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

9 **EMILY PERSAUD-ZAMORA, an individual**

11 **Plaintiff,**

12 **vs.**

13 **BARBARA CEGAVSKE, in her official**
14 **capacity as NEVADA SECRETARY OF**
15 **STATE,**

15 **Defendant,**

16 **vs.**

17 **REPUBLICAN PARTY OF NEVADA,**

18 **Proposed Intervenor-Defendant**

Case No.: 22 OC 00022 1B
Dept. No: I

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

19 **PROCEDURAL HISTORY AND PARTIES**

21 On February 18, 2022, Plaintiff Emily Persaud-Zamora ("Plaintiff") filed a Complaint
22 seeking declaratory and injunctive relief, asking this Court to declare that the description (the
23 "Description") of Initiative Petition C-03-2022 (the "Initiative") does not comply with NRS
24 295.009(1)(b) because it is argumentative, confusing, deceptive, and misleading and does not
25 sufficiently explain the ramifications of the Initiative, that the Petition does not comply with
26 Article 19, Section 6 of the Nevada Constitution for creating unfunded expenditure(s), and to
27 enjoin the Nevada Secretary of State ("Secretary") from placing the Referendum on the 2022
28

1 general election ballot. On February 28, 2022, the proponent of the Referendum, David Gibbs
2 (“Gibbs”) moved to intervene as a defendant. On March 29, 2022, the Court issued an order asking
3 the Defendants to respond to the Plaintiff’s Memorandum in Support of his Complaint. On April
4 12, 2022, the Republican Party of Nevada (“RPV”) filed its Motion to Intervene in this matter.
5 Because both proposed Intervenors have demonstrated timeliness, that they have an interest in the
6 subject matter of this litigation, that their respective interests would be violated should Plaintiff
7 prevail, and that their respective interests are not represented by any existing party, including each
8 other, both have satisfied the requirements to intervene.
9

10 STATEMENT OF FACTUAL HISTORY

11 On January 22, 2022, Gibbs filed a Notice of Intent to Circulate Statewide Initiative or
12 Referendum Petition. Any initiative petition must have a 200-word description as to the effects of
13 the referendum. NRS 295.009.1(b). In this case, the Initiative would add to the Nevada
14 Constitution the following text:
15

16 Article 2 of the Nevada Constitution is hereby amended by adding thereto
17 new sections to be designated as Section 1B and Section 1C, to read as
18 follows:

19 **Sect 1B. Photo Identification.** Each voter in Nevada shall present photo
20 identification to verify their identity when voting in person at a polling place
21 during early voting or on election day before being provided a ballot. To be
22 considered valid, the photo identification must be current or expired for no
23 more than four years. If the voter is 70 years old or more, the identification
24 can be expired for any length of time, so long as it is otherwise valid.
25 Acceptable forms of identification include:

- 26 1. Nevada driver’s license.
- 27 2. Identification card issued by the State of Nevada, any other State, or
28 the US Government.
3. Employee photo identification card issued by the US government,
Nevada government, or any county, municipality, board, authority, or
other Nevada government entity.
4. US Passport.
5. US military identification card.
6. Student photo identification card issued by a Nevada public college,
university, or technical school.
7. Tribal photo identification.

8. Nevada concealed firearms permit.
9. Other form of government-issued photo identification that the Legislature may approve.

Sec 1C. Voter Verification. Each voter in Nevada who votes by mail-in ballot shall enter one of the following in the block provided next to the voter's signature for election officials to use in verifying the voter's identity.

1. The last four digits of their Nevada driver's license number.
2. If the voter does not possess a Nevada driver's license, the last four digits of their Social Security number.
3. If the voter is neither a Nevada driver's license or Social Security number, the number provided by the county clerk when the voter registered to vote.

The Description of the Initiative states:

If passed, this initiative would amend the State Constitution to require that all persons voting in person present an approved photo identification before being provided a ballot. It also requires that voters submitting a mail-in ballot provide additional verification of their identity when completing their mail-in ballot using the number provided on their voter registration form when they registered to vote. This amendment will increase voter integrity by ensuring that any person casting a ballot in Nevada is, in fact, the duly registered voter. It will also improve and speed up the mail-in ballot verification process by providing a second, more secure means of verifying that the mail-in ballot was completed by the registered voter. Nevadans want confidence that all ballots submitted during an election are cast only by eligible voters.

Plaintiff argues that this description does not comply with NRS 295.009.1(b) because it is argumentative, misleading, and confusing does not adequately inform the voters of the effects. Additionally, Plaintiff argues that this Constitutional amendment would necessarily create appropriations or create unfunded expenditures. Plaintiff asks this Court to prohibit the Initiative from being placed on the general election ballot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Description

1. Statement of Law

Nevada law allows a challenger to a petition to bring suit alleging that the description of the initiative's effect is deficient pursuant to NRS 295.061. This challenge, falling within the category of a "procedural defect," is "virtually always ripe for pre-election review, since the

1 question to be resolved is whether a proposal has satisfied all constitutional and statutory
2 requirements for placement on the ballot.” *Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1228
3 (Nev. 2006). However, “[c]ourts generally refuse, at the pre-election stage, to consider
4 challenges...that the measure, if enacted, would violate substantive federal or state constitutional
5 provisions.” *Herbst Gaming*, 141 P.3d at 1229. The “substantive validity of an initiative should be
6 challenged if and when the initiative becomes law.” *Id.* at 1231.

8 Each petition for initiative or referendum must set forth, in 200 words, “a description of
9 the effect of the initiative or referendum if the initiative or referendum is approved by the voters.”
10 NRS 295.009.1(b). “A description of effect serves a limited purpose to facilitate the initiative
11 process, and to that end, it must be a straightforward, succinct, and nonargumentative summary of
12 what the initiative is designed to achieve and how it intends to reach those goals.” *Education Init.*
13 *v. Comm. to Protect Nev. Jobs*, 293 P.3d 874, 876 (Nev. 2013). “[T]he description of effect cannot
14 constitutionally be required to delineate every effect that an initiative will have; to conclude
15 otherwise could obstruct, rather than facilitate, the people’s right to the initiative process.” *Id.*
16 “Judicial review of a petition’s description of effect does not involve the close textual analysis
17 statutory construction does.” *Prevent Sanctuary Cities v. Haley*, 421 P.3d 281, *3 (Nev. 2018)
18 (unpublished disposition).

20 It is not the job of the Court to “parse the meanings of the words and phrases used in a
21 description of effect as closely as...statutory text.” *Education Init.*, 293 P.3d at 883. The court is
22 to take a “holistic approach.” *Id.* Accordingly, when “the information contained in the description
23 is neither deceptive nor misleading” so as to be “substantively correct and does not misrepresent
24 what the initiative will accomplish or how it will achieve those goals” it satisfies the description
25 requirement. *Id.* at 884.

1 **2. Analysis**

2 **a. Amendment of the Description of Effect.**

3 Given the strict word limit, the Description Of Effect necessarily must choose brevity,
4 within the bounds of accuracy, over exhaustive exposition. Upon reviewing the papers and
5 pleadings on file and hearing the arguments of counsel it is determined that the Description of
6 Effect should read as follows:
7

8 If passed, this initiative would amend the State Constitution to require that all
9 persons voting in person present an approved photo identification before being
10 provided a ballot. It also requires that voters submitting a mail-in ballot provide
11 additional verification of their identity when completing their mail-in ballot.

12 The Secretary shall accept the amendment of the foregoing Description of Effect and the
13 Petitioner shall forthwith be permitted to begin again collecting the required signatures.

14 **B. Appropriations or Unfunded Expenditures**

15 **1. Statement of Law**

16 Article 19, Section 6 of the Nevada Constitution does not permit an initiative to “make[]
17 an appropriation or otherwise require the expenditure of money, unless such statute or amendment
18 also imposes a sufficient tax....” An “appropriation is the setting aside of funds.” *Rogers*, 18 P.3d
19 at 1036. An “expenditure of money is the payment of funds.” *Id.* When an initiative “neither
20 explicitly nor implicitly compels an appropriation or expenditure, but rather, leaves the mechanics
21 of its enforcement with government officials, it does not involve an appropriation or expenditure.”
22 *Herbst Gaming*, 141 P.3d at 1233.

23 Nevada has limited case law to draw upon for Article 19, Section 6. In *Rogers*, the initiative
24 was to “increase[e] funding to Nevada’s public schools,” therefore, it was found that “the Initiative
25 requires a new appropriation and expenditure.” 18 P.3d at 1035, 1038. In *Herbst Gaming*, the
26 initiative would create new no smoking sections at various establishments, which did not create an
27
28

1 appropriation or expenditure. 141 P.3d at 1233. The Court noted that the initiative did not “compel
2 an increase or reallocation of police officers to enforce its provisions.” *Id.* Thus, so long as the
3 “mechanics of its enforcement” is left to government officials, an appropriation or expenditure has
4 not been created. *Id.*

5 **2. Analysis**

6 **a. Plaintiff Failed to Establish that the Initiative Necessarily Requires an** 7 **Appropriation or Expenditure of Money**

8 The Fiscal Analysis Division of the Legislative Counsel Bureau has not issued a Financial
9 Impact Statement. *Financial Impact of the Statewide Constitutional Initiative Petition-Identifier:*
10 *C-03-2022* (February 14, 2022), <https://www.nvsos.gov/sos/home/showpublish>
11 [eddokument/10131/637805360128370000](https://www.nvsos.gov/sos/home/showpublish) (stating that “The Fiscal Analysis Division is unable to provide a completed
12 financial impact statement...[but] will be provided to the Secretary of State when completed...”). Regardless, nothing in the text of
13 the Initiative would require Nevada officials to appropriate existing funds to or to expend new
14 funds. The Initiative only does two things.

15 First, it requires voters to present a valid identification when voting. These forms of
16 identification are listed and no new forms of identification are created by the Initiative. Each of
17 these forms of identification already exist and the agencies who issue them already issue photo
18 identification.
19

20 Second, the Initiative will require mail-in ballots have a block next to the voter’s signature
21 for the voter to add digits from their driver’s license number, social security number, or a number
22 provided by the county’s clerk. The only change that this requirement mandates is for the form to
23 have a block added.
24

25 The only evidence Plaintiff offers regarding the costs of this Initiative is a national
26 Conference of State Legislatures report from 2014. Nat’l Conference of State Legislatures, *Costs*
27 *of Voter Identification*, (June 2014), <https://www.ncsl.org/ismgt/elect/Vote>
28

1 r_ID_Costs_June2014.pdf. ("NCSL Report"). The costs Plaintiff discusses echoes the "Universal
2 Costs" that the report describes. *Compare* Pl. Mem. 9-10 with NCSL Report 1.

3 The report lists "Free voter ID cards" as its first universal cost. NCSL Report 1. But,
4 Nevada already has a mechanism for free identification cards, which Plaintiff acknowledges. Pl.
5 Mem. 3. Additionally, the Initiative does not create any new form of free identification. Next,
6 regarding "revised election materials," there is nothing to suggest that adding a square to a form
7 would require the state to expend money. Indeed, election forms always have minimal changes
8 each year (changing the date, for example). Finally, the other "universal costs" are voter education
9 and poll worker training. NCSL Report 1. However, these are not programs required by the text of
10 the Initiative. The Initiative "leaves the mechanics of its enforcement with government officials,"
11 which does not constitute an appropriation or expenditure. *Herbst Gaming*, 141 P.3d at 1233.

12
13 Plaintiff argues that it is "self-evident" and "inherently required" that new expenses will
14 occur. Pl. Mem. 9-10. But even Plaintiff's sole piece of evidence does not support this position.
15 The NCSL Report says that "states typically run voter education campaigns," that states "may also
16 have to offer public outreach programs," that they "may have to revise and reissue election
17 materials," and that they "may want to supplement existing poll worker training." NCSL Report
18 2. (emphasis added). Thus, even the NSCL Report acknowledges that these expenditures are not
19 inherent or self-evident. Plaintiff offered no evidence specific to Nevada or this Initiative.
20 Plaintiff's evidence does not establish that budgeting officials will be required to appropriate or
21 expend money.
22

23 CONCLUSIONS OF LAW AND ORDER

24 For each of these reasons, the Court FINDS and ORDERS the following:

- 25
- 26 1. Both proposed Intervenor have demonstrated timelines, that they have an interest in
27 the subject matter of this litigation, that their respective interests would be violated
28

1 should Plaintiff prevail, and that their respective interests are not represented by any
2 existing party, including each other. Their Motions are GRANTED.

- 3 2. The Description of Effect shall be amended to read as follows: "If passed, this
4 initiative would amend the State Constitution to require that all persons voting in
5 person present an approved photo identification before being provided a ballot. It
6 also requires that voters submitting a mail-in ballot provide additional verification of
7 their identity when completing their mail-in ballot."
8
9 3. The language of the proposed constitutional amendment does not create an
10 appropriation or unfunded expenditure, and therefore does not violate Article 19,
11 Section 6.
12
13 4. Plaintiff's requests for declaratory and injunctive relief are DENIED. The matter is
14 DISMISSED, with prejudice.

15 So Ordered.

16  4/26/22

17 Judge William A. Maddox

18 Submitted by:

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20
21
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