

**In the
Supreme Court of the State of Nevada**

NEVADANS FOR
REPRODUCTIVE FREEDOM, a
political action committee,

Appellant,

vs.

DONNA WASHINGTON, an
individual; COALITION FOR
PARENTS AND CHILDREN, a
political action committee; and
FRANCISCO V. AGUILAR, in his
official capacity as NEVADA
SECRETARY OF STATE,

Respondents.

Case No.: **87681**

First Judicial District Court
Case No.: 23 OC 00115 1B

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Clerk of Supreme Court

JOINT APPENDIX

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Dated this 8th day of December, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2023, a true and correct copy of **JOINT APPENDIX** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

Bv: /s/ *Dannielle Fresquez*
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5
6 **IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

7 DONNA WASHINGTON, an individual;
COALITION FOR PARENTS AND CHILDREN,
8 a Political Action Committee,

9 Plaintiffs,

10 vs.

11 FRANCISCO V. AGUILAR, in his Official
Capacity as the NEVADA SECRETARY OF
12 STATE,

13 Defendant.

Case No.: ²⁰⁰⁰⁰⁰¹¹⁵⁹ 122-OC-00122B

Dept. No. 1

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

15 Plaintiffs DONNA WASHINGTON and COALITION FOR PARENTS AND CHILDREN
16 ("Plaintiffs"), a Political Action Committee, by and through its undersigned counsel Jason D.
17 Guinasso, Esq., of the law firm Hutchison & Steffen, PLLC, hereby file this Complaint for Declaratory
18 and Injunctive Relief against Defendant FRANCISCO V. AGUILAR ("Defendant"), in his official
19 capacity as the Nevada Secretary of State, to challenge Initiative Petition C-01-2023. This complaint is
20 brought pursuant to NRS 295.061, NRS 30.030, and NRS 33.010.

21 **JURISDICTION**

22 1. This Court has jurisdiction to hear Plaintiffs' claims to challenge Initiative Petition C-
23 01-2023 pursuant to NRS 295.061.

24 ///

25 ///

2. This Court has jurisdiction to grant Plaintiffs' declaratory relief and injunctive relief pursuant to NRS 30.030, NRS 30.040, and NRS 33.010.

VENUE

3. Venue is proper in the First Judicial District Court pursuant to NRS 295.061(1), NRS 13.020, and NRS 13.040 because this action is against a public officer for acts done in his personal capacity.

PARTIES

4. Plaintiff COALITION FOR PARENTS AND CHILDREN, is a Political Action Committee registered in the State of Nevada.

5. Donna Washington is an individual, a Nevada resident, and is registered to vote.

6. Defendant is the Nevada Secretary of State and is sued in his official capacity. In his capacity as the Nevada Secretary of State, Defendant is responsible for administering, executing, and enforcing Nevada's election laws. *See* NRS 293.124. Defendant is also responsible for ensuring that initiative petitions comply with Nevada law. *See* NRS 295.015.

FACTUAL ALLEGATIONS

7. On or about September 14, 2023, Lindsey Harmon, on behalf of the Nevadans for Reproductive Freedom, filed Nevada Constitutional Initiative Petition C-01-2023 (the “Petition”). *See* Exhibit 1 (containing a copy of the Notice of Intent to Circulate Statewide Initiative Petition for the Petition).

8. The Petition seeks to add a new section to the Nevada Constitution, which will be designated as Section 25 of Article 1 (the “Amendment”). Exhibit 1, at 3.

9. The first subsection of the Amendment would create a “fundamental right to reproductive freedom.” Among other things, this newly developed right provides that reproductive freedom—which includes “all matters relating to pregnancy”—shall not be denied, burdened, or infringed upon unless justified by a compelling State interest. Exhibit 1, at 3. Broadly, this section

1 would expressly apply to “prenatal care, childbirth, postpartum care, birth control, vasectomy, tubal
2 ligation, abortion, abortion care, management of a miscarriage, and infertility care.”

3 10. The second subsection of the Amendment would allow the State to “regulate the
4 provision of abortion care after fetal viability, provided that in no circumstance may the State Prohibit
5 an abortion that, in the professional judgment of an attending provider of health care, is medically
6 indicated to protect the life or physical or mental health of the pregnant individual.” Exhibit 1, at 3.

7 11. The third subsection of the Amendment would prohibit the State from penalizing or
8 prosecuting an individual based on “perceived or alleged outcome of the pregnancy of the individual,
9 including, without limitation, a miscarriage, stillbirth or abortion.” Exhibit 1, at 3.

10 12. The fourth subsection of the Amendment would prohibit the State from penalizing,
11 prosecuting, or otherwise taking adverse action against “a provider of health care” for acting within the
12 standard of care for performing an abortion or providing abortion care. Exhibit 1, at 3.

13 13. The fifth subsection of the Amendment would prohibit the State from penalizing or
14 prosecuting an individual for aiding or assisting another individual in exercising the right of the
15 individual to reproductive freedom. Exhibit 1, at 3.

16 14. The sixth subsection of the Amendment would provide that “nothing herein narrows or
17 limits the rights to equality and equal protection.” Exhibit 1, at 3.

18 15. The Petition includes a description of effect that states:

19 If enacted, this initiative would add a new section to Article 1 of the
20 Nevada Constitution establishing a fundamental right to reproductive
21 freedom. This initiative enables individuals to make and carry out decisions
22 about matters relating to their pregnancies, including prenatal care,
23 childbirth, postpartum care, birth control, vasectomies and tubal ligations,
24 abortion and abortion care, and care for miscarriages and infertility.

25 If this measure is enacted, the State still may regulate provision of
abortion care after fetal viability, except where medically indicated to protect
the life or physical or mental health of the pregnant individual.

1 Under this measure, the State may not penalize, prosecute, or take
2 adverse action against any individual based on the outcome of a pregnancy of
3 the individual, or against any licensed health care provider who acts
4 consistent with the applicable scope and practice of providing reproductive
5 health care services to an individual who has granted their voluntary consent.
Neither may the State penalize, prosecute, or take adverse action against any
individual or entity for aiding or assisting another individual in the exercise
of the rights established by this initiative.

6 Exhibit 1, at 5.

7 **CLAIM FOR RELIEF**

8 **(Violations of NRS Chapter 295)**

9 16. Plaintiffs' hereby reincorporates Paragraphs 1-15 of this complaint as if set forth fully
10 herein.

11 17. "Courts will consider challenges to an initiative petition preelection in limited
12 circumstances, such as when those challenges are based on the petition's compliance with the single-
13 subject requirement, the statutory requirement for the description of effect, or the preclusion against
14 unfunded mandates." *Helton v. Nevada Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313
15 (2022).

16 **Single-Subject Requirement**

17 18. NRS 195.009(1)(a) provides that an initiative petition *must* embrace *only* "one subject
18 and matters necessarily connected therewith and pertaining thereto." An initiative petition embraces
19 one subject "if the parts of the proposed initiative or referendum are functionally related and germane
20 to each other in a way that provides sufficient notice of the general subject of, and of the interests likely
21 to be affected by, the proposed initiative or referendum." NRS 295.009(2).

22 19. "The single-subject requirement 'facilitates the initiative process by preventing petition
23 drafters from circulating confusing petitions that address multiple subjects.'" *Helton*, 138 Nev., Adv.
24 Op. 45, 512 P.3d at 314 (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894,
25 902, 141 P.3d 1235, 1240 (2006)). "[T]he single-subject requirement helps both in promoting informed

1 decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive
2 proposals or concealing them in lengthy, complex initiatives (i.e., logrolling).” *Id.* (internal quotation
3 marks omitted). “[L]ogrolling occurs when two or more completely separate provisions are combined
4 in a petition” *Id.* at 315 (internal quotation marks omitted).

5 20. In ascertaining whether a petition violates the single-subject requirement, “[t]he court
6 must first determine the initiative’s purpose or subject and then determine if each provision is
7 functionally related and germane to each other and the initiative’s purpose or subject.” *Helton*, 138
8 Nev., Adv. Op. 45, 512 P.3d at 314. “To determine the initiative’s purpose or subject, this court looks
9 to its textual language and the proponents’ arguments.” *Id.* (internal quotation marks omitted). “The
10 court also will look at whether the description of effect articulates an overarching purpose and explains
11 how provisions relate to a single subject.” *Id.*

12 21. Here, the Petition embraces a litany of subjects that clearly amount to logrolling.
13 Subsection 1, alone, embraces the following subjects: prenatal care, childbirth, postpartum care, birth
14 control, vasectomy, tubal ligation, abortion, abortion care, management of a miscarriage, and infertility
15 care. *See* Exhibit 1, at 3. Subsection 1 purportedly creates a “fundamental right to reproductive
16 freedom,” but there is no limiting language in that section to circumscribe that right such that the
17 section embraces a single and articulable subject. *Id.* For instance, it is wholly unclear how a
18 vasectomy relates to infertility care or postpartum care. Likewise, it is wholly unclear how postpartum
19 care is related to abortions or birth control. Thus, it is improper to characterize these broad categories
20 as a “single subject.”

21 22. Legally, the Petition creates several laws that are not functionally related and/or germane
22 to the proposed “right to reproductive freedom.” First, subsection 2 would allow the State to regulate
23 an abortion after fetal viability, but the State would be *prohibited* from regulating a viable fetus if a
24 “provider of health care” indicated that an abortion was necessary to “protect the life or physical or
25 mental health of the pregnant individual.” *See* Exhibit 1, at 3. The petition does not define the term

1 “provider of health care,” but other Nevada law defines that term to include physician assistants,
2 dentists, nurses, physical therapists, chiropractors, optometrists, and psychologists. *See* NRS 41A.017.
3 Thus, the Petition, if passed, would allow a dentist to grant an abortion late in the third trimester if the
4 dentist concluded that it was necessary for the mental health of the pregnant individual. Absurdity
5 aside, this provision does not relate to the other laws created by the Petition.

6 23. Second, subsection 3 of the Petition would prohibit the State from penalizing or
7 prosecuting any person based on the “actual, potential, perceived or alleged outcome of the pregnancy
8 of the individual, including, without limitation, a miscarriage, stillbirth or abortion.” *See* Exhibit 1, at
9 3. This section of the Petition essentially bars the State from making any investigation of a miscarriage
10 or stillbirth. Logically, a criminal could assault a woman, cause her miscarriage, and could not be
11 prosecuted based on the “actual” outcome of the pregnancy. Again, besides this absurdity, it is wholly
12 unclear how this provision relates to the foregoing law that relates to the State’s ability to regulate
13 abortions.

14 24. Third, subsection 4 of the Petition would prohibit the State from penalizing, prosecuting,
15 or “taking adverse action against” any “provider of health care” for acting within the standard of care
16 for performing an abortion. *See* Exhibit 1, at 3. It is unclear how this provision relates to miscarriages
17 or stillbirths.

18 25. Fourth, subsection 5 of the Petition prohibits the State from penalizing or prosecuting
19 any person or entity that aids or assists another person in “exercising the right of the individual to
20 reproductive freedom with the voluntary consent of the individual.” *See* Exhibit 1, at 3.

21 26. In sum, the Petition: (1) prohibits the State from regulating an abortion after fetal
22 viability *if* a “provider of health care” deems it “medically indicated”; (2) prohibits the State from
23 prosecuting or fining an Abortionist; (3) prohibits the State from prosecuting or fining any miscarriage
24 or stillbirth; (4) prohibits the State from prosecuting or fining a person that aids or abets any attempt to
25

1 procure “reproductive freedom”; and (5) creates a right to reproductive freedom that ranges from
2 vasectomies to postpartum care. *See* Exhibit 1, at 3.

3 27. These provisions constitute logrolling because they regulate completely separate conduct
4 but are placed in the same Petition. Again, miscarriages are wholly unrelated to abortions. Likewise,
5 aiding and abetting an Abortionist is unrelated to a miscarriage. Simply put, this Petition contains
6 overlapping provisions that are not functionally related or germane to any singular purpose.

7 28. Based on the foregoing analysis, the Petition does not address a single-subject or topics
8 that are functionally related.

9 Description of Effect

10 29. NRS 295.009(a)(b) provides that the initiative petition must set forth in no more than
11 200 words “a description of effect of the initiative.”

12 30. “The description of effect facilitates the constitutional right to meaningfully engage in
13 the initiative process by helping to prevent voter confusion and promote informed decisions.” *Helton*,
14 138 Nev. Adv. Op. 45, 512 P.3d at 316. “A description of effect ‘must be a straightforward, succinct,
15 and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach
16 those goals.’” *Id.* (quoting *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293
17 P.3d 874, 876 (2013)). Also, a description of effect cannot be “deceptive or misleading.” *Id.* at 42, 293
18 P.3d at 879 (internal quotation marks omitted). The Nevada Supreme Court has held that a description
19 of effect is misleading if it “omits the need for or nature of the revenue source to fund” the proposal in
20 the Petition. *See Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 304 (2022).

21 31. Here, the Petition’s description of effect fails to mention that the law will bar the State
22 from prosecuting, fining, or regulating any miscarriage or stillbirth. *See* Exhibit 1, at 5. Instead, the
23 description of effect vaguely states, “the State may not penalize, prosecute, or take adverse action
24 against any individual based on the outcome of the pregnancy of the individual.” *Id.* This description
25

1 of effect fails to delineate the fact that the Petition will prevent the State from investigating and/or
2 taking action against any miscarriage or stillborn birth.

3 32. Concerningly, the Petition also fails to mention that a “provider of health care,” which is
4 an undefined term, has the power to order a late-term abortion if it is “medically indicated” to protect
5 the physical or mental health of the pregnant individual. For this reason, voters are misled into
6 believing that a physician would be empowered to determine that the mother’s physical or mental well
7 being requires an abortion. In reality, any “provider of health care,” which is broadly defined under
8 existing Nevada law, would seemingly be able to green light a late-term abortion. Likewise, the term
9 “medically indicated” is undefined, which misleads voters into believing that there is a specific set of
10 criteria to determine when the mother’s physical or mental health requires an abortion.

11 33. In addition to the foregoing, the Petition would clearly *require* a funding source. The
12 Petition creates an enforcement mechanism whereby the State *may* take action against a provider of
13 health care if that provider did not meet the standard of care. Accordingly, tax dollars would need to be
14 utilized to create an enforcement regime whereby there is a review board to ascertain whether the
15 provider of health care met the standard of care in performing “reproductive health care services.”
16 Thus, the description of effect omits the need of a revenue source to fund its provisions, and therefore is
17 misleading. *Reid*, 138 Nev., Adv. Op. 47, 512 P.3d at 304. If a “ramification” of an initiative is that it
18 will increase taxes or reduce funding for government services, then the description of effect must so
19 state that or it is a material omission.” *Id.*

20 34. Perhaps most misleading is that the description of effect fails to explain that it affects
21 “equality” and “equal protection.” See Exhibit 1, at 3. Subsection 6 of the Petition provides that
22 “[n]othing herein narrows or limits the rights to equality and equal protection.” For a right to be
23 limited, it must exist. While the right to “equal protection” is well established in American
24 jurisprudence, it is unclear what the term “equality” means legally. In any event, the description of
25 effect wholly omits any discussion of equal protection or equality.

1 35. Conceivably, the Petition could also be read as allowing the right to gender-affirming
2 care. For instance, subsection 3 of the petition refers to the “pregnancy of the individual.” Thus, a
3 transgender man would seemingly be entitled to gender-affirming care as part of this newly-minted
4 right to “reproductive freedom.” Although this is a crucial implication of the Petition, the description
5 of effect says nothing about the Petition applying to transgender individuals.

6 36. For these reasons, the description of effect is not straightforward because it omits crucial
7 components of the law, and crucial implications of how the law would be applied.

8 Preclusion Against Unfunded Mandates

9 37. Article 19, Section 6 of the Nevada Constitution provides that the initiative power “does
10 not permit the proposal of any statute or statutory amendment which makes an appropriation or
11 otherwise requires the expenditure of money, unless such . . . amendment also imposes a sufficient tax,
12 not prohibited by the Constitution, or otherwise constitutionally provides for raising the necessary
13 revenue.” Thus, “all initiative petitions must comply with Article 19, Section 6’s requirement that
14 initiatives requiring expenditures or appropriations contain a funding provision.” *Educ. Freedom PAC*
15 *v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 303 (2022).

16 38. “[A]n initiative that makes an appropriation or requires an expenditure of money is void
17 if it does not also provide for the necessary revenue.” *Reid*, 138 Nev., Adv. Op. 47, 512 P.3d at 303.

18 39. The Petition would clearly *require* a funding source. The Petition creates an
19 enforcement mechanism whereby the State *may* take action against a provider of health care if that
20 provider did not meet the standard of care. *See* Exhibit 1, at 3. Accordingly, tax dollars would need to
21 be utilized to create an enforcement regime whereby there is a review board to ascertain whether the
22 provider of health care met the standard of care in performing “reproductive health care services.” The
23 inevitable ramification of this Petition is that it would require tax dollars to fund a board to review
24 whether abortions or reproductive services were performed pursuant to the standard of care.

40. In addition to the foregoing, it is conceivable that the Legislature will have to fund many of the rights set forth by the Petition. For instance, subsection 1's right to "infertility care" would seemingly include in vitro fertilization, which is a highly expensive process. It is conceivable that, as part of this newly-found right to "reproductive freedom," Nevada's Health Exchange would have to raise premiums for Nevada's residents to fund vasectomies, tubal ligations, abortions, access to birth control, and the many other similar services. Or, alternatively, Nevada's Legislature will need to fund these services for those who cannot afford them. Thus, this is clearly an unfunded mandate.

41. For these reasons, the Petition contains an unfunded mandate and therefore is void.

42. Based upon the foregoing, Plaintiff is entitled to a declaration that the Petition fails to comply with the provisions of NRS Chapter 295 that are identified above.

43. Respectfully, the Petition is invalid and must be stricken, and the Secretary of State should be enjoined from taking any further action on it.

PRAYER FOR RELIEF

Plaintiffs' respectfully asks for this Court to:

1. Enter an order for declaratory relief that rules that the Petition violates the single-subject rule set forth in NRS 195.009(1)(a) and therefore is invalid.

2. Enter an order for declaratory relief that rules that the Petition's description of effect violates NRS 295.009(1)(b) because it is materially misleading and fails to adequately apprise voters of the Petition's effect and therefore is invalid.

3. Enter an order for declaratory relief that rules that the Petition violates Article 19, Section 6 of the Nevada Constitution because it contains an unfunded mandate and is therefore invalid.

4. Enjoin and prohibit the Nevada Secretary of State from placing the Petition on the 2024 Ballot.

5. Award the Plaintiff reasonable attorney fees and costs.

6. Grant any other relief that this Court deems advisable.

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DATED this 5th day of October, 2023.

HUTCHISON & STEFFEN, PLLC

Attorney for Plaintiffs

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PLAINTIFF'S EXHIBITS
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Exhibit No.	DOCUMENT TITLE	# OF PAGES
1	NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE PETITION FOR INITIATIVE PETITION C-01-2023.	20
2	DECLARATION OF JASON D. GUINASSO, ESQ.	2

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

State of Nevada



Secretary of State Francisco V. Aguilar

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

Lindsey Harmon

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Lindsey Harmon

2.

3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Nevadans for Reproductive Freedom

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 Lindsey Harmon
Signature of Petition Filer

9/14/23
Date

FILED, NV, SOS
2023 SEP 14 4:34 PM

THE REPRODUCTIVE FREEDOM AMENDMENT

Explanation - Matter in *italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

1. **Section 1.** That a new section, designated Section 25, be added to Article 1 of the Nevada Constitution to read as follows:

1. Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including, without limitation, prenatal care, childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a miscarriage and infertility care. The right of an individual to reproductive freedom shall not be denied, burdened or infringed upon unless justified by a compelling State interest that is achieved by the least restrictive means available.

2. Notwithstanding the provisions of subsection 1, the State may regulate the provision of abortion care after fetal viability, provided that in no circumstance may the State prohibit an abortion that, in the professional judgment of an attending provider of health care, is medically indicated to protect the life or physical or mental health of the pregnant individual.

3. The State shall not penalize, prosecute or otherwise take adverse action against an individual based on the actual, potential, perceived or alleged outcome of the pregnancy of the individual, including, without limitation, a miscarriage, stillbirth or abortion.

4. The State shall not penalize, prosecute or otherwise take adverse action against a provider of health care, who is licensed by the State, for acting consistent with the applicable scope of practice and standard of care for performing an abortion upon, providing abortion care to, or providing reproductive care services to an individual who has granted their voluntary consent.

5. The State shall not penalize, prosecute or otherwise take adverse action against any individual or entity for aiding or assisting another individual in exercising the right of the individual to reproductive freedom with the voluntary consent of the individual.

6. Nothing herein narrows or limits the rights to equality and equal protection.

7. As used in this section:

(a) "Compelling state interest" means an interest which is limited exclusively to the State's interest in protecting the health of an individual who is seeking reproductive health care that is consistent with accepted clinical standards of practice.

(b) "Fetal viability" means the point in a pregnancy when, in the professional judgment of an attending provider of health care and based on the particular facts of the case, there is a significant

likelihood of the sustained survival of the fetus outside the uterus without the application of extraordinary medical measures.

Sec. 2. Severability. If any part of this Act be declared invalid, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the remaining provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. This subsection shall be construed broadly to preserve and effectuate the declared purpose of this Act.

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DESCRIPTION OF EFFECT

If enacted, this initiative would add a new section to Article 1 of the Nevada Constitution establishing a fundamental right to reproductive freedom. This initiative enables individuals to make and carry out decisions about matters relating to their pregnancies, including prenatal care, childbirth, postpartum care, birth control, vasectomies and tubal ligations, abortion and abortion care, and care for miscarriages and infertility.

If this measure is enacted, the State still may regulate provision of abortion care after fetal viability, except where medically indicated to protect the life or physical or mental health of the pregnant individual.

Under this measure, the State may not penalize, prosecute, or take adverse action against any individual based on the outcome of a pregnancy of the individual, or against any licensed health care provider who acts consistent with the applicable scope and practice of providing reproductive health care services to an individual who has granted their voluntary consent. Neither may the State penalize, prosecute, or take adverse action against any individual or entity for aiding or assisting another individual in the exercise of the rights established by this initiative.

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		
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	YOUR SIGNATURE DATE / /	CITY	COUNTY	
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	YOUR SIGNATURE DATE / /	CITY	COUNTY	

DESCRIPTION OF EFFECT

If enacted, this initiative would add a new section to Article 1 of the Nevada Constitution establishing a fundamental right to reproductive freedom. This initiative enables individuals to make and carry out decisions about matters relating to their pregnancies, including prenatal care, childbirth, postpartum care, birth control, vasectomies and tubal ligations, abortion and abortion care, and care for miscarriages and infertility.

If this measure is enacted, the State still may regulate provision of abortion care after fetal viability, except where medically indicated to protect the life or physical or mental health of the pregnant individual.

Under this measure, the State may not penalize, prosecute, or take adverse action against any individual based on the outcome of a pregnancy of the individual, or against any licensed health care provider who acts consistent with the applicable scope and practice of providing reproductive health care services to an individual who has granted their voluntary consent. Neither may the State penalize, prosecute, or take adverse action against any individual or entity for aiding or assisting another individual in the exercise of the rights established by this initiative.

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
5	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
6	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
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9	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		This Space For Office Use Only
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10	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE / /	DATE	CITY COUNTY	
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	YOUR SIGNATURE DATE / /	CITY COUNTY	

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

	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	This Space For Office Use Only
17	YOUR SIGNATURE DATE / /	CITY COUNTY	
18	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
19	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
20	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	

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

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

1 Jason D. Guinasso, Esq. (8478)
HUTCHISON & STEFFEN, PLLC
2 5371 Kietzke Lane
Reno, Nevada 89511
3 Telephone: (775) 853-8746
jguinasso@hutchlegal.com

4 *Attorney for Plaintiffs*

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

7 DONNA WASHINGTON, an individual;
COALITION FOR PARENTS AND CHILDREN,
8 a Political Action Committee,

9 Plaintiff,

10 vs.

11 FRANCISCO V. AGUILAR, in his Official
Capacity as the NEVADA SECRETARY OF
12 STATE,

13 Defendant.

Case No.: 122 OC 00122B

Dept. No. 1

**DECLARATION OF JASON D.
GUINASSO, ESQ.**

14
15
16 I, Jason D. Guinasso, under subject of the penalty of perjury, hereby declare as follows:

17 1. I am a partner at the law firm Hutchison & Steffen, PLLC. I am an attorney in the State
18 of Nevada in good standing of the Nevada Bar.

19 2. I represent the Plaintiffs in this action.

20 3. I submit this Declaration in support of the Complaint for Declaratory and Injunctive
21 Relief (the "Complaint") that is being filed contemporaneously herewith.

22 4. This Complaint challenges the legality of Initiative Petition C-01-2023.

23 5. This Complaint is timely filed pursuant to NRS 295.061.
24
25

1 6. The Notice of Intent to Circulate Statewide Initiative or Referendum Petition for C-01-
2 2023 lists Lindsey Harmon as the person filing the Petition. *See* Exhibit 1, at 2. The Political Action
3 Committee advocating for this Petition is Nevadans for Reproductive Freedom.

4 7. On October 4, 2023, I spoke to counsel for Ms. Harmon—Bradley S. Schrager, Esq.—
5 and agreed to send him a courtesy copy of this Complaint.

6 8. On October 5, 2023, I sent Mr. Schrager a courtesy copy of the Complaint.

7
8 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
9 true and correct.

10 DATED this 5th day of October, 2023.

11 HUTCHISON & STEFFEN, PLLC

12 
13 Jason D. Guinasso, Esq. (8478)
14 HUTCHISON & STEFFEN, PLLC
15 5371 Kietzke Lane
16 Reno, Nevada 89511
17 Telephone: (775) 853-8746
18 jguinasso@hutchlegal.com

19 *Attorneys for Plaintiffs*

Jason D. Guinasso, Esq. (SBN# 8478)
HUTCHISON & STEFFEN, PLLC
5371 Kietzke Lane
Reno, Nevada 89511
Telephone: (775) 853-8746
Facsimile: (775) 201-9611
jguinasso@hutchlegal.com
akruik@hutchlegal.com

Attorney for Plaintiffs

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

DONNA WASHINGTON, an individual;
COALITION FOR PARENTS AND
CHILDREN, a Political Action Committee,

Plaintiffs,

vs.

FRANCISCO V. AGUILAR, in his Official
Capacity as the NEVADA SECRETARY
OF STATE,

Defendant.

Case No.: 23 OC 00115 1B

Dept. No.: 1

SUMMONS

**TO THE DEFENDANTS: YOU HAVE BEEN SUED. THE COURT MAY DECIDE
AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN
21 DAYS. READ THE INFORMATION BELOW CAREFULLY.**

A civil Complaint has been filed by the plaintiff against you for the relief set forth in the
Petition.

1. If you intend to defend this lawsuit, within twenty-one (21) days after this
Summons is served on you exclusive of the day of service, you must do the
following:

- a. File with the Clerk of this Court, whose address is shown below, a formal
written response to the Petition in accordance with the rules of the Court,

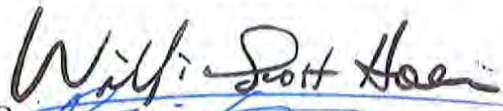

1 with the appropriate filing fee.

2 b. Serve a copy of your response upon the attorney whose name and address
3 is shown below.

4 2. Unless you respond, your default will be entered upon application of the Plaintiff
5 and failure to so respond will result in a judgment of default against you for the
6 relief demanded in the Petition, which could result in the taking of money or
7 property or other relief requested in the Petition.

8 Dated this 6 day of October, 2023.

CLERK OF THE COURT

9
10 
11 By: 

Deputy Clerk
First Judicial District Court
885 E. Musser Street
Carson City, Nevada 89701

14 Issued on behalf of Plaintiffs' attorney:

15 Name: Jason D. Guinasso, Esq.(SBN# 8478)

16 Address: 5371 Kietzke Lane
17 Reno, Nevada 89511

18 Tel: 775.853.8746
19
20
21
22
23
24
25
26
27

1 Jason D. Guinasso, Esq. (8478)
HUTCHISON & STEFFEN, PLLC
2 5371 Kietzke Lane
Reno, Nevada 89511
3 Telephone: (775) 853-8746
jguinasso@hutchlegal.com

2023 OCT 17 AM 10:40

WILLIAM SCOTT HOEN
CLERK

BY H. H. H. H. H.
DEPUTY

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

7 DONNA WASHINGTON, an Individual;
COALITION FOR PARENTS AND CHILDREN,
8 a Political Action Committee,

9 Plaintiffs,

10 vs.

11 FRANCISCO V. AGUILAR, in his Official
Capacity as the NEVADA SECRETARY OF
12 STATE,

13 Defendant,

14 and

15 NEVADANS FOR REPRODUCTIVE
FREEDOM, a Political Action Committee,

16 Intervenor-Defendant.

Case No.: 23 OC 00115

Dept. No. 1

STIPULATION AND ~~PROPOSED~~
SCHEDULING ORDER OF THE COURT

17 On October 5, 2023, Plaintiffs DONNA WASHINGTON and COALITION FOR PARENTS
18 AND CHILDREN (collectively the "Plaintiffs") filed a Complaint for Declaratory and Injunctive
19 Relief (the "Complaint") challenging Nevada Initiative Petition C-01-2023 pursuant to NRS Chapter
20 295.061. On October 12, 2023, Defendant FRANCISCO V. AGUILAR, in his official capacity as
21 Nevada Secretary of State, by and through counsel, Nevada Attorney General Aaron D. Ford, and
22 Laena St-Jules, accepted service of the Complaint and Summons. On October 6, 2023, Plaintiffs served
23 the Complaint and Summons on Bradley S. Schrager, Esq., counsel for prospective Intervenor-
24
25

1 Defendant NEVADANS FOR REPRODUCTIVE FREEDOM, who agreed to accept service on behalf
2 of his client.

3 **STIPULATION**

4 THE PARTIES HEREBY STIPULATE AS FOLLOWS:

5 1. The Parties stipulate to allowing Intervenor-Defendant NEVADANS FOR
6 REPRODUCTIVE FREEDOM, a Nevada committee for political action, to intervene in this litigation.

7 2. The Parties agree to the following deadlines to file briefing:

8 (a) Plaintiffs will file a memorandum of points and authorities by October 20, 2023.

9 This brief is limited to ten pages pursuant to FJDCR 3.23(b).

10 (b) Intervenor-Defendant will file an answer and response brief by November 8,
11 2023. This response brief is limited to ten pages pursuant to FJDCR 3.23(b). Defendant
12 the Secretary of State shall file an answer and/or response brief by this time as well.

13 (c) Plaintiffs will file a reply brief by November 15, 2023. This reply is limited to
14 five pages pursuant to FJDCR 3.23(b).

15 (d) Plaintiffs and any party filing an opposition to Plaintiffs' memorandum of points
16 and authorities will submit proposed orders to the Court by November 15, 2023.
17 Pursuant to FJDCR 3.10, the proposed orders must include a cover sheet, a statement of
18 facts, the applicable standard of law, analysis, and conclusions of law and an order.

19 (e) Pursuant to FJDCR 3.11, Plaintiff will submit a request for submission by
20 November 16, 2023.

21 3. The parties agree to electronic service of all documents amongst themselves pursuant to
22 NRCP 5(b)(2)F), at the email addresses listed below, and to this Court's judicial assistant, Julie
23 Harkleroad, at jharkleroad@carson.org. Physical copies must be filed with the Court as soon as
24 practicable thereafter, preferably within two days following the deadline, for scheduled filings, or
25 within two days of submission for all other papers.

1 4. The parties shall comply with FJDCR 3.2, which requires original signatures on all
2 pleadings and papers. The Court waives pre-hearing statements by the parties.

3 5. The Court shall hold hearing on this matter on November 21, 2023, at 1:30 P.M., to be
4 held remotely or in person at the Court's discretion.

5 Dated this _____ day of October, 2023.

6 By: _____
7 Bradley S. Schrager, Esq. (10217)
8 Daniel Bravo, Esq. (13078)
9 BRAVO SCHRAGER, LLP
10 6675 South Tenaya Way, Suite 200
11 Las Vegas, Nevada 89113
12 (702) 996-1724
13 bradley@bravoschrager.com
14 daniel@bravoschrager.com
15 *Counsel for Nevadans for Reproductive*
16 *Freedom*

12 Dated this 12th Day of October, 2023.

13 By: Kevin D. Dwyer #5286
14 Laena St-Jules, Esq. (15136)
15 ATTORNEY GENERAL'S OFFICE
16 100 N. Carson Street
17 Carson City, Nevada 89701
18 (775) 684-1265
19 lstjules@ag.nv.gov
20 *Counsel for Nevada Secretary of State*

Dated this 13th day of October, 2023.

By: _____
Jason D. Guinasso, Esq. (8478)
HUTCHISON & STEFFEN, PLLC
5371 Kietzke Lane
Reno, Nevada 89511
(775) 853-8746
guinasso@hutchlegal.com
Counsel for Donna Washington and
Coalition for Parents and Children

ORDER

19 GOOD CAUSE APPEARING, this Court hereby adopts the Stipulation of the Parties as the
20 Scheduling Order for this matter. The Parties shall adhere to all dates in the Stipulation.

21 DATED this _____ day of October, 2023.

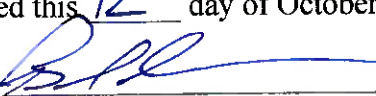
22
23 _____
24 District Court Judge
25

1 4. The parties shall comply with FJDCR 3.2, which requires original signatures on all
2 pleadings and papers. The Court waives pre-hearing statements by the parties.

3 5. The Court shall hold hearing on this matter on November 21, 2023, at 1:30 P.M., to be
4 held remotely or in person at the Court's discretion.

5 Dated this 12 day of October, 2023.

Dated this _____ day of October, 2023.

6 By: 
7 Bradley S. Schrager, Esq. (10217)
8 Daniel Bravo, Esq. (13078)
9 BRAVO SCHRAGER, LLP
10 6675 South Tenaya Way, Suite 200
11 Las Vegas, Nevada 89113
12 (702) 996-1724
13 bradley@bravoschrager.com
14 daniel@bravoschrager.com
15 *Counsel for Nevadans for Reproductive*
16 *Freedom*

By: _____
Jason D. Guinasso, Esq. (8478)
HUTCHISON & STEFFEN, PLLC
5371 Kietzke Lane
Reno, Nevada 89511
(775) 853-8746
guinasso@hutchlegal.com
Counsel for Donna Washington and
Coalition for Parents and Children

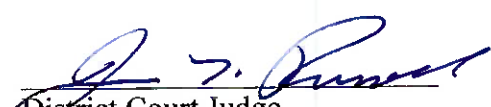
12 Dated this _____ Day of October, 2023.

13 By: _____
14 Laena St-Jules, Esq. (15156)
15 ATTORNEY GENERAL'S OFFICE
16 100 N. Carson Street
17 Carson City, Nevada 89701
18 (775) 684-1265
19 lstjules@ag.nv.gov
20 *Counsel for Nevada Secretary of State*

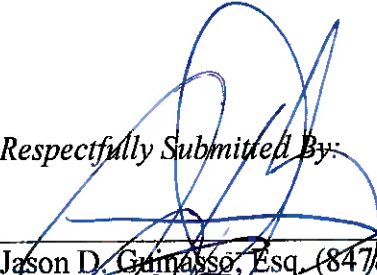
ORDER

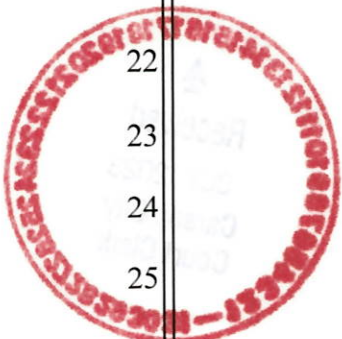
19 GOOD CAUSE APPEARING, this Court hereby adopts the Stipulation of the Parties as the
20 Scheduling Order for this matter. The Parties shall adhere to all dates in the Stipulation.

21 DATED this 17th day of October, 2023.

23 
24 District Court Judge

1 *Respectfully Submitted By:*

2 
3 Jason D. Guinasso, Esq. (8478)
4 HUTCHISON & STEFFEN, PLLC
5 5371 Kietzke Lane
6 Reno, Nevada 89511
7 Telephone: (775) 853-8746
8 iguinasso@hutchlegal.com
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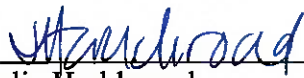
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on October 17, 2023, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Jason D. Guinasso, Esq.
Hutchison & Steffen, PLLC
5371 Kietzke Lane
Reno, NV 89511

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
Bravo Schrager, LLP
6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113

Laena St-Jules, Esq.
Attorney General Office
100 N Carson Street
Carson City, NV 89701


Julie Harkleroad
Judicial Assistant, Dept. 1

1 Jason D. Guinasso, Esq. (8478)
2 HUTCHISON & STEFFEN, PLLC
3 5371 Kietzke Lane
4 Reno, Nevada 89511
5 Telephone: (775) 853-8746
6 jguinasso@hutchlegal.com

7 *Attorney for Plaintiffs*

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

10 DONNA WASHINGTON, an individual;
11 COALITION FOR PARENTS AND CHILDREN,
12 a Political Action Committee,

13 Plaintiffs,

14 vs.

15 FRANCISCO V. AGUILAR, in his Official
16 Capacity as the NEVADA SECRETARY OF
17 STATE,

18 Defendant.

Case No.: 23-OC-00115

Dept. No. 1

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

19 Plaintiffs DONNA WASHINGTON and COALITION FOR PARENTS AND CHILDREN
20 ("Plaintiffs"), a Political Action Committee, by and through its undersigned counsel Jason D.
21 Guinasso, Esq., of the law firm Hutchison & Steffen, PLLC, hereby file this Memorandum of Points
22 and Authorities in support of the Complaint for Declaratory and Injunctive Relief that was filed on
23 October 5, 2023, to challenge Initiative Petition C-01-2023. This Memorandum of Points and
24 Authorities is based on the Complaint for Injunctive and Declaratory Relief that was filed on October 5,
25 2023, all pleadings and papers on file, and any oral argument that this Court will allow at the hearing on
November 21, 2023, at 1:30 P.M. Pursuant to FJDCR 3.23(b), the Memorandum of Points and
Authorities is limited to ten pages, exclusive of exhibits.

///

///

REC'D & FILED

2023 OCT 20 PM 2: 03

WILLIAM SCOTT HEN
CLERK

BY **D. ORTIZ**

AFFIRMATION

Pursuant to NRS 239B.030(1) and NRS 603A.040, undersigned counsel hereby affirms that the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF does not contain the personal information of any person.

DATED this 20th day of October, 2023.

HUTCHISON & STEFFEN, PLLC



Jason D. Guinasso, Esq. (8478)
HUTCHISON & STEFFEN, PLLC
5371 Kietzke Lane
Reno, Nevada 89511
Telephone: (775) 853-8746
jguinasso@hutchlegal.com

Attorney for Plaintiffs

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1 or misleading. This description of effect has a multitude of misleading statements or omissions. Most
2 concerning, the Petition fails to mention that a “provider of health care,” which is an undefined term,
3 has the power to order a late-term abortion if it is “medically indicated” to protect the physical or
4 mental health of the pregnant individual. For this reason, voters are misled into believing that a
5 physician would be empowered to determine that the mother’s physical or mental well-being requires
6 an abortion. In reality, any “provider of health care,” which is broadly defined under existing Nevada
7 law, *see* NRS 41A.017 (including a dentist), would seemingly be able to green light a late-term
8 abortion under the amorphous and undefined “medically indicated” standard. This is misleading.

9 Third, the Petition contains unfunded mandates. A petition cannot require an expenditure of
10 money without providing for necessary revenue. This Petition requires the State to create a panel to
11 ascertain whether a “provider of health care” met the standard of care while performing an abortion;
12 accordingly, tax dollars would need to be utilized to create an enforcement regime.

13 In sum, this Petition violates the law. Declaratory and injunctive relief must be granted.

14 **II. Facts and Procedural History**

15 On September 14, 2023, Lindsey Harmon, on behalf of the Nevadans for Reproductive
16 Freedom, filed Nevada Constitutional Initiative Petition C-01-2023 (the “Petition”). *See* Exhibit 1
17 (containing a copy of the Notice of Intent to Circulate Statewide Initiative Petition for the Petition).
18 The Petition seeks to add a new section to the Nevada Constitution, which will be designated as Section
19 25 of Article 1 (the “Amendment”). Exhibit 1, at 3.

20 The first subsection of the Amendment would create a “fundamental right to reproductive
21 freedom.” Among other things, this newly developed right provides that reproductive freedom—which
22 includes “all matters relating to pregnancy”—shall not be denied, burdened, or infringed upon unless
23 justified by a compelling State interest. Exhibit 1, at 3. Broadly, this section would expressly apply to
24 “prenatal care, childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion
25 care, management of a miscarriage, and infertility care.”

1 The second subsection of the Amendment would allow the State to “regulate the provision of
2 abortion care after fetal viability, provided that in no circumstance may the State Prohibit an abortion
3 that, in the professional judgment of an attending provider of health care, is medically indicated to
4 protect the life or physical or mental health of the pregnant individual.” Exhibit 1, at 3.

5 The third subsection of the Amendment would prohibit the State from penalizing or prosecuting
6 an individual based on “perceived or alleged outcome of the pregnancy of the individual, including,
7 without limitation, a miscarriage, stillbirth or abortion.” Exhibit 1, at 3.

8 The fourth subsection of the Amendment would prohibit the State from penalizing, prosecuting,
9 or otherwise taking adverse action against “a provider of health care” for acting within the standard of
10 care for performing an abortion or providing abortion care. Exhibit 1, at 3.

11 The fifth subsection of the Amendment would prohibit the State from penalizing or prosecuting
12 an individual for aiding or assisting another individual in exercising the right of the individual to
13 reproductive freedom. Exhibit 1, at 3.

14 The sixth subsection of the Amendment would provide that “nothing herein narrows or limits
15 the rights to equality and equal protection.” Exhibit 1, at 3.

16 The Petition includes a description of effect that states:

17 If enacted, this initiative would add a new section to Article 1 of the
18 Nevada Constitution establishing a fundamental right to reproductive
19 freedom. This initiative enables individuals to make and carry out decisions
20 about matters relating to their pregnancies, including prenatal care,
21 childbirth, postpartum care, birth control, vasectomies and tubal ligations,
22 abortion and abortion care, and care for miscarriages and infertility.

23 If this measure is enacted, the State still may regulate provision of
24 abortion care after fetal viability, except where medically indicated to protect
25 the life or physical or mental health of the pregnant individual.

Under this measure, the State may not penalize, prosecute, or take
adverse action against any individual based on the outcome of a pregnancy of
the individual, or against any licensed health care provider who acts
consistent with the applicable scope and practice of providing reproductive

1 health care services to an individual who has granted their voluntary consent.
2 Neither may the State penalize, prosecute, or take adverse action against any
3 individual or entity for aiding or assisting another individual in the exercise
4 of the rights established by this initiative.

5 Exhibit 1, at 5.

6 **III. Legal Standard**

7 “Courts will consider challenges to an initiative petition preelection in limited circumstances,
8 such as when those challenges are based on the petition’s compliance with the single-subject
9 requirement, the statutory requirement for the description of effect, or the preclusion against unfunded
10 mandates.” *Helton v. Nevada Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022).
11 Respectfully, the Petition violates each of the grounds identified by *Helton*.

12 **IV. Arguments**

13 **A. The Petition Violates the Single-Subject Requirement**

14 This Petition addresses an abyss of topics such that it fails to comply with the single-subject
15 requirement. NRS 295.009(1)(a) provides that an initiative petition *must* embrace *only* “one subject
16 and matters necessarily connected therewith and pertaining thereto.” An initiative petition embraces
17 one subject “if the parts of the proposed initiative or referendum are functionally related and germane
18 to each other in a way that provides sufficient notice of the general subject of, and of the interests likely
19 to be affected by, the proposed initiative or referendum.” NRS 295.009(2).

20 “The single-subject requirement ‘facilitates the initiative process by preventing petition drafters
21 from circulating confusing petitions that address multiple subjects.’” *Helton*, 138 Nev., Adv. Op. 45,
22 512 P.3d at 314 (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141
23 P.3d 1235, 1240 (2006)). “[T]he single-subject requirement helps both in promoting informed
24 decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive
25 proposals or concealing them in lengthy, complex initiatives (i.e., logrolling).” *Id.* (internal quotation
marks omitted). “[L]ogrolling occurs when two or more completely separate provisions are combined

1 in a petition” *Id.* at 315 (internal quotation marks omitted). In ascertaining whether a petition
2 violates the single-subject requirement, “[t]he court must first determine the initiative’s purpose or
3 subject and then determine if each provision is functionally related and germane to each other and the
4 initiative’s purpose or subject.” *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314. “To determine the
5 initiative’s purpose or subject, this court looks to its textual language and the proponents’ arguments.”
6 *Id.* (internal quotation marks omitted). “The court also will look at whether the description of effect
7 articulates an overarching purpose and explains how provisions relate to a single subject.” *Id.*

8 Here, the Petition embraces a litany of subjects that clearly amount to logrolling. Subsection 1,
9 alone, embraces the following subjects: prenatal care, childbirth, postpartum care, birth control,
10 vasectomy, tubal ligation, abortion, abortion care, management of a miscarriage, and infertility care.
11 *See* Exhibit 1, at 3. Subsection 1 purportedly creates a “fundamental right to reproductive freedom,”
12 but there is no limiting language in that section to circumscribe that right such that the section embraces
13 a single and articulable subject. *Id.* For instance, it is unclear how a vasectomy relates to infertility care
14 or postpartum care. Likewise, it is wholly unclear how postpartum care is related to abortions or birth
15 control. Thus, it is improper to characterize these broad categories as a “single subject.”

16 Legally, the Petition creates several laws that are not functionally related and/or germane to the
17 proposed “right to reproductive freedom.” First, subsection 2 would allow the State to regulate an
18 abortion after fetal viability, but the State would be *prohibited* from regulating a viable fetus if a
19 “provider of health care” indicated that an abortion was necessary to “protect the life or physical or
20 mental health of the pregnant individual.” *See* Exhibit 1, at 3. The petition does not define the term
21 “provider of health care,” but other Nevada law defines that term to include physician assistants,
22 dentists, nurses, physical therapists, chiropractors, optometrists, and psychologists. *See* NRS 41A.017.
23 Thus, the Petition, if passed, would allow a dentist to grant an abortion late in the third trimester if the
24 dentist concluded that it was necessary for the mental health of the pregnant individual. Absurdity
25 aside, this provision does not relate to the other laws created by the Petition.

1 Second, subsection 3 of the Petition would prohibit the State from penalizing or prosecuting any
2 person based on the “actual, potential, perceived or alleged outcome of the pregnancy of the individual,
3 including, without limitation, a miscarriage, stillbirth or abortion.” *See* Exhibit 1, at 3. This section of
4 the Petition essentially bars the State from making any investigation of a miscarriage or stillbirth.
5 Logically, a criminal could assault a woman, cause her miscarriage, and could not be prosecuted based
6 on the “actual” outcome of the pregnancy. Again, besides this absurdity, it is wholly unclear how this
7 provision relates to the foregoing law that relates to the State’s ability to regulate abortions.

8 Third, subsection 4 of the Petition would prohibit the State from penalizing, prosecuting, or
9 “taking adverse action against” any “provider of health care” for acting within the standard of care in
10 performing an abortion. *See* Exhibit 1, at 3. It is unclear how this relates to miscarriages or stillbirths.

11 Fourth, subsection 5 of the Petition prohibits the State from penalizing or prosecuting any
12 person or entity that aids or assists another person in “exercising the right of the individual to
13 reproductive freedom with the voluntary consent of the individual.” *See* Exhibit 1, at 3.

14 In sum, the Petition: (1) prohibits the State from regulating an abortion after fetal viability *if* a
15 “provider of health care” deems it “medically indicated”; (2) prohibits the State from prosecuting or
16 fining an Abortionist; (3) prohibits the State from prosecuting or fining any miscarriage or stillbirth; (4)
17 prohibits the State from prosecuting or fining a person that aids or abets any attempt to procure
18 “reproductive freedom”; and (5) creates a right to reproductive freedom that ranges from vasectomies
19 to postpartum care. *See* Exhibit 1, at 3.

20 These provisions constitute logrolling because they regulate completely separate conduct but are
21 placed in the same Petition. Again, miscarriages are wholly unrelated to abortions. Likewise, aiding
22 and abetting an Abortionist is unrelated to a miscarriage. Simply put, this Petition contains overlapping
23 provisions that are not functionally related or germane to any singular purpose.

24 Based on the foregoing analysis, the Petition does not address a single-subject or topics that are
25 functionally related.

1 B. The Description of Effect is Misleading and Deceptive

2 The description of effect is grievously misleading. NRS 295.009(a)(b) provides that the
3 initiative petition must set forth in no more than 200 words “a description of effect of the initiative.”
4 “The description of effect facilitates the constitutional right to meaningfully engage in the initiative
5 process by helping to prevent voter confusion and promote informed decisions.” *Helton*, 138 Nev.
6 Adv. Op. 45, 512 P.3d at 316. “A description of effect ‘must be a straightforward, succinct, and
7 nonargumentative summary of what the initiative is designed to achieve and how it intends to reach
8 those goals.’” *Id.* (quoting *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293
9 P.3d 874, 876 (2013)). Also, a description of effect cannot be “deceptive or misleading.” *Id.* at 42, 293
10 P.3d at 879 (internal quotation marks omitted). The Nevada Supreme Court has held that a description
11 of effect is misleading if it “omits the need for or nature of the revenue source to fund” the proposal in
12 the Petition. *See Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 304 (2022).

13 Here, the Petition’s description of effect fails to mention that the law will bar the State from
14 prosecuting, fining, or regulating any miscarriage or stillbirth. *See* Exhibit 1, at 5. Instead, the
15 description of effect vaguely states, “the State may not penalize, prosecute, or take adverse action
16 against any individual based on the outcome of the pregnancy of the individual.” *Id.* This description
17 of effect fails to delineate the fact that the Petition will prevent the State from investigating and/or
18 taking action against any miscarriage or stillborn birth.

19 Concerningly, the Petition also fails to mention that a “provider of health care,” which is an
20 undefined term, has the power to order a late-term abortion if it is “medically indicated” to protect the
21 physical or mental health of the pregnant individual. For this reason, voters are misled into believing
22 that a physician would be empowered to determine that the mother’s physical or mental well-being
23 requires an abortion. In reality, any “provider of health care,” which is broadly defined under existing
24 Nevada law, would seemingly be able to green light a late-term abortion. Likewise, the term
25 “medically indicated” is undefined, which misleads voters into believing that there is a specific set of

1 criteria to determine when the mother's physical or mental health requires an abortion.

2 In addition to the foregoing, the Petition would clearly *require* a funding source. The Petition
3 creates an enforcement mechanism whereby the State *may* take action against a provider of health care
4 if that provider did not meet the standard of care. Accordingly, tax dollars would need to be utilized to
5 create an enforcement regime whereby there is a review board to ascertain whether the provider of
6 health care met the standard of care in performing "reproductive health care services." Thus, the
7 description of effect omits the need of a revenue source to fund its provisions, and therefore is
8 misleading. *Reid*, 138 Nev., Adv. Op. 47, 512 P.3d at 304. If a "ramification" of an initiative is that it
9 will increase taxes or reduce funding for government services, then the description of effect must so
10 state that or it is a material omission." *Id.*

11 Perhaps most misleading is that the description of effect fails to explain that it affects "equality"
12 and "equal protection." See Exhibit 1, at 3. Subsection 6 of the Petition provides that "[n]othing herein
13 narrows or limits the rights to equality and equal protection." For a right to be limited, it must exist.
14 While the right to "equal protection" is well established in American jurisprudence, it is unclear what
15 the term "equality" means legally. In any event, the description of effect wholly omits any discussion
16 of equal protection or equality.

17 Conceivably, the Petition could also be read as allowing the right to gender-affirming care. For
18 instance, subsection 3 of the petition refers to the "pregnancy of the individual." Thus, a transgender
19 man would seemingly be entitled to gender-affirming care as part of this newly-minted right to
20 "reproductive freedom." Although this is a crucial implication of the Petition, the description of effect
21 says nothing about the Petition applying to transgender individuals.

22 For these reasons, the description of effect is not straightforward because it omits crucial
23 components of the law, and crucial implications of how the law would be applied.

24 ///

25 ///

1 C. The Petition Violates the Preclusion Against Unfunded Mandates

2 This Petition violates the preclusion against unfunded mandates because it would clearly and
3 unequivocally require a funding source. Thus, it is legally deficient on this basis.

4 Article 19, Section 6 of the Nevada Constitution provides that the initiative power “does not
5 permit the proposal of any statute or statutory amendment which makes an appropriation or otherwise
6 requires the expenditure of money, unless such . . . amendment also imposes a sufficient tax, not
7 prohibited by the Constitution, or otherwise constitutionally provides for raising the necessary
8 revenue.” Thus, “all initiative petitions must comply with Article 19, Section 6’s requirement that
9 initiatives requiring expenditures or appropriations contain a funding provision.” *Educ. Freedom PAC*
10 *v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 303 (2022). “[A]n initiative that makes an appropriation
11 or requires an expenditure of money is void if it does not also provide for the necessary revenue.” *Reid*,
12 138 Nev., Adv. Op. 47, 512 P.3d at 303.

13 The Petition would clearly *require* a funding source. The Petition creates an enforcement
14 mechanism whereby the State *may* take action against a provider of health care if that provider did not
15 meet the standard of care. *See* Exhibit 1, at 3. Accordingly, tax dollars would need to be utilized to
16 create an enforcement regime whereby there is a review board to ascertain whether the provider of
17 health care met the standard of care in performing “reproductive health care services.” The inevitable
18 ramification of this Petition is that it would require tax dollars to fund a board to review whether
19 abortions or reproductive services were performed pursuant to the standard of care.

20 In addition to the foregoing, it is conceivable that the Legislature will have to fund many of the
21 rights set forth by the Petition. For instance, subsection 1’s right to “infertility care” would seemingly
22 include in vitro fertilization, which is a highly expensive process. It is conceivable that, as part of this
23 newly-found right to “reproductive freedom,” Nevada’s Health Exchange would have to raise
24 premiums for Nevada’s residents to fund vasectomies, tubal ligations, abortions, access to birth control,
25 and the many other similar services. Or, alternatively, Nevada’s Legislature will need to fund these

1 services for those who cannot afford them. Thus, this is clearly an unfunded mandate. For these
2 reasons, the Petition contains an unfunded mandate and therefore is void.

3 Based upon the foregoing, Plaintiff is entitled to a declaration that the Petition fails to comply
4 with the provisions of NRS Chapter 295 that are identified above. Respectfully, the Petition is invalid
5 and must be stricken, and the Secretary of State should be enjoined from taking any further action on it.

6 **V. Conclusion**

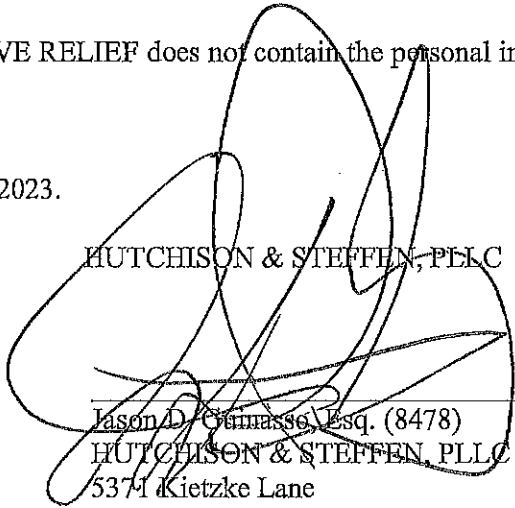
7 For the reasons stated herein, the Petition is legally defective. It creates a far-reaching and
8 newly-identified right without adequately informing Nevada's voters of its legal and financial
9 ramifications, which is contrary to the democratic process. Respectfully, this court *must* issue
10 declaratory relief concluding that the Petition violates NRS Chapter 295 and enjoin the Secretary of
11 State from placing it on the ballot.

12 **AFFIRMATION**

13 Pursuant to NRS 239B.030(1) and NRS 603A.040, undersigned counsel hereby affirms that the
14 foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT
15 FOR DECLARATORY AND INJUNCTIVE RELIEF does not contain the personal information of any
16 person.

17 DATED this 28th day of October, 2023.

18 HUTCHISON & STEFFEN, PLLC

19
20 
21 Jason D. Guinasso, Esq. (8478)
22 HUTCHISON & STEFFEN, PLLC
23 5374 Kietzke Lane
24 Reno, Nevada 89511
25 Telephone: (775) 853-8746
jguinasso@hutchlegal.com

Attorney for Plaintiffs

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PLAINTIFF'S EXHIBITS
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Exhibit No.	DOCUMENT TITLE	# OF PAGES
1	NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE PETITION FOR INITIATIVE PETITION C-01-2023.	10

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and the STIPULATION AND SCHEDULING ORDER OF THE COURT THAT WAS FILED ON OCTOBER 17, 2023, I certify that I am an employee of the law firm of HUTCHISON & STEFFEN, PLLC, and that on the 20th day of October 2023, I caused service of a true and accurate copy of the **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** by: (1) emailing a courtesy copy to all parties of record and the Court's Judicial Assistant at the address listed below; and (2) depositing a copy in First Class Mail, postage prepaid, to the parties identified below.

Bradley S. Schrager, Esq. (10217) Daniel Bravo, Esq. (13078) BRAVO SCHRAGER, LLP 6675 South Tenaya Way, Suite 200 Las Vegas, Nevada 89113 (702) 996-1724 bradley@bravoschrager.com daniel@bravoschrager.com <i>Attorneys for Nevadans for Reproductive Freedom</i>	Laena St-Jules, Esq. (15156) ATTORNEY GENERAL'S OFFICE 100 N. Carson Street Carson City, Nevada 89701 (775) 684-1265 lstjules@ag.nv.gov <i>Counsel for Nevada Secretary of State</i>
Ms. Julie Harkleroad Judicial Assistant Department One First Judicial District Court jharkleroad@carson.org *Email copy only.	


An employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

State of Nevada



Secretary of State Francisco V. Aguilar

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

Lindsey Harmon

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Lindsey Harmon

2.

3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Nevadans for Reproductive Freedom

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 Lindsey Harmon
Signature of Petition Filer

9/14/23
Date

FILED NV.SOS
2023 SEP 14 AM 8:40

THE REPRODUCTIVE FREEDOM AMENDMENT

Explanation - Matter in *italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

1. **Section 1.** That a new section, designated Section 25, be added to Article 1 of the Nevada Constitution to read as follows:

1. Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including, without limitation, prenatal care, childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a miscarriage and infertility care. The right of an individual to reproductive freedom shall not be denied, burdened or infringed upon unless justified by a compelling State interest that is achieved by the least restrictive means available.

2. Notwithstanding the provisions of subsection 1, the State may regulate the provision of abortion care after fetal viability, provided that in no circumstance may the State prohibit an abortion that, in the professional judgment of an attending provider of health care, is medically indicated to protect the life or physical or mental health of the pregnant individual.

3. The State shall not penalize, prosecute or otherwise take adverse action against an individual based on the actual, potential, perceived or alleged outcome of the pregnancy of the individual, including, without limitation, a miscarriage, stillbirth or abortion.

4. The State shall not penalize, prosecute or otherwise take adverse action against a provider of health care, who is licensed by the State, for acting consistent with the applicable scope of practice and standard of care for performing an abortion upon, providing abortion care to, or providing reproductive care services to an individual who has granted their voluntary consent.

5. The State shall not penalize, prosecute or otherwise take adverse action against any individual or entity for aiding or assisting another individual in exercising the right of the individual to reproductive freedom with the voluntary consent of the individual.

6. Nothing herein narrows or limits the rights to equality and equal protection.

7. As used in this section:

(a) "Compelling state interest" means an interest which is limited exclusively to the State's interest in protecting the health of an individual who is seeking reproductive health care that is consistent with accepted clinical standards of practice.

(b) "Fetal viability" means the point in a pregnancy when, in the professional judgment of an attending provider of health care and based on the particular facts of the case, there is a significant

likelihood of the sustained survival of the fetus outside the uterus without the application of extraordinary medical measures.

Sec. 2. Severability. If any part of this Act be declared invalid, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the remaining provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. This subsection shall be construed broadly to preserve and effectuate the declared purpose of this Act.

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DESCRIPTION OF EFFECT

If enacted, this initiative would add a new section to Article 1 of the Nevada Constitution establishing a fundamental right to reproductive freedom. This initiative enables individuals to make and carry out decisions about matters relating to their pregnancies, including prenatal care, childbirth, postpartum care, birth control, vasectomies and tubal ligations, abortion and abortion care, and care for miscarriages and infertility.

If this measure is enacted, the State still may regulate provision of abortion care after fetal viability, except where medically indicated to protect the life or physical or mental health of the pregnant individual.

Under this measure, the State may not penalize, prosecute, or take adverse action against any individual based on the outcome of a pregnancy of the individual, or against any licensed health care provider who acts consistent with the applicable scope and practice of providing reproductive health care services to an individual who has granted their voluntary consent. Neither may the State penalize, prosecute, or take adverse action against any individual or entity for aiding or assisting another individual in the exercise of the rights established by this initiative.

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

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	YOUR SIGNATURE DATE / /	CITY	COUNTY

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

BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
 DANIEL BRAVO, ESQ. (SBN 13078)
 BRAVO SCHRAGER LLP
 6675 South Tenaya Way, Suite 200
 Las Vegas, Nevada 89113
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 Attorneys for Intervenor/Defendant

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 WILLIAM SCOTT NOEN
 CLERK
 K. PETERSON
 DEPUTY

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

DONNA WASHINGTON, an individual;
 COALITION FOR PARENTS AND
 CHILDREAN, a Political Action
 Committee,

Case No.: 23 OC 00115 1B

Dept. No.: I

Plaintiffs,

**INTERVENOR/DEFENDANT
 NEVADANS FOR
 REPRODUCTIVE FREEDOM
 ANSWER TO COMPLAINT**

vs.

FRANCISCO V. AGUILAR, in his
 official capacity as NEVADA
 SECRETARY OF STATE;

Defendant,

and

NEVADANS FOR REPRODUCTIVE
 FREEDOM, a Political Action
 Committee,

Intervenor-Defendant.

Intervenor/Defendant NEVADANS FOR REPRODUCTIVE FREEDOM
 ("NRF") here submits its answer to the complaint.

1. Answering paragraphs 1, 2, and 3, NRF admits the allegations.
2. Answering paragraphs 4, 5, and 6, NRF is without sufficient information
 to respond and therefore denies the allegations.
3. Answering paragraphs 7, NRF admits the allegations.

1 4. Answering paragraphs 8, 9, 10, 11, 12, 13, 14, 15, NRF avers that the
2 text of the Petition speaks for itself, and denies any allegations that can be construed
3 as characterization of the language therein.

4 5. Answering paragraphs 16, 17, 18, 19, and 20, these paragraphs contain
5 legal conclusions for which no response is required, and therefore the allegations
6 within them are denied.

7 6. Answering paragraphs 21, 22, 23, 24, 25, 26, 27, and 28, the filed
8 Petition speaks for itself, and NRF denies the allegations asserted therein.

9 7. Answering paragraphs 29 and 30, these paragraphs contain legal
10 conclusions for which no response is required, and therefore the allegations within
11 them are denied.

12 8. Answering paragraphs 31, 32, 33, 34, 35, and 36, the filed Petition
13 speaks for itself, and NRF denies the allegations asserted therein.

14 9. Answering paragraphs 37 and 38, these paragraphs contain legal
15 conclusions for which no response is required, and therefore the allegations within
16 them are denied.

17 10. Answering paragraphs 39, 40, 41, 42, and 43, the filed Petition speaks
18 for itself, and NRF denies the allegations asserted therein.

19 **AFFIRMATIVE DEFENSES**

20 Intervenor/Defendant NRF sets forth its affirmative defenses without
21 assuming the burden of proving any fact, issue, or element of a cause of action where
22 such burden properly belongs to Plaintiffs. Moreover, nothing stated here is intended
23 or shall be construed as an admission that any particular issue or subject matter is
24 relevant to the allegations in the Complaint. Intervenor/Defendant NRF reserves the
25 right to amend or supplement these affirmative defenses as additional facts
26 concerning defenses become known.

27 As separate and distinct affirmative defenses, Intervenor/Defendant NRF
28

1 alleges as follows:

- 2 1. Plaintiffs fail to state a claim on which relief can be granted.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Intervenor/Defendant NRF respectfully requests that this
5 Court:

- 6 A. Deny that Plaintiffs are entitled to any relief;
7 B. Dismiss the Complaint in its entirety, with prejudice;
8 C. For attorneys' fees and costs of the suit incurred; and
9 D. Grant such other and further relief as the Court may deem just and
10 proper.

11 **AFFIRMATION**

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

14 DATED this 8th day of November, 2023.

15
16 **BRAVO SCHRAGER LLP**

17
18 By: 

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26 *Attorneys for Intervenor-Defendant,*
27 *Nevadans for Reproductive Freedom*
28

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2023, I served the foregoing
**INTERVENOR/DEFENDANT NEVADANS FOR REPRODUCTIVE
FREEDOM ANSWER TO COMPLAINT** by depositing a true copy of the same via
electronic mail, per the October 17, 2023 Stipulation, as follows:

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By:


Dannielle Fresquez, an Employee of
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 10 Nevadans for Reproductive Freedom*

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

10 DONNA WASHINGTON, an individual;
 11 COALITION FOR PARENTS AND
 12 CHILDREAN, a Political Action
 13 Committee,

14 Plaintiffs,

15 vs.

16 FRANCISCO V. AGUILAR, in his official
 17 capacity as NEVADA SECRETARY OF
 18 STATE;

19 Defendant,

20 and

21 NEVADANS FOR REPRODUCTIVE
 22 FREEDOM, a Political Action
 23 Committee,

24 Intervenor-Defendant.

Case No.: 23 OC 00115 1B

Dept. No.: I

**INITIAL APPEARANCE FEE
 DISCLOSURE**

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INITIAL APPEARANCE FEE DISCLOSURE

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

Intervenor-Defendant: NEVADANS FOR REPRODUCTIVE FREEDOM \$218.00
TOTAL REMITTED: \$218.00

AFFIRMATION

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

DATED this 8th day of November, 2023.

BRAVO SCHRAGER LLP

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Nevadans for Reproductive Freedom*

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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on this 8th day of November, 2023, I served the foregoing
5 **INITIAL APPEARANCE FEE DISCLOSURE** by depositing a true copy of the
6 same via electronic mail, per the October 17, 2023 Stipulation, as follows:

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

9 DONNA WASHINGTON, an individual;
 10 COALITION FOR PARENTS AND
 CHILDREN, a Political Action
 Committee,

11 Plaintiffs,

12 vs.

13 FRANCISCO V. AGUILAR, in his official
 14 capacity as NEVADA SECRETARY OF
 STATE;

15 Defendant,

16 and

17 NEVADANS FOR REPRODUCTIVE
 18 FREEDOM, a Political Action
 Committee,

19 Intervenor-Defendant.
 20

Case No.: 23 OC 00115 1B

Dept. No.: I

**INTERVENOR/DEFENDANT
 NEVADANS FOR
 REPRODUCTIVE FREEDOM
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN OPPOSITION**

21 Intervenor/Defendant NEVADANS FOR REPRODUCTIVE FREEDOM
 22 ("NRF") here submits its Memorandum of Points and Authorities in opposition to the
 23 Complaint and Memorandum filed by Plaintiffs in this action. It is based upon
 24 Nevada Statewide Initiative Petition C-01-2023 (the "Petition"), all papers and
 25 exhibits on file herein, and any argument the Court permits at hearing on this
 26 matter.
 27
 28

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 The Petition, also known as the Reproductive Freedom Amendment, does not
4 violate any of the requirements for Nevada constitutional initiatives. Its central topic
5 is the establishment of rights to freedom for the access and provision of reproductive
6 health services, and its provisions all pertain to that subject. The required description
7 of effect is direct and helpfully explanatory to any potential signatory of the Petition.
8 Lastly, there is no evidence of—and no logical conclusion that—the Petition requires
9 the appropriation or expenditure of funds in any manner that would violate Nev.
10 Const. art. 19, sec. 6's prohibition on unfunded mandates in the initiative process.
11 Plaintiffs' requests for relief should be denied.

12 **II. LEGAL STANDARD**

13 The party challenging the initiative petition at the pre-election stage bears the
14 burden of demonstrating the proposed initiative is clearly invalid. *See Las Vegas*
15 *Taxpayer Accountability Comm. v. City Council of Las Vegas*, 125 Nev. 165, 176, 208
16 P.3d 429, 436 (2009).

17 **III. ARGUMENT**

18 **A. The Petition Does Not Violate Nevada's Single Subject Rule For**
19 **Initiatives**

20 Plaintiffs argue that the Petition violates Nevada's statutory single subject
21 rule, NRS 295.009(1)(a), which requires that each initiative petition "(e)mbrace but
22 one subject and matters necessarily connected therewith and pertaining thereto." *Id.*
23 For purposes of the requirement, "a petition for initiative or referendum embraces
24 but one subject and matters necessarily connected therewith and pertaining thereto,
25 if the parts of the proposed initiative or referendum are functionally related and
26 germane to each other in a way that provides sufficient notice of the general subject
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1 of, and of the interests likely to be affected by, the proposed initiative or referendum.”
2 NRS 295.009(2).

3 The single-subject requirement “facilitates the initiative process by preventing
4 petition drafters from circulating confusing petitions that address multiple subjects.”
5 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d
6 1235, 1240 (2006). Thus, “the single-subject requirement helps both in promoting
7 informed decisions and in preventing the enactment of unpopular provisions by
8 attaching them to more attractive proposals or concealing them in lengthy, complex
9 initiatives (i.e., logrolling).” *Las Vegas Taxpayer Accountability Comte. V. City*
10 *Council of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009).

11 In considering single-subject challenges, courts must first determine the
12 initiative’s purpose or subject. “To determine the initiative’s purpose or subject, this
13 court looks to its textual language and the proponents’ arguments.” *Las Vegas*
14 *Taxpayer*, 125 Nev. at 180, 208 P.3d at 439. Courts also will look at whether the
15 description of effect articulates an overarching purpose and explains how provisions
16 relate to a single subject. *Id.*

17 The most recent, and to date most comprehensive, analysis of the single subject
18 rule for Nevada initiatives by the Nevada Supreme Court came in *Helton v. Nevada*
19 *Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309 (2022). There, initiative
20 proponents proposed a constitutional amendment that would work separate but
21 wholesale revisions, respectively, of 1) the manner in which Nevadans conduct
22 primary elections by replacing partisan primaries with open elections in which the
23 top five finishers advance to the general election in the fall; and 2) general election
24 results, by instituting a system, of ranked-choice voting to replace the historic system
25 of plurality, first-past-the-post voting that has marked Nevada elections since
26 statehood. Opponents brought a pre-election single-subject challenge, arguing that
27 the two changes in law were both massive in their own rights and also functionally
28

1 independent, in that one could achieve open primaries and ranked choice general
2 elections irrespective of one another.

3 The Court, however, found that “(b)oth categories of changes proposed in the...
4 initiative concern the election process in Nevada and more specifically how
5 candidates for the specifically defined partisan offices are presented to voters and
6 elected.” *Id.*, 512 P.3d at 314-15. The measure’s “single subject is the *framework* by
7 which specified officeholders are presented to voters and elected.” *Id.*, at 314. That
8 the changes were separate, or even arguably could be considered independent, was
9 not material to a single-subject analysis, because the Court reasoned they had a
10 functional relationship to one another in achieving the aims and purposes of the
11 initiative generally.

12 Furthermore, and pertinent here, the Court found no logrolling because
13 subjects were sufficiently interrelated. Logrolling “occurs when two or more
14 *completely separate provisions* are combined in a petition, one or both of which would
15 not obtain enough votes to pass without the other.” *Nevadans for Prop. Rights*, 122
16 Nev. at 922, 141 P.3d at 1254 (Hardesty, J., concurring and dissenting). “The mere
17 fact that an initiative petition proposes more than one change does not automatically
18 mean the proponents are guilty of logrolling, provided that the changes are
19 functionally related and germane to each other and the initiative petition’s subject or
20 purpose. To conclude otherwise would only serve to frustrate the people’s initiative
21 power.” *Id.*

22 Here, the case against any single-subject violation is much clearer than it was
23 in *Helton*. Plaintiffs argue, for example, that vasectomies may be said not to relate to
24 post-partum care, or that infertility care may be said not to relate directly to
25 abortions. But this approach entirely misses the point of Nevada’s single subject rule.
26 It is unnecessary for the discrete examples of the areas where the Petition establishes
27 rights of access and decision-making to relate directly to one another, but rather that
28

1 these areas relate, in turn, to the single subject—the *framework*, as the Supreme
2 Court said in *Helton*—of the proposed rights to matters of reproductive care and
3 services.¹ In that context, it makes no sense to argue that birth control does not relate
4 to tubal ligations, or that prenatal care and management of miscarriages are not very
5 obviously within that framework; clearly, they do. If massive independent changes to
6 the way Nevada structures primary elections can be safely married, in an initiative
7 measure, to a separate, completely independent, and radical revamping of how we
8 count votes at general elections—all under the single subject of “elections”—then it
9 would require a particularly perverse interpretation to consider a nonexclusive list of
10 “all matters relating to pregnancy, including, without limitation, prenatal care,
11 childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion care,
12 management of a miscarriage, and infertility care” as somehow insufficiently related
13 within a proposed ballot measure explicitly designed to establish fundamental rights
14 to reproductive freedom in precisely these areas. Further provisions in the Petition
15 merely clarify and protect both the rights sought to be established in the measure
16 from state interference and those who seek to exercise them. Nothing in the Petition
17 strays, even arguably, from the central subject and framework of ensuring freedom
18 of care, access to care, and decision-making among individuals and health care
19 providers in the realm of reproduction.

20 Additionally, like the proponents in *Helton*, proponents here are not “trying to
21 hide an unrelated and unpopular change within the initiative petition with the hope
22

23
24 ¹ This analysis is further supported by the text of the Petition’s description of
25 effect, per the Supreme Court’s direction in *Las Vegas Taxpayer*, 125 Nev. at 180. The
26 key passage in the description, for these purposes, is its second sentence: “This
27 initiative enables individuals to make and carry out decisions about matters relating
28 to their pregnancies, including prenatal care, childbirth, postpartum care, birth
control, vasectomies and tubal ligations, abortion and abortion care, and care for
miscarriages and infertility.”

1 that the electorate decides the more popular change is worth the adoption of the less
2 popular one.” *Helton*, 512 P.3d at 315. Quite the contrary: It cannot be persuasively
3 argued that any of the provisions in the present Petition overwhelm and dominate in
4 some manner as to drag other, unpopular provisions along with it to the general
5 election ballot. Each provision functions within the overall framework of the
6 establishment of particular rights, and the protection of their exercise.

7 **B. The Petition’s Description Of Effect Is Perfectly Appropriate**

8 NRS 295.009(1)(b) requires each initiative to “[s]et forth, in not more than 200
9 words, a description of the effect of the initiative... if the initiative... is approved by
10 the voters.” A description of effect “must be a straightforward, succinct, and
11 nonargumentative summary of what the initiative is designed to achieve and how it
12 intends to reach those goals.” *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129
13 Nev. 35, 37, 293 P.3d 874, 876 (2013). Also, the description of effect must “not be
14 deceptive or misleading.” *Id.*, at 42. The description of effect “facilitates the
15 constitutional right to meaningfully engage in the initiative process by helping to
16 prevent voter confusion and promote informed decisions.” *Las Vegas Taxpayer*, 125
17 Nev. at 177. It is well-known that a description need not include every possible effect,
18 hypothetical effects, hyper-technical effects, or be written in the manner its
19 opponents would prefer; what is required is a good-faith and non-argumentative
20 statement of the ramifications and aims of the measure under consideration.

21 Here, the description that Plaintiffs call “grievously misleading” is, in fact,
22 rather simple, and direct. Plaintiffs, instead, would appear to prefer the description
23 to elucidate every potential negative consequence of the freedom of reproductive care
24 they can dream up, even to the point of imagining not only that the measure would
25 legalize feticide but that the description must state that in the description (which is
26 a particularly inflammatory argument, to say the least). To that immensely
27 wrongheaded approach, Intervenor urges Plaintiffs to conduct their political
28

1 campaign against the Petition however they see fit, but it is not appropriate or
2 actionable to demand this Court require such language in the Petition itself.

3 All constitutional provisions are policy-based; legislatures thereafter design
4 statutes pursuant to their terms and meanings, which are themselves often debated
5 and debatable. Requiring this Petition's proponents to discuss, at length and in the
6 mandated description, for example, Plaintiffs' personal understanding of how this
7 measure might interact with notions of "equality," when the Petition expressly states
8 it works no narrowing or limitation of equality or equal protection, stretches
9 credulity. Likewise, where Plaintiffs state that "Conceivably, the Petition could also
10 be read..." in some or other way, this does not support an argument for the
11 description's invalidity; proponents are absolutely not required to satisfy and address
12 each "conceivable" concern an initiative opponent can raise. *See* Pl. Memo., at 8.

13 The Petition's description lays out the aims of the proposal, its terms, and its
14 effects, with admirably clarity. Plaintiffs' wish-list of political counterarguments
15 should stay where it belongs, as part of an election campaign where competing ideas
16 and interpretations are encouraged. The current description, however, meets all the
17 requirements of Nevada law for petition circulation.

18 **C. The Petition Does Not Violate Nev. Const. Article 19, Section 6's**
19 **Prohibition On Unfunded Mandates Via Initiative**

20 Article 19, Section 2 of the Nevada Constitution provides that "subject to the
21 limitations of Section 6 of this Article, the people reserve to themselves the power to
22 propose, by initiative petition, statutes and amendments to statutes and amendments
23 to this constitution, and to enact or reject them at the polls." Section 6 provides that
24 Article 19 "does not permit the proposal of any statute or statutory amendment which
25 makes an appropriation or otherwise requires the expenditure of money, unless such
26 statute or amendment also imposes a sufficient tax, not prohibited by the
27 Constitution, or otherwise constitutionally provides for raising the necessary
28

1 revenue." Nev. Const. art. 19, sec. 6. The primary purpose behind this requirement is
2 to ensure that no initiative is presented to the voters without funding provisions when
3 the initiative requires an appropriation or expenditure.

4 "[A]n appropriation is the setting aside of funds, and an expenditure of money
5 is the payment of funds." *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036
6 (2001). "A necessary appropriation or expenditure in *any* set amount or percentage is
7 a new requirement that otherwise does not exist." *Id.*, 117 Nev. at 176. "[A]n initiative
8 makes an appropriation or expenditure when it leaves budgeting officials no
9 discretion in appropriating or expending the money mandated by the initiative—the
10 budgeting official must approve the appropriation or expenditure, regardless of any
11 other financial considerations." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890, 141
12 P.3d 1224, 1233 (2006).

13 Here, Plaintiffs' argument that the Petition "would clearly *require* a funding
14 source" turn out to be highly attenuated and speculative, if not outright incorrect and
15 implausible. The allegation that the creation of an "enforcement mechanism" because
16 the State "*may* take action against a provider of health care if that provider did not
17 meet the standard of care" is, in the first instance, based on a discretionary *may*
18 rather than a directory *shall*, and moreover is just a statement that law enforcement
19 will, if necessary, enforce the law—something it does currently. There is no
20 establishment of some new task force or law enforcement agency in the Petition,
21 directing the appropriation of public monies. Neither does the Petition, as Plaintiffs
22 appear to argue, mandate or provide free health care in a manner that requires the
23 Legislature to appropriate and expend monies under some new program. Any notion
24 that raised premiums of health insurance for private persons would also result in the
25 need for public finding of indigents, specifically due to the terms of the Petition, is far
26 too attenuated to be taken very seriously, much less to establish a violation of Nev.
27 Const. art. 19, sec. 6.

28

1 In any event, as explained above, the burden of demonstrating the invalidity
2 of an initiative falls on the challenger. *Las Vegas Taxpayer*, 125 Nev. at 176. As in
3 *Helton*, Plaintiffs here do not provide any evidence regarding the expected costs they
4 insist come along with the Petition, nor could they.

5 **IV. CONCLUSION**

6 Based upon the foregoing, Intervenor asks this Court to reject the present
7 challenge and award no relief to Plaintiffs in this action.

8 **AFFIRMATION**

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

11 DATED this 8th day of November, 2023.

12
13 **BRAVO SCHRAGER LLP**

14
15 By: 

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23 *Attorneys for Intervenor-Defendant,*
24 *Nevadans for Reproductive Freedom*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 8th day of November, 2023, I served the foregoing
3 **INTERVENOR/DEFENDANT NEVADANS FOR REPRODUCTIVE**
4 **FREEDOM MEMORANDUM OF POINTS AND AUTHORITIES IN**
5 **OPPOSITION** by depositing a true copy of the same via electronic mail, per the
6 October 17, 2023 Stipulation, as follows:

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Francisco V. Aguilar in his Official
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**IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

DONNA WASHINGTON, an individual;
COALITION FOR PARENTS AND CHILDREN,
a Political Action Committee,

Plaintiffs,

vs.

FRANCISCO V. AGUILAR, in his Official
Capacity as the NEVADA SECRETARY OF
STATE,

Defendant,

and

NEVADANS FOR REPRODUCTIVE FREEDOM, a
Political Action Committee,

Intervenor-Defendant.

Case No.: 23-OC-00115

Dept. No. 1

**PLAINTIFFS' REPLY TO INTERVENOR-
DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS'
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiffs DONNA WASHINGTON and COALITION FOR PARENTS AND CHILDREN ("Plaintiffs"), a Political Action Committee, by and through its undersigned counsel Jason D. Guinasso, Esq., of the law firm Hutchison & Steffen, PLLC, hereby file this Reply to Intervenor-Defendant Nevadans for Reproductive Freedom's ("NRF") Memorandum of Points and Authorities in Opposition to Plaintiff's Complaint for Declaratory and Injunctive Relief (the "Reply"). Intervenor-Defendants filed this Memorandum of Points and Authorities (the "Opposition") to rebut the allegations made in the Complaint for Declaratory and Injunctive Relief that was filed on October 5, 2023, to

1 challenge Initiative Petition C-01-2023 (the "Petition"). This Reply is based on the Complaint for
2 Injunctive and Declaratory Relief that was filed on October 5, 2023, all pleadings and papers on file,
3 and any oral argument that this Court will allow at the hearing on November 21, 2023, at 1:30 P.M.
4 Pursuant to FJDCR 3.23(b), this Reply is limited to five pages.

5 **AFFIRMATION**

6 Pursuant to NRS 239B.030(1) and NRS 603A.040, undersigned counsel hereby affirms that the
7 foregoing PLAINTIFFS' REPLY TO INTERVENOR-DEFENDANT'S MEMORANDUM OF
8 POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' COMPLAINT FOR
9 DECLARATORY AND INJUNCTIVE RELIEF does not contain the personal information of any
10 person.

11 DATED this 15 day of November, 2023.

12 HUTCHISON & STEFFEN, PLLC

13 
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19 jguinasso@hutchlegal.com

20 *Attorney for Plaintiffs*

21 ///

22 ///

23 ///

24 ///

25 ///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. Introduction**

3 The Opposition avers that Plaintiffs are conducting a “political campaign against the Petition.”
4 *Opposition*, at 6-7. While abortion is perhaps the most contentious issue in the Nation—particularly in
5 the post-*Dobbs*¹ legal regime, Plaintiffs have *not* filed the Complaint to challenge whether the Petition
6 contains wise policy. Instead, this Complaint was filed to safeguard the right of the People to have
7 honest and open discussions about the wisdom of the policies contained in this Petition *before* it
8 becomes law. Respectfully, the Petition—as drafted—fails to adequately apprise voters of its impacts.
9 The Petition addresses an abyss of far-reaching conduct. It seems impossible for the Petition’s
10 description of effect, which is limited to 200 words, to adequately apprise voters of its far-reaching
11 consequences. Finally, the Petition would require public funding to effectuate its mandates. These
12 criteria are established so that the People can have honest and open discussions *before* enacting a law
13 that governs them. Because the Petition fails to facilitate the honest and open conversations that are
14 fundamental to the democratic process, it fails as a matter of law. It must be enjoined.

15 **II. Reply Arguments**

16 A. The Petition violates Nevada’s Single-Subject Rule by embracing an abyss of subjects.

17 The Opposition contends that the Petition contemplates a single subject in compliance with
18 NRS 295.009(1)(a) because it embraces a single “framework,” *i.e.*, reproductive care. *Opposition*, at 5.
19 The alleged framework of the Petition is “ensuring freedom of care, access to care, and decision-
20 making among individuals and health care providers in the realm of reproduction.” *Id.* at 2-6. This
21 “framework” language is taken from *Helton v. Nevada Voters First PAC*, 138 Nev. Adv. Op. 45, 512
22 P.3d 309, 314 (2022), which found that a petition that proposed (1) primaries with open voting and (2)
23 general elections with ranked-choice voting presented a single subject because it was a “framework”

24 _____
25 ¹See *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022) (returning the resolution
of abortion-policy decisions to the states because the Fourteenth Amendment is silent on abortion).

1 governing how officials are elected. The Court then looked to the textual language of the petition and
2 the proponents arguments, and verified that the purpose of both provisions was to create a framework
3 for voting. *See id.* The Court contrasted the petition's framework for electing officials versus the
4 "mechanics" of voting like early voting, absentee ballots, voting machines, and paper ballots. *See id.*

5 Here, unlike the facts in *Helton*, it is wholly unclear what "framework" the Petition applies,
6 especially when its textual provisions are compared. As noted in previous briefing, this Petition would
7 expressly apply to "prenatal care, childbirth, postpartum care, birth control, vasectomy, tubal ligation,
8 abortion, abortion care, management of a miscarriage, and infertility care." While the Opposition
9 vaguely states that the supposed framework on these topics "enables individuals to make and carry out
10 decisions about matters relating to [reproductive health]," *Opposition* at 5 n.1, it cites *no* provision in
11 the Petition that effectuates, defines, or constrains this "framework." Thus, unlike the petition in
12 *Helton*—which could be reduced to a framework for electing officials—the subjects contained in this
13 petition cannot be confined to a single operative framework. In other words, there is no criteria for
14 effectuating this right to "make and carry out decisions."

15 To prove that no ascertainable "framework" exists for this Petition, it is necessary to analyze
16 existing laws that address the abyss of potential conduct expressly or implicitly recognized by the
17 Petition. Existing statutory laws address reproductive health, and show the breadth of the Petition's
18 import. For instance: (1) Birth Control is addressed in NRS 422.308, NRS 442.080, and NRS
19 449.1885; (2) Post-Partum and/or Prenatal Care is addressed in NRS 698A.0419, NRS 689C.194, NRS
20 689B.03785, NRS 422.27177, and other related statutes; (3) Miscarriage is addressed in NRS
21 614.4383; (4) Tubal Ligation is addressed in NRS 449.198; (5) Abortion is addressed in NRS 442.250,
22 *et seq.*, and NRS 689A.042; (6) Vasectomies are addressed in NRS 442.725; and (7) Infertility Care is
23 addressed in NRS 126.510. This list, which includes only a partial list of applicable statutes, highlights
24 the breadth of the Petition. The Legislature could not reduce "reproductive health" into a single statute,
25 let alone a single statutory chapter, and therefore had to compartmentalize this broad swath of conduct

1 into multiple statutes contained in various parts of the Nevada Revised Statutes. The Petition addresses
2 all of this conduct in several paragraphs without an articulable framework.

3 The most probative rebuttal of the Opposition is that it fails to tie the “framework” to what the
4 petition actually *does*. As Plaintiffs have noted, the Petition: (1) prohibits the State from regulating an
5 abortion after fetal viability *if* a “provider of health care” deems it “medically indicated”; (2) prohibits
6 the State from prosecuting or fining an Abortionist; (3) prohibits the State from prosecuting or fining
7 any miscarriage or stillbirth; (4) prohibits the State from prosecuting or fining a person that aids or
8 abets any attempt to procure “reproductive freedom”; and (5) creates a right to reproductive freedom
9 that ranges from vasectomies to postpartum care. It is unclear how this is a single framework. As the
10 ~~Helton~~ Court reasoned, these are separate *mechanics* that effectuate the multiple subjects contemplated
11 by the Petition. In sum, this Petition clearly constitutes logrolling and does not encompass a single
12 subject. Because the Petition violates of NRS 295.009(1)(a), it must be enjoined.

13 B. The description of effect is misleading as it fails to describe the impact of the Petition.

14 The Opposition contends that the description of effect is not misleading because it sets forth is
15 terms and effects “with admirable clarity.” *Opposition*, at 7. Rather than explaining how the 200-word
16 description accurately captures the import of the Petition, the Opposition instead criticizes the
17 Plaintiffs. *Id.* at 6-7. For instance, the Opposition accuses Plaintiffs of a “political campaign” and
18 “political counterarguments.” *Id.* While it is understood that this topic is politically contentious,
19 Plaintiffs set forth meritorious arguments as to why the description of effect is misleading. Rather than
20 explaining why the Petition satisfies NRS 295.009(1)(b), and specifically rebutting Plaintiffs
21 arguments, the Opposition chose merely to criticize Plaintiffs. Perhaps the reason the Opposition
22 failed to justify the description of effect is because it is indefensible under NRS 295.009(1)(b).

23 As the Plaintiffs have noted, the Petition’s description of effect fails to describe five important
24 consequences, none of which are directly rebutted by the Opposition. First, the Petition’s description of
25 effect omits that the law will bar the State from prosecuting, fining, or regulating any miscarriage or

1 stillbirth. Conceivably, a domestic abuser could use this provision as a defense against prosecution for
2 battering a pregnant woman and causing the miscarriage. Second, the description fails to mention that
3 a “provider of health care,” which is an undefined, has the power to order a late-term abortion if it is
4 “medically indicated” to protect the health of the pregnant individual. The term “provider of health
5 care” is broad under Nevada law, *see* NRS 41A.017, and would encompass a nurse or dentist. The
6 description omits this law. Third, the Petition requires a funding source. The Petition creates an
7 enforcement mechanism whereby the State may take action against an Abortionist if that provider did
8 not meet the standard of care of an Abortionist. Tax dollars would be utilized to create a review board
9 to complete this inquiry. Fourth, the description of effect fails to explain that it affects “equality” and
10 “equal protection.” It is unclear what the term “equality” means, but the Petition would make it law.

11 Fifth, and most importantly, the Opposition—in attempting to create a “framework” for the
12 Petition—actually unveiled an additional reason why the Petition is misleading. In showing that the
13 Petition fails to embrace a single subject, this Reply cited to a plethora of statutes that show that the
14 Petition addresses an abyss of conduct that not even the Legislature could harmonize into a single
15 statute. *See infra*, at 3. If this Petition is enacted, each of those statutes would need to be revisited.
16 Thus, the Petition fails wholly to advise the People that all existing statutes embracing these broad
17 subjects would need to be revisited and possibly amended or revoked. In sum, this Petition contains a
18 misleading description of effect in violation of NRS 295.009(1)(b). It must be enjoined.

19 C. The Petition contains an unfunded mandate by requiring the creation of a Board.

20 The Opposition contends that the Petition does not create an unfunded mandate because the
21 Petition does not expressly create a task force or law enforcement agency. *Opposition*, at 8.
22 Respectfully, this is a misinterpretation of Plaintiffs’ argument.

23 The fourth subsection of the Petition would prohibit the State from penalizing, prosecuting, or
24 otherwise taking adverse action against “a provider of health care” for acting within the standard of
25 care for performing an abortion or providing abortion care. *See* Petition, at 3. Only doctors and other

1 providers of health care would be in a position to testify as to the applicable standard of care. *See* NRS
2 41A.071(2) (contemplating that only an *expert* who practices in a medical field can render an opinion
3 as to the standard of care). Thus, funding would need to be appropriated to create a Panel or Board—
4 most likely under the supervision of the Nevada Board of Medical Examiners—to evaluate whether a
5 provider of health care performed an abortion within the standard of care. Yet, the Petition does not set
6 forth a revenue source to create this board. *See Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47,
7 512 P.3d 296, 303 (2022). If no board is created, as Plaintiff suggests, then the plain meaning of the
8 Petition would be rendered meaningless because there would be no legal entity to ascertain whether an
9 Abortionist acted within the standard of care. Thus, the Opposition is incorrect that this Petition does
10 not contain an unfunded mandate.

11 **III. Conclusion**

12 For the reasons stated above, the Petition is legally defective and is contrary to the democratic
13 process. Respectfully, this Court should reject the Opposition, issue declaratory relief concluding that
14 the Petition violates NRS Chapter 295, and enjoin the Secretary of State from placing it on the ballot.

15 **AFFIRMATION**

16 Pursuant to NRS 239B.030(1) and NRS 603A.040, undersigned counsel hereby affirms that the
17 foregoing pleading does not contain the personal information of any person.

18 DATED this 15th day of November, 2023.

19 HUTCHISON & STEFFEN, PLLC

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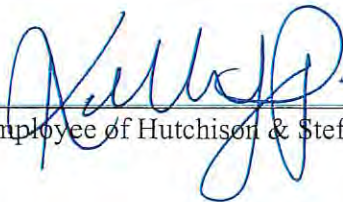
jguinasso@hutchlegal.com

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and the STIPULATION AND SCHEDULING ORDER OF THE COURT THAT WAS FILED ON OCTOBER 17, 2023, I certify that I am an employee of the law firm of HUTCHISON & STEFFEN, PLLC, and that on the 13th day of November 2023, I caused service of a true and accurate copy of the **PLAINTIFFS' REPLY TO INTERVENOR-DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** by: (1) emailing a courtesy copy to all parties of record and the Court's Judicial Assistant at the address listed below; and (2) depositing a copy in First Class Mail, postage prepaid, to the parties identified below.

Bradley S. Schrager, Esq. (10217) Daniel Bravo, Esq. (13078) BRAVO SCHRAGER, LLP 6675 South Tenaya Way, Suite 200 Las Vegas, Nevada 89113 (702) 996-1724 bradley@bravoschrager.com daniel@bravoschrager.com <i>Attorneys for Nevadans for Reproductive Freedom</i>	Laena St-Jules, Esq. (15156) ATTORNEY GENERAL'S OFFICE 100 N. Carson Street Carson City, Nevada 89701 (775) 684-1265 lstjules@ag.nv.gov <i>Counsel for Nevada Secretary of State</i>
Ms. Julie Harkleroad Judicial Assistant Department One First Judicial District Court jharkleroad@carson.org *Email copy only.	


An employee of Hutchison & Steffen, PLLC

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7 *Attorney for Plaintiffs*

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

10 DONNA WASHINGTON, an individual;
11 COALITION FOR PARENTS AND CHILDREN,
12 a Political Action Committee,

13 Plaintiffs,

14 vs.

15 FRANCISCO V. AGUILAR, in his Official
16 Capacity as the NEVADA SECRETARY OF
17 STATE,

18 Defendant,

19 and

20 NEVADANS FOR REPRODUCTIVE FREEDOM, a
21 Political Action Committee,

22 Intervenor-Defendant.

Case No.: 23-OC-00115

Dept. No. 1

REQUEST TO SUBMIT

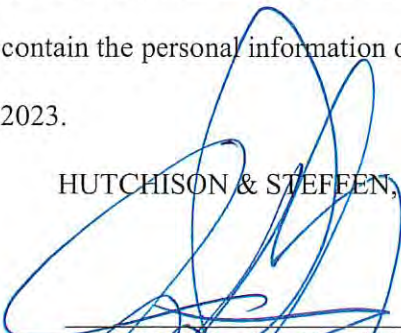
23 Plaintiffs DONNA WASHINGTON and COALITION FOR PARENTS AND CHILDREN
24 ("Plaintiffs"), a Political Action Committee, by and through its undersigned counsel Jason D. Guinasso,
25 Esq., of the law firm Hutchison & Steffen, PLLC, hereby requests that the accompanying
26 PLAINTIFFS' [PROPOSED] FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER
27 GRANTING DECLARATORY AND INJUNCTIVE RELIEF, be submitted to the Court for
28 consideration.

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DATED this 17 day of November, 2023.


contain the personal information of
2023.
HUTCHISON & STEFEN,


Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and the STIPULATION AND SCHEDULING ORDER OF THE COURT THAT WAS FILED ON OCTOBER 17, 2023, I certify that I am an employee of the law firm of HUTCHISON & STEFFEN, PLLC, and that on the 15th day of November 2023, I caused service of a true and accurate copy of the **REQUEST TO SUBMIT** by: (1) emailing a courtesy copy to all parties of record and the Court's Judicial Assistant at the address listed below; and (2) depositing a copy in First Class Mail, postage prepaid, to the parties identified below.

Bradley S. Schrager, Esq. (10217) Daniel Bravo, Esq. (13078) BRAVO SCHRAGER, LLP 6675 South Tenaya Way, Suite 200 Las Vegas, Nevada 89113 (702) 996-1724 bradley@bravoschrager.com daniel@bravoschrager.com <i>Attorneys for Nevadans for Reproductive Freedom</i>	Laena St-Jules, Esq. (15156) ATTORNEY GENERAL'S OFFICE 100 N. Carson Street Carson City, Nevada 89701 (775) 684-1265 lstjules@ag.nv.gov <i>Counsel for Nevada Secretary of State</i>
Ms. Julie Harkleroad Judicial Assistant Department One First Judicial District Court jharkleroad@carson.org *Email copy only.	



An employee of Hutchison & Steffen, PLLC

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EXHIBIT INDEX

Exhibit Number	Title	Pages (Including Cover Sheet)
1	PLAINTIFFS' [PROPOSED] FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER GRANTING DECLARATORY AND INJUNCTIVE RELIEF	12

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EXHIBIT 1

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

7 DONNA WASHINGTON, an individual;
COALITION FOR PARENTS AND CHILDREN,
8 a Political Action Committee,

9 Plaintiffs,

10 vs.

11 FRANCISCO V. AGUILAR, in his Official
Capacity as the NEVADA SECRETARY OF
12 STATE,

13 Defendant,

14 and

15 NEVADANS FOR REPRODUCTIVE FREEDOM, a
Political Action Committee,

16 Intervenor-Defendant.
17

Case No.: 23-OC-00115

Dept. No. 1

**PLAINTIFFS' [PROPOSED] FINDINGS
OF FACTS, CONCLUSIONS OF LAW,
AND ORDER GRANTING
DECLARATORY AND INJUNCTIVE
RELIEF**

18 Plaintiffs DONNA WASHINGTON and COALITION FOR PARENTS AND CHILDREN
19 ("Plaintiffs"), a Political Action Committee, by and through its undersigned counsel Jason D. Guinasso,
20 Esq., of the law firm Hutchison & Steffen, PLLC, filed a Complaint for Declaratory and Injunctive
21 Relief on October 5, 2023 to challenge Initiative Petition C-01-2023 (the "Petition"). Plaintiffs
22 submitted a Memorandum of Points and Authorities in Support of the Complaint for Declaratory and
23 Injunctive Relief on October 20, 2023. Intervenor-Defendant Nevadans for Reproductive Freedom
24 ("Intervenor-Defendant") filed an Answer to the Complaint on November 8, 2023. On the same day,
25 Intervenor-Defendant filed a Memorandum of Points and Authorities in Opposition to the Complaint

1 for Declaratory and Injunctive Relief. Plaintiffs filed a Reply to the Memorandum of Points and
2 Authorities in Opposition to the Complaint on November 15, 2023. Plaintiffs and the Intervenor-
3 Defendant both submitted competing proposed orders on November 15, 2023. This matter came before
4 the Court for a hearing on November 21, 2023. After reviewing all pleadings on file, entertaining the
5 arguments of counsel at the hearing, and reviewing the proposed orders, this Court hereby enters these
6 Findings of Fact, Conclusions of Law, and Order GRANTING Declaratory and Injunctive Relief in
7 favor of the Plaintiffs, which enjoins the Nevada Secretary of State from advancing Initiative Petition
8 C-01-2023.

9 FINDINGS OF FACT

10 1. On or about September 14, 2023, Lindsey Harmon, on behalf of the Intervenor-
11 Defendant, filed Nevada Constitutional Initiative Petition C-01-2023 (the “Petition”).

12 2. The Petition seeks to add a new section to the Nevada Constitution, which will be
13 designated as Section 25 of Article 1 (the “Amendment”).

14 3. The first subsection of the Amendment would create a “fundamental right to
15 reproductive freedom.” Among other things, this right provides that reproductive freedom—which
16 includes “all matters relating to pregnancy”—shall not be denied, burdened, or infringed upon unless
17 justified by a compelling State interest. This section would expressly apply to “prenatal care,
18 childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care,
19 management of a miscarriage, and infertility care.”

20 4. The second subsection of the Amendment would allow the State to “regulate the
21 ~~provision of abortion care after fetal viability, provided that in no circumstance may the State Prohibit~~
22 an abortion that, in the professional judgment of an attending provider of health care, is medically
23 indicated to protect the life or physical or mental health of the pregnant individual.”

24 5. The third subsection of the Amendment would prohibit the State from penalizing or
25 prosecuting an individual based on “perceived or alleged outcome of the pregnancy of the individual,

1 including, without limitation, a miscarriage, stillbirth or abortion.”

2 6. The fourth subsection of the Amendment would prohibit the State from penalizing,
3 prosecuting, or otherwise taking adverse action against “a provider of health care” for acting within the
4 standard of care for performing an abortion or providing abortion care.

5 7. The fifth subsection of the Amendment would prohibit the State from penalizing or
6 prosecuting an individual for aiding or assisting another individual in exercising the right of the
7 individual to reproductive freedom.

8 8. The sixth subsection of the Amendment would provide that “nothing herein narrows or
9 limits the rights to equality and equal protection.”

10 9. The Petition includes a description of effect that states:

11 If enacted, this initiative would add a new section to Article 1 of the
12 Nevada Constitution establishing a fundamental right to reproductive
13 freedom. This initiative enables individuals to make and carry out decisions
14 about matters relating to their pregnancies, including prenatal care,
15 childbirth, postpartum care, birth control, vasectomies and tubal ligations,
16 abortion and abortion care, and care for miscarriages and infertility.

17 If this measure is enacted, the State still may regulate provision of
18 abortion care after fetal viability, except where medically indicated to protect
19 the life or physical or mental health of the pregnant individual.

20 Under this measure, the State may not penalize, prosecute, or take
21 adverse action against any individual based on the outcome of a pregnancy of
22 the individual, or against any licensed health care provider who acts
23 consistent with the applicable scope and practice of providing reproductive
24 health care services to an individual who has granted their voluntary consent.
25 Neither may the State penalize, prosecute, or take adverse action against any
individual or entity for aiding or assisting another individual in the exercise
of the rights established by this initiative.

21 10. On October 5, 2023, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief
22 on October 5, 2023 to challenge the legality of the Petition.

23 11. On October 20, 2023, Plaintiffs filed a Memorandum of Points and Authorities in
24 Support of the Complaint for Declaratory and Injunctive Relief. Plaintiffs argued that the Petition does
25 not embrace a single subject, contains a misleading and/or inaccurate description of effect, and contains

1 an unfunded mandate in violation of Nevada law.

2 12. On November 8, 2023, the Intervenor-Defendant filed an Answer to the Complaint for
3 Declaratory and Injunctive Relief. The same day, the Intervenor-Defendant filed a Memorandum of
4 Points and Authorities in Opposition to Plaintiffs' Complaint for Declaratory and Injunctive Relief.
5 Intervenor-Defendant argued that the Petition contains a single subject, contains an accurate description
6 of effect, and does not contain an unfunded mandate.

7 13. On November 15, 2023, Plaintiffs filed a Reply to Intervenor-Defendant's Memorandum
8 of Points and Authorities in Opposition to Plaintiffs' Complaint for Declaratory and Injunctive Relief.
9 The same day, both parties submitted competing proposed orders to this Court.

10 14. On November 21, 2023, this matter came before this Court for a hearing.

11 15. Any finding of fact that is more properly construed as a conclusion of law shall be duly
12 incorporated into this Court's Conclusions of Law.

13 CONCLUSIONS OF LAW

14 1. This Court may consider Plaintiffs challenge to the Petition. "Courts will consider
15 challenges to an initiative petition preelection in limited circumstances, such as when those challenges
16 are based on the petition's compliance with the single-subject requirement, the statutory requirement
17 for the description of effect, or the preclusion against unfunded mandates." *Helton v. Nevada Voters*
18 *First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022). Plaintiffs have alleged that the Petition
19 violates each of the foregoing legal grounds identified by *Helton*. The Intervenor-Defendant argues
20 that the Petition meets each of the foregoing legal standards.

21 The Single-Subject Requirement

22 2. NRS 295.009(1)(a) provides that an initiative petition *must* embrace *only* "one subject
23 and matters necessarily connected therewith and pertaining thereto." An initiative petition embraces
24 one subject "if the parts of the proposed initiative or referendum are functionally related and germane
25 to each other in a way that provides sufficient notice of the general subject of, and of the interests likely

1 to be affected by, the proposed initiative or referendum.” NRS 295.009(2).

2 3. “The single-subject requirement ‘facilitates the initiative process by preventing petition
3 drafters from circulating confusing petitions that address multiple subjects.’” *Helton*, 138 Nev., Adv.
4 Op. 45, 512 P.3d at 314 (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894,
5 902, 141 P.3d 1235, 1240 (2006)). “[T]he single-subject requirement helps both in promoting informed
6 decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive
7 proposals or concealing them in lengthy, complex initiatives (i.e., logrolling).” *Id.* (internal quotation
8 marks omitted). “[L]ogrolling occurs when two or more completely separate provisions are combined
9 in a petition” *Id.* at 315 (internal quotation marks omitted). In ascertaining whether a petition
10 violates the single-subject requirement, “[t]he court must first determine the initiative’s purpose or
11 subject and then determine if each provision is functionally related and germane to each other and the
12 initiative’s purpose or subject.” *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314. “To determine the
13 initiative’s purpose or subject, this court looks to its textual language and the proponents’ arguments.”
14 *Id.* (internal quotation marks omitted). “The court also will look at whether the description of effect
15 articulates an overarching purpose and explains how provisions relate to a single subject.” *Id.*

16 4. This Court agrees with Plaintiffs that the Petition embraces a multitude of subjects that
17 amount to logrolling. Subsection 1, alone, embraces the following subjects: prenatal care, childbirth,
18 postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a
19 miscarriage, and infertility care. Subsection 1 purportedly creates a “fundamental right to reproductive
20 freedom,” but there is no limiting language in that section to circumscribe that right such that the
21 section embraces a single and articulable subject. For instance, it is unclear how a vasectomy relates to
22 infertility care or postpartum care. Likewise, it is unclear how postpartum care is related to abortions or
23 birth control. Thus, it is improper to characterize these broad categories as a “single subject” because
24 there is no explanation as to how these provisions are functionally related.

25 ///

1 5. The Petition also creates several laws that are not functionally related and/or germane to
2 the proposed “right to reproductive freedom.” First, subsection 2 would allow the State to regulate an
3 abortion after fetal viability, but the State would be *prohibited* from regulating a viable fetus if a
4 “provider of health care” indicated that an abortion was necessary to “protect the life or physical or
5 mental health of the pregnant individual.” The petition does not define the term “provider of health
6 care,” but other Nevada law defines that term to include physician assistants, dentists, nurses, physical
7 therapists, chiropractors, optometrists, and psychologists. *See* NRS 41A.017. It is unclear how
8 subsection 2 functionally relates to postpartum care, birth control, vasectomy, tubal ligation,
9 vasectomies, and infertility care.

10 6. Subsection 3 of the Petition would prohibit the State from penalizing or prosecuting any
11 person based on the “actual, potential, perceived or alleged outcome of the pregnancy of the individual,
12 including, without limitation, a miscarriage, stillbirth or abortion.” This section of the Petition would
13 essentially bar the State from making any investigation of a miscarriage or stillbirth. It is unclear how
14 this provision functionally relates to postpartum care, birth control, tubal ligation, vasectomies, and
15 infertility care.

16 7. Subsection 4 of the Petition would prohibit the State from penalizing, prosecuting, or
17 “taking adverse action against” any “provider of health care” for acting within the standard of care in
18 performing an abortion. It is unclear how this provision functionally relates to postpartum care, birth
19 control, tubal ligation, vasectomies, and infertility care.

20 8. Subsection 5 of the Petition prohibits the State from penalizing or prosecuting any
21 ~~person or entity that aids or assists another person in “exercising the right of the individual to~~
22 reproductive freedom with the voluntary consent of the individual.” It is unclear how this provision
23 functionally relates to postpartum care, birth control, tubal ligation, vasectomies, and infertility care.

24 9. These provisions constitute logrolling because they regulate separate conduct but are
25 placed in the same Petition. Subsections 2-5 of the Petition pertain to various abortion rights, and do

1 not address postpartum care, birth control, tubal ligation, vasectomies, and/or infertility care. Thus,
2 subsection 1 of the Petition is not “functionally related and germane” to the provisions in Subsections
3 2-5. *See Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314.

4 10. Intervenor-defendant contends that the Petition contemplates a single subject in
5 compliance with NRS 295.009(1)(a) because it embraces a single “framework,” *i.e.*, reproductive care.
6 The alleged framework of the Petition is “ensuring freedom of care, access to care, and decision-
7 making among individuals and health care providers in the realm of reproduction.” This “framework”
8 language is taken from *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 314, which found that a petition that
9 proposed (1) primaries with open voting and (2) general elections with ranked-choice voting presented
10 a single subject because it was a “framework” governing how officials are elected. The Court then
11 looked to the textual language of the petition and the proponents arguments, and verified that the
12 purpose of both provisions was to create a framework for voting. *See id.* The Court contrasted the
13 petition’s framework for electing officials versus the “*mechanics*” of voting like early voting, absentee
14 ballots, voting machines, and paper ballots. *See id.*

15 11. Unlike the facts in *Helton*, it is unclear what “framework” the Petition applies, especially
16 when its textual provisions are compared. This Petition would expressly apply to “prenatal care,
17 childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care,
18 management of a miscarriage, and infertility care.” While the Intervenor-Defendant states that the
19 supposed framework on these topics “enables individuals to make and carry out decisions about matters
20 relating to [reproductive health],” it cites *no* provision in the Petition that effectuates, defines, or
21 ~~constrains this “framework.” Thus, unlike the petition in *Helton* which could be reduced to a~~
22 framework for electing officials—the subjects contained in this petition cannot be confined to a single
23 operative framework. In other words, there is no criteria, *i.e.*, framework, for effectuating this right to
24 “make and carry out decisions.”

25 12. Existing statutory laws addressing reproductive health also underscore the breadth of the

Petition and show that it does not contain a single subject. For instance: (1) Birth Control is addressed in NRS 422.308, NRS 442.080, and NRS 449.1885; (2) Post-Partum and/or Prenatal Care is addressed in NRS 698A.0419, NRS 689C.194, NRS 689B.03785, NRS 422.27177, and other related statutes; (3) Miscarriage is addressed in NRS 614.4383; (4) Tubal Ligation is addressed in NRS 449.198; (5) Abortion is addressed in NRS 442.250, *et seq.*, and NRS 689A.042; (6) Vasectomies are addressed in NRS 442.725; and (7) Infertility Care is addressed in NRS 126.510. This list, which includes only a partial list of applicable statutes, highlights the breadth of the Petition. The Legislature could not reduce “reproductive health” into a single statute, let alone a single statutory chapter, and therefore had to compartmentalize this broad swath of conduct into multiple statutes contained in various parts of the Nevada Revised Statutes. The Petition addresses all of this conduct in several paragraphs without an articulable framework.

13. Further, after reviewing the pleadings on file, this Court did not find arguments to show how the proposed “framework” ties into subsections 2-5 of the Petition.

14. In sum, this Court concludes that the Petition constitutes logrolling and does not encompass a single subject. Accordingly, the Petition violates of NRS 295.009(1)(a).

Description of Effect

15. NRS 295.009(1)(b) provides that the initiative petition must set forth in no more than 200 words “a description of effect of the initiative.” “The description of effect facilitates the constitutional right to meaningfully engage in the initiative process by helping to prevent voter confusion and promote informed decisions.” *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 316. “A description of effect ‘must be a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals.’” *Id.* (quoting *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). Also, a description of effect cannot be “deceptive or misleading.” *Id.* at 42, 293 P.3d at 879 (internal quotation marks omitted). The Nevada Supreme Court has held that a description of effect is misleading if it “omits the

1 need for or nature of the revenue source to fund” the proposal in the Petition. *See Educ. Freedom PAC*
2 *v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 304 (2022).

3 16. The Petition’s description of effect is misleading because it fails to mention that the law
4 will bar the State from prosecuting, fining, or regulating any miscarriage or stillbirth. Instead, the
5 description of effect vaguely states, “the State may not penalize, prosecute, or take adverse action
6 against any individual based on the outcome of the pregnancy of the individual.” This is misleading
7 because it does not delineate the fact that the Petition will prevent the State from investigating and/or
8 taking action against any miscarriage or stillborn birth.

9 17. The description of effect is also misleading because it fails to mention that a “provider of
10 health care,” which is an undefined term, has the power to order a late-term abortion if it is “medically
11 indicated” to protect the physical or mental health of the pregnant individual. For this reason, voters
12 are misled into believing that a physician would be empowered to determine that the mother’s physical
13 or mental well-being requires an abortion. In reality, any “provider of health care,” which is broadly
14 defined under existing Nevada law, *see* NRS 41A.017, would seemingly be able to approve a late-term
15 abortion. Likewise, the term “medically indicated” is undefined, which misleads voters into believing
16 that there is a specific set of criteria to determine when the mother’s physical or mental health requires
17 an abortion.

18 18. The description of effect also is misleading because it fails to explain that it affects
19 “equality” and “equal protection.” Subsection 6 of the Petition provides that “[n]othing herein narrows
20 or limits the rights to equality and equal protection.” While the right to “equal protection” is well
21 established in American jurisprudence, it is unclear what the term “equality” means legally. In any
22 event, the description of effect wholly omits that it will impact the constitutional right of equal
23 protection or a newly identified right to equality.

24 19. Additionally, the enactment of the Petition would fundamentally alter the statutes listed
25 in Paragraph 12 of this Court’s Conclusions of Law. The description of effect does not mention this.

20. The Intervenor-Defendant argues that the description of effect is not misleading because it sets forth its terms “with admirable clarity.” Yet, the Intervenor-Defendant does not identify how the description of effect adequately addresses the foregoing concerns. Given the breadth of this petition, it is unclear how the Intervenor-Defendants could describe it accurately in 200-words, which further supports this Court’s conclusion that the Petition fails to embrace a single subject.

21. In sum, this Court concludes that the description of effect is misleading and violates NRS 295.009(1)(b).

Unfunded Mandate

22. Article 19, Section 6 of the Nevada Constitution provides that the initiative power “does not permit the proposal of any statute or statutory amendment which makes an appropriation or otherwise requires the expenditure of money, unless such . . . amendment also imposes a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides for raising the necessary revenue.” Thus, “all initiative petitions must comply with Article 19, Section 6’s requirement that initiatives requiring expenditures or appropriations contain a funding provision.” *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 303 (2022). “[A]n initiative that makes an appropriation or requires an expenditure of money is void if it does not also provide for the necessary revenue.” *Reid*, 138 Nev., Adv. Op. 47, 512 P.3d at 303.

23. Subsection 4 of the Petition would prohibit the State from penalizing, prosecuting, or otherwise taking adverse action against “a provider of health care” for acting within the standard of care for performing an abortion or providing abortion care. Only doctors and other providers of health care would be in a position to testify as to the applicable standard of care. ~~See NRS 41A.071(2)~~ (contemplating that only an *expert* who practices in a medical field can render an opinion as to the standard of care). Thus, funding would need to be appropriated to create a Panel or Board—most likely under the supervision of the Nevada Board of Medical Examiners—to evaluate whether a provider of health care performed an abortion within the standard of care. Yet, the Petition does not set forth a

1 revenue source to create this board or panel. *See Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47,
2 512 P.3d 296, 303 (2022). If no board is created, as Plaintiff suggests, then the plain meaning of the
3 Petition would be rendered meaningless because there would be no legal entity to ascertain whether a
4 provider of healthcare acted within the standard of care. This is an unfunded mandate.

5 24. This Court concludes that the Petition contains an unfunded mandate in violation of
6 Article 19, Section 6 of the Nevada Constitution.

7 25. Any conclusion of law that is more properly characterized as a finding of fact shall be
8 duly incorporated into this Court's Findings of Facts.

9 **[PROPOSED] ORDER**

10 THE COURT HEREBY ORDERS, ADJUDGES, and DECREES that Initiative Petition C-01-
11 2023 does not embrace a single subject, contains a misleading description of effect, and contains an
12 unfunded mandate. Therefore, it violates NRS 295.009 and Article 19, Section 6, of the Nevada
13 Constitution.

14 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that the Nevada Secretary
15 of State shall be enjoined from placing Initiative Petition C-01-2023 on the ballot.

16 IT IS SO ORDERED.

17 Dated this ____ day of _____, 2023.

18
19
20 *Respectfully Submitted by:*

21 
22 Jason D. Guinasso, Esq. (8478)
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Attorney for Plaintiffs

District Court

REC'D & FILED

2023 NOV 21 AM 10:18

WILLIAM SCOTT NOEN
CLERK

BY W. Scott Noen
DEPUTY

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

DONNA WASHINGTON, an individual;
COALITION FOR PARENTS AND
CHILDREN, a Political Action Committee,

Plaintiffs,

vs.

Case No.: 23 OC 00115 1B

Dept. No.: 1

FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF STATE.

Defendants.

NEVADANS FOR REPRODUCTIVE
FREEDOM, a Political Action Committee,

Intervenor-Defendant.

ORDER GRANTING NEWS REPORTERS ACCESS

THIS MATTER comes before the Court pursuant to a request by KOLO - TV being granted access to the hearing set in the above-entitled matter for November 21, 2023, at 1:30 p.m. Generally, all proceedings are open to the public, and news reporters are allowed to attend all court proceedings that are open to the public. There is a presumption that all open court proceedings are subject to electronic coverage. This Court has the discretion to limit or place conditions on media coverage of court proceedings. Pursuant to Supreme Court Rules 229 through 246 "Rules on Electronic Coverage of Court Proceedings," news reporters' coverage of these proceedings is granted based on the following conditions and limitations:

1 1. Pursuant to SCR 230, the 24-hour written request by news reporters requirement
2 will be enforced. However, the Court may grant a request on shorter notice. The attorneys of
3 record shall be notified by the Court Administrator or by the Clerk of the Court of the filing of
4 the written request.

5 2. The number of news reporters will not be limited unless the number of persons
6 desiring to attend proceedings is so numerous that attendance at proceedings needs to be
7 coordinated by the Court. At a minimum, the Court will allow one member of the broadcast
8 media with a television camera person and one still photographer and a reporter from the print
9 media at a time.

10 3. Pursuant to SCR 232(2), news reporters are responsible for the designation of a
11 pool representative and an alternate with whom the Court may consult.

12 4. Pursuant to SCR 233, no more than one television camera and one still
13 photographer shall be in the courtroom during the proceedings. It is the responsibility of the
14 broadcasting representatives to decide how they will pool their broadcast coverage.

15 5. Pursuant to SCR 235, the Court will designate in advance of the proceedings an
16 area of the courtroom for news reporters. Once news reporters are in the designated area, they
17 should not move in a manner that disrupts the proceedings. Members of the media must, at all
18 times, remain behind the bar, except as allowed by the Court.

19 6. Pursuant to SCR 240, news reporters are prohibited from photographing or
20 filming the minor victims at any time before, during, and after these proceedings, including
21 during testimony. News reporters are further prohibited from photographing or filming the minor
22 children at any time while they are present on courthouse property, including in the courthouse
23 building and parking grounds. Further, news reporters should not identify the minor children by
24 first name, middle name, last name or initials within their name.


25 7. All motor vehicles and media equipment shall be kept in such a manner as to not
26 obstruct or interfere with the entrance by the public into the courthouse. All media equipment
27 allowed in the courtroom shall be kept in such a manner as to not obstruct or interfere with
28 entrance by the public into the courtroom.

8. If any news reporter fails to comply with the conditions prescribed herein, the Court may revoke that individual's permission to broadcast or photograph these proceedings and shall place particular findings thereof on the record.

9. All news reporters should familiarize themselves, in advance, with the Nevada Supreme Court rules governing media coverage of court proceedings and are governed thereby.

10. The Court requests that news reporters respect the privacy of all persons participating in the proceedings and conduct themselves in a manner that does not interfere with the Court's orderly performance of its duties.

IT IS SO ORDERED this 21 day of November, 2023


JAMES T. RUSSELL
DISTRICT JUDGE

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CERTIFICATE OF SERVICE

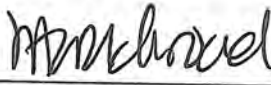
I hereby certify that on this 21st day of November, 2023, I serviced the foregoing
ORDER GRANTING NEWS REPORTERS ACCESS by depositing a true and correct copy of
the same via electronic mail to the following:

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Julie Harkleroad
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1 CASE NO. 23 OC 00115 1B

2 DEPT. NO. I

3
4 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR CARSON CITY

6 BEFORE THE HONORABLE DISTRICT COURT JUDGE, JAMES T. RUSSELL

7
8 DONNA WASHINGTON, an individual;
9 COALITION FOR PARENTS AND CHILDREN,
a Political Action Committee

10 Plaintiffs,

11 vs.

12 FRANCISCO V. AGUILAR, in the his official
13 capacity as NEVADA SECRETARY OF STATE;

14 Defendant,

15 and

16 NEVADANS FOR REPRODUCTIVE FREEDOM, a
Political Committee,

17 Intervenor-Defendant.

18
19 TRANSCRIPT OF PROCEEDINGS

20 HEARING

21 TUESDAY, NOVEMBER 21, 2023

22
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24 Reported By:

Kathy Jackson CSR
Nevada CCR #402

CAPITOL REPORTERS (775) 882-5322

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APPEARANCES

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1 TUESDAY, NOVEMBER 21, 2023, CARSON CITY, NEVADA

2 -oOo-

3 THE COURT: For the record, this is Case Number
4 23OC00115, Donna Washington, an individual, Coalition for
5 Parents and Children, a Political Action Committee versus the
6 Secretary of State of Nevada and also Nevadans for
7 Reproductive Freedom. This is an initiative matter in
8 respect to review of this matter. The plaintiffs are
9 represented by Jason Guinasso; is that correct?

10 MR. GUINASSO: Yes, sir.

11 THE COURT: The Secretary of State is represented
12 by Ms. St-Jules.

13 MS. ST-JULES: Yes.

14 THE COURT: And Bradley Schrager is here on
15 behalf of Nevadans for Reproductive Freedom in respect to
16 this matter. Again, we're here on an initiative in respect
17 to this matter.

18 Mr. Guinasso, are you ready to proceed?

19 MR. GUINASSO: Yes, Your Honor.

20 THE COURT: Thank you.

21 MR. GUINASSO: May it please the Court, on
22 October 5th we filed this complaint for declaratory
23 injunctive relief to challenge the petition that's now before
24 you. The initiative petition seeks to profoundly alter the

1 Nevada Constitution by creating a newly identified and quite
2 amorphous new right called the, quote, Fundamental Right to
3 Reproductive Freedom, closed quote.

4 Now at the outset, Your Honor, I would like to
5 acknowledge that abortion is perhaps the most contentious
6 issue in the nation, particularly in this post Dobbs legal
7 environment and political environment. But I want to be
8 clear, the plaintiffs in this case have not filed a complaint
9 to challenge whether the petition contains wise policy. This
10 complaint is not a political challenge or that's going to
11 contain political arguments to challenge the broad policies
12 contained in the petition. Instead, Your Honor, this
13 complaint was filed to ensure that this petition complies
14 with the requirements of the Nevada law to address one single
15 subject to not be deceptive and misleading and to fund the
16 foreseeable costs of its mandates.

17 And respectfully, this petition as currently
18 drafted, addresses an abyss of far reaching conduct and a
19 multitude of subjects. Moreover, this petition's description
20 of effect fails to apprise voters of its far reaching
21 consequences adequately. And due to its impermissible
22 breath, Your Honor, the petition is deceptive and misleading.

23 Finally, this petition would require public
24 finding to effectuate the reasonable -- the reasonably

1 foreseeable costs of its mandates, which have not been
2 disclosed in the petition and is otherwise unlawful.

3 So I would like to start with the argument, Your
4 Honor, that the petition violates the single-subject rule by
5 embracing an abyss of subject matter that goes far beyond
6 what is required by the single-subject rule.

7 The single-subject requirement, as you are well
8 familiar with, facilitates the initiative process by
9 preventing petition drafters from circulating confusing
10 petitions that address multiple subjects. This
11 single-subject requirement helps both in promoting informed
12 decisions and in preventing the enactment of unpopular
13 provision by attaching them to more attractive proposals or
14 concealing them within ambiguous proposals, often referred to
15 in the case law as logrolling or more colloquially
16 shoehorning a set of rights in that go far beyond a single
17 subject.

18 The defendants contended in their pleadings that
19 their petition only encompassed a single subject because it
20 embraces a single framework, i.e. reproductive care. This
21 alleged framework, Your Honor, of the petition according to
22 the -- to the petitioners is that it ensures freedom of care,
23 access to care and decision making among individuals and
24 healthcare providers in the realm of reproduction. This

1 framework language, you probably would recognize it from the
2 Helton case. I believe it was before this Court last year
3 and it was decided by the Supreme Court in 2022, which found
4 that a petition that proposes open primaries and general
5 elections with ranked choice voting presented a single
6 subject because it was a framework governing how officials
7 are elected.

8 The Court contrasted the petition's framework for
9 electing officials versus the mechanics of voting, like early
10 voting, absentee ballots, voting machines and paper ballots.
11 And what I would like to do, Your Honor, is direct your
12 attention to page 314 of the decision. And the Court says in
13 the middle of that page that the Court will look to whether
14 the description of effect articulates an overarching purpose
15 and explains how the provisions relate to a single subject
16 and then it explains this framework versus mechanics dynamic
17 where it says the initiative single subject is the framework
18 by which specified officeholders are presented to voters and
19 elected.

20 The purpose articulated by the description of
21 effect and the textual language in the initiative support
22 this characterization of the initiative's subject. The
23 subject is distinctly different from for instance the
24 mechanics of how voters vote, which would include early

1 voting, absentee ballots, machine voting, paper ballots among
2 other things.

3 That -- that language about this -- about that
4 particular initiative being overbroad if it contained those
5 mechanics was language that actually the dissent in page 319
6 agreed to, saying if there are all these subject matters
7 contained within this initiative petition it would have
8 indeed been too broad. So both the majority and the dissent
9 agree on this proposal that voting rights in general are, if
10 that was what was proposed or the mechanics of voting, if
11 that was proposed, would be overbroad.

12 To help clarify this, Your Honor, if I could have
13 your indulgence. I was trying to reconcile this idea of
14 framework with mechanics and apply it to this case and so for
15 me it helped to break it out into two separate charts so
16 that -- so that I could explain it to the Court and
17 understand what the Court -- what the Supreme Court was
18 saying itself.

19 And so, Your Honor, with regard to framework, the
20 Helton case focused on the specific officeholders are
21 presented to voters and elected, that is the process where
22 you have a primary election and a general election. And so
23 they tied open primaries and ranked choice balloting together
24 as one framework.

1 Meanwhile -- and then with regard to mechanics,
2 with regard to mechanics, the Court pointed out that
3 mechanics include early voting. That is how voters vote,
4 early voting, absentee ballots, machine voting and paper
5 balloting. And so taking those -- those buckets and applying
6 them to this case, here, an acceptable framework would have
7 been to draft the petition so it encompassed abortion and
8 abortion care which would include medical procedures,
9 pre-abortion care and post-abortion care.

10 However, these other subjects, how women become
11 pregnant, including birth control, vasectomy, tubal ligation,
12 pregnancy where babies die without an abortion, including
13 miscarriage and infertility are all like these other subject
14 matters with regards to the mechanics of voting. And so as a
15 consequence, you have multiple -- multiple petitions within
16 one petition.

17 And so for example, you've got one subject matter
18 to protect the right to become pregnant. Another subject
19 matter, to protect the right to prevent pregnancy. A third
20 subject matter, the right or to protect the right to
21 terminate a pregnancy. And then the fourth subject matter,
22 to protect women's health when there is complications in a
23 pregnancy.

24 And, Your Honor, I know you're squinting at my

1 handwriting. I apologize for my scribbles there but bear
2 with me as I go through this outline.

3 So when you have multiple subjects, the Court has
4 said that each of these petitions, if they could be brought
5 singularly should be brought singularly, not in one -- one
6 petition. And so to further illustrate that point, we
7 covered this in the briefing, but I wanted to cover it for
8 you here.

9 In dealing with birth control, we have one, two,
10 three, at least three different chapters of the NRS that
11 cover birth control. With regard to postpartum and prenatal
12 care, we have one, two, three, four, at least four different
13 chapters covered. With regard to miscarriage, we have a
14 separate chapter for that. With regard to tubal ligation, we
15 have a separate chapter for that. And with regard to
16 abortion, vasectomy and infertility care, we have separate
17 chapters that deal with each of those unique subject matters
18 within this -- within pregnancy, so both pre-pregnancy,
19 during pregnancy and post pregnancy.

20 And so, Your Honor, if the legislature has -- and
21 this is only a sampling. There's over 20 different statutes
22 at issue here. So in this initiative, this petition doesn't
23 put the public on notice to that particular effect, which
24 goes to the second prong, the description of effect being

1 deceptive and misleading.

2 But with regard to the single-subject rule,
3 clearly if the legislature treats each of these component
4 parts of the pregnancy process differently in a similar
5 matter that in elections you have early voting, absentee
6 voting, the mechanics of voting, paper ballots being treated
7 differently than the subject matter of open primaries and
8 ranked choice voting, then clearly this violates the
9 single-subject rule as articulated most recently by the
10 Helton Court.

11 THE COURT: Now, this is going to be very
12 interesting, the Helton decision, because it was a 3-3
13 decision when you look at it. Two of the judges are now gone
14 from the -- from the Supreme Court in respect to that. One
15 of those that was in the -- for the majority and one of which
16 was for the dissent. So it's going to be interesting to see
17 what happens up there with the new justices in respect to
18 that and everything. I was looking at it. I looked at the
19 different, and I thought, wow, this is going to be a case
20 where they're going to look at it, as Justice Hardesty said
21 in a footnote, he said they look at each one individually.
22 In respect to these matters and they look at it. So it's
23 going to be interesting what happens. We're the stop on the
24 way when everybody is headed to the Supreme Court. But it's

1 going to be kind of interesting what happens in this
2 particular case from that standpoint.

3 What was your four? I can't read your writing
4 down at the bottom. To protect what?

5 MR. GUINASSO: To protect women's health when
6 there are complications in pregnancy. That's a whole other
7 area of law, a whole other set of subject matter that is
8 dealt with in both in the NRS separately but also in medicine
9 it's dealt with differently than abortion or pre-birth kind
10 of care or even postpartum and prenatal care. All of those
11 things are dealt with both differently as in medicine, as
12 well as in the law and that's -- you know, there are multiple
13 different statutes that govern all of these different subject
14 matters. So this -- this petition is grossly overbroad as it
15 pertains to what they're calling reproductive freedom.

16 And, really, you brought up the composition of
17 the Supreme Court, and I wanted to touch on something I
18 noticed and that is the one thing that both the dissent and
19 the majority agreed upon. If you compare the language in the
20 paragraph I just read to you from page or 314 of the decision
21 with page 319, let me just turn there. With page 319, the
22 dissent points out that while this subject would cover both
23 of the changes proposed in the BBN initiative, it could also
24 cover a plethora of other changes.

1 For example, under such a broad subject, an
2 initiative proponent could also propose changes to early
3 voting, polling places and requirements for election. And
4 here's the key part of this paragraph, it says if an
5 initiative petition proposes changes related to all of these
6 items, it would clearly be too broad to qualify as a single
7 subject. And so if you compare the dissent's language there
8 to what the majority says and rationalizing this framework
9 versus mechanic's dichotomy, it says this subject is not
10 excessively broad given that the initiatives proposals only
11 apply to the framework of the election of partisan
12 officeholders as defined in the initiative petition,
13 specifically with regard to open primaries and ranked choice
14 voting.

15 With regard to all these subject matters, to
16 protect the right to become pregnant, to protect the right to
17 prevent pregnancy, to protect the right to terminate
18 pregnancy, to protect a woman's health when there are
19 complications, the law requires the petitioners to choose one
20 or to bring four separate petitions.

21 To further approve that there's really no
22 ascertainable framework as concede by the Helton case that
23 exists for this petition, I think it's, you know, necessary
24 to analyze the fact that we've got these different chapters

1 of the NRS dealing with these discreet subject matters that
2 they're trying to logroll into one petition.

3 This petition just fails on its face to tie the
4 framework to what the petition actually does and that's the
5 other component of this. You've got to tie these disparate
6 parts to one coherent framework and this petition is void of
7 any language that actually does that.

8 So in sum, Your Honor, with regard to the
9 single-subject issue, this petition clearly constitutes
10 logrolling and does not encompass a single subject. And as
11 such, it violates NRS 295.009 sub (1) sub (a) and should be
12 enjoined.

13 That leads to the discussion of the description
14 of effect which, Your Honor, we would submit respectfully to
15 you that it's grievously misleading. The description of
16 effect fails to describe several important consequences, and
17 I'm just going to outline a few of them here.

18 First, the petition's description of effect omits
19 that the law will bar the state from prosecuting, fining or
20 regulating any miscarriage or stillbirth. So the consequence
21 of that is that a person who commits domestic violence, a
22 sexual abuser, a sex trafficker could use this provision as a
23 safe harbor against prosecution when there are criminal acts
24 causing a miscarriage and -- and they would escape both

1 investigation by the terms of this language and prosecution
2 and this description of effect doesn't cover that.

3 Secondly, the description fails to mention or
4 define what a provider of healthcare is. And so the term
5 provider of healthcare in the statute, NRS 41A.010
6 encompasses a wide range of providers, including nurses,
7 dentists, optometrists, physical therapists, podiatrists. So
8 are we saying that a podiatrist is going to be able to opine
9 as to whether an abortion is medically indicated after
10 viability? That seems absurd on its face and should be
11 disclosed within the description of effect.

12 Thirdly, the petition requires a funding source
13 for foreseeable consequences of its mandates. One of those
14 foreseeable consequences is how do you determine if an
15 abortion provider has failed to satisfy the standard of care?
16 We have to have an inquiry into that. And if the state is
17 going to be charged with doing that, that's a whole other
18 process outside of malpractice.

19 Additionally, if you create this new set of
20 rights and all of these different categories, Your Honor, the
21 problem is going to be that the state is going to have to
22 fund for the payment of all of those rights, so pay for
23 things such as infertility care, which can be quite expensive
24 and that's neither disclosed by the petitioners or discussed

1 in any way within the language of the description of effect
2 or in the actual language of the petition, and as such is
3 misleading because it doesn't address what are foreseeable
4 consequences.

5 Finally, going back to the single-subject
6 discussion I had with you earlier, Your Honor, we've cited a
7 plethora of statutes that show that the petition addresses an
8 abyss of conduct that not even a legislature can harmonize
9 into a single subject and as such, it's another reason why
10 the description of effect is grossly misleading.

11 I'll close, Your Honor, with a final prong and
12 that is that this petition contains an unfunded mandate. And
13 those unfunded mandates are foreseeable consequences of
14 creating these new rights, both with regard to what I
15 mentioned earlier, the creation of some state apparatus that
16 can determine the breach of the standard of care for the
17 purposes of the state's role in holding doctors accountable
18 to that standard of care as purported in their petition.

19 But, secondly, with regard to the health exchange
20 and providing health insurance, all of these -- all of these
21 different procedures would now, if they become a right within
22 this umbrella of reproductive freedom, now it obligate the
23 state to pay for those procedures where presently they don't
24 have that requirement. So it's an unfunded mandate akin to

1 what we saw in the Education Freedom Act case. And for all
2 of those reasons, we ask that you enjoin this petition and --
3 and declare that it fails to comply with the relevant law.

4 THE COURT: Thank you.

5 MR. GUINASSO: Thank you.

6 THE COURT: Ms. St-Jules, I would ask you, you're
7 next in order, whether or not the Secretary of State wishes
8 to take a position or do you stand on your general position
9 that we take no position?

10 MS. ST-JULES: We take no position. Thank you,
11 Your Honor.

12 THE COURT: Thank you. I figured that was the
13 response. I thought I would get that out of the way, so.

14 MR. SCHRAGER: Your Honor, if I may. Good
15 afternoon. Bradley Schrager for Nevadans for Reproductive
16 Freedom. And here we are again. You know, it's funny you
17 mention the change and makeup of the Supreme Court because
18 over the history of the single-subject rule and the
19 description of effect rules, one thing hasn't changed and
20 that's the makeup of Departments 1 and 2 up here in Carson
21 City, where all of these things come, which means that over
22 the years, like you said before, every single initiative has
23 traveled its ways through these two courtrooms, okay.

24 You have seen the development, overseeing really

1 the development of the single-subject jurisprudence of the
2 description of effect jurisprudence of all those things. And
3 I'm not going to say there hasn't been an evolution over the
4 years. There has been. That's natural as the cases come to
5 you. That's what common law and civil law do, right. So
6 over the years there has been some refining in conversation
7 with the Supreme Court.

8 But going back to 2005, when these statutes were
9 passed involving single subject through last year up to
10 Helton, which I'll talk about in a moment, there's not a
11 single moment in which the current petition would have been
12 held to violate the single-subject rule or the description of
13 effect rule. The description of effect rule is a little more
14 in the eye of the beholders. The single-subject rule not so
15 much. And, as I said, at no time would this particular
16 petition have been considered to have covered inadmissible or
17 impermissibly more than one subject.

18 Now, it's interesting and increasingly rare for
19 anyone to find that. You have to go back to I think 2008,
20 2006 to even find violations of the single-subject rule.
21 There's been -- there has been -- I think that the practice
22 of petitioners has gotten better so that the things they
23 bring to the Court are less likely to obviously violate that
24 rule. And, secondly, there's been a secondary expansion

1 based upon the rights of proponents to exercise their Article
2 19 rights to initiative.

3 Now, you talked about Helton and how close it
4 was. I thought Helton was a really close case, right. And
5 it seemed to me that that could have gone either way. I
6 think formally it was a fourth read, opinion on the -- on the
7 merits, even though the sort of post -- the post opinion
8 makeup of the Court has changed.

9 But I sort of feel like plaintiffs' counsel
10 has -- has made a bit of my argument for me which is by
11 pointing out all of the things that went into Helton, all of
12 the things having to do with the open primary, which were
13 very different from and separate, apart from all the things
14 that go into the ranked choice voting and the general
15 election. And the two were not -- they're independent.
16 They're not necessarily related. And yet still under the
17 rubric drawn by the Supreme Court, they were considered to be
18 sufficiently related and germane to one another to pass the
19 single-subject test.

20 I think that's instructive for us here today
21 because something that even -- even when it was 50/50, really
22 could have gone either way. Single subject did not impede
23 those petitioners' rights to move forward. I think that's --
24 that's instructive for today because what the Supreme Court

1 said in Helton was its clearest statement of the analysis
2 this Court is due to make regarding the single subject.

3 The first step is to establish the primary
4 subject of the petition before you and then afterwards, to
5 look at the provisions of the -- of the petition to determine
6 whether they are functionally related and germane to one
7 another in a way that provides sufficient notice of the
8 general subject -- general subject of and of the interest
9 likely to be affected by the proposed initiative or
10 referendum. So the lone stars, dual lone stars, the Court
11 statement of what is this thing about, what are we trying to
12 do with this petition. And then, secondly, do all of its
13 provisions relate to one another in a way that supports and
14 works toward that particular goal.

15 Here though, I think there are a number of ways
16 in which the Court can turn it. The primary subject of this
17 petition is to establish rights regarding reproductive care
18 services and to protect those who seek or provide those care
19 services. That's the primary subject. And when stated that
20 way, it's really, really difficult for anyone to look at the
21 provisions of this petition and say they don't functionally
22 relate to that particular policy project.

23 And let's keep in mind, this is a constitutional
24 measure. It's not a statute. The legislature, if this

1 passes, will legislate within its terms and judges across the
2 state will determine whether statutes that are passed to
3 follow and acted under they are within the meaning of the
4 constitution. We don't have to today determine where all
5 those possible avenues of both legislation and conduct are
6 going to be because the constitution becomes organic law
7 under which statutes are then enacted. Which is one of the
8 reasons why the number of NRS statutes or chapters that might
9 be affected by constitutional amendment are essentially
10 irrelevant. Constitution is organic law, will control and it
11 really doesn't matter for a single-subject analysis or for
12 any other random legal analysis how may NRS chapters might be
13 affected by that.

14 But one of the ways of restating the analysis is
15 the functioning related and germane to one another analysis
16 is do these have to be multiple in issues. And if so, where
17 would they break, right? And listening to counsel, I'm sort
18 of -- I come away with the idea this should be anywhere from
19 six to a dozen separate initiatives, all to achieve what's in
20 the petition. That struck me as an implausible reading. And
21 I can't really tell where the fissures would be within the
22 text of the -- of the proposal. But I want to go through it
23 briefly with the analysis in mind, the Helton directed
24 analysis so we can see the coherence of the entire petition

1 for purposes of the single-subject rule.

2 Section one essentially states the rights. Every
3 individual has a fundamental right to reproductive freedom
4 which entails the right to make and effectuate decisions
5 about all matters relating to pregnancy, including without
6 limitation prenatal care, child birth, postpartum care, birth
7 control, vasectomy, tubal ligation, abortion, abortion care,
8 management of a miscarriage and infertility care.

9 Now, it sort of -- it sort of begs credulity to
10 say those don't relate one to each other in the sphere of
11 reproductive care and to the point of and interests likely to
12 be affected by and advanced by the petition itself, which is
13 to establish those rights.

14 In fact, if you were to -- if you were to ask a
15 middle school health class, if you were to take them and give
16 them this list of individual care services and say what do
17 these have in common, they would very poignantly say they
18 have to do with reproduction. They are reproductive
19 services. It is clear on its face. If you went to a
20 reproductive care facility, these are the services you would
21 receive there. If you go to the website or the literature of
22 opponents of reproductive freedom, these are the services
23 that they oppose. This is the universe of reproductive care
24 services and that's what is sought to be advanced by this

1 petition.

2 The second section, can't be said to introduce a
3 new subject into the petition because it essentially carves
4 out of the first section. It says that notwithstanding the
5 provisions of subsection (1), the state may still regulate
6 the provision of abortion care after field viability, et
7 cetera. This is carving out an important exception that is,
8 of course, well known to people and alerts folks that this is
9 not a wholesale adoption of unlimited abortion rights but
10 that the state retains regulatory authority in certain
11 circumstances. That's not a new subject. That's a way of --
12 of effecting the overall subject.

13 And then sections three, four and five have to do
14 with protecting those who either seek these services, perform
15 these services or aid and abet those that seek these
16 services. All of those flow from the general overarching
17 purpose of the petition, which is, as I stated, to establish
18 these rights and to protect those who seek them and provide
19 them.

20 I don't really see how this could be termed
21 logrolling. Because logrolling, as I understand it, is
22 essentially hiding or burying a popular provision in with
23 other -- with unpopular provisions so that you can get it
24 across the line on the strength of the first one, right.

1 That's what -- that's what the Court in Helton said. They
2 need to be completely separate provisions that are sort of
3 jammed together. In essence, logrolling, when you do that,
4 you have violated the single-subject rule by definition
5 because we have stuck two completely separate provisions
6 together in this same petition.

7 I don't think you can fairly say that's what's
8 being done here. The provisions that are laid out in the
9 petition and by opposing counsel are not separate subjects.
10 They are merely aspects, all of them working in the same
11 direction toward establishing these rights of care.

12 So the notion that these should be brought
13 singularly, certainly anyone has a right to bring nine
14 different initiative petitions on all these subjects. It's
15 not necessary here. It's all easily covered under one
16 umbrella.

17 In many ways I think the plaintiffs get too
18 granular, right. They're looking too far down in the weeds
19 to what should be separate subjects. It's as if you were to
20 say, well, we're going to pass the right of veterans to -- to
21 medical care. But there's so many different kinds of medical
22 care that a veteran could get that we would need a subject
23 and an initiative for each single one of those. That doesn't
24 make sense to me.

1 Given the history of single subjects in the state
2 and the state of the petition, that I've laid out here, I
3 don't think you can fairly say that this needs to go back to
4 the drawing board on single-subject grounds but if you did, I
5 think one would have a responsibility to show exactly where
6 those fault lines are. This is in. This is out. These are
7 incompatible with this one so that you can guide someone to
8 go and do a petition that would be legally acceptable. I
9 don't think that's going to be necessary here because I don't
10 see those fault lines, the right, the -- the sort of
11 adaptation of the right with the state's ability to regulate
12 and then the protection of the right in three sections. They
13 flow almost without pause.

14 Let me move briefly to the description of effect
15 because, you know, it's always fascinating when sets of
16 people, here, two sets of people can reach something and take
17 away such vastly different interpretations. But I want to
18 say at the onset, though I appreciate my colleague saying
19 this is not a political argument, it's not a political
20 lawsuit, many of the things that plaintiffs raise regarding
21 the description of effect are things they would want their
22 supporters or people they want to convince to know in advance
23 of either signing this or voting for it. That's not a
24 petitioner's responsibility to respond to in a description of

1 effect.

2 A description of effect and, you know, honestly I
3 think that this description of effect, and you've seen dozens
4 of them, this description of effect may be among the most
5 straight forward, non-argumentative and objective description
6 of effect that I've read in many, many years. There's no
7 politics in here. It doesn't mention the decisive quality of
8 the issue. It doesn't talk about the overturning of Roe or
9 the Dobbs decision. It doesn't do any of those things.
10 Those are properly reserved for the political campaign. And
11 essentially many of the things that plaintiffs have raised
12 here today, they are encouraged to put on fliers and say
13 robocalls, do all of the things you can do in politics. It
14 is merely the responsibility of the proponents of a petition
15 to not mislead, to not be argumentative and to say things as
16 clearly as they can in language that signatories can
17 understand.

18 And so when I go through the description of
19 effect, I really find it hard to improve upon. If enacted,
20 this initiative would add a new section, Article One,
21 establish in the fundamental right to reproductive freedom.
22 This initiative enables individuals to make and carry out
23 decisions about matter relating to their pregnancies,
24 including, and then there's a list from prenatal care to

1 infertility. That's both informative and states the effect
2 of the measure.

3 Further on, in setoff language, if this measure
4 is enacted, the state may -- still may regulate provision of
5 abortion -- abortion care after fetal viability except where
6 medically indicated to protect the life or physical or mental
7 health of the pregnant individual. Once again, alerting
8 people immediately to an effect of it, right, that there is,
9 in fact, still room for the state to regulate in -- in the
10 area of reproductive care.

11 And then much like the initiative petition
12 itself, the final paragraph discusses the protections for
13 people who seek or provide this care is in essence in
14 182 words a model description of effect. This is exactly
15 what somebody should be looking at when they make this
16 decision because it's also not -- in the America of 2023 and
17 2024, this is not the only information, a signatory or a
18 voter is going to have about the controversies regarding
19 reproductive care in this country. They will bring much to
20 the table when they do that.

21 And there's sort of, I don't even know if I -- if
22 I need to go much into the sort of it could mean this or it
23 could mean that, sort of hypotheticals that were albeit
24 rather grotesquely listed by the plaintiffs, I don't think

1 should concern the Courts. Because, you know, first of all,
2 the notion that an abuser would cause a miscarriage in
3 another person and then would get off the hook because of
4 this. It outlines two things. We have statutes against
5 feticide in this state which are highly effective and it
6 appears to have a misreading of the petition itself, which
7 does not involve some of the causes of miscarriage or harm to
8 another person but involves protecting those who are -- the
9 alleged outcome of the pregnancy of the individual, not of
10 another individual but of the individual. Of course, this is
11 meant to speak to the current wave of legislation, in some
12 states criminalizing things like a miscarriage.

13 So, you know, this parade of horrors that this
14 is going to cause people to get off of what is essentially
15 murder for on the strength of this amendment I don't think is
16 a very plausible thing and certainly wouldn't be something to
17 go into a description of effect at any rate. And this notion
18 that dentists are going to be I guess performing abortions
19 under this also doesn't strike me as particularly credible,
20 largely because I don't know how many times it says in this,
21 the applicable standard of care. I don't know the exact
22 applicable standard of care of a dentist or an optometrist or
23 any of those folks. I do not believe historically and
24 customarily, the abortion is within that applicable standard

1 of care.

2 So once again, if it's the kind of thing that can
3 make its way into a political campaign and somebody gets
4 traction by saying those things, that's fine. It is not a
5 necessary part of a description of effect which is there not
6 to lead people into inflammatory, you know, visions of what
7 any particular petition is going to do but rather to inform
8 them what this thing is and then they're free to sign it, not
9 sign it and to research as they see fit.

10 Finally, Your Honor, the unfunded mandate, you
11 know, I sort of struggled to sort of understand exactly what
12 we were talking about when it got to this portion of the
13 argument because it seems highly attenuated, right. If
14 there's agencies, the Courts, the police already enforce the
15 law, right, where they -- where they enforce licensure. They
16 do that now already. There's certainly nothing that in
17 addition that says that some new agency needs to be set up or
18 anybody needs to be charged in some way to -- to take on
19 regulatory or law enforcement duties that they currently do
20 not and, therefore, this would require the setting aside of
21 and appropriating an expenditure of however a roughly
22 incalculable figure. That strikes me as too far afield in
23 this petition. And, you know, we didn't have it at the time
24 of briefing but, you know, there's always a financial impact

1 statement that comes with these things as well. I don't know
2 if counsel has seen one here.

3 It says -- you know, this came out this month and
4 it says roughly what they always say which is can't tell,
5 right. Sometimes they say, you know, the LCB will say we can
6 tell and that can be part of the record. Here it says we
7 can't tell, right. So at the very least, there's no prima
8 facie evidence that there would be an expenditure and I don't
9 think it's fair to say that from the -- from the text of the
10 petition itself that one can glean that there's any likely or
11 required appropriation or expenditure that's going to flow
12 from this. If people have the right to their healthcare,
13 they're going to pay for it how they pay for it. There's
14 nothing in here about the state's responsibility for those
15 things. Those are covered by other provisions, not by this
16 provision. So I think that finding a 196 -- an Article 19
17 section (6) violation here would be -- would be unfortunate.

18 So, I mean, I'll be happy to answer any
19 questions, but I think I have gone through the list of what I
20 had for you.

21 THE COURT: Thank you.

22 MR. SCHRAGER: Thank you, Your Honor.

23 THE COURT: Mr. Guinasso, any final short
24 comments?

1 MR. GUINASSO: Just briefly, Your Honor.

2 THE COURT: Okay.

3 MR. GUINASSO: If I may.

4 THE COURT: Real briefly.

5 MR. GUINASSO: Your Honor, I just want to point
6 out, since 2005 there actually have been two Supreme Court
7 cases that have struck down -- you know have struck down
8 petitions because they exceeded single-subject rule. The Las
9 Vegas Taxpayer's case of 2009 found to be excessively general
10 and the Nevada for Property Rights petition was found to
11 violate the single-subject rule and then was -- parts of it
12 were stricken and another piece was kept.

13 So the single-subject rule is not in violate with
14 regard to -- it's not a cursory piece of the analysis. It's
15 a very vital piece of the analysis so that there's not
16 deception with regard to what's being proposed and so that
17 there's clarity as to what -- what rights we're talking about
18 and what the effect of enacting those rights might be.

19 You know, with each of these subject matters that
20 we've outlined, there's a body of law. Abortion law has its
21 own body of law surrounding it, abortion care. Prenatal care
22 has its own body of law. The issues surrounding miscarriage
23 have its own body of law. And we don't have to ask
24 kindergartners whether there are, you know, multiple subjects

1 or one subject. We've left that to the legislature and the
2 legislature has wrestled with this abyss of different
3 considerations as it pertain to pregnancy in over 20
4 different chapters of the NRS.

5 And so if you look to the petition and you're
6 trying to function -- figure out where the functionality
7 lies, you're not going to be able to find it because they --
8 they have basically presented an abortion care petition and
9 then shoehorned these other processes, these other mechanics
10 of pregnancy into their petition without functionally pulling
11 them together within the language of the petition.

12 Counsel said that I was too far granular. And I
13 would just submit to you, Your Honor, that Helton really
14 tells us to be granular and to distinguish between what's
15 functional and what's mechanical.

16 The description of effect issue, I just wanted to
17 touch on a couple of quick points. It's not -- it's not what
18 we want the public to know that's at issue here. It's what
19 the law requires so that there could be a robust and informed
20 opinion concerning what reproductive freedom is and what it
21 means when such a right is enacted into our constitution, and
22 the burden is on the petitioners to articulate that, not on
23 the challenging party to the petition.

24 The description as it's presented is ambiguous

1 and overbroad and, you know, with regard to this idea that I
2 presented hypotheticals, well, Your Honor, petitioners are
3 required to understand the foreseeable consequences of their
4 proposed -- the proposed new right and it doesn't appear to
5 me in the language of the petition itself or the description
6 of effect that there's been any reasonable effort to consider
7 the implications of this new right that they're enacting and
8 all the attending language.

9 This ambiguity for example of what a healthcare
10 provider is, we didn't create that ambiguity. In the face of
11 the petition, they created that ambiguity and didn't -- and
12 didn't provide any definition. So the absurd results that I
13 presented to you earlier are absurd results that their own
14 language has created and they're required to put the public
15 on notice about those things. Thank you.

16 THE COURT: Thank you.

17 Well, again, first of all, I want to thank you
18 for the excellent briefs and arguments again. I've had a lot
19 of matters lately, it seems lately, in respect to that, and
20 not all of the briefs have been great in respect to that. I
21 appreciate it. Again, I obviously want to say, this is not
22 about protecting a woman's rights in the Court's mind but
23 whether or not the Nevada rules as to the initiative petition
24 have been violated in respect to this particular matter by

1 the petition in respect to this matter.

2 Again, the Court has reviewed this. I've looked
3 at it, and I -- and it's clear to me, this is probably the
4 clearest case that I've seen that I think there's a violation
5 of the single-subject rule. I just, I've seen a lot of them
6 over the years in respect to this particular matter. There's
7 just too many subjects, not all of which are functionally
8 related to each other in respect to that.

9 Each section appears to state almost a different
10 subject let alone a -- Mr. Guinasso went through to protect
11 the rights to becoming pregnant, protect the rights to
12 prevent pregnancy, protect the rights to terminate pregnancy,
13 protect a woman's health when complications begin, exist or
14 let alone the liability of the people who, providers and who
15 is subject to that and let alone the protections of those
16 people. So, again, I think there are just too many subjects
17 involved in this particular initiative. And, again, I think
18 the description of effect by and through because there's so
19 many subjects that's misleading as to the unfunded mandate.
20 Again, I think -- I appreciate the fact that the LCB can't
21 tell whether or not there is an unfunded mandate or not.

22 But it's going to be the order of the Court that
23 I believe the initiative does not embrace the single subject.
24 It contains the misleading description. It contains possibly

1 an unfunded mandate. Therefore, it violates NRS 295.009
2 Article 19 section (6) of the Nevada Constitution. The Court
3 orders the judgment of decrees of the Secretary of State
4 should be enjoined from placing the initiative on the ballot
5 in respect to this matter.

6 So, again, thank you very much for the arguments
7 and everything else. I appreciate it.

8 Anything further?

9 MR. SCHRAGER: Was there an order submitted by
10 Mr. Guinasso? You'll be signing that one.

11 THE COURT: I already reviewed it.

12 MR. SCHRAGER: Very good.

13 THE COURT: I appreciate yours and that, but I
14 already reviewed it. I went through it days ago, went
15 through it and double checked everything. I felt it was
16 important with respect to this particular matter. Again, I
17 just don't think this as close of an issue that some people
18 feel or believe. I just think there's so many subjects.
19 It's just across the board, encompassing way too many, and I
20 don't think that was ever the intent of the legislature or
21 the constitution in respect to this matter, so thank you.

22 MR. SCHRAGER: Thank you, Your Honor.
23
24

1 STATE OF NEVADA,)
2 CARSON CITY.) ss.
3

4 I, KATHY JACKSON, Nevada Certified Court Reporter
5 Number 402, do hereby certify:

6 That I was present in the District Court in Carson
7 City, in and for the State of Nevada, on Tuesday, November
8 21, 2023, for the purpose of reporting in verbatim stenotype
9 notes the within-entitled Hearing;

10 That the foregoing transcript, consisting of pages 1
11 through 35, is a full, true and correct transcription of said
12 Hearing.

13
14 Dated at Carson City, Nevada, this 25th day
15 of November, 2023.

16
17 *Kathy Jackson*
18 /s/ Kathy Jackson
19 KATHY JACKSON, CCR
20 Nevada CCR #402
21
22
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24

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

1 DONNA WASHINGTON, an individual;
2 COALITION FOR PARENTS AND CHILDREN,
3 a Political Action Committee,

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Plaintiffs,

vs.

1 FRANCISCO V. AGUILAR, in his Official
2 Capacity as the NEVADA SECRETARY OF
3 STATE,

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Defendant,

and

1 NEVADANS FOR REPRODUCTIVE FREEDOM, a
2 Political Action Committee,

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Intervenor-Defendant.

18 Plaintiffs DONNA WASHINGTON and COALITION FOR PARENTS AND CHILDREN
19 ("Plaintiffs"), a Political Action Committee, by and through its undersigned counsel Jason D. Guinasso,
20 Esq., of the law firm Hutchison & Steffen, PLLC, filed a Complaint for Declaratory and Injunctive
21 Relief on October 5, 2023 to challenge Initiative Petition C-01-2023 (the "Petition"). Plaintiffs
22 submitted a Memorandum of Points and Authorities in Support of the Complaint for Declaratory and
23 Injunctive Relief on October 20, 2023. Intervenor-Defendant Nevadans for Reproductive Freedom
24 ("Intervenor-Defendant") filed an Answer to the Complaint on November 8, 2023. On the same day,
25 Intervenor-Defendant filed a Memorandum of Points and Authorities in Opposition to the Complaint

REC'D & FILED
November 21, 2023
Date
WILLIAM SCOTT HOEN
CLERK
By Deputy

Case No.: 23-OC-00115

Dept. No. 1

**PLAINTIFFS' [PROPOSED] FINDINGS
OF FACTS, CONCLUSIONS OF LAW,
AND ORDER GRANTING
DECLARATORY AND INJUNCTIVE
RELIEF**

1 for Declaratory and Injunctive Relief. Plaintiffs filed a Reply to the Memorandum of Points and
2 Authorities in Opposition to the Complaint on November 15, 2023. Plaintiffs and the Intervenor-
3 Defendant both submitted competing proposed orders on November 15, 2023. This matter came before
4 the Court for a hearing on November 21, 2023. After reviewing all pleadings on file, entertaining the
5 arguments of counsel at the hearing, and reviewing the proposed orders, this Court hereby enters these
6 Findings of Fact, Conclusions of Law, and Order GRANTING Declaratory and Injunctive Relief in
7 favor of the Plaintiffs, which enjoins the Nevada Secretary of State from advancing Initiative Petition
8 C-01-2023.

9 FINDINGS OF FACT

10 1. On or about September 14, 2023, Lindsey Harmon, on behalf of the Intervenor-
11 Defendant, filed Nevada Constitutional Initiative Petition C-01-2023 (the "Petition").

12 2. The Petition seeks to add a new section to the Nevada Constitution, which will be
13 designated as Section 25 of Article 1 (the "Amendment").

14 3. The first subsection of the Amendment would create a "fundamental right to
15 reproductive freedom." Among other things, this right provides that reproductive freedom—which
16 includes "all matters relating to pregnancy"—shall not be denied, burdened, or infringed upon unless
17 justified by a compelling State interest. This section would expressly apply to "prenatal care,
18 childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care,
19 management of a miscarriage, and infertility care."

20 4. The second subsection of the Amendment would allow the State to "regulate the
21 provision of abortion care after fetal viability, provided that in no circumstance may the State Prohibit
22 an abortion that, in the professional judgment of an attending provider of health care, is medically
23 indicated to protect the life or physical or mental health of the pregnant individual."

24 5. The third subsection of the Amendment would prohibit the State from penalizing or
25 prosecuting an individual based on "perceived or alleged outcome of the pregnancy of the individual,

1 including, without limitation, a miscarriage, stillbirth or abortion.”

2 6. The fourth subsection of the Amendment would prohibit the State from penalizing,
3 prosecuting, or otherwise taking adverse action against “a provider of health care” for acting within the
4 standard of care for performing an abortion or providing abortion care.

5 7. The fifth subsection of the Amendment would prohibit the State from penalizing or
6 prosecuting an individual for aiding or assisting another individual in exercising the right of the
7 individual to reproductive freedom.

8 8. The sixth subsection of the Amendment would provide that “nothing herein narrows or
9 limits the rights to equality and equal protection.”

10 9. The Petition includes a description of effect that states:

11 If enacted, this initiative would add a new section to Article 1 of the
12 Nevada Constitution establishing a fundamental right to reproductive
13 freedom. This initiative enables individuals to make and carry out decisions
14 about matters relating to their pregnancies, including prenatal care,
15 childbirth, postpartum care, birth control, vasectomies and tubal ligations,
16 abortion and abortion care, and care for miscarriages and infertility.

17 If this measure is enacted, the State still may regulate provision of
18 abortion care after fetal viability, except where medically indicated to protect
19 the life or physical or mental health of the pregnant individual.

20 Under this measure, the State may not penalize, prosecute, or take
21 adverse action against any individual based on the outcome of a pregnancy of
22 the individual, or against any licensed health care provider who acts
23 consistent with the applicable scope and practice of providing reproductive
24 health care services to an individual who has granted their voluntary consent.
25 Neither may the State penalize, prosecute, or take adverse action against any
individual or entity for aiding or assisting another individual in the exercise
of the rights established by this initiative.

21 10. On October 5, 2023, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief
22 on October 5, 2023 to challenge the legality of the Petition.

23 11. On October 20, 2023, Plaintiffs filed a Memorandum of Points and Authorities in
24 Support of the Complaint for Declaratory and Injunctive Relief. Plaintiffs argued that the Petition does
25 not embrace a single subject, contains a misleading and/or inaccurate description of effect, and contains

1 an unfunded mandate in violation of Nevada law.

2 12. On November 8, 2023, the Intervenor-Defendant filed an Answer to the Complaint for
3 Declaratory and Injunctive Relief. The same day, the Intervenor-Defendant filed a Memorandum of
4 Points and Authorities in Opposition to Plaintiffs' Complaint for Declaratory and Injunctive Relief.
5 Intervenor-Defendant argued that the Petition contains a single subject, contains an accurate description
6 of effect, and does not contain an unfunded mandate.

7 13. On November 15, 2023, Plaintiffs filed a Reply to Intervenor-Defendant's Memorandum
8 of Points and Authorities in Opposition to Plaintiffs' Complaint for Declaratory and Injunctive Relief.
9 The same day, both parties submitted competing proposed orders to this Court.

10 14. On November 21, 2023, this matter came before this Court for a hearing.

11 15. Any finding of fact that is more properly construed as a conclusion of law shall be duly
12 incorporated into this Court's Conclusions of Law.

13 CONCLUSIONS OF LAW

14 1. This Court may consider Plaintiffs challenge to the Petition. "Courts will consider
15 challenges to an initiative petition preelection in limited circumstances, such as when those challenges
16 are based on the petition's compliance with the single-subject requirement, the statutory requirement
17 for the description of effect, or the preclusion against unfunded mandates." *Helton v. Nevada Voters*
18 *First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022). Plaintiffs have alleged that the Petition
19 violates each of the foregoing legal grounds identified by *Helton*. The Intervenor-Defendant argues
20 that the Petition meets each of the foregoing legal standards.

21 The Single-Subject Requirement

22 2. NRS 295.009(1)(a) provides that an initiative petition *must* embrace *only* "one subject
23 and matters necessarily connected therewith and pertaining thereto." An initiative petition embraces
24 one subject "if the parts of the proposed initiative or referendum are functionally related and germane
25 to each other in a way that provides sufficient notice of the general subject of, and of the interests likely

1 to be affected by, the proposed initiative or referendum.” NRS 295.009(2).

2 3. “The single-subject requirement ‘facilitates the initiative process by preventing petition
3 drafters from circulating confusing petitions that address multiple subjects.’” *Helton*, 138 Nev., Adv.
4 Op. 45, 512 P.3d at 314 (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894,
5 902, 141 P.3d 1235, 1240 (2006)). “[T]he single-subject requirement helps both in promoting informed
6 decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive
7 proposals or concealing them in lengthy, complex initiatives (i.e., logrolling).” *Id.* (internal quotation
8 marks omitted). “[L]ogrolling occurs when two or more completely separate provisions are combined
9 in a petition” *Id.* at 315 (internal quotation marks omitted). In ascertaining whether a petition
10 violates the single-subject requirement, “[t]he court must first determine the initiative’s purpose or
11 subject and then determine if each provision is functionally related and germane to each other and the
12 initiative’s purpose or subject.” *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314. “To determine the
13 initiative’s purpose or subject, this court looks to its textual language and the proponents’ arguments.”
14 *Id.* (internal quotation marks omitted). “The court also will look at whether the description of effect
15 articulates an overarching purpose and explains how provisions relate to a single subject.” *Id.*

16 4. This Court agrees with Plaintiffs that the Petition embraces a multitude of subjects that
17 amount to logrolling. Subsection 1, alone, embraces the following subjects: prenatal care, childbirth,
18 postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a
19 miscarriage, and infertility care. Subsection 1 purportedly creates a “fundamental right to reproductive
20 freedom,” but there is no limiting language in that section to circumscribe that right such that the
21 section embraces a single and articulable subject. For instance, it is unclear how a vasectomy relates to
22 infertility care or postpartum care. Likewise, it is unclear how postpartum care is related to abortions or
23 birth control. Thus, it is improper to characterize these broad categories as a “single subject” because
24 there is no explanation as to how these provisions are functionally related.

25 ///

1 5. The Petition also creates several laws that are not functionally related and/or germane to
2 the proposed “right to reproductive freedom.” First, subsection 2 would allow the State to regulate an
3 abortion after fetal viability, but the State would be *prohibited* from regulating a viable fetus if a
4 “provider of health care” indicated that an abortion was necessary to “protect the life or physical or
5 mental health of the pregnant individual.” The petition does not define the term “provider of health
6 care,” but other Nevada law defines that term to include physician assistants, dentists, nurses, physical
7 therapists, chiropractors, optometrists, and psychologists. *See* NRS 41A.017. It is unclear how
8 subsection 2 functionally relates to postpartum care, birth control, vasectomy, tubal ligation,
9 vasectomies, and infertility care.

10 6. Subsection 3 of the Petition would prohibit the State from penalizing or prosecuting any
11 person based on the “actual, potential, perceived or alleged outcome of the pregnancy of the individual,
12 including, without limitation, a miscarriage, stillbirth or abortion.” This section of the Petition would
13 essentially bar the State from making any investigation of a miscarriage or stillbirth. It is unclear how
14 this provision functionally relates to postpartum care, birth control, tubal ligation, vasectomies, and
15 infertility care.

16 7. Subsection 4 of the Petition would prohibit the State from penalizing, prosecuting, or
17 “taking adverse action against” any “provider of health care” for acting within the standard of care in
18 performing an abortion. It is unclear how this provision functionally relates to postpartum care, birth
19 control, tubal ligation, vasectomies, and infertility care.

20 8. Subsection 5 of the Petition prohibits the State from penalizing or prosecuting any
21 person or entity that aids or assists another person in “exercising the right of the individual to
22 reproductive freedom with the voluntary consent of the individual.” It is unclear how this provision
23 functionally relates to postpartum care, birth control, tubal ligation, vasectomies, and infertility care.

24 9. These provisions constitute logrolling because they regulate separate conduct but are
25 placed in the same Petition. Subsections 2-5 of the Petition pertain to various abortion rights, and do

1 not address postpartum care, birth control, tubal ligation, vasectomies, and/or infertility care. Thus,
2 subsection 1 of the Petition is not “functionally related and germane” to the provisions in Subsections
3 2-5. *See Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314.

4 10. Intervenor-defendant contends that the Petition contemplates a single subject in
5 compliance with NRS 295.009(1)(a) because it embraces a single “framework,” *i.e.*, reproductive care.
6 The alleged framework of the Petition is “ensuring freedom of care, access to care, and decision-
7 making among individuals and health care providers in the realm of reproduction.” This “framework”
8 language is taken from *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 314, which found that a petition that
9 proposed (1) primaries with open voting and (2) general elections with ranked-choice voting presented
10 a single subject because it was a “framework” governing how officials are elected. The Court then
11 looked to the textual language of the petition and the proponents arguments, and verified that the
12 purpose of both provisions was to create a framework for voting. *See id.* The Court contrasted the
13 petition’s framework for electing officials versus the “mechanics” of voting like early voting, absentee
14 ballots, voting machines, and paper ballots. *See id.*

15 11. Unlike the facts in *Helton*, it is unclear what “framework” the Petition applies, especially
16 when its textual provisions are compared. This Petition would expressly apply to “prenatal care,
17 childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care,
18 management of a miscarriage, and infertility care.” While the Intervenor-Defendant states that the
19 supposed framework on these topics “enables individuals to make and carry out decisions about matters
20 relating to [reproductive health],” it cites *no* provision in the Petition that effectuates, defines, or
21 constrains this “framework.” Thus, unlike the petition in *Helton*—which could be reduced to a
22 framework for electing officials—the subjects contained in this petition cannot be confined to a single
23 operative framework. In other words, there is no criteria, *i.e.*, framework, for effectuating this right to
24 “make and carry out decisions.”

25 12. Existing statutory laws addressing reproductive health also underscore the breadth of the

1 Petition and show that it does not contain a single subject. For instance: (1) Birth Control is addressed
2 in NRS 422.308, NRS 442.080, and NRS 449.1885; (2) Post-Partum and/or Prenatal Care is addressed
3 in NRS 698A.0419, NRS 689C.194, NRS 689B.03785, NRS 422.27177, and other related statutes; (3)
4 Miscarriage is addressed in NRS 614.4383; (4) Tubal Ligation is addressed in NRS 449.198; (5)
5 Abortion is addressed in NRS 442.250, *et seq.*, and NRS 689A.042; (6) Vasectomies are addressed in
6 NRS 442.725; and (7) Infertility Care is addressed in NRS 126.510. This list, which includes only a
7 partial list of applicable statutes, highlights the breadth of the Petition. The Legislature could not
8 reduce “reproductive health” into a single statute, let alone a single statutory chapter, and therefore had
9 to compartmentalize this broad swath of conduct into multiple statutes contained in various parts of the
10 Nevada Revised Statutes. The Petition addresses all of this conduct in several paragraphs without an
11 articulable framework.

12 13. Further, after reviewing the pleadings on file, this Court did not find arguments to show
13 how the proposed “framework” ties into subsections 2-5 of the Petition.

14 14. In sum, this Court concludes that the Petition constitutes logrolling and does not
15 encompass a single subject. Accordingly, the Petition violates of NRS 295.009(1)(a).

16 Description of Effect

17 15. NRS 295.009(1)(b) provides that the initiative petition must set forth in no more than
18 200 words “a description of effect of the initiative.” “The description of effect facilitates the
19 constitutional right to meaningfully engage in the initiative process by helping to prevent voter
20 confusion and promote informed decisions.” *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 316. “A
21 description of effect ‘must be a straightforward, succinct, and nonargumentative summary of what the
22 initiative is designed to achieve and how it intends to reach those goals.’” *Id.* (quoting *Educ. Initiative*
23 *PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). Also, a description of
24 effect cannot be “deceptive or misleading.” *Id.* at 42, 293 P.3d at 879 (internal quotation marks
25 omitted). The Nevada Supreme Court has held that a description of effect is misleading if it “omits the

1 need for or nature of the revenue source to fund” the proposal in the Petition. *See Educ. Freedom PAC*
2 *v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 304 (2022).

3 16. The Petition’s description of effect is misleading because it fails to mention that the law
4 will bar the State from prosecuting, fining, or regulating any miscarriage or stillbirth. Instead, the
5 description of effect vaguely states, “the State may not penalize, prosecute, or take adverse action
6 against any individual based on the outcome of the pregnancy of the individual.” This is misleading
7 because it does not delineate the fact that the Petition will prevent the State from investigating and/or
8 taking action against any miscarriage or stillborn birth.

9 17. The description of effect is also misleading because it fails to mention that a “provider of
10 health care,” which is an undefined term, has the power to order a late-term abortion if it is “medically
11 indicated” to protect the physical or mental health of the pregnant individual. For this reason, voters
12 are misled into believing that a physician would be empowered to determine that the mother’s physical
13 or mental well-being requires an abortion. In reality, any “provider of health care,” which is broadly
14 defined under existing Nevada law, *see* NRS 41A.017, would seemingly be able to approve a late-term
15 abortion. Likewise, the term “medically indicated” is undefined, which misleads voters into believing
16 that there is a specific set of criteria to determine when the mother’s physical or mental health requires
17 an abortion.

18 18. The description of effect also is misleading because it fails to explain that it affects
19 “equality” and “equal protection.” Subsection 6 of the Petition provides that “[n]othing herein narrows
20 or limits the rights to equality and equal protection.” While the right to “equal protection” is well
21 established in American jurisprudence, it is unclear what the term “equality” means legally. In any
22 event, the description of effect wholly omits that it will impact the constitutional right of equal
23 protection or a newly identified right to equality.

24 19. Additionally, the enactment of the Petition would fundamentally alter the statutes listed
25 in Paragraph 12 of this Court’s Conclusions of Law. The description of effect does not mention this.

20. The Intervenor-Defendant argues that the description of effect is not misleading because it sets forth its terms “with admirable clarity.” Yet, the Intervenor-Defendant does not identify how the description of effect adequately addresses the foregoing concerns. Given the breadth of this petition, it is unclear how the Intervenor-Defendants could describe it accurately in 200-words, which further supports this Court’s conclusion that the Petition fails to embrace a single subject.

21. In sum, this Court concludes that the description of effect is misleading and violates NRS 295.009(1)(b).

Unfunded Mandate

22. Article 19, Section 6 of the Nevada Constitution provides that the initiative power “does not permit the proposal of any statute or statutory amendment which makes an appropriation or otherwise requires the expenditure of money, unless such . . . amendment also imposes a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides for raising the necessary revenue.” Thus, “all initiative petitions must comply with Article 19, Section 6’s requirement that initiatives requiring expenditures or appropriations contain a funding provision,” *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 303 (2022). “[A]n initiative that makes an appropriation or requires an expenditure of money is void if it does not also provide for the necessary revenue.” *Reid*, 138 Nev., Adv. Op. 47, 512 P.3d at 303.

23. Subsection 4 of the Petition would prohibit the State from penalizing, prosecuting, or otherwise taking adverse action against “a provider of health care” for acting within the standard of care for performing an abortion or providing abortion care. Only doctors and other providers of health care would be in a position to testify as to the applicable standard of care. See NRS 41A.071(2) (contemplating that only an *expert* who practices in a medical field can render an opinion as to the standard of care). Thus, funding would need to be appropriated to create a Panel or Board—most likely under the supervision of the Nevada Board of Medical Examiners—to evaluate whether a provider of health care performed an abortion within the standard of care. Yet, the Petition does not set forth a

1 revenue source to create this board or panel. *See Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47,
2 512 P.3d 296, 303 (2022). If no board is created, as Plaintiff suggests, then the plain meaning of the
3 Petition would be rendered meaningless because there would be no legal entity to ascertain whether a
4 provider of healthcare acted within the standard of care. This is an unfunded mandate.

5 24. This Court concludes that the Petition contains an unfunded mandate in violation of
6 Article 19, Section 6 of the Nevada Constitution.

7 25. Any conclusion of law that is more properly characterized as a finding of fact shall be
8 duly incorporated into this Court's Findings of Facts.

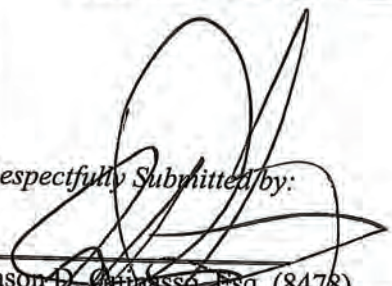
9 **[PROPOSED] ORDER**

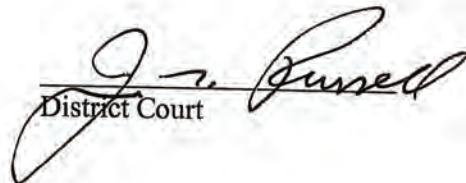
10 THE COURT HEREBY ORDERS, ADJUDGES, and DECREES that Initiative Petition C-01-
11 2023 does not embrace a single subject, contains a misleading description of effect, and contains an
12 unfunded mandate. Therefore, it violates NRS 295.009 and Article 19, Section 6, of the Nevada
13 Constitution.

14 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that the Nevada Secretary
15 of State shall be enjoined from placing Initiative Petition C-01-2023 on the ballot.

16 IT IS SO ORDERED.

17 Dated this 21st day of November 2023.

18
19
20 Respectfully Submitted by:
21 
22 Jason D. Guinasso, Esq. (8478)
23 HUTCHISON & STEFFEN, PLLC
24 5371 Kietzke Lane
25 Reno, Nevada 89511
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Attorney for Plaintiffs


District Court

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Attorneys for Intervenor-Defendant

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

DONNA WASHINGTON, an individual;
COALITION FOR PARENTS AND
CHILDREAN, a Political Action
Committee,

Plaintiffs,

vs.

FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE;

Defendant,

and

NEVADANS FOR REPRODUCTIVE
FREEDOM, a Political Action
Committee,

Intervenor-Defendant.

Case No.: 23 OC 00115 1B

Dept. No.: I

NOTICE OF ENTRY OF ORDER

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WILLIAM SCOTT HOEN
CLERK

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NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that a FINDINGS OF FACT CONCLUSIONS
OF LAW AND ORDER was entered in the above-captioned matter on the 21st day
of November, 2023. A true and correct copy of the Order is attached hereto as
Exhibit 1.

AFFIRMATION

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

DATED this 22nd day of November, 2023.

BRAVO SCHRAGER LLP

By: 

BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
DANIEL BRAVO, ESQ. (SBN 13078)
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*Attorneys for Intervenor-Defendant,
Nevadans for Reproductive Freedom*

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2023, I served the foregoing
NOTICE OF ENTRY OF ORDER by depositing a true copy of the same via
electronic mail, per the October 17, 2023 Stipulation, as follows:

Jason D. Guinasso, Esq.
HUTCHISON & STEFFEN, PLLC
5371 Kietzke Lane
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Attorneys for Plaintiffs

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*Attorneys for Defendant,
Francisco V. Aguilar in his Official
Capacity as the Nevada Secretary of
State*

Julie Harkleroad
Judicial Assistant to
Hon. James T. Russell
First Judicial District Court, Dept. I
JHarkleroad@carson.org

By:

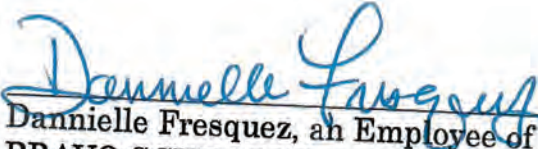

Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP

Exhibit 1

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3 5371 Kietzke Lane
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5 Telephone: (775) 853-8746
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7 *Attorney for Plaintiffs*

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

10 DONNA WASHINGTON, as individual;
11 COALITION FOR PARENTS AND CHILDREN,
12 a Political Action Committee,

13 Plaintiffs,

14 vs.

15 FRANCISCO V. AGUILAR, in his Official
16 Capacity as the NEVADA SECRETARY OF
17 STATE,

18 Defendant,

19 and

20 NEVADANS FOR REPRODUCTIVE FREEDOM, a
21 Political Action Committee,

22 Intervenor-Defendant.

REC'D & FILED

November 21, 2023

Date

WILLIAM SCOTT HOEN
CLERK

By

Deputy

Case No.: 23-OC-00115

Dept. No. 1

**PLAINTIFFS' [PROPOSED] FINDINGS
OF FACTS, CONCLUSIONS OF LAW,
AND ORDER GRANTING
DECLARATORY AND INJUNCTIVE
RELIEF**

23 Plaintiffs DONNA WASHINGTON and COALITION FOR PARENTS AND CHILDREN
24 ("Plaintiffs"), a Political Action Committee, by and through its undersigned counsel Jason D. Guinasso,
25 Esq., of the law firm Hutchison & Steffen, PLLC, filed a Complaint for Declaratory and Injunctive
Relief on October 5, 2023 to challenge Initiative Petition C-01-2023 (the "Petition"). Plaintiffs
submitted a Memorandum of Points and Authorities in Support of the Complaint for Declaratory and
Injunctive Relief on October 20, 2023. Intervenor-Defendant Nevadans for Reproductive Freedom
("Intervenor-Defendant") filed an Answer to the Complaint on November 8, 2023. On the same day,
Intervenor-Defendant filed a Memorandum of Points and Authorities in Opposition to the Complaint

1 for Declaratory and Injunctive Relief. Plaintiffs filed a Reply to the Memorandum of Points and
2 Authorities in Opposition to the Complaint on November 15, 2023. Plaintiffs and the Intervenor-
3 Defendant both submitted competing proposed orders on November 15, 2023. This matter came before
4 the Court for a hearing on November 21, 2023. After reviewing all pleadings on file, entertaining the
5 arguments of counsel at the hearing, and reviewing the proposed orders, this Court hereby enters these
6 Findings of Fact, Conclusions of Law, and Order GRANTING Declaratory and Injunctive Relief in
7 favor of the Plaintiffs, which enjoins the Nevada Secretary of State from advancing Initiative Petition
8 C-01-2023.

9 FINDINGS OF FACT

10 1. On or about September 14, 2023, Lindsey Harmon, on behalf of the Intervenor-
11 Defendant, filed Nevada Constitutional Initiative Petition C-01-2023 (the "Petition").

12 2. The Petition seeks to add a new section to the Nevada Constitution, which will be
13 designated as Section 25 of Article 1 (the "Amendment").

14 3. The first subsection of the Amendment would create a "fundamental right to
15 reproductive freedom." Among other things, this right provides that reproductive freedom—which
16 includes "all matters relating to pregnancy"—shall not be denied, burdened, or infringed upon unless
17 justified by a compelling State interest. This section would expressly apply to "prenatal care,
18 childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care,
19 management of a miscarriage, and infertility care."

20 4. The second subsection of the Amendment would allow the State to "regulate the
21 provision of abortion care after fetal viability, provided that in no circumstance may the State Prohibit
22 an abortion that, in the professional judgment of an attending provider of health care, is medically
23 indicated to protect the life or physical or mental health of the pregnant individual."

24 5. The third subsection of the Amendment would prohibit the State from penalizing or
25 prosecuting an individual based on "perceived or alleged outcome of the pregnancy of the individual,

1 including, without limitation, a miscarriage, stillbirth or abortion.”

2 6. The fourth subsection of the Amendment would prohibit the State from penalizing,
3 prosecuting, or otherwise taking adverse action against “a provider of health care” for acting within the
4 standard of care for performing an abortion or providing abortion care.

5 7. The fifth subsection of the Amendment would prohibit the State from penalizing or
6 prosecuting an individual for aiding or assisting another individual in exercising the right of the
7 individual to reproductive freedom.

8 8. The sixth subsection of the Amendment would provide that “nothing herein narrows or
9 limits the rights to equality and equal protection.”

10 9. The Petition includes a description of effect that states:

11 If enacted, this initiative would add a new section to Article 1 of the
12 Nevada Constitution establishing a fundamental right to reproductive
13 freedom. This initiative enables individuals to make and carry out decisions
14 about matters relating to their pregnancies, including prenatal care,
15 childbirth, postpartum care, birth control, vasectomies and tubal ligations,
16 abortion and abortion care, and care for miscarriages and infertility.

17 If this measure is enacted, the State still may regulate provision of
18 abortion care after fetal viability, except where medically indicated to protect
19 the life or physical or mental health of the pregnant individual.

20 Under this measure, the State may not penalize, prosecute, or take
21 adverse action against any individual based on the outcome of a pregnancy of
22 the individual, or against any licensed health care provider who acts
23 consistent with the applicable scope and practice of providing reproductive
24 health care services to an individual who has granted their voluntary consent.
25 Neither may the State penalize, prosecute, or take adverse action against any
individual or entity for aiding or assisting another individual in the exercise
of the rights established by this initiative.

21 10. On October 5, 2023, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief
22 on October 5, 2023 to challenge the legality of the Petition.

23 11. On October 20, 2023, Plaintiffs filed a Memorandum of Points and Authorities in
24 Support of the Complaint for Declaratory and Injunctive Relief. Plaintiffs argued that the Petition does
25 not embrace a single subject, contains a misleading and/or inaccurate description of effect, and contains

1 an unfunded mandate in violation of Nevada law.

2 12. On November 8, 2023, the Intervenor-Defendant filed an Answer to the Complaint for
3 Declaratory and Injunctive Relief. The same day, the Intervenor-Defendant filed a Memorandum of
4 Points and Authorities in Opposition to Plaintiffs' Complaint for Declaratory and Injunctive Relief.
5 Intervenor-Defendant argued that the Petition contains a single subject, contains an accurate description
6 of effect, and does not contain an unfunded mandate.

7 13. On November 15, 2023, Plaintiffs filed a Reply to Intervenor-Defendant's Memorandum
8 of Points and Authorities in Opposition to Plaintiffs' Complaint for Declaratory and Injunctive Relief.
9 The same day, both parties submitted competing proposed orders to this Court.

10 14. On November 21, 2023, this matter came before this Court for a hearing.

11 15. Any finding of fact that is more properly construed as a conclusion of law shall be duly
12 incorporated into this Court's Conclusions of Law.

13 CONCLUSIONS OF LAW

14 1. This Court may consider Plaintiffs challenge to the Petition. "Courts will consider
15 challenges to an initiative petition preelection in limited circumstances, such as when those challenges
16 are based on the petition's compliance with the single-subject requirement, the statutory requirement
17 for the description of effect, or the preclusion against unfunded mandates." *Helton v. Nevada Voters*
18 *First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022). Plaintiffs have alleged that the Petition
19 violates each of the foregoing legal grounds identified by *Helton*. The Intervenor-Defendant argues
20 that the Petition meets each of the foregoing legal standards.

21 The Single-Subject Requirement

22 2. NRS 295.009(1)(a) provides that an initiative petition *must* embrace *only* "one subject
23 and matters necessarily connected therewith and pertaining thereto." An initiative petition embraces
24 one subject "if the parts of the proposed initiative or referendum are functionally related and germane
25 to each other in a way that provides sufficient notice of the general subject of, and of the interests likely

1 to be affected by, the proposed initiative or referendum.” NRS 295.009(2).

2 3. “The single-subject requirement ‘facilitates the initiative process by preventing petition
3 drafters from circulating confusing petitions that address multiple subjects.’” *Helton*, 138 Nev., Adv.
4 Op. 45, 512 P.3d at 314 (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894,
5 902, 141 P.3d 1235, 1240 (2006)). “[T]he single-subject requirement helps both in promoting informed
6 decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive
7 proposals or concealing them in lengthy, complex initiatives (i.e., logrolling).” *Id.* (internal quotation
8 marks omitted). “[L]ogrolling occurs when two or more completely separate provisions are combined
9 in a petition” *Id.* at 315 (internal quotation marks omitted). In ascertaining whether a petition
10 violates the single-subject requirement, “[t]he court must first determine the initiative’s purpose or
11 subject and then determine if each provision is functionally related and germane to each other and the
12 initiative’s purpose or subject.” *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314. “To determine the
13 initiative’s purpose or subject, this court looks to its textual language and the proponents’ arguments.”
14 *Id.* (internal quotation marks omitted). “The court also will look at whether the description of effect
15 articulates an overarching purpose and explains how provisions relate to a single subject.” *Id.*

16 4. This Court agrees with Plaintiffs that the Petition embraces a multitude of subjects that
17 amount to logrolling. Subsection 1, alone, embraces the following subjects: prenatal care, childbirth,
18 postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a
19 miscarriage, and infertility care. Subsection 1 purportedly creates a “fundamental right to reproductive
20 freedom,” but there is no limiting language in that section to circumscribe that right such that the
21 section embraces a single and articulable subject. For instance, it is unclear how a vasectomy relates to
22 infertility care or postpartum care. Likewise, it is unclear how postpartum care is related to abortions or
23 birth control. Thus, it is improper to characterize these broad categories as a “single subject” because
24 there is no explanation as to how these provisions are functionally related.

25 ///

1 5. The Petition also creates several laws that are not functionally related and/or germane to
2 the proposed "right to reproductive freedom." First, subsection 2 would allow the State to regulate an
3 abortion after fetal viability, but the State would be *prohibited* from regulating a viable fetus if a
4 "provider of health care" indicated that an abortion was necessary to "protect the life or physical or
5 mental health of the pregnant individual." The petition does not define the term "provider of health
6 care," but other Nevada law defines that term to include physician assistants, dentists, nurses, physical
7 therapists, chiropractors, optometrists, and psychologists. See NRS 41A.017. It is unclear how
8 subsection 2 functionally relates to postpartum care, birth control, vasectomy, tubal ligation,
9 vasectomies, and infertility care.

10 6. Subsection 3 of the Petition would prohibit the State from penalizing or prosecuting any
11 person based on the "actual, potential, perceived or alleged outcome of the pregnancy of the individual,
12 including, without limitation, a miscarriage, stillbirth or abortion." This section of the Petition would
13 essentially bar the State from making any investigation of a miscarriage or stillbirth. It is unclear how
14 this provision functionally relates to postpartum care, birth control, tubal ligation, vasectomies, and
15 infertility care.

16 7. Subsection 4 of the Petition would prohibit the State from penalizing, prosecuting, or
17 "taking adverse action against" any "provider of health care" for acting within the standard of care in
18 performing an abortion. It is unclear how this provision functionally relates to postpartum care, birth
19 control, tubal ligation, vasectomies, and infertility care.

20 8. Subsection 5 of the Petition prohibits the State from penalizing or prosecuting any
21 person or entity that aids or assists another person in "exercising the right of the individual to
22 reproductive freedom with the voluntary consent of the individual." It is unclear how this provision
23 functionally relates to postpartum care, birth control, tubal ligation, vasectomies, and infertility care.

24 9. These provisions constitute logrolling because they regulate separate conduct but are
25 placed in the same Petition. Subsections 2-5 of the Petition pertain to various abortion rights, and do

1 not address postpartum care, birth control, tubal ligation, vasectomies, and/or infertility care. Thus,
2 subsection 1 of the Petition is not “functionally related and germane” to the provisions in Subsections
3 2-5. See *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314.

4 10. Intervenor-defendant contends that the Petition contemplates a single subject in
5 compliance with NRS 295.009(1)(a) because it embraces a single “framework,” *i.e.*, reproductive care.
6 The alleged framework of the Petition is “ensuring freedom of care, access to care, and decision-
7 making among individuals and health care providers in the realm of reproduction.” This “framework”
8 language is taken from *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 314, which found that a petition that
9 proposed (1) primaries with open voting and (2) general elections with ranked-choice voting presented
10 a single subject because it was a “framework” governing how officials are elected. The Court then
11 looked to the textual language of the petition and the proponents arguments, and verified that the
12 purpose of both provisions was to create a framework for voting. See *id.* The Court contrasted the
13 petition’s framework for electing officials versus the “mechanics” of voting like early voting, absentee
14 ballots, voting machines, and paper ballots. See *id.*

15 11. Unlike the facts in *Helton*, it is unclear what “framework” the Petition applies, especially
16 when its textual provisions are compared. This Petition would expressly apply to “prenatal care,
17 childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care,
18 management of a miscarriage, and infertility care.” While the Intervenor-Defendant states that the
19 supposed framework on these topics “enables individuals to make and carry out decisions about matters
20 relating to [reproductive health],” it cites *no* provision in the Petition that effectuates, defines, or
21 constrains this “framework.” Thus, unlike the petition in *Helton*—which could be reduced to a
22 framework for electing officials—the subjects contained in this petition cannot be confined to a single
23 operative framework. In other words, there is no criteria, *i.e.*, framework, for effectuating this right to
24 “make and carry out decisions.”

25 12. Existing statutory laws addressing reproductive health also underscore the breadth of the

1 Petition and show that it does not contain a single subject. For instance: (1) Birth Control is addressed
2 in NRS 422.308, NRS 442.080, and NRS 449.1885; (2) Post-Partum and/or Prenatal Care is addressed
3 in NRS 698A.0419, NRS 689C.194, NRS 689B.03785, NRS 422.27177, and other related statutes; (3)
4 Miscarriage is addressed in NRS 614.4383; (4) Tubal Ligation is addressed in NRS 449.198; (5)
5 Abortion is addressed in NRS 442.250, *et seq.*, and NRS 689A.042; (6) Vasectomies are addressed in
6 NRS 442.725; and (7) Infertility Care is addressed in NRS 126.510. This list, which includes only a
7 partial list of applicable statutes, highlights the breadth of the Petition. The Legislature could not
8 reduce “reproductive health” into a single statute, let alone a single statutory chapter, and therefore had
9 to compartmentalize this broad swath of conduct into multiple statutes contained in various parts of the
10 Nevada Revised Statutes. The Petition addresses all of this conduct in several paragraphs without an
11 articulable framework.

12 13. Further, after reviewing the pleadings on file, this Court did not find arguments to show
13 how the proposed “framework” ties into subsections 2-5 of the Petition.

14 14. In sum, this Court concludes that the Petition constitutes logrolling and does not
15 encompass a single subject. Accordingly, the Petition violates of NRS 295.009(1)(a).

16 Description of Effect

17 15. NRS 295.009(1)(b) provides that the initiative petition must set forth in no more than
18 200 words “a description of effect of the initiative.” “The description of effect facilitates the
19 constitutional right to meaningfully engage in the initiative process by helping to prevent voter
20 confusion and promote informed decisions.” *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 316. “A
21 description of effect ‘must be a straightforward, succinct, and nonargumentative summary of what the
22 initiative is designed to achieve and how it intends to reach those goals.’” *Id.* (quoting *Educ. Initiative*
23 *PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). Also, a description of
24 effect cannot be “deceptive or misleading.” *Id.* at 42, 293 P.3d at 879 (internal quotation marks
25 omitted). The Nevada Supreme Court has held that a description of effect is misleading if it “omits the

1 need for or nature of the revenue source to fund" the proposal in the Petition. *See Educ. Freedom PAC*
2 *v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 304 (2022).

3 16. The Petition's description of effect is misleading because it fails to mention that the law
4 will bar the State from prosecuting, fining, or regulating any miscarriage or stillbirth. Instead, the
5 description of effect vaguely states, "the State may not penalize, prosecute, or take adverse action
6 against any individual based on the outcome of the pregnancy of the individual." This is misleading
7 because it does not delineate the fact that the Petition will prevent the State from investigating and/or
8 taking action against any miscarriage or stillborn birth.

9 17. The description of effect is also misleading because it fails to mention that a "provider of
10 health care," which is an undefined term, has the power to order a late-term abortion if it is "medically
11 indicated" to protect the physical or mental health of the pregnant individual. For this reason, voters
12 are misled into believing that a physician would be empowered to determine that the mother's physical
13 or mental well-being requires an abortion. In reality, any "provider of health care," which is broadly
14 defined under existing Nevada law, *see* NRS 41A.017, would seemingly be able to approve a late-term
15 abortion. Likewise, the term "medically indicated" is undefined, which misleads voters into believing
16 that there is a specific set of criteria to determine when the mother's physical or mental health requires
17 an abortion.

18 18. The description of effect also is misleading because it fails to explain that it affects
19 "equality" and "equal protection." Subsection 6 of the Petition provides that "[n]othing herein narrows
20 or limits the rights to equality and equal protection." While the right to "equal protection" is well
21 established in American jurisprudence, it is unclear what the term "equality" means legally. In any
22 event, the description of effect wholly omits that it will impact the constitutional right of equal
23 protection or a newly identified right to equality.

24 19. Additionally, the enactment of the Petition would fundamentally alter the statutes listed
25 in Paragraph 12 of this Court's Conclusions of Law. The description of effect does not mention this.

20. The Intervenor-Defendant argues that the description of effect is not misleading because it sets forth its terms “with admirable clarity.” Yet, the Intervenor-Defendant does not identify how the description of effect adequately addresses the foregoing concerns. Given the breadth of this petition, it is unclear how the Intervenor-Defendants could describe it accurately in 200-words, which further supports this Court’s conclusion that the Petition fails to embrace a single subject.

6 21. In sum, this Court concludes that the description of effect is misleading and violates
7 NRS 295.009(1)(b).

Unfunded Mandate

22. Article 19, Section 6 of the Nevada Constitution provides that the initiative power “does not permit the proposal of any statute or statutory amendment which makes an appropriation or otherwise requires the expenditure of money, unless such . . . amendment also imposes a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides for raising the necessary revenue.” Thus, “all initiative petitions must comply with Article 19, Section 6’s requirement that initiatives requiring expenditures or appropriations contain a funding provision.” *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 303 (2022). “[A]n initiative that makes an appropriation or requires an expenditure of money is void if it does not also provide for the necessary revenue.” *Reid*, 138 Nev., Adv. Op. 47, 512 P.3d at 303.

23. Subsection 4 of the Petition would prohibit the State from penalizing, prosecuting, or otherwise taking adverse action against “a provider of health care” for acting within the standard of care for performing an abortion or providing abortion care. Only doctors and other providers of health care would be in a position to testify as to the applicable standard of care. See NRS 41A.071(2) (contemplating that only an *expert* who practices in a medical field can render an opinion as to the standard of care). Thus, funding would need to be appropriated to create a Panel or Board—most likely under the supervision of the Nevada Board of Medical Examiners—to evaluate whether a provider of health care performed an abortion within the standard of care. Yet, the Petition does not set forth a

1 revenue source to create this board or panel. *See Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47,
2 512 P.3d 296, 303 (2022). If no board is created, as Plaintiff suggests, then the plain meaning of the
3 Petition would be rendered meaningless because there would be no legal entity to ascertain whether a
4 provider of healthcare acted within the standard of care. This is an unfunded mandate.

5 24. This Court concludes that the Petition contains an unfunded mandate in violation of
6 Article 19, Section 6 of the Nevada Constitution.

7 25. Any conclusion of law that is more properly characterized as a finding of fact shall be
8 duly incorporated into this Court's Findings of Facts.

9 **PROPOSED ORDER**

10 THE COURT HEREBY ORDERS, ADJUDGES, and DECREES that Initiative Petition C-01-
11 2023 does not embrace a single subject, contains a misleading description of effect, and contains an
12 unfunded mandate. Therefore, it violates NRS 295.009 and Article 19, Section 6, of the Nevada
13 Constitution.

14 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that the Nevada Secretary
15 of State shall be enjoined from placing Initiative Petition C-01-2023 on the ballot.

16 IT IS SO ORDERED.

17 Dated this 21st day of November 2023.

18
19
20 Respectfully Submitted by:

21 
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District Court

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 Email: daniel@bravoschrager.com

Attorneys for Intervenor-Defendant

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

DONNA WASHINGTON, an individual;
 COALITION FOR PARENTS AND
 CHILDREAN, a Political Action
 Committee,

Plaintiffs,

vs.

FRANCISCO V. AGUILAR, in his official
 capacity as NEVADA SECRETARY OF
 STATE;

Defendant,

and

NEVADANS FOR REPRODUCTIVE
 FREEDOM, a Political Action
 Committee,

Intervenor-Defendant.

Case No.: 23 OC 00115 1B

Dept. No.: I

NOTICE OF APPEAL

2023 NOV 27 PM 3:00
 WILLIAM C. COOPER
 BY
 C. COOPER

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NOTICE OF APPEAL

Intervenor-Defendant Nevadans for Reproductive Freedom, by and through their undersigned counsel, hereby appeal to the Supreme Court of the State of Nevada the district court's Findings of Facts, Conclusions of Law and Order Granting Declaratory and Injunctive Relief entered on November 21, 2023.

A true and correct copy of the district court's order is attached hereto as Exhibit A.

AFFIRMATION

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

DATED this 25th day of November, 2023.

BRAVO SCHRAGER LLP

By: 

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*Attorneys for Intervenor-Defendant,
Nevadans for Reproductive Freedom*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 25th day of November, 2023, I served the foregoing
3 **NOTICE OF APPEAL** by depositing a true copy of the same via electronic mail, per
4 the October 17, 2023 Stipulation, as follows:

5 Jason D. Guinasso, Esq.
6 HUTCHISON & STEFFEN, PLLC
7 5371 Kietzke Lane
8 Reno, Nevada 89511
9 jguinasso@hutchlegal.com

10 *Attorneys for Plaintiffs*

11 Julie Harkleroad
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*Attorneys for Defendant,
Francisco V. Aguilar in his Official
Capacity as the Nevada Secretary of
State*

16 By: 

Dannielle Fresqu  , an Employee of
BRAVO SCHRAGER LLP

Exhibit A

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4 *Attorney for Plaintiffs*

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

7 DONNA WASHINGTON, as individual;
COALITION FOR PARENTS AND CHILDREN,
8 a Political Action Committee,

9 *Plaintiffs,*

10 *vs.*

11 FRANCISCO V. AGUILAR, in his Official
Capacity as the NEVADA SECRETARY OF
12 STATE,

13 *Defendant,*

14 *and*

15 NEVADANS FOR REPRODUCTIVE FREEDOM, a
Political Action Committee,

16 *Intervenor-Defendant.*

17
18 Plaintiffs DONNA WASHINGTON and COALITION FOR PARENTS AND CHILDREN
19 ("Plaintiffs"), a Political Action Committee, by and through its undersigned counsel Jason D. Guinasso,
20 Esq., of the law firm Hutchison & Steffen, PLLC, filed a Complaint for Declaratory and Injunctive
21 Relief on October 5, 2023 to challenge Initiative Petition C-01-2023 (the "Petition"). Plaintiffs
22 submitted a Memorandum of Points and Authorities in Support of the Complaint for Declaratory and
23 Injunctive Relief on October 20, 2023. Intervenor-Defendant Nevadans for Reproductive Freedom
24 ("Intervenor-Defendant") filed an Answer to the Complaint on November 8, 2023. On the same day,
25 Intervenor-Defendant filed a Memorandum of Points and Authorities in Opposition to the Complaint

REC'D & FILED

November 21, 2023

Date

WILLIAM SCOTT HOEN
CLERK

By

Deputy

Case No.: 23-OC-00115

Dept. No. 1

**PLAINTIFFS' [PROPOSED] FINDINGS
OF FACTS, CONCLUSIONS OF LAW,
AND ORDER GRANTING
DECLARATORY AND INJUNCTIVE
RELIEF**

1 for Declaratory and Injunctive Relief. Plaintiffs filed a Reply to the Memorandum of Points and
2 Authorities in Opposition to the Complaint on November 15, 2023. Plaintiffs and the Intervenor-
3 Defendant both submitted competing proposed orders on November 15, 2023. This matter came before
4 the Court for a hearing on November 21, 2023. After reviewing all pleadings on file, entertaining the
5 arguments of counsel at the hearing, and reviewing the proposed orders, this Court hereby enters these
6 Findings of Fact, Conclusions of Law, and Order GRANTING Declaratory and Injunctive Relief in
7 favor of the Plaintiffs, which enjoins the Nevada Secretary of State from advancing Initiative Petition
8 C-01-2023.

9 FINDINGS OF FACT

10 1. On or about September 14, 2023, Lindsey Harmon, on behalf of the Intervenor-
11 Defendant, filed Nevada Constitutional Initiative Petition C-01-2023 (the "Petition").

12 2. The Petition seeks to add a new section to the Nevada Constitution, which will be
13 designated as Section 25 of Article 1 (the "Amendment").

14 3. The first subsection of the Amendment would create a "fundamental right to
15 reproductive freedom." Among other things, this right provides that reproductive freedom—which
16 includes "all matters relating to pregnancy"—shall not be denied, burdened, or infringed upon unless
17 justified by a compelling State interest. This section would expressly apply to "prenatal care,
18 childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care,
19 management of a miscarriage, and infertility care."

20 4. The second subsection of the Amendment would allow the State to "regulate the
21 provision of abortion care after fetal viability, provided that in no circumstance may the State Prohibit
22 an abortion that, in the professional judgment of an attending provider of health care, is medically
23 indicated to protect the life or physical or mental health of the pregnant individual."

24 5. The third subsection of the Amendment would prohibit the State from penalizing or
25 prosecuting an individual based on "perceived or alleged outcome of the pregnancy of the individual,

1 including, without limitation, a miscarriage, stillbirth or abortion.”

2 6. The fourth subsection of the Amendment would prohibit the State from penalizing,
3 prosecuting, or otherwise taking adverse action against “a provider of health care” for acting within the
4 standard of care for performing an abortion or providing abortion care.

5 7. The fifth subsection of the Amendment would prohibit the State from penalizing or
6 prosecuting an individual for aiding or assisting another individual in exercising the right of the
7 individual to reproductive freedom.

8 8. The sixth subsection of the Amendment would provide that “nothing herein narrows or
9 limits the rights to equality and equal protection.”

10 9. The Petition includes a description of effect that states:

11 If enacted, this initiative would add a new section to Article 1 of the
12 Nevada Constitution establishing a fundamental right to reproductive
13 freedom. This initiative enables individuals to make and carry out decisions
14 about matters relating to their pregnancies, including prenatal care,
15 childbirth, postpartum care, birth control, vasectomies and tubal ligations,
16 abortion and abortion care, and care for miscarriages and infertility.

17 If this measure is enacted, the State still may regulate provision of
18 abortion care after fetal viability, except where medically indicated to protect
19 the life or physical or mental health of the pregnant individual.

20 Under this measure, the State may not penalize, prosecute, or take
21 adverse action against any individual based on the outcome of a pregnancy of
22 the individual, or against any licensed health care provider who acts
23 consistent with the applicable scope and practice of providing reproductive
24 health care services to an individual who has granted their voluntary consent.
25 Neither may the State penalize, prosecute, or take adverse action against any
individual or entity for aiding or assisting another individual in the exercise
of the rights established by this initiative.

10. On October 5, 2023, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief
on October 5, 2023 to challenge the legality of the Petition.

11. On October 20, 2023, Plaintiffs filed a Memorandum of Points and Authorities in
Support of the Complaint for Declaratory and Injunctive Relief. Plaintiffs argued that the Petition does
not embrace a single subject, contains a misleading and/or inaccurate description of effect, and contains

1 an unfunded mandate in violation of Nevada law.

2 12. On November 8, 2023, the Intervenor-Defendant filed an Answer to the Complaint for
3 Declaratory and Injunctive Relief. The same day, the Intervenor-Defendant filed a Memorandum of
4 Points and Authorities in Opposition to Plaintiffs' Complaint for Declaratory and Injunctive Relief.
5 Intervenor-Defendant argued that the Petition contains a single subject, contains an accurate description
6 of effect, and does not contain an unfunded mandate.

7 13. On November 15, 2023, Plaintiffs filed a Reply to Intervenor-Defendant's Memorandum
8 of Points and Authorities in Opposition to Plaintiffs' Complaint for Declaratory and Injunctive Relief.
9 The same day, both parties submitted competing proposed orders to this Court.

10 14. On November 21, 2023, this matter came before this Court for a hearing.

11 15. Any finding of fact that is more properly construed as a conclusion of law shall be duly
12 incorporated into this Court's Conclusions of Law.

13 CONCLUSIONS OF LAW

14 1. This Court may consider Plaintiffs challenge to the Petition. "Courts will consider
15 challenges to an initiative petition preelection in limited circumstances, such as when those challenges
16 are based on the petition's compliance with the single-subject requirement, the statutory requirement
17 for the description of effect, or the preclusion against unfunded mandates." *Helton v. Nevada Voters*
18 *First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022). Plaintiffs have alleged that the Petition
19 violates each of the foregoing legal grounds identified by *Helton*. The Intervenor-Defendant argues
20 that the Petition meets each of the foregoing legal standards.

21 The Single-Subject Requirement

22 2. NRS 295.009(1)(a) provides that an initiative petition *must* embrace *only* "one subject
23 and matters necessarily connected therewith and pertaining thereto." An initiative petition embraces
24 one subject "if the parts of the proposed initiative or referendum are functionally related and germane
25 to each other in a way that provides sufficient notice of the general subject of, and of the interests likely

1 to be affected by, the proposed initiative or referendum.” NRS 295.009(2).

2 3. “The single-subject requirement ‘facilitates the initiative process by preventing petition
3 drafters from circulating confusing petitions that address multiple subjects.’” *Helton*, 138 Nev., Adv.
4 Op. 45, 512 P.3d at 314 (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894,
5 902, 141 P.3d 1235, 1240 (2006)). “[T]he single-subject requirement helps both in promoting informed
6 decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive
7 proposals or concealing them in lengthy, complex initiatives (i.e., logrolling).” *Id.* (internal quotation
8 marks omitted). “[L]ogrolling occurs when two or more completely separate provisions are combined
9 in a petition” *Id.* at 315 (internal quotation marks omitted). In ascertaining whether a petition
10 violates the single-subject requirement, “[t]he court must first determine the initiative’s purpose or
11 subject and then determine if each provision is functionally related and germane to each other and the
12 initiative’s purpose or subject.” *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314. “To determine the
13 initiative’s purpose or subject, this court looks to its textual language and the proponents’ arguments.”
14 *Id.* (internal quotation marks omitted). “The court also will look at whether the description of effect
15 articulates an overarching purpose and explains how provisions relate to a single subject.” *Id.*

16 4. This Court agrees with Plaintiffs that the Petition embraces a multitude of subjects that
17 amount to logrolling. Subsection 1, alone, embraces the following subjects: prenatal care, childbirth,
18 postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a
19 miscarriage, and infertility care. Subsection 1 purportedly creates a “fundamental right to reproductive
20 freedom,” but there is no limiting language in that section to circumscribe that right such that the
21 section embraces a single and articulable subject. For instance, it is unclear how a vasectomy relates to
22 infertility care or postpartum care. Likewise, it is unclear how postpartum care is related to abortions or
23 birth control. Thus, it is improper to characterize these broad categories as a “single subject” because
24 there is no explanation as to how these provisions are functionally related.

25 ///

1 not address postpartum care, birth control, tubal ligation, vasectomies, and/or infertility care. Thus,
2 subsection 1 of the Petition is not "functionally related and germane" to the provisions in Subsections
3 2-5. *See Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314.

4 10. Intervenor-defendant contends that the Petition contemplates a single subject in
5 compliance with NRS 295.009(1)(a) because it embraces a single "framework," *i.e.*, reproductive care.
6 The alleged framework of the Petition is "ensuring freedom of care, access to care, and decision-
7 making among individuals and health care providers in the realm of reproduction." This "framework"
8 language is taken from *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 314, which found that a petition that
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10 a single subject because it was a "framework" governing how officials are elected. The Court then
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12 purpose of both provisions was to create a framework for voting. *See id.* The Court contrasted the
13 petition's framework for electing officials versus the "mechanics" of voting like early voting, absentee
14 ballots, voting machines, and paper ballots. *See id.*

15 11. Unlike the facts in *Helton*, it is unclear what "framework" the Petition applies, especially
16 when its textual provisions are compared. This Petition would expressly apply to "prenatal care,
17 childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care,
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20 relating to [reproductive health]," it cites *no* provision in the Petition that effectuates, defines, or
21 constrains this "framework." Thus, unlike the petition in *Helton*—which could be reduced to a
22 framework for electing officials—the subjects contained in this petition cannot be confined to a single
23 operative framework. In other words, there is no criteria, *i.e.*, framework, for effectuating this right to
24 "make and carry out decisions."

25 12. Existing statutory laws addressing reproductive health also underscore the breadth of the

1 5. The Petition also creates several laws that are not functionally related and/or germane to
2 the proposed "right to reproductive freedom." First, subsection 2 would allow the State to regulate an
3 abortion after fetal viability, but the State would be *prohibited* from regulating a viable fetus if a
4 "provider of health care" indicated that an abortion was necessary to "protect the life or physical or
5 mental health of the pregnant individual." The petition does not define the term "provider of health
6 care," but other Nevada law defines that term to include physician assistants, dentists, nurses, physical
7 therapists, chiropractors, optometrists, and psychologists. See NRS 41A.017. It is unclear how
8 subsection 2 functionally relates to postpartum care, birth control, vasectomy, tubal ligation,
9 vasectomies, and infertility care.

10 6. Subsection 3 of the Petition would prohibit the State from penalizing or prosecuting any
11 person based on the "actual, potential, perceived or alleged outcome of the pregnancy of the individual,
12 including, without limitation, a miscarriage, stillbirth or abortion." This section of the Petition would
13 essentially bar the State from making any investigation of a miscarriage or stillbirth. It is unclear how
14 this provision functionally relates to postpartum care, birth control, tubal ligation, vasectomies, and
15 infertility care.

16 7. Subsection 4 of the Petition would prohibit the State from penalizing, prosecuting, or
17 "taking adverse action against" any "provider of health care" for acting within the standard of care in
18 performing an abortion. It is unclear how this provision functionally relates to postpartum care, birth
19 control, tubal ligation, vasectomies, and infertility care.

20 8. Subsection 5 of the Petition prohibits the State from penalizing or prosecuting any
21 person or entity that aids or assists another person in "exercising the right of the individual to
22 reproductive freedom with the voluntary consent of the individual." It is unclear how this provision
23 functionally relates to postpartum care, birth control, tubal ligation, vasectomies, and infertility care.

24 9. These provisions constitute logrolling because they regulate separate conduct but are
25 placed in the same Petition. Subsections 2-5 of the Petition pertain to various abortion rights, and do

1 Petition and show that it does not contain a single subject. For instance: (1) Birth Control is addressed
2 in NRS 422.308, NRS 442.080, and NRS 449.1885; (2) Post-Partum and/or Prenatal Care is addressed
3 in NRS 698A.0419, NRS 689C.194, NRS 689B.03785, NRS 422.27177, and other related statutes; (3)
4 Miscarriage is addressed in NRS 614.4383; (4) Tubal Ligation is addressed in NRS 449.198; (5)
5 Abortion is addressed in NRS 442.250, *et seq.*, and NRS 689A.042; (6) Vasectomies are addressed in
6 NRS 442.725; and (7) Infertility Care is addressed in NRS 126.510. This list, which includes only a
7 partial list of applicable statutes, highlights the breadth of the Petition. The Legislature could not
8 reduce "reproductive health" into a single statute, let alone a single statutory chapter, and therefore had
9 to compartmentalize this broad swath of conduct into multiple statutes contained in various parts of the
10 Nevada Revised Statutes. The Petition addresses all of this conduct in several paragraphs without an
11 articulable framework.

12 13. Further, after reviewing the pleadings on file, this Court did not find arguments to show
13 how the proposed "framework" ties into subsections 2-5 of the Petition.

14 14. In sum, this Court concludes that the Petition constitutes logrolling and does not
15 encompass a single subject. Accordingly, the Petition violates of NRS 295.009(1)(a).

16 Description of Effect

17 15. NRS 295.009(1)(b) provides that the initiative petition must set forth in no more than
18 200 words "a description of effect of the initiative." "The description of effect facilitates the
19 constitutional right to meaningfully engage in the initiative process by helping to prevent voter
20 confusion and promote informed decisions." *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 316. "A
21 description of effect 'must be a straightforward, succinct, and nonargumentative summary of what the
22 initiative is designed to achieve and how it intends to reach those goals.'" *Id.* (quoting *Educ. Initiative*
23 *PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). Also, a description of
24 effect cannot be "deceptive or misleading." *Id.* at 42, 293 P.3d at 879 (internal quotation marks
25 omitted). The Nevada Supreme Court has held that a description of effect is misleading if it "omits the

1 need for or nature of the revenue source to fund" the proposal in the Petition. *See Educ. Freedom PAC*
2 *v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 304 (2022).

3 16. The Petition's description of effect is misleading because it fails to mention that the law
4 will bar the State from prosecuting, fining, or regulating any miscarriage or stillbirth. Instead, the
5 description of effect vaguely states, "the State may not penalize, prosecute, or take adverse action
6 against any individual based on the outcome of the pregnancy of the individual." This is misleading
7 because it does not delineate the fact that the Petition will prevent the State from investigating and/or
8 taking action against any miscarriage or stillborn birth.

9 17. The description of effect is also misleading because it fails to mention that a "provider of
10 health care," which is an undefined term, has the power to order a late-term abortion if it is "medically
11 indicated" to protect the physical or mental health of the pregnant individual. For this reason, voters
12 are misled into believing that a physician would be empowered to determine that the mother's physical
13 or mental well-being requires an abortion. In reality, any "provider of health care," which is broadly
14 defined under existing Nevada law, *see* NRS 41A.017, would seemingly be able to approve a late-term
15 abortion. Likewise, the term "medically indicated" is undefined, which misleads voters into believing
16 that there is a specific set of criteria to determine when the mother's physical or mental health requires
17 an abortion.

18 18. The description of effect also is misleading because it fails to explain that it affects
19 "equality" and "equal protection." Subsection 6 of the Petition provides that "[n]othing herein narrows
20 or limits the rights to equality and equal protection." While the right to "equal protection" is well
21 established in American jurisprudence, it is unclear what the term "equality" means legally. In any
22 event, the description of effect wholly omits that it will impact the constitutional right of equal
23 protection or a newly identified right to equality.

24 19. Additionally, the enactment of the Petition would fundamentally alter the statutes listed
25 in Paragraph 12 of this Court's Conclusions of Law. The description of effect does not mention this.

20. The Intervenor-Defendant argues that the description of effect is not misleading because it sets forth its terms "with admirable clarity." Yet, the Intervenor-Defendant does not identify how the description of effect adequately addresses the foregoing concerns. Given the breadth of this petition, it is unclear how the Intervenor-Defendants could describe it accurately in 200-words, which further supports this Court's conclusion that the Petition fails to embrace a single subject.

21. In sum, this Court concludes that the description of effect is misleading and violates NRS 295.009(1)(b).

Unfunded Mandate

22. Article 19, Section 6 of the Nevada Constitution provides that the initiative power “does not permit the proposal of any statute or statutory amendment which makes an appropriation or otherwise requires the expenditure of money, unless such . . . amendment also imposes a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides for raising the necessary revenue.” Thus, “all initiative petitions must comply with Article 19, Section 6’s requirement that initiatives requiring expenditures or appropriations contain a funding provision.” *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 303 (2022). “[A]n initiative that makes an appropriation or requires an expenditure of money is void if it does not also provide for the necessary revenue.” *Reid*, 138 Nev., Adv. Op. 47, 512 P.3d at 303.

23. Subsection 4 of the Petition would prohibit the State from penalizing, prosecuting, or otherwise taking adverse action against "a provider of health care" for acting within the standard of care for performing an abortion or providing abortion care. Only doctors and other providers of health care would be in a position to testify as to the applicable standard of care. See NRS 41A.071(2) (contemplating that only an *expert* who practices in a medical field can render an opinion as to the standard of care). Thus, funding would need to be appropriated to create a Panel or Board—most likely under the supervision of the Nevada Board of Medical Examiners—to evaluate whether a provider of health care performed an abortion within the standard of care. Yet, the Petition does not set forth a

1 revenue source to create this board or panel. See *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47,
2 512 P.3d 296, 303 (2022). If no board is created, as Plaintiff suggests, then the plain meaning of the
3 Petition would be rendered meaningless because there would be no legal entity to ascertain whether a
4 provider of healthcare acted within the standard of care. This is an unfunded mandate.

5 24. This Court concludes that the Petition contains an unfunded mandate in violation of
6 Article 19, Section 6 of the Nevada Constitution.

7 25. Any conclusion of law that is more properly characterized as a finding of fact shall be
8 duly incorporated into this Court's Findings of Facts.

9 **PROPOSED ORDER**

10 THE COURT HEREBY ORDERS, ADJUDGES, and DECREES that Initiative Petition C-01-
11 2023 does not embrace a single subject, contains a misleading description of effect, and contains an
12 unfunded mandate. Therefore, it violates NRS 295.009 and Article 19, Section 6, of the Nevada
13 Constitution.

14 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that the Nevada Secretary
15 of State shall be enjoined from placing Initiative Petition C-01-2023 on the ballot.

16 IT IS SO ORDERED.

17 Dated this 21st day of November 2023.

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20 Respectfully Submitted by:

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

DONNA WASHINGTON, an individual;
 COALITION FOR PARENTS AND
 CHILDREN, a Political Action
 Committee,

Plaintiffs,

vs.

FRANCISCO V. AGUILAR, in his official
 capacity as NEVADA SECRETARY OF
 STATE;

Defendant,

and

NEVADANS FOR REPRODUCTIVE
 FREEDOM, a Political Action
 Committee,

Intervenor-Defendant.

Case No.: 23 OC 00115 1B

Dept. No.: I

CASE APPEAL STATEMENT

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 WILLIAM
 BY C. COOPER

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CASE APPEAL STATEMENT

Intervenor-Defendant Nevadans for Reproductive Freedom, by and through their undersigned counsel, hereby appeal to the Supreme Court of the State of Nevada the district court's Findings of Facts, Conclusions of Law and Order Granting Declaratory and Injunctive Relief entered on November 21, 2023.

1. Appellants filing this case appeal statement: Nevadans for Reproductive Freedom
2. Judge issuing decision, judgment, or order appealed from: Hon. James T. Russell
3. Appellant: Nevadans for Reproductive Freedom

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 24th day of November, 2023, I served the foregoing
3 **CASE APPEAL STATEMENT** by depositing a true copy of the same via electronic
4 mail, per the October 17, 2023 Stipulation, as follows:

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