

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Dec 29 2023 04:33 PM
Elizabeth A. Brown

NEVADANS FOR
REPRODUCTIVE FREEDOM, A
POLITICAL ACTION
COMMITTEE,

Appellant,

v.

DONNA WASHINGTON, AN
INDIVIDUAL; COALITION FOR
PARENTS AND CHILDREN, A
POLITICAL ACTION
COMMITTEE, AND FRANCISCO
V. AGUILAR, IN HIS OFFICIAL
CAPACITY AS THE NEVADA
SECRETARY OF STATE,

Respondents.

Docket No. 87681
Clerk of Supreme Court
First Judicial District Court
Case No. 23-0C-00115-B

ANSWERING BRIEF

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

*Counsel for Respondents Donna Washington
and Coalition for Parents and Children*

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel certifies that the following are persons and entities described in Nevada Rule of Appellate Procedure (NRAP) 26.1(a) that must be disclosed: Respondent Donna Washington is an individual. Respondent Coalition for Parents and Children is a Nevada Political Action Committee. Respondents are not corporate entities and do not issue stock. Respondents were represented in the district court and on appeal by the same legal counsel:

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

These representations are made so that the Justices of this Court may evaluate possible disqualifications or recusals.

Dated: December 29, 2023.

HUTCHISON & STEFFEN, PLLC



Jason D. Guinasso, Esq. (8478)

*Counsel for Respondents
Donna Washington and
Coalition for Parents and Children*

TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. FACTS AND PROCEDURAL HISTORY	3
A. <u>Facts</u>	3
B. <u>Procedural History</u>	6
III. STANDARD OF REVIEW	13
IV. ARGUMENT	13
A. <u>The Petition Does Not Embrace a Single Subject</u>	14
B. <u>The Description of Effect is Misleading</u>	30
C. <u>The Petition Contains an Unfunded Mandate</u>	36
D. <u>Appellant’s New Petition Should be Judicially Noticed</u>	40
V. CONCLUSION	42
CERTIFICATE OF COMPLIANCE	vi
CERTIFICATE OF SERVICE	viii

TABLE OF AUTHORITIES

Nevada Constitution

Nev. Const. art. 4, § 17	22
Nev. Const. art. 19, § 2	1
Nev. Const. art. 19, § 6	2, 35, 36

Nevada Supreme Court Opinions

<i>Educ. Freedom PAC v. Reid</i> , 138 Nev., Adv. Op. 47, 512 P.3d 296 (2022)	31, 37, 39
<i>Educ. Initiative PAC v. Comm. to Protect Nev. Jobs</i> , 129 Nev. 35, 293 P.3d 874 (2013)	13, 31, 35
<i>Helton v. Nevada Voters First PAC</i> , 138 Nev., Adv. Op. 45, 512 P.3d 309 (2022)	<i>passim</i>
<i>Herbst Gaming, Inc. v. Heller</i> , 122 Nev. 877, 141 P.3d 1224 (2006)	35, 37, 38, 39
<i>Mack v. Est. of Mack</i> , 125 Nev. 80, 206 P.3d 98 (2009)	40, 41
<i>Nevadans for the Prot. of Prop. Rights, Inc. v. Heller</i> , 122 Nev. 894, 141 P.3d 1235 (2006)	15, 24
<i>Old Aztec Mine, Inc. v. Brown</i> , 97 Nev. 49, 623 P.2d 981 (1981)	27, 32

Nevada Revised Statutes

NRS 41A.010	10
NRS 41A.017	33

NRS 47.13041

NRS 47.15041

NRS 126.51023

NRS 295.009*passim*

NRS 422.2717723

NRS 422.30823

NRS 442.08023

NRS 442.25023, 39

NRS 449.188523

NRS 449.72523

NRS 614.438323

NRS 689A.041923

NRS 689B.0378523

NRS 689C.19423

Nevada Administrative Code

NAC 630.04039

NAC 630.38039

Nevada Rules of Appellate Procedure

NRAP 26.1i

NRAP 28(c)vi

NRAP 32(a)vi

Nevada District Court Cases

Silver State Hope Fund v. Nev. Dep’t of Health and Human Servs.,
Eighth Judicial District Court Docket No. A-23-876702-W
(Filed Aug. 28, 2023)39

United States Supreme Court Opinions

Dobbs v. Jackson Women’s Health Organization,
142 S. Ct. 2228 (2022)1

Griswold v. Connecticut,
381 U.S. 479 (1965)21

United States Courts of Appeals Cases

Campbell v. Buckley,
203 F.3d 738, 746 (10th Cir. 2000)25

Other State Constitutions

Ohio Const. art. 1, § 2228

Other State Supreme Court Decisions

State ex rel. DeBlase v. Ohio Ballot Bd.,
___ N.E.3d ___, 2023 WL 3749300, at *4 (Ohio, June 1, 2023)28, 29

Other State Statutes

Ohio Rev. Code. Ann. § 3505.062(A)28

I. INTRODUCTION

Abortion is the most contentious and polarizing issue in our Nation. It is self-evident that the discord and dissension surrounding abortion was exacerbated by the United States Supreme Court's landmark decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). Thus, even if a legal issue is *only* tangentially related to abortion, advocates for and against abortions will vehemently present their viewpoints on the issue, often without humble reflective deliberation. This case received strong media scrutiny due to its tangential relationship to abortion, but the legal issues in this case do *not* involve abortion and abortion care alone.

Instead, this case is about guarding the right of the People to have honest and open discussions about the wisdom of the policies contained in an Initiative Petition before it becomes the law. It is axiomatic that the People have the right to decide whether *their Constitution* should be amended. See Nev. Const. art. 19, § 2. Indeed, this Court's precedents emphatically defend the proposition that the People are entitled to have meaningful discourse and dialogue on the propriety of policies contained in a proposed amendment before it becomes *constitutional law*. The

meaningful discourse and dialogue are crucial for the democratic process.

The Legislature has duly codified the right of the People to have meaningful discourse and dialogue on the policy ramifications of an Initiative Petition. *See* NRS 295.009. Specifically, these statutes require petition drafters to embrace a single subject and set forth a description of effect that accurately reflects the proposed law. *See id.* Both requirements prevent voter confusion and promote informed decisions. As such, these requirements fortify the principle that the People should have the right to meaningfully discuss a petition before it becomes law.

Respondents Donna Washington and Coalition for Parents and Children (collectively the “Respondents”) respectfully submit to the Court that Initiative Petition C-01-2023 (the “Petition”) violates the foregoing principles by embracing an abyss of subject matter and proffering a misleading description of effect. Further, the Petition contained unfunded mandates without providing a funding mechanism in violation of the Nev. Const. art 19, § 6. As such, the Petition—if it had been presented to the voters—would have infringed on the right of the People to meaningfully engage with a proposed constitutional amendment.

Thus, the district court correctly ruled that the Petition violates

Nevada law. Respondents now request that this Court AFFIRM the district court's Order Granting Declaratory and Injunctive Relief.

II. FACTS AND PROCEDURAL HISTORY

A. Facts

On September 14, 2023, Lindsey Harmon, on behalf of Appellant Nevadans for Reproductive Freedom (“Appellant”) filed Nevada Constitutional Initiative Petition C-01-2023 (the “Petition”). 1 JA 14-22. The Petition sought to amend Article 1 of the Nevada Constitution by adding Section 25. *Id.* at 15. This proposed Constitutional Amendment purported to give every individual something proponents called, “a fundamental right to reproductive freedom.” *Id.* This right was defined so broadly as to embrace an abyss of unique subjects.

Indeed, the first subsection of the Petition contemplated that the new right expressly applied to “prenatal care, childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a miscarriage, and infertility care.” 1 JA 15. More vaguely, this new right included “all matters relating to pregnancy.” *Id.* Facially, this subsection applied to a litany of broad subjects.

The second subsection of the Petition would have allowed the State

to “regulate the provision of abortion care after fetal viability,” but prohibited the State from regulating 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.” 1 JA 15. Except for abortions, it remains unclear how the second subsection related to the litany of other subjects listed in the first subsection of the Petition. In other words, it is unclear how the regulation of abortion care after fetal viability related to vasectomies, tubal ligation, infertility care, postpartum care, and prenatal care.

The third subsection of the Petition would have prohibited the State from penalizing or prosecuting any person based on “perceived or alleged outcome of the pregnancy of the individual, including, without limitation, a miscarriage, stillbirth or abortion.” 1 JA 15. Again—except for abortion—it remains unclear how the third subsection related to the litany of other subjects listed in the first subsection of the Petition.

The fourth subsection of the Petition would have prohibited 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. 1 JA 15. The

Petition did not define the term “provider of health care.” *See id.* Again—except for abortion—it remains unclear how the fourth subsection related to the litany of other subjects listed in the first subsection of the Petition.

The fifth subsection of the Petition subsection of the Amendment would have prohibited the State from penalizing or prosecuting an individual for aiding or assisting another individual in exercising the so called “right to reproductive freedom”. *See* 1 JA 15.

The sixth subsection of the Petition would have provided that nothing in new law would “narrow[] or limit[] the rights to equality and equal protection.” 1 JA 15. It remains unclear how the Equal Protection Clause applies to this litigation—or how equal protection and equality differ under the law—because the Petition did not define those terms. *Id.*

The Petition included a description of effect with 183 words that that stated:

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.

1 JA 17 (emphases added). As noted, Lindsey Harmon filed this petition with the Nevada Secretary of State's Office on September 14, 2023, and the legal challenge resulting in Petitioner's initial appeal followed.

B. Procedural History

On October 5, 2023, Respondents Donna Washington and Coalition for Parents and Children ("Respondents") filed a Complaint for Declaratory and Injunctive Relief (the "Complaint") against the Nevada Secretary of State in the First Judicial District Court to challenge the legality of the Petition. 1 JA 1-25. Respondents alleged, *inter alia*, that

the Petition embraced more than a single subject, contained a misleading description of effect, and violated the Nevada Constitution's preclusion against unfunded mandates. *Id.* at 4-10. Respondents asked the Court to declare that the Petition was invalid under NRS 295.009 and enjoin the Secretary of State from placing the petition on the ballot. *Id.* at 10.

On October 17, 2023, the Parties filed a Stipulation that allowed Appellant to intervene in the litigation to defend the Petition. *See* 1 JA 28-32. The Parties agreed to file memoranda of points and authorities and thereafter set a hearing on November 21, 2023. *See id.* at 29.

On October 20, 2023, Respondents filed a Memorandum of Points and Authorities in Support of the Complaint. *See* 1 JA 34-45. Respondents first argued that the Petition violated the single-subject rule because it embraced a litany of subjects that amounted to logrolling, *i.e.*, it addressed prenatal care, childbirth, postpartum care, birth control, vasectomies, tubal ligation, abortion, abortion care, management of a miscarriage, and infertility care. *Id.* at 39-41. Second, Respondents argued that the Petition contained a misleading description of effect because it failed to adequately explain its impact to voters. *Id.* at 42-43. Third, Respondents argued that the Petition contained unfunded

mandates. Chiefly, the Petition created an enforcement mechanism whereby the State could only regulate abortions if a “provider of health care” did not meet the standard of care, thereby necessitating expenditures to create a body to enforce this law. *See id.* at 44-45. Thus, Respondents argued that the Petition violates Nevada law. *Id.* at 45.

On November 13, 2023, Appellant filed a Memorandum of Points and Authorities in Opposition to the Complaint (the “Opposition”). 1 JA 65-74. Appellant challenged the three arguments raised by Respondents. First, Appellant contended that the Petition contemplated a single subject in compliance with NRS 295.009(1)(a) because it embraced a single “framework,” *i.e.*, reproductive care. 1 JA 68-69. The alleged framework of the Petition was “ensuring freedom of care, access to care, and decision-making among individuals and health care providers in the realm of reproduction.” *Id.* at 69. Second, Appellant argued that the description of effect contained “admirable clarity.” *Id.* at 71. Rather than explaining this clarity, Appellant accused Respondents of a “political campaign.” *Id.* at 70-71. Finally, Appellant argued that the Petition did not contain an unfunded mandate because it did not directly call for the creation of a “new task force or law enforcement agency.” *Id.* at 72.

Respondents' Reply first argued that the subsection one of the Petition applies to the *mechanics* of reproductive care, rather than a central *framework*, such that it failed to embrace a single subject. 1 JA 78-79. Next, Respondents argued that, rather than defending the legality of the description of effect, Appellant accused Respondents of engaging in a political campaign. *Id.* at 79. Finally, Respondents argued that the Petition clearly contemplated that the State would need to employ an expert to opine to the standard of care for abortion-care regulation, which therefore created an unfunded mandate. *See id.* at 80-81.

Before the hearing, Respondents submitted proposed Findings of Fact and Conclusions of Law. *See* 1 JA 83-98. The hearing was held on November 21, 2023. *Id.* at 103-137.

At the hearing, Respondents first addressed the single-subject requirement. Respondents argued that the Petition “addresses an abyss of far-reaching conduct and a multitude of subjects.” 1 JA 106. Respondents made clear that the Petition failed to address a single framework, such as abortion care. *See id.* at 106-12. Instead, the Petition addressed the *mechanics* of reproductive care, *e.g.*, prenatal care, childbirth, postpartum care, birth control, vasectomies, tubal ligation,

abortion, abortion care, management of a miscarriage, and infertility care. *See id.* To support this point, Respondents argued that the Legislature has enacted multiple statutes—in multiple chapters of the Nevada Revised Statutes—to address these *mechanics*. *See* 1 JA 111-12, 114. As such, Respondents argued that the Petition lacked an ascertainable framework to embrace a single subject. *Id.* at 111-114.

Next, Respondents argued that the description of effect was grievously misleading because it fails to mention that the Petition would bar the State from prosecuting, fining, or regulating any miscarriage. 1 JA 115. Respondents pointed out that a domestic or sexual abuser could use this law as a safe harbor from prosecution if criminal acts caused a miscarriage. 1 JA 115. Respondents added that the description of effect failed to define the term “provider of health care,” and NRS 41A.010 defines that term to include nurses, dentists, and physical therapists. *Id.* at 116. Finally, the description of effect failed to inform voters about the costs of this new right and the related funding source. *Id.* at 116-17.

Finally, Respondents argued that the Petition contained an unfunded mandate. *Id.* at 117-118. Respondents specifically argued that the Petition required the State to fund an apparatus to determine

whether a doctor breached the standard of care while performing an abortion. *Id.* Further, Respondents noted that the State would likely be obligated to pay for abortion care if passed by the voters. *Id.*

Appellant argued that it's "increasingly rare for anyone to find" a violation of the single-subject rule. 1 JA 119. Appellant argued that the framework of this Petition was to "establish rights regarding productive care services and to protect those who seek or provide those care services." *Id.* at 121. Yet, Appellant never explained how tubal ligations, vasectomies, postpartum care, or infertility care relate to abortions. *Id.* at 121-126. Instead, Appellant explained that the separate subjects are "merely aspects, all of them working in the same direction toward establishing these rights of care." *Id.* at 125.

For the description of effect, Appellant argued that "it would be hard to improve on." 1 JA 127. Appellant conceded that the Petition "was meant to speak to the current wave of legislation in some states criminalizing things like a miscarriage." *Id.* at 129. Yet, the description of effect contained no language informing the voters of the same. *See* 1 JA 17. Finally, Appellant argued that dentists would not be able to perform abortions, even though Nevada law defines "a provider of health

care” to include a dentist. *See* 1 JA 129. For the unfunded mandate, Appellant repeated its argument that the Petition does not require the appointment of law enforcement. *Id.* at 130.

Following the parties’ arguments, the district court made clear that its ruling was “not about protecting a woman’s rights . . . but whether or not the Nevada rules as to the initiative petition have been violated.” 1 JA 134. The district court ruled that the Petition violated the single-subject rule because it contained “too many subjects, not all of which are functionally related to each other.” *Id.* at 135. The district court noted that each subsection “appears to state almost a different subject.” *Id.* The district court reasoned that the Petition attempted to “protect” the right to become pregnant, the right to prevent pregnancy, the right to prevent pregnancy, the rights of a provider, and the right to women’s health when pregnancy complications occur. *Id.* As such, the petition failed to embrace a single subjection. For that reason, the district court concluded that the Petition contained a misleading description of effect. *Id.* Finally, the district court agreed that the Petition contained an unfunded mandate in violation of the Nevada Constitution. *Id.* at 136.

The district court signed Respondents’ proposed Findings of Facts

and Conclusions of Law. *See* JA 138-148. This Court should AFFIRM the well-reasoned ruling of the district court and uphold its order granting declaratory and injunctive relief.

III. STANDARD OF REVIEW

The district court is permitted to “consider challenges to an initiative petition preelection in limited circumstances, such as when those challenges are based on the petition’s compliance with the single-subject requirement, the statutory requirement for the description of effect, or the preclusion against unfunded mandates.” *Helton v. Nevada Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022). This court reviews *de novo* a district court’s order granting Declaratory and Injunctive Relief in a preelection challenge. *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 41, 293 P.3d 874, 878 (2013).

This Court should AFFIRM the district court’s decision to grant Declaratory and Injunctive Relief. The district court *correctly* declared that the Petition violates Nevada law and enjoined the Secretary of State from placing it on the ballot. Respectfully, there was no error.

IV. ARGUMENT

This argument addresses each of the three categories of preelection

challenges to show that the district court did not err. The Petition contained an abyss of subjects that cannot be reduced to a single framework. Also, the description of effect was misleading. Finally, the Petition contained an unfunded mandate. Under a straightforward application of the law, the district court properly declared that the Petition violated Nevada law and enjoined its placement on the ballot.

A. The Petition Does Not Embrace a Single Subject

Appellant's challenge to the single-subject rule has three components. First, Appellant argues that all provisions of the Petition are functionally related to its overarching purpose, *i.e.*, the preservation of reproductive freedom. AOB 21-31. In this analysis, Appellant again alleges that the Petition contained a singular framework. *See id.* at 29. Second, Appellant argues that the policy considerations of the single-subject rule refute the district court's ruling. *Id.* at 32-35. Finally, Appellant argues that the Petition embraced a single subject: safeguarding the right to reproductive freedom. *See id.* at 10. To support this argument, appellants cite a plethora of authorities from other jurisdictions. *See id.* at 10-20. Each of these arguments is addressed.

First, however, Respondents set forth the law governing the single-subject rule. NRS 295.009(1)(a) provides that an initiative petition *must* embrace *only* “one subject and matters necessarily connected therewith and pertaining thereto.” An initiative petition embraces one subject “if the parts of the proposed initiative or referendum are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative or referendum.” NRS 295.009(2).

“The single-subject requirement ‘facilitates the initiative process by preventing petition drafters from circulating confusing petitions that address multiple subjects.’” *Helton v. Nevada Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 314 (2022) (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006)). “[T]he single-subject requirement helps both in promoting informed decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive 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 in a petition” *Id.* at 315 (internal quotation marks omitted).

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

1. *The Petition Addresses Mechanics not Framework*

Appellant strenuously argues that the Petition contained a singular framework, *i.e.*, reproductive freedom. *See* AOB 20-31. Thus, Appellant contends that a singular framework touches all rights identified by the Petition, being that each subject in the Petition traced back to reproductive freedom. *See id.* Under the governing law, this is simply not the case.

The “framework” analysis was adopted by this Court in *Helton v. Nevada Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309, 314 (2022). In that case, the Nevada Voters First Pac submitted an Initiative Petition that amended the Nevada Constitution to allow open primary elections and ranked-choice general elections. *See id.*, 512 P.3d at 312. The *Helton* Appellant challenged this Initiative Petition on the ground that it violated the single-subject rule by providing two separate policy changes to Nevada’s election law and therefore constituted logrolling. *Id.*, 512 P.3d at 314. In other words, Appellant contended that the Initiative Petition lacked a singular subject. *Id.* This Court disagreed.

In ruling that the Initiative Petition did not violate the single-subject rule, this Court reasoned that it presented a “*framework* by which specified officeholders are presented to the voters and elected.” *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314. This Court contrasted this *framework* with “*mechanics* of how voters vote, which would include early voting, absentee ballots, machine voting, and paper ballots, among other things.” *Id.* (emphasis added).

Here, unlike the facts in *Helton*, this Petition fails to contain a single framework. Instead, this Petition addresses the *mechanics* of

reproduction, such as vasectomies, tubal ligation, prenatal care, postnatal care, and infertility care. See 1 JA 15. The lack of a framework is illustrated by the following table:

Comparison of <i>Helton</i> Petition and this Petition			
<i>Helton</i> Petition		This Petition	
<i>What it Did?</i>		<i>What it Did?</i>	
<ul style="list-style-type: none"> • Created open primaries. • Created ranked-choice general elections. 		<ul style="list-style-type: none"> • Subsection 1 created a fundamental right to reproductive freedom including abortion, abortion care, tubal ligation, vasectomies, prenatal care, postpartum care, infertility care, childbirth, and infertility care. • Subsections 2-4 created protections for abortion care. • Subsection 5 created a right for equality and equal protection. 	
<i>Mechanics</i>	<i>Framework</i>	<i>Mechanics</i>	<i>Framework</i>
<ul style="list-style-type: none"> • Early Voting • Absentee Ballots • Machine Voting • Paper ballots 	<p>A <i>process</i> by which specified officeholders are presented to the voters and elected.</p>	<ul style="list-style-type: none"> • Tubal Ligation • Vasectomies • Prenatal Care • Postpartum Care • Infertility Care • Childbirth 	<p>?</p>

Because each of these broad topics pertains to the mechanics of reproductive care, the Petition fails to set forth a single subject or framework. For instance, the *Helton* Initiative Petition created a framework of *how officeholders are elected*. Unlike the facts in *Helton*, it is wholly unclear how this Petition creates an ascertainable framework for reproductive care.

The lack of a singular framework becomes particularly obvious upon examination of the Petition's subsections. The first subsection—which created the *fundamental right* to reproductive care—addressed prenatal care, childbirth, postpartum care, birth control, vasectomies, tubal ligation, abortion, abortion care, management of a miscarriage, and infertility care. 1 JA 15. As will be shown, the litany of subjects listed in the first subsection of the Petition do not clearly tie into the remaining subsections of the petition (except for abortion). *See id.*

The second subsection of the Petition—by its plain language—applied exclusively to abortion. 1 JA 15. Indeed, this section expressly stated that “the State may regulate the provision of abortion care after fetal viability.” *Id.* Yet, this subsection of the Petition is entirely silent on prenatal care, miscarriage, infertility, vasectomies, tubal ligations,

childbirth, postpartum care, and birth control. *See id.* Thus, it is unclear *how* there is an ascertainable framework between the second subsection's regulation of abortion and the first subsection's creation of rights to a litany of other topics that do not address abortion.

Likewise, the third subsection of the Petition prohibited prosecution based on the "outcome of the pregnancy of the individual." 1 JA 15. The third subsection further provides that this protection would extend to "miscarriage, stillbirth, and abortion." *Id.* Again, this subsection is silent as to many of the topics listed in the first subsection of the petition, *e.g.*, birth control, vasectomies, tubal ligation, and infertility care. It is unclear how there is an ascertainable framework *between* the third subsection's prohibition of prosecution against stillbirths, abortions, and miscarriages, *and* the first subsection's creation of rights to miscarriages, tubal ligations, postpartum care, *etc.*

The fourth subsection of the Petition prohibited prosecution against "a provider of health care" for "performing an abortion, providing abortion care to, or providing reproductive care services." 1 JA 15. It is unclear how barring the prosecution of a physician for performing an

abortion relates to miscarriage, infertility care, or prenatal care, postpartum care, or birth control. Again, no framework exists.

The fifth subsection of the Petition prohibited the State from penalizing, prosecuting, or taking adverse action against any individual or entity for aiding or assisting another person in exercising the right to reproductive freedom. 1 JA 15. Pragmatically, it is unclear how this subsection relates to birth control, vasectomies, prenatal care, postpartum care, and infertility care. In other words, this subsection would *not* apply to birth control because there is still a federal constitutional right to birth control. *See Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965). Instead, the clear import of the fifth subsection is that it protects interstate transportation for abortions in Nevada. This may very well be a policy decision the voters adopt as law, but it does not relate to topics such as birth control, prenatal care, *etc.*

In sum, the five subsections of the Petition fail to create an ascertainable, good faith, and sensible framework that is faithful to the holding of *Helton*. Specifically, the second through fifth subsections fail to contain a logical nexus to birth control, tubal ligations, vasectomies,

postnatal care, prenatal care, and infertility care. As such, this Petition fails to contain a single subject and is legally invalid under NRS 295.009.

While Appellant argues that the entire Petition falls under the umbrella of “the proposed right to reproductive freedom,” *see* AOB 29, this is a disingenuous argument under *Helton*. For instance, this would be like lumping the *mechanics* of how voters vote—*e.g.*, early voting, absentee ballots, machine voting, and paper ballots, among other things—into a Petition and stating that the *framework* is the right to have elections. *See Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314. This Court set forth the notion that the mechanical aspects of a right fail to fall within a single framework. Here, the *mechanics* of reproductive freedom include topics such as vasectomies, tubal ligations, infertility care, postpartum care, birth control, and the other topics listed in subsection one of the Petition. This is not a framework.

This analysis is further supported by the fact that the Legislature was unable to reduce “reproductive freedom” to a single subject. As this Court is aware, the Legislature is obliged to enact legislation that “embrace[s] but one subject.” *See* Nev. Const. art. 4, § 17. Existing statutes address reproductive health and underscore the breadth of the

Petition's import. 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 recitation of applicable statutes, highlights the breadth of the Petition. In other words, if the Legislature could not reduce the abyss of matters that fall within the umbrella of "reproductive" health into a single subject, it is highly doubtful that the Petition does so. Rather, the Petition contains a litany of subjects that amounts to logrolling.

As noted, "logrolling occurs when two or more completely separate provisions are combined in a petition . . ." *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 315 (internal quotation marks omitted). This Petition clearly constitutes logrolling because there is simply no plausible and sufficiently articulable nexus between: infertility care and abortions, *or* postpartum care and abortions, *or* tubal ligations/vasectomies and

infertility care, *or* the prohibition of prosecutions of abortions and postpartum care, *etc.* One can clearly imagine the abundance of scenarios where the Petition's rights do not clearly relate to each other, except with a broad and highly general catchall term such as "reproductive freedom."

For these reasons, the topics in the first subsection of the Petition are not functionally related and/or germane to the remainder of the Petition. The district court correctly concluded that this Petition constitutes logrolling, fails to contain a single subject, and is violative of Nevada law. Thus, the district court correctly Declared that the Petition violates Nevada law and enjoined the Secretary of State from placing it on the ballot. Respectfully, this Court should AFFIRM.

2. Policy Considerations Support Affirmance

While Appellant contends that the district court's order violates the policy justifications of the single-subject rule, *see* AOB 32-35, Respondents respectfully but fundamentally disagree with this assertion.

The single-subject rule "facilitates the initiative process by preventing petition drafters from circulating confusing petitions that address multiple subjects." *Nevadans for the Prot. of Prop. Rts., Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). This "prevent[s]"

voter confusion and promote[s] informed decisions by narrowing the initiative to a single matter and providing information on that single matter to the voter.” *Id.* at 1240-41 (quoting *Campbell v. Buckley*, 203 F.3d 738, 746 (10th Cir. 2000)). The single-subject rule further “prevents petitioners from gaining passage of provisions that would not otherwise become law by attaching them to more popular proposals or concealing them in a long and complex initiative.” *Id.* (quoting *Campbell*, 203 F.3d at 746). In sum, the single-subject rule facilitates the democratic process.

Here, the Petition raises an *abyss* of pragmatic concerns by attempting to codify an *abyss* of topics. The Petition broadly creates a new fundamental right to vasectomies, tubal ligations, birth control, abortion, prenatal care, postpartum care, childbirth, infertility care, and management of a miscarriage. 1 JA 15. Yet, the Petition fails to explain how any right—other than abortion—will be implemented. In other words, there is no articulable method to confine, define, implement, or effectuate the rights of this proposed *constitutional* amendment, except for the right to abortion. Beyond creating an interpretive quagmire for this Court, it is unclear how the import of the Petition can be adequately explained to the voters. As previously discussed, the Legislature could

not confine these matters to a single subject. Yet, the Petition asks voters to create a fundamental right for all these topics without explaining what this right will do with respect to every topic other than abortion.

Resultingly, the voters are unlikely to understand—and make meaningful decisions—on whether they agree with the policies in the Petition, predominantly because the Petition does not define those policies for any topic other than abortion. As such, this Petition attempts to lump every conceivable topic relating to reproductive health into a single Petition. This is improper and violates the policies underlying the foregoing law. At bottom, this Petition is contrary to the democratic process because it simply fails to inform the voters of its import.

3. Foreign Authorities Were Not Cited Below

Appellant dedicates significant portions of its brief to citing laws from other jurisdictions to support the Petition. AOB 13-20. These authorities were not raised below in the briefing or at the hearing. *See* 1 JA 65-74 (containing Appellant's Memorandum of Points and Authorities); *id.* at 103-37 (containing the transcript of the hearing). Thus, neither Respondents nor the district court had the opportunity to address this caselaw below.

This Court should refuse to consider Appellant's citation to authorities from other jurisdictions because these points were not raised below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (stating that failure to raise a point in the district court deems it waived and prevents this court from considering it on appeal).

Here, Appellant has added a completely new analysis on appeal by citing to constitutional, statutory, and decisional authority of other states to support the Petition. *See* AOB 13-20. This is improper. These authorities should have been raised in the trial court so that Respondents had the opportunity to brief these contentions and discuss the same at oral argument. Likewise, the district court should have been allowed to rule on these authorities. This Court should deem this argument waived.

4. *Appellant's Analysis of Foreign Laws is Misguided*

Even if this Court considers the citation to authorities from other jurisdictions, it is unclear how these authorities apply directly to the instant analysis. Appellant merely cites a plethora of constitutional or statutory authority from Alaska, California, Colorado, Illinois, Kansas, New York, Michigan, Minnesota, Montana, New Jersey, and Ohio to support the proposition that similar laws *exist*. *See* AOB 13-20.

Respondents do not contest that this law *exists*. Respectfully, Appellant attempts to misguide this Court into believing that the *existence* of this law means that the district court erred in its legal analysis. Yet, Appellants have not explained how any of these foreign authorities tie into Nevada’s caselaw and statutory law for initiative petitions.

Specifically, notably absent from Appellant’s brief is any description of how most of these laws were *enacted*, any meaningful analysis of legal challenges to these laws based on the single-subject rule, a comparison between the single-subject rule in Nevada and the other jurisdictions, and *why* such authorities require reversal in this case. As such, Appellant’s presentation of these authorities is unpersuasive.

For instance, Appellant cites Article 1, Section 22 of the Ohio Constitution to support this Petition. AOB 14-15. This Ohio Initiative Petition gave a right to reproductive freedom for “contraception,” “fertility treatment,” “continuing one’s own pregnancy,” “miscarriage care,” and “abortion.” Ohio Const. art 1, § 22. The Initiative Petition was challenged on the ground that it “contained two proposed constitutional amendments” in violation of Ohio Statute. *State ex rel. DeBlase v. Ohio Ballot Bd.*, ___ N.E.3d ___, ___, 2023 WL 3749300, at *4 (Ohio, June 1,

2023) (citing Ohio Rev. Code. Ann. § 3505.062(A)). The Ohio Supreme Court noted that this statute simply required “the provisions of a proposed amendment be related to a single *general* purpose.” *Id.* at 5 (emphasis added). Thus, the Ohio Supreme Court concluded that the provisions of the amendment all related to the single general purpose of “reproductive decisions.” *See id.*

Unlike the legal analysis applied by the Ohio Supreme Court, Nevada law has more robust requirements for the single-subject rule. Indeed, Nevada does not have the simple “single general purpose” test. Instead, “[t]he court must first determine the initiative’s purpose or subject and then determine if each provision is functionally related and germane to each other and the initiative’s purpose or subject.” *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 314. Thus, the Ohio case is inapposite to this analysis because Nevada has a more stringent single-subject rule.

Appellant then cites California’s reproductive-freedom law but concedes that it was never challenged under that State’s single-subject rule. AOB 15. Thus, it is unclear how California’s law is helpful to the instant analysis of the single-subject rule.

In sum, Appellant provides a loquacious citation to authorities from other jurisdictions but fails to explain how these authorities help resolve the instant analysis. As Respondents have shown, Ohio law is simply different than Nevada law and therefore is unpersuasive to this analysis. Appellant has not explained how any other foreign caselaw applies.

B. The Description of Effect is Misleading

Appellant argues that the district court made three legal errors when it concluded that the description of effect was misleading. *See* AOB 37-42. First, Appellant argues that the district court erred by concluding that the description of effect omitted crucial details. *Id.* at 37-39. Second, Appellant argues that the district erred by applying a “hyper-technical, word-by-word statutory analysis” of the description of effect. *Id.* at 39-40. Third, Appellant contends that the district court erred by incorporating substantive legal arguments into its analysis of the description of effect’s language. *Id.* at 41-42. Each point is addressed.

NRS 295.009(a)(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.” *Protect Nev. Jobs*, 129 Nev. at 42, 293 P.3d at 879 (internal quotation marks omitted). This Court has held that a description of effect is misleading if it “omits the need for or nature of the revenue source to fund” the proposal in the Petition. *See Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 304 (2022).

1. *Arguments are Raised for the First Time on Appeal*

Respectfully, each of Appellant’s arguments to challenge the district court’s decision were not presented below. *Compare* AOB 37-42, *with* 1 JA 70-71. In the trial court briefing, Appellant provided a succinct and short analysis that said that the description of effect was set forth with “admirabl[e] clarity” and that Respondents simply “had a wish-list of political arguments.” *See* 1 JA 71. Respondent did not address each of Respondents’ points to argue that the description of effect was

misleading. *See id.* at 70-71. The district court specifically concluded that Appellant did “not identify how the description of effect adequately address[ed] the” concerns raised by Appellant. *See* 1 JA 147.

Thus, Appellant’s robust arguments on appeal are likely waived because they were not presented below such that the district court could meaningfully rule on each of these points. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that issues not presented to the trial court are waived). Thus, this Court should summarily reject any challenge to the description of effect on appeal. Nonetheless, Respondents answer these arguments below.

2. Appellants Remaining Arguments are Unpersuasive

First, Appellant argues that the district court erred by “fault[ing] the Petition’s description for failing to mention various details.” *See* AOB 37. More precisely, the district court’s order concluded that the description of effect was misleading for omitting “crucial” details. *See* 1 JA 146-47. The district court was correct, as now explained.

Most notably, the description of effect was grievously misleading because it did not explain to voters that: (1) “a provider of health care” has the power to order a late-term abortion if it is “medically indicated”;

and (2) NRS 41A.017 broadly defines “a provider of health care to include dentists, nurses, physical therapists, optometrists, *etc.* Compare 1 AA 15 (petition), *with id.* at 17 (description). The description of effect intentionally omitted its broad term “a provider of health care” and stated that “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.” See 1 AA 17 (emphasis added). Thus, the description of effect intentionally used the term “medically indicated” to suggest to voters that a Doctor of Medicine, *i.e.*, a physician, would be allowed to order late-term abortions. Yet, the Petition actually confers this power to *any provider of health care*, which includes non-physicians like dentists, nurses, and physical therapists. See NRS 41A.017. Thus, the description of effect is misleading.

The Petition also expressly provided that the State “shall not penalize, prosecute, or otherwise take adverse action against an individual based on . . . the alleged outcome of the pregnancy . . . including, without limitation, a miscarriage, stillbirth or abortion.” 1 JA 15. The description of effect omits the fact that the Petition prohibits the State from prosecuting any stillbirth or miscarriage. 1 JA 17. This

prevents the voters from being able to identify, understand, and discuss whether it is good policy to bar the State from prosecuting any miscarriage or stillbirth. For instance, a domestic abuser could cause a miscarriage and then use this provision as a safe harbor. The voters have a right to know about and discuss the foreseeable consequences of this proposed constitutional amendment.

The description of effect is also misleading because it failed to explain that the Petition prohibits the government from narrowing any right to “equality and equal protection.” *See* 1 JA 15. The description of effect omits the fact that it provides a constitutional right to equality and equal protection by prohibiting the government from limiting that right. *See id.* at 17. Thus, the Petition failed to put voters on notice that they would also be enacting a right to equality and equal protection. Thus, these massive rights were hidden from the voters.

In sum, the district court did not err by finding that the description of effect was misleading. It was clearly misleading.

Second, Appellant argues that the district court erred by “applying principles of statutory construction in analyzing the description” of effect. *See* AOB 39. This contention is belied by the record because the district

court did not apply any statutory canons or resolve any ambiguities in its analysis of the description of effect. *See* 1 JA 146-47. Instead, the district court simply reviewed the language of the petition as described in the four preceding paragraphs and determined that it was misleading. There was no “statutory construction.” *Id.* Instead, the district court reviewed the language of the description of effect and concluded that it was misleading. It was permitted to review the language in the description of effect and determine whether it was “deceptive or misleading.” *Protect Nev. Jobs*, 129 Nev. at 42, 293 P.3d at 879 (internal quotation marks omitted). Respectfully, this argument is meritless.

Third, Appellant seeks to misdirect this analysis by arguing that the district court considered legal challenges to the Petition in its order. *See* AOB 41-42. As an example, Appellant argues that the district court considered a legal challenge to the Petition based on equality and equal protection. *Id.* at 41. To support this argument, Appellant cites *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 889, 141 P.3d 1224, 1232 (2006), which explained that the legality of a Petition cannot be analyzed based on a “hypothetical set of facts.”

Appellant's argument is an inaccurate recitation of this case. Respondents argued that the description of effect was misleading because it failed to inform voters that the Petition prohibits the government from narrowing any right to "equality and equal protection." See 1 JA 15, 146. Respondents proffered no arguments—and the district court made no rulings—with respect to the legality of the Petition's equality and equal protection clause. See *id.* at 146. Respondents proffered no hypothetical facts. *Id.* As such, this argument is meritless.

In sum, the description of effect was grievously misleading. Appellant has failed to show that the district court erred by concluding that the description of effect failed to adequately apprise voters of the effect of the Petition. As such, the district court correctly invalidated the Petition on the ground that it contained a misleading description of effect.

C. The Petition Contains an Unfunded Mandate

Appellant argues that the district court erred by concluding that the Petition contained an unfunded mandate. AOB 42-45. Appellant argues that the Petition would not have required any funding because the mechanics of enforcement would have been left with government

officials. *See id.* at 43-44 (citing *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 891, 141 P.3d 1224, 1233 (2006)). Respectfully, this is incorrect.

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.” *Id.*, 512 P.3d at 303.

In *Reid*, this Court concluded that the petition required an appropriation because it “direct[ed] the Legislature to pass or amend laws to create a system for education freedom accounts to be used outside the public school system and to fund those accounts.” *Id.*

In *Herbst Gaming*, this Court held that there was no appropriation where a petition simply “expand[ed] the statutory list of public places in which smoking is unlawful.” 122 Nev. at 891, 141 P.3d 1224 at 1233. This Court reasoned that there was no appropriation because the petition did not “compel an appropriation or expenditure, but rather, leaves the mechanics of its enforcement with government officials.” *Id.*

Here, the fourth subsection of the Petition provided:

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 standard 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.

1 JA 15 (emphasis added).

The fourth subsection of the petition clearly requires an appropriation. It requires a government official to opine on the standard of care for performing an abortion, and to review whether “a provider of health care” met the standard of care when performing an abortion. It is axiomatic that only a *physician* would be able to opine to the standard of care for an abortion. *See, e.g.*, NRS 41A.071(2) (contemplating that only

a “medical expert” can opine to the standard of care); NRS 442.250(1) (stating that an abortion can only be performed by a physician). Thus, the pragmatic effect of the Petition is that it would require the State to fund a review board to analyze whether a physician performing an abortion met the standard of care. See NAC 630.040 (defining the standard of care for medical malpractice); NAC 630.380(1)(f) (stating that the Nevada Board of Medical Examiners has the power to discipline a physician for committing malpractice). This is an unfunded mandate.¹

Like the facts in *Reid*, the Petition would require the Legislature to fund a review system to ascertain whether abortions met the standard of care. 138 Nev., Adv. Op. 47, 512 P.3d at 303. Unlike the facts in *Herbst Gaming*, the Petition “compel an appropriation or expenditure” by

¹Moreover, it is readily foreseeable that litigants would use the Petition—if it became law—to argue that the State has an affirmative obligation to fund abortion services. This argument was raised by Respondents at oral argument. See 1 JA 117-118. Indeed, the Silver State Hope Fund has filed a writ of mandamus against the Nevada Department of Health and Human Services alleging that has an affirmative obligation under Nevada’s Equal Rights Amendment to fund abortion services. See *Silver State Hope Fund v. Nev. Dep’t of Health and Human Servs.*, Eighth Judicial District Court Docket No. A-23-876702-W (Filed Aug. 28, 2023). Thus, the enactment of the Petition would certainly lead to arguments that it creates a funding obligation for the State for reproductive services, which underscores the notion that the Petition calls for an unfunded mandate.

mandating that the State, when seeking to fine or prosecute an abortionist, would need to expend monies to review whether the abortion met the standard of care. 122 Nev. at 891, 141 P.3d 1224 at 1233. This requires the State to expend and/or appropriate monies to create a review board for abortions. As such, this constitutes an unfunded mandate.

In sum, the district court correctly found that the Petition contains an unfunded mandate and therefore violates the Nevada Constitution.

D. Appellant's New Petition Should be Judicially Noticed

Respondents respectfully ask this Court to take judicial notice of the new Initiative Petition that Appellant filed on December 6, 2023.² Appellant filed Initiative Petition C-05-2023 (the "New Petition"), which pertains *solely* to abortion. The New Petition omits any details about vasectomies, tubal ligation, birth control, prenatal care, postpartum care, childbirth, infertility care, and miscarriages.

This Court "may take judicial notice of facts generally known or capable of verification from a reliable source, whether we are requested to or not." *Mack v. Est. of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009)

² Notice of Intent to Circulate Statewide Initiative Petition, <https://www.nvsos.gov/sos/home/showpublisheddocument/12633/638375592027970000> (Accessed on Dec. 28, 2023).

(citing NRS 47.150(1)). Further, this Court may also “take judicial notice of facts that are ‘[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.’” *Id.* (quoting NRS 47.130(2)(b)).

Here, this Court should take judicial notice of the *fact* that the New Petition has been filed and omits all details about vasectomies, tubal ligation, birth control, prenatal care, postpartum care, childbirth, infertility care, and miscarriages. This fact can easily be verified by reviewing the Secretary of State’s website at the link Respondents provided. The existence of this fact is not subject to reasonable dispute.

If this Court takes judicial notice of the New Petition, the fact that it omits the offending subjects strongly supports the notion that Respondents correctly argued that the Petition violated the single-subject rule. *See infra*, at 14-28. In other words, Appellant redrafted the Petition to address a single subject, *i.e.*, abortion.

V. CONCLUSION

For the reasons stated herein, Respondents respectfully submit to the Court that it should AFFIRM the judgment of the district court.

Dated: December 29, 2023.

HUTCHISON & STEFFEN, PLLC



Jason D. Guinasso, Esq. (8478)

*Counsel for Respondents
Donna Washington and
Coalition for Parents and Children*

CERTIFICATE OF COMPLIANCE

I certify that this ANSWERING BRIEF complies with the formatting requirements of Nevada Rule of Appellate Procedure (“NRAP”) 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word, Century Schoolbook 14-point type. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) as it is proportionally spaced, has a typeface of 14-point type, and contains **8,905** words. I have read this brief, and to the best of my knowledge and belief, it is not frivolous or made for an improper purpose. This brief complies with the NRAP 28(c)(1), which requires every assertion in this brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions if the accompanying brief does not conform with the NRAP.

Dated: December 29, 2023.

HUTCHISON & STEFFEN, PLLC



Jason D. Guinasso, Esq. (8478)

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this completed ANSWERING BRIEF was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

Dated: December 29, 2023.



An Employee of Hutchison & Steffen