

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.

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Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 87681

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

DOCKETING STATEMENT OF CIVIL APPEALS

- Judicial District: First Judicial District Court Department: 1
County: Carson City Judge: James T. Russell
District Ct. Case No.: 23 OC 00115 1B

2. Attorney(s) filing this docketing statement:

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Client: Appellant Nevadans for Reproductive Freedom

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Client: Respondents Donna Washington and Coalition for Parents and
Children

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Client: Respondent Francisco V. Aguilar

4. Nature of Disposition Below (check all that apply):

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

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

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

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

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which

are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

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

On September 14, 2023, Lindsey Harmon, on behalf of Appellant Nevadans for Reproductive Freedom, filed Initiative Petition C-01-2023 (the “Petition”). The Petition seeks to add a new section to Article I of the Nevada Constitution establishing a fundamental right to reproductive freedom.

On October 5, 2023, Respondents Donna Washington and Coalition for Parents and Children initiated the underlying action by filing a complaint pursuant to N.R.S. 295.061.

On November 21, 2023, the district court issued its order granting declaratory and injunctive relief, declaring that the Petition was invalid under Nevada law and enjoining the Nevada Secretary of State from placing the Petition on the 2024 general-election ballot. Appellant timely filed an appeal on November 30.

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

Whether the district court properly concluded that the Petition violates the single-subject requirement.

Whether the district court properly concluded that the Petition’s description of effect is misleading.

Whether the district court properly concluded that the Petition contains an unfunded mandate.

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

N/A

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

- ☒ N/A
☐ Yes
☐ No

If not, explain:

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

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
☐ An issue arising under the United States and/or Nevada Constitutions
☐ A substantial issue of first impression
☒ An issue of public policy
☒ An issue where *en banc* consideration is necessary to maintain uniformity of this court's decisions
☒ A ballot question

If so, explain: This is an initiative-petition challenge made pursuant to N.R.S. 295.061.

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

The matter is presumptively retained by the Supreme Court pursuant to N.R.A.P. 17(a)(2) because it involves a ballot or election question.

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

N/A

Was it a bench or jury trial? N/A

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

N/A

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from:**
November 21, 2023

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

17. **Date written notice of entry of judgment or order was served:**
November 27, 2023

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

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

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

- ☐ NRCP 50(b) Date of filing _____
☐ NRCP 52(b) Date of filing _____
☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

- ☐ Delivery
☐ Mail

19. Date notice of appeal filed: November 27, 2023

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

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

N.R.A.P. 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

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

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

A final judgment in an action or proceeding commenced in the court in which the judgment is rendered (Respondents Donna Washington and Coalition for Parents and Children's challenge to a filed ballot initiative).

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

(a) Parties: Nevadans for Reproductive Freedom, Donna Washington, Coalition for Parents and Children, and Francisco V. Aguilar

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

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

N/A

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Nevadans for Reproductive Freedom
Name of appellants

Bradley S. Schrager, Esq.
Name of counsel of record

December 8, 2023
Date

/s/ Bradley S. Schrager
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

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

By: /s/ Dannielle Fresquez
Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP

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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.: 230000115 9
~~122-000122B~~

Dept. No. 1

**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 Complaint for Declaratory
22 and Injunctive Relief against Defendant FRANCISCO V. AGUILAR ("Defendant"), in his official
23 capacity as the Nevada Secretary of State, to challenge Initiative Petition C-01-2023. This complaint is
24 brought pursuant to NRS 295.061, NRS 30.030, and NRS 33.010.

JURISDICTION

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

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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.

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.

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

HUTCHISON & STEFFEN, PLLC
5371 Kietzke Lane
Reno, Nevada 89511
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.	20
2	DECLARATION OF JASON D. GUINASSO, ESQ.	2

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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 [~~emitted 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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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Use Only

1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
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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 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 
14 Jason D. Guinasso, Esq. (8478)
15 HUTCHISON & STEFFEN, PLLC
16 5371 Kietzke Lane
17 Reno, Nevada 89511
18 Telephone: (775) 853-8746
19 jguinasso@hutchlegal.com

20 *Attorneys for Plaintiffs*

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,

19 and

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

22 Intervenor-Defendant.

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

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**

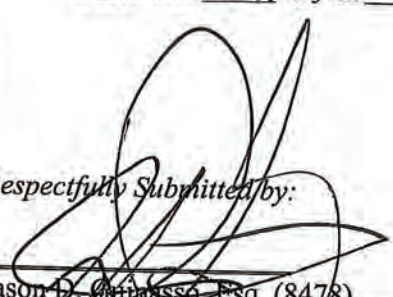
10 THE COURT HEREBY ORDERS, ADJUDGES, and DECREES that Initiative Petition C-01-
11 2023 does not embrace a single subject, contains a misleading description of effect, and contains an
12 unfunded mandate. Therefore, it violates NRS 295.009 and Article 19, Section 6, of the Nevada
13 Constitution.

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 
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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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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:

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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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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**

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
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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.

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19
20 Respectfully Submitted by:

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