specific requirement not to impede the political process. Under the Nevada Constitution the people have reserved unto themselves the ability to file such an initiative petition that we are presenting here.

The description of effect requirement is constitutional and valid only insofar as it doesn't absolutely prevent or preclude the proponents of this petition from proceeding in the political arena. So there must be some 200-word description of effect out there that matches the petition and that makes it a valid exercise of the people's initiative power.

That said, we have proposed five alternatives, and as you rightly inquired, none of them seem to be acceptable to other side. If we were to amend this petition and refile, another word can be challenged or random word could be attacked for having multiple dictionary definitions, and that's not the point of this entire exercise.

So we presented alternatives that directly correspond and under NRS Chapter 295, all of their complaints and objections to our description of the fact, including in the affidavits or documents in support thereof must be included in their initial complaint. So that's what they are limited to in terms of arguing against the petition today.

THE COURT: What about the 2023 argument that if

the legislature or the Court, whoever does it in 2021 then you're immediately redoing that again, redistricting two years later. Does that make sense?

MR. HOSMER-HENNER: It does because in order to qualify for this ballot, in order to effect the amendment, this initiative will have to go to the voters in both the 2020 election and the 2022 -- and the 2022 election. If it were possible in an ideal world to establish those maps so the legislature does haven't to redraw them once and then redistrict again, of course that would make sense to everyone.

But I'll offer two things. One, is the proponents of this petition hopeful that the legislature takes into consideration the requirements against gerrymandering that are present in this petition knowing full well that if they introduce such a map it could be overturned in two years.

Second, there's nothing in the petition that requires the commission or stops them from adopting the map adopted by the legislature so long as the legislature doesn't engage in partisan or racial gerrymandering and disenfranchising voters through the gerrymandering process. Those maps ideally should comply with the constitutional amendment as drafted. So it really is up to the legislature

whether they want to draw invalid maps that the voters will disapprove that the voters through this petition have effectively preemptively disapproved of.

And, again, because the people have reserved the power to conduct this initiative position -- petition process themselves they don't have to wait until 2031, 2033 in order to change the redistricting process. If they believe that it is such an importance to the Nevada's democracy to begin that process now, changing requiring midyear, midcycle redistricting for the next decade is a small price, if any additional price to pay, for ensuring that the voters' rights are protected for supposedly, unless thus amendments further change for all of the succeeding decades.

THE COURT: The funding comes from the State of Nevada obviously; is that correct?

MR. HOSMER-HENNER: Correct. Just like the commission for Judicial Discipline's funding comes from the State of Nevada as that is a constitutional body that doesn't specify the nature of its funding or have a specific appropriation for that.

And, Your Honor, I may further say that the word independent is often used to refer to our federal judiciary and yet that is also a body that draws its funding from congress and is appointed by the President with the consent

of congress. So we're arguing over this word of independent and forgetting that in our National Constitution and in the national way that we appoint our federal judiciary, that word is used to describe a process that is awfully similar to what were proposed in this current petition.

THE COURT: What about his argument about the veto power that there's, by the minority. I mean, the way it's structured there's --

MR. HOSMER-HENNER: First, that's nothing more than a policy argument, Your Honor. That's a criticism of what our petition intends to do. It is not something that he's objecting to it on the basis of policy.

And second, we'll defend that because we believe that that consensus requirement ensures that our commission is a bipartisan commission that allows people who are appointed, and the commission will be made up of essentially two republicans and two democrats assuming those are the majority of minority parties in the Nevada Legislature and three nonpartisan or independents by requiring the members of the commission to participate together and have someone represented from each potential factor.

THE COURT: But they are the ones that picked the three members, right?

MR. HOSMER-HENNER: Correct. Just as if

arbitrators would pick a neutral chairperson. We believe that this process can and will work.

And the one thing I would ask at this point is for Your Honor disregard all references to other states processes. It's simply not true that every other state from an independent commission is different than this --

THE COURT: How many states have adopted commissions, do you know?

MR. HOSMER-HENNER: Probably eight or nine that have adopted a fully empowered commission, and then I believe about five or six more that have an advisor commission where the commission recommends a plan and the legislature can veto with some certain portion and then redistricting back to that.

But for instance, Hawaii, Montana, New Jersey and Washington all have a partially appointed commission made up of appointments from the legislative branch and then some additional number of additional commissioners. So those statements concern what the majority of other redistricting commissions are not only not on the record but they are misleading and they are inaccurate, and more important they have no relevance to what we have chosen to do here in Nevada.

The second broad point I would like to offer,

Your Honor, is that there's a -- what we're determining in some part is whether this is a political challenge to our -- to our specific petition that has merit because they -- the plaintiff actually believes that the description of effect does not fully inform the voters about what the initiative process does or whether it's a dilatory tactic designed to prevent this petition from getting to the voters.

And there's an acid test to determine which of those is the case, and we perform that test by providing five alternatives that gave them the relief that they were seeking. They complained about the word independent. We excised the word independent. Complained about the words fair and competitive. We excised the words fair and competitive without conceding that those are inaccurate descriptions of what our petition is actually trying to do. Those words can be removed.

They complained about the cost of the commission which is an absolutely hypothetical cost given that the statements used to support that cost argument are that there will be more litigation as a result of this commission process even though there was just litigation in the prior cycle under legislative process. There's no way for this Court to quantify the exact costs of redistricting under this commission process or under the legislative process.

But even putting that aside, it would be awfully difficult for this Court to make a factual finding that the cost of redistricting will increase. Even if you duplicate them by having commission to do it again after the legislature does, we have managed to remedy that within the 200-word limit by including statements that the costs may go up.

We believe the costs will go down because this will reduce partisan gerrymandering and reduce the incentive to have litigation over the partisan maps, and hopefully everyone will learn to accept the bipartisan maps that this commission will generate, but that's a hypothetical and speculative effect. Even then our language solves and moots the concerns of plaintiff in terms of informing the voters about what the effect of this petition is.

And the third and final broad point I would like to offer, Your Honor, is the statement about what the remedy is for this. And plaintiff's counsel is simply incorrect about the status of the law and the way that these procedures go and the court process.

It is not enough for this Court to invalidate this petition in the abstract. Send us back to the drawing board with no guidance, file a new petition which then could be challenged. Not only should plaintiff's counsel be aware

of this, it was cited in his brief and that was Sanctuary Cities case that this Court heard I believe last cycle. And in that Supreme Court decision, the Nevada Supreme Court specifically held that it was error for this Court not to give factual findings in order to guide the process for initiative proponent to amend their description of effect in compliance with the Court's factual findings and instructed this Court to make those factual findings so that the initiative proponent wasn't simply shooting in the dark.

That's what we're asking here for today is a way to minimize litigation, prevent delay and actually allow this substantive piece of good policy to get to the voters. We can accept their factual, not their factual statements, but their complaints about our description of effects and moot and cure all of them today by removing the words that are objectionable and increase and include in the sentence about costs. That moots and mitigates all of their concerns.

This Court can make those factual findings. We can amend the description of effects in compliance with this Court's factual findings, and we need not go in a merry-go-round of constantly circulating an amended description of effect only to have that be substantively challenged by some other dictionary or Thesaurus.

So for all of these reasons we strongly believe

our description of effect is valid but if this Court feels in any way it isn't, the proper most efficient remedy is to amend our description of effect so that this political process can go forward.

THE COURT: Thank you.

Mr. Benson?

MR. BENSON: Thank you, Your Honor. So with regard to the point about the Court's -- this Court's role in the process, I actually agree with opposing counsel that we are also asking this Court to make factual findings and give direction about how this description effect is invalid and that that does guide the process. We're not arguing otherwise.

Our position is that it's not the goal of this Court nor as we as an advocate to secure in court in realtime and redraft a description of effect, but we are asking this Court to make factual findings about how and why this description of effect is not valid so that they can go and refile it. And, of course, if they do refile it in compliance with those findings the statute bars it from being challenged again. So I don't think that that is really that big of a point of contention.

The other thing about this issue about debating policy versus the description of effect, in each one of these

cases, it's necessarily that the Court look at what the petition actually does. And so you need to look at what the policy is that it's being proposed. We're not going to debate whether that's wise policy or unwise policy, but it's necessarily required to look at what it proposes because you can't propose policy A and tell voters that you're actually proposing policy B in your description of effect. That's -- that defeats the entire purpose of the description of effect.

And, you know, an example of that is the RIP Commerce case. That was referendum petition that would repeal the congress tax and that was the stated purpose of the petition. That's what it said in the description of effect that this would appeal congress tax, and the Nevada Supreme Court nevertheless struck down the description of effect because it didn't describe what the actual effect would be which would be that it would unbalance the state budget.

And we're not just doing this in a vacuum. The Court has to look at what the policy is that's being proposed and determine whether or not that policy is being accurately described to the voters in the description with it. That's really the touchstone of what that requirement is for, and so this petition with respect to taking into account what other states have done. So there's about eight or nine other

states that have not necessarily independent redistricting commissions but what the national counsel of state legislatures refers to as primary authority or primary responsibility committees, those are commissions that they draft the maps and the plans themselves and the legislature has limited or no ability to approve or veto those maps or anything of that sort. Other states have a different system of another commission drafts it and then sends it to the legislature. It's up to the legislature whether to adopt or approve the plan.

Now, of those eight or nine states that have these primary responsibility commissions not all of them are independent, and there's only about four of those that are independent and that's Arizona, California, Colorado and Michigan, and they are independent because of these differences that are put into the, and most of those are constitutional initiatives in order to insulate the commissioners from this political pressure. That's what makes its independent. They are not under the control of or subject to the influences of the legislature or these other political process, and that's why each of those states has a process involved to take applications or to insulate the commissioners from that pressure.

And so it's absolutely critical I think that the

Court look at what those other states do because that determines, you know, what a voter is going to expect. For example, a voter who is being told that this is an independent commission probably expects it's going to look something like an independent commission in Arizona or in California or Colorado, but this commission bears no reasonableness whatsoever to those commission and so to call it independent when it has no reasonableness to those other states is very misleading.

So with respect to the funding requirement, counsel made the argument that, you know, everybody gets their funding from the legislature, all of the branches of the government do and, therefore, we consider, you know, them to be independent. So this is just as independent. As the Nevada Supreme Court recognized in the Danes case, State versus Danes case, an independent branch of government can't function without funding, and that's just the practical reality.

And given that it was, the issue is if the legislature withholds funding it could essentially subvert the Separation of Powers Doctrine by disallowing a separate branch of government from doing its job, and that is the case with respect to all of the branches. And so to say that it's independent just because of that is I think a very

constrained and unusual definition of what is independent.

And here we have a whole different issue because obviously our Separation of Powers Doctrine expressly says that the executive judiciary and the legislative are separate branches and coequal branches of government. Here the petition says that the commission is part of the legislative branch.

And as part of the legislative branch the question becomes, well, what if the legislature doesn't fund it? Wouldn't it then be a separation of powers problem for the Courts to step in and order the legislature to fund it or to fund it in any particular way? That's a whole different problem, and so it's not independent like these other branches where there's a clear constitutional mandate that they are independent from the legislature.

So with respect to the alternatives, we do take issue with their alternatives for various different reasons. I mean, the first one for example, it characterizes it as a citizen commission which, again, we disagree with because like independent, this is really not the citizen commission. There's no application process. It's not open to people to express interest. It's you're only going to get appointed to this if you have political connections. It's not a citizen commission.

This also, the first description also as we discussed fails to, all of these alternatives fail to disclose that it's going to undo the redistricting and have mid decade redistricting that's going to undo what was done in 2021 and that that, it's going to increase the cost as a result of that because clearly that's going to require some additional expense.

Again, it doesn't provide any of the disclosures regarding the (inaudible) required by the parties. It's going to be distributed in such a way that it's going to give an absolute veto authority to a very small minority of the commission.

The second alternative that Your Honor referenced, unless I missed something that looks identical to the first one, except they took out the word citizen. It's probably --

THE COURT: Well, they took out the word independent and just focused on a redistricting commission. They additionally took out the words fear and competitive the way I was reading it, and so they neutralized that argument, so to speak, to some extent.

And then you get down to the end and, again, I think they want redistricting beginning in 2023. I guess if you didn't start in 2023 you have to start in 2031 is when it

would roll around again. That would be the next time they did it in respect to that.

MR. BENSON: And that would be a typical redistricting cycle.

THE COURT: Right.

MR. BENSON: And that's why it's by omitting that that's going to redo what was just done. That is the misleading part of this. And so, like I said, all of the proposed alternatives do not include that, and so that's one of the reasons that none of them we feel are truly representative of what this petition is actually proposing.

And so with alternative three, again, they add back in the use of citizen. And as I just discussed --

THE COURT: Well, you don't have to go through three and four or five. I didn't care for either of those particularly. What I kind of focused on was two because I thought that was the most clear and distinct that there was if I could somehow fix that to some extent.

Again, I think Mr. Benson is correct from the standpoint it's up to me to make determinations in regard to where we go in regards to determining the facts, the aspect from it to a certain extent. So you don't have to go on to those, Mr. Benson. Thank you.

MR. BENSON: Thank you, Your Honor. We would ask

that you do make some findings in this case that the description effect is not valid for those reasons that we discussed in the opening brief.

THE COURT: Okay.

MR. BENSON: And in its argument today.

THE COURT: Thank you. Well, again, and what I'm inclined to do today, and again, I think there's a significant amount of time in regards to fixing this or before the election, so to speak, and everything. I like alternative number two with the following change. If I make any finding, I don't like the word independent. I'm removing that. I think you're correct, Mr. Benson. I think it creates issues that don't have to be argued about. I also like the fact that remove the fear and competitive because we don't know how these districts are going to come about, where they're going to end up in respect to that.

The balance of that number two I like except the end of it. This amendment will require redistricting beginning in 2023. I can't do much about that. I mean, that's an issue that you can argue about and each federal census. And then I like the language rather than your language begin which will result in expenditures or state funds to fund the committee. It's -- it's just the commission, excuse me. It's going to cost money no matter

what. It's just this is going to be a process that costs money and when you do do it and go about it with respect to that. So, again, that's kind of where I am to a certain extent.

Mr. Zunino, anything that the Secretary of State wants to offer? I mean, you always sit in silence on the initiative and I enjoy the opportunity to poke the knife in you and ask where is the Secretary of State on these.

MR. ZUNINO: Well, I think --

THE COURT: Huh?

MR. ZUNINO: -- the Secretary of State has no position on this matter, Your Honor.

THE COURT: Now, is that a surprise? No. I'm just kidding.

Anyway, why don't you both prepare orders for the Court and provide them to me within ten days or something like that. Again, I kind of modified number two a little bit because I think that's the one that I would kind of go with.

I think you're absolutely correct, Mr. Benson, on independent and fair and competitive. I don't like that language at all. I think it is misleading. I think it causes problems, but I think number two with some corrections may fit and may handle the situation. So if that helps anybody, that's kind of where I am.

MR. BENSON: Okay. Thank you, Your Honor. I just want to clarify. So you are not requiring that it include the language that it's going to undo what was done in 2021; is that correct?

THE COURT: No. It's going to say -- I don't know how you fix that. 2023 is going to be what it is, and they can do whatever they do at that time, so.

MR. HOSMER-HENNER: Your Honor, on that point we could, unless you're ordering us not to, we could include a statement that it would require redistricting in 2023 which we could replace the legislative maps in 2021.

THE COURT: You could add that if you want. That clarifies it. I think that helps Mr. Benson out.

MR. HOSMER-HENNER: Thank you.

THE COURT: That doesn't bother me either.

Okay. Again, you know, I went back. This is great because I went back to the original order that I did in redistricting back in 2011, and I kind of was going through because there's some -- there's some preconditions that have to be met, and there's a standard that you go through and different things in respect to that. We spent considerable time coming up with this order. So it was kind of fun to go back and read it. I thought, wow, we didn't do a bad job back then. So, anyway, thank you.

Court will be in recess.

MR. BENSON: Thank you, Your Honor.

MR. HOSMER-HENNER: Thank you.

STATE OF NEVADA,)
)
CARSON CITY.)

I, KATHY JACKSON, do hereby certify:

That on December 23, 2019, a hearing was held in the within-entitled matter in the Carson City, Nevada District Court, Department No. 1;

That said trial was recorded on JAVS, and said JAVS was delivered to me for transcription;

That the foregoing transcript, consisting of pages 1 through 46 is a full, true and correct transcript of said recorded JAVS performed to the best of my ability.

Dated at Carson City, Nevada, this 24th day of March, 2020.

_____
KATHY JACKSON, CCR

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

REV. LEONARD JACKSON,

Plaintiff,

v.

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

ORDER GRANTING DECLARATORY AND INJUNCTIVE RELIEF

The Court, having reviewed the Parties' briefs and considered arguments of counsel, finds that good cause exists to grant declaratory and injunctive relief in favor of the Plaintiff, Rev. Leonard Jackson.

I. BACKGROUND

On November 4, 2019 Defendant Fair Maps Nevada PAC filed a constitutional initiative petition designated as #C-02-2019 by the Secretary of State. The initiative petition seeks to amend the Nevada Constitution to require that redistricting be performed by a commission rather than by the Legislature ("the Petition").

The Petition would create the "Independent Redistricting Commission" ("Commission") within the legislative branch of state government. Petition, Section 5A(1). The Commission would consist of seven members. Petition, Section 5A(2). The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader each appoint one commissioner. *Id.* These four commissioners appoint three additional commissioners, each of whom has not been

registered or affiliated with either of the two largest political parties in the State within the last four years, and is not registered or affiliated with the same political party as another commissioner. *Id.* The Commission shall adopt a redistricting plan not later than July 1, 2023, and thereafter not later than 180 days from the release of the decennial census. Petition, Section 5B(2).

The Commission must draw districts according to certain criteria, and must apply those criteria in the order listed in the Petition. Petition, Section 5B(1). These criteria include ensuring that, on a statewide basis, the districts "do not unduly advantage or disadvantage a political party." *Id.* The last criteria that the Commission may consider is the number of politically competitive districts. *Id.*

The Description of Effect of the Petition states in full:

> 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.

Petition, p. 3, Description of Effect.

On November 26, 2019, Plaintiff Reverend Leonard Jackson filed a timely complaint and opening brief pursuant to NRS 295.061, challenging the Description of Effect as misleading and inaccurate. Defendant Fair Maps filed an answer and an answering brief, to which Plaintiff Jackson replied. The Court heard argument on the matter on December 23, 2019.

II. ANALYSIS

A. Legal Standard for the Description of Effect.

NRS 295.009(1)(b) requires that every initiative "[s]et forth, in not more than 200 words, a description of the effect of the initiative or referendum if the initiative or referendum is approved by the voters." The purpose of the description of effect is to "prevent voter confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006).

The description of effect must appear on every signature page. NRS 295.009(1)(b). Thus "[t]he importance of the description of effect cannot be minimized, as it is what the voters see when deciding whether to even sign a petition." *Coal. for Nev.'s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS 153, at *5 (May 11, 2016) (unpublished decision – NRAP 36(c), citing *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013) and *Las Vegas Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 177, 208 P.3d 429, 437 (2009)).

For that reason, the description of effect "must be a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve." *Educ. Initiative,* 129 Nev. at 37, 293 P.3d at 876. The district court must also analyze "whether the information contained in the description is correct and does not misrepresent what the initiative will accomplish and how it intends to achieve those goals." *Id.*, 129 Nev. at 35. 293 P.3d at 883.

B. The Description of Effect inaccurately states that the Commission would be "independent," and therefore is misleading.

The first sentence of the Petition's description of effect states in relevant part: "This measure will amend the Nevada Constitution to establish an **Independent** Redistricting Commission." (Emphasis added.) The Court finds that the Description of Effect's characterization of the Commission as "independent" is inaccurate and materially misleading.

Specifically, the Court makes the following findings of fact:

1. A majority of the Commission would be directly appointed by legislative leadership of the two largest political parties;
2. The remaining three members of the Commission would be appointed by those appointees;

3. The Petition does not contain any mechanism to prevent commissioners from running for office immediately after performing redistricting, and thus no mechanism to prevent commissioners from acting in their personal self-interest;
4. The Petition does not contain any requirement that the Legislature fund the commission, nor set forth any dedicated funding to ensure that the Commission can carry out its duties;
5. The Commission as proposed in this Petition differs substantially from "independent" commissions in other states, which use an application and selection process for commissioners that is not under legislative control and which provide for independent funding for the commission;
6. The Commission proposed in this Petition is not "independent" of the Legislature, nor "independent" from political influences.

Based on these findings of facts, the Court makes the following conclusions of law:

1. The Description of Effect is inaccurate because it describes the Commission as "independent," which it is not;
2. The Description of Effect is materially misleading because the creation of a truly independent redistricting commission is very different policy than what is actually being proposed in the Petition;
3. Voters would be deceived and misled by the current Description of Effect into expecting the Commission to function independently;
4. Accordingly, the Description of Effect's characterization of the Commission as "independent" is inaccurate and misleading, and the Description of Effect therefore violates NRS 295.009(1)(b).

C. <u>The Description of Effect inaccurately states that the Commission will create "fair and competitive" districts.</u>

The Petition's Description of Effect represents that it will end partisan gerrymandering in Nevada by creating "fair and competitive electoral districts." The Court finds that the Description of Effect is materially misleading because in fact the Petition requires neither fairness nor competitiveness.

Specifically, the Court makes the following findings of fact:

1. The U.S. Supreme Court recently reaffirmed its prior holdings that partisan gerrymandering is a political question and is thus an issue that cannot be redressed in federal court;
2. The Petition states that the Commission should ensure that districts "do not unduly advantage or disadvantage a political party" (Petition, 5B(1)),
3. The Petition does not require "fairness" between the parties, but only states that one should not be "unduly" advantaged or disadvantaged;
4. The Petition contains no criteria for its members to ensure that commissioners are representative of the racial, language, or geographic diversity of Nevada;
5. The Petition states that the Commission should, to the extent practicable, and only after considering all other redistricting criteria, consider making the districts politically competitive, *id.*;
6. The Petition does not require any districts to be politically competitive, *id.*;
7. The Petition requires a supermajority of five out of the seven commissioners to adopt a redistricting plan. Additionally, the Petition requires at least one vote to come from a representative of each major party, and one from a non-major party member. The Petition therefore allows a small minority of the Commission to veto any redistricting plan.

Based on these conclusions of fact, the Court makes the following conclusions of law:

1. The Description of Effect is inaccurate because it represents to voters that the Commission will create "fair and competitive" maps when in fact the Petition does not require the maps to be either fair or competitive;
2. The Description of Effect is materially misleading because voters reading it would be deceived and misled into believing that the Petition will stop partisan gerrymandering when it is designed to tolerate unfairness between the parties;
3. The Description of Effect is materially misleading because voters reading it would expect that the Petition would require the Commission to draw politically competitive districts, but it does not;

4. The Description of Effect fails to adequately inform voters that the Petition would give disproportionate power to a small and non-representative minority of the Commission to veto any redistricting plan;
5. Accordingly, the Description of Effect's assertion that the Commission would create "fair and competitive" districts is inaccurate and misleading, and the Description of Effect therefore violates NRS 295.009(1)(b).

D. <u>The Description of Effect is Invalid Because it Fails to Inform Voters of the Cost of the Commission.</u>

The Description of Effect is invalid because it fails to adequately inform voters of the practical consequences of the Petition. *Coal. for Nev.'s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS 153, at *5 (May 11, 2016). Specifically, the Court makes the following findings of fact:

1. The Legislature will perform redistricting in 2021;
2. The Petition would require the Commission to perform redistricting again in 2023;
3. The Petition would have the effect of replacing the redistricting plan that the Legislature adopts in 2021;
4. The Petition would have the effect of increasing the costs of redistricting by requiring mid-decade redistricting in 2023;
5. The Petition would increase the cost of redistricting due to litigation because of the Petition's lack of guidelines concerning partisan gerrymandering and lack of provisions to deal with contingencies such as vacancies, lack of a quorum, lack of funding, and so forth;

Based on these conclusions of fact, the Court makes the following conclusions of law:

1. The Description of Effect fails to adequately disclose the true effects of the Petition;
2. The Petition will require additional state spending on redistricting because it requires mid-decade redistricting in 2023;
3. The Description of Effect fails to adequately inform voters that the 2023 maps created by the Commission would replace the 2021 maps drawn by the Legislature;

4. The Description of Effect fails to adequately inform voters that it will increase costs due to litigation;
5. The Description of Effect does not inform voters of material practical consequences of the Petition and therefore violates NRS 295.009.

III. ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that:

1. The Court finds and declares that the Description of Effect is invalid because it is inaccurate and materially misleading and does not comply with NRS 295.009; and,
2. The Secretary of State is enjoined from taking any further action to process the Petition in its current form, including without limitation, placing it on any ballot.

Dated: _____.

_____
DISTRICT COURT JUDGE

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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:

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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.

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

LEGAL STANDARDS

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

The Commission will have seven members, four who will be appointed by the leadership 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,

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

The Commission will ensure, to the extent possible, that the districts comply with the U.S. 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 requires redistricting after each federal census, beginning in 2023, which could replace maps drawn by the Legislature after the 2020 census, and will result in the expenditure of state funds to fund the Commission."

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

Dated this 2 day of ~~December~~ January, ~~2019~~ 2020.

District Court Judge James Russell

Respectfully submitted by:

McDONALD CARANO LLP

By: /s/ Adam Hosmer-Henner
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

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100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701

Chloe McClintick, Esq.
Law Clerk, Dept. 1

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

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

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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 Stated 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

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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100 West Liberty Street, 10th Floor
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lfoletta@mcdonaldcarano.com

Attorneys for Defendant
Fair Maps Nevada PAC

REC'D & FILED
2020 JAN -2 PM 12: 15
AUBREY 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:

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//

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PHONE 775.788.2000 • FAX 775.788.2020

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.

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

LEGAL STANDARDS

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

The Commission will have seven members, four who will be appointed by the leadership 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,

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

The Commission will ensure, to the extent possible, that the districts comply with the U.S. 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 requires redistricting after each federal census, beginning in 2023, which could replace maps drawn by the Legislature after the 2020 census, and will result in the expenditure of state funds to fund the Commission."

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

Dated this 2 day of ~~December~~ January, ~~2019~~ 2020.

District Court Judge James Russell

Respectfully submitted by:

McDONALD CARANO LLP

By: /s/ Adam Hosmer-Henner
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

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100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701

Chloe McClintick, Esq.
Law Clerk, Dept. 1

KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
BENSON LAW, LLC.
123 W. Nye Lane, Suite #487
Carson City, NV 89706
Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com
Attorneys for Plaintiff

REC'D & FILED
2020 FEB -5 PM 2:40
AUBREY ROWLATT
CLERK
BY _____ DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

REV. LEONARD JACKSON,

Plaintiff,

v.

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 APPEAL

Plaintiff Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of Benson Law Nevada, hereby appeals the Order entered by the District Court on January 2, 2020 and served on January 6, 2020.

Dated this 5th day of February, 2020.

BENSON LAW, LLC

By: _____

KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
123 W. Nye Lane, Suite #487
Carson City, NV 89706
Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com

BENSON LAW NEVADA
123 W. Nye Lane, Suite 478
Carson City, NV 89706
(775) 884-0838

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of Benson Law, LLC, and that on this date, I caused the foregoing Notice of Appeal to be served to all parties to this action by:

__X__ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada

_____ Hand-delivery - via Reno/Carson Messenger Service

_____ Facsimile

__X__ E-Mail (courtesy copy)

_____ Federal Express, UPS, or other overnight delivery

_____ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures

_____ E-filing through the federal courts' CM / ECF filing and service system.

fully addressed as follows:

Adam Hosmer-Henner
Lucas Folletta
McDONALD CARANO
100 West Liberty Street, Tenth Floor
Reno, Nevada 89501
Attorneys for Defendant Fair Maps

Greg Zunino
Office of the Attorney General
100 N. Carson Street
Carson City, Nevada 89701
Attorneys for Defendant Secretary of State

Dated: 2/5/20

An employee of Benson Law, LLC

BENSON LAW NEVADA
123 W. Nye Lane, Suite 478
Carson City, NV 89706
(775) 884-0838

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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lfoletta@mcdonaldcarano.com

Attorneys for Defendant
Fair Maps Nevada PAC

REC'D & FILED
2020 FEB 18 PM 4:49
AUBREY ROWLATT
CLERK
BY
DEPUTY

Electronically Filed
Feb 21 2020 03:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 CROSS-APPEAL

On February 5, 2020, Plaintiff Rev. Leonard Jackson filed a Notice of Appeal regarding the First Judicial District Court's Order filed January 2, 2020. Defendant Fair Maps Nevada PAC, a registered Nevada political action committee ("Fair Maps"), by and through its attorneys Adam Hosmer-Henner, Esq. and Lucas Foletta, Esq. of McDONALD CARANO LLP, hereby provide notice that it cross-appeals to the Nevada Supreme Court from the District Court regarding the following order attached as Exhibit 1:

(1) Order filed January 2, 2020.

//

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//

AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated: February 18, 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

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PHONE 775.788.2000 • FAX 775.788.2020

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on February 18, 2020, I served the foregoing on the parties in said case by placing a true copy of the foregoing **NOTICE OF CROSS-APPEAL** in the United Stated 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

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 February 18, 2020 at Reno, Nevada.

By _____
An Employee of McDonald Carano LLP

INDEX OF EXHIBITS

EXHIBIT #	DESCRIPTION	NUMBER OF PAGES
1	Order	6

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

Exhibit 1

Exhibit 1

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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100 West Liberty Street, 10th Floor
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lfoletta@mcdonaldcarano.com

Attorneys for Defendant
Fair Maps Nevada PAC

REC'D & FILED
2020 JAN -2 PM 12:15
AUBREY 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:

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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.

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

LEGAL STANDARDS

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

The Commission will have seven members, four who will be appointed by the leadership 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,

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

The Commission will ensure, to the extent possible, that the districts comply with the U.S. 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 requires redistricting after each federal census, beginning in 2023, which could replace maps drawn by the Legislature after the 2020 census, and will result in the expenditure of state funds to fund the Commission."

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

Dated this 2 day of ~~December~~ January, ~~2019~~ 2020.

District Court Judge James Russell

Respectfully submitted by:

McDONALD CARANO LLP

By: /s/ Adam Hosmer-Henner
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

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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 7 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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701

Chloe McClintick, Esq.
Law Clerk, Dept. 1

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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lfoletta@mcdonaldcarano.com

Attorneys for Defendant
Fair Maps Nevada PAC

REC'D & FILED
2020 FEB 18 PM 4:49
AUBREY 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

CASE APPEAL STATEMENT

Defendant Fair Maps Nevada PAC submits the following Case Appeal Statement pursuant to Nevada Rule of Appellate Procedure 3(f):

1. **Name of appellants filing this case appeal statement:**

Fair Maps Nevada PAC

2. **Identify the judge issuing the decision, judgment, or order appealed from:**

The Honorable James T. Russell, Jr., Department 1, First Judicial District Court, Carson City, Nevada.

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3. **Identify each appellant and the name and address of counsel for each appellant:**

Respondent/Cross-Appellant

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
(775) 788-2000
ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

4. **Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

Appellant/Cross-Respondent:
Rev. Leonard Jackson

Appellant/Cross-Respondent's Counsel:
Kevin Benson
Benson Law Nevada
123 W. Nye Lane, Suite 487, Carson City NV 89706

Additional Party Below:
BARBARA CEGAVSKE

GREG ZUNINO, ESQ.
Chief Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

Not applicable.

6. **Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Retained.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained.

8. Indicate whether appellant was granted leave to proceed in forma pauperis and the date of entry of the district court order granting such leave:

Not applicable.

9. Indicate the date the proceedings commenced in the district court:

Appellant/Cross-Respondent filed his Complaint on November 26, 2019.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This cross-appeal, involving a ballot question under NRS 295.009, is from the District Court's Order granting full relief in favor of Appellant/Cross-Respondent's challenge to the description of effect of the petition in question.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceedings in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

Not applicable.

12. Indicate whether this appeal involves child custody or visitation:

Not applicable.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This appeal has already been exempted from the Supreme Court settlement program and should be placed on an expedited briefing schedule. Respondent/Cross-Appellant has attempted to amicably resolve this litigation with Appellant/Cross-Respondent, who has failed to respond to each inquiry.

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AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239B.030, that the preceding document does not contain the social security number of any person.

Dated: February 18, 2020

McDONALD CARANO LLP

By: _____

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on February 18, 2020, I served the foregoing on the parties in said case by placing a true copy of the foregoing **CASE APPEAL STATEMENT** in the United Stated 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

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 February 18, 2020 at Reno, Nevada.

By _____
An Employee of McDonald Carano LLP

Judge: RUSSELL, JUDGE JAMES TODD

Case No. 19 OC 00209 1B

Ticket No.
CTN:

JACKSON, REV LEONARD By:

-vs-

CEGAVSKE, BARBARA DRSPND By: ATTORNEY GENERAL OFFICE
HEROE'S MEMORIAL BLDG.
CAPITOL COMPLEX
CARSON CITY, NV 89710

Dob: Sex:
Lic: Sid:

FAIR MAPS NEVADA PAC DRSPND By:

Dob: Sex:
Lic: Sid:

Plate#:
Make:
Year: Accident:
Type:
Venue:
Location:

Bond: Set:
JACKSON, REV LEONARD PLNTPET Type: Posted:

Charges:

Ct.
Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct.
Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	02/19/20	RECEIPT	1BCCOOPER	0.00	0.00
2	02/19/20	APPEAL BOND DEPOSIT Receipt: 64243 Date: 02/19/2020	1BCCOOPER	500.00	0.00
3	02/18/20	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
4	02/18/20	NOTICE OF CROSS-APPEAL Receipt: 64243 Date: 02/19/2020	1BCCOOPER	24.00	0.00
5	02/05/20	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
6	02/05/20	NOTICE OF APPEAL Receipt: 64083 Date: 02/05/2020	1BCCOOPER	24.00	0.00
7	01/07/20	SUMMARY JUDGMENT	1BSBARAJAS	0.00	0.00
8	01/06/20	NOTICE OF ENTRY OF ORDER	1BSBARAJAS	0.00	0.00
9	01/06/20	STIPULATED DISMISSAL	1BSBARAJAS	0.00	0.00
10	01/02/20	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BSBARAJAS	0.00	0.00
11	01/02/20	ORDER	1BSBARAJAS	0.00	0.00
12	12/23/19	HEARING HELD: The following event: PETITION HEARING scheduled for 12/23/2019 at 2:30 pm has been resulted as follows: Result: HEARING HELD Judge: RUSSELL, JUDGE JAMES TODD Location: DEPT I	1BJHIGGINS	0.00	0.00
13	12/20/19	REQUEST FOR SUBMISSION	1BJHIGGINS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
14	12/20/19	REPLY BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY RELIEF	1BJHIGGINS	0.00	0.00
15	12/20/19	WAIVER OF SERVICE	1BJHIGGINS	0.00	0.00
16	12/20/19	NOTICE OF APPEARANCE AS COUNSEL OF RECORD	1BJHIGGINS	0.00	0.00
17	12/18/19	DEFENDANT FAIR MAPS NEVADA PAC'S ANSWERING BRIEF IN RESPONSE TO PLAITNIFF'S OPENING BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELEIF	1BJULIEH	0.00	0.00
18	12/16/19	ORDER SETTING HEARING	1BVANESSA	0.00	0.00
19	12/13/19	ANSWER TO COMPLAINT FOR DECLARATORY RELIEF	DATA2	0.00	0.00
20	12/13/19	ACCEPTANCE AND WAIVER OF SERVICE	DATA2	0.00	0.00
21	12/10/19	ORDER TO SET FOR HEARING	1BJULIEH	0.00	0.00
22	12/06/19	RECEIPT	1BJULIEH	0.00	0.00
23	12/05/19	NOTICE OF ASSIGNMENT BY CLERK	1BCCOOPER	0.00	0.00
24	12/04/19	PEREMPTORY CHALLENGE OF JUDGE	1BCCOOPER	0.00	0.00
25	12/04/19	NOTICE OF APPEARANCE Receipt: 63163 Date: 12/05/2019	1BCCOOPER	218.00	0.00
26	12/02/19	ISSUING SUMMONS & ADD'L SUMMONS	1BCCOOPER	0.00	0.00
27	11/26/19	OPENING BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	1BCCOOPER	0.00	0.00
28	11/26/19	COMPLAINT FOR DECLARATORY RELIEF Receipt: 63081 Date: 11/27/2019	1BCCOOPER	265.00	0.00
			Total:	1,031.00	0.00

Totals By:	COST	531.00	0.00
	HOLDING	500.00	0.00
	INFORMATION	0.00	0.00

*** End of Report ***

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Attorneys for Defendant
Fair Maps Nevada PAC

REC'D & FILED
2020 JAN -2 PM 12:15
AUBREY ROWLATT
CLERK
BY
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

* * *

REV. LEONARD JACKSON,

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vs.

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

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

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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The Commission will ensure, to the extent possible, that the districts comply with the U.S. 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 requires redistricting after each federal census, beginning in 2023, which could replace maps drawn by the Legislature after the 2020 census, and will result in the expenditure of state funds to fund the Commission."

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

Dated this 2 day of ~~December~~ January, 2020.

District Court Judge James Russell

Respectfully submitted by:

McDONALD CARANO LLP

By:_____/s/ Adam Hosmer-Henner_____
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

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PHONE 775.788.2000 • FAX 775.788.2020

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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701

Chloe McClintick, Esq.
Law Clerk, Dept. 1

Adam Hosmer-Henner, Esq. (NSBN 12779)
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ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

Attorneys for Defendant
Fair Maps Nevada PAC

REC'D & FILED
2020 JAN -6 PM 3:25
AUBREY 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

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
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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 Stated 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

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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Attorneys for Defendant
Fair Maps Nevada PAC

REC'D & FILED

2020 JAN -2 PM 12:15

AUBREY 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:

//

//

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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.

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

LEGAL STANDARDS

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

The Commission will have seven members, four who will be appointed by the leadership 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,

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

The Commission will ensure, to the extent possible, that the districts comply with the U.S. 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 requires redistricting after each federal census, beginning in 2023, which could replace maps drawn by the Legislature after the 2020 census, and will result in the expenditure of state funds to fund the Commission."

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

Dated this 2 day of ~~December~~ January, ~~2019~~ 2020.

District Court Judge James Russell

Respectfully submitted by:

McDonald Carano LLP

By: /s/ Adam Hosmer-Henner
Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
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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:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
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100 West Liberty Street, 10th Floor
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Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701

Chloe McClintick, Esq.
Law Clerk, Dept. 1

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 19 OC 00209 1B

TITLE: REV. LEONARD JACKSON VS FAIR MAPS NEVADA PAC, AND BARBARA CEGAVSKE, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE

12/23/19 – DEPT. I – HONORABLE JAMES T. RUSSELL
J. Higgins, Clerk – Not Reported

PETITION FOR DECLARATORY RELIEF
Present: Kevin Benson, counsel for Petitioner; Adam Hosmer-Henner, counsel for Fair Maps; Gregory Zunino, Deputy A.G.

Statements were made by Court.
Benson and Hosmer-Henner present arguments.
Statements were made by Court.
COURT ORDERED: It likes alternative number two with the following change. It doesn't like the word "independent", it is removing that. It also likes the fact to remove "fair and competitive" because it doesn't know how these districts are going to come about and where they are going to end up. The balance of number two it likes except the end of it "this amendment will require redistricting beginning in 2023", it can't do much about that. It likes the language "which will result in the expenses of state funds to fund the commission".
Statements were made by Court and Zunino.
COURT ORDERED: Benson and Hosmer-Henner to prepare Orders for the Court and provide them to the Court within 10 days.
Statements were made by Court and Benson who clarified that the Court is not requiring that it include the language that it is going to undo what was done in 2021.
COURT ORDERED: No, it doesn't know how they are going to fix that, 2023 is going to be what it is.
Hosmer-Henner indicated they could include a statement that it would require a redistricting in 2023 which could replace the legislative maps in 2021.
COURT ORDERED: You can add that if you want, that clarifies it.
Statements were made by Court.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

DISTRICT COURT CIVIL COVER SHEET

Carson City County, Nevada

Case No. 19 DC 00394 B (Assigned by Clerk's Office)

REC'D & FILED
2019 NOV 26 PM 3:43

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Rev. Leonard Jackson	Fair Maps Nevada PO Box 751271 Las Vegas, NV 89136
Attorney (name/address/phone):	Attorney (name/address/phone):
Kevin Benson - 123 W. Nye Lane, #487 Carson City, NV 89706 (775) 884-0838	

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Foreclosure Mediation Assistance
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

Malpractice
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

Other Torts
- ☐ Product Liability
- ☐ Intentional Misconduct
- ☐ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

Probate

Probate *(select case type and estate value)*
- ☐ Summary Administration
- ☐ General Administration
- ☐ Special Administration
- ☐ Set Aside ☐ Surviving Spouse
- ☐ Trust/Conservatorship
- ☐ Other Probate

Estate Value
- ☐ Greater than $300,000
- ☐ $200,000-$300,000
- ☐ $100,001-$199,999
- ☐ $25,001-$100,000
- ☐ $20,001-$25,000
- ☐ $2,501-20,000
- ☐ $2,500 or less

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

Contract Case
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

Judicial Review/Appeal

Judicial Review
- ☐ Petition to Seal Records
- ☐ Mental Competency

Nevada State Agency Appeal
- ☐ Department of Motor Vehicle
- ☐ Worker's Compensation
- ☐ Other Nevada State Agency

Appeal Other
- ☐ Appeal from Lower Court
- ☐ Other Judicial Review/Appeal

Civil Writ

Civil Writ
- ☐ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

Other Civil Filing

Other Civil Filing
- ☐ Compromise of Minor's Claim
- ☐ Foreign Judgment
- ■ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

11/26/2019
Date

Signature of initiating party or representative

See other side for family-related case filings.

Nevada AOC - Research Statistics Unit
Pursuant to NRS 3.275

Form PA 201
Rev 3.1

the description of effect's characterization of the commission as independent and the districts it will be asked to generate as fair and competitive is improper. Op. Br. 8-10.

A. Describing the Redistricting Commission as Independent is Neither Deceptive nor Misleading.

Plaintiff asserts that the redistricting commission described in the Petition is not independent because a majority of its members will be appointed by legislative leadership and because the Legislature will determine whether and to what extent to fund the commission. Op. Br. 4-9. Plaintiff asserts that the Petition would allow the Legislature "to exercise substantial, if not total, control over the Commission by determining whom to appoint and how or whether to fund the Commission." *Id.* at 9. Plaintiff then contends that because the commission does not meet his definition of independent, the description of effect's reference to the creation of an "independent redistricting commission" is misleading and deceptive because the commission will not be immune from the political influence of the Legislature. *Id.* at 8-9.

The Nevada Supreme Court has held that in reviewing a description of effect, the court "must take a holistic approach to determine whether the description is a straightforward, succinct, and nonargumentative summary of an initiative's purpose and how that purpose is achieved." *Educ. Initiative PAC*, 129 Nev. at 48, 293 P.3d at 883. This is the opposite of Plaintiff's textual approach that turns on differing definitions of the word independent. Plaintiff asks the Court to do exactly what the Nevada Supreme Court has said it cannot do—parse the meanings of words or phrases in the Petition. *See id.*

The description of effect states clearly the purpose of the Petition: to amend the Nevada Constitution to establish an independent redistricting commission to oversee the mapping of fair and competitive electoral districts in Nevada. Ex. 1. It states with equal clarity how that purpose will be achieved: (1) by ensuring that the commission is composed of a bipartisan group of Nevada voters; (2) by requiring transparency in the mapping process; and (3) by providing specific criteria for the commission to employ in drawing electoral districts. *Id.*

Contrary to Plaintiff's assertions, the characterization of the redistricting commission as independent is not only accurate but entirely consistent with the purpose of the Petition. In the

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context of the Petition, independence connotes the fact that the decisions of the commission will not be subject to substantive control, oversight, or review of the Legislature. Toward this end, the Petition explicitly removes the mapping responsibility from the Legislature, stating that "[t]he powers granted to the Commission are legislative functions not subject to *the control or approval of the Legislature and are exclusively reserved to the Commission.*" Ex. 1 (emphasis added). Thus, the Legislature has no authority to review, modify or amend those decisions, rendering the acts of the commission independent of the Legislature's control. That the Legislature will appoint four of the seven members of the commission and have some control over its funding level does not change this fact.

Plaintiff's citation to *Las Vegas Taxpayer Accountability Committee v. City Council of Las Vegas*, 125 Nev. 165, 208 P.3d 429 (2009), is unpersuasive. While Plaintiff correctly points out that in that case the Nevada Supreme Court found the description of effect at issue to be misleading and deceptive, it did so because "the description of effect materially fails to accurately identify the consequences of the referendum's passage." *Id.* at 184, 208 P.3d at 441. The material failure identified by the court was that the petition at issue would have affected all redevelopment plans, not just new redevelopment plans as stated by the description of effect. *Id.* In this case, the characterization of the commission as independent cannot reasonably be construed to be a material failure to identify a consequence of the passage of the Petition. Independent is merely an adjective used to describe the nature of the commission. Plaintiff may disagree with the characterization, but the characterization in no way supports the conclusion that an effect of the Petition is not included.

Even if Plaintiff could persuade the Court that the term independent was misleading, the description of effect can be amended to incorporate this finding by modifying or excising the term.

B. The Petition Promotes Fair and Competitive Electoral Districts.

Plaintiff opposes the Petition and argues that it will not result in fair and competitive electoral districts. Op. Br. 9. Plaintiff's argument is not tied to the test that this Court must employ in evaluating the description of effect. As the Nevada Supreme Court has held, the

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description of effect "need not be the best possible statement of a proposed measure's intent," *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 889, 141 P.3d 1224, 1232 (2006), but "must be a straightforward, succinct, and nonargumentative statement of what the initiative will accomplish and how it will achieve those goals," *Educ. Initiative PAC*, 129 Nev. at 38, 293 P.3d at 876. In this case, the description informs the reader about the purpose of the Petition as the establishment of an independent redistricting commission to oversee the adoption of fair and competitive electoral maps. Ex. 1. And, it further specifies how the commission will do that. *Id.* While Plaintiff is entitled to his opinion about whether the process contemplated will, in fact, result in fair and competitive maps, the ultimate result is not relevant to whether the description of effect accurately states the Petition's purpose and how it intends to achieve it. Plaintiff does not call into question the accuracy of the description of effect as a summary of the purpose of the Petition, but instead registers disagreement with the likelihood that the structure of the Petition will bring that purpose to fruition. That is not the legal test as it is a decision for the voters.

Plaintiff's attempt to support his argument by claiming that the Petition invites or allows various types of unfairness—in particular, partisan bias—is unavailing. Op. Br. 10. Plaintiff's argument turns on his assertion that various types of unfairness *could* affect the commission's processes such that the electoral maps it draws do not meet his definition of fair and competitive. Here, again, Plaintiff's argument fails because it is a critique of the Petition and not the description of effect.

Even if Plaintiff could persuade the Court that the description of effect is invalid as related to the definitions of fair and competitive, the description of effect can be amended to incorporate the Court's findings.

C. Any Financial Impact of the Petition Is Hypothetical, Arguable, and Not a Significant Aspect of the Petition.

Plaintiff cannot do any more than guess as to whether the Petition will increase or decrease the costs of redistricting in Nevada. The Nevada Constitution currently imposes a "mandatory duty" upon the Nevada Legislature "at its first session after the taking of the decennial census" to apportion the "number of Senators and Assemblymen . . . among legislative

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districts which may be established by law, according to the number of inhabitants in them." Nev. Const. art. 4, § 5. Plaintiff does not provide the Court with any facts that could be determined with certainty as to how the administrative costs of redistricting would be affected by the Petition. Thus, these arguments should be reserved for the committees preparing the "pros and cons for the ballot." *Educ. Initiative PAC*, 129 Nev. at 45, 293 P.3d at 881.

A description of effect "does not necessarily need to explain every effect, or hypothetical effects, but it does need to accurately set forth the main consequences of the referendum's passage." *No Solar Tax PAC v. Citizens for Solar & Energy Fairness*, No. 70146, 2016 WL 4182739, at *2 (Nev. Aug. 4, 2016). Plaintiff challenges the description of effect as failing to inform voters of certain costs allegedly associated with the commission. Op. Br. 10. Plaintiff claims redistricting is expensive but that the Petition fails to identify and describe these costs, and he further claims the process contemplated by the Petition will result in additional litigation costs. *Id.* at 10-11. He also claims that the Petition fails to note that the commission "will 'undo' whatever maps are drawn by the Legislature in 2021," which will result in additional costs. *Id.* Because these are all hypothetical effects based on Plaintiff's unfounded speculation, they need not be included in the description of effect.

Plaintiff's argument regarding costs is based solely on his unsupported assertion that certain hypothetical effects should be referenced in the description of effect. Op. Br. 12 (listing a practical consequence as "potentially doubling the cost of redistricting for the 2020 census"). First, there is no certainty that the proposed amendment would increase the costs of redistricting and it is equally or more probable that the costs of redistricting would be reduced. The Petition establishes a single redistricting process for each census cycle, while the Legislature can currently re-draw the lines as many times as the Legislature deems appropriate. Moreover, the cost of legislative redistricting can be very high for taxpayers, especially if the Legislature is required to work in a special session. Second, there is no requirement that the Commission "undo" any maps drawn by the Legislature in 2021. Op. Br. 11. The Commission has the option to adopt the same maps drawn by the Legislature if the maps comply with the proposed amendment. What the Legislature and Commission may choose to do in the future is not an

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effect that can be definitively conveyed to voters. Finally, Plaintiff's assertion that there will be more litigation because of the standard imposed by the Petition is pure speculation. Legislative redistricting regularly draws legal challenges both in Nevada and nationally.

The administrative costs of redistricting are not part of the primary purpose of the Petition, nor do they represent a significant effect of the Petition. In *Coalition for Nevada's Future v. RIP Commerce Tax, Inc., PAC*, the Nevada Supreme Court found that the referendum would "unbalance the state budget," No. 69501, 2016 WL 2842925, at *4 (Nev. May 11, 2016), and in *Prevent Sanctuary Cities v. Haley*, the Nevada Supreme Court found that the initiative would "limit the power of local governments to address matters of local concern by impinging on their ability . . . to implement and carry out city programs and functions for the effective operation of local governments, such as policies regarding public health and safety." No. 74966, 2018 WL 2272955, at *4 (Nev. May 16, 2018) (quotation marks omitted). The hypothetical and arguable administrative costs of the Petition are not of the same scope, import, or certainty as the above cases.

Even if Plaintiff could persuade the Court that the description of effect is invalid as related to the costs of redistricting, the description of effect can be amended to incorporate the Court's findings.

D. The Court Can Amend the Description of Effect to Address Plaintiff's Concerns.

The proponent of an initiative is afforded the opportunity to amend a description of effect to resolve any inadequacies identified by the Court. NRS 295.061(3). While the description of effect contained within the Petition is legally sufficient and holistically sound, in order to reach an amicable resolution and expedite the proceedings, Fair Maps has proactively drafted five alternative descriptions of effect for the Court's consideration. Ex. 2. Should the Court determine that the Petition's description of effect requires amendment, Fair Maps requests that the Court consider one of the alternative descriptions of effect or further revise the description of effect in accordance with the Court's findings.

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In no event is Plaintiff entitled to the requested relief of prohibiting the Petition from appearing on the ballot. Such a result would deny the people's right to propose amendments to their principal governing document.

V. CONCLUSION

For all of the above reasons, the Court should deny Plaintiff's attempt to keep the Petition off the ballot.

Dated this 17th day of December, 2019.

AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

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

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on December 17, 2019, I served the foregoing on the parties in said case by placing a true copy thereof in the United Stated 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 December 12, 2019 at Reno, Nevada.

By _____
An Employee of McDonald Carano LLP

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

INDEX OF EXHIBITS

EXHIBIT #	DESCRIPTION	NUMBER OF PAGES
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McDONALD CARANO
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State of Nevada - Initiative Petition – Constitutional Amendment

C-02-2019

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EXPLANATION: Matter in ***bolded italics*** is new language to be added to the Nevada Constitution by this Amendment. Matter in strikethrough is existing language in the Nevada Constitution to be deleted by this Amendment.

The People of the State of Nevada do enact as follows:

Section 1: Article 4, Section 5 of the Nevada Constitution is hereby amended to read as follows:

Section 5. Number of Senators and members of Assembly~~; apportionment~~. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third nor more than one-half of that of the members of the Assembly.

It shall be the mandatory duty of the Legislature at its first session after the taking of the decennial census of the United States in the year 1950, and after each subsequent decennial census, to fix by law the number of Senators and Assemblymen~~, and apportion them among the several counties of the State, or among legislative districts which may be established by law, according to the number of inhabitants in them, respectively~~.

Section 2: Article 4 of the Nevada Constitution is hereby amended by adding thereto new sections to be designated as Sections 5A, 5B and 5C, to read as follows:

Section 5A. Apportionment; Creation of Independent Redistricting Commission.

1. There is created within the legislative branch of state government the Independent Redistricting Commission. It shall be the duty of the Commission in the year 2023, and after each subsequent decennial census of the United States, to apportion the number of Senators and Assemblymen among legislative districts established by the Commission and to apportion the number of representatives in the United States House of Representatives among districts established by the Commission.

2. The Commission shall be composed of seven members who are registered and eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3. The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader shall each appoint one Commissioner. The four Commissioners appointed in this manner shall appoint three additional Commissioners, each of whom, for at least four years immediately preceding their appointment, has not been registered or affiliated with the largest political party or the second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.

3. Within four years preceding appointment and during their term, no Commissioner may be a registered lobbyist; a candidate for a federal, state, or partisan local office; an elected official to a federal, state, or partisan local office; an officer or member of the governing body of a national, state, or local political party; a paid consultant or employee of a federal, state, or partisan local elected official or candidate, or of a political action committee, or of a committee sponsored by a political party, or of a committee that seeks to influence elections to federal, state, or partisan local offices; an employee of the Legislature; an employee of the State of Nevada, except for employees in the judicial branch, the armed forces, or a state institution of higher education; or related within the third degree of consanguinity or affinity to any individual disqualified under this subsection.

4. The term of office of each Commissioner shall expire once the Commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete and shall expire no later than the release of the following decennial census of the United States.

5. All meetings of the Commission shall be open to the public. The Commission shall ensure that the public has opportunities to view, present testimony, and participate in hearings before the Commission. All Commission materials shall be public records.
6. The Commission shall adopt rules to govern its administration and operation.
7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

Section 5B. Criteria for Determination of Districts; Approval of Final Plans.

1. In adopting a redistricting plan, the Independent Redistricting Commission shall use the following criteria, in the order listed, to draw districts: Ensure that districts comply with the United States Constitution and applicable federal law; Ensure that districts have an approximately equal number of inhabitants; Ensure that districts are geographically contiguous; Ensure that districts are not drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or elect representatives of their choice, whether by themselves or voting in concert with other persons; Ensure that districts, when considered on a statewide basis, do not unduly advantage or disadvantage a political party; Ensure that districts reflect, to the extent possible, county, city, and township boundaries; Minimize, to the extent practicable, the division of communities of interest, meaning an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities, but not including common relationships with political parties or political candidates; Ensure that districts are reasonably compact; and to the extent practicable, after complying with the requirements above, consider the number of politically competitive districts, measured by creating a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses.
2. Not later than July 1, 2023, and thereafter not later than 180 days from the release of the decennial census of the United States, the Commission shall approve a redistricting plan for the Nevada State Senate, the Nevada State Assembly, and Nevada's Congressional Districts, after providing public notice of each proposed final plan and allowing sufficient time for public review and comment. A final plan may be approved by the Commission only upon at least five affirmative votes, including at least one Commissioner registered with the largest political party, one Commissioner registered with the second largest political party, and one Commissioner not registered or affiliated with the largest or second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year.

Section 5C. Severability.

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

[The remainder of this page is blank.]

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.

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

			This Space For Office Use Only
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
4	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	
5	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY COUNTY	

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.

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

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

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

_____
Signature of Circulator

Subscribed and sworn to or affirmed before me this
_____ day of _____, _____, by_____.

_____
Notary Public or person authorized to administer oath

EL501C
Revised 8/2019

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

FILED.NV.SOS
2019 NOV 4 PM4:14

State of Nevada

Secretary of State Barbara K. Cegavske

Pursuant to NRS 295.015, before a petition for initative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Sondra Cosgrove

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

1. Sondra Cosgrove
2.
3.

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

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X Sondra Cosgrove
Signature of Petition Filer

11/4/2019
Date

EL600
NRS 295.009; NRS 295.015
Revised: 07-24-2017

Exhibit 2 – Proposed Alternative Descriptions of Effect

Alternative 1

A. Redline Version

This measure will amend the Nevada Constitution to establish ~~an Independent Redistricting Commission~~ a citizen 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 have ~~consist of~~ seven ~~Nevada voters~~members, 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~~ U.S. 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 and ~~,~~ may, but is not certain to, result in the expenditure of state funds that would not have otherwise been spent.

B. Clean Version

This measure will amend the Nevada Constitution to establish a citizen redistricting commission to oversee the mapping of electoral districts for the Nevada Senate, Assembly, and U.S. House of Representatives.

The Commission will have seven members, four 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 .The Commission will ensure, to the extent possible, that the districts comply with the U.S. 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 following each federal census and may, but is not certain to, result in the expenditure of state funds that would not have otherwise been spent.

Alternative 2

A. Redline Version

This measure will amend the Nevada Constitution to establish ~~an Independent Redistricting Commission~~ a 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~~have seven membersNevada 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 m~~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~~ U.S. 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~~after each federal census and may, but is not certain to, increase the cost of redistricting in the short term.

B. Clean Version

This measure will amend the Nevada Constitution to establish a redistricting commission to oversee the mapping of electoral districts for the Nevada Senate, Assembly, and U.S. House of Representatives.

The Commission will have seven members, four who will be appointed by the leadership 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, lobbyists, or certain relatives of such individuals. Meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings.

The Commission will ensure, to the extent possible, that the districts comply with the U.S. 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 beginning in 2023 and after each federal census and may, but is not certain to, increase the cost of redistricting in the short term.

Alternative 3

A. Redline Version

This measure will amend the Nevada Constitution to establish ~~an Independent Redistricting Commission~~ a citizen 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~~have seven ~~Nevada voters~~members, four who will be appointed by a bipartisan group of Nevada legislators ~~the leadership of the Nevada Legislature,~~ and three who will be ~~are unaffiliated with the two largest political parties who will be appointed~~ appointed by the other four commissioners. The legislator appointed commissioners are prohibited from appointing commissioners that are affiliated with the two largest political parties. 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 mapping of electoral districts by the commission will ensure to the extent practicable against the influence of partisan politics in the creation of electoral districts. The Commission will be legally bound to

~~The Commission will~~ ensure, to the extent possible and among other things, 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~~may, but is not certain to, require the expenditure of additional state funds on redistricting.

B. Clean Version

This measure will amend the Nevada Constitution to establish a citizen redistricting commission to oversee the mapping of electoral districts for the Nevada Senate, Assembly, and U.S. House of Representatives.

The Commission will have seven members, four who will be appointed by a bipartisan group of Nevada legislators and three who will be appointed by the other four commissioners. The legislator appointed commissioners are prohibited from appointing commissioners that are affiliated with the two largest political parties. Commissioners may not be partisan candidates, lobbyists, or certain relatives of such individuals.

The mapping of electoral districts by the commission will ensure to the extent practicable against the influence of partisan politics in the creation of electoral districts. The Commission will be legally bound to ensure, to the extent possible and among other things, that the electoral districts comply with the United States Constitution, 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, and are politically competitive.

This amendment will require redistricting beginning in 2023 and may, but is not certain to, require the expenditure of additional state funds on redistricting.

Alternative 4

A. Redline Version

This measure will amend the Nevada Constitution to establish ~~an Independent Redistricting Commissiona~~ commission that will ~~to oversee the mapping of fair and competitive~~ draw the 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~~are 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~~those four. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals~~partisan candidates, lobbyists, or certain relatives of such individuals~~. The Commission will require funding by the legislature to perform its duties. ~~All meetings of the~~ Commission meetings ~~shall~~ will be open to the public, ~~who~~ and the public will ~~shall~~ have opportunities to participate in ~~hearings before the~~ Commission hearings.

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), ~~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 the redrawing of districts in 2023 and after each federal census.~~redistricting by the Commission beginning in 2023 and thereafter following each federal census.~~

B. Clean Version

This measure will amend the Nevada Constitution to establish a commission that will draw the electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will consist of seven Nevada voters, four who are appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by those four. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals. The Commission will require funding by the legislature to perform its duties. Commission meetings will be open to the public, and the public will have opportunities to participate in Commission hearings.

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 the redrawing of districts in 2023 and after each federal census.

Alternative 5

A. Redline Version

This measure will amend the Nevada Constitution to establish ~~an Independent Redistricting Commissiona~~ commission to ~~to oversee the mapping of fair and competitive~~ draw the 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~~are 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~~those four. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals~~partisan candidates, lobbyists, or certain relatives of such individuals~~. The Commission will require funding by the legislature to perform its duties. ~~All meetings of the~~ Commission meetings ~~shall~~ will be open to the public ~~who shall have opportunities to~~who may participate in ~~hearings before the~~ Commission hearings.

The Commission will ensure, to the extent possible, that the electoral districts comply with the ~~United States~~U.S. 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), ~~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~~requires the redrawing of districts in 2023 and after each federal census.~~redistricting by the Commission beginning in 2023 and thereafter following each federal censu s.~~and may require expending additional state funds on redistricting.

B. Clean Version

This measure will amend the Nevada Constitution to establish a commission to draw the electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will consist of seven Nevada voters, four who are appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by those four. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals. The Commission will require funding by the legislature to perform its duties. Commission meetings will be open to the public who may participate in Commission hearings.

The Commission will ensure, to the extent possible, that the electoral districts comply with the U.S. 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 requires the redrawing of districts in 2023 and after each federal census and may require expending additional state funds on redistricting.

KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
BENSON LAW, LLC.
123 W. Nye Lane, Suite #487
Carson City, NV 89706
Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com
Attorneys for Plaintiff

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AUBREY ROWLATT
CLERK
BY _____ DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

REV. LEONARD JACKSON,

Plaintiff,

v.

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.: II

WAIVER OF SERVICE

BENSON LAW NEVADA
123 W. Nye Lane, Suite 478
Carson City, NV 89706
(775) 884-0838

On behalf of Defendant Barbara Cegavske, in her official capacity as Nevada Secretary of State, the undersigned counsel hereby acknowledges that said defendant has received a copy of the Complaint for Declaratory Relief and the Opening Brief in this matter, and hereby waives service of the summons and complaint.

Dated: 12/2/2019

(Signature of party or attorney)

Gregory L. Zunino (4805)
(Print name)

100 N. Carson St.
Carson City NV 89701
(Address)

775 684 - 1237
(Phone)

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KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
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Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com
Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

REV. LEONARD JACKSON,

Plaintiff,

v.

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

REPLY BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY RELIEF

BENSON LAW NEVADA
123 W. Nye Lane, Suite 478
Carson City, NV 89706
(775) 884-0838

Plaintiff, Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of BENSON LAW, LLC, hereby replies to Defendant's Answering Brief and requests that the Court order that the Petition #C-02-2019 does not comply with the requirements of state law and therefore cannot appear on the general election ballot for 2020.

I. INTRODUCTION

The core purpose of the description of effect is to accurately summarize what the petition will do, in order to "prevent voter confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006). This challenge is not a debate about the wisdom of the policy that the Petition proposes. Instead, this challenge was brought to prevent Defendant from misleading voters by telling them its Petition will do something that it will not do.

As described in the Opening Brief, other states have created independent redistricting commissions. The commission that this Petition would create bears no resemblance whatsoever to

those independent commissions. If Defendant wants to pursue a policy of creating a non-independent additional arm of the Legislature to perform redistricting, it is free to do so. But it cannot tell voters that it is creating an independent commission, and that the commission will create fair and competitive maps, when it will not.

II. ARGUMENT

A. The Description of Effect is Misleading Because the Commission Would Not be Independent.

Defendant argues that the Description of Effect is not misleading because the Commission would be "independent" in the sense that it is not entirely controlled by the Legislature. *See* Answering Brief, pp. 6-7. Defendant points to Section 5A (7) of the Petition, which states: "The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission." Answering Brief, p. 7.

Essentially, Defendant is arguing that the Commission is "independent" simply because the Legislature does not directly approve or reject the Commission's plan. That is a very unusual and constrained definition of "independent," and certainly not one that the typical voter would understand. "Independent" is defined as "[f]ree from outside control; not depending on another's authority." Oxford English Dictionary, https://www.lexico.com/en/definition/independent Voters expect that an "independent" institution is one which is, in practical terms, insulated from political influences and pressures.

On that point, Defendant concedes that the Legislature would directly appoint a majority of the commissioners and that the Legislature would have "some control" over its funding.[1] Answering Brief, p. 7. Nor does Defendant contest the fact that this Commission is not in any way similar to independent commissions in other states. For example, Defendant does not contest that there is no mechanism for ensuring actual independence of the commissioners, the Petition allows politically-

[1] Defendant does not explain how the Legislature has only "some" control, rather than total control of the Commission's funding, as discussed in the Opening Brief, pp. 6-8.

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connected and ambitious people to serve on the commission, and that it does not prevent commissioners from immediately running for a district that they just drew.

Instead, Defendant argues that "independent" is "merely an adjective" and that characterizing this Commission as "independent" is not material, and that it is improper for this Court to "parse" such words in the Description of Effect. *See* Answering Brief, p. 7. This argument must be rejected.

It is apparent that the Defendant itself does not treat "independent" as merely an adjective. Instead, the Petition states that it would create the "Independent Redistricting Commission." It uses "independent" as part of a proper noun, the very title of the Commission, in both the description of effect and the proposed language.[2] As discussed in the Opening Brief, there is a clear and substantial difference in policy between creating an actually independent commission, as other states have done, versus what is proposed here, which is essentially an additional arm of the legislative branch that is subject to legislative control and political influences. Thus the Defendant's mischaracterization of the nature of the Commission is material.

If Defendant wants to pursue the policy of creating a non-independent additional arm of the Legislature to perform redistricting, it is of course free to do so. Whether that is good policy or bad policy is not this issue here. The issue here is that Defendant cannot tell voters that it is creating an independent commission when it is not.

Contrary to Defendant's argument, this case is very similar to *Las Vegas Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 183-84, 208 P.3d 429 (2009). There, the description of effect stated that the referendum would only apply to new redevelopment plans, when it would actually apply to all redevelopment plans. The description was therefore simply wrong. Here, the Description of Effect is also simply wrong because the Commission is not independent, and Defendant does not seriously contend otherwise. Instead, it attempts to convince the Court to allow it to redefine the concept of "independent" in an implausible and misleading way. That violates the

[2] Surely it would have also put "independent" in the title of the Petition, but the Secretary of State no longer allows petition proponents to assign their own titles to initiatives, and instead assigns it a number. This helps to avoid these kinds of problems raised by filing a petition and giving it a misleading title.

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very purpose of the description of effect, which is to "prevent voter confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006).

In this case, it is the Defendant who is trying to "parse" the meaning of the word, rather than taking a "holistic" approach to determine whether the Description of Effect is "a straightforward, succinct, and non-argumentative summary" that "is correct and does not misrepresent what the initiative will accomplish." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 48, 293 P.3d 874, 883 (2013).

B. The Description of Effect would mislead voters into believing that the Commission will create fair and competitive electoral districts.

1. Partisan fairness and political competitiveness.

With respect to partisan fairness and competitive electoral districts, Defendant again does not really dispute that the Commission is *not* required to create fair and competitive districts, as discussed in the Opening Brief, pp. 9-10. Instead, Defendant asserts that that doesn't matter because Nevada law requires that a description of effect only describe the *purpose* of the petition, not its effect. *See* Answering Brief, p. 8. Defendant goes so far as to argue that "...the ultimate result is not relevant to whether the description of effect accurately states the Petition's purpose and how it intends to achieve it." Answering Brief, p. 8, ll. 9-10.

This is backwards of course. Defendant has, intentionally or not, substituted the word "purpose" for "effect." Nevada law is clear that the "ultimate result" (i.e., the effect) is exactly what the description of **effect** must describe. *See e.g., Education Initiative,* 129 Nev. at 48 (the description of effect must describe "what the initiative will accomplish," not what its purpose is); *Las Vegas Taxpayer*, 125 Nev. at 183-84, 208 P.3d at 441 (striking down description of effect that did not accurately describe the petition's "true effect").

In *Coal. for Nev.'s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS 153, at *10 (May 11, 2016) (unpublished decision – NRAP 36(c)), the purpose of the petition was to repeal the commerce tax, and the description of effect stated that the effect of the petition would be a repeal of the tax. Nevertheless, the Nevada Supreme Court struck down the description of effect

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because it did not disclose the actual, practical effect: that the repeal would unbalance the state budget. *Id.*

Thus, contrary to Defendant's argument, the "purpose" behind a petition is immaterial. The best intentions or the noblest purpose are not an excuse for drafting an inaccurate and misleading description of effect.

To the extent that Defendant is arguing that it is merely hypothetical that the Commission's maps would not be fair or competitive, that argument again misses the mark and misapprehends the Plaintiff's argument. *See* Answering Brief, p. 8, ll. 14-22. As discussed in the Opening Brief, pp. 9-10, the Petition is invalid because it tells voters that it will create a Commission that will draw fair and competitive maps, when the Petition actually contains no requirements that the Commission do so. This is not a critique of the policy set forth in the Petition. It is a critique of the Description of Effect for misrepresenting *what* policy the Petition would enact.

Again, if Defendant wishes pursue the policy of creating a Commission that is not required to deal with partisan gerrymandering, that is its prerogative. But it cannot tell voters that the Commission will adopt politically fair maps when it is not actually required to do so.

2. The Commission's composition does not fairly represent Nevada's demographics.

As discussed in the Opening Brief, p. 10, the Petition contains no requirements that the Commission must be fairly representative of Nevada's demographics. This is true both in terms of racial, language, and geographic demographics, and also in political or partisan demographics.

With respect to partisan demographics, the Petition would enshrine in the Nevada Constitution power over the majority of the Commission to the two major parties. The three remaining commissioners must either be members of minor parties, or nonpartisan. All minor party voters, combined, comprise 6.5% of Nevada voters.[3] The percentage of voters registered as Democrats is 38% and the percentage of Republicans is 32%. Voters registered as nonpartisan make up almost

[3] Nevada Voter Registration Statistics, November 2019, available at: https://www.nvsos.gov/sos/home/showdocument?id=8166

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23% of all voters, and that percentage has been steadily rising.[4] If this trend continues, nonpartisan voters will be a full third (or more) of all registered voters by 2021. Yet there is no requirement that nonpartisans be represented at all on the Commission, and minor parties could be greatly overrepresented.

Finally, the Petition requires five votes to approve a redistricting plan, and those votes must be distributed by party affiliation. This means that a small minority of commissioners can veto any map, and thus hold disproportionate power over the redistricting process. Petition, Section 5B(2). Clearly, this is not "fair" to the majority of Nevadans. The Petition requires at least one vote from each major party and one vote from a minor party or nonpartisan commissioner. Consequently, even if a supermajority of five commissioners (all three non-major party commissioners and both commissioners of one major party) agree to a map, if the two other major party commissioners vote no, the plan will fail. Given this composition, the practical effect of this Petition is that the Commission will never approve any plan, let alone a fair and competitive one. It is set up to fail.[5]

C. The financial impact of the Petition is concrete and substantial and therefore must be disclosed to voters in the Description of Effect.

Defendant next argues that it is entirely hypothetical and speculative whether the Petition will increase the costs of redistricting, and therefore this effect need not be described in the Description of Effect. *See* Answering Brief, pp. 8-10. The exact *amount* of the increase in cost cannot be accurately determined at this time[6], but it cannot be reasonably disputed that the Petition will increase costs.

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[4] Compare November 2019 voter registration statistics to January 2010, when nonpartisans were only 15.7% of all registered voters. https://www.nvsos.gov/sos/elections/voters/voter-registration-statistics/2010-statistics/voter-registration-statistics-jan-2010-total

[5] This unfairness will only get worse over time, because the Petition would enshrine in the Constitution a grant of disproportionate power to the major political parties, which continue to lose ground to nonpartisans. This will create the same issues that other constitutional amendments have, such as the Minimum Wage Amendment, which have made it extremely difficult to adapt to changing circumstances.

[6] See Legislative Counsel Bureau Statement of Financial Impact, stating that it is unable, in the short time period since the Petition was filed, to determine its financial impacts. Available at: https://www.nvsos.gov/sos/home/showdocument?id=8130

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Neither voters nor the Court should check their common sense at the door when considering an initiative petition. Several aspects of the Petition make it certain that it will increase costs of redistricting.

First, Defendant argues that the Petition would reduce costs by "establishing a single redistricting process for each census cycle, while the Legislature can currently re-draw the lines as many times as the Legislature deems appropriate." Answering Brief, p. 9. Nevada has not been plagued by the type of racial or partisan gerrymandering that has occurred in other states, including some where the legislature attempts to redistrict whenever partisan control changes. Except for 1965, when the Legislature was forced to redistrict to comply with the Supreme Court's rulings establishing the one-person-one-vote doctrine, counsel for Plaintiff has been unable to find another instance where the Legislature has redistricted more than once in a decade. Thus Defendant's argument is not just theoretical, but is contrary to history.

Second, and ironically in light of Defendant's first argument, the Petition itself requires mid-decade redistricting for the 2020 Census. Petition, Section 5B(2). It provides that the Commission "shall" approve a redistricting plan not later than July 1, 2023. *Id.* This will obviously increase the cost of redistricting by having a "do over" only two years after the Legislature will redistrict in 2021. There is nothing speculative about that. Defendant first attempts to understate this effect by claiming that such "administrative" costs are either hypothetical or do not matter because costs are not a main "purpose" of the initiative. *See* Answering Brief, p. 9. As discussed above, whether the increase in costs is a "purpose" of the initiative is irrelevant. Defendant next argues that the increase in costs is hypothetical because it is possible that the Commission could just accept the Legislature's 2021 plan. Answering Brief, p. 9. While that is indeed theoretically possible, it is not at all probable, given that the Commission will be subject to different political influences. In any event, the Commission would incur costs to be organized and to hold public hearings, which would be needless expenditures in the unlikely event it did simply adopt the Legislature's 2021 maps.

Furthermore, this effect is not just about costs, but about informing voters that the Commission will immediately re-do the maps, as opposed to beginning after the next census. That is a significant departure from Nevada's history of redistricting only once per decade, and is not something that

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voters would expect. Therefore the Description of Effect must inform voters that the Petition will undo the redistricting plan that the Legislature will have just adopted in 2021.

Finally, the Petition will result in additional costs due to litigation. As to Defendant's argument that litigation costs are hypothetical, again, reviewing the Petition itself makes it plain that these costs are certain to occur. One example is the Petition's directive that neither political party should be "unduly" disadvantaged, yet it lacks guidelines for determining when a map "unduly" disadvantages a political party. Such vague language is sure to invite litigation by whichever party feels it was slighted. That party has nothing to lose and everything to gain by going to court, so it would be surprising if such lawsuits did *not* routinely occur.

The Petition is rife with other problems that are certain to generate litigation. For example, it would have two Democrats and two Republicans choose the three other members. Given that there is an even party split, it is likely that these four commissioners would be unable to agree on who to appoint to the remaining seats. What happens if then? The Petition contains no provisions for this contingency, nor even for dealing with vacancies generally. The Petition requires five votes to approve a plan, and the votes must be distributed amongst the members by party affiliation. As discussed above, this gives a small minority an absolute veto power over any map. What happens when the Commission fails to adopt a map within its 180-day window? These are but a few examples.

As the Court is well-aware, a map can be challenged for non-compliance with constitutional requirements or for violation of the Voting Rights Act. But this Petition would create numerous additional avenues for litigation that have nothing to do with typical redistricting lawsuits. The Petition invites litigation that will be focused on procedural problems rather than voters' constitutional rights. This Petition would therefore substantially increase the costs of redistricting caused by repeated, expensive, and wasteful litigation.

D. Legal Standard for the Description of Effect and the Role of the Court.

Lastly, Defendant asserts that the Court has no authority to order that the Petition cannot appear on the 2020, and instead that the Court's role is to amend the Description of Effect. This argument is incorrect on both counts.

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First, the role of the Court is not to redraft or amend the description of effect itself. The role of the Court is to determine whether the description of effect as presented by the petition proponents is valid or not. NRS 295.061(1), (3). If the Court finds it to be invalid, it is the obligation of the petition proponent to draft an accurate and non-misleading description of effect. *See id.* Amendment of the description of effect is accomplished by refiling the petition with the new description. *See Beers*, 122 Nev. at 940, 142 P.3d at 346 (petition proponents must refile the petition with the amended description of effect with the Secretary of State before circulating).

Nor is it the obligation of the opponents of the petition to assist the proponents in redrafting the description of effect. Furthermore, it would be a violation of the opponents' First Amendment rights to require them to do so. *See Video Software Dealers Ass'n v. Schwarzenegger*, 556 F.3d 950, 953 (9th Cir. 2009) (compelled speech violates the First Amendment).

Accordingly, the first step in the process is for the Court to determine the validity of the description of effect. If the Court finds that it is invalid, then the next step is for the proponent to amend by filing a new version with the Secretary of State.

Second, the Court plainly has the authority, and the obligation, to prohibit a initiative from appearing on the ballot if its description of effect is invalid. The description of effect is an integral and required part of the petition. NRS 295.009(1)(b); *Nevadans for Nev. v. Beers*, 122 Nev. 930, 940, 142 P.3d 339, 346 (2006). The description of effect is the "descriptive language is what appears directly above the signature lines, as registered voters decide the threshold issue of whether they even want the initiative placed on the ballot." *Id.*

An initiative that contains an inaccurate or misleading description of effect obviously has no place on any ballot. That is why NRS 295.015(2) provides that any signatures obtained before the misleading description of effect is amended are invalid and that is why such petitions have been invalidated by the courts on numerous occasions. *See Beers*, 122 Nev. at 940, 142 P.3d at 346 (invalidating petition due to inaccurate description of effect); *Las Vegas Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 177, 208 P.3d 429, 437 (2009)) (same); *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs,* 129 Nev. 35, 37, 293 P.3d 874, 876 (2013) (same); *Coal. for Nev.'s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS 153, at *5 (May 11, 2016)

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(unpublished decision – NRAP 36(c)) (same). A ruling that the description of effect is inaccurate or misleading is therefore a ruling that the petition, in that form, cannot appear on the ballot. As demonstrated by the case law, it is clear that the Court has such authority.

III. CONCLUSION

Defendant is attempting to sell the voters a bill of goods. It states that it will amend the Nevada Constitution to create the "Independent Redistricting Commission," which will be free from the Legislature's influence and that will create fair and politically competitive maps. The problem is that none of that is true. Furthermore, the Petition's description of effect fails to disclose material effects that it will cause, including undoing the Legislature's 2021 redistricting plan, increasing the costs of redistricting, increasing litigation, and granting disproportionate power to a small minority of the commission.

For these reasons, Plaintiff respectfully requests that the Court enter the following relief:

1. Declare that the Description of Effect is inaccurate and materially misleading because:
    a. it misrepresents the nature of the Commission because the Commission is not independent;
    b. it misrepresents the effect of the Petition because the Commission is not required to prevent or avoid partisan gerrymandering;
    c. it fails to disclose that, if the Petition passes, it will increase the cost of redistricting due to litigation over when a party is "unduly" disadvantaged;
    d. it misrepresents the effect of the Petition because the Commission is not required to create politically competitive districts;
    e. it fails to disclose that, if the Petition passes, a small minority of commissioners will hold disproportionate power over the redistricting process;
    f. it fails to disclose that the Commission would re-draw maps in 2023, just two years after the Legislature will have performed redistricting in 2021 and that this will increase costs of redistricting;

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g. it fails to disclose that, if the Petition passes, it will increase the cost of redistricting because of the strong likelihood that the Commission will deadlock and fail to approve any redistricting plan, leading to litigation;

2. Order that the Secretary of State take no further action to process the Petition in its current form, including, without limitation, placing it on any ballot; and,

3. Order any other relief the Court deems just.

Dated this 20th day of December, 2019.

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of Benson Law, LLC, and that on this date, I caused the foregoing Reply Brief to be served to all parties to this action by:

X	Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada
_____	Hand-delivery - via Reno/Carson Messenger Service
_____	Facsimile
X	E-Mail
_____	Federal Express, UPS, or other overnight delivery
_____	E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
_____	E-filing through the federal courts' CM / ECF filing and service system.

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CASE NO. 19-OC-00209

DEPT. NO. 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

BEFORE THE HONORABLE DISTRICT COURT JUDGE, JAMES T. RUSSELL

REV. LEONARD JACKSON,

Plaintiff,

vs.

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

Defendants.
_____/

JAVS TRANSCRIPT OF PROCEEDINGS

PETITION HEARING

DECEMBER 23, 2019

Transcribed By: Kathy Jackson CSR

A P P E A R A N C E S

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DECEMBER 23, 2019, CARSON CITY, NEVADA

-oOo-

THE COURT: For the record this is Case Number 19CO009, Leonard Jackson versus Fair Maps Nevada PAC and Barbara Cegavske. Show the appearance of Kevin Benson on behalf of Reverend Leonard Jackson. Show the appearance of Adam, please state your name for the record.

MR. HOSMER-HENNER: Adam Hosmer-Henner from McDonald Carano.

THE COURT: And you are Greg Zunino.

MR. ZUNINO: Your Honor, Greg Zunino. We're here on behalf of the Secretary of State.

THE COURT: Thank you.

This is the time set for a hearing in regards to the petition that was filed. It's an initiative petition in respect to this particular matter.

Mr. Benson, are you ready to proceed?

MR. BENSON: Yes, I am, Your Honor.

THE COURT: Go ahead, Mr. Benson.

MR. BENSON: Thank you, Your Honor. So we are here on a constitutional initiative petition that proposes to amend the Nevada Constitution to create a redistricting commission instead of having the legislature perform redistricting.

And as the Court is aware, we're not here to debate the policy or the wisdom of that policy, whether that's good or bad or wise or unwise. It's clear that anybody can propose whatever policy they like, whatever changes they like through the initiative process in Nevada. However, under Nevada law what you can't do is you can't propose one policy in your petition and tell voters in your description in effect you are doing something else, and that's the crux of the challenge here is that the description of effect is materially inaccurate and misleading.

So as you're aware, Your Honor, the standard for description of effect is that it must be a straight forward succinct non-argumentative summary of what the initiative will do. And the role of this Court, the district court is to analyze whether the information, quote contained in the description is correct and does not misrepresent what the initiative will accomplish and how it intends to achieve those goals, end quote. That's the Education Initiative PAC case.

And so in this case there's several problems with the description of effect, and I'll start with the name of the commission which is they call it the Independent Redistricting Commission. And it states on the very first sentence of the description of effect that it will create an

independent redistricting commission, and this is simply not accurate because the commission is not independent. It's not independent for a couple of reasons.

The first is its composition. It's composed by direct appointment of a majority of the commissioners by the legislative leadership and then those appointees directly appoint the remaining three members minority of the commission. And so as a result of this process, what you have are only people who are well politically connected that are going to get appointed to this commission. There's no insulation from the politics or from the political pressures or the legislature in this appointment process.

And there's nothing also in this petition that prevents the commissioners themselves from acting in their own self-interest. For example, you would be perfectly free to sit on the commission, to draw these plans and these maps and then immediately thereafter in the next election run for the district that you just drew. And this is in stark contrast to the independent redistricting commissions that have been formed in other states.

These other states, they involve some kind of process to avoid this direct appointment issue, and they generally do that through some third party mechanism or a third party, neutral third party, not the legislature, not

the party leadership creates, either does the appointments directly or creates pools from which the appointees are made.

And these other states also, most of them use an application process. So that somebody who's interested in serving on a commission but who does not necessarily have the political connections to get appointed can make an application and somebody will review that application, see if they are qualified and, again, either appointments depending on the state made from a pool or they are made -- or they are made directly from that third party. And in states they are also done randomly.

So the point is there's this application process that opens it up to other citizens, people who are not necessarily politically connected, and that gives an opportunity for them to show their interest and a real possibility to actually be selected to serve on this commission.

Other states also generally have some period of time after which commission owners are barred from being elected to or appointed to an office. And that, again, depends on the state but it's anywhere from two years to in some cases in certain offices in California it's ten years. But the point is to, again, remove that incentive, one, to actually personal interest that I'm going to draw myself a

district essentially and run for that district but also to remove some of the political pressure where, you know, if you do what we ask you to do on this commission, we're going to support your campaign in this next year. Well, if we barter for money for the next two or four or six years or whatever the case may be that will remove some of that pressure and criticism insulation from that political process.

So another major issue with the independence or the lack thereof in this petition is the funding mechanism or, again, I should say the lack of a funding mechanism. There's no provision in this petition that provides any funding for the commission nor is there any mandate that the legislature fund the commission at all or any particular amount or in any particular way.

Of course, the legislature is the branch of government that controls the purse strings. And so by giving the legislature essentially complete discretion and control over how to fund the commission, what to appropriate the money for, what it can be spent on or whether to fund it at all, that gives the legislature substantial control over the commission. And, again, this is in contrast to other states that have set up independent commissions where those states mandate that the legislature fund the commission either in a particular dollar amount we're using some kind of formula to

figure out how much that should be.

And Arizona has even gone one step further and it has expressly given authority to the commission and authority and standing to sue in court to challenge the adequacy of its funding. And that gives it further independence from the legislature so that it's not beholding to what the legislature deems it can spend money on or cannot spend money on.

So for these reasons the commission that is proposed in this case contrary to what is stated in the description of effect and in the language of the petition itself is not an independent commission. It essentially bears no reasonableness whatsoever to these independent commissions that have been enacted in other states.

And because of that the description of effect is not just inaccurate but it is seriously misleading to members because the general plain language or plain meaning of the term independent is that it's free from control or that it's free from the influence of another person or another body, and that is just simply not the case in this case. This commission is very much subject to political pressures. It's very much subject to political control from the legislature.

THE COURT: Let me ask you a question because obviously the census is going to be done in 2020 again; is

that correct?

MR. BENSON: Correct.

THE COURT: And then as it was in 2010 and then we get to 2023 is when this would go in effect, is there going to have to be another census or another, some kind of further action taken because I would presume after the 2020 census there's going to have to be a redistricting done.

MR. BENSON: Correct.

THE COURT: So then would you turn around and redo it again in two years or a year or whatever it was?

MR. BENSON: It would redo it again in two years and that's another problem with description of effect in this case is --

THE COURT: Does that make sense to anybody? I don't know. You do it and turn around and do it again in another year and a half. I don't know. I'm just thinking out loud.

MR. BENSON: It doesn't make sense to me, Your Honor, but again that's -- they're free to enact that policy if that's what they want to pursue, but they have to tell voters that's what they are doing because as I stated in my reply brief, at least as far as I could find as far as 1965, Nevada has not had any mid district -- mid decade redistricting. So you're right. There's one census that

will happen in 2020. The legislature will redistrict 2021 and then this will -- this petition mandates that the commission redistrict again in 2023. So it's going to undo whatever the legislature just did. It's going to mid decade redistricting what we haven't done at least in recent history and it's going to also increase the cost of redistricting because we're essentially going to have a do-over in just a year or two after the legislature has already done.

THE COURT: The last redistricting cost the State of Nevada approximately 35 to $38,000 and that was based upon the three masters that we paid out of this court in order to sit down and do it on an independent basis. So, again, that is as very reasonable I think from if you look around the United States. It was very very reasonable.

MR. BENSON: And I think that that was an unusual circumstance, Your Honor, in for redistricting a commission like this to go through the entire process and it's going to need to have some kind of staff. It's going to have to hold all of these public hearings and so forth and so on. And I -- correct me if I'm wrong, but as I recall the commissioners in that case were not paid a salary but were essentially volunteers.

THE COURT: No. They were all -- every one, every master was paid $100 an hour. That's where the $3,800

came from.

MR. BENSON: I thought it was a per diem, Your Honor. My apologies.

THE COURT: No. Basically the staff as it existed up there and the people from the legislature, and so they provided the staff in regards to that, but and they had a hearing in the north and in the south. So, again, that was an unusual situation.

MR. BENSON: It was an unusual situation and I'm glad you mentioned the staff because that's another issue with the independence of this commission is, again, there's no provision for its funding. There's no provision for staff. So if it's going to be using its own staff that's a question we don't know or if it's going to be using the legislative staff, like the masters did the last time around, if that's what ends up doing then that is yet another influence from the legislature in control potentially that it can exert over this commission.

And so in this case, even if the costs are not substantial, which I think if they are going to hold these public meetings and do all of this and get computer software and all that they need, especially if they are going to do it independent of the legislative staff, even if that cost is not that substantial I think what is substantial is what you

mentioned earlier which is that we're going to have redistricting just like normal, but then we're going to completely undo all of that just two years later, and I think that's material to a lot of voters, and that is not disclosed anywhere in the description of effect in this case.

THE COURT: Does it -- it kind of implies that there will be two selected from the original four, if I'm not mistaken, basically by the legislative majority, minority from both houses in respect to that. What if they are all democrats and republicans? What about the independent voter out there? What about, does he ever get a shot at being on this commission?

MR. BENSON: Well, that's kind of the interesting thing about this commission is it doesn't guarantee a nonpartisan or independent voter any seat on this commission. It only requires that those three other commissioners not be affiliated with a major party. So they could be affiliated with a minor party.

And given that there's going to be, you know, partisan majority of the commission, it's reasonable to expect that those commissioners are going to want to appoint somebody who aligns more or less with their party. So you could have republicans selecting a libertarian for example or democrats selecting a green party. And so one of the other

issues with this petition and the fairness aspect of it is that there's no guarantee that nonpartisans are going to have any seat on this either, even though as we stand now nonpartisans are almost 25 percent of our registered voters.

And if that has -- that number has been increasing rapidly, and so I expect that by 2031, and there's a typo in my brief, I said 2021, I mean 2031, I expect that nonpartisan voters will be a full third or more, but yet there's no guarantee that they're going to have any seats on this commission at all.

In fact, what this commission is going to do is or excuse me, this petition, is it's going to enshrine in the constitution a majority control of the commission in the two major parties, both of which are rapidly losing ground to nonpartisans. Meanwhile, the minor parties at least for now represent about six and a half percent of all registered voters. So they may be substantially over-represented on this commission, while nonpartisans have no guarantee of their representation at all.

And so that is -- that goes to the fairness aspect of the description of effect which to answer that, that's one of the second major issues with the description of this, of effect in this case is it tells voters that it's going to adopt fair and politically competitive maps. And

one of several problems with that, one I just discussed. Another is that there's really no guarantee that this is going to do anything to fix partisan gerrymandering.

As I discussed in the brief, the U.S. Supreme Court recently reaffirmed its position that partisans gerrymandering is a political question and because of that the federal courts really have no jurisdiction over that, and so they are going to have to do something on the state level in order to address partisan gerrymandering.

But in this petition what it requires the commission to do is not to fix gerrymandering. It just says that it should ensure no parties go unduly disadvantaged. So it doesn't give any guidelines or any definitions about what that means to be unduly disadvantaged.

And so what it does is it actually contemplates that there's going to be at least some unfairness between the parties because it contemplates by using the term unduly that there's going to be some disadvantage to one party or the other. How much we don't know because there's no guidelines and there's no definition.

And so I think one thing that we do know because of that is that there's going to be lots of litigation because whichever party feels like it was slighted has absolutely nothing to lose and everything to gain by going to

court and arguing that it's being unduly disadvantaged.

And so this petition is not going to fix partisan gerrymandering. It doesn't have a mandate that it makes these maps fair between the parties. It just says you can't unduly disadvantage one. So, again, the description of effect is inaccurate and it's misleading because a voter reading this is going to think, oh, well, this is going to do away with partisan gerrymandering, but it's really not required to do that at all.

THE COURT: Let me ask you is the Court required, and I think you made this point in your brief, it says the Court is not required to rewrite the description of effect. Is that true?

MR. BENSON: That is correct, Your Honor. It is the obligation of the proponents of the petition to amend their description of effect and to refile that with the Secretary of State. When you refile it that's how the amendment is accomplished.

THE COURT: I tried to find that in the case you cited, the Beers case. Is it in that case?

MR. BENSON: The Beers case is the description of effect is an integral part of -- what they had argued in that case was that the petition that they filed is different from the description of effect that they circulated. So they

said, oh, but we filed the petition with the Secretary of State and, therefore, everything is okay. And the Court said no, no, they are one in the same. They are part of the same document, and you have to file the one that you're going to circulate before you circulate it.

And the other thing that that case said is that once you file it, that is the version that you have to circulate. So in effect with the description of effect is invalid, you can't circulate that petition unless you refile it, and so that's how the amendment is done is you change the description of effect and you refile the entire thing with the Secretary of State.

THE COURT: Did you look at all of the alternative of descriptions of effect that they provided?

MR. BENSON: I did.

THE COURT: Any of them meet your approval?

MR. BENSON: Unfortunately no.

THE COURT: Well, I knew you were going to say that. I don't know why, but I kind of figured that was the case. None of them come close, huh?

MR. BENSON: I'm not --

THE COURT: I'm putting you on the spot.

MR. BENSON: We had issues with all of them. I think the last one, the fifth one starts to make a good start

but I think that there's issues with all of them. And I -- if you would like, we'll address each of those now, but I meant to do so a little later but I can certainly do so if you would like, Your Honor.

THE COURT: Well, I was looking at them and I was looking like, well, you know, I was looking at the second -- the one that basically calls it the, gets rid of all of the language and calls it just establishing a redistricting commission. I mean, it takes all of the nuances out of it and just says we're going to create a redistricting commission in respect to that.

And that kind of seemed fine to oversee the mapping of electoral districts. It takes out the fair and competitive language that bothers you as well. Then you get down to the end and -- and part of it, this amendment will require redistricting beginning in 2023 and each federal census. And then the language after that wasn't exciting to me but it may be some language which will result in expenditures of state funds to fund the commission. I mean, there's no doubt that you're going to have to -- funds are going to have to be expended to fund this commission. What that amount is or not nobody will know, they really won't until you get down to the end. So I kind of looked at that one kind of better than the others to be honest with you.

I thought the second one kind of has some merit, so to speak, but tell me what is wrong with the second one. You don't have to go beyond the second one.

MR. BENSON: So there's a couple of things. One is what we just discussed earlier is that it does say it's going to be redistricted in 2023.

THE COURT: Well, I know that's a problem.

MR. BENSON: Right. It doesn't say what's really important about that which it's going to undo what the legislature just did in 2021, and so that's the part, that omission makes it inaccurate and misleading.

THE COURT: What if you take out beginning in 2023 and leave that out?

MR. BENSON: And this --

THE COURT: I know that doesn't help everybody but I'm just --

MR. BENSON: Correct, Your Honor. It's material that they disclose to voters that it's going to essentially just do -- have a do-over what the legislature just did, and so that's the point of my argument before that you just asked me about is I can't ethically represent my client and come into court and help them draft their initiative, you know, in real time.

THE COURT: Well, I noticed you pointed that out

in your brief too. It's not my job to rewrite it for them.

MR. BENSON: Right. And so what we're asking the Court to do is to look at the petition as it's drafted and to make a ruling on whether the description of effect as it stands now is valid or not, and then it will be up to the petitioners, to the proponents to redraft and refile their description of effect in order to amend it.

THE COURT: Is there any case law that says the Court is required to help or, again, I'm back to that question, help or assist them in that regard?

MR. BENSON: Not that I'm aware of, Your Honor. There is, of course, the statute that says if they amend it by refiling it with the Secretary of State in a way that complies with the Court orders then it can no longer be challenged. And so that -- but there's nothing that I am aware of that requires that the district court do that for them, and I would submit that that's not the role of the district court. The role of the district court is simply to determine as its filed now whether or not it is a valid description of effect.

So going on to fairness and the competitiveness issues. So we have discussed the fairness in a couple of different respects. Another issue under fairness on this commission is there's no requirement that the commissioners

themselves represent voters either in terms of partisan breakdown or in terms of any other aspect of diversity of the state, not geographic, not racial, not language, not anything else.

So as I point out in the brief, it's perfectly possible you could have the entire commission made up of old rich guys from Las Vegas and they are drawing the maps for the entire state.

And another issue with respect to fairness is the way this is composed is it requires a super majority of commission five votes in order to approve a plan, and those votes have to be distributed between -- there has to be at least one vote from each major party, and there also has to be at least one vote from one of the non major party commissioners.

And so what this does is it creates an essentially automatic veto power in a very small minority of the commission. And so for example, let's say you have all three non major party commissioners and two on the same side major party commissioners, they all agree on a plan. The other two major party commissioners, if they vote no, that plan can't pass, and all it takes is a little bit of, you know, political polarization and this committee will never be able to pass a plan because they have absolute veto power

even if the entire other five commissioners agree on the plan.

So giving that kind of power to a very small minority on this commission, that is unfair, and that ties into what I talked about before is that the commission doesn't represent and especially going into the future with the changing of the demographics if we amend the constitution, it's going to be even worse and it's not going to represent the partisan breakdown of the state's voters.

THE COURT: Wouldn't that be nice to have a commission that basically took this out of the legislative hands and the Courts hands?

MR. BENSON: I think that, again, if you want to propose the policy of an actual independent redistricting commission that again we can debate whether that's good policy, bad policy, but the point in this case is that that's not what they are doing. And I anticipate as discussed in the brief that this petition, you know, the minority veto power, there's nothing in this petition that describes what happens if they can't pass a plan. Presumably we're right back here just like we were in 2011.

There's nothing that discusses what happens if they -- if the two major party, the four evenly party split commissioners can't agree on who to appoint for those other

three other commissioners. There's nothing to fill vacancies generally or in that commission or the commission might not be able to be constituted because of that, and yet there's nothing in this petition that will account for any of those contingencies.

So as a result I think that it's going to increase cost of redistricting not to just in terms of redistricting itself but in terms of the litigation that it's going to cost, and this is not what I'm going to call ordinary redistricting litigation. This is not litigation over whether the plan itself is constitutional or whether it violates the voter rights act or anything like that. It's purely litigation related to procedural issues with the commission itself.

So going on to the other aspect of redistricting effect of competitiveness issue is, again, the description of effect tells voters that it's going to create politically competitive districts. And once again this is simply not accurate, and it's misleading because there is no requirement in the petition that it create competitive districts.

It does tell voters that it will, and this -- the petition in this case simply directs the commission to if practicable consider political competitiveness, and it is the very last of the considerations that the commission is

supposed to consider. And not only is it very last, it says especially in the commission that each of those has to be considered in order. So it's the very last thing and it's only if practical. So, again, it's going to mislead voters into believing this commission is going to do something that its simply not required to do.

So we've already discussed the cost aspects of this -- of the petition as well and especially the fact that it's going to have a do-over. That both relates to the cost and this argument that that's speculative or hypothetical, frankly, I don't think has any merit because the petition mandates that they redistrict in 2023. So that's going to be a cost. There's nothing hypothetical or speculative about that. The idea is it won't be much of a cost because it could just, you know, adopt the plan that the legislature passed in 2021. It's possible, I mean everything is possible but, frankly, I think it's extremely improbable.

And there's going to be, of course, different political influences on this commission because of the way it's constituted and so forth and so on that for it to simply adopt the plan that the legislature adopted is probably not going to happen. So it's misleading and it's inaccurate by not describing to voters, one, that it's going to increase their cost and there's nothing speculative about that and

also that it's going to have a do-over of what the legislature had just done.

And so what we're asking the Court to do in this case is to define the description effect as presented currently is not valid. That does not comply with NRS 295.09 because it is inaccurate and misleading in describing the commission as independent, that it promises voters that it's going to fix partisan gerrymandering when it won't, and it tells voters that it's going to create Fair Maps. And, again, it will not do this. It's not required to in terms of geographic or language or racial diversity in the state. It's not going to be fair in the sense that it doesn't reflect the partisan makeup of the voters and that that's only going to get worse as time goes on, and this is in the constitution.

And it tells voters it's going to create politically competitive districts when, again, it's not actually required to do so. And, again, this is, it's the responsibility of this Court to determine the validity of the description of that. It's the responsibility of the petitioners to, should the Court so rule that it's invalid in any respect to amend the petition.

And in this case they can amend it, refile it with the Secretary of State. We are -- we're here before

Christmas. It's actually very early in this process, so.

THE COURT: I'm going to say awfully early in this process.

MR. BENSON: Yes. This is unusual. We're not usually here this early. So there's plenty of time for them to amend the description effect, correct it. If we're going to do a constitutional petition let's do it right. There's no reason to not fix it at this point. There's still going to be plenty of time to circulate and get signatures on this petition.

So with that being said, if you have anymore questions I would be happy to answer them, Your Honor. I would reserve my time for rebuttal.

THE COURT: Thank you.

MR. BENSON: Thank you.

THE COURT: Mr. Hosmer-Henner.

MR. HOSMER-HENNER: Yes, Your Honor. I would like to start by saying there is plenty of time for us to refile and move forward with this petition unless, of course, the other side decides to file another lawsuit and they pick the remnant synonyms that we chose to include in our proposed descriptions of the fact.

Fair Maps has proposed a petition to amend the Nevada Constitution to stop partisan and racial

gerrymandering by transferring the authority for redistricting from the legislature to this separate redistricting commission.

At the beginning of his argument, Mr. Benson stated the point of this is not to argue over whether this is good or bad policy and we strongly believe that this is good policy for the State of Nevada, but the point is to determine whether the description of effect matches our petition. And yet throughout that opening statement, it was almost impossible for the other side to refrain from digging into the policy in terms of what will actually happen whether something is a benefit or a detriment because our description of effect matches what we say and intend to do in our petition and is valid under NRS 295.09.

I have several broad arguments to begin with and the first is under Pest Committee versus Miller, the Ninth Circuit decision, the description of effect is a valid statutory requirement that can effect people's right to petition the -- to file an initiative petition to amend the Nevada Constitution, but it's only a valid requirement insofar as it's contend neutral and doesn't unduly interfere with the political process.

What that means is there must be some description of effect that matches our petition in order for that

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

REV. LEONARD JACKSON,

Plaintiff,

v.

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

Defendants.

Case No.: 19OC00209 1B

Dept. No.: II

COMPLAINT FOR DECLARATORY RELIEF

Priority Claimed: NRS 295.061(1)

Arbitration Exemption: Request for Declaratory and Injunctive Relief.

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

I. JURISDICTION

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

II. PARTIES

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

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

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

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

III. GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

> 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.

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FIRST CAUSE OF ACTION

(Misleading Description of Effect: "Independent")

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

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

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

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

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

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

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

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

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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

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

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

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

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

Dated this 26th day of November, 2019.

BENSON LAW, LLC

By: _____

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

Defendants.

Case No.: 19OC00209 1B

Dept. No.: II

OPENING BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

I. FACTS

On November 4, 2019, Sondra Cosgrove, in connection with Defendant Fair Maps Nevada PAC, filed a constitutional initiative petition designated as #C-02-2019 by the Secretary of State. The initiative petition seeks to amend the Nevada Constitution to require that redistricting be performed by a commission rather than by the Legislature ("the Petition"). The Petition proposes to add a new

Section 5A to Article 4, Section 5 of the Nevada Constitution, which would be titled: "Apportionment; Creation of Independent Redistricting Commission." Petition, Section 5A.[1]

The Petition would create the "Independent Redistricting Commission" ("Commission") within the legislative branch of state government. Petition, Section 5A(1). Starting in the year 2023, the Commission would apportion the number of Senators and Assemblymen among the state legislative districts and would apportion the number of representatives to the United States House of Representatives among the congressional districts. *Id.*

The Commission would consist of seven members. Petition, Section 5A(2). The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader each appoint one commissioner. *Id.* These four commissioners appoint three additional commissioners, each of whom has not been registered or affiliated with either of the two largest political parties in the State within the last four years, and is not registered or affiliated with the same political party as another commissioner. *Id.*

Additionally, a commissioner cannot, within the four years preceding appointment and during their term on the Commission, be a registered lobbyist, a candidate for partisan office, an elected official to a partisan office, an officer or member of the governing body of a political party, a paid consultant or employee of a partisan elected official, candidate, PAC, or caucus, an employee of the Legislature or the State of Nevada (except employees of the judicial branch, the armed forces, or a state institution of higher education). Petition, Section 5A(3). Nor may a commissioner be related within the third degree of consanguinity or affinity to any such individual. *Id.*

All meetings of the Commission must be open to the public and the Commission shall ensure that the public has the opportunity to view, present testimony, and participate in the hearings before the Commission. All Commission materials shall be public records. Petition, Section 5A(5).

The Commission shall adopt a redistricting plan not later than July 1, 2023, and thereafter not later than 180 from the release of the decennial census. Petition, Section 5B(2).

[1] Unless otherwise noted, the citations to the text of the Petition are to the *proposed* constitutional section and subsection numbers in Section 2 of the Petition.

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

The Commission must draw districts according to certain criteria, and must apply those criteria in the order listed in the Petition. Petition, Section 5B(1). These criteria include ensuring that, on a statewide basis, the districts "do not unduly advantage or disadvantage a political party." *Id.* The last criteria that the Commission may consider is the number of politically competitive districts. *Id.*

The Description of Effect of the Petition states in full:

> 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.

Petition, p. 3, Description of Effect.

II. ARGUMENT

A. Legal Standard for the Description of Effect.

NRS 295.009(1)(b) requires that every initiative "[s]et forth, in not more than 200 words, a description of the effect of the initiative or referendum if the initiative or referendum is approved by the voters." The purpose of the description of effect is to "prevent voter confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006).

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The description of effect must appear on every signature page. NRS 295.009(1)(b). Thus "[t]he importance of the description of effect cannot be minimized, as it is what the voters see when deciding whether to even sign a petition." *Coal. for Nev.'s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS 153, at *5 (May 11, 2016) (unpublished decision – NRAP 36(c), citing *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs,* 129 Nev. 35, 37, 293 P.3d 874, 876 (2013) and *Las Vegas Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 177, 208 P.3d 429, 437 (2009)).

For that reason, the description of effect "must be a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve." *Educ. Initiative,* 129 Nev. at 37, 293 P.3d at 876. The district court must also analyze "whether the information contained in the description is correct and does not misrepresent what the initiative will accomplish and how it intends to achieve those goals." *Id.*, 129 Nev. at 35. 293 P.3d at 883.

B. <u>The Description of Effect inaccurately states that the Commission would be "independent," and therefore is misleading.</u>

The first sentence of the Petition's description of effect states in relevant part: "This measure will amend the Nevada Constitution to establish an **Independent** Redistricting Commission." (Emphasis added.) However, the Commission is not independent, thus that statement is inaccurate and seriously misleading. The Commission is not independent for two main reasons: its composition and its funding.

1. <u>The Commission is not independent because legislative leadership would directly appoint a majority of the commissioners.</u>

First, a majority of the Commission is directly appointed by the major parties' legislative leadership. Petition, Section 5A(2). The Petition prohibits certain politically-active people from serving as commissioners. *See* Petition, Section 5A(3) (prohibiting from serving those who in the previous four years have been partisan candidates or elected officials, lobbyists, most state employees, paid political staff, etc., and their close relatives). These exclusions only prevent a certain sub-set of politically-involved people from serving on the Commission. For example, it does not prevent a legislator from appointing a campaign volunteer, nor does it prevent county commissioners

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or city council members from being appointed. The exclusions do not create independence because the appointments are still directly made by legislative leadership. Thus the exclusions do nothing to ensure that appointees are insulated from political pressures, are not beholden to the legislative leadership, and do not stand to gain personally or politically from serving on the Commission.

The composition and selection of the Commission as proposed in the Petition is contrary to truly "independent" redistricting commissions that have been adopted in other states. Four other states have given primary redistricting responsibility to independent commissions. In each of them, the independence of the commissioners is ensured by having a body *other than* the legislative leadership either appoint the commissioners directly, or create the pool from which commissioners are chosen.

In Arizona, the commission on appellate court appointments creates an initial pool of 25 nominees, ten from each of the two largest parties, and five not from those two parties. Ariz. Const. art. IV, pt. 2, § 1(4), (5). Legislative leadership can only appoint commissioners from this pool. *Id.* at (6).

In Colorado, a panel of three retired appellate court justices or judges randomly select nominees from all applicants who meet the minimum qualifications, then the panel creates pools for each of the two major parties and for nonpartisans. Colo. Const. Art. V, Section 44.1. Applicants are selected based on, among other things, their experience, analytical skills, and ability to remain impartial. *Id.* at 44.1(8)(1),(2). The panel of judges must ensure that the commission reflects Colorado's racial, ethnic, gender, and geographical diversity. *Id.* at 44.1(10). Legislative leadership can choose sub-pools from their respective party's pool, but ultimately the panel of retired judges make the final selection. *Id.* at 44.1(8)-(10).

In California, Proposition 11 of 2008 amended the California Constitution to create the Citizens Redistricting Commission. That amendment expressly states: "The selection process is designed to produce a commission that is independent from legislative influence and reasonably representative of this State's diversity." Cal. Const. Art. XXI, Section 2(c)(1). Government auditors create a pool from the qualified applicants. Cal. Govt. Code § 8252. Legislative leadership can reduce the pool, but then the auditors pick a majority of the commissioners by lottery, and those

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commissioners appoint additional commissions from the remaining members of the pools, who form a minority of the commission. *Id.*

In Michigan, the secretary of state must make the application to serve as a commission widely available to the general public in all areas of the state. Mich. Const., Art. IV, § 6. The secretary of state must also mail 10,000 applications to randomly selected voters. *Id.* The secretary of state then creates the pools by randomly selecting from the qualified applicants, but shall also use accepted statistical methods to ensure that the pool represents the geographical and demographic diversity of the state. *Id.* Similar to California, legislative leadership can reduce the pools by striking a certain number of names, but the secretary of state, by lottery, makes the final selections of commissioners from the remaining pool. *Id.*

Additionally, most states prohibit commissioners from running for partisan office or being appointed to an office or government employment for a certain period of time *after* serving on the commission. *See e.g.*, Ariz. Const. art. IV, pt. 2, § 1(13) (ineligible for public office and cannot be a paid lobbyist for three years after serving); Cal. Const. Art. XXI, Section 2(c)(6) (ineligible for office for 5 to 10 years, depending on the office); Mich. Const. Art. IV § 6(1)(e). This reduces the incentive for commissioners to draw maps that would favor their own future political ambitions.

By contrast, the Petition in this case: (1) allows legislative leadership to directly appoint a majority of the Commission; (2) allows the commissioners to run for an office for which they just finished drawing new districts; and (3) allows the commissioners to be appointed to an office or any other government position immediately after completing redistricting. Thus the Petition permits substantial political influence over individual commissioners and the Commission itself. Nor does the Petition prevent individual commissioners from acting solely for their own political interests.

2. The Commission is not independent because it has no independent funding.

Redistricting is an expensive and difficult process. *See* "Reapportionment and Redistricting," Legislative Counsel Bureau Bulletin No. 11-04 (January 2011).[2] It requires a huge amount of data, staff with technical expertise, and specialized software. *Id.* Additionally, the Commission would

[2] Available at: https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2011/Bulletin11-04.pdf

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require administrative staff to manage its materials, schedule, notice, and hold its meetings, and respond to requests and input from the public. The Commission will also need legal guidance to ensure that it complies with the Voting Rights Act and other federal requirements, as well as the requirements in the Petition.

Despite these substantial costs, the Petition does not provide for any funding or funding mechanism for the Commission. In fact, the Petition does not require that the Commission be funded at all. Again, this contrasts starkly with truly independent commissions in other states.

For example, the Michigan Constitution mandates that the legislature shall fund the commission, and sets forth a formula for the amount. It states: "the legislature **shall** appropriate funds sufficient to compensate the commissioners and to enable the commission to carry out its functions, operations and activities, which activities include retaining independent, nonpartisan subject-matter experts and legal counsel, conducting hearings, publishing notices and maintaining a record of the commission's proceedings, and any other activity necessary for the commission to conduct its business, **at an amount equal to not less than 25 percent of the general fund/general purpose budget for the secretary of state for that fiscal year**." Mich. Const. Art. IV § 6(5) (emphasis added).

Other states have similar language, and also mandate that the legislature fund the commission adequately to ensure that it can carry out its duties.

California requires that the legislature appropriate funds for the commission according to a formula, but in no event less than $3 million for each cycle of redistricting. Cal. Govt. Code. § 8253.6.

The Arizona Constitution similarly requires that the legislature fund the commission, and mandates that it be appropriated $6 million for its first year of operation. Ariz. Const. Art. 4, Part 2, Section 1(18). The commission has express authority to challenge the sufficiency of the funding appropriated. *Id.*

The Legislature is the branch of government that holds the purse strings. *State Emps. Ass'n v. Daines*, 108 Nev. 15, 21, 824 P.2d 276, 279 (1992). As such, it has tremendous power to control the Commission by deciding whether, when, how much, and for what purposes to appropriate money for

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the Commission. Likewise, it can direct the Legislative Counsel Bureau whether or not provide assistance to the Commission. *See* NRS 218F.110 (LCB staff hired and duties defined pursuant to budget approved by Legislative Commission).

In the context of the separation of powers doctrine, the Nevada Supreme Court has recognized that the judiciary cannot truly function as an independent branch of government if it is not able to require the disbursement of funds necessary to carrying out its basic duties. *State ex rel. Harvey v. Second Judicial Dist. Ct*, 117 Nev. 754, 770, 32 P.3d 1263, 1273 (2001). Similarly here, the Commission cannot operate independently of the Legislature if it has no independent control of the funding necessary to perform its duties. Indeed, the problem is exacerbated in this case because the Petition declares the Commission to be part of the legislative branch and to be executing legislative powers. Petition, Section 5A(7). That raises the question of whether it would itself be a violation of the separation of powers doctrine should a court attempt to order the Legislature to fund the Commission, or fund it in any particular way or amount. *Cf.* Ariz. Const. Art. 4, Part 2, Section 1(18) (expressly granting the commission standing in court and the power to challenge the adequacy of its funding).

3. The Description of Effect is inaccurate and misleading because the Commission is not "independent."

"[A]n initiative petition signer must be informed at the time of signing of the nature and effect of that which is proposed. Failure to so inform the signatories and voters is deceptive and misleading…" *Stumpf v. Lau*, 108 Nev. 826, 833, 839 P.2d 120, 124 (1992) (internal quotations omitted).

The Petition's Description of Effect states that the Petition would establish an "independent" redistricting commission. The Description of Effect is invalid because it would mislead voters into believing that the Commission is independent from the political influence of the Legislature and other officials, when in fact it is not.

As discussed above, the Commission is not "independent" because a majority of the Commission is directly appointed at the sole discretion of the legislative leadership. Additionally, the Petition does not prevent Commissioners from running for or being appointed to an office

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immediately after redistricting is complete. Finally, the Petition does not require that the Commission be funded. Consequently, the Legislature will be able to exercise substantial, if not total, control over the Commission by determining whom to appoint and how or whether to fund the Commission.

This case is closely analogous to *Las Vegas Taxpayer Accountability v. City Council of Las Vegas*, 125 Nev. 165, 183-84, 208 P.3d 429, 441 (2009). In that case, the description of effect stated that the petition would prevent the redevelopment agency from undertaking any *additional* redevelopment projects in a certain area. *Id.* However, the actual effect of the petition would be to stop *all* redevelopment projects, including those already underway. *Id.* The court held that the description of effect was inaccurate and materially misleading and it invalidated the petition. *Id.*

In this case, the Description of Effect states that the Commission will be "independent," but the text of the Petition itself shows that to be an inaccurate statement of the Petition's effect. Like in *Taxpayer Accountability*, that inaccuracy renders the Description of Effect materially misleading because the independence of the Commission is a critical factor for voters in determining whether to support to the Petition. Accordingly, this Petition therefore violates NRS 295.009(1)(b) and cannot be placed on the ballot.

C. The Description of Effect inaccurately states that the Commission will create "fair and competitive" districts.

The U.S. Supreme Court recently held, again, that partisan gerrymandering presents a non-justiciable political question. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506-07 (June 27, 2019). Accordingly, the federal laws and the U.S. Constitution do not provide voters with any relief from unfair partisan gerrymanders. The Petition's Description of Effect represents that it will end partisan gerrymandering in Nevada by creating "fair and competitive electoral districts." But this is a promise it cannot and will not keep. The Description of Effect is materially misleading because in fact the Petition requires neither fairness nor competitiveness.

The Petition sets forth various criteria that the Commission must use when creating districts. *See* Petition, 5B(1). The Petition states that the criteria must be followed in the order listed in the Petition. *Id.* Most of these criteria reflect the general federal requirements to comply with the Voting Rights Act and the one-person, one-vote doctrine. *See id.* In addition to these minimum requirements,

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the Petition states that the Commission should ensure that the districts "do not unduly advantage or disadvantage a political party." *Id.* By use of the term "unduly," it is clear that the Petition is designed and intended to tolerate **un**fairness between the political parties. The Petition sets forth no definitions or mechanism 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 every plan open to being challenged through litigation.

The Petition also invites other types of unfairness, besides partisan bias. The Petition contains no requirements that the Commissioners fairly represent Nevada's racial, language, ethnic, gender, geographic, or demographic diversity. All of the Commissioners could be white, male, wealthy residents of Las Vegas, for example. This would leave all other Nevadans without any formal representation in drawing districts that, among other things, are supposed to keep communities intact, while also ensuring that minorities retain their political voice.

Finally, partisan competitiveness is the very *last* of the criteria that the Commission is to consider when drawing districts. The Petition provides that the criteria must be applied in the order presented, so competitiveness will always be the last item considered. Petition, 5(B)(1). The Petition in fact expressly makes competitiveness subordinate to all other criteria. *Id.* And most importantly, the Petition does not even require that the Commission create competitive districts, and instead instructs it to "consider" competitiveness "to the extent practicable." *Id.*

In conclusion, the Description of Effect is inaccurate and materially misleading because it states that the Commission will create "fair and competitive electoral districts," but the Petition does not in fact require "fairness," nor does it require "competitive" districts. Voters will therefore be misled into believing that the Petition will prevent partisan gerrymandering and that the Commission will create truly fair and nonpartisan maps, when it actually need not do so.

D. The Description of Effect is Invalid Because it Fails to Inform Voters of the Cost of the Commission.

As described above, the Petition does not provide for funding or any funding source for the Commission. But in order to operate, the Commission necessarily needs funding. Redistricting is complex and expensive, requiring specialized software and often involving special experts to analyze

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the data. *See* LCB Bulletin No. 11-04, *supra* at 6. As described above, other states expressly require the legislature to fund the commission, and typically set forth a formula intended to ensure that the funding is adequate. Several years ago, California set a baseline of $3 million, while Arizona used a baseline of $6 million.

However, the Description of Effect fails to describe any of these costs, nor does it notify voters of these costs. Furthermore, the Petition is likely to generate more litigation over the validity of the maps drawn by the Commission, because it states that no political party should be "unduly" advantaged or disadvantaged, but provides no guidelines, safe harbors, or other mechanism for the parties or the courts to evaluate when that criterion has been satisfied or when it has been violated. This type of litigation will further increase the costs of redistricting.

Additionally, the Description of Effect fails to inform voters that the Commission will "undo" whatever maps are drawn by the Legislature in 2021. The Description of Effect states that the Commission will begin drawing maps in 2023, but fails to describe the practical consequence: that the Legislature will have just drawn new districts 2021, which will only be operative for the 2022 election, and then the Commission will immediately start redrawing the maps. Thus the State will potentially spend twice the resources (or more) as it would normally on redistricting efforts in the three-year period following the 2020 census.

In *Coal. for Nev.'s Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 Nev. Unpub. LEXIS 153, at *5 (May 11, 2016) (unpublished decision – NRAP 36(c)), the Nevada Supreme Court held that a referendum's description of effect was deceptive because it failed to inform voters of its practical consequences. The referendum's description of effect accurately summarized the *legal* effect it would have: it would repeal the commerce tax. *Id.* at *9-10. However, the description of effect contained no description of the *practical* consequences of repealing the commerce tax, which would be to unbalance the state budget for the biennium. *Id.* The court therefore held that the referendum's "description is deceptive for failing to accurately identify the practical ramification of the commerce tax's disapproval." *Id.*

It is not enough for a petition's description of effect to merely recite or summarize the petition's language. *See id.*; *Prevent Sanctuary Cities v. Haley*, 421 P.3d 281, No. 74966, 2018 Nev.

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Unpub. LEXIS 442, at *9-10 (May 16, 2018) (unpublished decision – NRAP 36(c)). The purpose of the description of effect is to inform the voters of the practical ramifications of the petition. Failure to do so renders the description of effect deceptive and misleading.

Like in *RIP Commerce Tax* and *Prevent Sanctuary Cities*, the Petition's Description of Effect simply repeats the language of the Petition without actually informing voters of the Petition's real consequences. These practical consequences include at potentialy doubling the cost of redistricting for the 2020 census, and failing to inform voters that the Commission will require substantial taxpayer funding to carry out its duties. Therefore, like the petitions in *RIP Commerce Tax* and *Prevent Sanctuary Cities*, the Petition must be declared invalid for failure to comply with NRS 295.009(1)(b).

III. CONCLUSION

For the reasons discussed above, Plaintiff respectfully requests that the Court enter an order:

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

Dated this 26th day of November, 2019.

BENSON LAW, LLC

By: _____

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Attorneys for Defendant Fair Maps Nevada PAC

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AUBREY ROWLATT
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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. II

PEREMPTORY CHALLENGE OF JUDGE

Defendant FAIR MAPS NEVADA PAC, a registered Nevada political action committee ("Fair Maps"), pursuant to Rule 48.1 of the Nevada Supreme Court Rules, hereby gives notice of its peremptory challenge of the Honorable James Wilson, and asks pursuant to this Rule that the matter be transferred to the remaining judge within the First Judicial District Court.

Dated: December 4, 2019

McDONALD CARANO

By: _____

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Attorneys for Defendant Fair Maps Nevada PAC

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on December 4, 2019, I served the within **PEREMPTORY CHALLENGE OF JUDGE** on the parties in said case by placing a true copy thereof in the United Stated 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

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 December 4, 2019 at Reno, Nevada.

By _____
An Employee of McDonald Carano LLP

4829-3749-5470, v. 2

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Case No.: 19 OC 00209 1B

Dept. No.: 1

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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.

ORDER TO SET FOR HEARING

This matter is before this Court pursuant to a Complaint for Declaratory and Injunctive Relief and an Opening Brief, both filed by the Plaintiff on November 26, 2019. The Complaint is made pursuant to NRS 295.061.

NRS 295.061(2) requires that the Court set this matter for a hearing no later than 15 days after the filing of a Complaint. A Peremptory Challenge of Judge was filed on December 4, 2019, causing the above-referenced matter be transferred to Department I of the above-referenced Court. Therefore, good cause appearing,

IT IS HEREBY ORDERED that the parties appear telephonically at 9:00 a.m. before the Court's Judicial Assistant on Monday, December 16, 2019, to set this matter for a hearing. Plaintiff shall arrange a conference call to chambers, providing the call-in number to the Court and opposing counsel.

///

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IT IS FURTHER ORDERED that Plaintiff shall immediately serve a copy of its Complaint for Declaratory and Injunctive Relief on Defendants and Opening Brief, along with this Order, and provide proof of such service to the Court. This includes service on the Secretary of State. Defendants will have 20 days after being served to file an Answer and responsive briefs.

Dated this 10th day of December, 2019.

JAMES T. RUSSELL
DISTRICT JUDGE

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 10th day of December, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, and caused to be transmitted via email, a true and correct copy of the foregoing Order addressed as follows:

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Angela Jeffries
Judicial Assistant, Dept. 1

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

REV. LEONARD JACKSON,

Plaintiff,

v.

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.: II

ACCEPTANCE AND WAIVER OF SERVICE

I, Defendant (or counsel for Defendant) FAIR MAPS NEVADA PAC, have received a copy of the Complaint for Declaratory Relief and the Opening Brief in this matter, and I hereby waive service of the summons and complaint.

Dated: December 4, 2019

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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

ANSWER TO COMPLAINT FOR DECLARATORY RELIEF

Defendant FAIR MAPS NEVADA PAC, a registered Nevada political action committee ("Fair Maps"), by and through its attorneys Adam Hosmer-Henner, Esq. and Lucas Foletta Esq., of McDONALD CARANO LLP, hereby responds to the Complaint for Declaratory Relief ("Complaint") of Plaintiff as follows:

INTRODUCTION

1. The allegations of Paragraph 1 set forth legal conclusions to which no response is necessary, but should any answer be required, Fair Maps denies the allegations of this Paragraph.

2. Fair Maps is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and on this basis denies the allegations of this Paragraph.

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3. Fair Maps denies the allegations contained in Paragraph 3.

4. Fair Maps is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and on that basis denies the allegations of this Paragraph.

GENERAL ALLEGATIONS

5. Fair Maps denies the allegations contained in Paragraph 5, except admits that the constitutional initiative petition designated as #C-02-2019 ("Petition") and related Notice of Intent to Circulate Statewide Initiative or Referendum Petition ("Notice of Intent") was filed on November 4, 2019.

6. Fair Maps denies the allegations contained in Paragraph 6, except admits that the Petition states as follows:

The People of the State of Nevada do enact as follows:

Section 1: Article 4, Section 5 of the Nevada Constitution is hereby amended to read as follows:

Section 5. Number of Senators and members of Assembly~~; apportionment~~. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third nor more than one-half of that of the members of the Assembly.

It shall be the mandatory duty of the Legislature at its first session after the taking of the decennial census of the United States in the year 1950, and after each subsequent decennial census, to fix by law the number of Senators and Assemblymen~~, and apportion them among the several counties of the State, or among legislative districts which may be established by law, according to the number of inhabitants in them, respectively~~.

Section 2: Article 4 of the Nevada Constitution is hereby amended by adding thereto new sections to be designated as Sections 5A, 5B and 5C, to read as follows:

Section 5A. Apportionment; Creation of Independent Redistricting Commission.

1. There is created within the legislative branch of state government the Independent Redistricting Commission. It shall be the duty of the Commission in the year 2023, and after each subsequent decennial census of the United States, to apportion the number of Senators and Assemblymen among legislative districts established by the Commission and to apportion the number of representatives in the United States House of Representatives among districts established by the Commission.

2. The Commission shall be composed of seven members who are registered and eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3. The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader shall each appoint one Commissioner. The four Commissioners appointed in this manner shall appoint three additional Commissioners, each of whom, for at least four years immediately preceding their appointment, has not been registered or affiliated with the largest political party or the

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second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.

3. Within four years preceding appointment and during their term, no Commissioner may be a registered lobbyist; a candidate for a federal, state, or partisan local office; an elected official to a federal, state, or partisan local office; an officer or member of the governing body of a national, state, or local political party; a paid consultant or employee of a federal, state, or partisan local elected official or candidate, or of a political action committee, or of a committee sponsored by a political party, or of a committee that seeks to influence elections to federal, state, or partisan local offices; an employee of the Legislature; an employee of the State of Nevada, except for employees in the judicial branch, the armed forces, or a state institution of higher education; or related within the third degree of consanguinity or affinity to any individual disqualified under this subsection.

4. The term of office of each Commissioner shall expire once the Commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete and shall expire no later than the release of the following decennial census of the United States.

5. All meetings of the Commission shall be open to the public. The Commission shall ensure that the public has opportunities to view, present testimony, and participate in hearings before the Commission. All Commission materials shall be public records.

6. The Commission shall adopt rules to govern its administration and operation.

7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

Section 5B. Criteria for Determination of Districts; Approval of Final Plans.

1. In adopting a redistricting plan, the Independent Redistricting Commission shall use the following criteria, in the order listed, to draw districts: Ensure that districts comply with the United States Constitution and applicable federal law; Ensure that districts have an approximately equal number of inhabitants; Ensure that districts are geographically contiguous; Ensure that districts are not drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or elect representatives of their choice, whether by themselves or voting in concert with other persons; Ensure that districts, when considered on a statewide basis, do not unduly advantage or disadvantage a political party; Ensure that districts reflect, to the extent possible, county, city, and township boundaries; Minimize, to the extent practicable, the division of communities of interest, meaning an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities, but not including common relationships with political parties or political candidates; Ensure that districts are reasonably compact; and to the extent practicable, after complying with the requirements above, consider the number of politically competitive districts, measured by creating a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses.

2. Not later than July 1, 2023, and thereafter not later than 180 days from the release of the decennial census of the United States, the Commission shall approve a redistricting plan for the Nevada State Senate, the Nevada State Assembly, and Nevada's Congressional Districts, after providing public notice of each proposed final plan and allowing sufficient time for public review and comment. A final plan may be approved by the Commission only upon at least five affirmative votes, including at least one Commissioner registered with the largest political party, one Commissioner registered with the second largest political party, and one Commissioner not registered or affiliated with the largest or second largest political party, according to voter

registration data published by the Secretary of State as of the earliest day in January of the redistricting year.

Section 5C. Severability.

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

7. Fair Maps denies the allegations contained in Paragraph 7, except admits that the text of the Petition is as stated in Paragraph 6 of this Answer.

8. Fair Maps denies the allegations contained in Paragraph 8, except admits that the text of the Petition is as stated in Paragraph 6 of this Answer.

9. Fair Maps denies the allegations contained in Paragraph 9, except admits that the text of the Petition is as stated in Paragraph 6 of this Answer.

10. Fair Maps denies the allegations contained in Paragraph 10, except admits that the text of the Petition is as stated in Paragraph 6 of this Answer.

11. Fair Maps denies the allegations contained in Paragraph 11, except admits that the text of the Petition is as stated in Paragraph 6 of this Answer.

12. Fair Maps denies the allegations contained in Paragraph 12, except admits that the text of the Petition is as stated in Paragraph 6 of this Answer.

13. Fair Maps denies the allegations contained in Paragraph 13, except admits that the text of the Petition is as stated in Paragraph 6 of this Answer.

14. Fair Maps denies the allegations contained in Paragraph 14, except admits that the text of the Description of Effect states:

> 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.

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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.

FIRST CAUSE OF ACTION

(Misleading Description of Effect: "Independent")

15. Fair Maps denies the allegations contained in Paragraph 15.

16. Fair Maps denies the allegations contained in Paragraph 16.

17. Fair Maps denies the allegations contained in Paragraph 17.

18. Fair Maps denies the allegations contained in Paragraph 18.

19. Fair Maps denies the allegations contained in Paragraph 19.

20. Fair Maps denies the allegations contained in Paragraph 20.

21. Fair Maps denies the allegations contained in Paragraph 21.

22. Fair Maps denies the allegations contained in Paragraph 22.

SECOND CAUSE OF ACTION

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

23. Fair Maps denies the allegations contained in Paragraph 23.

24. Fair Maps denies the allegations contained in Paragraph 24.

25. Fair Maps denies the allegations contained in Paragraph 25.

26. Fair Maps denies the allegations contained in Paragraph 26.

27. Fair Maps denies the allegations contained in Paragraph 27.

28. Fair Maps denies the allegations contained in Paragraph 28.

THIRD CAUSE OF ACTION

(Misleading Description of Effect: "Practical and Fiscal Impacts")

29. Fair Maps denies the allegations contained in Paragraph 29.

30. Fair Maps denies the allegations contained in Paragraph 30.

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31. Fair Maps denies the allegations contained in Paragraph 31.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses to the Complaint and to each cause of action, claim and allegation contained therein, Fair Maps alleges as follows:

1. Neither the Complaint nor any cause of action therein states a claim for which relief may be granted.

2. That the allegations in the Complaint are barred by any applicable equitable doctrine.

3. That all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were unavailable upon the filing of the Answer. Therefore, Fair Maps reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

PRAYER FOR RELIEF

WHEREFORE, Fair Maps prays as follows:

1. That Plaintiff take nothing by way of the Complaint and that the same be dismissed with prejudice;
2. That the Petition is valid and complies with Nevada law;
3. In the alternative that the Petition, with a revised or amended description of effect, is valid and complies with Nevada law;
4. That judgment be entered in favor of Fair Maps;
5. For an award of attorney's fees and costs incurred in the defense of this action; and
6. For such other and further relief as the Court deems just and proper under all the circumstances of this mater.

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AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated: December 13, 2019

McDONALD CARANO

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 Nevada PAC

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on December 13, 2019, I served the within **ANSWER TO COMPLAINT FOR DECLARATORY RELIEF** on the parties in said case by placing a true copy thereof in the United Stated 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

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 December 13, 2019 at Reno, Nevada.

By _____
An Employee of McDonald Carano LLP

4837-7475-6526, v. 1

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Case No.: 19 OC 00209 1B

Dept. No.: 1

REC'D & FILED

2019 DEC 16 AM 10: 08

AUBREY 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.

ORDER SETTING HEARING

Following a telephonic setting on December 16, 2019, and good cause appearing,

IT IS HEREBY ORDERED that this matter is set for an initial hearing before the First Judicial District Court, located at 885 East Musser Street, Carson City, Nevada, Department I, on December 23, 2019, at 2:30 p.m.

Dated this 16th day of December, 2019.

JAMES T. RUSSELL
DISTRICT JUDGE

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 16th day of December, 2019, 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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123 W. Nye Lane, Suite #487
Carson City, NV 89706

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Attorneys for Defendant
Fair Maps Nevada PAC

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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

DEFENDANT FAIR MAPS NEVADA PAC's ANSWERING BRIEF IN RESPONSE TO PLAINTIFF'S OPENING BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendant FAIR MAPS NEVADA PAC, a registered Nevada political action committee ("Fair Maps"), by and through its attorneys Adam Hosmer-Henner, Esq. and Lucas Foletta, Esq. of McDONALD CARANO LLP, hereby submits its Answering Brief in Response to Plaintiff Rev. Leonard Jackson's ("Plaintiff") Opening Brief in Support of Complaint for Declaratory Relief and Injunctive Relief ("Opening Brief" or "Op. Br."). This Answering Brief is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file with the Court, and any oral argument entertained by the Court at a hearing in this matter.

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I. INTRODUCTION

The only consistency within Plaintiff's lawsuit is that it is an attempt to defend one anti-democratic tactic, political and racial gerrymandering, through the use of another anti-democratic tactic, meritless pre-election litigation to keep ballot initiatives away from the voters. *See, e.g., Rucho v. Common Cause*, 139 S. Ct. 2484, 2525 (2019) (Kagan, J., dissenting) (describing gerrymandering as "anti-democratic in the most profound sense"). Plaintiff directly seeks to prevent Fair Maps' Initiative Petition #C-02-2019 ("Petition"), Exhibit 1, from "appear[ing] on the general election ballot for 2020." Op. Br. 1. Yet throughout the Opening Brief, Plaintiff struggles to articulate a basis for its opposition to the Petition and instead seems to argue that the Petition does not go far enough. Op. Br. 6 (arguing that the proposed amendment does not completely remove "political influence over individual commissioners and the Commission itself"); Op. Br. 9-10 (arguing that the proposed amendment "requires neither fairness nor competitiveness" but only makes it a factor to be considered "to the extent practicable"). As Plaintiff's arguments reflect policy differences rather than legal objections, Plaintiff's remedy is to propose an alternative initiative to the public, not to litigate against Fair Maps' Petition.

The description of effect, limited to two-hundred words, must be considered holistically and not hyper-technically. Fair Maps's Petition seeks to transfer responsibility for redistricting from the Nevada Legislature to a newly established commission. Ex. 1. Plaintiff introduces policy arguments about the description of effect that should be reserved for the political process or ballot arguments rather than the courtroom. The description of effect, however, accurately and succinctly describes the proposed amendment to voters and need not address Plaintiff's policy objections. If Plaintiff disagrees with this policy, he may decline to sign the Petition or campaign against it, but policy disagreements do not render the description of effect legally invalid.

Most importantly, while Plaintiff asks the Court to prohibit the Petition from appearing on the ballot, this is relief that the Court cannot grant. As the sole challenge in this litigation is based on the Petition's description of effect, the sole relief that the Court can grant is to amend the description of effect based on its factual findings. Fair Maps has proactively provided five

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alternative descriptions of effect attached to this Answering Brief. Exhibit 2. Should the Court accept any of Plaintiff's arguments, it can select an alternative description from Exhibit 2; Fair Maps can provide additional alternatives consistent with the Court's factual findings in this matter; or the Court can further amend the description of effect. Under no circumstance can the Petition, which Plaintiff does not challenge, be barred from the ballot in violation of Nevadans' right to propose amendments to the Nevada Constitution.

II. FACTUAL AND PROCEDURAL BACKGROUND

Fair Maps filed the Petition on November 4, 2019 to amend the Nevada Constitution by adding a new section, Section 5A, to the Nevada Constitution. Ex. 1. 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.

Ex. 1.

Plaintiff filed a Complaint and the Opening Brief on November 26, 2019, which was the last possible day (resulting in maximum delay) to file such a Complaint pursuant to NRS 295.065(1). The Complaint is limited to a challenge of the Petition's description of effect.

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III. LEGAL STANDARD

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

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

In reviewing a description of effect, "it is inappropriate to parse the meanings of the words and phrases used in a description of effect" as closely as a reviewing court would a statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach "comes at too high a price in that it carries the risk of depriving the people of Nevada of their constitutional right to propose laws by initiative." *Id.* Thus, a reviewing court "must take a holistic approach" to the required analysis. *Id.* "The opponent of a ballot initiative bears the burden of showing that the initiative's description of effect fails to satisfy this standard." *Id.* at 42, 293 P.3d at 879.

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IV. ARGUMENT

"The [gerrymandering] practices challenged in these cases imperil our system of government. Part of the Court's role in that system is to defend its foundations. None is more important than free and fair elections." *Rucho*, 139 S. Ct. at 2525 (Kagan, J., dissenting). In response to the majority decision in *Rucho* where the U.S. Supreme Court held that partisan gerrymandering claims were nonjusticiable political questions, political initiatives have been launched across the country to protect voting rights. *See* League of Women Voters of the US, *Redistricting*, LWV (last visited Dec. 17, 2019), https://www.lwv.org/voting-rights/redistricting, ("We promote transparent and accountable redistricting processes and to end hyper-partisan practices that don't benefit constituents. We believe responsibility for fair redistricting should be vested in an independent special commission, with membership that reflects the diversity of the unit of government. The League works in states across the country to pass ballot initiatives to institute independent redistricting commissions."). The Petition is part of this nationwide effort and seeks to amend the Nevada Constitution to transfer responsibility for redistricting from the Nevada Legislature to a newly established independent commission.

Plaintiff concedes that the current redistricting process is politicized insofar as it is conducted by the Legislature. Despite this concession, Plaintiff seems to argue that Fair Maps should have gone farther—created more independence and fairness in redistricting—in order to support the language in the description of effect. Instead of proposing an alternative description of effect to correspond more closely to his interpretation of the Petition or proposing a separate initiative, Plaintiff requests that the Court preclude the Petition from reaching the ballot. This clearly reveals Plaintiff's interest is not in the accuracy of the description of effect, but rather in preserving the status quo.

Plaintiff's central argument is that the proposed redistricting commission is not sufficiently insulated from political pressure to prevent partisan gerrymandering because four of the seven members of the commission will be appointed by members of the Legislature. He contends that as a result, the districts it generates will not be fair and competitive, and therefore