursed to them by the State to pay for non-public
24 school expenses, such as private school tuition. *Id.* By doing so, the Petition
25 impermissibly mandates a future Nevada Legislature to appropriate money to fund
26 each EFA in an amount comparable to that which, theoretically, would otherwise be
27 used in the public school system. *Id.* Additionally, the Petition commands the Nevada
28 Legislature to enact statutes creating eligibility criteria for parents to establish an
EFA. *Id.*

¹ As an amendment to the Nevada Constitution, this proposed measure would
have to qualify for the ballot and then be approved by the vote of the people at the 2022
and 2024 General Elections. The 2025 academic year begins in the summer of 2025,
about eight months after the November 2024 General Election. There is only one
legislative session during which the demands of the Petition may be addressed. In other
words, the command contained in this Petition is specifically directed to the 2025
Nevada Legislature, which has obviously not been constituted.

1 **III. ARGUMENT**

2 **A. The Petition's Description Of Effect Violates NRS 295.009(1)(B)**
3 **Because It Is Deceptive Or Misleading, And Fails To Provide**
4 **Essential Information Regarding The Petition's Effects**

5 Under NRS 295.009(1)(b), every initiative must "[s]et forth, in not more than
6 200 words, a description of the effect of the initiative or referendum if the initiative or
7 referendum is approved by the voters." The purpose of the description is to "prevent
8 voter confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev.
9 930, 939, 142 P.3d 339, 345 (2006). Thus, "[t]he importance of the description of effect
10 cannot be minimized, as it is what the voters see when deciding whether to even sign
11 a petition." *Coalition for Nevada's Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016
12 WL 2842925 at *2 (2016) (unpublished disposition) (citing *Educ. Initiative PAC v.*
Comm. to Protect Nev. Jobs, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)).

13 The Nevada Supreme Court has repeatedly held that "a description of effect
14 must be straightforward, succinct, and non-argumentative, and it must not be
15 deceptive or misleading." *Educ. Initiative PAC*, 129 Nev. at 37. It must also "explain
16 the[] ramifications of the proposed amendment" in order to allow voters to make an
17 informed decision. *Nev. Judges Ass'n v. Lau*, 112 Nev. 51, 59 (1996). The Petition's
18 description of effect violates each of these requirements. Furthermore, although a
19 description need not "explain hypothetical effects" or "mention every possible effect" of
20 the initiative, *Educ. Initiative PAC*, 129 Nev. at 37, it must at very least fairly present
21 enough information for a potential signer to make an informed decision about whether
22 to support the initiative. See *Nev. Judges Ass'n v. Lau*, 112 Nev. at 59 (rejecting
23 initiative description for "failure to explain [certain] ramifications of the proposed
24 amendment," which "renders the initiative and its explanation potentially
25 misleading").

26 Here, the Petition's description of effect states that "[g]enerating the revenue to
27 fund the accounts could necessitate a tax increase or a reduction in government
28 services[,] the description of effect misleadingly fails to disclose that any funding

1 appropriated for the contemplated program would inevitably reduce the funding
2 available funding for Nevada’s public school system, leading to a deterioration in
3 Nevada’s public school system. The description of effect fails to disclose the significant
4 financial burden placed on the State Treasurer and the Department of Education to
5 support and maintain Nevada’s public school system because of the Petition’s effects of
6 diverting funds appropriated for the operation of the public schools to EFAs for private
7 expenditures. Public schools in Nevada—or anywhere—do not operate on individual
8 per-student contributions by the State; that is merely a shorthand way of expressing
9 education funding. Schools, unsurprisingly, have hard costs—utility costs,
10 compensation for staff and maintenance, etc. Subtracting the amount that would have
11 been allocated to a school or district because a number of parents take money that
12 would have been spent on electricity for a school building will inarguably affect the
13 functioning of the school system, and the description should admit this if, in fact, the
14 purpose of the description is (as the Nevada Supreme Court has long maintained) to
15 inform the electorate honestly rather than to persuade on a political level.

16 **B. The Petition Is An Impermissible Use Of The Initiative Process**

17 The Petition does not, by itself, establish an EFA. Instead, Petition commands
18 the Nevada Legislature to enact a statute or set of statutes effecting its terms. The
19 binding command of the Petition violates the inherent deliberative functions of the
20 Nevada Legislature, and thus cannot proceed in its current form. Simply put, no
21 agency, no executive branch leader, no petition proponent, not even a fully-constituted
22 and elected legislature can direct or commandeer the discretion of a future legislature;
23 this is the very root of democratic governance.

24 The people’s initiative power “is legislative in nature.” *Nevadans for the*
25 *Protection of Property Rights, Inc. v. Heller*, 122 Nev. 894, 914 (2006). It is a historic
26 legal commonplace that one legislature may not control future legislations. “Implicit in
27 the plenary power of each legislature is the principle that one legislature cannot enact
28 a statute that prevents a future legislature from exercising its law-making power,” and

1 there is “a general rule that one legislature cannot abridge the power of a succeeding
2 legislature.” *Washington State Farm Bureau Fed’n v. Gregoire*, 162 Wash. 2d 284, 301,
3 174 P.3d 1142, 1150 (2007). *See also Ex parte Collie*, 38 Cal. 2d 396, 398, 240 P.2d 275,
4 276 (1952) (“It is the general rule that one legislative body cannot limit or restrict its
5 own power or that of subsequent Legislatures and that the act of one Legislature does
6 not bind its successors.”). In exactly the same vein, the people, acting through the
7 initiative process, can no more command the Legislature to take specific legislative
8 action than a current Legislature can bind a future one. The people’s initiative power
9 is to enact statutes or amendments, and that power does not extend to preventing a
10 future legislature from exercising its law-making power or deliberative function.
11 “Legislators must be free to deliberate and vote their own considered judgment, being
12 responsible to their own constituents through the electoral process.” *In re Initiative*
13 *Petition No. 364*, 930 P.2d 186, 192 (Okla. 1996).

14 To illustrate, the Nevada Constitution may be amended in several ways, and one
15 of those is for the Legislature to propose and approve a particular measure at two
16 successive sessions, prior to submission to the electorate at a general election. Nev.
17 Const. art. XVI, § 1. But the initial legislature to approve a particular measure cannot
18 also pass a law requiring the next legislature to also approve; that would be flatly
19 unlawful and in contravention of basic democratic functions. Furthermore, consider if
20 the present Petition is approved by the people and becomes part of the state
21 constitution, but the 2025 Legislature refuses to enact the required statutes, or the
22 Governor refuses to sign the bill. What is the remedy? Is this Court, or the Nevada
23 Supreme Court, going to order individual legislators to vote in particular ways on
24 legislation? Is it going to issue a writ of mandamus against the Governor of Nevada?
25 Of course not, and this is why the legislative power—either of the Legislature itself, or
26 the people in their legislative capacity—cannot be exercised in this manner, because it

1 leads to intolerable constitutional crises.²

2 In *In re Initiative Petition No. 364*, the Oklahoma Supreme Court faced an
3 initiative petition that contained a purported command to the state legislature. Over
4 proponent's objections that the measure was, in fact, non-binding, the court looked to
5 the language of the initiative and found it to be "an express mandate from the people
6 to the Legislature to take a specific action." *Id.*, at 193. As such, the measure could not
7 stand, because "Legislative deliberation cannot exist where the outcome is a
8 predetermined specific action." *Id.* "State lawmakers," the court concluded, "cannot be
9 compelled to cast a vote in obedience to an electorate's instructions." *Id.*, at 200.

10 Here, the Petition's command to the Nevada Legislature is purportedly binding,
11 and the deliberative function of the Legislature is impermissibly impaired. Nevada
12 legislators would not be free to deliberate and vote their own considered judgment,
13 being responsible to their own constituents, and they would no longer be part of a
14 deliberative body acting independently in exercising their individual best judgments
15 on the matters that come before them. The outcome of the specific action mandated by
16 the Petition—passage of a statute or statutes effecting the terms of the initiative—
17 would be predetermined. No initiative may compel such a result.

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

20 The Petition is also separately invalid because it mandates expenditures without
21 providing reciprocal revenues in violation of Article 19, Section 6 of the Nevada
22 Constitution. That provision prohibits any initiative that "makes an appropriation or
23 otherwise requires the expenditure of money, unless such statute or amendment also
24

25 ² This is very different from, for example, the command to the Legislature to enact
26 the public school appropriations as the first budgetary priority, pursuant to Nev. Const.
27 art. XI, § 6. In that instance, a remedy exists in the form of invalidation of
28 appropriations or expenditures that are enacted before the funding of the public school
system.

1 imposes a sufficient tax, not prohibited by the Constitution, or otherwise
2 constitutionally provides for raising the necessary revenue.” Nev. Const. art. XIX, § 6.
3 “Section 6 applies to all proposed initiatives, without exception, and does not permit
4 any initiative that fails to comply with the stated conditions.” *Rogers v. Heller*, 117 Nev.
5 169, 173, 18 P.3d 1034, 1036 (2001) (emphasis supplied). “If the Initiative does not
6 comply with section 6, then the Initiative is void” in its entirety, and the offending
7 provision cannot be severed to render it constitutional.³ *Id.* at 173, 177-78.

8 “Simply stated, an appropriation is the setting aside of funds, and an
9 expenditure of money is the payment of funds.” *Rogers*, 117 Nev. at 173. The Nevada
10 Constitution prohibits initiatives that require appropriations or expenditures in order
11 to “prevent[] the electorate from creating the deficit that would result if government
12 officials were forced to set aside or pay money without generating the funds to do so.”
13 *Herbst Gaming*, 122 Nev. at 891. An initiative need not “by its terms appropriate
14 money” to violate the prohibition. *Id.* at 890 n.40 (citing *State ex rel. Card v. Kaufman*,
15 517 S.W.2d 78, 80 (Mo. 1974)). Rather, “an initiative makes an appropriation or
16 expenditure when it leaves budgeting officials no discretion in appropriating or
17 expending the money mandated by the initiative—the budgeting official must approve
18 the appropriation or expenditure, regardless of any other financial considerations.” *Id.*
19 at 890. This is precisely what the Petition does.

20 Here, the Petition mandates the Nevada Legislature appropriate money to fund
21 each EFA in an amount comparable to the amount of funding that would otherwise be
22 used in the public school system. The very first sentence of the second paragraph of the
23 Petition’s description declares that “[t]he initiative will result in the expenditure of
24 _____

25 ³ Although the substantive constitutionality of a ballot initiative is often not ripe
26 for review until the initiative is enacted, *See Herbst Gaming, Inc. v. Heller*, 122 Nev.
27 877, 884, 141 P.3d 1224, 1229 (2006), Nevada courts have held that compliance with
28 Article 19, Section 6’s appropriation or expenditure provision is a “threshold content
restriction” that may be raised in a pre-election challenge, *Id.* at 890 n.38 (quoting
Rogers, 117 Nev. at 173).

1 state funds..." **Exhibit 1**, at 3. The Petition fails to impose any taxes or otherwise raise
2 the necessary revenue to either fund the EFAs contemplated by the Petition, or to pay
3 for the administrative expenses that would necessarily have to be incurred in creating,
4 maintaining, and administering the EFA program. Although the wide-ranging changes
5 mandated by the Petition would unquestionably require enormous expenditures of
6 money, the Petition contains no tax or other provision for funding, thereby violating
7 Article 19, Section 6.

8 With some small exceptions, the proposed initiative largely tracks the provisions
9 of Senate Bill ("S.B.") 302 (2015), which the Nevada Supreme Court struck down in
10 *Schwartz v. Lopez*, 132 Nev. 732, 738, 382 P.3d 886, 891 (2016), on the grounds that
11 S.B. 302 failed to appropriate funds for the EFAs contemplated by the bill and that
12 moneys appropriated for K-12 public education could not properly be used for this
13 purpose. The proponents of the Petition are obviously attempting to circumvent the
14 lack of funding which led to S.B. 302 being struck down by sidestepping this issue and
15 passing the buck to the Legislature to appropriate the necessary funding for the EFA
16 grants. In doing so, however, the Petition plainly runs afoul of Article 19, section 6 of
17 the Nevada Constitution, which prohibits any initiative which requires the expenditure
18 of money, without providing for the necessary revenue to cover such expenditures. This
19 Petition, like its predecessor S.B. 302, is thus fatally flawed.

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1 **IV. CONCLUSION**


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

5 **AFFIRMATION**

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

8 DATED this 22nd day of February, 2022.

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

11 By: 
12 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
13 JOHN SAMBERG, ESQ. (NSB 10828)
14 DANIEL BRAVO, ESQ. (NSB 13078)
15 3773 Howard Hughes Parkway, Suite 590 South
16 Las Vegas, Nevada 89169
17 (702) 341-5200/Fax: (702) 341-5300
18 bschrager@wrslawyers.com
19 jsamberg@wrslawyers.com
20 dbravo@wrslawyers.com

21 *Attorneys for Plaintiffs*

22
23
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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

DESCRIPTION OF EFFECT

The initiative will provide parents with the ability to use funds appropriated by the Legislature to pay for the education of their child in a school or educational environment that is not a part of the public school system. The initiative requires the Legislature to establish an education freedom account program under which parents may spend money appropriated by the Legislature into those accounts to pay for some or all of their child's education outside the public school system. The Legislature must establish an eligibility criteria for parents to establish an account.

The initiative will result in the expenditure of state funds to fund the accounts in an amount comparable to the public support that would be used to support the education of the child for whose benefit the account has been established in a public school. For Fiscal Year 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. Generating the revenue to fund the accounts could necessitate a tax increase or a reduction in government services. The Legislature must establish the program by the start of the school year that commences in 2025.

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

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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

ORIGINAL

REC'D & FILED

2022 FEB 22 PM 1:45

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)

JOHN SAMBERG, ESQ. (NSB 10828)

DANIEL BRAVO, ESQ. (NSB 13078)

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dbravo@wrslawyers.com

BY

PROWLATT
CLERK

DEPUTY

Attorneys for Plaintiffs

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,

vs.

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

Defendant.

Case No.:

Dept. No.:

PLAINTIFFS' INITIAL
APPEARANCE FEE DISCLOSURE

PLAINTIFFS' INITIAL APPEARANCE FEE DISCLOSURE

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are
submitted for parties appearing in the above entitled action as indicated below:

1. Plaintiff, RORY REID	\$265.00
Plaintiff, BEVERLY ROGERS	\$30.00
TOTAL REMITTED:	\$295.00

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DATED this 22d day of Februrary, 2022.

By: John S. Smith

Attorneys for Plaintiffs

Case No.: 22 OC 00028 1B

Dept. No.: 1

REC'D & FILED

2022 FEB 22 PM 2: 53

AUBREY ROWLATT
CLERK

BY *[Signature]*
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,

vs.

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

**ORDER TRANSFERRING CASE TO
DEPARTMENT 2**

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

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

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

Dated this 22 day of February, 2022.

[Signature]
JAMES T. RUSSELL
DISTRICT JUDGE

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Bradley S. Schrager, Esq.
John Samberg, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, NV 89169

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REC'D & FILED

2022 MAR -1 PM 3: 27

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AUBREY ROWLATT
CLERK

BY DEPUTY

Attorneys for Plaintiffs

**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,

vs.

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

Defendant.

Case No.: 2200003813

Dept. No.: 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.**

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against you.

- Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Shulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169

By:

Date: October 22, 2021.

****Note –** When service by publication, insert a brief statement of the object of the action. See Rule 4.

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

C & H COURIERS/PROCESS SERVERS

Work Order No. 285509

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
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bschrager@wrslawyers.com
jsamberg@wrslawyers.com
dbravo@wrslawyers.com

REC'D & FILED

2022 MAR -1 PM 3: 27

AUBREY ROWLETT
CLERK

BY _____ DEPUTY

Attorneys for Plaintiffs

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

RORY REID, an individual, BEVERLY
ROGERS, an individual

Case No. 22-OC-00028 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 C-04-2022 Pursuant to NRS 295.061(1), Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022 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.

AARON D. FORD
Attorney General

KYLE E. N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



JESSICA L. ADAIR
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

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

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

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

CASE NUMBER: 220C000281B COURT: 1ST JD

DOCUMENT(S) RECEIVED: SUMMONS; COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-04-2022
PURSUANT TO NRS 295.061(1); MEMORANDUM OF P.A. 150 COMPLAINT; PLAINTIFF'S
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.

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

By: Armani Johnson

2022 MAR -3 PM 3:53

REC'D & FILED

ARMANI JOHNSON
CLERK
DEPUTY

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

IN THE MATTER OF THE ASSIGNMENT OF
A SENIOR JUDGE

Order No. 22-00649

MEMORANDUM OF TEMPORARY ASSIGNMENT

WHEREAS, the Honorable James E. Wilson, District Judge, is unable to hear the matter of *Rory Reid, Beverly Rogers & Stand up for Students NV v. Barbara Cegavske*, Case Number 22 OC 00028, now pending in the First Judicial District, now therefore

IT IS HEREBY ORDERED that the Honorable Charles McGee, Senior Judge, is assigned to hear any and all matters in *Rory Reid, Beverly Rogers & Stand up for Students NV v. Barbara Cegavske*, Case Number 22 OC 00028, and he shall have authority to sign any orders arising out of this assignment. The Court shall notify the parties of the assignment and provide Charles McGee, Senior Judge with any assistance as requested.

Entered this 3rd 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

Lucas Foletta (NSBN 12154)
McDONALD CARANO LLP
100 W. Liberty St., 10th Floor
Reno, Nevada 89501
Telephone: (775) 788-2000
lfoletta@indonaldcarano.com

Attorneys for Education Freedom PAC

**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,

vs.

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

Defendant.

Case No.: 22OC00028 1B

Dept. No.: I

**STIPULATION AND ORDER
REGARDING INTERVENTION**

Plaintiffs RORY REID and BEVERLY ROGERS, Defendant BARBARA CEGAVSKE in her official capacity as NEVADA SECRETARY OF STATE, and EDUCATION FREEDOM PAC ("EFP"), by and through their counsel, hereby submit this stipulation and order regarding the intervention of EFP in the instant litigation. As circulator of record of the Initiative Petition C-04-2022 ("Initiative Petition") filed with the Nevada Secretary of State and the subject of this litigation, EFP claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede EFP's ability to protect its interest.

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REC'D & FILED

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AUBREY REILLY
CLERK

BY

OFFICE

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

Dated: February 28, 2022

5 McDONALD CARANO LLP

WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

6
7
8 By: 

9 Lucas Foletta (NSBN 12154)
10 McDONALD CARANO LLP
11 100 W. Liberty St., 10th Floor
12 Reno, Nevada 89501
Telephone: (775) 788-2000
lfoletta@mdonaldcarano.com

13
14 *Attorneys for Education
Freedom PAC*

By:  (SRN 10828)

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Telephone: (702) 341-5200
bschrager@wrslawyers.com

*Attorneys for Rory Reid and Beverley
Rogers*

15 STATE OF NEVADA

16
17
18 By:  #15868

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20 555 E. Washington Ave, Suite 3900
21 Las Vegas, Nevada 89101
22 Telephone: (702) 486-9246
23 cnewby@ag.nv.gov

Attorneys for Barbara Cegavske

ORDER

IT IS ORDERED:

☒ *u* **Granted**
☐ **Granted in part:**

and Denied in part:

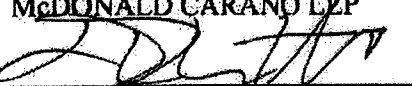
☐ **Denied**
☐ **Declined to consider ex parte**
☐ **Declined to consider without a hearing**
☐ **Other:**

DATED: March 9, 2022

Chen Megan
DISTRICT COURT JUDGE

Respectfully submitted by:

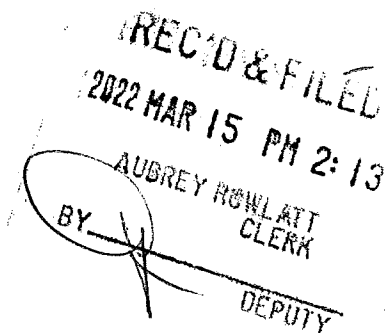
McDONALD CARANO LLP


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Attorneys for Education Freedom PAC



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,

vs.

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

Defendant.

Case No. 22 OC 00028 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 C-04-2022 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 constitutional-amendment initiative petition designated as C-04-2022 ("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. The allegations in Paragraph 13 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.

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. EFP denies the allegations in Paragraph 15, 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 in 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.

22. EFP denies the allegations in Paragraph 22.

23. EFP denies the allegations in Paragraph 23.

SECOND CAUSE OF ACTION

("Impermissible Use of the Initiative Process")

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

25. The allegations in Paragraph 25 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 25.

26. The allegations in Paragraph 26 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 26.

27. The allegations in Paragraph 27 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 27.

28. The allegations in Paragraph 28 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 28.

29. The allegations in Paragraph 29 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 29.

30. The allegations in Paragraph 30 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 30.

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 in Paragraph 31.

32. The allegations in Paragraph 32 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 32.

33. The allegations in Paragraph 33 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 33.

34. EFP denies the allegations in Paragraph 34.

THIRD CAUSE OF ACTION

("Violation of Unfunded Expenditure Prohibition, Nev. Const. Art. XIX, Sec. 6")

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

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

1 5. For such other and further relief as the Court deems just and proper under all the
2 circumstances of this matter.

3 **AFFIRMATION**

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

6
7 Dated: March 5, 2022

8 MCDONALD CARANO

9
10 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 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:

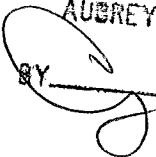
Bradley Schrager, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP.
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, NV 89169

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


Employee of McDonald Carano LLP

Lucas Foletta, Esq. (NSBN 12154)
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lfoletta@mcdonaldcarano.com

*Attorneys for Intervenor
Education Freedom PAC*

REC'D & FILED
2022 MAR 15 PM 2:13
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,

vs.

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

Defendant.

Case No. 22 OC 00028 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 C-04-2022 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 C-04-2022 ("Petition"). The Petition, filed by EFP on January 31, 2022, proposes to amend the Nevada Constitution to require the Legislature 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 C-04-2022 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 judge. (Id. ¶¶ 7-9.) This caused further delay. These delays resulted in the Court's failure to hold a hearing on this matter within 15 days of the complaint being filed as required by NRS 295.061(1), 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 June 29, 2022, to do so. Nev. Const. Art. 19, § 2(2); NRS 295.056(3). 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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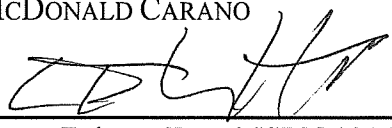
AFFIRMATION

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

Carole Davis
Employee of McDonald Carano LLP

EXHIBIT 1

EXHIBIT 1

Lucas Foletta, Esq. (NSBN 12154)
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*Attorneys for Intervenor
Education Freedom PAC*

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

* * *

RORY REDl, an individual;
BEVERLY ROGERS, an individual,

Plaintiffs,

vs.

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

Defendant.

Case No. 22 OC 00028 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.

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

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

4 5. EFP filed Initiative Petition C-04-2022 (the "Petition") on January 31, 2022.

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

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

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

13 9. The peremptory challenge resulted in the appointment of a senior judge on March
14 3, 2022.

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

18 11. Because Plaintiffs failed to name EFP as a defendant, EFP was forced to obtain a
19 stipulation to intervene in this matter, causing unnecessary confusion and delaying EFP's
20 participation in the case.

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

24 13. This delay has resulted in significant detriment to EFP, which must gather
25 140,777 valid signatures by June 29, 2022, to qualify the Petition for the ballot.

26 14. EFP cannot circulate a non-court approved petition, as signatures gathered on a
27 petition deemed invalid by the courts are invalid.
28

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 13, 2022



Lucas Foletta, Esq.

EXHIBIT 1

EXHIBIT 1

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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 * * *

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 00028 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:

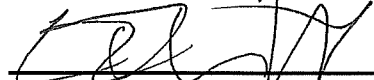
22 **THEREFORE**, good cause appearing, it is hereby:

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 CHARLES McGEE
28 District Judge

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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(775) 788-2000
lfoletta@mcdonaldcarano.com

Attorneys for Education Freedom PAC

REC'D & FILED

2022 MAR 15 PM 2:13

AUDREY 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,

vs.

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

Defendant.

Case No. 22 OC 00028 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 C-04-2022 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 C-04-2022 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.

//

//

I. INTRODUCTION

The Court should reject Plaintiffs' attempt to obstruct EFP's constitutional right to access the ballot. First, Plaintiffs failed to name the necessary parties to this litigation within the time required by law; therefore, the case must be dismissed. Second, the Court failed to hold a hearing in this matter in the time required by law; therefore, the case must be dismissed. Third, Plaintiffs' arguments against the Description of Effect ("Description") are merely an attempt to make it an advocacy statement for the political opposition, a strategy the Nevada Supreme Court has rejected. Therefore, they must be rejected. Fourth, Plaintiffs' claim that the Petition improperly impairs the legislative process is baseless; the Petition is entirely consistent with the plain language and structure of the Nevada Constitution. Therefore, the Court must reject this argument. Fifth, and finally, Plaintiffs' contention that the rule against unfunded mandates prohibits the Petition is meritless; the rule does not apply to constitutional initiative petitions. Therefore, the Court must reject this argument. For these reasons, and as more specifically described below, the Court must dismiss Plaintiffs' case.

II. FACTUAL AND PROCEDURAL BACKGROUND

EFP filed Petition C-04-2022 ("Petition") on January 31, 2022. The Petition proposes to amend the Nevada Constitution to require the Legislature to establish an education freedom account program under 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 tuition and fees at private schools. *Id.* The Petition would require the Legislature to fund each account in an amount comparable to the amount of funding that would otherwise be used to support the beneficiary-child's education in the public schools. (*Id.*) The Petition includes the following description of effect ("Description"):

The initiative will provide parents with the ability to use funds appropriated by the Legislature to pay for the education of their child in a school or educational environment that is not a part of the public school system. The initiative requires the Legislature to establish an education freedom account program under which parents may spend money appropriated by the Legislature into those accounts to pay for some or all of their child's education outside the public school system. The Legislature must establish an eligibility criteria for parents to establish an account.

1 The initiative will result in the expenditure of state funds to fund the accounts in an amount
2 comparable to the public support that would be used to support the education of the child
3 for whose benefit the account has been established in a public school. For Fiscal Year
4 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980
5 per pupil. For Fiscal Year 2022-2023, the amount is \$7,074 per pupil. Generating the
6 revenue to fund the accounts could necessitate a tax increase or a reduction in government
7 services. The Legislature must establish the program by the start of the school year that
8 commences in 2025.

9 *Id.*

10 Plaintiffs filed their Complaint for Declaratory and Injunctive Relief Challenging Initiative
11 Petition C-04-2022 Pursuant to NRS 295.061(1) ("Complaint") on February 22, 2022. Plaintiffs
12 included with their Complaint their Memorandum of Points and Authorities in Support of
13 Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022
14 Pursuant to NRS 295.061(1). Plaintiffs, however, did not name EFP as a defendant in the action,
15 necessitating EFP's intervention in this matter. The failure to name EFP as a defendant caused
16 unnecessary delay in the administration of this case. What's more, Plaintiffs filed a peremptory
17 challenge disqualifying Judge Wilson *after* Judge Russell recused, necessitating the appointment
18 of a senior judge. This caused further delay. As a consequence, the Court failed to hold a hearing
19 on this matter within 15 days of the complaint being filed as required by NRS 295.061(1).

20 **III. LEGAL STANDARD**

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

1 **IV. ARGUMENT**

2 **A. Plaintiffs failed to join EFP in the time required by statute and therefore the case**
3 **must be dismissed.**

4 As stated above, Plaintiffs filed their suit on the last possible day but failed to name EFP
5 as a defendant. Customarily, the party that filed the initiative petition at issue is named as a
6 defendant. *E.g.*, Complaint at 1, *Helton v. Nev. Voters First PAC, et al.*, Case No. 21 OC 00172
7 1B (Nev. 1st Jud. Dist. Ct. 2022); Complaint at 1, *Rev. Leonard Jackson v. Fair Maps Nev. PAC,*
8 *et al.*, Case No. 19 00 00209 1B (Nev. 1st Jud. Dist. Ct. 2019); *Haley v. Prevent Sanctuary Cities,*
9 Case No. 17 00 000239 1B (Nev. 1st Jud. Dist. Ct. 2017). This is because the party that filed the
10 petition is required to be joined under NRCP Rule 19. That rule provides that a person must be
11 joined if the person “is subject to service of process” and their “joinder will not deprive the court
12 of subject-matter jurisdiction” “if . . . in that person’s absence, the court cannot accord complete
13 relief among existing parties.” NRCP 19(a)(1)(A). NRCP 19 further provides that such a person
14 must be joined if “that person claims an interest relating to the subject of the action and is so
15 situated that disposing of the action in the person’s absence may . . . as a practical matter impair
16 or impede the person’s ability to protect the interest.” NRCP 19(a)(1)(B)(i).

17 EFP is clearly a party that must be joined pursuant to Rule 19. Pursuant to NRS
18 295.061(1), a party challenging a petition must file their complaint “not later than 15 days”
19 weekends and holidays excluded, after the petition is filed with the Secretary of State. What’s
20 more, “[a]ll affidavits and documents in support of the challenge must be filed with the
21 complaint.” *Id.* Failure to satisfy these requirements is a jurisdictional bar that mandates
22 dismissal. *See Washoe County v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (holding that the
23 failure to name a required party in connection with a petition for judicial review is “mandatory”
24 and “jurisdictional”). Thus, NRS 295.061 contemplates a process by which a challenge that is
25 fully supported and properly constituted is made promptly after the filing of an initiative petition.
26 The statute goes on to provide for a hearing within fifteen days of the challenge being filed. NRS
27 295.061(1). This further underscores the Legislature’s desire that challenges being filed as
28 necessary to afford the relief being sought within the fifteen days prescribed by law.

1 Here, however, Plaintiffs failed to do so. While they filed their complaint within fifteen
2 days of the Petition being filed, they failed to name a necessary party, EFP. And since that time,
3 they have not named EFP as a party, instead merely stipulating to EFP's entry as an intervener.
4 (Stip. and Order Regarding Intervention at 2.) As such, Plaintiffs clearly failed to satisfy the
5 fifteen-day filing requirement, and the case must be dismissed.

6 That this is the case is underscored by the fact that one remedy at the Court's disposal in
7 the event it agrees with Plaintiffs' arguments is to amend the Description. *See* NRS 295.061(3)
8 ("If a description of the effect of an initiative or referendum required pursuant to NRS 295.009 is
9 challenged successfully pursuant to subsection 1 and such description is amended in compliance
10 with the order of the court, the amended description may not be challenged.") Thus, even if EFP
11 was not a required party under Rule 19, it is a required party under NRS 295.061 because EFP is
12 the only party that can re-file an amended petition. As such, the Court's administration of the case
13 requires EFP's presence and thus so does NRS 295.061. Plaintiffs' failure to name EFP was
14 therefore fatal.

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

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

23
24 ¹ Prior to 2007, a complaint challenging an initiative petition could be filed within 30 days after the petition was filed
25 with the Secretary of State, and a hearing was to be held within 30 days thereafter. In 2007, the Legislature shortened
26 both temporal limitations to 15 days. Senator Beers explained that the shortened time period arose from a concern
27 that opponents were attempting to delay litigation as long as possible, which "appears as a deliberate strategic tactic
28 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 The fact that no hearing has been held is largely the fault of Plaintiffs. Plaintiffs filed their
2 suit on the last possible day; under NRS 295.061(2), parties challenging ballot petitions have
3 fifteen days from the date the petition is filed, excluding weekends and holidays, to file their
4 challenge. NRS 295.061(2). The case was initially assigned to Judge Russell who recused
5 resulting in the case being transferred to Judge Wilson the same day. Two days later, on February
6 24, 2022, Plaintiffs lodged a peremptory challenge of Judge Wilson. Plaintiffs did this with full
7 knowledge that another First Judicial District Court judge was not available to hear the case. The
8 peremptory challenge resulted in the appointment of a senior judge on March 3, 2022. Despite
9 the 15 day hearing requirement, no hearing of any kind has been held in this matter to date.

10 This delay has resulted in significant detriment to EFP for whose protection the procedural
11 requirements of NRS 295.061 exist. EFP is on a tight timetable for gathering signatures to qualify
12 the Petition for the ballot. EFP needs to gather 140,777 valid signatures, *see* Nev. Const. art. 19,
13 § 2(2), by June 29, 2022, *see* NRS 295.056(3). Every day this matter is tied up in litigation is a
14 day EFP loses in circulating a court-approved Petition. Signatures gathered on a petition deemed
15 invalid by the courts are invalid. *See Nevadans for Nev. v. Beers*, 122 Nev. 930, 940, 142 P.3d
16 339, 345 (2006) (holding that an initiative petition without a compliant description of effect is not
17 operative).

18 That the delay has worked harm upon EFP is underscored by the fact that the statutory
19 scheme that governs ballot petition challenges contemplates expediency in all respects. Not only
20 does it require a hearing to be held within fifteen days, but it also requires that the challenging
21 party include with its complaint “[a]ll affidavits and documents in support of the challenge.” *Id.*
22 at 295.061(1). This requirement clearly reflects the Legislature’s intent that ballot petition
23 challenges be ready for hearing almost immediately after being filed. Here, that has not taken
24 place. It should be noted that Plaintiffs created delay not only in choosing to preempt Judge
25 Wilson, but also by failing to name EFP as a defendant.

26 Notwithstanding the foregoing, the court respectfully bears some responsibility as well.
27 The statute is clear that a hearing must be held within 15 days. Not doing so places the proponents
28 of initiative petitions in the untenable position of having to wait to circulate their petition while

1 the court administers its political opponents' lawsuit. Because a hearing was not held within the
2 time allotted by statute, this matter must be dismissed.

3 **C. The Description is neither misleading nor confusing because it describes what it**
4 **will achieve and how it will achieve it.**

5 Plaintiffs contend that the Description is misleading. (Op. Br. at 4-5.) They argue that
6 "the description of effect misleadingly fails to disclose that any funding appropriated for the
7 contemplated program would inevitably reduce the funding available [sic] for Nevada's public
8 school system, leading to a deterioration in Nevada's public school system." (*Id.*) Plaintiffs
9 further contend the Petition will result in the "[s]ubtracting" of funds from public schools because
10 "a number of parents take that money" for EFAs. (*Id.*) Plaintiffs' factual claims are unsupported.
11 Instead, their assertions are merely an attempt to require EFP to describe a hypothetical effect so
12 that the Description serves as an advocacy piece for the political opposition. This approach has
13 been rejected by the Nevada Supreme Court, and this Court should not indulge it.

14 The Nevada Supreme Court has stated that "[a] description of effect serves a limited
15 purpose to facilitate the initiative process," *Educ. Initi. v. Comm. to Protect Nev. Jobs*, 129 Nev.
16 35, 37, 293 P.3d 874, 876 (2013), and that a description of effect should be reviewed with an eye
17 toward that limited purpose, *see id.* Thus, while a description of effect need not "delineate every
18 effect that an initiative will have," it "must be a straightforward, succinct, and nonargumentative
19 statement of what the initiative will accomplish and how it will achieve those goals." *Id.* A
20 description of effect cannot "be deceptive or misleading," *id.* at 49, 293 P.3d at 879, but it need
21 not "explain hypothetical effects," *id.* at 43, 293 P.3d at 879.

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

1 In this case, the Description “is a straightforward, succinct, and nonargumentative
2 statement of what the initiative will accomplish and how it will achieve those goals.” *Id.* at 37,
3 293 P.3d at 876. It states what the Petition attempts to accomplish—the establishment of an EFA
4 program—and how it will do it; it describes the requirement that the Legislature will establish the
5 program by law, including any eligibility criteria; it describes how parents will be able to use EFA
6 funds; and it describes what the level of funding will be. (Exhibit 1.) There is no reasonable
7 argument that the Description is anything other than a straightforward description of what the
8 Petition intends to achieve and how it will achieve it.

9 Plaintiffs attempt to avoid this conclusion by contending that the Description should
10 describe the purported “deterioration” of the public school system they believe will result from
11 the Petition’s passage. However, this is nothing more than an attempt to argue for the inclusion
12 of a hypothetical effect to be used to advocate against the Petition. What’s more, it is based on an
13 erroneous reading of the Petition.

14 Nothing in the Petition provides for a reduction in funding for the public schools. Indeed,
15 Plaintiffs cite none. To the contrary, the Petition specifically calls for a Legislative appropriation
16 to fund EFAs “comparable” to what would be used to fund the education of a specific child in the
17 public school system. (Exhibit 1.) Thus, it is clear that the Petition does not require the re-
18 direction of money otherwise being routed to the public schools. Instead, it requires an
19 appropriation to fund EFAs that is separate and distinct from whatever funds are directed to public
20 schools. Therefore, the factual basis of Plaintiffs’ assertion is hypothetical at best—based on their
21 speculation as to how the Legislature might fulfill its obligation to fund EFAs. As such, it would
22 be improper to require its inclusion in the Description. *Educ. Initi.*, 129 Nev. at 42, 293 P.3d at
23 879.

24 That said, and perhaps more importantly, the Description specifically states that
25 “[g]enerating the revenue to fund the accounts could necessitate a tax increase or a reduction in
26 government services.” (Exhibit 1.) Consequently, it already references the risk Plaintiffs
27 apparently believe exists—the possibility that the Legislature will reduce other government
28

1 services—e.g., public school funding—to fund EFAs. As such, the Description is neither
2 deceptive nor misleading.

3 Generally speaking, Plaintiffs attempt to persuade the Court to include their preferred
4 effects in the Description. However, that is improper. Allowing the inclusion of a hypothetical
5 effect would do nothing more than allow Plaintiffs to hijack the Description for their political
6 purposes. As Judge Wilson recently pointed out, it is improper to “attempt to use the description
7 as an advocacy piece.” *Helton v. Nev. Voters First PAC, et al.*, Case No. 21 OC 00172, at *13
8 (Nev. 1st Jud. Dist. Ct. Nev. Jan. 6, 2022). Plaintiffs are free to advocate against the policy
9 reflected in the Petition, but their criticisms are better suited for the argument against the Petition
10 to be included on the ballot and political advocacy against its passage,² not this litigation.

11 **D. The Petition does not “impair” the Legislature’s function; it is entirely consistent**
12 **with the plain language and structure of the Nevada Constitution.**

13 Plaintiffs argue that the Petition would unconstitutionally “command[] the Nevada
14 Legislature to . . . effect its terms,” (Op. Br. 5), and would be unenforceable and “lead[] to
15 intolerable constitutional crises” should the Legislature somehow choose to disregard the
16 Amendment, (*id.* at 7). This is decidedly not the case.

17 The Nevada Constitution contains numerous provisions that require the Legislature to
18 provide by law for certain statutory outcomes. Nev. Const. art. 4, § 26 (“The Legislature shall
19 provide by law, for the election of a Board of County Commissioners”), § 38(1)(d) (“The
20 legislature shall provide by law for . . . [a] registry of patients”); art. 9, § 2 (“The legislature
21 shall provide by law for an annual tax”); art. 12, § 1 (“The Legislature shall provide by law
22 for organizing and disciplining the Militia of this State”); art. 11, § 2 (“The legislature shall
23 provide for a uniform system of common schools”). Indeed, Article 10, Section 3B, provides that
24 “[t]he legislature shall provide by law for the exemption of durable medical equipment, oxygen
25 delivery equipment and mobility enhancing equipment prescribed for human use by a licensed

26
27 ² Before an initiative petition can appear on the ballot, the Secretary of State must appoint two committees to draft
28 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).

1 provider of health care acting within his or her scope of practice from any tax upon the sale,
2 storage, use or consumption of tangible personal property.” Nev. Const. art. 10, § 3B. This
3 provision was proposed by initiative petition and ratified by the voters at the 2016 and 2018
4 general elections. *Id.* (see annotation).

5 Thus, the structure of the Petition is entirely consistent with a mechanism regularly
6 employed in the Nevada Constitution. As such, it is consistent with the articulation of separation
7 of powers reflected there. Plaintiffs attempt to avoid this conclusion by purportedly distinguishing
8 the Petition from just one instance where the Nevada Constitution requires legislative action.
9 Indeed, they do so in a footnote, reflecting the weakness of the argument. They cite the
10 requirement under Article 11, Section 6(2), that the legislature annually appropriate funds for
11 public schools before any other state-budget item and characterize it as “very different” because
12 a remedy exists. (Op. Br. at n. 2.) According to Plaintiffs, this provision affords a remedy in the
13 event the Legislature breaches its terms; a court could invalidate any appropriation or expenditure
14 bill until the Legislature passes funding for public schools. (Op. Br. at n.2.) This is contrary to
15 the Petition, as to which, according to Plaintiffs, there is no remedy because courts could not
16 compel a legislator to vote in a particular way. (*Id.* at 7.)

17 As a threshold matter, Plaintiffs cite no Nevada case or point of law that supports the
18 notion that a specific remedy must be available to enforce a command of the Nevada Constitution
19 for it to be constitutional itself. Thus, Plaintiffs’ fixation on the availability of a remedy is
20 misplaced; there is no such requirement.

21 That said, Plaintiffs’ reference to Article 11, Section 6(2), is unavailing. While it may be
22 true that a court could remedy a violation of Article 11, Section 6(2), as Plaintiffs describe, that
23 does not explain how a court would manage, for example, any of the provisions cited above. For
24 example, no similar remedy would be available to enforce the requirement that “[t]he Legislature
25 shall provide by law, for the election of a Board of County Commissioners,” that “[t]he Legislature
26 provide for a uniform system of common schools” or that “the legislature shall provide by law for
27 the exemption of durable medical equipment, oxygen delivery equipment and mobility enhancing
28

1 equipment.” These are all straightforward commands that the Legislature take action for which
2 no remedy springs from the structure of the provision itself.

3 Moreover, remedies do exist. For example, NRS 34.160 provides statutory authority to
4 the courts to issue writs of mandamus “to compel the performance of an act which the law
5 especially enjoins as a duty resulting from an office, trust or station.” NRS 34.160. Indeed, the
6 courts’ mandamus authority is also rooted in the Nevada Constitution itself. Nev. Const. art. 6,
7 §§ 4, 6. A court could issue a writ of mandamus to compel the Legislature generally to take action
8 to effectuate its obligations under the Nevada Constitution regardless of whether it has authority
9 to order individual legislators to vote a particular way. Indeed, Plaintiffs entirely omit discussion
10 of the possibility of a remedy requiring the Legislator to act as an institution, instead selectively
11 choosing to focus on whether a court would require legislator to vote yay or nay. (Op. Br. 6-7.)

12 Plaintiffs also misleadingly attempt to support their argument by contending that the
13 people’s right to amend the Nevada Constitution is legislative in nature and thus is commensurate
14 with authority the Legislature has. (Op. Br. 5-6.) In this way, Plaintiffs contend the people cannot
15 bind the Legislature. (*Id.*) This is not the case. The people’s right to amend the Nevada
16 Constitution clearly comes with it the authority to require the Legislature to act. As stated above,
17 the structure of the Nevada Constitution includes various provisions that do just that. It is
18 axiomatic that the people’s right to amend the Constitution authorizes them to do by constitutional
19 amendment all that the Nevada Constitution can do on its own. This includes the ability to direct
20 the Legislature to take action.

21 *Nevadans for the Protection of Property Rights, Inc. v. Heller*, 122 Nev. 894, 141 P.3d
22 1235 (2006) does not counsel a different result. In that case, the Nevada Supreme Court described
23 the people’s initiative power as “legislative in nature,” but it did so in the context of discussing
24 the prohibition against guiding administrative details by way of initiative petitions. 122 Nev. at
25 914, 141 P.3d at 1248. Thus, the Nevada Supreme Court explained that the people have the right
26 to enact policy measures by way of constitutional amendment, but they cannot “include
27 administrative, non-policy matters.” *Id.* In other words, the people do not have the authority to
28 “put into execution previously-declared policies or previously-enacted laws or direct [] a decision

1 that has been delegated to [a governmental body with that authority].” *Id.* at 915, 131 P.3d at
2 1249 (quoting *Citizens for Train Trench Vote v. Reno*, 118 Nev. 574, 582, 53 P.3d 387, 392 (2002),
3 *overruled in part on other grounds by Gavin v. District Court*, 118 Nev. 749, 59 P.3d 1180
4 (2002)).

5 Whether to establish an EFA program is not the execution of a previously declared policy
6 or enacted law, nor is it a decision that has been specifically delegated to the Legislature. *See id.*;
7 *Train Trench*, 118 Nev. at 583, 53 P.3d at 392. Similar to the other provisions of the Nevada
8 Constitution that require the Legislature to provide by law for various statutes, if enacted it will
9 constitute a policy choice upon which the Legislature must act.

10 Plaintiffs’ argument also fails because it is not ripe. NRS 295.061(1) permits a pre-election
11 challenge on only two bases: the single-subject rule or an insufficient description of effect. The
12 Nevada Supreme Court has further explained that courts may review pre-election challenges
13 “asserting that an initiative measure does not fall within the proper subject matter for legislation.”
14 *Glover v. Concerned Citizens for Fuji Park & Fairgrounds*, 118 Nev. 488, 498, 50 P.3d 546, 552
15 (2002), as corrected (Sept. 6, 2002); *see also Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 883-
16 84, 84 n.13, 141 P.3d 1224, 1228-29, 1229 n.13 (2006) (explaining the scope of subject-matter
17 challenges a court may consider, which excludes constitutional challenges except in “the truly
18 ‘extreme’ case,” such as “an initiative to establish a state religion” (quoting *Hessey v. Burden*, 615
19 A.2d 562, 572-74 (D.C.1992))). But Plaintiffs’ argument is not ripe on any of those bases.

20 As the Nevada Supreme Court has repeatedly and unmistakably explained, “challenges to
21 an initiative’s substantive validity will not be considered as part of this court’s preelection review
22 of an initiative” and are unripe “until an initiative becomes law.” *Nevadans for Protection of*
23 *Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 916, 141 P.3d 1235, 1250 (2006) (citing *Herbst*
24 *Gaming*, 122 Nev. at 887-88, 141 P.3d at 1230-31). Therefore, the Court must reject this
25 argument.

26 ///

27 ///

28 ///

E. The Petition does not violate Article 19, Section 6 because the rule against unfunded mandates does not apply to constitutional amendments.

Plaintiffs next argue that the Amendment would violate Article 19, Section 6, of the Nevada Constitution as an unfunded mandate. (Op. Br. at 7-9.) This is not the case. Undeterred by the plain meaning of Article 19, Section 6, which they incompletely quote, and supporting their argument with nothing more than a broad, context-free quotation from *Rogers v. Heller*, 117 Nev. 169, 18 P.3d 1034 (2001), Plaintiffs insist that this Court somehow read “any statute or statutory amendment” to also include *constitutional* amendments.

Article 19, Section 6, provides (in full) 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.

(Emphasis added.)

Apparently hoping that this Court will not consult the full text of Article 19, Section 6, Plaintiffs misleadingly omit its first fourteen words. (Op. Br. 7-8.) Plaintiffs thereby deprive the reader of the section’s reference to “statutory” to which the adjective “such” refers in modifying “amendment.” Nev. Const. art. 19, § 6. Thus, as Plaintiffs present it, Article 19, Section 6, would apply not only to statutes and statutory to amendments, but also to *constitutional* amendments. But as the plain language indicates, this is not the case.

Plaintiffs also offer a similarly misleading citation to *Rogers*. (Op. Br. at 8.) While it is true that in *Rogers* the Nevada Supreme Court said “Section 6 applies to *all* proposed initiatives, without exception, and *does not permit* any initiative that fails to comply with the stated conditions,” *Rogers*, 117 Nev. at 173, 18 P.3d at 1036, but Plaintiffs take this statement out of context. The relevant issue in *Rogers* was whether Article 19, Section 2, applied to the statutory initiative at issue. *Id.* at 171, 18 P.3d at 1035. Thus, the Nevada Supreme Court in no way opined on its applicability to constitutional amendments like the one at issue here. *Id.* That said, even if the Nevada Supreme Court did articulate its view as to the applicability of the provision to

1 constitutional amendments, its statement can at most be read to mean that all proposed initiatives
2 must pass through this “threshold” consideration. *Id.* Does the initiative propose a “statute or
3 statutory amendment” that “makes an appropriation or otherwise requires the expenditure of
4 money”? If so, then it must provide for funding. If not, then it need not provide for funding. Any
5 other interpretation of the provision is inconsistent with its text.

6 *Rogers’s* progeny further clarifies this distinction. In *Nevadans for Nevada*, which
7 Plaintiffs cite in the other sections of their brief but have somehow overlooked only in this section,
8 the Nevada Supreme Court addressed a proposed constitutional amendment and offered an
9 overview of the initiative-petition requirements to which petitioners must strictly adhere. 122
10 Nev. at 947, 142 P.3d at 350. Immediately after explaining the authentication requirements that
11 apply to an initiative petition regardless of whether its proposal is statutory or constitutional, the
12 Court underscored the fact that the funding requirement is unique to *statutory* proposals by noting
13 that Article 19, Section 6, “prohibits the proposal of any *statute* making an appropriation without
14 also providing a means for raising revenue.” *Id.* (emphasis added) (citing *Rogers*, 117 Nev. at
15 173, 18 P.3d at 1036). Thus, in case the full text of Article 19, Section 6, is not clear enough on
16 its face, the Nevada Supreme Court has unmistakably clarified that it applies only to *statutory*
17 proposals.

18 Plaintiffs attempt to buttress their argument with a citation to *Schwartz v. Lopez*, 132 Nev.
19 732, 739, 382 P.3d 886, 891 (2016). Plaintiffs contend that in *Schwartz* the Nevada Supreme
20 Court struck down a law that provided for a program similar to the EFA program contemplated
21 by the Petition on grounds that the Legislature failed to fund it. (Op. Br. at 9.) However, in doing
22 so, Plaintiffs obscure the true story from *Schwartz* in an attempt to falsely claim that it controls
23 this situation.

24 At issue in *Schwartz* was the constitutionality of SB 302 (2015). 132 Nev. at 738, 382
25 P.3d at 891. The bill authorized the creation of education savings accounts. *Id.* at 891; SB 302
26 *available at* <https://www.leg.state.nv.us/App/NELIS/REL/78th2015/Bill/1857/Overview>. Thus,
27 it established a program similar to that contemplated in the Petition except that it had an entirely
28 different funding mechanism. *Id.* Under SB 302, once an education savings account was

1 established, “the amount of money deposited by the Treasurer into an account for a child within a
2 particular school district is deducted from that school district’s apportionment of legislatively
3 appropriated funds in the [Distributed School Account].” *Schwartz*, 132 Nev. at 741, 382 P.3d at
4 893. As the Nevada Supreme Court pointed out, the Legislature accomplished this by including
5 language in SB 302 that specifically amended provisions of existing law to provide for a reduction
6 in the apportionment consistent with the amount of funds deposited in education savings accounts.

7 The Nevada Supreme Court stated as follows:

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

11 *Id.*

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

20 The Petition is different from SB 302 in that it does not require the diversion of DSA funds
21 to support EFAs. Unlike SB 302, the Petition contains no language amending the provisions of
22 law that apportion the DSA to account for funds appropriated to fund EFAs, nor does it require
23 the Legislature to do so. To the contrary, the Petition merely provides for the level of funding; it
24 does not speak to how the funds must be derived. Thus, *Schwartz* is not analogous.

25 What’s more, it is also not accurate to claim that the Nevada Supreme Court struck down
26 the education savings account program because SB 302 did not contain an appropriation. SB 302
27 was deemed unconstitutional because SB 515 did not specifically contemplate using DSA funds
28 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, Sec. 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. The holding has no bearing on the application of Article 19, Section 6. What’s more, the Petition does not require money to be drawn from the treasury; it specifically requires that the Legislature make an appropriation to fund the EFAs. For these reasons, the Court should reject this argument.

V. CONCLUSION

For all of the above reasons, the Court should reject Plaintiffs’ attempt to keep the Petition off the ballot and dismiss their suit.

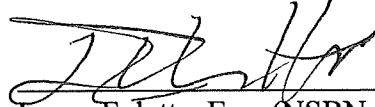
Dated this 15th day of March, 2022.

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

Carole Davis
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 – Constitutional Amendment

EXPLANATION: Matter in ***bolded italics*** is new language to be added to the Nevada Constitution by this Amendment. Matter in strikethrough is existing language in the Nevada Constitution to be deleted by this Amendment.

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

Section 1: Article 11 of the Nevada Constitution is hereby amended by adding thereto a new section to read as follows:

1. ***No later than the school year commencing in 2025, and on an ongoing basis thereafter, the Legislature shall provide by law for the establishment of education freedom accounts by parents of children being educated in Nevada. Parents shall be authorized to use the funds in the accounts to pay for the education of their child in full or in part in a school or educational environment that is not a part of the uniform system of common schools established by the Legislature. The Legislature shall appropriate money to fund each account in an amount comparable to the amount of funding that would otherwise be used to support the education of that child in the uniform system of common schools. The Legislature shall provide by law for an eligibility criteria for parents to establish an education freedom account.***
2. **Severability.** Should any 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.

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

The initiative will provide parents with the ability to use funds appropriated by the Legislature to pay for the education of their child in a school or educational environment that is not a part of the public school system. The initiative requires the Legislature to establish an education freedom account program under which parents may spend money appropriated by the Legislature into those accounts to pay for some or all of their child's education outside the public school system. The Legislature must establish an eligibility criteria for parents to establish an account.

The initiative will result in the expenditure of state funds to fund the accounts in an amount comparable to the public support that would be used to support the education of the child for whose benefit the account has been established in a public school. For Fiscal Year 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. Generating the revenue to fund the accounts could necessitate a tax increase or a reduction in government services. The Legislature must establish the program by the start of the school year that commences in 2025.

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

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The initiative will provide parents with the ability to use funds appropriated by the Legislature to pay for the education of their child in a school or educational environment that is not a part of the public school system. The initiative requires the Legislature to establish an education freedom account program under which parents may spend money appropriated by the Legislature into those accounts to pay for some or all of their child's education outside the public school system. The Legislature must establish an eligibility criteria for parents to establish an account.

The initiative will result in the expenditure of state funds to fund the accounts in an amount comparable to the public support that would be used to support the education of the child for whose benefit the account has been established in a public school. For Fiscal Year 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. Generating the revenue to fund the accounts could necessitate a tax increase or a reduction in government services. The Legislature must establish the program by the start of the school year that commences in 2025.

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	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

REC'D & FILED

March 15, 2022

Date

AUBREY ROWLATT
CLERK

By [Signature] Deputy

1 Lucas Foletta (NSBN 12154)
2 McDONALD CARANO LLP
3 100 W. Liberty St., 10th Floor
4 Reno, Nevada 89501
5 Telephone: (775) 788-2000
6 lfoletta@mdonaldcarano.com

Attorneys for Education Freedom PAC

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

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

Plaintiffs,

vs.

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

Defendant.

Case No.: 22OC00028 1B

Dept. No.: I

STIPULATION AND ORDER
REGARDING INTERVENTION

15 Plaintiffs RORY REID and BEVERLY ROGERS, Defendant BARBARA CEGAVSKE
16 in her official capacity as NEVADA SECRETARY OF STATE, and EDUCATION FREEDOM
17 PAC ("EFP"), by and through their counsel, hereby submit this stipulation and order regarding
18 the intervention of EFP in the instant litigation. As circulator of record of the Initiative Petition
19 C-04-2022 ("Initiative Petition") filed with the Nevada Secretary of State and the subject of this
20 litigation, EFP claims an interest relating to the property or transaction that is the subject of the
21 action and is so situated that disposing of the action may as a practical matter impair or impede
22 EFP's ability to protect its interest.

24 ///

25 ///

26 ///

27 ///

28 ///

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

JA0087

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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11 100 W. Liberty St., 10th Floor
12 Reno, Nevada 89501
13 Telephone: (775) 788-2000
14 lfoletta@mdonaldcarano.com

15 *Attorneys for Education*
16 *Freedom PAC*

Dated: February 28, 2022

WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

17
18 By:  (SRN 10828)

19 Bradley Schrager (NSBN 10217)
20 3773 Howard Hughes Parkway
21 Suite 590 South
22 Las Vegas, Nevada 89169
23 Telephone: (702) 341-5200
24 bschrager@wrslawyers.com

25 *Attorneys for Rory Reid and Beverley*
26 *Rogers*

27
28 STATE OF NEVADA

By:  #15368

29 Craig Newby (NSBN 8591)
30 555 E. Washington Ave, Suite 3900
31 Las Vegas, Nevada 89101
32 Telephone: (702) 486-9246
33 cnewby@ag.nv.gov

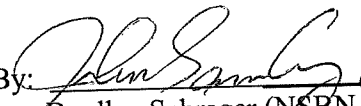
34 *Attorneys for Barbara Cegavske*

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
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

6
7
8 By: _____
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13
14 *Attorneys for Education
Freedom PAC*

STATE OF NEVADA

15
16
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18 By: _____
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20 555 E. Washington Ave, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-9246
cnewby@ag.nv.gov

Attorneys for Barbara Cegavske

ORDER

IT IS ORDERED:

- ☐ Granted
☐ Granted in part:

and Denied in part:

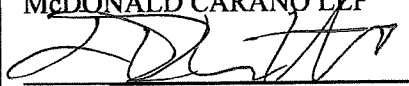
- ☐ Denied
☐ Declined to consider ex parte
☐ Declined to consider without a hearing
☐ Other:

DATED:

DISTRICT COURT JUDGE

Respectfully submitted by:

McDONALD CARANO LLP


Lucas Foletta (NSBN 12154)
McDONALD CARANO LLP
100 W. Liberty St., 10th Floor
Reno, Nevada 89501
Telephone: (775) 788-2000
lfoletta@mdonaldcarano.com

Attorneys for Education Freedom PAC

ORDER

IT IS ORDERED:

☒ *u* **Granted**
☐ **Granted in part:**

and Denied in part:

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

DATED:

March 9, 2022

Cheryl N. Megan
DISTRICT COURT JUDGE

Respectfully submitted by:

McDONALD CARANO LLP

[Signature]
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lfoletta@mdonaldcarano.com

Attorneys for Education Freedom PAC

REC'D & FILED

2022 MAR 23 PM 12:30

AUBREY ROBLATT
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, CASE NO.: 2200 0028 1B

Plaintiffs,

DEPT. NO. I

Vs.

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

Defendant,

EDUCATION FREEDOM PAC,

**Intervenors, aligned
as Defendant.**

**ORDER GRANTING JOINDER;
ORDER FOR HEARING ON THE
MERITS AND ORDER
SHORTENING TIME**

**By reason of the disqualification of Judge Wilson, recusal of
Judge Russell, and ultimately the appointment of the undersigned, this**

1 case has, indeed, fallen short of the directive to hold a hearing within
2 fifteen (15) days of the filing of the Complaint. *Cf NRS 295.0661(1)*.

3
4 This Judge did not even receive the PAC'S intervention and
5 answering brief until yesterday.

6
7 But in any event, the Court is going to accelerate the process to
8 give scope and meaning to the statute which requires a quick
9 resolution.
10

11 The Court is persuaded that full vetting and relief in this case
12 cannot be had without joinder of Education Freedom Pac ("EFP").
13

14 Since then the Court has received pleadings from Intervenor,
15 EFP, notably including an ex parte motion for an immediate hearing
16 seeking dismissal of the Complaint.
17

18 Despite the fact that the Court used a letter instead of a formal
19 Order which may have encouraged similar communications, upon
20 reconsideration, it is hereby ORDERED that all that all further
21 pleadings be formally vetted and submitted to this Judge with a case
22 and caption in the normal manner, but in each case expedited.
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1 **The Court has also accepted the Stipulation and Order filed on**
2 **March 10, 2022, dubbed “Stipulation and Order Regarding**
3 **Intervention”, which this Judge has already signed.**

4
5 **While there may be differences on the scope of an early hearing**
6 **on this matter, the Court agrees that a hearing, by Zoom, if a**
7 **courtroom cannot be found, take place as soon as the Court Clerk can**
8 **make a time available, which the undersigned would like to set it for**
9 **three (3) hours, or four (4) hours maximum by Stipulation.**

10
11 **Simultaneous with the signing of this Order, the Court’s**
12 **Administrative Assistant, Jackie Tucker will immediately try to work**
13 **with the Court Clerk to find a hearing room in Carson City on Monday,**
14 **Tuesday, or Wednesday of next week – and notify the parties of this**
15 **effort immediately. Intervenors will share their Answer and Points and**
16 **Authorities immediately, with no further ex parte practice.**

17
18 **Unless the Court decides at the hearing to terminate or sideline**
19 **some issues, the hearing will be wide open and will include both**
20 **parties’ efforts to summarily conclude the case.**

1 **In this connection, each of the motions to dismiss, on both sides**
2 **are TEMPORARILY DENIED without prejudice to their being renewed at**
3 **the time of the hearing.**

4
5 **This is obviously an important case and the Court appropriately**
6 **acknowledges the suggested level of urgency, and the possibility of a**
7 **fast track appeal.**

8
9 **In this connection, the parties are ORDERED to show cause why**
10 **this case should not be merged with Case No. 22 OC 0027 1B,**
11 **BEVERLY ROGERS vs. BARBARA CEGAVSKE, which appears at first**
12 **blush to have common facts and common issues.**

13
14 **This case needs to go forward with all diligent dispatch, although**
15 **short of an ex parte trajectory, which the Court discourages.**

16
17 **If she so desires, the Secretary of State, (or an assistant**
18 **Attorney General) who is really an accommodation party, may be**
19 **excused from the hearing unless her presence is demanded by the real**
20 **party in interest, in which case that matter will be taken up at the**
21 **outset of the hearing.**

22
23 **This case, obviously, will be on its way to an Appellate Court**
24 **once my decision is published.**
25
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For that reason, the parties should make as clear and articulate as possible their respective positions on why the electorate can, use the initiative process in the suggested way, to create a binding law that does not run afoul of the Constitutional significance of front-loading a mandatory budget that strips the legislature, and the School Districts, of their solemn role to balance the budget by bringing the best possible calculations and staffers to the process. How can that happen under the theories of the Intervenor/Defendants?

These are questions, not leanings.

IT IS SO ORDERED.

DATED this 23 day of March, 2022.

Charles M. McGee
CHARLES M. McGEE
Senior Judge on Assignment

CERTIFICATE OF MAILING

I hereby certify that on this day, March 22, 2022, I emailed a copy
of ORDER GRANTING JOINDER; ORDER FOR HEARING ON THE MERITS
AND ORDER SHORTENING TIME in the foregoing case to:


Lucas Foletta, Esq.
lfoletta@mcdonaldcarano.com

Bradley S. Schragr, Esq.
bschrager@wrslawyers.com

John Samberg, Esq.
jsamberg@wrslawyers.com

Daniel Bravo, Esq.
dbravo@wrslawyers.com

Craig Newby, Esq.
CNewby@ag.nv.gov


JACKIE TUCKER
Assistant to Sr. Judge McGee

REC'D & FILED ✓

2022 MAR 24 PM 2:34

AUDREY BOWEN ATT
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
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bschrager@wrslawyers.com
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dbravo@wrslawyers.com

Attorneys for Plaintiffs

**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,

vs.

BARBARA CEGAVSKE, in her official
capacity as NEVADA SECRETARY OF
STATE; EDUCATION FREEDOM FOR
NEVADA, a Nevada Committee for
Political Action,

Defendants.

Case No.: 22 OC 00044 1B

Dept. No.: II

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-06-2022 PURSUANT
TO NRS 295.061(1)**

**Priority Matter Pursuant to
NRS 295.061(1)**

Arbitration Exemption: Declaratory
and Injunctive Relief

Plaintiffs, Rory Reid and Beverly Rogers (collectively, "Plaintiffs"), file this
Complaint for declaratory and injunctive relief against Defendants, Barbara Cegavske,
in her official capacity as the Nevada Secretary of State, and Education Freedom for
Nevada¹ (collectively, "Defendants"), pursuant to NRS 295.061, NRS 30.030, and

¹ Plaintiffs include Education Freedom for Nevada as an accommodation, because it
has indicated, in companion cases in this jurisdiction, that it wishes to litigate on

1 NRS 33.010. Plaintiffs allege and complain as follows:

2 **JURISDICTION AND VENUE**

3 1. This Court has jurisdiction to hear Plaintiffs' claims pursuant to
4 NRS 295.061 and to grant declaratory and injunctive relief pursuant to NRS 30.030,
5 30.040, and 33.010.

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

9 **PARTIES**

10 3. Plaintiff Rory Reid is a resident of and a registered voter in Clark County,
11 Nevada.

12 4. Plaintiff Beverly Rogers is a resident of and a registered voter in Clark
13 County, Nevada.

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

20 6. Defendant Education Freedom for Nevada is a Nevada committee for
21 political action existing pursuant to Chapter 294A of the Nevada Revised Statutes and
22 is named herein as the proponent of the initiative petition at issue here, Initiative
23 Petition C-06-2022 (the "Petition").

24 ///

25 ///

26
27 _____
28 behalf of its proposed initiative petition.

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1 11. The Petition impermissibly mandates a future Nevada Legislature to
2 appropriate money to fund each EFA in an amount comparable to the amount of
3 funding that would otherwise be used in the public school system.

4 12. The Petition permits the Nevada Legislature to limit eligibility to
5 participate in the EFA program.

6 13. The constitutional amendment proposed by the Petition is not self-
7 executing—it requires the Nevada Legislature to provide by law during a future
8 legislative session for the establishment of the EFA.

9 14. The Petition is similar to the provisions of Senate Bill (S.B.) 302 (2015),
10 passed by the Nevada Legislature during the Regular Session in 2015, which the
11 Nevada Supreme Court struck down in *Schwartz v. Lopez*, 132 Nev. 732, 738, 382 P.3d
12 886, 891 (2016). The Nevada Supreme Court ruled that S.B. 302 had failed to
13 appropriate funds for the education savings accounts contemplated by the bill, and that
14 money that the Legislature had appropriated for K–12 public education could not be
15 used for that purpose, consistent with the constitutional mandates to fund public
16 education.

17 15. The Petition also runs afoul of Article 19, Section 6 of the Nevada
18 Constitution, which prohibits the “proposal of any statute or statutory amendment
19 which makes an appropriation or otherwise requires the expenditure of money, unless
20 such statute or amendment also imposes a sufficient tax, not prohibited by the
21 Constitution, or otherwise constitutionally provides for raising the necessary revenue.”

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

24 The initiative requires the Legislature to establish an education
25 freedom account program under which parents may spend money
26 appropriated by the Legislature to pay for part or all of their child’s
27 education outside the public school system. The Legislature may
28 limit eligibility in the program to parents of children eligible to
enroll in kindergarten and parents of children who enroll in the
public school system for a specified period of time preceding
establishment of an education freedom account not to exceed the
entirety of the previous school year.

1 The initiative will result in the expenditure of state funds to fund
2 the accounts in an amount comparable to the public support that
3 would support the education of the child for whose benefit the
4 account has been established in a public school. For Fiscal Year
5 2021-2022, the Legislature determined the statewide base per
6 pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023,
7 that amount is \$7,074 per pupil. Generating the revenue to fund
8 the accounts could necessitate a tax increase or a reduction in
9 government services. The Legislature must establish the program
10 by the start of the school year that commences in 2025.

11 See Exhibit 1, at 3.

12 FIRST CAUSE OF ACTION

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

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

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

19 19. “[A] description of effect ... [can]not be deceptive or misleading.” *Educ.*
20 *Initiative PAC v. Comm. to Protect Nevada Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879
21 (2013) (internal quotation marks and citation omitted). It must also “explain these
22 ramifications of the proposed amendment” in order to allow voters to make an informed
23 decision. *Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996).

24 20. Here, the description of effect is deficient, first, because it is deceptive or
25 misleading, and second, because it fails to provide essential information regarding the
26 Petition’s effects, including significant financial, legislative, and practical ramifications
27 that are necessary for voters to make informed decisions as to whether to support the
28 Petition.

29 21. The description of effect fails to disclose the financial burden placed on
30 the State Treasurer and the Department of Education, or of the fact that no revenue
31 source is established by the proposed Petition to pay for the substantial expenditures
32 required by the Petition.

1 22. While stating that “[g]enerating the revenue to fund the accounts could
2 necessitate a tax increase or a reduction in government services[,]” the description of
3 effect misleadingly fails to disclose that any funding appropriated for the contemplated
4 program would inevitably reduce the funding available funding for Nevada’s public
5 school system, leading to a deterioration in Nevada’s public school system.

6 23. Collectively, these omissions render it impossible for a potential signatory
7 to make an informed decision whether to sign the Petition.

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

10 SECOND CAUSE OF ACTION

11 **Impermissible Use of the Initiative Process**

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

14 26. “The Legislative authority of this state shall be vested in a Senate and
15 Assembly which shall be designated ‘The Legislature of the State of Nevada’ and the
16 sessions of such legislature shall be held at the seat of the government of the state.”
17 Nev. Const. art. IV, § 1.

18 27. “The powers of the Government of the State of Nevada shall be divided
19 into three separate departments,--the Legislative,--the Executive and the Judicial; and
20 no persons charged with the exercise of powers properly belonging to one of these
21 departments shall exercise any functions, appertaining to either of the others, except
22 in the cases expressly directed or permitted in this constitution.” Nev. Const.
23 art. III, § 1(1).

24 28. Pursuant to Article 19, Sections 1 and 2 of the Nevada Constitution, the
25 people of Nevada “reserve to themselves” the power of referendum, as well as “the
26 power to propose, by initiative petition, statutes and amendments to statutes and
27 amendments to this Constitution, and to enact or reject them at the polls.” Nev. Const.
28 art. XIX, §§ 1, 2.

1 29. The people have reserved to themselves the initiative or referendum
2 power, but all other legislative powers and authority reside with the Nevada
3 Legislature, including the inherent ability of a duly-constituted Legislature to
4 deliberate, to debate, to freely consider legislative enactments, and to vote upon them
5 according to its members' judgments—a power and function that cannot be impaired
6 by the people's exercise of the initiative or referendum power.

7 30. “Implicit in the plenary power of each legislature is the principle that one
8 legislature cannot enact a statute that prevents a future legislature from exercising its
9 law-making power,” and there is “a general rule that one legislature cannot abridge
10 the power of a succeeding legislature.” *Washington State Farm Bureau Fed'n v.*
11 *Gregoire*, 162 Wash. 2d 284, 301, 174 P.3d 1142, 1150 (2007). *See also Ex parte Collie*,
12 38 Cal. 2d 396, 398, 240 P.2d 275, 276 (1952) (“It is the general rule that one legislative
13 body cannot limit or restrict its own power or that of subsequent Legislatures and that
14 the act of one Legislature does not bind its successors.”).

15 31. The people acting through the initiative process can no more command
16 the Nevada Legislature to take specific legislative action than a current Legislature
17 can bind a future Legislature to act or deliberate or vote in a particular way.

18 32. The command to the Nevada Legislature contained in the Petition is
19 binding, and the deliberative function of the Legislature is impermissibly impaired.
20 The initiative process cannot be so employed.

21 33. Nevada legislators would not be free to deliberate and vote their own
22 considered judgment, being responsible to their own constituents, and they would no
23 longer be part of a deliberative body acting independently in exercising their individual
24 best judgments on the matters that come before them.

25 34. The Petition constitutes an impermissible use of the initiative process
26 because in commanding the Nevada Legislature to take specific action, it exceeds the
27 powers of direct democracy reserved to the people by the Nevada Constitution.

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

3 **THIRD CAUSE OF ACTION**

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

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

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

12 38. “Section 6 applies to *all* proposed initiatives, without exception, and *does*
13 *not permit* any initiative that fails to comply with the stated conditions.” *Rogers v.*
14 *Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001) (emphases in original).

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

19 40. Here, the Petition mandates the Nevada Legislature appropriate money
20 to fund each EFA in an amount comparable to the amount of funding that would
21 otherwise be used in the public school system.

22 41. The Petition fails to impose any taxes or otherwise raise the necessary
23 revenue to either fund each EFA contemplated by the Petition, or to pay for the
24 administrative expenses that would necessarily have to be incurred in creating,
25 maintaining and administering the EFA program.

26 42. Although the wide-ranging changes mandated by the Petition would
27 unquestionably require expenditures of money, the Petition contains no tax or other
28 provision for their funding, thereby violating Article 19, Section 6.

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

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs ask this Court to enter an order:

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

8 B. Declaring that the Petition does not comply with Article 19, Section 6 of
9 the Nevada Constitution because it impermissibly mandates an unfunded expenditure;

10 C. Declaring that the Petition represents an impermissible use of the
11 initiative process because it seeks to bind future Legislatures, in contravention of laws;

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

14 E. Enjoining Education Freedom For Nevada and its proponents, officers, or
15 agents from circulating the signatures for verification pursuant to NRS 293.1276 to
16 293.1279, inclusive;

17 F. In the circumstance that Education Freedom For Nevada has obtained
18 any signatures of Nevada voters, invalidating those signatures;

19 G. Awarding Plaintiffs their reasonable costs and attorneys' fees; and

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 H. Granting such other relief as the Court deems appropriate.

2 **AFFIRMATION**

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

5 DATED this 24th day of March, 2022.

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

8 Bv: 

9 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
10 JOHN SAMBERG, ESQ. (NSB 10828)
11 DANIEL BRAVO, ESQ. (NSB 13078)
12 3773 Howard Hughes Parkway, Suite 590 South
13 Las Vegas, Nevada 89169

14 *Attorneys for Plaintiffs*

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

Signature of Petition Filer

Date

DESCRIPTION OF EFFECT

The initiative requires the Legislature to establish an education freedom account program under which parents may spend money appropriated by the Legislature to pay for part or all of their child's education outside the public school system. The Legislature may limit eligibility in the program to parents of children eligible to enroll in kindergarten and parents of children who enroll in the public school system for a specified period of time preceding establishment of an education freedom account not to exceed the entirety of the previous school year.

The initiative will result in the expenditure of state funds to fund the accounts in an amount comparable to the public support that would support the education of the child for whose benefit the account has been established in a public school. For Fiscal Year 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. Generating the revenue to fund the accounts could necessitate a tax increase or a reduction in government services. The Legislature must establish the program by the start of the school year that commences in 2025.

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		

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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 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

RECEIVED
2022 MAR 24 AM 11:07
AUSREY FOWLETT
CLERK

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

Case No.: 22 OC 00028 1B

Set In Department: 2
DEPUTY

RORY REID, an individual; BEVERLY
ROGERS, 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
Attorney General
CRAIG A. NEWBY (Bar No. 8591)
Deputy Solicitor General
LAENA ST-JULES (Bar No. 15156)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
T: (702) 486-3420
E: cnewby@ag.nv.gov
lstjules@ag.nv.gov
Attorneys for Defendant Barbara Cegavske

REC'D & FILED

2022 MAR 24 AM 11:43

AUBREY ROWLANDT
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,

vs.

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

Defendant,

EDUCATION FREEDOM PAC,

Intervenors, aligned as
Defendant.

Case No. 22 OC 00028 1B

Dept. No. I

LIMITED RESPONSE TO MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF CHALLENGING INITIATIVE PETITION C-04-2022
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 Rory Reid and Beverly Rogers'
Memorandum of Points and Authorities in Support of Complaint for Declaratory and
Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(1).

///

1 The Secretary of State does not take a position on the legality of the proposed
2 initiative. This case was brought prior to the Secretary of State having the opportunity to
3 consider certifying the proposed initiative as sufficient pursuant to NRS 295.061(2).
4 Plaintiffs and Intervenor will make those arguments, and the Secretary of State will
5 comply with any final judgment in this case. The Secretary of State does not take a position
6 on the policy merits of the proposed initiative. If deemed legal and qualified for the 2022
7 general election ballot, Nevadan voters will have that debate and make that policy decision.

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


10 AFFIRMATION

11 The undersigned does hereby affirm that the preceding Limited Response to
12 Memorandum of Points and Authorities in Support of Complaint for Declaratory and
13 Injunctive Relief Challenging Initiative Petition C-04-2022 Pursuant to NRS 295.061(1)
14 does not contain the social security number of any person.

15 DATED this 24th day of March, 2022.

16 AARON D. FORD
17 Attorney General

18 By:

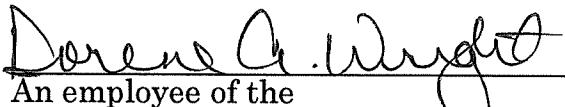

19 CRAIG A. NEWBY (Bar No. 8591)
20 Deputy Solicitor General
21 LAENA ST-JULES (Bar No. 15156)
22 Deputy Attorney General
23 *Attorneys for Defendant Barbara Cegavske*
24
25
26
27
28

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 C-04-2022 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.
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3773 Howard Hughes Pkwy., Ste. 590 S.
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

REC'D & FILED ✓

2022 MAR 24 PM 2:34

AUSREY BOWLETT
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
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(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**

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

Plaintiffs,

vs.

BARBARA CEGAVSKE, in her official
capacity as NEVADA SECRETARY OF
STATE; EDUCATION FREEDOM FOR
NEVADA, a Nevada Committee for
Political Action,

Defendants.

Case No.: **220C 00044 1B**

Dept. No.: **IF**

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS'
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-06-2022 PURSUANT
TO NRS 295.061(1)**

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs, Rory Reid and Beverly Rogers (collectively, "Plaintiffs"), by and through their attorneys of record, hereby submit this Memorandum of Points and Authorities in Support of the Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061(1).

I. INTRODUCTION

Initiative Petition C-06-2022 (the "Petition"), proposed by Erin Phillips, on behalf of Defendant Education Freedom For Nevada, seeks to amend Article 11 of the Nevada Constitution to require the Nevada Legislature to create an education savings

1 account program, known in the Petition as “education freedom accounts” (“EFAs”), for
2 K-12 students to attend schools and educational programs outside of the uniform
3 system of common public schools established pursuant to the Nevada Constitution. The
4 Petition, however, is legally deficient because its description of effect is misleading and
5 deceptive, and fails to enable voters to make an informed decision whether to support
6 it. Further, the Petition constitutes an impermissible use of the initiative process
7 because it commands the Nevada Legislature to take specific legislative action, it
8 exceeding the constitutional powers of direct democracy reserved to the people of
9 Nevada. Finally, the Petition fails to impose any taxes or otherwise raise the necessary
10 revenue sufficient to fund its EFA program, which violates Article 19, Section 6 of the
11 Nevada Constitution.

12 The Petition does not comply with the requirements of Nevada law, and the
13 Court should enjoin the Secretary of State from taking any further action upon it.

14 **II. THE INITIATIVE PETITION**

15 On March 3, 2022, the Petition was filed with the Nevada Secretary of State. *See*
16 **Exhibit 1**, a true and accurate copy of Notice of Intent to Circulate Statewide Initiative
17 or Referendum Petition associated with Initiative Petition C-06-2022. The Petition
18 seeks to amend Article 11 of the Nevada Constitution by adding a new section, which
19 reads, in full:

20 No later than the school year commencing in 2025, and on an ongoing
21 basis thereafter, the Legislature shall provide by law for the
22 establishment of education freedom accounts by parents of children
23 being educated in Nevada. Parents shall be authorized to use the funds
24 in the accounts to pay for the education of their child in full or in part
25 in a school or educational environment that is not a part of the uniform
26 system of common schools established by the Legislature except that
27 the Legislature may limit eligibility to participate in the program to
28 parents of children eligible to enroll in kindergarten and parents of
children who enroll in the uniform system of common schools for a
specified period of time prior to establishing an education freedom
account not to exceed the entirety of the preceding school year. The
Legislature shall appropriate money to fund each account in an
amount comparable to the amount of funding that would otherwise be
used to support the education of that child in the uniform system of
common schools.

1 See **Exhibit 1**, at 2. The Petition includes a description of effect as required by
2 NRS 295.009(1)(b), which reads, in full:

3 The initiative requires the Legislature to establish an education
4 freedom account program under which parents may spend money
5 appropriated by the Legislature to pay for part or all of their child's
6 education outside the public school system. The Legislature may limit
7 eligibility in the program to parents of children eligible to enroll in
kindergarten and parents of children who enroll in the public school
system for a specified period of time preceding establishment of an
education freedom account not to exceed the entirety of the previous
school year.

8 The initiative will result in the expenditure of state funds to fund the
9 accounts in an amount comparable to the public support that would
10 support the education of the child for whose benefit the account has
11 been established in a public school. For Fiscal Year 2021-2022, the
12 Legislature determined the statewide base per pupil amount to be
\$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per
pupil. Generating the revenue to fund the accounts could necessitate
a tax increase or a reduction in government services. The Legislature
must establish the program by the start of the school year that
commences in 2025.

13 See **Exhibit 1**, at 3.

14 The Petition commands the Nevada Legislature to enact law, no later than the
15 2025 school year,¹ establishing a voucher-style EFA program that would authorize
16 parents to use taxpayer monies disbursed to them by the State to pay for non-public
17 school expenses, such as private school tuition. *Id.* By doing so, the Petition
18 impermissibly mandates a future Nevada Legislature to appropriate money to fund
19 each EFA in an amount comparable to that which, theoretically, would otherwise be
20 used in the public school system. *Id.* Additionally, the Petition permits the Nevada
21 Legislature to limit eligibility to participate in the EFA program. *Id.*

22
23
24 ¹ As an amendment to the Nevada Constitution, this proposed measure would
25 have to qualify for the ballot and then be approved by the vote of the people at the 2022
26 and 2024 General Elections. The 2025 academic year begins in the summer of 2025,
27 about eight months after the November 2024 General Election. There is only one
28 legislative session during which the demands of the Petition may be addressed. In other
words, the command contained in this Petition is specifically directed to the 2025
Nevada Legislature, which has obviously not been constituted.

1 **III. ARGUMENT**

2 **A. The Petition's Description Of Effect Violates NRS 295.009(1)(B)**
3 **Because It Is Deceptive Or Misleading, And Fails To Provide**
4 **Essential Information Regarding The Petition's Effects**

5 Under NRS 295.009(1)(b), every initiative must "[s]et forth, in not more than
6 200 words, a description of the effect of the initiative or referendum if the initiative or
7 referendum is approved by the voters." The purpose of the description is to "prevent
8 voter confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev.
9 930, 939, 142 P.3d 339, 345 (2006). Thus, "[t]he importance of the description of effect
10 cannot be minimized, as it is what the voters see when deciding whether to even sign
11 a petition." *Coalition for Nevada's Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016
12 WL 2842925 at *2 (2016) (unpublished disposition) (citing *Educ. Initiative PAC v.*
13 *Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)).

14 The Nevada Supreme Court has repeatedly held that "a description of effect
15 must be straightforward, succinct, and non-argumentative, and it must not be
16 deceptive or misleading." *Educ. Initiative PAC*, 129 Nev. at 37. It must also "explain
17 the[] ramifications of the proposed amendment" in order to allow voters to make an
18 informed decision. *Nev. Judges Ass'n v. Lau*, 112 Nev. 51, 59 (1996). The Petition's
19 description of effect violates each of these requirements. Furthermore, although a
20 description need not "explain hypothetical effects" or "mention every possible effect" of
21 the initiative, *Educ. Initiative PAC*, 129 Nev. at 37, it must at very least fairly present
22 enough information for a potential signer to make an informed decision about whether
23 to support the initiative. *See Nev. Judges Ass'n v. Lau*, 112 Nev. at 59 (rejecting
24 initiative description for "failure to explain [certain] ramifications of the proposed
25 amendment," which "renders the initiative and its explanation potentially
26 misleading").

27 Here, the Petition's description of effect states that "[g]enerating the revenue to
28 fund the accounts could necessitate a tax increase or a reduction in government
services[.]" the description of effect misleadingly fails to disclose that any funding

1 appropriated for the contemplated program would inevitably reduce the funding
2 available funding for Nevada's public school system, leading to a deterioration in
3 Nevada's public school system. The description of effect fails to disclose the significant
4 financial burden placed on the State Treasurer and the Department of Education to
5 support and maintain Nevada's public school system because of the Petition's effects of
6 diverting funds appropriated for the operation of the public schools to EFAs for private
7 expenditures. Public schools in Nevada—or anywhere—do not operate on individual
8 per-student contributions by the State; that is merely a shorthand way of expressing
9 education funding. Schools, unsurprisingly, have hard costs—utility costs,
10 compensation for staff and maintenance, etc. Subtracting the amount that would have
11 been allocated to a school or district because a number of parents take money that
12 would have been spent on electricity for a school building will inarguably affect the
13 functioning of the school system, and the description should admit this if, in fact, the
14 purpose of the description is (as the Nevada Supreme Court has long maintained) to
15 inform the electorate honestly rather than to persuade on a political level.

16 The description of effect incorrectly conflates “the public support that would
17 support the education of the child” with the statewide average base per-pupil amount,
18 a completely different figure describing only a portion of per-pupil “public support.”
19 The most recent K-12 funding legislation describes “total public support” as:

20 “[A]ll money appropriated directly for the support of the public schools
21 in this State, including, without limitation, the statewide base per
22 pupil funding amount, adjusted base per pupil funding, additional
23 weighted funding and all money appropriated for a specific program or
24 purpose in support of the public schools, and all other money projected
25 to be received for the support of the public schools from taxes, fees and
26 other revenues authorized by state law, excluding any money provided
27 by the Federal Government directly to a public school or school district
28 or otherwise provided on a one-time basis in response to an
emergency.”

SB 458, § 2(2) (2021).

The legislature calculated the average total public support per pupil at \$10,204
for FY 2020-2021 and \$10,290 for FY 2022-2023. The description of effect provides

signatories with significantly smaller per-pupil figures, \$6,980 and \$7,074, respectively. It cites the statewide average base per-pupil funding levels despite the initiative requiring EFA accounts fund an amount comparable to “public support that would support the education of the child for whose benefit the account has been established in a public school,” which would include funding beyond the statewide base per pupil amount.

Likewise, the description of effect completely omits the variable per-pupil funding support that any given student might receive in determining a comparable per-pupil funding amount for the EFA. The recently passed education funding formula, the Pupil-Centered Funding Plan, determines each student’s per-pupil support using a variety of factors. The formula adjusts per-pupil funding based on a student’s district size, geography, population, enrollment zones, and labor costs. For example, for FY 2021-2022, the legislature allocated a student in Esmeralda County an adjusted base per-pupil of \$22,360, due to its small, rural status, compared to \$7,222 for a Washoe County student. SB 458, § 5(4). Additionally, a student may receive additional weighted per-pupil support based on their status as a special education, low-income, or gifted and talented student. The comparable funding levels for any given student can vary widely based on these funding formula calculations. The description of effect incorrectly describes “the public support that would support the education of *the child*” in narrow terms that does not reflect the actual funding that an individual student might receive, and consequently, the actual financial impact to taxpayers and local district budgets. See **Exhibit 1**, at 3 (emphasis added).

B. The Petition Is An Impermissible Use Of The Initiative Process

The Petition does not, by itself, establish an EFA. Instead, Petition commands the Nevada Legislature to enact a statute or set of statutes effecting its terms. The binding command of the Petition violates the inherent deliberative functions of the Nevada Legislature, and thus cannot proceed in its current form. Simply put, no agency, no executive branch leader, no petition proponent, not even a fully-constituted

1 and elected legislature can direct or commandeer the discretion of a future legislature;
2 this is the very root of democratic governance.

3 The people's initiative power "is legislative in nature." *Nevadans for the*
4 *Protection of Property Rights, Inc. v. Heller*, 122 Nev. 894, 914 (2006). It is a historic
5 legal commonplace that one legislature may not control future legislations. "Implicit in
6 the plenary power of each legislature is the principle that one legislature cannot enact
7 a statute that prevents a future legislature from exercising its law-making power," and
8 there is "a general rule that one legislature cannot abridge the power of a succeeding
9 legislature." *Washington State Farm Bureau Fed'n v. Gregoire*, 162 Wash. 2d 284, 301,
10 174 P.3d 1142, 1150 (2007). *See also Ex parte Collie*, 38 Cal. 2d 396, 398, 240 P.2d 275,
11 276 (1952) ("It is the general rule that one legislative body cannot limit or restrict its
12 own power or that of subsequent Legislatures and that the act of one Legislature does
13 not bind its successors."). In exactly the same vein, the people, acting through the
14 initiative process, can no more command the Legislature to take specific legislative
15 action than a current Legislature can bind a future one. The people's initiative power
16 is to enact statutes or amendments, and that power does not extend to preventing a
17 future legislature from exercising its law-making power or deliberative function.
18 "Legislators must be free to deliberate and vote their own considered judgment, being
19 responsible to their own constituents through the electoral process." *In re Initiative*
20 *Petition No. 364*, 930 P.2d 186, 192 (Okla. 1996).

21 To illustrate, the Nevada Constitution may be amended in several ways, and one
22 of those is for the Legislature to propose and approve a particular measure at two
23 successive sessions, prior to submission to the electorate at a general election. Nev.
24 Const. art. XVI, § 1. But the initial legislature to approve a particular measure cannot
25 also pass a law requiring the next legislature to also approve; that would be flatly
26 unlawful and in contravention of basic democratic functions. Furthermore, consider if
27 the present Petition is approved by the people and becomes part of the state
28 constitution, but the 2025 Legislature refuses to enact the required statutes, or the

1 Governor refuses to sign the bill. What is the remedy? Is this Court, or the Nevada
2 Supreme Court, going to order individual legislators to vote in particular ways on
3 legislation? Is it going to issue a writ of mandamus against the Governor of Nevada?
4 Of course not, and this is why the legislative power—either of the Legislature itself, or
5 the people in their legislative capacity—cannot be exercised in this manner, because it
6 leads to intolerable constitutional crises.²

7 In *In re Initiative Petition No. 364*, the Oklahoma Supreme Court faced an
8 initiative petition that contained a purported command to the state legislature. Over
9 proponent's objections that the measure was, in fact, non-binding, the court looked to
10 the language of the initiative and found it to be "an express mandate from the people
11 to the Legislature to take a specific action." *Id.*, at 193. As such, the measure could not
12 stand, because "Legislative deliberation cannot exist where the outcome is a
13 predetermined specific action." *Id.* "State lawmakers," the court concluded, "cannot be
14 compelled to cast a vote in obedience to an electorate's instructions." *Id.*, at 200.

15 Here, the Petition's command to the Nevada Legislature is purportedly binding,
16 and the deliberative function of the Legislature is impermissibly impaired. Nevada
17 legislators would not be free to deliberate and vote their own considered judgment,
18 being responsible to their own constituents, and they would no longer be part of a
19 deliberative body acting independently in exercising their individual best judgments
20 on the matters that come before them. The outcome of the specific action mandated by
21 the Petition—passage of a statute or statutes effecting the terms of the initiative—
22 would be predetermined. No initiative may compel such a result.

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26 ² This is very different from, for example, the command to the Legislature to enact
27 the public school appropriations as the first budgetary priority, pursuant to Article XI,
28 Section 6. In that instance, a remedy exists in the form of invalidation of appropriations
or expenditures that are enacted before the funding of the public school system.

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

3 The Petition is also separately invalid because it mandates expenditures without
4 providing reciprocal revenues in violation of Article 19, Section 6 of the Nevada
5 Constitution. That provision prohibits any initiative that “makes an appropriation or
6 otherwise requires the expenditure of money, unless such statute or amendment also
7 imposes a sufficient tax, not prohibited by the Constitution, or otherwise
8 constitutionally provides for raising the necessary revenue.” Nev. Const. art. XIX, § 6.
9 “Section 6 applies to all proposed initiatives, without exception, and does not permit
10 any initiative that fails to comply with the stated conditions.” *Rogers v. Heller*, 117 Nev.
11 169, 173, 18 P.3d 1034, 1036 (2001) (emphasis supplied). “If the Initiative does not
12 comply with section 6, then the Initiative is void” in its entirety, and the offending
13 provision cannot be severed to render it constitutional.³ *Id.* at 173, 177-78.

14 “Simply stated, an appropriation is the setting aside of funds, and an
15 expenditure of money is the payment of funds.” *Rogers*, 117 Nev. at 173. The Nevada
16 Constitution prohibits initiatives that require appropriations or expenditures in order
17 to “prevent[] the electorate from creating the deficit that would result if government
18 officials were forced to set aside or pay money without generating the funds to do so.”
19 *Herbst Gaming*, 122 Nev. at 891. An initiative need not “by its terms appropriate
20 money” to violate the prohibition. *Id.* at 890 n.40 (citing *State ex rel. Card v. Kaufman*,
21 517 S.W.2d 78, 80 (Mo. 1974)). Rather, “an initiative makes an appropriation or
22 expenditure when it leaves budgeting officials no discretion in appropriating or
23 expending the money mandated by the initiative—the budgeting official must approve
24 the appropriation or expenditure, regardless of any other financial considerations.” *Id.*

25 ³ Although the substantive constitutionality of a ballot initiative is often not ripe
26 for review until the initiative is enacted, *See Herbst Gaming, Inc. v. Heller*, 122 Nev.
27 877, 884, 141 P.3d 1224, 1229 (2006), Nevada courts have held that compliance with
28 Article 19, Section 6’s appropriation or expenditure provision is a “threshold content
restriction” that may be raised in a pre-election challenge, *Id.* at 890 n.38 (quoting
Rogers, 117 Nev. at 173).

1 at 890. This is precisely what the Petition does.

2 Here, the Petition mandates the Nevada Legislature appropriate money to fund
3 each EFA in an amount comparable to the amount of funding that would otherwise be
4 used in the public school system. The very first sentence of the second paragraph of the
5 Petition's description declares that "[t]he initiative will result in the expenditure of
6 state funds ..." **Exhibit 1**, at 3. The Petition fails to impose any taxes or otherwise
7 raise the necessary revenue to either fund the EFAs contemplated by the Petition, or
8 to pay for the administrative expenses that would necessarily have to be incurred in
9 creating, maintaining, and administering the EFA program. Although the wide-
10 ranging changes mandated by the Petition would unquestionably require enormous
11 expenditures of money, the Petition contains no tax or other provision for funding,
12 thereby violating Article 19, Section 6.

13 With some small exceptions, the proposed initiative largely tracks the provisions
14 of Senate Bill ("S.B.") 302 (2015), which the Nevada Supreme Court struck down in
15 *Schwartz v. Lopez*, 132 Nev. 732, 738, 382 P.3d 886, 891 (2016), on the grounds that
16 S.B. 302 failed to appropriate funds for the EFAs contemplated by the bill and that
17 moneys appropriated for K-12 public education could not properly be used for this
18 purpose. The proponents of the Petition are obviously attempting to circumvent the
19 lack of funding which led to S.B. 302 being struck down by sidestepping this issue and
20 passing the buck to the Legislature to appropriate the necessary funding for the EFA
21 grants. In doing so, however, the Petition plainly runs afoul of Article 19, section 6 of
22 the Nevada Constitution, which prohibits any initiative which requires the expenditure
23 of money, without providing for the necessary revenue to cover such expenditures. This
24 Petition, like its predecessor S.B. 302, is thus fatally flawed.

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1 **IV. CONCLUSION**

2 For the reasons set forth above, the Court should grant Plaintiffs' requested
3 relief, striking Initiative Petition C-06-2022 and issuing an injunction prohibiting the
4 Secretary of State from taking further action upon it.

5 **AFFIRMATION**

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

8 DATED this 24th day of March, 2022.

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

11 By: 

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23
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27
28

State of Nevada - Initiative Petition – Constitutional Amendment

EXPLANATION: Matter in ***bolded italics*** is new language to be added to the Nevada Constitution by this Amendment. Matter in strikethrough is existing language in the Nevada Constitution to be deleted by this Amendment.

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

Section 1: Article 11 of the Nevada Constitution is hereby amended by adding thereto a new section to read as follows:

1. ***No later than the school year commencing in 2025, and on an ongoing basis thereafter, the Legislature shall provide by law for the establishment of education freedom accounts by parents of children being educated in Nevada. Parents shall be authorized to use the funds in the accounts to pay for the education of their child in full or in part in a school or educational environment that is not a part of the uniform system of common schools established by the Legislature except that the Legislature may limit eligibility to participate in the program to parents of children eligible to enroll in kindergarten and parents of children who enroll in the uniform system of common schools for a specified period of time prior to establishing an education freedom account not to exceed the entirety of the preceding school year. The Legislature shall appropriate money to fund each account in an amount comparable to the amount of funding that would otherwise be used to support the education of that child in the uniform system of common schools.***
2. **Severability.** Should any 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.

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DESCRIPTION OF EFFECT

The initiative requires the Legislature to establish an education freedom account program under which parents may spend money appropriated by the Legislature to pay for part or all of their child's education outside the public school system. The Legislature may limit eligibility in the program to parents of children eligible to enroll in kindergarten and parents of children who enroll in the public school system for a specified period of time preceding establishment of an education freedom account not to exceed the entirety of the previous school year.

The initiative will result in the expenditure of state funds to fund the accounts in an amount comparable to the public support that would support the education of the child for whose benefit the account has been established in a public school. For Fiscal Year 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. Generating the revenue to fund the accounts could necessitate a tax increase or a reduction in government services. The Legislature must establish the program by the start of the school year that commences in 2025.

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

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Office Use Only

1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY	COUNTY
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The initiative will result in the expenditure of state funds to fund the accounts in an amount comparable to the public support that would support the education of the child for whose benefit the account has been established in a public school. For Fiscal Year 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. Generating the revenue to fund the accounts could necessitate a tax increase or a reduction in government services. The Legislature must establish the program by the start of the school year that commences in 2025.

County of _____
Petition District _____

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

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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 MAR 25 PM 4:57

AUDREY BOWLATT
CLERK

RY DEPUTY

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
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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

RORY REID, an individual; BEVERLY
ROGERS, 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-00028 1B

Dept. No.: II

PLAINTIFFS' REPLY IN
SUPPORT OF COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-04-2022 PURSUANT
TO NRS 295.061(1)

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Initiative Petition C-04-2022 (the "Petition") is legally deficient and must be
invalidated under Nevada law. Education Freedom PAC ("Intervenor") fails to provide
any reason for the Court to conclude otherwise.

1 **II. ARGUMENT**

2 **A. Plaintiffs Filed the Complaint in the Time Required By Statute**

3 NRS 295.061 provides that an initiative or referendum “may be challenged by
4 filing a complaint in the First Judicial District Court not later than 15 days, Saturdays,
5 Sundays and holidays excluded, after a copy of the petition is placed on file with the
6 Secretary of State[.]” The Petition here was filed with the Secretary of State on January
7 31, 2022, and the Complaint was filed on February 22, 2022, which was within the time
8 prescribed by NRS 295.061.¹

9 Further, this complaint is ripe for this Court’s review as NRS 295.061 authorizes
10 all of Plaintiffs’ challenges. *See PEST Comm. v. Miller*, 648 F. Supp. 2d 1202, 1216 (D.
11 Nev. 2009), *aff’d*, 626 F.3d 1097 (9th Cir. 2010) (recognizing that Nevada court have
12 heard pre-election challenges such as an initiative seeks to legislate administrative
13 details or that an initiative requires an expenditure of money without raising the
14 necessary revenue).

15 Additionally, Intervenor’s argument that the complaint should be dismissed
16 because the Court did not hold a hearing within the time allotted by statute is
17 unsupported by case law or statutory law. There is a significant legal difference
18 between a “directory” deadline and a “mandatory” deadline. The statutory deadline for
19 the filing of the present lawsuit is mandatory, and there would be grounds for dismissal
20 if Plaintiffs had not respected that deadline. The fifteen-day direction in the hearing
21 portion of the statute is, as the Court is already aware, a directory deadline; otherwise,
22

23
24 ¹ NRS 295.061 only requires a complaint, and all affidavits and documents in
25 support of the challenge, to be filed with the complaint within 15 days, weekends and
26 holidays excluded, after the Petition is filed with the Secretary of State. Intervenor’s
27 argument that it should have been named as a party is unsupported by case law or
28 statutory law, and in any event Intervenor issued a press statement the same day as
the filing indicating its intent to enter the case; Plaintiffs agreed immediately to
stipulate to the intervention; and Intervenor is now in the case, so the argument
seems moot at this stage.

1 rights of initiative opponents could be squelched merely by a lack of diligence by a
2 particular chambers, or other circumstances beyond the control of a plaintiff. As the
3 Nevada Supreme Court has said,

4 Finally, we consider the implications of construing the deadlines as
5 mandatory or directory. If the statutory deadlines at issue are
6 mandatory, then in a year when property assessments are plagued
7 with problems, real or perceived, and multitudes of taxpayers wish to
8 contest their assessments, the State Board might not have adequate
9 time to hear all taxpayer appeals. Construing the statutory deadlines
as mandatory would then result in denying taxpayers the opportunity
to challenge assessments, whereas construing the deadlines as
directory would allow the boards to hear all of the taxpayer appeals.
This court may construe a statute as directory to prevent 'harsh, unfair
or absurd consequences.'

10 *Vill. League to Save Incline Assets, Inc. v. State ex rel. Bd. of Equalization*, 124 Nev.
11 1079, 1088, 194 P.3d 1254, 1260-61 (2008). Here, the function of the deadline is
12 directory, to urge the Court to act expeditiously but not to overturn the normal
13 presumption that cases are to be determined on their merits.

14 **B. The Petition's Description of Effect Is Legally Insufficient**

15 Plaintiffs are not attempting to persuade the Court to include their preferred
16 language in the description of effect as Intervenor suggests. The description of effect is
17 misleading. The description incorrectly conflates "the public support that would
18 support the education of the child" with the statewide average base per-pupil amount,
19 a completely different figure describing only a portion of per-pupil "public support."
20 The most recent K-12 funding legislation describes "total public support" as:

21 "[A]ll money appropriated directly for the support of the public schools
22 in this State, including, without limitation, the statewide base per
23 pupil funding amount, adjusted base per pupil funding, additional
24 weighted funding and all money appropriated for a specific program or
25 purpose in support of the public schools, and all other money projected
to be received for the support of the public schools from taxes, fees and
other revenues authorized by state law, excluding any money provided
by the Federal Government directly to a public school or school district
or otherwise provided on a one-time basis in response to an
emergency."

26 SB 458, § 2(2) (2021).

27 The Legislature calculated the average total public support per pupil at \$10,204
28

1 for FY 2020-2021 and \$10,290 for FY 2022-2023. The description of effect provides
2 signatories with significantly smaller per-pupil figures, \$6,980 and \$7,074,
3 respectively. It cites the statewide average base per-pupil funding levels despite the
4 initiative requiring EFA accounts fund an amount comparable to “public support that
5 would support the education of the child for whose benefit the account has been
6 established in a public school,” which would include funding beyond the statewide base
7 per pupil amount.

8 Likewise, the description of effect completely omits the variable per-pupil
9 funding support that any given student might receive in determining a comparable per-
10 pupil funding amount for the EFA. The recently passed education funding formula, the
11 Pupil-Centered Funding Plan, determines each student’s per-pupil support using a
12 variety of factors. The formula adjusts per-pupil funding based on a student’s district
13 size, geography, population, enrollment zones, and labor costs. For example, for
14 FY 2021-2022, the legislature allocated a student in Esmeralda County an adjusted
15 base per-pupil of \$22,360, due to its small, rural status, compared to \$7,222 for a
16 Washoe County student. SB 458, § 5(4). Additionally, a student may receive additional
17 weighted per-pupil support based on their status as a special education, low-income, or
18 gifted and talented student. The comparable funding levels for any given student can
19 vary widely based on these funding formula calculations. The description of effect
20 incorrectly describes “the public support that would support the education of *the child*”
21 in narrow terms that does not reflect the actual funding that an individual student
22 might receive, and consequently, the actual financial impact to taxpayers and local
23 district budgets. See **Exhibit 1**, at 3 (emphasis added).

24 **C. The Petition Is An Impermissible Use Of The Initiative Process**

25 The Intervenor’s do not deny that the Petition is a command to the Legislature
26 to take specific legislative action. Intervenor points to other provisions in the Nevada
27 Constitution that require the passage of specific legislation. Yet, the provisions
28 identified were not the subject of initiative petitions, and did not, therefore, raise the

1 question here: whether a command to the Legislature to enact specific laws, contained
2 in an initiative petition, exceeds the people's legislative capacity. The people's
3 legislative capacity is sufficient to enact laws without resort to such a command. "If the
4 people have the power to enact a measure by initiative, they should do so directly." *Am.*
5 *Fed'n of Lab. v. Eu*, 36 Cal. 3d 687, 714, 686 P.2d 609, 627 (1984).

6 **D. The Petition Violates The Nevada Constitution's Prohibition On**
7 **Initiatives That Mandate Unfunded Expenditures**

8 Intervenor does not dispute that the Petition mandates expenditures without
9 generating funds to do so. Intervenor's argument is that Article 19, Section 6's
10 prohibition on unfunded mandates does not apply to initiatives that propose an
11 amendment to the Nevada Constitution. The Nevada Supreme Court has stated
12 multiple times that Article 19, Section 6 applies to all initiatives. *See Herbst Gaming,*
13 *Inc. v. Heller*, 122 Nev. 877, 890, 141 P.3d 1224, 1232-33 (2006) ("Nevada Constitution
14 Article 19, Section 6 prohibits *any* initiative that 'makes an appropriation or otherwise
15 requires the expenditure of money, unless such statute or amendment also imposes a
16 sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides
17 for raising the necessary revenue.'") (emphasis added; citing Nev. Const. art. XI, § 6);
18 *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001) ("Section 6 applies to all
19 proposed initiatives, without exception, and does not permit any initiative that fails to
20 comply with the stated conditions.").

21 **III. CONCLUSION**

22 For reasons discussed, the Petition is legally deficient, and Plaintiffs' requested
23 relief should be granted.

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DATED this 24th day of March, 2022.

By:

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2022, a true and correct copy of the **PLAINTIFFS' REPLY IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-04-2022 PURSUANT TO NRS 295.061(1)** was electronically mailed to all parties per below, and then served upon all parties via U.S. Mail postage prepaid, Las Vegas, Nevada 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

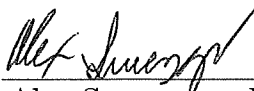
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BShadron@carson.org

By: 

Alex Swezey, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN
& RABKIN, LLP

EXHIBIT 1

EXHIBIT 1

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

State of Nevada



Secretary of State Barbara K. Cogavske

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 – Constitutional Amendment

EXPLANATION: Matter in ***bolded italics*** is new language to be added to the Nevada Constitution by this Amendment. Matter in strikethrough is existing language in the Nevada Constitution to be deleted by this Amendment.

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

Section 1: Article 11 of the Nevada Constitution is hereby amended by adding thereto a new section to read as follows:

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2. **Severability.** Should any 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.

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DESCRIPTION OF EFFECT

The initiative will provide parents with the ability to use funds appropriated by the Legislature to pay for the education of their child in a school or educational environment that is not a part of the public school system. The initiative requires the Legislature to establish an education freedom account program under which parents may spend money appropriated by the Legislature into those accounts to pay for some or all of their child's education outside the public school system. The Legislature must establish an eligibility criteria for parents to establish an account.

The initiative will result in the expenditure of state funds to fund the accounts in an amount comparable to the public support that would be used to support the education of the child for whose benefit the account has been established in a public school. For Fiscal Year 2021-2022, the Legislature determined the statewide base per pupil amount to be \$6,980 per pupil. For Fiscal Year 2022-2023, that amount is \$7,074 per pupil. Generating the revenue to fund the accounts could necessitate a tax increase or a reduction in government services. The Legislature must establish the program by the start of the school year that commences in 2025.

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	
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DESCRIPTION OF EFFECT

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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	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

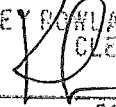
_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
(775) 788-2000
(775) 788-2020
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*Attorneys for Intervenor
Education Freedom PAC*

RECD & FILED
2022 MAR 25 PM 3: 33

AUBREY SCHWARTZ
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,

vs.

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

Defendant.

Case No. 22 OC 00028 1B

Dept. No. II

**RESPONSE TO COURT'S ORDER TO
SHOW CAUSE**

Intervenor Education Freedom PAC ("EFP") hereby provides its response to the Court's order to show cause, in its March 23, 2022 Order, why the above-titled case should not be consolidated with *Rogers v. Cegavske*, First Judicial District Court Case No. 22 OC 00027 1B. This response is based on the memorandum of points and authorities below and all papers, exhibit on file with the Court in this matter.

MEMORANDUM OF POINTS & AUTHORITIES

On March 24, 2022, Plaintiffs filed their Response to Court's Order to Show Cause Re: Merging Cases arguing that this Court should not consolidate the cases because doing so would be improper and potentially unfair. EFP submits that while the cases have some common elements, the legal and factual questions at issue are distinct and consolidating the cases would cause confusion and prejudice that would substantially outweigh any judicial convenience.

1 Under NRCP 42(a)(2), this Court may consolidate actions that “involve a common
2 question of law or fact.” When determining whether to consolidate, courts “weigh the interest of
3 judicial convenience against the potential for delay, confusion and prejudice.” *Zhu v. UCBH*
4 *Holdings, Inc.*, 682 F.Supp.2d 1049, 1052 (N.D. Cal. 2010); *see also Yount v. Criswell Radovan,*
5 *LLC*, 136 Nev. 409, 414–15, 469 P.3d 167, 172 (2020) (“Where a Nevada rule is similar to an
6 analogous federal rule, the cases interpreting the federal rule provide persuasive authority as to
7 the meaning of the Nevada rule.”).

8 Here, there are no common questions of law and fact. Although Plaintiffs make similar
9 claims in both cases, their arguments manifest differently in each case. This is because the
10 petitions at issue in each case are different. At issue here is a petition to amend the Nevada
11 Constitution whereas at issue in Case No. 22 OC 00027 1B is a petition to enact a statute. What’s
12 more, while both petitions seek to create an education freedom account program, they do so in
13 different ways. The constitutional petition does so by requiring Legislative action articulated in a
14 relatively brief constitutional mandate. The statutory petition, on the other hand, proposes the
15 enactment of a detailed and comprehensive statutory scheme. What’s more, the descriptions of
16 effect for each petition are different, reflecting the legal and substantive distinctions between the
17 petitions. Thus, while both cases will require this Court to determine whether, as Plaintiffs allege
18 and EFP denies, the petitions’ descriptions satisfy the law, the issue is common to both cases only
19 in name. The arguments Plaintiffs present for each description are substantially different.
20 *Compare* S-02-2022 Op. Br. 5-7, *with* C-04-2022 Op. Br. 4-5. And EFP’s answers to those are
21 likewise substantially different. *Compare* S-02-2022 Ans. Br. 6-12, *with* C-04-2022 Ans. Br. 7-
22 9. Consequently, in fact and substance the issues in each case are distinct and cannot be decided
23 together without potentially causing confusion or prejudice.

24 This is also true in relation to the unfunded-mandate issue that Plaintiffs raise in both cases.
25 Although nominally common to both cases, this issue is factually and substantially distinct in
26 each. *Compare* S-02-2022 Op. Br. 7-9, *and* S-02-2022 Ans. Br. 12-15, *with* C-04-2022 Op. Br.
27 7-9, *and* C-04-2022 Ans. Br. 13-16. And, as EFP argues, the issue does not even apply to the
28 constitutional petition. C-04-2022 Ans. Br. 13-16. Consolidating the cases simply because this

1 issue and the description of effect issues are nominally the same would almost certainly cause
2 confusion for the parties and prejudice their ability to duly and thoroughly present the issues for
3 this Court's consideration.

4 Finally, consolidating the cases to decide the remaining issues together would be improper
5 for the additional reason that they are not even nominally similar. The remaining issues arise from
6 different factual bases in each petition, but they are also wholly distinct in each case. In Case No.
7 22 OC 00027 1B, Plaintiffs further challenge the statutory petition on the ground that it allegedly
8 dictates administrative details. S-02-2022 Op. Br. 9. But in this case, they challenge the
9 constitutional petition separately and distinctly on the ground that it is an allegedly impermissible
10 use of the initiative process. C-04-2022 Op. Br. 5-7. These issues are so unlike and unrelated
11 that the judicial convenience of consolidating the cases does not outweigh the confusion and
12 prejudice that trying and deciding them together would cause.

13 It should also be noted that the petitions at issue are distinct in another respect. The
14 proponents of the constitutional petition must submit signatures for verification no later than June
15 29, *see* NRS 295.056(3), whereas signatures for the statutory petition may be submitted no later
16 than November 23, 2022, *see* NRS 295.056(2). Furthermore, if the signatures on the constitutional
17 initiative are deemed valid, it will be placed on the ballot in this election cycle. Nev. Const. art.
18 19, sec. 4. However, if the signatures on the statutory petition are deemed valid, it will be
19 transmitted to the Legislature for action, after which it will appear on the ballot in the next general
20 election if the Legislature takes no action. *Id.*, art. 19, sec. 3. Thus, there are significant procedural
21 distinctions between the two petitions which have implications for the litigation of each. Nothing
22 should slow down the litigation of the constitutional petition at issue here given the tight timeframe
23 for collecting signatures. Consolidating the cases has the potential to do that. For example, motion
24 practice regarding Case No. 22 OC 00027 1B could slow down the processing of this case.

25 For the foregoing reasons, the Court should not consolidate this case with Case No. 22 OC
26 00027 1B.

27 ///


28 ///

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and that on the on the 25th 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

ORIGINAL

REC'D & FILED

March 25, 2022 Date

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
DANIEL BRAVO, ESQ. (NSB 13078)
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AUBREY ROWLATT
CLERK
By Deputy

Attorneys for Plaintiffs

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

RORY REID, an individual; BEVERLY
ROGERS, an individual; and STAND
UP FOR STUDENTS NEVADA PAC, a
Nevada committee for political action,

Plaintiffs,

vs.

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

Defendant,

and

EDUCATION FREEDOM PAC, a
Nevada committee for political action,

Intervenor-Defendant

Case No.: 22 OC 00028 1B

Dept. No.: II

**RESPONSE TO COURT'S ORDER
TO SHOW CAUSE RE: MERGING
CASES**

Plaintiffs here provide their response to the Court's order to show cause, in its
March 23, 2022 Order, why the above-entitled case should not be merged with *Beverly
Rogers v. Cegavske*, First Judicial District Court Case No. 22 OC 00027 1B. The
response is based upon the memorandum of points and authorities below, and all
papers, exhibits on file with the Court in the present matter.

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 Intervenor-Defendant Education Freedom PAC (“EFP”) has filed two separate
3 proposed ballot measure petitions, one a constitutional amendment and the other a
4 proposed statute: Nevada Initiative C-04-2022, EFP’s proposed constitutional
5 amendment that is the subject of the present action; and Nevada Initiative S-02-2022,
6 EFP’s separately-proposed statute. Both measures target the treatment and funding
7 of public and private education in Nevada, but do so in very different ways. (EFP also
8 filed a further proposed constitutional amendment, its third measure of the election
9 cycle, C-06-2022, on March 3, 2022, the legal sufficiency of which Plaintiffs in this
10 case expect to file a similar challenge as to the current one promptly.)

11 Because of the strict legal separation between these measures, while this Court
12 has been appointed to hear and determine challenges to each of them, they should
13 not be merged or consolidated into a single case, and they should be the subject of
14 separate hearings, arguments, and deliberations. Expedition of the cases may require
15 them to proceed in parallel fashion, for reasons of efficiency, but formal consolidation
16 is not appropriate.

17 The two proposed ballot measures are separate measures in all ways., and they
18 are treated separately under law. Each of them will be analyzed independently by
19 courts to determine their legal sufficiency, pursuant to the causes of action and
20 allegations in the respective complaints. Each of them proceeds on a different
21 timeline for signature gathering: the statutory proposal requires signatures to be
22 submitted in November of 2022, for example. Each of them is authorized and
23 regulated pursuant to different constitutional provisions; C-04-2022 (*Reid v.*
24 *Cegavske*) is regulated under Nev. Const. Article 19, Section 4, while S-02-2022
25 *Rogers v. Cegavske*) is regulated pursuant to Nev. Const. Article 19, Section 3.

26 Practically speaking, EFP’s constitutional proposal could garner sufficient
27 signatures to proceed to the 2022 general election ballot, while the statutory proposal
28 does not receive enough to be presented to the 2023 Legislature. Both measures could

1 qualify with sufficient signatures, but one is approved by the electorate at an eventual
2 general election while the other is not. Any combination of these eventualities is
3 possible, as is the chance that the 2023 Nevada Legislature enacts, rejects, or submits
4 a competing measure to EFP's statutory proposal. In plain language, the two
5 measures are entirely different animals, subject to different processes and procedures
6 and requiring independent scrutiny, which is why they are the subject of discrete
7 lawsuits.

8 Seen another way, EFP does not get to present these separate measures as
9 some complementary package to the Court, as if the shortcomings of one may be
10 mitigated by the terms of the other. For example, EFP cannot argue to the Court that
11 any vagueness of the constitutional measure should be viewed in light of the specifics
12 of the statutory proposal, or that the command to the Legislature to enact certain
13 future laws is made permissible by the fact EFP has drawn up its own preferred
14 future statutes., which must undergo lengthy legislative consideration in any event.

15 NRS 295.061(1) permits challenge to the subject matter and procedural
16 requirements of "an initiative or referendum," singular, and the best way to ensure
17 fair consideration of every petition on its own merits to keep the measures separate,
18 even if their subject matter relates in some way.

19 **AFFIRMATION**

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

22 Respectfully submitted this 24th day of March, 2022.

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

25 By: 

26 BRADLEY S. SCHRAGER, ESQ.
27 JOHN SAMBERG, ESQ.
28 DANIEL BRAVO, ESQ.
 Attorneys for Plaintiffs

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2022 MAR 25 AM 11:49

AUBREY NEWLATT
CLERK

BY [Signature]
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, CASE NO.: 2200 0028 1B

Plaintiffs,

DEPT. NO. 1

Vs.

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

Defendant,

EDUCATION FREEDOM PAC,

**Intervenors, aligned
as Defendant.**

**ORDER TEMPORARILY
DENYING THE PLAINTIFFS'
PETITION TO DISMISS THE
INITIATIVE; ORDER
MAINTAINING THE NON-
MERGING OF THIS CASE WITH
THE BEVERLY ROGERS CASE;
ORDER COMMANDING ALL
PARTIES TO PREPARE HEARING
BRIEFS FOR TUESDAY NOT
EXCEEDING FIVE PAGES WHICH
PERTAIN TO THE FACTS AND
SUPPORT THE SUGGESTED
DISPOSITION**

**On Tuesday, March 29, 2022, at 1:00 p.m., this Court is prepared
to hear arguments in support of and in opposition to the compilation of**

1 an initiative process which significantly changes the way that parents,
2 on one hand, and school districts, on the other hand, provide
3 education opportunities for their students according to discrete levels
4 of advancement.
5

6 To get ready for next week, this Court has already signed an
7 Order Granting Joinder and specifically a hearing on the merits in an
8 effort to truncate the timeline because the statutes give this case a
9 commanding priority.
10

11 As we approach Tuesday's hearing, new pleadings have been
12 received from the authors of a Memorandum of Points and Authorities
13 in response to the Court's Order to show cause why the initial case
14 which primarily involves the Plaintiffs vs. the Nevada Secretary of
15 State and vs. the Education Freedom PAC, should not include an
16 affiliated Petition brought by attorneys in the case of BEVERLY
17 ROGERS, an individual, and RORY REID, an individual, Case No. 22
18 OC00027 1B, First Judicial District Court in and for Carson City, which
19 seeks a number of forms of relief, but most importantly, for this motion
20 practice, the BEVERLY Plaintiffs want to at least partly disassociate
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1 from the RORY REID Plaintiffs, and in due course submit their own
2 Points and Authorities relative to their case

3
4 The Court is inclined and hereby GRANTS authority to the newest
5 parties being brought into the mix to argue differential rationales for
6 legal sufficiency of the proposed Petition.
7

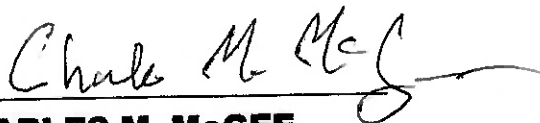
8 With that said, the primary focus will be whether the initiative is
9 deficient on its face.
10

11 In the meantime, the parties are directed to get ready for the oral
12 arguments on Tuesday, March ^{29c.m.} 8, 2022.
13

14 At the close of that hearing, this Court reserves the authority to
15 make a dispositional ruling, especially in light of the certainty of an
16 appeal.
17

18 IT IS SO ORDERED.

19
20 DATED this 25th day of March, 2022.

21
22 
23 CHARLES M. McGEE
24 Senior Judge on Assignment
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on this day, March ²⁵~~22~~, 2022, I emailed a copy
of ORDER GRANTING JOINDER; ORDER FOR HEARING ON THE MERITS
AND ORDER SHORTENING TIME in the foregoing case to:


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lfoletta@mcdonaldcarano.com

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John Samberg, Esq.
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CNewby@ag.nv.gov


JACKIE TUCKER
Assistant to Sr. Judge McGee

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
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2022 MAR 30 PM 1:47

AUDREY ROWLATT
CLERK

BY [Signature] DEPUTY

Attorneys for Plaintiffs

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

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

Case No. 22-OC-00044 1B

Plaintiffs,

Dept. No. II

vs.

BARBARA CEGAVSKE, in her official
capacity as NEVADA SECRETARY OF
STATE; EDUCATION FREEDOME FOR
NEVADA, a Nevada Committee for
Political Action,

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 C-06-2022 Pursuant to NRS 295.061(1), Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061(1) and Plaintiff's Initial Appearance Fee Disclosure on the 24th day of March, 2022 and served the same on the 25th day of March, 2022 at 11:25 am 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

AARON D. FORD
Attorney General

KYLE E. N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



JESSICA L. ADAIR
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

DATE RECEIVED: 3-25-2022 RECEIVED BY: C. SAVERNO

NAME OF ENTITY/PERSON SERVING: Dawn Calhoun CTH Couriers
PROCESS SERVERS

CASE NAME: Rory Reed, individual, Beverly Rogers, individual vs.

Barbara Cegauske, in her official capacity as Nevada Secretary
of State; Education Freedom for Nevada, a Nevada Committee for Political
CASE NUMBER: 22-cv-00041 IB COURT: First Judicial District Court Action

DOCUMENT(S) RECEIVED: Summon Barbara Cegauske; Complaint for Declaratory
and Injunctive Relief challenging Initiative Petition C-06-2022.

Pursuant to NRS 295.061(1); memorandum of PLAIN Support of
Plaintiffs' Complaint for Declaratory and Injunctive Relief, Challenging

☐ Service of Process

☒ Courtesy copy only (not Service of Process) Initiative
Petition
C-06-2022

PURSUANT TO STATUTE

Plaintiffs Initial Appearance Fee Disclosure

NOTICE

Pursuant to
NRS 295.061

☐ **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.

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2022 MAR 30 PM 1:47

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)

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AUBREY ROWLATT
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DEPUTY

Attorneys for Plaintiffs

**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,

vs.

BARBARA CEGAVSKE, in her official
capacity as NEVADA SECRETARY OF
STATE; EDUCATION FREEDOM FOR
NEVADA, a Nevada Committee for
Political Action,

Defendants.

Case No.: 22 CC 000441B

Dept. No.: JT

SUMMONS

EDUCATION FREEDOM FOR NEVADA

50 S. Jones Blvd. #201

Las Vegas, Nevada 89107

**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.**

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 or
2 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 the
7 publication must be attached to the proof of service, and proof of service must be made
8 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 a
21 defendant before the 120-day service period — or any extension thereof — expires, the
22 court must dismiss the action, without prejudice, as to that defendant upon motion or
23 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 period,
27 the court must extend the service period and set a reasonable date by which service
28 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.

Attorney or Party without Attorney: Bradley S Schrager, Esq. (SBN 10217) Wolf Rifkin Shapiro Schulman & Rabkin, LLP 3773 Howard Hughes Pkwy Suite 590 South Las Vegas, NV 89169 Telephone No: (702) 341-5200				<i>For Court Use Only</i>
Attorney For: Plaintiffs		Ref. No. or File No.: LV4594-006 REID II		
Insert name of Court, and Judicial District and Branch Court: In the First Judicial District Court of the State of Nevada in and for Carson City				
Plaintiff: Rory Reid, et al., Defendant: Barbara Cegavske, et al.				
DECLARATION OF SERVICE	Hearing Date:	Time:	Dept/Div: II	Case Number: 22 OC 000441B

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons; Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061(1); Memorandum of Points and Authorities in Support of Plaintiffs' Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061(1); Plaintiffs' Initial Appearance Fee Disclosure
3.
 - a. Party served: Education Freedom for Nevada, a Nevada Committee for Political Action
 - b. Person served: Cameron Phillips - Registered Agent, a person of suitable age and discretion, authorized to accept at the address listed below.
 Desc: Caucasian , Male , Age: 30s , Hair: Blond , Height: 5'8"
4. Address where the party was served: 50 S Jones Blvd 201, Las Vegas, NV 89107
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Mon, Mar 28 2022 (2) at: 12:41 PM

Fee for Service:

Pursuant to NRS 53.045

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

6. Person Who Served Papers:

- a. Luis Sanchez-Jacquez (R-2022-03727)
- b. FIRST LEGAL
 NEVADA PI/PS LICENSE 1452
 2920 N. GREEN VALLEY PARKWAY, SUITE 514
 HENDERSON, NV 89014
- c. (702) 671-4002

03/28/2022

(Date)

(Signature)



DECLARATION OF
SERVICE

6867057
(55190137)

JA0162

REC'D & FILED

2022 MAR 30 PM 1:47

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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Las Vegas, Nevada 89169
(702) 341-5200/Fax: (702) 341-5300
bschrager@wrslawyers.com
jsamberg@wrslawyers.com
dbravo@wrslawyers.com

BY  CLERK

DEPUTY

Attorneys for Plaintiffs

**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,

vs.

BARBARA CEGAVSKE, in her official
capacity as NEVADA SECRETARY OF
STATE; EDUCATION FREEDOM FOR
NEVADA, a Nevada Committee for
Political Action,

Defendants.

Case No.: 2201 00044 1B

Dept. No.: II

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.**

1 **READ THE INFORMATION BELOW.**

2 **TO THE DEFENDANT:** A civil Complaint has been filed by the plaintiffs
3 against you.

- 4 1. If you wish to defend this lawsuit, you must, within 20 days after this
5 Summons is served on you, exclusive of the day of service, file with this
6 Court a written pleading* in response to this Complaint.
- 7 2. Unless you respond, your default will be entered upon application of the
8 plaintiff, and this Court may enter a judgment against you for the relief
9 demanded in the Complaint**, which could result in the taking of money
10 or property or the relief requested in the Complaint.
- 11 3. If you wish to seek the advice of an attorney in this matter, you should
12 do so promptly so that your response may be filed on time.
- 13 4. You are required to serve your response upon plaintiff's attorney, whose
14 address is:

15 Bradley S. Schrager, Esq.
16 Daniel Bravo, Esq.
17 Wolf, Rifkin, Shapiro, Shulman & Rabkin, LLP
18 3773 Howard Hughes Parkway, Suite 590 South
19 Las Vegas, Nevada 89169

20 AUBREY ROWLETT, Clerk of the
21 Court

22 By: _____

23 Deputy Clerk

24 Date: march 24, 2022.

25 *There is a fee associated with filing a responsive pleading. Please refer to fee
26 schedule.

27 **Note – When service by publication, insert a brief statement of the object of the
28 action. See Rule 4.

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 or
2 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 the
7 publication must be attached to the proof of service, and proof of service must be made
8 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.

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15 does not affect the validity of the service.

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18 defendant no later than 120 days after the complaint is filed, unless the court grants
19 an extension of time under this rule.

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21 defendant before the 120-day service period — or any extension thereof — expires, the
22 court must dismiss the action, without prejudice, as to that defendant upon motion or
23 upon the court's own order to show cause.

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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 period,
27 the court must extend the service period and set a reasonable date by which service
28 should be made.

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

C & H COURIERS/PROCESS SERVERS

Work Order No. 795841

ORIGINAL

REC'D & FILED

2022 APR -4 PM 2:44

AUDREY ROBERTS
CLERK

BY KP DEPUTY

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
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Attorneys for Plaintiffs

**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,

vs.

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

Defendant,

and

EDUCATION FREEDOM PAC, a
Nevada committee for political action,

Intervenor-Defendant.

Case No.: 22 OC 00028 1B

Dept. No.: II

**PLAINTIFFS' MOTION TO
CONSOLIDATE CASE NO.
22 OC 00044 1B WITH CASE NO.
22 OC 00028 1B**

Plaintiffs, RORY REID and BEVERLY ROGERS (collectively, "Plaintiffs"), by and through undersigned counsel, hereby submit this Motion to Consolidate Case No. 22 OC 00044 1B with Case No. 22 OC 00028 1B (the "Motion"). The Motion is made and based upon the Memorandum of Points and Authorities and all of the papers and pleadings on file herein together with such further evidence and argument as may be presented and considered by this Court at any hearing of this Motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Nevada Rules of Civil Procedure 42(a), Plaintiffs move for an order
4 consolidating *Rory Reid, et al., v. Barbara Cegavske, et al.*, Case No. 22 OC 00044 1B,
5 First Judicial District Court of the State of Nevada in and for Carson City ("*Reid II*"),
6 with this action ("*Reid I*"). *Reid II*, filed on March 24, 2022, against the same
7 defendants in this action, challenges Initiative Petition C-06-2022, which is similar
8 to the challenged initiative petition in this action, Initiative Petition C-04-2022. Both
9 initiative petitions seek to amend the Nevada Constitution to require the Nevada
10 Legislature to create an education savings account program for K-12 students to
11 attend schools and educational programs other than public schools. This Court
12 possesses broad discretion to consolidate matters involving "a common question in
13 law or fact" such as the initiative petitions at issue in both actions. Plaintiffs urge the
14 Court to exercise this authority by consolidating *Reid II* with the *Reid I*.

15 **II. PROCEDURAL HISTORY**

16 **A. *Reid I***

17 On February 2, 2022, Plaintiffs in *Reid I* filed a Complaint for Declaratory
18 Relief and Injunctive Relief Challenging Initiative Petition C-04-2022, and a
19 Memorandum of Point and Authorities in Support of the Complaint. On or about
20 March 15, 2022, Intervenor Education Freedom PAC filed an answering brief in
21 response to Plaintiffs' Memorandum of Point and Authorities in Support of the
22 Complaint. On March 24, 2022, Plaintiffs filed a reply in support of their
23 Memorandum of Point and Authorities in Support of the Complaint. On March 29,
24 2022, the Court held a hearing on Plaintiffs' Memorandum of Point and Authorities
25 in Support of the Complaint.

26 **B. *Reid II***

27 On March 24, 2022, the plaintiffs in *Reid II* filed a Complaint for Declaratory
28 Relief and Injunctive Relief Challenging Initiative Petition C-06-2022, and a

1 Memorandum of Point and Authorities in Support of the Complaint. An answering
2 brief has not yet been filed in *Reid II*.

3 III. LEGAL ARGUMENT

4 Consolidation is warranted because the two cases involve common questions of
5 law and fact. In such circumstances, the Nevada Rules of Civil Procedure contemplate
6 consolidation. According Rule 42(a):

7 **Consolidation.** When actions involving a common question in law
8 or fact are pending before the court, it may order a joint hearing or
9 trial of any or all the matters in issue in the actions; it may order all
the actions consolidated and it may make such orders concerning
proceedings therein as may tend to avoid unnecessary costs or delay.

10 NRCP 42(a); *see also Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 163 P.3d
11 462, 468 (2007) (consolidation “promotes efficiency and justice by reducing the
12 possibility that courts will have to adjudicate several separate suits that all arise
13 from a single wrong”). The core inquiry is whether the fact pattern, defendants,
14 timing and other prevailing common questions of law subsist. *See also Zimmerman*
15 *v. GJS Grp., Inc.*, 2018 WL 1512603, at *2 (D. Nev. Mar. 27, 2018) (complaints
16 presented common questions of law and were appropriate for consolidation).¹ That is
17 very much the case here.

18 Plaintiffs in *Reid I*, pursuant to NRS 295.061, challenge Initiative Petition
19 C-04-2022, which seeks to amend Article 11 of the Nevada Constitution by adding a
20 new section, that reads, in full:

21 No later than the school year commencing in 2025, and on an ongoing
22 basis thereafter, the Legislature shall provide by law for the
23 establishment of education freedom accounts by parents of children
24 being educated in Nevada. Parents shall be authorized to use the
25 funds in the accounts to pay for the education of their child in full or
in part in a school or educational environment that is not a part of
the uniform system of common schools established by the
Legislature. The Legislature shall appropriate money to fund each

26 ¹ *See Executive Mgmt. v. Tigor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876
27 (2002) (“Federal cases interpreting the Federal Rules of Civil Procedure are strong
28 persuasive authority, because the Nevada Rules of Civil Procedure are based in
large part upon their federal counterparts.”)

1 account in an amount comparable to the amount of funding that
2 would otherwise be used to support the education of that child in the
3 uniform system of common schools. The Legislature shall provide by
law for an eligibility criteria for parents to establish an education
freedom account.

4 *See Exhibit 1*, a true and accurate copy of the Complaint in *Reid I*, at 3.

5 Plaintiffs in *Reid II*, pursuant to NRS 295.061, challenge Initiative Petition
6 C-06-2022, which similarly seeks to amend Article 11 of the Nevada Constitution by
7 adding a new section, that reads, in full:

8 No later than the school year commencing in 2025, and on an ongoing
9 basis thereafter, the Legislature shall provide by law for the
establishment of education freedom accounts by parents of children
10 being educated in Nevada. Parents shall be authorized to use the
funds in the accounts to pay for the education of their child in full or
11 in part in a school or educational environment that is not a part of
the uniform system of common schools established by the Legislature
except that the Legislature may limit eligibility to participate in the
12 program to parents of children eligible to enroll in kindergarten and
parents of children who enroll in the uniform system of common
13 schools for a specified period of time prior to establishing an
education freedom account not to exceed the entirety of the preceding
14 school year. The Legislature shall appropriate money to fund each
account in an amount comparable to the amount of funding that
15 would otherwise be used to support the education of that child in the
uniform system of common schools.

16 *See Exhibit 2*, a true and accurate copy of the Complaint in *Reid II*, at 3. The two
17 initiative petitions are nearly identical, except that Initiative Petition C-06-2022
18 contains an eligibility clause. *Id.* The two complaints contain similar causes of action,
19 and the cases contain the same parties, represented by the same counsel.

20 Consolidation of the two cases will mitigate the risk of inconsistent judgments,
21 facilitate judicial economy, and avoid unnecessary costs and delays to both the court
22 and the parties. *See* NRCP 42(a); *Hill v. England*, 2006 WL 1452675, at *4 (E.D. Cal.
23 May 25, 2006) (interpreting the federal equivalent of Rule 42(a) and ordering
24 consolidation of a third complaint into a previously consolidated action when the
25 additional complaint did not assert any significantly different allegations to warrant
26 the expense of a separate trial); *see also Weddell v. Stewart*, 261 P.3d 1080, 1084 (Nev.
27 2011) (recognizing the need for Nevada's judicial branch to efficiently manage its
28

1 limited judicial resources). As the court explained in *Hill*: “Allowing these few
2 additional facts—all of which arise out of the same nucleus of operative facts—to be
3 tried in an entirely separate proceeding would be a gross burden on the parties,
4 witnesses and judicial resources.” 2006 WL 1452675, at *4. There is no reason why
5 cases that involve the same issues and parties should be litigated in two separate
6 matters before two different judicial officers.

7 Therefore, the Plaintiffs urge the Court to exercise the discretion afforded by
8 Rule 42(a) to consolidate *Reid II* with *Reid I*.

9 **IV. CONCLUSION**

10 For the reasons set forth herein, Plaintiffs respectfully request that the Court
11 consolidate *Reid II* with *Reid I*.

12 **AFFIRMATION**

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

15 DATED this 4th day of April, 2022.

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

18 By 

19 **BRADLEY S. SCHRAGER, ESQ. (NSB 10217)**
20 **JOHN SAMBERG, ESQ. (NSB 10828)**
21 **DANIEL BRAVO, ESQ. (NSB 13078)**
22 3773 Howard Hughes Parkway, Suite 590 South
23 Las Vegas, Nevada 89169
24 (702) 341-5200/Fax: (702) 341-5300
25 bschrager@wrslawyers.com
26 jsamberg@wrslawyers.com
27 dbravo@wrslawyers.com

28 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2022, a true and correct copy of the **PLAINTIFFS' MOTION TO CONSOLIDATE CASE NO. 22 OC 00044 1B WITH CASE NO. 22 OC 00028 1B** via was electronically mailed to all parties per below, and then served upon all parties via U.S. Mail postage prepaid, Reno, Nevada 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, Esq.
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
jfoletta@mcdonaldcarano.com

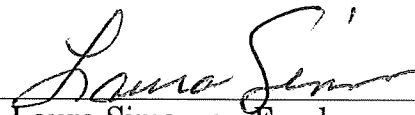
Attorneys for Education Freedom PAC

Laena St. Jules, Esq.
**OFFICE OF THE ATTORNEY
GENERAL**
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Carson City, Nevada 89701
LStJules@ag.nv.gov

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

Attorney for Barbara Cegavske

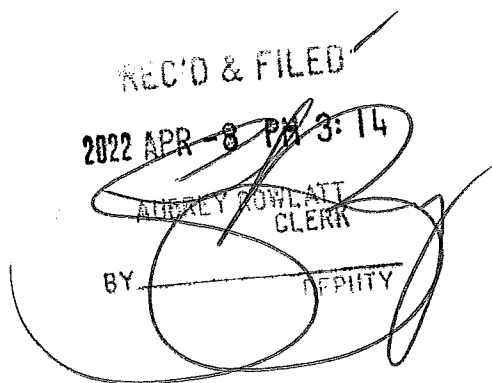
By



Laura Simar, an Employee of
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& RABKIN, LLP

Lucas Foletta, Esq. (NSBN 12154)
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*Attorneys for Intervenor
Education Freedom PAC*



**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,

vs.

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

Defendant.

Case No. 22 OC 00028 1B

Dept. No. II

**OPPOSITION TO PLAINTIFFS'
MOTION TO CONSOLIDATE CASE NO.
22 OC 00044 1B WITH CASE NO.
22 OC 00028 1B**

Intervenor Education Freedom PAC ("EFP") hereby opposes Plaintiffs' Motion to Consolidate Case No. 22 OC 00044 1B with Case No. 22 OC 00028 1B ("Mot."). This response is based on the following memorandum of points and authorities and all papers and exhibits on file with the Court in this matter.

MEMORANDUM OF POINTS & AUTHORITIES

Under NRCP 42(a)(2), this Court may consolidate actions that "involve a common question of law or fact." When determining whether to consolidate, courts "weigh the interest of judicial convenience against the potential for delay, confusion and prejudice." *Zhu v. UCBH Holdings, Inc.*, 682 F.Supp.2d 1049, 1052 (N.D. Cal. 2010). The burden is on the moving party to show that consolidation is appropriate. *Krause v. Nev. Mut. Ins. Co.*, No. 2:12-CV-00342-JCM-CW, 2013 WL 6524657, at *3 (D. Nev. Dec. 10, 2013); *see also Yount v. Criswell Radovan, LLC*,

1 136 Nev. 409, 414–15, 469 P.3d 167, 172 (2020) (“Where a Nevada rule is similar to an analogous
2 federal rule, the cases interpreting the federal rule provide persuasive authority as to the meaning
3 of the Nevada rule.”).

4 In their Motion to Consolidate, Plaintiffs summarily argue that this Court should
5 consolidate the cases simply because they share similar questions of law and fact and the same
6 parties and counsel. Mot. 4. They conclude without explanation that those commonalities would
7 be sufficient to “facilitate judicial economy, and avoid . . . delays.” *Id.* They do not acknowledge,
8 however, that this Court must weigh whatever advantages consolidation might offer against its
9 disadvantages, such as delay and prejudice. *Zhu*, 682 F.Supp.2d at 1052. What’s more, they fail
10 to argue or attempt to prove that the advantages would outweigh the disadvantages in this case.
11 Their failure to carry their burden alone warrants denial of their motion. *Krause* at *3.

12 Nonetheless, EFP submits that consolidating this case—which the parties have fully
13 briefed and argued before this Court, and in which this Court recently notified the parties that it
14 will soon issue a dispositive decision—with Case No. 22 OC 00044 1B—in which EFP has not
15 yet even filed a responsive pleading—would not serve judicial economy or avoid delay. Instead,
16 and as Plaintiffs are undoubtedly aware, it would only stall this case at the finish line.

17 While, as this Court recently explained, this case is mere days from its resolution in this
18 Court, consolidating it with another case that has just begun would effectively stay these
19 proceedings. The parties have not yet held a scheduling conference in Case No. 22 OC 00044,
20 this Court has not yet set a hearing date, and EFP has not filed a responsive pleading. Given the
21 expediency with which cases of this type are meant to be resolved, NRS 295.061(1) (requiring a
22 hearing to be held within 15 days of a complaint being filed), this Court should not oblige
23 Plaintiffs’ efforts to delay its decision.

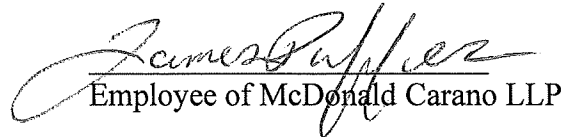
24 As EFP explained in its Response to this Court’s Order to Show Cause, another delay in
25 this case would further violate the spirit and intent of the statutory mandate under NRS 295.061
26 that these challenges be resolved expeditiously. It would also further frustrate and prejudice EFP’s
27 attempts to exercise its constitutional right to access the ballot. Each day that this case remains
28 unresolved is another in which EFP is deprived of an opportunity to collect signatures. This would

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP and, on April 8, 2022, 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 APR 12 AM 9:28

AUDREY ROWLAND
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, CASE NO.: 22-0C-00028 1B

Plaintiffs,

DEPT. NO. I

Vs.

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

Defendant,

EDUCATION FREEDOM PAC,

**Intervenors, aligned
as Defendant.**

PART A

**DISCUSSION OF DECISION
INVALIDATING PETITION TO
AMEND THE NEVADA
CONSTITUTION TO OFFER
SEQUESTERED FUNDING
ALTERNATIVES GOING OUTSIDE
SCHOOL DISTRICTS TO
PARENTS OF SCHOOL AGE
CHILDREN**

PART B

ORDER ENJOINING PETITION

**On March 29, 2022, this Court scheduled a priority hearing in
Carson City to address a recently filed Initiative to Amend the Nevada**

1 **Constitution. Present in Court were counsel for Plaintiffs Rory Reid**
2 **and Beverly Rogers, Bradley S. Schrager and counsel for Education**
3 **Freedom PAC, (hereinafter EFP) Lucas Foletta. Appearing by ZOOM**
4 **was Craig Newby, Esq., representing the Secretary of State's Office,**
5 **who has an administrative stake in the outcome, but properly took a**
6 **neutral stance on the merits of the case.**
7
8

9
10 **The first order of business was the issue of a possibility of**
11 **consolidating the instant case with Case No. 22 OC 00027 1B,**
12 **BEVERLY ROGERS, an individual; RORY REID, an individual, Plaintiffs,**
13 **vs. BARBARA CEGAVSKE, in her Official Capacity as NEVADA**
14 **SECRETARY OF STATE, Defendant, and EDUCATION FREEDOM PAC,**
15 **Intervenors, aligned as Defendant.**
16
17

18 **THE COURT DECIDED NOT TO MERGE THESE TWO CASES BUT TWO**
19

20 **OTHER CASES PROBABLY MERGE**

21 **From here on out the case which is covered by this Decision may**
22 **be informally referred to as "Reid/281B" and the companion case**
23 **which goes in a separate direction, so it will be referred to as**
24 **"Rogers/271B", containing the last digits of the case numbers.**
25
26
27
28

Counsel, in effect, has stipulated to maintaining the separateness of Reid/281B and Rogers/271B.

The latter, Rogers/271B, has features which are entirely missing in the first case, as it is an elaborate scheme for administering a major fund through the Department of the Treasurer with many different timelines for the signature gathering, and other provisions which touch and concern *different* sections of Article 19 of Nevada's Constitution.

Consolidating at this time would cause nothing more than additional confusion, so the cases will be separately adjudicated, and this Decision pertains only to Reid/281B: the Constitutional route.

[illegible]

The will defer whether to consolidate “REID I” with “REID II”.

A motion has been made by Intervenor/Defendant to summarily decide the case based on procedural grounds such as the Intervenor's Complaint that states they have been deprived of the time necessary

1 under NRS 295.061 to deal with the Complaint which challenges the
2 Petition with Secretary of State.¹

3
4 The two Carson City judges were off the case by the time this
5 Court received the file (and that file was incomplete until the end of
6 last week).

7
8 The Court immediately saw the priority, closed the pleadings and
9 set the matter for hearing within ten days.

10
11 The spirit if not the letter of the rule was observed and even if
12 Plaintiffs didn't first join the Intervenors in their Complaint, there is
13 insufficient cause or proof of improper gamesmanship to grant
14 dismissal.

15
16
17 The Motion to dismiss may be and hereby is DENIED.

18
19 THE PETITION MUST BE INVALIDATED BECAUSE LACK OF CLARITY

20 OF CONSEQUENCES IN THE DECLARATION OF EFFECT (WHIZZY,

21 WHIZZY, WHIZZY HOW TO HIDE THE FUNDING ISSUE)

22
23 The Intervenors are playing the great old Western shell game
24 with walnut husks and a single, hard, green pea, when they fail to

25
26
27 ¹ As soon as this case was received by this Judge, after the recusal of the
28 Carson City Judges and served, the oral arguments hearing was set for
Tuesday, Marcy 29, 2022, at 1:00 p.m., and thus the spirit, if not the
letter, of the calendar priority was observed.

1 describe the enormous fiscal impact of this Initiative on the budget of
2 most, if not all, of the school districts in the State of Nevada.

3
4 In this allegory, funding is the “pea”, and “there you see it; there
5 you don’t.”

6
7 And it is ingenious, because the funding used for the program
8 could theoretically be taken from other budgets for road, prisons, law
9 enforcement, motor vehicles, etc., because it is not designated
10 funding as that term has become to be known.

11
12 Two decisions by our Supreme Court inform this Decision as
13 primary authority and contravene the Intervenor’s standing.

14
15 The controlling cases are *Herbst Gaming, Inc. v. Heller*, 122 Nev
16 877, 890, 141 P.3d 1224, 1232-33 (2006) and *Rogers v. Heller*, 117
17 Nev. 169, 173, 18 P.3d 1034, 1036 (2001).

18
19
20 A third case, *Schwartz v. Lopez*, 132 Nev. 732, 738, 382 P.3d 886,
21 891 (2016), offers a valuable precedent, but is probably more
22 applicable to the companion case where the Initiative, once passed,
23 creates a new statute instead of a Constitutional Amendment.
24
25
26
27
28

1 **In *Schwartz*, the High Court examined the constitutionality of a**
2 **Senate bill establishing an educational savings account not all that**
3 **dissimilar to the one under discussion in the companion case.**

4
5 **So, the *Schwartz* discussion will be reserved for the companion**
6 **opinion but is cited here for its reinforcement of the other precedents.**
7

8 **Before addressing the two earlier controlling precedents, the**
9 **Court needs to sit back and define a few terms which are peculiar to**
10 **this area of jurisprudence.**
11

12 **The most scrutinized term for the purposes of this Decision is**
13 **contained in a sheaf of documents that are shown the prospective**
14 **signatory, called a "Declaration of Effect" (sometimes hereinafter**
15 **referred to as a "DOE"). The citizens are asked to consider joining**
16 **others in starting a process of amending the Constitution of the State**
17 **of Nevada for the purpose of establishing education accounts called**
18 **"Education Freedom Accounts", which, when funded, may then be**
19 **used at the parents' discretion to educate children outside the public**
20 **school system.**
21
22
23
24

25 **Obviously, this would be the first phase of two referendums**
26 **before this amendment is authorized to change the Constitution.**
27
28

1 **The Declaration of Effect is the key document because it is read just**
2 **before the proponent hands a page for signature to a prospect who**
3 **can then peruse the language in its two paragraphs at his or her**
4 **leisure.**

5
6 **But the issue most often discussed when these initiatives have**
7 **been challenged, is, that however terse the description, it MUST**
8 **contain sufficient clarity to put the prospective signatories in such a**
9 **state of mind where they comprehensively, if not necessarily perfectly,**
10 **understand the ramifications of the passage.**

11
12 **Sometimes in these cases, confusing language in the DOE is**
13 **actually changed by the Court for clarity; sometimes counsel will work**
14 **together with the Court for the purpose of altering the Declaration of**
15 **Effect (DOE) effect for that same purpose.**

16
17 **In this case, this Court holds that there is a material omission in**
18 **the Declaration of Effect by reason of its failure to set forth a clean**
19 **and understandable impact statement of direct and collateral fiscal**
20 **ramifications that a normal voter should know about before he or she**
21 **affixes a signature to the petition.**

1 **To help expand upon this finding, the Court is going to embellish**
2 **upon the hypothetical it posed during the oral arguments.**

3 **Please presume, hypothetically, that the rancher's wife, who we**
4 **will call Norma L. Goodman, along with her husband, together have a**
5 **small alfalfa farm in Lyon County, stops at a Yerington grocery store.**

6 **A pleasant young proponent of the initiative shows her the requisite**
7 **documents and Norma asks him to explain what is meant by the**
8 **Declaration of Effect.**

9 **She tells the proponent that she and her husband have not 1, but**
10 **three children; the two older children are enrolled in the public schools**
11 **in Lyon County and the six year old is getting ready for matriculation**
12 **into the public elementary school, but he has special needs and is**
13 **currently the subject of Individual Educational Plan, referred to as an**
14 **"IEP", because he has been placed on the autism spectrum.**

15 **This wife, mother and taxpayer reveals that she and her husband**
16 **are just delighted with the education the older children are receiving,**
17 **but they are looking into a church affiliated group which has created a**
18 **special program for autistic children, to help her youngest son as they**
19 **approach decisions, they have no expertise to deal with.**

1 **She asks the following questions:**

2 **1. Norma: "If I sign this petition and it becomes law, are my**
3
4 **husband and I going to be required to pay the amounts set forth in in**
5 **the Declaration?**

6 **The Pleasant Responder: "The answer to that question is No, it**
7
8 **is free to your family; you guys get direct control over the per-pupil**
9
10 **calculation at the time which may be higher than the amounts**
11 **suggested in this Declaration. Congrats."**

12 **In any given fiscal year, as noted by Plaintiffs' counsel, Brad**
13
14 **Schrager, the actual amounts are likely to be higher than the amounts**
15 **quoted as they are subject to any number of adjustments to account**
16 **for variables in the "per pupil" calculation.**

17 **To its credit, the Declaration states clearly that the program**
18
19 **doesn't commence until 2025 and that the numbers quoted are just**
20 **"examples" of base level funding, but the examples are misleadingly**
21 **low, and that could be easily corrected.**

22 **But, the omission that is fatal to this initiative, in the Court's**
23
24 **opinion, is that it is misleading when it comes to answering the**
25
26 **mother's second question:**
27
28

1 **2. Norma: "Since we are so happy with the schooling for our two**
2 **older children, this initiative won't have any effect on the revenues to**
3 **support their school, will it?"**

4
5 **The Pleasant Responder: "Well it is hard to say, and it is entirely**
6 **too speculative at this point in time."**

7
8 **The truth, of course, is that outcomes can spread all over the**
9 **board.**

10
11 **If Lyon County has few citizens electing to receive the benefit,**
12 **the impact may be minimal. But if the County were to eventually go**
13 **60% in favor of the alternative schooling, the effect might seriously**
14 **affect the programs, teachers, custodians, physical environment,**
15 **electives, and the rest of the infrastructure for the entire School**
16 **District.**

17
18 **However, the DOE altogether sidesteps the important issue, and**
19 **try as it might, the Court cannot come up with alternate language that**
20 **isn't equally confusing.**

21
22 **The Pleasant Proponent should add, "Well Norma, it could be**
23 **zero, or something small, or it could have a major effect as far as your**
24 **older children go."**

1 **If this initiative were to pass muster and send the matter to the**
2 **electorate, and if a significant number of people were to exercise their**
3 **rights to vote for it, in some cases it might have a huge effect on**
4 **school districts, and Intervenors know it.**

5
6 **Later, it says, “generating the revenue to fund the accounts**
7 **could necessitate a tax increase or a reduction in government**
8 **services.”**

9
10
11 **But the notice is too tepid.**

12 **For one thing, it talks about “could” when the truth is that if the**
13 **Initiative gets traction at the ballot box, the verb should be “will”.**

14 **Again, to their credit, the DOE states that the Initiative “will**
15 **result in the expenditure of state funds...”.**

16 **Later, it says “generating the revenue to fund the account could**
17 **necessitate a tax increase or a reduction in government services”.**

18 **The Court holds that it is absolutely essential for the people to**
19 **know that if a sufficient number of voters have chosen to appropriate**
20 **monies otherwise going to the School District, then once becoming the**
21 **Law, the amendment to the Constitution has a most solemn and**
22 **powerful effect on the public education system.**

1 **However, clothed in a topcoat of bright colors or in camouflaged**
2 **colors; the operator manipulating the “funding pea” is still whizzing it**
3 **around the table topped with poker felt.**

4
5 **The proposed initiative will have a pronounced effect on the**
6 **education system in the State of Nevada and it would leave a future**
7 **Legislature with a harness around its neck and shoulders that would**
8 **prevent it from exercising its discretion to fulfill its duties to see to the**
9 **education of children in our state. Thus, it illegally usurps the function**
10 **from a future Legislature.**

11 **The description of effect is deemed legally misleading.**

12
13
14 **Thus, the Court holds that to pass constitutional muster, the**
15 **Declaration of effect must articulately set forth language that the**
16 **funds distributed into EFA account may diminish the revenues**
17 **available to the State for funding of public schools and/or other public**
18 **works in major way.**

19
20 **Every dollar that is sent to an EFP to give parents the right to**
21 **choose programs outside the School District for their children,**
22 **reduces, dollar by dollar, the funds available to the School Districts or**
23 **other Public Work to achieve their mission.**

1 **In other words, if enough people opt for the outcome suggested**
2 **by this initiative, then are the School Districts, statewide, in major**
3 **trouble in being able to balance their books?**

4
5 **Let's say that the proponents, who are the Intervenor and**
6 **Defendants in this case, are able, under the time frame, to get at least**
7 **140,777 signatures to open the gates to a process which would**
8 **substantially change public education three years from now.**

9
10
11 **Let's also say that 10% of the people who sign the petition are**
12 **just interested. Maybe 90% are committed; they wait the three years**
13 **and become a part of the constituency that makes the alternate**
14 **schooling availability the Law of the Land. Simple math says that just**
15 **that slice of voters approving final rendition will cost upward of a**
16 **BILLION DOLLARS, using the approximate \$7,000.00 per pupil figure.**
17 **(Rough average of fictional figures used by Intervenor of \$6,980.00**
18 **and \$7,074.00).**

19
20
21
22
23 **ALTERNATIVELY, THE SCHEME IS AN UNFUNDED MANDATE**

24 **The Court, as an alternative remedy, rules in part B that the**
25 **Intervenor's Petition and Initiative is just the kind of unfunded**
26 **mandate which under strong authority is prohibited in Nevada.**
27
28

1 **In *Rogers v. Heller, supra*, 63,000 voters signed Initiative**
2 **Documents, called, generally, “Nevada Tax and Fairness and Quality**
3 **School Funding Accountability Act”.**

4
5 **A group of business entities, afraid of the fiscal consequences,**
6 **challenged the Initiative, as was done here.**

7
8 **In no uncertain terms, our Supreme Court made the following**
9 **pronouncement, *Rogers, supra*, 117 Nev. 169 @ p. 173 (2001):**

10
11 **“Nevada Constitution article 19, section 2(1) provides that the**
12 **Initiative process is “subject to the limitations of [article 19**
13 **section 6].” Article 19, section 6, in turn “does not permit**
14 **the proposal of any statute or statutory amendment which**
15 **makes an appropriation or otherwise requires the expenditure**
16 **of money, unless such statute or amendment also imposes a**
17 **sufficient tax, not prohibited by the constitution, or otherwise**
18 **constitutionally provides for raising the necessary revenue.”**
19 **Section 6 applies to *all* proposed initiatives, without exception,**
20 **and *does not permit* any initiative that fails to comply with**
21 **the stated conditions. Consequently, section 6 is a**
22 **threshold content restriction, under which we must address**
23 **the Initiative’s validity. If the Initiative does not comply with**
24 **section 6, then the Initiative is void.**

25
26 **In *Rogers*, the High Court was asked to examine whether**
27 **proposed funding sources would “do the trick,” so to speak and**
28 **provide fair revenues to sustain the Initiative.**

1 **A 4% tax in that case would have generated more than a quarter**
2 **of a BILLION dollars for the program, but even that amount was**
3 **deemed deficient.**

4
5 **Thus, the law in the State of Nevada precludes Constitutional**
6 **Initiatives that don't set forth a viable funding mechanism.**

7
8 **In accord with the holding in *Rogers*, is the more recent case of**
9 ***Herbst, Id.***

10
11 ***Herbst* is, factually and in some part, legally, a very different**
12 **case from *Rogers, supra*.**

13
14 **It involves how and whether smoking in business**
15 **establishments, not schooling alternatives;**

16 **A previous decision affirming a broad scope of pre-**
17 **election challenges was overturned;**

18 **Pre-election challenges that reach Constitutional**
19 **Mandates are eliminated;**

20
21 **[NOTE: this refers to claims of Constitutional substance, gone**
22 **awry, not challenges made through initiative process as to whether it**
23 **is valid in the first instance.]**

24
25 ***Herbst* tells us: as different as they are factually and even though**
26 **Reid/281B relies on Constitutional Article 19, Section 4, while**
27

1 Rogers/271B relies upon Section 3, they are both governed by Section
2 6 – the revenue mandate.

3
4 So, the Reid/281B Petition is judicially determined to be non-
5 viable for two separate, albeit related, reasons.

6
7 1. The DOE is short of crucial information regarding funding
8 impacts;

9
10 2. The Initiative represents an unfunded mandate prohibited by
11 Nevada Law. Article 19, Sec. 6 is quoted in full:

12
13
14 ***“Sec. 6. Limitation on initiative making appropriation***
15 ***or requiring expenditure of money. This Article does not***
16 ***permit the proposal of any statute or statutory***
17 ***amendment which makes an appropriation or otherwise***
18 ***requires the expenditure of money, unless such***
19 ***statute or amendment also imposes a sufficient tax,***
20 ***not prohibited by the Constitution, or otherwise***
constitutionally provides for raising the necessary
revenue.” (emphasis supplied)

21
22 Anytime a legislature enactment is needed to fund a Bill,
23 traditionally all bills with fiscal import have to specify the exact
24 source of revenue.
25
26
27
28

PART B ORDER

This Judge has historically encouraged attorneys who prevail in a given matter to suggest language for the Order they will have to defend on appeal.

So, in that connection, the Court acknowledges and adopts much of the proposed order proffered by Plaintiffs' counsel as follows:

This matter having come before this Court pursuant to Plaintiffs, Rory Reid and Beverly Rogers ("Plaintiffs") Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022, and Plaintiffs' Memorandum of Points and Authorities in Support of the Complaint, and having considered Intervenor Defendant, Education Freedom PAC ("Intervenor"), Answer and Answering Brief in Response to Plaintiffs' Memorandum of Points and Authorities in Support of the Complaint, Plaintiffs' Reply in Support of the Complaint, and oral argument from counsel for both Plaintiffs and Intervenor, the Court finds as follows:

STATEMENT OF FACTS

On January 31, 2022, Erin Phillips, on behalf of Education Freedom PAC, filed Initiative Petition C-04-2022 (the "Petition") with

1 the Secretary of State of Nevada, proposing to amend Article 11 of the
2 Nevada Constitution to require the Nevada Legislature to create an
3 education saving account program, known in the Petition as
4 “education freedom accounts” (“EFA”), for K-12 students to attend
5 schools and educational programs outside the uniform system of
6 common public schools established pursuant to the Nevada
7 Constitution. The Petition seeks to add a new section to Article II,
8 which reads, in full:
9

12 **No later than the school year commencing in 2025, and**
13 **on an ongoing basis thereafter, the Legislature shall**
14 **provide by law for the establishment of education**
15 **freedom accounts by parents of children being educated**
16 **in Nevada. Parents shall be authorized to use the funds**
17 **in the accounts to pay for the education of their child in**
18 **full or in part in a school or educational environment that**
19 **is not a part of the uniform system of common schools**
20 **established by the Legislature. The Legislature shall**
21 **appropriate money to fund each account in an amount**
22 **comparable to the amount of funding that would otherwise**
23 **be used to support the education of that child in the**
24 **uniform system of common schools. The Legislature**
25 **shall provide by law for an eligibility criteria for parents**
26 **to establish an education freedom account.**

27 **The Petition includes a description of effect as required by NRS**
28 **295.009(1)(b), which reads, in full:**

The initiative will provide parents with the ability to use

1 funds appropriated by the Legislature to pay for the
2 education of their child in a school or educational
3 environment that is not a part of the public school
4 system. The initiative requires the Legislature to
5 establish an education freedom account program under
6 which parents may spend money appropriated by the
7 Legislature into those accounts to pay for some or all
8 of their child's education outside the public school
9 system. The Legislature must establish an eligibility
10 criteria for parents to establish an account.

11 The initiative will result in the expenditure of state
12 funds to fund the accounts in an amount comparable to
13 the public support that would be used to support the
14 education of the child for whose benefit the account
15 has been established in a public school. For Fiscal
16 Year 2021-2022, the Legislature determined the statewide
17 base per pupil amount to be \$6,980 per pupil. For
18 Fiscal Year 2022-2023, that amount is \$7,074 per pupil
19 Generating the revenue to fund the accounts *could*
20 necessitate a tax increase or a reduction in government
21 services. The Legislature must establish the program
22 by the start of the school year that commences
23 in 2025. (emphasis supplied)

24 STANDARD OF LAW

25 Nevada law requires that any initiative petition "[e]mbrace but
26 one subject and matters necessarily connected therewith and
27 pertaining thereto." NRS 295.009(1)(a). Additionally, Article 19,
28 Section 6 of the Nevada Constitution prohibits any initiative that
"makes an appropriation or otherwise requires the expenditure of

1 money, unless such statute or amendment also imposed a sufficient
2 tax, not prohibited by the Constitution, or otherwise constitutionally
3 provides for raising the necessary revenue.” Nev. Const. Art. 19, Sec.
4
5 6. Finally, initiatives description of effect “must be straightforward,
6 succinct, and nonargumentative, and it must not be deceptive or
7 misleading.” *Edu. Initiative PAC v. Comm. To Protect Nev. Jobs*, 129
8 Nev. 35, 37, 293 P.3d 874, 876 (2013) (internal quotation marks and
9 citation marks omitted).
10
11

12 ANALYSIS AND CONCLUSIONS OF LAW

13
14 The Petition violates NRS 295.009(1)(b) because it does not
15 inform voters of the effects of the Petition. A description of effect
16 must present enough information for a potential signer to make an
17 informed decision about whether to support the initiative; the failure
18 to meet this requirement renders an initiative invalid. *See e.g., Nev.*
19 *Judges Ass’n v. Lau*, 112 Nev. 51,59 (1996) (rejecting initiative’s
20 description of effect for “failure to explain [certain] ramifications of
21 the proposed amendment,” which “renders the initiative and its
22 explanation potentially misleading”).
23
24
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1 **The description of effect is invalid because it is confusing,**
2 **misleading, and omits discussion of many of the Petition's most**
3 **significant ramifications. For example, the description incorrectly**
4 **conflates "the public support that would support the education of the**
5 **child" with the statewide average base per-pupil amount, a completely**
6 **different figure describing only a portion of per-pupil "public support."**

7
8
9 **The most recent K-12 funding legislation describes "total public**
10 **support as:**

11
12 **"[A]ll money appropriated directly for the support of the**
13 **public schools in this State, including, without limitation,**
14 **the statewide base per pupil funding amount, adjusted base per**
15 **pupil funding, additional weighted funding and all money**
16 **appropriated for a specific program or purpose in support of**
17 **the public schools, and all other money projected to be**
18 **received for the support of the public schools from taxes,**
19 **fees and other revenues authorized by state law, excluding**
20 **any money provided by the Federal Government directly**
21 **to a public school or school district or otherwise provided**
22 **on a one-time basis in response to an emergency."**

23 **SB458, Sec. 2(2)(2021)/**

24 **The Legislature calculated the average total public support per**
25 **pupil at \$10,204 for FY 2020-2021 and \$10,290 for FY 2022-2023. The**
26 **description of effect provides signatories with significantly smaller**
27 **per-pupil figures, \$6,980 and \$7,074, respectively. It cites the**
28

1 statewide average base per-pupil funding levels despite the initiative
2 requiring EFA accounts fund an amount comparable to “public support
3 that would support the education of the child for whose benefit the
4 account has been established in a public school,” which would include
5 funding beyond the statewide base per pupil amount. Likewise, the
6 description of effect completely omits the variable per-pupil funding
7 support that any given student might receive in determining a
8 comparable per-pupil funding amount for the EFA. The description of
9 effect incorrectly describes “the public support that would support the
10 education of *the child*” in narrow terms that does not reflect the actual
11 funding that an individual student might receive, and consequently,
12 the actual financial impact to taxpayers and local district budgets.
13 The Petition’s description of effect states that “[g]enerating the
14 revenue to fund the accounts could necessitate a tax increase or a
15 reduction in government services[,]” and misleadingly fails to disclose
16 that any funding appropriated for the contemplated program would
17 inevitably reduce the funding available for Nevada’s public school
18 system.
19
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1 **Secondly, the Petition is invalid because it mandates**
2 **expenditures without providing reciprocal revenues in violation of**
3 **Article 19, Section 6 of the Nevada Constitution. An initiative need not**
4 **“by its terms appropriate money” to violate the prohibition. *Herbst***
5 ***Gaming, Inc. v. Heller*, 122 Nev. 877, 890 n.40, 141 P.3d 1224, 1233**
6 **n.40 (2006) (citing *State ex rel Card v. Kaufman*, 517 S.W.2d 78, 80**
7 **(Mo. 1974)). Rather, “an initiative makes an appropriation or**
8 **expenditure when it leaves budgeting officials no discretion in**
9 **appropriating or expending the money mandated by the initiative –the**
10 **budgeting official must approve the appropriation or expenditure,**
11 **regardless of any other financial considerations.” *Id.* At 890. “If the**
12 **Initiative does not comply with section 6, then the Initiative is void” in**
13 **its entirety, and the offending provision cannot be severed to render it**
14 **constitutional. *Id.* at 173, 177-78. This is what the Petition does. The**
15 **Petition mandates the Nevada Legislature appropriate money to fund**
16 **each EFA in an amount comparable to the amount of funding that**
17 **would otherwise be used in the public school system. The very first**
18 **sentence of the second paragraph of the Petition’s description**
19 **declares that “[t]he initiative will result in the expenditure of state**
20 **21**
22
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1 **funds[.]” The Petition fails to impose any taxes or otherwise raise the**
2 **necessary revenue to either fund the EFAs contemplated by the**
3 **Petition, or to pay for the administrative expenses that would**
4 **necessarily have to be incurred in creating, maintaining, and**
5 **administering the EFA program.**
6
7

8 **Finally, the Petition impermissibly commands the Nevada**
9 **Legislature to enact a statute or set of statutes effecting its terms,**
10 **which violates the inherent deliberative functions of the Nevada**
11 **Legislature. The Petition’s command to the Nevada Legislature is**
12 **purportedly binding, and Nevada legislators would not be free to**
13 **deliberate and vote their own considered judgment, being responsible**
14 **to their own considered judgment, being responsible to their own**
15 **constituents, and they would no longer be part of a deliberative body**
16 **acting independently in exercising their individual best judgments on**
17 **the matters that come before them. The outcome of the specific**
18 **action mandated by the Petition – passage of a statute or statutes**
19 **affecting the term of the initiative – would be predetermined. No**
20 **initiative may compel such a result.**
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IT IS THEREFORE ORDERED and declared that Initiative Petition C-04-2022 is legally deficient because it violates the description of effect requirement of NRS 295.009; the Petition constitutes an impermissible unfunded governmental mandate; and the Petition impermissibly commands the Nevada Legislature to enact a statute or set of statutes effecting its terms.

IT IS FURTHER ORDERED and declared that Intervenor-Defendant Education Freedom PAC, its proponents, officers, or agents, are hereby enjoined from collecting signatures in support of the Petition and from submitting any signatures for verification pursuant to NRS 293.1276, and any signatures previously collected are declared invalid.

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

DATED THIS 11 **day of April, 2022.**

Charles M. McGee
CHARLES M. McGEE
SR. Judge on Assignment

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CERTIFICATE OF MAILING

I hereby certify that on this day, April 12, 2022, I emailed a
copy of **DECISION INVALIDATING PETITION TO AMEND THE NEVADA
CONSTITUTION TO OFFER SEQUESTERED FUNDING ALTERNATIVES
GOING OOUTSIDE DISTRICTS TO PARENTS OF SCHOOL AGE
CHILDREN to:**

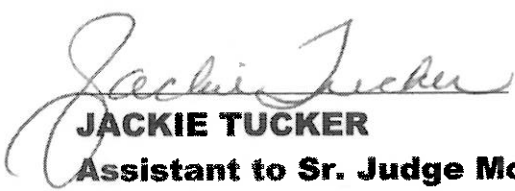
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JACKIE TUCKER
Assistant to Sr. Judge McGee

Case No.: 22 OC 00044 1B

Dept. No.: 1

REC'D & FILED

2022 APR 12 AM 11:52

AUBREY ROWLATT
CLERK
BY Amelias
DEPUTY

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

RORY RIED, an individual; BEVERLY
ROGERS, an individual,

Plaintiffs,

vs.

BARBARA CEGAVSKE, in her official capacity
as NEVADA SECRETARY OF STATE;
EDUCATION FREEDOM FOR NEVADA, a
Nevada Committee for Political Action,

Defendants.

**ORDER TRANSFERRING CASE TO
SENIOR JUDGE**

This case, upon filing, was assigned to Department Two of the First Judicial District Court of the State of Nevada, in and for Carson City, in which said department District Judge James E. Wilson, Jr. presides.

On March 31, 2022, a Peremptory Challenge was filed by Plaintiffs against Judge Wilson, transferring the case to Department One, in which said department the undersigned District Judge James T. Russell presides. A conflict exists with Judge Russell continuing to hear this matter due to the Public Information Officer for the Nevada Secretary of State is his niece, Jennifer Russell. Therefore, good cause appearing;

IT IS HEREBY ORDERED that the above-entitled matter be assigned to a Senior Judge, presiding in Department One, for all further proceedings.


Dated this 12 day of April, 2022.

William C. Russell
JAMES T. RUSSELL
DISTRICT JUDGE

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 12 day of April, 2022, I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Bradley S. Schrager, Esq.
John Samberg, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, NV 89169



Julie Harkleroad
Judicial Assistant, Dept. 1

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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bschrager@wrslawyers.com
5 jsamberg@wrslawyers.com
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6 *Attorneys for Plaintiffs*

7
8 **IN THE FIRST JUDICIAL DISTRICT COURT**
9 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**
10

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

12 Plaintiffs,

13 vs.
14

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

17 Defendant,

18 and

19 EDUCATION FREEDOM PAC, a
Nevada committee for political action,

20 Intervenor-Defendant.
21
22

Case No.: 22 OC 00028 1B

Dept. No.: II

**PLAINTIFF'S REPLY IN
SUPPORT OF MOTION TO
CONSOLIDATE CASE NO.
22 OC 00044 1B WITH CASE NO.
22 OC 00028 1B**

23 Plaintiffs, RORY REID and BEVERLY ROGERS (collectively, "Plaintiffs"), by
24 and through undersigned counsel, hereby submit their Reply in support of their
25 Motion to Consolidate Case No. 22 OC 00044 1B with Case No. 22 OC 00028 1B (the
26 "Motion"). The Reply is based upon the Memorandum of Points and Authorities and
27 all of the papers and pleadings on file herein together with such further evidence and
28 argument as may be presented and considered by this Court at any hearing of this

FILED
2022 APR 13 PM 1:48
K. PETERSON
BY _____

1 Motion.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 The Court issued its dispositive decision and order in *Rory Reid, et al., v.*
4 *Barbara Cegavske, et al.*, Case No. 22 OC 00028 1B, First Judicial District Court of
5 the State of Nevada in and for Carson City ("*Reid I*") on Tuesday, April 12, 2022. The
6 concerns voiced by Intervenor-Defendants in their opposition to this motion,
7 regarding potential delay of resolution of the merits of that action, are now moot.

8 There now exists no reason not to take the rational next step of consolidating
9 *Rory Reid, et al., v. Barbara Cegavske, et al.*, Case No. 22 OC 00044 1B, First Judicial
10 District Court of the State of Nevada in and for Carson City ("*Reid II*") with the
11 present action. The matters are essentially identical in substance, because
12 Intervenor filed an initiative petition nearly identical to the one challenged and
13 found unlawful in *Reid I*. The claims and arguments in *Reid II* are repetitive of those
14 made in *Reid I*. Intervenor merely disagree with the decision in *Reid I* and now want
15 a second chance before a different jurist. This sort of obvious forum shopping should
16 be discouraged.

17 There is no reason for a second senior district court judge to be made to get up
18 to speed on the issues involved in this action, or to risk conflicting decisions and
19 orders on the same topics emanating serially from the same judicial district.

20 ///

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1 Plaintiffs ask the Court to consolidate the actions pursuant to NRCP 42(a), as
2 described in their motion, and to address the matters with all deliberate and
3 necessary speed.

4
5 DATED this 13th day of April, 2022.

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

8 By: 

9 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
10 JOHN SAMBERG, ESQ. (NSB 10828)
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16 jsamberg@wrslawyers.com
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18 *Attorneys for Plaintiffs*
19
20
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2022, a true and correct copy of the **PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE CASE NO. 22 OC 00044 1B WITH CASE NO. 22 OC 00028 1B** via was electronically mailed to all parties per below, and then served upon all parties via U.S. Mail postage prepaid, Reno, Nevada to the following:

Craig A. Newby, Esq.
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555 E. Washington Avenue, Suite #3900
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CNewby@ag.nv.gov

Lucas Foletta, Esq.
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jfoletta@mcdonaldcarano.com

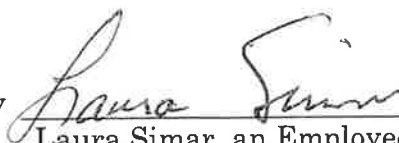
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Attorney for Barbara Cegauske

By



Laura Simar, an Employee of
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*Attorneys for Intervenor
Education Freedom PAC*

REC'D & FILED ✓

2022 APR 15 PM 3:38

BEVERLY ROGERS
CLERK

**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,

vs.

BARBARA CEGAVSKE, in her official
capacity as NEVADA SECRETARY OF
STATE; EDUCATION FREEDOM FOR
NEVADA, a Nevada Committee for Political
Action,

Defendants.

Case No. 22 OC 00044 1B

Dept. No. I

**OPPOSITION TO PLAINTIFFS'
MOTION TO CONSOLIDATE CASE NO.
22 OC 00044 1B WITH CASE NO.
22 OC 00028 1B**

Defendant Education Freedom PAC ("EFP") hereby opposes Plaintiffs' Motion to Consolidate Case No. 22 OC 00044 1B ("*Reid I*") with Case No. 22 OC 00028 1B ("*Reid P*") ("*Mot.*"). This response is based on the following memorandum of points and authorities and all papers and exhibits on file with the Court in this matter.

MEMORANDUM OF POINTS & AUTHORITIES

Under NRCP 42(a)(2), this Court may consolidate actions that "involve a common question of law or fact." When determining whether to consolidate, courts "weigh the interest of judicial convenience against the potential for delay, confusion and prejudice." *Zhu v. UCBH Holdings, Inc.*, 682 F.Supp.2d 1049, 1052 (N.D. Cal. 2010). The burden is on the moving party to show that consolidation is appropriate. *Krause v. Nev. Mut. Ins. Co.*, No. 2:12-CV-00342-JCM-

1 CW, 2013 WL 6524657, at *3 (D. Nev. Dec. 10, 2013); *see also Yount v. Criswell Radovan, LLC*,
2 136 Nev. 409, 414–15, 469 P.3d 167, 172 (2020) (“Where a Nevada rule is similar to an analogous
3 federal rule, the cases interpreting the federal rule provide persuasive authority as to the meaning
4 of the Nevada rule.”).

5 In their Motion to Consolidate, Plaintiffs summarily argue that this Court should
6 consolidate the cases because they share similar questions of law and fact and the same parties
7 and counsel. Mot. 4. They conclude without explanation that those commonalities would be
8 sufficient to “facilitate judicial economy, and avoid . . . delays.” *Id.* They do not acknowledge,
9 however, that this Court must weigh whatever advantages consolidation might offer against its
10 disadvantages, such as delay and prejudice. *Zhu*, 682 F.Supp.2d at 1052.

11 Since Plaintiffs filed their Motion, however, *Reid I* was decided by Judge McGee presiding
12 over Department II. (Order Attached as Exhibit 1.) Thus, there is no advantage to consolidating
13 the cases at this point. Indeed, consolidating the cases would only result in confusion and delay
14 to the expeditious resolution of both cases. To consolidate *Reid I* and *Reid II* in Department I
15 would only serve to joint one case litigated to completion with a second case only beginning to be
16 litigated. Consequently, EFP’s ability to appeal the Court’s decision in *Reid I* would be
17 complicated by joining it with a live controversy yet to be decided. *Reid I* has already been the
18 subject of considerable delay. Despite the fact that the Court is required to hold a hearing ballot
19 petition challenges within 15 days of a complaint being filed, NRS 295.061(1), the Court did not
20 hold a hearing until approximately 5 weeks after the complaint was filed. This delay resulted in
21 substantial prejudice to EFP, which has only until June 29 to submit approximately 140,000
22 petition signatures to the Nevada Secretary of State. NRS 295.056(3). Any further delay in the
23 resolution of *Reid I* would result in further prejudice to EFP.

24 For the foregoing reasons, the Court should not consolidate *Reid I* and *Reid II*.

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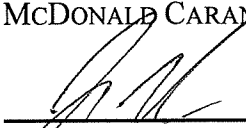
AFFIRMATION

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: April 15, 2022

MCDONALD CARANO

By:


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

*Attorneys for Intervenor
Education Freedom PAC*

MCDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP and, on April 8, 2022, 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

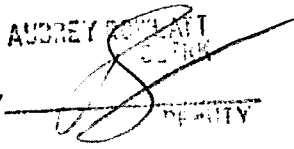
EXHIBIT 1

EXHIBIT 1

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2022 APR 12 AM 9:28

AUDREY ROBERTS

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, CASE NO.: 22-0C-00028 1B

Plaintiffs,

DEPT. NO. I

Vs.

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

Defendant,

EDUCATION FREEDOM PAC,

**Intervenors, aligned
as Defendant.**

PART A

**DISCUSSION OF DECISION
INVALIDATING PETITION TO
AMEND THE NEVADA
CONSTITUTION TO OFFER
SEQUESTERED FUNDING
ALTERNATIVES GOING OUTSIDE
SCHOOL DISTRICTS TO
PARENTS OF SCHOOL AGE
CHILDREN**

PART B

ORDER ENJOINING PETITION

**On March 29, 2022, this Court scheduled a priority hearing in
Carson City to address a recently filed Initiative to Amend the Nevada**

1 **Constitution. Present in Court were counsel for Plaintiffs Rory Reid**
2 **and Beverly Rogers, Bradley S. Schrager and counsel for Education**
3 **Freedom PAC, (hereinafter EFP) Lucas Foletta. Appearing by ZOOM**
4 **was Craig Newby, Esq., representing the Secretary of State's Office,**
5 **who has an administrative stake in the outcome, but properly took a**
6 **neutral stance on the merits of the case.**
7
8

9
10 **The first order of business was the issue of a possibility of**
11 **consolidating the instant case with Case No. 22 OC 00027 1B,**
12 **BEVERLY ROGERS, an individual; RORY REID, an individual, Plaintiffs,**
13 **vs. BARBARA CEGAVSKE, in her Official Capacity as NEVADA**
14 **SECRETARY OF STATE, Defendant, and EDUCATION FREEDOM PAC,**
15 **Intervenors, aligned as Defendant.**
16
17

18 **THE COURT DECIDED NOT TO MERGE THESE TWO CASES BUT TWO**
19

20 **OTHER CASES PROBABLY MERGE**

21 **From here on out the case which is covered by this Decision may**
22 **be informally referred to as "Reid/281B" and the companion case**
23 **which goes in a separate direction, so it will be referred to as**
24 **"Rogers/271B", containing the last digits of the case numbers.**
25
26
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1 **Counsel, in effect, has stipulated to maintaining the**
2 **separateness of Reid/281B and Rogers/271B.**

3 **The latter, Rogers/271B, has features which are entirely missing**
4 **in the first case, as it is an elaborate scheme for administering a**
5 **major fund through the Department of the Treasurer with many**
6 **different timelines for the signature gathering, and other provisions**
7 **which touch and concern *different* sections of Article 19 of Nevada's**
8 **Constitution.**

9 **Consolidating at this time would cause nothing more than**
10 **additional confusion, so the cases will be separately adjudicated, and**
11 **this Decision pertains only to Reid/281B: the Constitutional route.**

12 **THE COURT WILL *NOT* DISMISS THE COMPLAINT ON PROCEDURAL**

13 **GROUND**

14 **The will defer whether to consolidate "REID I" with "REID II".**

15 **A motion has been made by Intervenor/Defendant to summarily**
16 **decide the case based on procedural grounds such as the Intervenor's**
17 **Complaint that states they have been deprived of the time necessary**

1 under NRS 295.061 to deal with the Complaint which challenges the
2 Petition with Secretary of State.¹

3
4 The two Carson City judges were off the case by the time this
5 Court received the file (and that file was incomplete until the end of
6 last week).

7
8 The Court immediately saw the priority, closed the pleadings and
9 set the matter for hearing within ten days.
10

11 The spirit if not the letter of the rule was observed and even if
12 Plaintiffs didn't first join the Intervenor in their Complaint, there is
13 insufficient cause or proof of improper gamesmanship to grant
14 dismissal.
15
16

17 The Motion to dismiss may be and hereby is DENIED.

18 **THE PETITION MUST BE INVALIDATED BECAUSE LACK OF CLARITY**
19
20 **OF CONSEQUENCES IN THE DECLARATION OF EFFECT (WHIZZY,**
21
22 **WHIZZY, WHIZZY HOW TO HIDE THE FUNDING ISSUE)**

23 The Intervenor is playing the great old Western shell game
24 with walnut husks and a single, hard, green pea, when they fail to
25

26
27 ¹ As soon as this case was received by this Judge, after the recusal of the
28 Carson City Judges and served, the oral arguments hearing was set for
Tuesday, Marcy 29, 2022, at 1:00 p.m., and thus the spirit, if not the
letter, of the calendar priority was observed.

1 describe the enormous fiscal impact of this Initiative on the budget of
2 most, if not all, of the school districts in the State of Nevada.

3
4 In this allegory, funding is the "pea", and "there you see it; there
5 you don't."

6
7 And it is ingenious, because the funding used for the program
8 could theoretically be taken from other budgets for road, prisons, law
9 enforcement, motor vehicles, etc., because it is not designated
10 funding as that term has become to be known.

11
12 Two decisions by our Supreme Court inform this Decision as
13 primary authority and contravene the Intervenor's standing.

14
15 The controlling cases are *Herbst Gaming, Inc. v. Heller*, 122 Nev
16 877, 890, 141 P.3d 1224, 1232-33 (2006) and *Rogers v. Heller*, 117
17 Nev. 169, 173, 18 P.3d 1034, 1036 (2001).

18
19 A third case, *Schwartz v. Lopez*, 132 Nev. 732, 738, 382 P.3d 886,
20 891 (2016), offers a valuable precedent, but is probably more
21 applicable to the companion case where the Initiative, once passed,
22 creates a new statute instead of a Constitutional Amendment.
23
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1 In *Schwartz*, the High Court examined the constitutionality of a
2 Senate bill establishing an educational savings account not all that
3 dissimilar to the one under discussion in the companion case.
4

5 So, the *Schwartz* discussion will be reserved for the companion
6 opinion but is cited here for its reinforcement of the other precedents.
7

8 Before addressing the two earlier controlling precedents, the
9 Court needs to sit back and define a few terms which are peculiar to
10 this area of jurisprudence.
11

12 The most scrutinized term for the purposes of this Decision is
13 contained in a sheaf of documents that are shown the prospective
14 signatory, called a "Declaration of Effect" (sometimes hereinafter
15 referred to as a "DOE"). The citizens are asked to consider joining
16 others in starting a process of amending the Constitution of the State
17 of Nevada for the purpose of establishing education accounts called
18 "Education Freedom Accounts", which, when funded, may then be
19 used at the parents' discretion to educate children outside the public
20 school system.
21
22
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26 Obviously, this would be the first phase of two referendums
27 before this amendment is authorized to change the Constitution.
28

1 **The Declaration of Effect is the key document because it is read just**
2 **before the proponent hands a page for signature to a prospect who**
3 **can then peruse the language in its two paragraphs at his or her**
4 **leisure.**

5
6 **But the issue most often discussed when these initiatives have**
7 **been challenged, is, that however terse the description, it MUST**
8 **contain sufficient clarity to put the prospective signatories in such a**
9 **state of mind where they comprehensively, if not necessarily perfectly,**
10 **understand the ramifications of the passage.**

11
12 **Sometimes in these cases, confusing language in the DOE is**
13 **actually changed by the Court for clarity; sometimes counsel will work**
14 **together with the Court for the purpose of altering the Declaration of**
15 **Effect (DOE) effect for that same purpose.**

16
17 **In this case, this Court holds that there is a material omission in**
18 **the Declaration of Effect by reason of its failure to set forth a clean**
19 **and understandable impact statement of direct and collateral fiscal**
20 **ramifications that a normal voter should know about before he or she**
21 **affixes a signature to the petition.**

1 **To help expand upon this finding, the Court is going to embellish**
2 **upon the hypothetical it posed during the oral arguments.**

3 **Please presume, hypothetically, that the rancher's wife, who we**
4 **will call Norma L. Goodman, along with her husband, together have a**
5 **small alfalfa farm in Lyon County, stops at a Yerington grocery store.**
6
7 **A pleasant young proponent of the initiative shows her the requisite**
8 **documents and Norma asks him to explain what is meant by the**
9 **Declaration of Effect.**

10
11
12 **She tells the proponent that she and her husband have not 1, but**
13 **three children; the two older children are enrolled in the public schools**
14 **in Lyon County and the six year old is getting ready for matriculation**
15 **into the public elementary school, but he has special needs and is**
16 **currently the subject of Individual Educational Plan, referred to as an**
17 **"IEP", because he has been placed on the autism spectrum.**

18
19
20
21 **This wife, mother and taxpayer reveals that she and her husband**
22 **are just delighted with the education the older children are receiving,**
23 **but they are looking into a church affiliated group which has created a**
24 **special program for autistic children, to help her youngest son as they**
25 **approach decisions, they have no expertise to deal with.**
26
27
28

1 **She asks the following questions:**

2 **1. Norma: "If I sign this petition and it becomes law, are my**
3 **husband and I going to be required to pay the amounts set forth in in**
4 **the Declaration?**

5 **The Pleasant Responder: "The answer to that question is No, it**
6 **is free to your family; you guys get direct control over the per-pupil**
7 **calculation at the time which may be higher than the amounts**
8 **suggested in this Declaration. Congrats."**

9 **In any given fiscal year, as noted by Plaintiffs' counsel, Brad**
10 **Schrager, the actual amounts are likely to be higher than the amounts**
11 **quoted as they are subject to any number of adjustments to account**
12 **for variables in the "per pupil" calculation.**

13 **To its credit, the Declaration states clearly that the program**
14 **doesn't commence until 2025 and that the numbers quoted are just**
15 **"examples" of base level funding, but the examples are misleadingly**
16 **low, and that could be easily corrected.**

17 **But, the omission that is fatal to this initiative, in the Court's**
18 **opinion, is that it is misleading when it comes to answering the**
19 **mother's second question:**

1 **2. Norma: "Since we are so happy with the schooling for our two**
2 **older children, this initiative won't have any effect on the revenues to**
3 **support their school, will it?"**
4

5 **The Pleasant Responder: "Well it is hard to say, and it is entirely**
6 **too speculative at this point in time."**
7

8 **The truth, of course, is that outcomes can spread all over the**
9 **board.**
10

11 **If Lyon County has few citizens electing to receive the benefit,**
12 **the impact may be minimal. But if the County were to eventually go**
13 **60% in favor of the alternative schooling, the effect might seriously**
14 **affect the programs, teachers, custodians, physical environment,**
15 **electives, and the rest of the infrastructure for the entire School**
16 **District.**
17
18
19

20 **However, the DOE altogether sidesteps the important issue, and**
21 **try as it might, the Court cannot come up with alternate language that**
22 **isn't equally confusing.**
23

24 **The Pleasant Proponent should add, "Well Norma, it could be**
25 **zero, or something small, or it could have a major effect as far as your**
26 **older children go."**
27
28

1 **If this initiative were to pass muster and send the matter to the**
2 **electorate, and if a significant number of people were to exercise their**
3 **rights to vote for it, in some cases it might have a huge effect on**
4 **school districts, and Intervenors know it.**

5 **Later, it says, “generating the revenue to fund the accounts**
6 **could necessitate a tax increase or a reduction in government**
7 **services.”**

8 **But the notice is too tepid.**

9 **For one thing, it talks about “could” when the truth is that if the**
10 **Initiative gets traction at the ballot box, the verb should be “will”.**

11 **Again, to their credit, the DOE states that the Initiative “will**
12 **result in the expenditure of state funds...”.**

13 **Later, it says “generating the revenue to fund the account could**
14 **necessitate a tax increase or a reduction in government services”.**

15 **The Court holds that it is absolutely essential for the people to**
16 **know that if a sufficient number of voters have chosen to appropriate**
17 **monies otherwise going to the School District, then once becoming the**
18 **Law, the amendment to the Constitution has a most solemn and**
19 **powerful effect on the public education system.**

1 **However, clothed in a topcoat of bright colors or in camouflaged**
2 **colors; the operator manipulating the "funding pea" is still whizzing it**
3 **around the table topped with poker felt.**

4
5 **The proposed initiative will have a pronounced effect on the**
6 **education system in the State of Nevada and it would leave a future**
7 **Legislature with a harness around its neck and shoulders that would**
8 **prevent it from exercising its discretion to fulfill its duties to see to the**
9 **education of children in our state. Thus, it illegally usurps the function**
10 **from a future Legislature.**

11
12 **The description of effect is deemed legally misleading.**

13
14 **Thus, the Court holds that to pass constitutional muster, the**
15 **Declaration of effect must articulately set forth language that the**
16 **funds distributed into EFA account may diminish the revenues**
17 **available to the State for funding of public schools and/or other public**
18 **works in major way.**

19
20 **Every dollar that is sent to an EFP to give parents the right to**
21 **choose programs outside the School District for their children,**
22 **reduces, dollar by dollar, the funds available to the School Districts or**
23 **other Public Work to achieve their mission.**

1 **In other words, if enough people opt for the outcome suggested**
2 **by this initiative, then are the School Districts, statewide, in major**
3 **trouble in being able to balance their books?**
4

5 **Let's say that the proponents, who are the Intervenor and**
6 **Defendants in this case, are able, under the time frame, to get at least**
7 **140,777 signatures to open the gates to a process which would**
8 **substantially change public education three years from now.**
9

10 **Let's also say that 10% of the people who sign the petition are**
11 **just interested. Maybe 90% are committed; they wait the three years**
12 **and become a part of the constituency that makes the alternate**
13 **schooling availability the Law of the Land. Simple math says that just**
14 **that slice of voters approving final rendition will cost upward of a**
15 **BILLION DOLLARS, using the approximate \$7,000.00 per pupil figure.**
16 **(Rough average of fictional figures used by Intervenor of \$6,980.00**
17 **and \$7,074.00).**
18
19

20 **ALTERNATIVELY, THE SCHEME IS AN UNFUNDED MANDATE**
21

22 **The Court, as an alternative remedy, rules in part B that the**
23 **Intervenor's Petition and Initiative is just the kind of unfunded**
24 **mandate which under strong authority is prohibited in Nevada.**
25
26
27
28

1 **In *Rogers v. Heller, supra*, 63,000 voters signed Initiative**
2 **Documents, called, generally, “Nevada Tax and Fairness and Quality**
3 **School Funding Accountability Act”.**

4
5 **A group of business entities, afraid of the fiscal consequences,**
6 **challenged the Initiative, as was done here.**

7
8 **In no uncertain terms, our Supreme Court made the following**
9 **pronouncement, *Rogers, supra*, 117 Nev. 169 @ p. 173 (2001):**

10
11 **“Nevada Constitution article 19, section 2(1) provides that the**
12 **Initiative process is “subject to the limitations of [article 19**
13 **section 6].” Article 19, section 6, in turn “does not permit**
14 **the proposal of any statute or statutory amendment which**
15 **makes an appropriation or otherwise requires the expenditure**
16 **of money, unless such statute or amendment also imposes a**
17 **sufficient tax, not prohibited by the constitution, or otherwise**
18 **constitutionally provides for raising the necessary revenue.”**
19 **Section 6 applies to *all* proposed initiatives, without exception,**
20 **and *does not permit* any initiative that fails to comply with**
21 **the stated conditions. Consequently, section 6 is a**
22 **threshold content restriction, under which we must address**
23 **the Initiative's validity. If the Initiative does not comply with**
24 **section 6, then the Initiative is void.**

25
26 **In *Rogers*, the High Court was asked to examine whether**
27 **proposed funding sources would “do the trick,” so to speak and**
28 **provide fair revenues to sustain the Initiative.**

1 A 4% tax in that case would have generated more than a quarter
2 of a BILLION dollars for the program, but even that amount was
3 deemed deficient.
4

5 Thus, the law in the State of Nevada precludes Constitutional
6 Initiatives that don't set forth a viable funding mechanism.
7

8 In accord with the holding in *Rogers*, is the more recent case of
9 *Herbst, Id.*
10

11 *Herbst* is, factually and in some part, legally, a very different
12 case from *Rogers, supra*.
13

14 It involves how and whether smoking in business
15 establishments, not schooling alternatives;

16 A previous decision affirming a broad scope of pre-
17 election challenges was overturned;

18 Pre-election challenges that reach Constitutional
19 Mandates are eliminated;
20

21 [NOTE: this refers to claims of Constitutional substance, gone
22 awry, not challenges made through initiative process as to whether it
23 is valid in the first instance.]
24

25 *Herbst* tells us: as different as they are factually and even though
26 *Reid/281B* relies on Constitutional Article 19, Section 4, while
27
28

1 **Rogers/271B relies upon Section 3, they are both governed by Section**
2 **6 – the revenue mandate.**

3 **So, the Reid/281B Petition is judicially determined to be non-**
4 **viable for two separate, albeit related, reasons.**

5 **1. The DOE is short of crucial information regarding funding**
6 **impacts;**

7 **2. The Initiative represents an unfunded mandate prohibited by**
8 **Nevada Law. Article 19, Sec. 6 is quoted in full:**

9 ***“Sec. 6. Limitation on initiative making appropriation***
10 ***or requiring expenditure of money. This Article does not***
11 ***permit the proposal of any statute or statutory***
12 ***amendment which makes an appropriation or otherwise***
13 ***requires the expenditure of money, unless such***
14 ***statute or amendment also imposes a sufficient tax,***
15 ***not prohibited by the Constitution, or otherwise***
16 ***constitutionally provides for raising the necessary***
17 ***revenue.” (emphasis supplied)***

18 **Anytime a legislature enactment is needed to fund a Bill,**
19 **traditionally all bills with fiscal import have to specify the exact**
20 **source of revenue.**

PART B ORDER

This Judge has historically encouraged attorneys who prevail in a given matter to suggest language for the Order they will have to defend on appeal.

So, in that connection, the Court acknowledges and adopts much of the proposed order proffered by Plaintiffs' counsel as follows:

This matter having come before this Court pursuant to Plaintiffs, Rory Reid and Beverly Rogers ("Plaintiffs") Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022, and Plaintiffs' Memorandum of Points and Authorities in Support of the Complaint, and having considered Intervenor Defendant, Education Freedom PAC ("Intervenor"), Answer and Answering Brief in Response to Plaintiffs' Memorandum of Points and Authorities in Support of the Complaint, Plaintiffs' Reply in Support of the Complaint, and oral argument from counsel for both Plaintiffs and Intervenor, the Court finds as follows:

STATEMENT OF FACTS

On January 31, 2022, Erin Phillips, on behalf of Education Freedom PAC, filed Initiative Petition C-04-2022 (the "Petition") with

1 the Secretary of State of Nevada, proposing to amend Article 11 of the
2 Nevada Constitution to require the Nevada Legislature to create an
3 education saving account program, known in the Petition as
4 “education freedom accounts” (“EFA”), for K-12 students to attend
5 schools and educational programs outside the uniform system of
6 common public schools established pursuant to the Nevada
7 Constitution. The Petition seeks to add a new section to Article II,
8 which reads, in full:
9

12 No later than the school year commencing in 2025, and
13 on an ongoing basis thereafter, the Legislature shall
14 provide by law for the establishment of education
15 freedom accounts by parents of children being educated
16 in Nevada. Parents shall be authorized to use the funds
17 in the accounts to pay for the education of their child in
18 full or in part in a school or educational environment that
19 is not a part of the uniform system of common schools
20 established by the Legislature. The Legislature shall
21 appropriate money to fund each account in an amount
22 comparable to the amount of funding that would otherwise
23 be used to support the education of that child in the
24 uniform system of common schools. The Legislature
25 shall provide by law for an eligibility criteria for parents
26 to establish an education freedom account.

24 The Petition includes a description of effect as required by NRS
25 295.009(1)(b), which reads, in full:
26

27 The initiative will provide parents with the ability to use
28

1 funds appropriated by the Legislature to pay for the
2 education of their child in a school or educational
3 environment that is not a part of the public school
4 system. The initiative requires the Legislature to
5 establish an education freedom account program under
6 which parents may spend money appropriated by the
7 Legislature into those accounts to pay for some or all
8 of their child's education outside the public school
9 system. The Legislature must establish an eligibility
10 criteria for parents to establish an account.

11 The initiative will result in the expenditure of state
12 funds to fund the accounts in an amount comparable to
13 the public support that would be used to support the
14 education of the child for whose benefit the account
15 has been established in a public school. For Fiscal
16 Year 2021-2022, the Legislature determined the statewide
17 base per pupil amount to be \$6,980 per pupil. For
18 Fiscal Year 2022-2023, that amount is \$7,074 per pupil
19 Generating the revenue to fund the accounts *could*
20 necessitate a tax increase or a reduction in government
21 services. The Legislature must establish the program
22 by the start of the school year that commences
23 in 2025. (emphasis supplied)

24 STANDARD OF LAW

25 Nevada law requires that any initiative petition “[e]mbrace but
26 one subject and matters necessarily connected therewith and
27 pertaining thereto.” NRS 295.009(1)(a). Additionally, Article 19,
28 Section 6 of the Nevada Constitution prohibits any initiative that
“makes an appropriation or otherwise requires the expenditure of

1 money, unless such statute or amendment also imposed a sufficient
2 tax, not prohibited by the Constitution, or otherwise constitutionally
3 provides for raising the necessary revenue.” Nev. Const. Art. 19, Sec.
4

5 6. Finally, initiatives description of effect “must be straightforward,
6 succinct, and nonargumentative, and it must not be deceptive or
7 misleading.” *Edu. Initiative PAC v. Comm. To Protect Nev. Jobs*, 129
8 Nev. 35, 37, 293 P.3d 874, 876 (2013) (internal quotation marks and
9 citation marks omitted).
10
11

12 ANALYSIS AND CONCLUSIONS OF LAW

13

14 The Petition violates NRS 295.009(1)(b) because it does not
15 inform voters of the effects of the Petition. A description of effect
16 must present enough information for a potential signer to make an
17 informed decision about whether to support the initiative; the failure
18 to meet this requirement renders an initiative invalid. *See e.g., Nev.*
19 *Judges Ass’n v. Lau*, 112 Nev. 51,59 (1996) (rejecting initiative’s
20 description of effect for “failure to explain [certain] ramifications of
21 the proposed amendment,” which “renders the initiative and its
22 explanation potentially misleading”).
23
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1 **The description of effect is invalid because it is confusing,**
2 **misleading, and omits discussion of many of the Petition's most**
3 **significant ramifications. For example, the description incorrectly**
4 **conflates "the public support that would support the education of the**
5 **child" with the statewide average base per-pupil amount, a completely**
6 **different figure describing only a portion of per-pupil "public support."**

7
8
9 **The most recent K-12 funding legislation describes "total public**
10 **support as:**

11
12 **"[A]ll money appropriated directly for the support of the**
13 **public schools in this State, including, without limitation,**
14 **the statewide base per pupil funding amount, adjusted base per**
15 **pupil funding, additional weighted funding and all money**
16 **appropriated for a specific program or purpose in support of**
17 **the public schools, and all other money projected to be**
18 **received for the support of the public schools from taxes,**
19 **fees and other revenues authorized by state law, excluding**
20 **any money provided by the Federal Government directly**
21 **to a public school or school district or otherwise provided**
22 **on a one-time basis in response to an emergency."**

23 **SB458, Sec. 2(2)(2021)/**

24 **The Legislature calculated the average total public support per**
25 **pupil at \$10,204 for FY 2020-2021 and \$10,290 for FY 2022-2023. The**
26 **description of effect provides signatories with significantly smaller**
27 **per-pupil figures, \$6,980 and \$7,074, respectively. It cites the**
28

1 **statewide average base per-pupil funding levels despite the initiative**
2 **requiring EFA accounts fund an amount comparable to “public support**
3 **that would support the education of the child for whose benefit the**
4 **account has been established in a public school,” which would include**
5 **funding beyond the statewide base per pupil amount. Likewise, the**
6 **description of effect completely omits the variable per-pupil funding**
7 **support that any given student might receive in determining a**
8 **comparable per-pupil funding amount for the EFA. The description of**
9 **effect incorrectly describes “the public support that would support the**
10 **education of *the child*” in narrow terms that does not reflect the actual**
11 **funding that an individual student might receive, and consequently,**
12 **the actual financial impact to taxpayers and local district budgets.**
13 **The Petition’s description of effect states that “[g]enerating the**
14 **revenue to fund the accounts could necessitate a tax increase or a**
15 **reduction in government services[,]” and misleadingly fails to disclose**
16 **that any funding appropriated for the contemplated program would**
17 **inevitably reduce the funding available for Nevada’s public school**
18 **system.**

1 **Secondly, the Petition is invalid because it mandates**
2 **expenditures without providing reciprocal revenues in violation of**
3 **Article 19, Section 6 of the Nevada Constitution. An initiative need not**
4 **“by its terms appropriate money” to violate the prohibition. *Herbst***
5 ***Gaming, Inc. v. Heller*, 122 Nev. 877, 890 n.40, 141 P.3d 1224, 1233**
6 **n.40 (2006) (citing *State ex rel Card v. Kaufman*, 517 S.W.2d 78, 80**
7 **(Mo. 1974)). Rather, “an initiative makes an appropriation or**
8 **expenditure when it leaves budgeting officials no discretion in**
9 **appropriating or expending the money mandated by the initiative –the**
10 **budgeting official must approve the appropriation or expenditure,**
11 **regardless of any other financial considerations.” *Id.* At 890. “If the**
12 **Initiative does not comply with section 6, then the Initiative is void” in**
13 **its entirety, and the offending provision cannot be severed to render it**
14 **constitutional. *Id.* at 173, 177-78. This is what the Petition does. The**
15 **Petition mandates the Nevada Legislature appropriate money to fund**
16 **each EFA in an amount comparable to the amount of funding that**
17 **would otherwise be used in the public school system. The very first**
18 **sentence of the second paragraph of the Petition’s description**
19 **declares that “[t]he initiative will result in the expenditure of state**
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1 **funds[.]” The Petition fails to impose any taxes or otherwise raise the**
2 **necessary revenue to either fund the EFAs contemplated by the**
3 **Petition, or to pay for the administrative expenses that would**
4 **necessarily have to be incurred in creating, maintaining, and**
5 **administering the EFA program.**
6
7


8 **Finally, the Petition impermissibly commands the Nevada**
9 **Legislature to enact a statute or set of statutes effecting its terms,**
10 **which violates the inherent deliberative functions of the Nevada**
11 **Legislature. The Petition’s command to the Nevada Legislature is**
12 **purportedly binding, and Nevada legislators would not be free to**
13 **deliberate and vote their own considered judgment, being responsible**
14 **to their own considered judgment, being responsible to their own**
15 **constituents, and they would no longer be part of a deliberative body**
16 **acting independently in exercising their individual best judgments on**
17 **the matters that come before them. The outcome of the specific**
18 **action mandated by the Petition – passage of a statute or statutes**
19 **effecting the term of the initiative – would be predetermined. No**
20 **initiative may compel such a result.**
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1 **IT IS THEREFORE ORDERED** and declared that Initiative Petition
2 **C-04-2022 is legally deficient because it violates the description of**
3 **effect requirement of NRS 295.009; the Petition constitutes an**
4 **impermissible unfunded governmental mandate; and the Petition**
5 **impermissibly commands the Nevada Legislature to enact a statute or**
6 **set of statutes effecting its terms.**
7
8

9 **IT IS FURTHER ORDERED** and declared that Intervenor-Defendant
10 **Education Freedom PAC, its proponents, officers, or agents, are hereby**
11 **enjoined from collecting signatures in support of the Petition and from**
12 **submitting any signatures for verification pursuant to NRS 293.1276,**
13 **and any signatures previously collected are declared invalid.**
14
15

16 **IT IS FURTHER ORDERED** and declared that Defendant Secretary
17 **of State Barbara Cegavske is enjoined from placing the Petition on the**
18 **ballot.**
19
20

21 DATED THIS 11th day of April, 2022.
22
23

24 
25 **CHARLES M. MCGEE**
26 **SR. Judge on Assignment**
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CERTIFICATE OF MAILING

I hereby certify that on this day, April 12, 2022, I emailed a
copy of **DECISION INVALIDATING PETITION TO AMEND THE NEVADA
CONSTITUTION TO OFFER SEQUESTERED FUNDING ALTERNATIVES
GOING OOUTSIDE DISTRICTS TO PARENTS OF SCHOOL AGE
CHILDREN to:**


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*Attorneys for Defendant
Education Freedom PAC*

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CLERK
BY K. PETERSON
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,

vs.

BARBARA CEGAVSKE, in her official
capacity as NEVADA SECRETARY OF
STATE; EDUCATION FREEDOM FOR
NEVADA, a Nevada Committee for
Political Action

Defendants.

Case No. 22 OC 00044 1B

Dept. No. II

ANSWER TO COMPLAINT

COMES NOW, Defendant 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 Plaintiffs' Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-06-2022 Pursuant to NRS 295.061(1) ("Complaint") 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.

6. EFP admits the allegations in Paragraph 6.

GENERAL FACTUAL ALLEGATIONS

7. EFP denies the allegations in Paragraph 7, except admits that the constitutional-amendment initiative petition designated as C-06-2022 ("Petition") and related Notice of Intent to Circulate Statewide Initiative or Referendum Petition ("Notice of Intent") was filed on March 3, 2022.

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 15, except admits that the text of the Petition is as stated in Exhibit 1 to the Complaint.

16. EFP denies the allegations in Paragraph 16, 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)”)

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

18. EFP denies the allegations in Paragraph 18, 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.

19. The allegations in Paragraph 19 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 19.

20. EFP denies the allegations in Paragraph 20.

21. EFP denies the allegations in Paragraph 21.

22. EFP denies the allegations in Paragraph 22.

23. EFP denies the allegations in Paragraph 23.

1 24. EFP denies the allegations in Paragraph 24.

2 **SECOND CAUSE OF ACTION**

3 **(“Impermissible Use of the Initiative Process”)**

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

6 26. The allegations in Paragraph 26 set forth legal conclusions to which no response is
7 necessary, but should any answer be required, EFP denies the allegations in Paragraph 26.

8 27. The allegations in Paragraph 27 set forth legal conclusions to which no response is
9 necessary, but should any answer be required, EFP denies the allegations in Paragraph 27.

10 28. The allegations in Paragraph 28 set forth legal conclusions to which no response is
11 necessary, but should any answer be required, EFP denies the allegations in Paragraph 28.

12 29. The allegations in Paragraph 29 set forth legal conclusions to which no response is
13 necessary, but should any answer be required, EFP denies the allegations in Paragraph 29.

14 30. The allegations in Paragraph 30 set forth legal conclusions to which no response is
15 necessary, but should any answer be required, EFP denies the allegations in Paragraph 30.

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

18 32. The allegations in Paragraph 32 set forth legal conclusions to which no response is
19 necessary, but should any answer be required, EFP denies the allegations in Paragraph 32.

20 33. The allegations in Paragraph 33 set forth legal conclusions to which no response is
21 necessary, but should any answer be required, EFP denies the allegations in Paragraph 33.

22 34. The allegations in Paragraph 34 set forth legal conclusions to which no response is
23 necessary, but should any answer be required, EFP denies the allegations in Paragraph 34.

24 35. EFP denies the allegations in Paragraph 35.

25 **THIRD CAUSE OF ACTION**

26 **(“Violation of Unfunded Expenditure Prohibition, Nev. Const. Art. XIX, Sec. 6”)**

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

37. The allegations in Paragraph 37 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 37.

38. The allegations in Paragraph 38 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 38.

39. The allegations in Paragraph 39 set forth legal conclusions to which no response is necessary, but should any answer be required, EFP denies the allegations in Paragraph 39.

40. EFP denies the allegations in Paragraph 40.

41. EFP denies the allegations in Paragraph 41.

42. EFP denies the allegations in Paragraph 42.

43. EFP denies the allegations in Paragraph 43.

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 so 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

1 5. For such other and further relief as the Court deems just and proper under all the
2 circumstances of this matter.


3 **AFFIRMATION**

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

6
7 Dated: April 18, 2022

8 MCDONALD CARANO

9
10 By:


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

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13 *Attorneys for Education Freedom PAC*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and that on the on the 18th day of April, 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

4876-3121-9732, v. 2

McDONALD CARANO

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