

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

EDUCATION FREEDOM PAC,
Appellant,

vs.

RORY REID, AN INDIVIDUAL; AND
BARBARA K. CEGAVSKE, IN HER
OFFICIAL CAPACITY AS SECRETARY OF
STATE,
Respondent.

No. 84736

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
May 27 2022 11:25 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

Revised December 2015

1. Judicial District First Judicial District Department II
County Carson City Judge Sr. Judge McGee
District Ct. Case No. 22 OC 00028 1B

2. Attorney filing this docketing statement:

Attorney Jason D. Guinasso, Esq Telephone 775) 853-8746
Firm Hutchison & Steffen, PLLC
Address 5371 Kietzke Lane
Reno, NV 89521

Client(s) Education Freedom PAC

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

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

Attorney Craig Newby, Esq Telephone (702) 486-9246
Firm Office of the Attorney General
Address 555 E. Washington Ave., Ste 3900
Las Vegas, NV 89101

Client(s) Barbara Cegavske

Attorney Bradley S. Schrager, Esq Telephone 702) 341-5200
Firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
Address 3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, NV 89169

Client(s) Beverly Rogers, Rory Reid

(List additional counsel on separate sheet if necessary)

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

- | | |
|--|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Invalidated Petition</u> |

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

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

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

Reid, et al. v. Cegavske, et al.

In the First Judicial District Court of the State of Nevada

In and for Carson City

Case No.: 220C002B 1B

Dept. No.: II

Date of Disposition: April 12, 2022

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

Reid, et al. v. Cegavske, et al.

In the First Judicial District Court of the State of Nevada

In and for Carson City

Case No.: 220C0044 1B

Dept. No.: II

Date of Disposition: Pending

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

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

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

1. Whether Education Freedom PAC's Description of Effect is a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals?
2. Whether the district court erred in requiring Education Freedom PAC's Description of Effect to contain subjective, argumentative language?
3. Whether the Nevada Constitution prohibits unfunded Constitutional Amendments, when the plain language only applies to statutes and statutory amendments?
4. Whether, as is the case with many other provisions of the Nevada Constitution, a Constitutional Amendment can force the Legislature to act?
5. Whether NRS 295.061 obligates a district court to dismiss a complaint if the district court cannot comply with the statutorily required timeline?

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

Rogers, et al. v. Cegavske, et al.

Supreme Court Case No.: 84735

Similar issues: Validity of Initiative Petition

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

☐ N/A

☒ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☒ A ballot question

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

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

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

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

Was it a bench or jury trial? _____

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

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 12, 2022

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

17. Date written notice of entry of judgment or order was served April 21, 2021

Was service by:

☒ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed May 19, 2022

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) | <u></u> |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This Court has jurisdiction over this appeal pursuant to NRAP 3A(b)(1) because it is an appeal from a final order resolving all claims presented to the district court, and pursuant to NRAP 3A(b)(3) because it is an appeal from an order granting an injunction.

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

(a) Parties:

Education Freedom PAC
Rory Reid
Beverly Rogers
Barbara Cevaske

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

N/A

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

Claim that Petition is invalid, disposition April 12, 2022.

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below:

A separate challenge to an Initiative Petition is pending in district court:

Reid, et al. v. Cegavske, et al.

In the First Judicial District Court of the State of Nevada

In and for Carson City

Case No.: 220C0044 1B

Dept. No.: II

(b) Specify the parties remaining below:

Education Freedom PAC

Rory Reid

Beverly Rogers

Barbara Cevaske

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

The final order in Supreme Court Case No. 84736, appeal of district court Case No. 22 OC 000 28 is a final order and independently appealable. There is a separate related matter that does not yet have a final order under district court Case No.: 2 OC 000 44.

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

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

VERIFICATION

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

Education Freedom PAC
Name of appellant

Jason D. Guinasso, Esq
Name of counsel of record

May 27, 2022
Date

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

Washoe County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 27th day of May, 2022, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)
- ☒ By serving it upon the below counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

Bradley S. Schrager, Esq.
John Samberg, Esq.
Daniel Bravo, Esq.
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Las Vegas, NV 89101
Attorney for Barbara K. Cevasko

Dated this 27th day of May, 2022

/s/ Kaylee Conradi
Signature

REC'D & FILED

2022 FEB 22 PM 1:45

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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.: 22000028 B

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:

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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).

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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.
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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.

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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,
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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.

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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	
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Petition District _____

(Only registered voters of this county may sign below)

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Office Use Only**

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

THE COURT WILL NOT DISMISS THE COMPLAINT ON PROCEDURAL

****GROUND****

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 THE PETITION MUST BE INVALIDATED BECAUSE LACK OF CLARITY

19 OF CONSEQUENCES IN THE DECLARATION OF EFFECT (WHIZZY,

20 WHIZZY, WHIZZY HOW TO HIDE THE FUNDING ISSUE)
21
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 **calculation at the time which may be higher than the amounts**
10 **suggested in this Declaration. Congrats."**

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

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

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

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.
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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**
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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**
27
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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:**

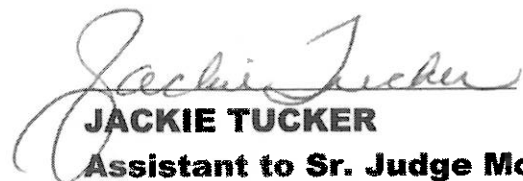
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ORIGINAL

REC'D & FILED

2022 APR 19 PM 2:59

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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

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that the 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 and
Order Enjoining Petition was entered in the above-caption matter on the 12th day of
April, 2022.

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

2 **AFFIRMATION**

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

5
6 DATED this 19th day of April, 2022.

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

9 By: 

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

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2022, a true and correct copy of the **Notice of Entry of Order** 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:

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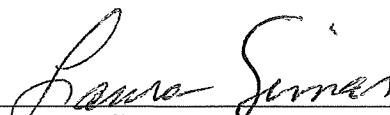
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By



Laura Simar, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN
& RABKIN, LLP

INDEX OF EXHIBITS

Exhibit No.	Documents	Pages
1	Decision and Order	26

1 **Constitution. Present in Court were counsel for Plaintiffs Rory Reid**
2 **and Beverly Rogers, Bradley S. Schragger 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
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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.

THE COURT WILL NOT DISMISS THE COMPLAINT ON PROCEDURAL

GROUND

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

15
16 The controlling cases are *Herbst Gaming, Inc. v. Heller*, 122 Nev
17 877, 890, 141 P.3d 1224, 1232-33 (2006) and *Rogers v. Heller*, 117
18 Nev. 169, 173, 18 P.3d 1034, 1036 (2001).
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
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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
23
24
25

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

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

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 **This wife, mother and taxpayer reveals that she and her husband**
20 **are just delighted with the education the older children are receiving,**
21 **but they are looking into a church affiliated group which has created a**
22 **special program for autistic children, to help her youngest son as they**
23 **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 **mother's second question:**
26
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

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
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
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

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**

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:
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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.
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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).
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12 ANALYSIS AND CONCLUSIONS OF LAW

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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”).
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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."**

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

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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**
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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.
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14 The Petition's description of effect states that "[g]enerating the
15 revenue to fund the accounts could necessitate a tax increase or a
16 reduction in government services[,] and misleadingly fails to disclose
17 that any funding appropriated for the contemplated program would
18 inevitably reduce the funding available for Nevada's public school
19 system.
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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**
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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.
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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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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 OUTSIDE DISTRICTS TO PARENTS OF SCHOOL AGE
CHILDREN to:**


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