

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

REV. LEONARD JACKSON,
Appellant,

vs.

FAIR MAPS NEVADA PAC,
NEVADA SECRETARY OF STATE,
Respondents.

No. 80563

DOCKETING

CIVIL APPEALS

Electronically Filed
Feb 26 2020 05:29 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District First Department I
County Carson City Judge Hon. James Todd Russell
District Ct. Case No. 19 OC 00209 1B

2. Attorney filing this docketing statement:

Attorney Kevin Benson Telephone 775-884-0838
Firm Benson Law Nevada
Address 123 W. Nye Lane, Suite 487
Carson City, NV 89706

Client(s) Plaintiff-Appellant Rev. Leonard Jackson

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

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

Attorney Adam Hosmer-Henner Telephone 775-788-2000
Firm McDonald Carano LLP
Address 100 West Liberty Street, 10th Floor
Reno, NV 89501

Client(s) Fair Maps Nevada PAC

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

None.

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:

None.

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

Respondent filed a constitutional initiative petition that purports to create an "independent" redistricting commission. Plaintiff-Appellant Jackson filed a challenge pursuant to NRS 295.061 and 295.009 challenging the petition's description of effect as inaccurate and misleading on several grounds.

The district court held that the description of effect was invalid but failed to make any findings of fact. The district court also rewrote the description of effect for Fair Maps. The district court's description of effect is still inaccurate and misleading.

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

Does NRS 295.061, *Las Vegas Taxpayer Accountability v. City Council of Las Vegas*, 125 Nev. 165, 183-84, 208 P.3d 429, 441 (2009), and other Nevada case law require the district court to make specific findings of fact regarding the "true effect" of the petition?

Does the district court have jurisdiction to rewrite the petition's description of effect?

Is the description of effect, as rewritten by the district court, inaccurate and misleading where it states that the commission's new maps drawn in 2023 merely "could" replace the Legislature's 2021 maps, when in fact it is certain that they will?

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:

None known.

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 appeal involves a challenge to the description of effect of a constitutional initiative petition.

It involves an issue of public policy related to whether the district court has jurisdiction to rewrite the description of effect on behalf of the petition proponent.

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

This appeal is presumptively retained by the Supreme Court because it involves a ballot measure. NRAP 17(a)(2).

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

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 01/02/2020

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

17. Date written notice of entry of judgment or order was served 01/06/2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed 02/05/2020

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:

Respondent Fair Maps Nevada PAC filed a notice of cross-appeal on February 18, 2020.

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

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

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

(a)

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

The district court's January 2, 2020 order is a final order resolving all claims between all parties.

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

(a) Parties:

Plaintiff-Appellant: Rev. Leonard Jackson

Defendant / Respondent-Cross-Appellant: Fair Maps Nevada PAC

Defendant / Respondent: Nevada Secretary of State Barbara Cegavske

(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.

Plaintiff's claims: The description of effect is misleading because it misrepresents the proposed redistricting commission as "independent;" it misrepresents that the commission will create "fair and competitive" electoral districts; and it fails to inform voters of the practical effects of the petition, including that the commission will "redo" the maps drawn by the Legislature in 2021, and that it will require taxpayer funding. There were no counterclaims or cross-claims.

All claims were formally disposed of on January 2, 2020.

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)):

The order is a final judgment disposing of all claims, therefore it is independently appealable under NRAP 3A(b)(1).

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.

Rev. Leonard Jackson
Name of appellant

Kevin Benson
Name of counsel of record

02-26-2020
Date


Signature of counsel of record

Carson City, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 26th day of February, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or


☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

By electronically filing it with the Nevada Supreme Court's e-filing system, which will electronically serve the following:

Adam Hosmer-Henner, Esq.
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
ahosmerhenner@mcdonaldcarano.com

Greg Zunino, Esq.
100 N. Carson Street
Carson City, NV 89701
GZunino@ag.nv.gov

Dated this 26th day of February, 2020


Signature

1 KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
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5 *Attorneys for Plaintiff*

REC'D & FILED
2019 NOV 26 PM 3:43
AUDREY R. BLATT
CLERK
BY C. COOPER
DEPUTY

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

11 REV. LEONARD JACKSON,
12 Plaintiff,

13 v.

14 FAIR MAPS NEVADA PAC, and
15 BARBARA CEGAVSKE, in her official
16 capacity as Nevada Secretary of State,
17 Defendants.

Case No.: 190000209 13

Dept. No.: #

**COMPLAINT FOR
DECLARATORY RELIEF**

Priority Claimed: NRS 295.061(1)

**Arbitration Exemption:
Request for Declaratory and Injunctive
Relief.**

19 Plaintiff, Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of BENSON
20 LAW, LLC, seeks declaratory and injunctive relief against Defendants that the Redistricting
21 Commission Initiative Petition does not comply with the requirements of state law and therefore
22 cannot appear on the general election ballot for 2020. Plaintiff alleges and complains as follows:

23 **I. JURISDICTION**

24 1. This Court has jurisdiction pursuant to Nev. Const. Art. 6, § 6 and NRS 295.061(1).

25 **II. PARTIES**

26 2. Plaintiff Rev. Leonard Jackson is citizen of Nevada and a registered voter.

27 3. Defendant Fair Maps Nevada PAC is a proponent of a constitutional initiative petition
28 designated as #C-02-2019 by the Secretary of State. The initiative petition seeks to amend the

1 Nevada Constitution to require that redistricting be performed by a commission rather than by the
2 Legislature ("the Petition").

3 4. Defendant Barbara Cegavske is Nevada's duly elected Secretary of State. She is sued
4 in her official capacity only. The Secretary's duties include certifying the number of signatures on an
5 initiative petition and other processing necessary to place an initiative petition on the ballot.

6 **III. GENERAL ALLEGATIONS**

7 5. On November 4, 2019, Sondra Cosgrove, in connection with Defendant FAIR MAPS
8 NEVADA PAC, filed with the Secretary of State a Notice of Intent to Circulate Petition and a copy
9 of the Petition.

10 6. The Petition proposes to add a new Section 5A to Article 4, Section 5 of the Nevada
11 Constitution, which would be titled: "Apportionment; Creation of Independent Redistricting
12 Commission."

13 7. The Petition would create the "Independent Redistricting Commission"
14 ("Commission") within the legislative branch of state government. Starting in the year 2023, the
15 Commission would apportion the number of Senators and Assemblymen among the state legislative
16 districts and would apportion the number of representatives to the United States House of
17 Representatives among the congressional districts.

18 8. The Commission would consist of seven members. The Senate Majority Leader,
19 Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader each appoint one
20 commissioner. These four commissioners appoint three additional commissioners, each of whom has
21 not been registered or affiliated with either of the two largest political parties in the State within the
22 last four years, and is not registered or affiliated with the same political party as another
23 commissioner.

24 9. The commissioners cannot, within the four years preceding appointment and during
25 their term on the Commission, be a registered lobbyist, a candidate for partisan office, an elected
26 official to a partisan office, an officer or member of the governing body of a political party, a paid
27 consultant or employee of a partisan elected official, candidate, PAC, or caucus, an employee of the
28 Legislature or the State of Nevada, except the judicial branch, the armed forces, or a state institution

1 of higher education. Nor may a commissioner be related within the third degree of consanguinity or
2 affinity to any such individual.

3 10. All meetings of the Commission must be open to the public and the Commission shall
4 ensure that the public has the opportunity to view, present testimony, and participate in the hearings
5 before the Commission. All Commission materials shall be public records.

6 11. The Commission shall adopt a redistricting plan not later than July 1, 2023, and
7 thereafter not later than 180 from the release of the decennial census.

8 12. A final plan requires five affirmative votes, including votes from at least one
9 commissioner from each of the two largest political parties and one commissioner not registered or
10 affiliated with either of those parties.

11 13. The Commission must draw districts according to certain criteria, and must apply
12 those criteria in the order listed in the Petition. These criteria include ensuring that, on a statewide
13 basis, the districts "do not unduly advantage or disadvantage a political party." The last criteria is that
14 the Commission may consider the number of politically competitive districts.

15 14. The Description of Effect of the Petition states in full:

16 This measure will amend the Nevada Constitution to establish an Independent Redistricting
17 Commission to oversee the mapping of fair and competitive electoral districts for the
18 Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

19 The Commission will consist of seven Nevada voters, four who will be appointed by the
20 leadership of the Nevada Legislature, and three who are unaffiliated with the two largest
21 political parties who will be appointed by the other four commissioners. Commissioners
22 may not be partisan candidates, lobbyists, or certain relatives of such individuals. All
23 meetings of the Commission shall be open to the public who shall have opportunities to
24 participate in hearings before the Commission.

25 The Commission will ensure, to the extent possible, that the electoral districts comply with
26 the United States Constitution, have an approximately equal number of inhabitants, are
27 geographically compact and contiguous, provide equal opportunities for racial and
28 language minorities to participate in the political process, respect areas with recognized
similarities of interests, including racial, ethnic, economic, social, cultural, geographic, or
historic identities, do not unduly advantage or disadvantage a political party, and are
politically competitive.

This amendment will require redistricting by the Commission beginning in 2023 and
thereafter following each federal census.

1 **FIRST CAUSE OF ACTION**

2 **(Misleading Description of Effect: "Independent")**

3 15. The Petition's Description of Effect is materially misleading and fails to comply with
4 NRS 295.009(1)(b) because the Description of Effect describes the Commission as an "independent"
5 redistricting commission when in fact the Commission is not independent.

6 16. The Commission is not independent because a majority of commissioners are directly
7 appointed by the legislative leadership of the two major political parties. Those commissioners in turn
8 appoint the remaining three commissioners. Thus there is no mechanism to ensure that any of the
9 commissioners are in fact independent of the legislative leadership of the two major parties.

10 17. Redistricting is an expensive and difficult process that requires substantial technical
11 expertise, specialized software, and personnel with knowledge and experience in the field. Moreover,
12 the Commission will need administrative assistance to manage its materials and to schedule, notice,
13 and hold public meetings.

14 18. The Commission is part of the legislative branch, but the Petition does not provide for
15 any funding or funding mechanism for the Commission. It does not require the Legislature to fund
16 the Commission at all. Therefore the Commission is not independent of the Legislature because the
17 Legislature can control its funding.

18 19. The Petition does not prohibit the commissioners from being appointed to or
19 becoming a candidate for any partisan office or government employment immediately after
20 approving a redistricting plan.

21 20. The ordinary definition of "independent" is: "free from outside control; not subject to
22 another's authority." Oxford English Dictionary (<https://www.lexico.com/en/definition/independent>,
23 last visited: Nov. 12, 2019).

24 21. Because the Commission is not independent of the Legislature, voters will be
25 materially misled by the Description of Effect's statement that the Petition "will amend the Nevada
26 Constitution to establish an **Independent** Redistricting Commission..." (emphasis added).

27 22. The Petition's Description of Effect therefore violates NRS 295.009(1)(b) and cannot
28 appear on the 2020 general election ballot.

SECOND CAUSE OF ACTION

(Misleading Description of Effect: "Fair and competitive maps")

23. The Petition's Description of Effect is materially misleading because it claims that the Commission will oversee "the mapping of fair and competitive electoral districts," but the Petition in fact requires neither fairness nor competitiveness.

24. The criteria to be used in drawing maps adhere to the general requirements for redistricting that are required under federal law to satisfy the Voting Rights Act and the one-person, one-vote doctrine.

25. Beyond this, the Petition requires that the districts "do not unduly advantage or disadvantage a political party." The use of the word "unduly" indicates that the Petition is actually designed and intended to tolerate *un*fairness as between the political parties, but to what degree is unknown. The Petition sets forth no criteria for determining when a party is "unduly" advantaged or disadvantaged. There will obviously be disagreement on that question and the lack of any guidelines leaves the potential for every plan to be challenged through litigation.

26. Further, competitiveness is the very *last* of the criteria that the Commission is to consider when drawing maps, and it is expressly subordinate to all the other criteria. The Commission is only required to consider competitiveness "to the extent practicable." Thus the Petition does not in fact require that the Commission create, or even attempt to create, competitive districts.

27. Voters will be materially misled by the Description of Effect's assertion that the Commission will create "fair and competitive" maps, because the Petition does not require either.

28. The Petition's Description of Effect therefore violates NRS 295.009(1)(b) and the Petition cannot appear on the 2020 general election ballot.

THIRD CAUSE OF ACTION

(Misleading Description of Effect: Practical and Fiscal Impacts)

29. The Petition's Description of Effect is deceptive and misleading because it fails to inform voters of the practical ramifications of the Petition.

30. The Petition's Description of Effect recites the language of the Petition stating that the proposed Commission would draw new maps beginning in 2023, but it fails to inform voters of the

1 practical effects. It fails to inform voters that the Legislature will have just drawn maps in 2021,
2 which will be effective for only the 2022 election. It fails to inform voters that the Commission will
3 “undo” those maps and create new maps in 2023, thus potentially doubling the resources that would
4 otherwise be spent on redistricting following the 2020 census.

5 31. By failing to describe these material practical consequences, the Description of Effect
6 is deceptive. The Petition and therefore violates NRS 295.009(1)(b) and cannot appear on the 2020
7 general election ballot.

8 WHEREFORE, the Plaintiff Rev. Jackson respectfully requests that the Court enter an order:

- 9 1. Declaring that the Petition does not comply with NRS 295.009(1)(b) and is therefore
10 invalid;
11 2. Prohibiting the Secretary of State from placing the Petition on any ballot; and,
12 3. Granting any other relief the Court deems just.

13
14 Dated this 26th day of November, 2019.

15
16 BENSON LAW, LLC

17
18 By: 

19 KEVIN BENSON, ESQ.
20 Nevada State Bar No. 9970
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*Attorneys for Defendant
Fair Maps Nevada PAC*

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

* * *

REV. LEONARD JACKSON,

Plaintiff,

vs.

FAIR MAPS NEVADA PAC, and
BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on January 2, 2020, the above-entitled Court entered its
Order. A true and correct copy of that Order is attached hereto.

Dated: January 6, 2020

MCDONALD CARANO LLP

By: 

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Defendant Fair Maps PAC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on January 6, 2020, I served the foregoing on the parties in said case by placing a true copy thereof in the United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501 addressed as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

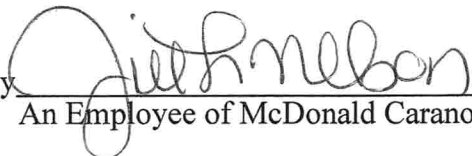
Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Barbara Cegasvke, Nevada Secretary of State
202 N. Carson Street
Carson City, NV 89701

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed to the parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2020 at Reno, Nevada.

By 
An Employee of McDonald Carano LLP

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*Attorneys for Defendant
Fair Maps Nevada PAC*

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2020 JAN -2 PM 12:15

AUDREY ROWLATT
CLERK

BY  DEPUTY

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

REV. LEONARD JACKSON,

Plaintiff,

vs.

FAIR MAPS NEVADA PAC, and
BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,

Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

ORDER

This matter having come before this Court pursuant to Plaintiff Reverend Leonard Jackson's Complaint for Declaratory Relief ("Complaint") and Plaintiff's Opening Brief in Support of Complaint for Declaratory and Injunctive Relief ("Opening Brief"), and having considered Defendant Fair Maps Nevada PAC's ("Fair Maps") Answer and Answering Brief in Response to Plaintiff's Opening Brief in Support of Complaint for Declaratory and Injunctive Relief ("Answering Brief") and Plaintiff's Reply Brief in Support of Complaint for Declaratory Relief ("Reply Brief") as well as the arguments of counsel at the hearing held December 23, 2019, the Court finds as follows:

//

//

PROCEDURAL BACKGROUND

Fair Maps filed Initiative Petition #C-02-2019 (“Petition”) on November 4, 2019 to amend the Nevada Constitution by adding a new section to the Nevada Constitution to establish a redistricting commission to map electoral districts for members of the Nevada Senate, Nevada Assembly, and Nevada’s delegation to the U.S. House of Representatives. The Petition includes the following description of effect:

This measure will amend the Nevada Constitution to establish an Independent Redistricting Commission to oversee the mapping of fair and competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will consist of seven Nevada voters, four who will be appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by the other four commissioners. Commissioners may not be partisan candidates, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.

The Commission will ensure, to the extent possible, that the electoral districts comply with the United States Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language minorities to participate in the political process, respect areas with recognized similarities of interests, including racial, ethnic, economic, social, cultural, geographic, or historic identities, do not unduly advantage or disadvantage a political party, and are politically competitive.

This amendment will require redistricting by the Commission beginning in 2023 and thereafter following each federal census.

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he argues that the Petition’s description of effect fails to comply with NRS 295.009(1)(b). More specifically, he contends that description of the commission as independent and the description of effect’s statement that the commission will oversee “the mapping of fair and competitive electoral districts,” are materially misleading statements. Compl. ¶¶ 15 & 23. He also asserts that the description of effect is deceptive and misleading because it fails to inform voters of a specific practical effect of passage of the Petition—that the redistricting commission will “undo” electoral maps generated by the Legislature in 2021 “thus potentially doubling the resources that would otherwise be spent on redistricting following the 2020 census.” *Id.* at ¶¶ 30. Plaintiff’s Complaint is limited to his challenge to the description of effect.

1 Fair Maps contends that the use of the term independent and the characterization of the
2 commission's objective of creating fair and competitive electoral districts is neither deceptive
3 nor misleading and amount to attacks on the policy reflected in the Petition and not the
4 description of effect. Ans. Br. 6-8. Fair Maps also contends that Plaintiff's claim that there will
5 be additional redistricting costs as a result of Petition is speculative and hypothetical and
6 therefore need not be addressed in the description of effect. *Id.* at 8-10.

7 LEGAL STANDARDS

8 Article 19, Section 2 of the Nevada Constitution enshrines the people's right to amend
9 the Nevada Constitution by initiative petition. Specifically it states that "the people reserve to
10 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
11 Nev. Const. art. 19, § 2(1). The Nevada Constitution further provides that the Legislature "may
12 provide by law for procedures to *facilitate* the operation thereof." *Id.* art. 19, § 5 (emphasis
13 added). In interpreting such laws, the courts "must make every effort to sustain and preserve the
14 people's constitutional right to amend their constitution through the initiative process."
15 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247
16 (2006).

17 NRS 295.009(1)(b) provides that a petition must "[s]et forth, in not more than 200
18 words, a description of the effect of the initiative . . . if the initiative . . . is approved by the
19 voters." NRS 295.009(1)(b). The Nevada Supreme Court has noted that "[a] description of effect
20 serves a limited purpose to facilitate the initiative process," and that a description of effect
21 should be reviewed with an eye toward that limited purpose. *Educ. Initiative PAC v. Comm. to*
22 *Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013). Thus, while a description of
23 effect need not "delineate every effect that an initiative will have," it must be "a straightforward,
24 succinct, and nonargumentative statement of what the initiative will accomplish and how it will
25 achieve those goals." *Id.* at 38, 293 P.3d at 876. A description of effect cannot "be deceptive or
26 misleading." *Id.* at 42, 293 P.3d at 879.

27 In reviewing a description of effect, "it is inappropriate to parse the meanings of the
28 words and phrases used in a description of effect" as closely as a reviewing court would a

1 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
2 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
3 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
4 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
5 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 In this case, the description of effect for the Petition does not meet the requirements of
8 NRS 295.009(1)(b). The description of effect could be argumentative or confusing or
9 misleading to voters as currently written. The description of effect does not adequately explain
10 to voters what is meant by the term “independent” or the phrase “fair and competitive.” The
11 Court further finds that the description of effect is inadequate in that it does not provide potential
12 signatories with enough information about the cost consequences of the Petition—specifically,
13 that it will result in the expenditure of state funds. *See, e.g., Nev. Judges Ass’n v. Lau*, 112 Nev.
14 51,59 (1996). The Petition also does not adequately inform voters that the Petition would result
15 in redistricting in 2023 after the Legislature has already drawn electoral districts after the 2020
16 Census.

17 The Court finds that the above-referenced deficiencies may be cured through the revised
18 description of effect provided herein. NRS 295.061(3) provides that “[i]f a description of the
19 effect of an initiative or referendum required pursuant to NRS 295.009 is challenged
20 successfully . . . and such description is amended in compliance with the order of the court, the
21 amended description may not be challenged.” NRS 295.061(3). Thus, the Court, in consultation
22 with the parties, identifies a new description of effect that satisfies the legal standard required by
23 NRS 295.061(3). This revised description of effect states:

24
25 “This measure will amend the Nevada Constitution to establish a redistricting
26 commission to map electoral districts for the Nevada Senate, Assembly, and U.S. House of
Representatives.

27 The Commission will have seven members, four who will be appointed by the leadership
28 of the Legislature, and three who are unaffiliated with the two largest political parties who will
be appointed by the other four commissioners. Commissioners may not be partisan candidates,

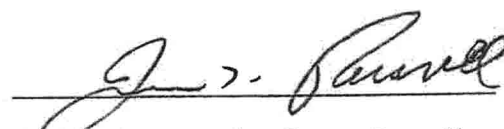
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

3 The Commission will ensure, to the extent possible, that the districts comply with the
4 U.S. Constitution, have an approximately equal number of inhabitants, are geographically
5 compact and contiguous, provide equal opportunities for racial and language minorities to
6 participate in the political process, respect areas with recognized similarities of interests,
7 including racial, ethnic, economic, social, cultural, geographic, or historic identities, do not
8 unduly advantage or disadvantage a political party, and are politically competitive.

9 This amendment requires redistricting after each federal census, beginning in 2023,
10 which could replace maps drawn by the Legislature after the 2020 census, and will result in the
11 expenditure of state funds to fund the Commission.”

12 **IT IS THEREFORE ORDERED** and declared that the description of effect filed with
13 the Secretary of State on November 4, 2019 failed to satisfy the requirements of NRS
14 295.009(1)(b). Thus, any signatures collected on the Petition containing the description of effect
15 are invalid. However, Defendant Fair Maps may re-file an amended petition with the revised
16 description of effect as set forth by this Order, which cures all deficiencies raised by Plaintiff
17 and identified by the Court. Upon re-filing, the description of effect will have been amended in
18 compliance with this Order and be accorded the finality set forth in NRS 295.061(3) and shall
19 not be subject to further challenge. NRS 295.061(3).

20 Dated this 2 day of ~~December~~ ^{January}, 2020.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:

24 McDONALD CARANO LLP

25 By: /s/ Adam Hosmer-Henner
26 Adam Hosmer-Henner, Esq. (NSBN 12779)
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2 day of January 2020 I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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