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David Gibbs Et Al

**IN THE FIRST JUDICIAL DISTRICT COURT**

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

EMILY PERSAUD- ZAMORA, an individual,

Plaintiff,

VS.

BARBARA CEGAVSKE, in her official  
capacity as NEVADA SECRETARY OF  
STATE,

### Defendants.

DAVID GIBBS, individually and on behalf  
of REPAIR THE VOTE PAC,

Defendant-Intervenor

Case No: 220C00022B

## RESPONDING BRIEF

**DEFENDANT’S RESPONDING BRIEF IN SUPPORT OF DISMISSAL OF  
COMPLAINT WITH PREJUDICE**

COME NOW, Defendants Intervenors DAVID GIBBS *Et Al*, by and through their attorney of record, SIGAL CHATTAH, ESQ., of CHATTAH LAW GROUP, who hereby submit the foregoing BRIEF IN SUPPORT OF MOTION TO DISMISS COMPLAINT WITH PREJUDICE.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 The litigation *sub judice* involves a Complaint for Declaratory Relief and Injunctive  
5 Relief challenging Referendum Petition C-03-2022, filed against Nevada Secretary of State  
6 Barbara Cegavske. Defendant Intervenors submit the foregoing responding brief requesting  
7 dismissal of same.  
8

9 On or about January 28, 2022, Intervenor DAVID G. GIBBS, on behalf of the REPAIR  
10 THE VOTE PAC, filed Initiative Petition C-03-2022 with the Nevada Secretary of State. The  
11 Petition seeks to amend the Nevada Constitution to include voter identification requirement on  
12 in-person voting and seeks to revise the vote by mail process to require Nevadans who vote by  
13 mail to include an identifying number from one of specified government issued documents with  
14 their mail-in ballots.

15 Plaintiffs' Complaint was filed February 18, 2022. This Brief in support of Dismissal is  
16 submitted in accordance therewith.  
17

18 **II.**

19 **LEGAL AUTHORITY**

20 **A. STANDARD FOR PETITION**

21 Nev. Const. Art. 19, § 1 provides in pertinent part: “

22 A person who intends to circulate a petition that a statute or resolution or part thereof  
23 enacted by the legislature be submitted to a vote of the people, before circulating the  
24 petition for signatures, shall file a copy thereof with the secretary of state.”  
25 Sections 2 and 3 of Article 19, § 1 refers to a referendum on

“a statute ... or *any* part thereof.” Whenever a number of registered voters of this state  
equal to 10 percent or more of the number of voters who voted at the last preceding  
general election shall express their wish by filing with the secretary of state, not less than

1 120 days before the next general election, a petition in the form provided for in Section 3  
2 of this Article that any statute or resolution or any part thereof enacted by the legislature  
3 be submitted to a vote of the people... The circulation of the petition shall cease on the  
4 day the petition is filed with the secretary of state or such other date as may be prescribed  
5 for the verification of the number of signatures affixed to the petition, whichever is  
6 earliest.”

7 Nev. Const. Art. 19, § 1(2) (emphasis added). Section 3 continues:

8 If a majority of the voters voting upon the proposal submitted at such election votes  
9 approval of such statute or resolution **or any part thereof**, such statute or resolution **or**  
10 **any part thereof** shall stand as the law of the state and shall not be amended, annulled,  
11 repealed, set aside, suspended or in any way made inoperative except by the direct vote  
12 of the people. If a majority of such voters votes disapproval of such statute or resolution  
13 **or any part thereof**, such statute or resolution **or any part thereof** shall be  
14 void and of no effect.

15 Nev. Const. Art. 19, § 1(3) (emphasis added).

16 The Nevada Constitution authorizes referenda on only a part of a statute by using the  
17 plain language “a statute ... or any part thereof.” Nev. Const. Art. 19, § 1(2). The phrase “part  
18 thereof” is not qualified in any way. Therefore, Plaintiff’s Complaint challenging same fails as  
19 delineated *infra*.

20 **B. PLAINTIFF’S FAILURE TO HOLD A HEARING WITHIN 15 DAYS**  
21 **PRECLUDES THE COURT FROM MAINTAINING THIS ACTION; IT**  
22 **SHOULD BE DISMISSED WITH PREJUDICE**

23 The Supreme Court in *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d  
24 670, (2008), stated “[O]ur prior cases have not been completely consistent in applying the  
25 standard of review for failure to state a claim upon which relief can be granted. The appropriate  
standard requires a showing beyond a doubt. *Dombroski v. NV Energy, Inc.*, 2016 Nev. LEXIS  
204, citing to *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670, (2008).

26 The question that remains for this Court is than to determine whether Plaintiff is  
27 jurisdictionally barred from asserting claims assuming all factual allegations are true. *See Buzz*  
28 *Stew*, 124 Nev. at 228, 181 P.3d at 672. *See also SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334

1 *P.3d 408, 418, (2014)*. Here, Plaintiff's Complaint, even if taken as true, fails procedurally  
2 under NRS 295.061 for his failure to have a hearing within 15 days of filing the Complaint.

3 **1. This Court is Procedurally Barred from Hearing this Matter under NRS**  
4 **295.061**

5 NRS 295.061 entitled Challenge to description of petition; challenge to legal sufficiency  
6 of petition provides in pertinent part:

7 1. Except as otherwise provided in subsection 3, whether an initiative or referendum  
8 embraces but one subject and matters necessarily connected therewith and pertaining  
9 thereto, and the description of the effect of an initiative or referendum required pursuant  
10 to NRS 295.009... The court shall set the matter for hearing not later than 15 days after  
11 the complaint is filed and shall give priority to such a complaint over all other matters  
12 pending with the court, except for criminal proceedings.  
13 *[Emphasis added]*

14 NRS 295.061 requires Plaintiff to set the matter for hearing not later than 15 days after  
15 the Complaint is filed and the Court shall give priority to such a complaint over all other matters  
16 pending with the Court, except for criminal proceedings. *Id.*

17 The Complaint *sub judice* was filed on February 18, 2022, allowing for this Court to  
18 schedule a hearing on the matter no later than March 66, 2022. At the time of the date of this  
19 Response it has been over 40 days since the filing of the Complaint and the failure to have a  
20 hearing in this matter on or before March 16, 2022, mandates that this Complaint be dismissed  
21 with prejudice.

22 The purpose of an expedited hearing in NRS 295.061 is to prevent the prejudicial effect  
23 of having a Petition challenged based on the description of the effect of an initiative or  
24 referendum, precluded by lengthy languishment in Court during the time frame allowable for the  
25 Petitioners to obtain sufficient signatures to remain on the ballot if amended.

26 The last day for petitioners to submit signatures to the counties for verification is June 21,  
27 2022. Counties must certify petition sufficiency within 13 working days of submission. *Id.*

1 Therefore, a timely adjudication of this matter would have allowed even an Amended  
2 Petition have ample time to obtain signatures; here, an Amended Petition would overwhelmingly  
3 prejudice Petitioners to the extent that NRS 295.061 is specifically drafted to prevent. To avoid  
4 this undue prejudice, this Court should dismiss Plaintiff's Complaint with prejudice.

5 **C. PLAINTIFF FAILS TO MEET THE BURDEN OF PROVING THE PETITION IS**  
6 **CLEARLY INVALID**

7 Assuming *arguendo*, that this Court exercises subject matter jurisdiction, Plaintiff still  
8 fails to meet the burden to sustain a challenge to the referendum as demonstrated *infra*.

9 The opponent of a petition bears the burden of demonstrating that the petition is "clearly  
10 invalid." *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas*, 125  
11 *Nev.165, 176, 208 P.3d 429, 436 (2009)*.

12 The Nevada Supreme Court has previously held that the people's petition power is  
13 "'coequal, coextensive, and concurrent' with that of the Legislature." *Nevadans for the Prot. of*  
14 *Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 914, 141 P.3d 1235, 1248 (2006); see also *We People*  
15 *Nevada ex rel. Angle v. Miller*, 124 Nev. 874, 887, 192 P.3d 1166, 1174, n. 39 (2008) (the people  
16 ultimately hold all legislative power). That which the Legislature can do, so can the people. The  
17 Legislature can, of course, enact a statute with various parts. It can also repeal certain phrases,  
18 sentences, or subsections within a statute. The people can likewise reject any of those parts  
19 through referendum. *Nev. Const. Art. 19, § 1*.

20 Plaintiff alleges violation of Description of Effect under NRS 295.009(1)(b) with the  
21 three following challenges:

- 22  
23 (a). The Petition's Description of Effect contacts Argumentative Advocacy;  
24 (b). The Petition's Description of Effect Omits and Misstates Important Details;  
25

1 (c) The Petition Violates Nevada's Constitution's Prohibition on Initiatives that  
2 Mandate Unfunded Expenditures

3 **1. Plaintiff's Claim that the Description of Effect is Argumentative Advocacy**  
4 **Fails**

5 Plaintiff alleges that the following is argumentative advocacy:

6 "This Amendment will increase voter integrity by ensuring that any person casting a  
7 ballot in Nevada is, in fact, the duly registered voter. It will also improve and speed up  
8 the mail-in ballot verification process by providing a second, more secure means of  
9 verifying that the mail in ballot was completed by the registered voter."

10 The words "ensuring that any person casting a ballot in Nevada is the duly registered  
11 voter" is not argumentative nor is it advocacy, it is a statement of fact. Likewise, the statement  
12 "verifying that the mail in ballot was completed by the registered voter" is not argumentative  
13 advocacy, it also is a statement of fact.

14 While Plaintiff's claims that the narrative is argumentative, it is simply explaining the  
15 ramifications of the proposed amendment and informs signatories of the nature and effect of that  
16 which is proposed as required under NRS 295.009(1)(b).

17 If initiative petition signers are petitioning for enactment of a state law, the petition  
18 should state that law enactment is what the petition is about. *Stumpf v Lau*, 108 Nev. 826, 839  
19 P.2d 120 (1992). Here including the words of "identification" and "registered voters" are not  
20 argumentative, they are descriptive.

21 In *Nevada Judges Ass'n v. Lau* 910 P.2d 898 (1996), the Supreme Court held NRS  
22 293.250(5) requires initiative explanations to be "in easily understood language and of  
23 reasonable length stating that "[W]e recognize that it might be impossible for the Secretary of  
24 State to explain all the conceivable implications of every initiative placed on a ballot." *Id. at*  
25 903.

1           **2.       The Petition’s Description Does Not Omit or Misstate Important Details**

2           The main objection Plaintiff claims is that the description omits crucial information how  
3 the new restrictions will function; it does not provide voters with any information about which  
4 types of documents would constitute “an approved photo identification” for in person voting.  
5 Here, Plaintiff seeks to place a burden on Petitioners of having every conceivable implication  
6 listed in a 200-word description which is precisely what *Lau* lists as an impossibility.  
7

8           NRS 295.009 provides in pertinent part that a referendum petition must “[s]et forth, in  
9 not more than 200 words, a description of the effect of the...referendum if the ...referendum is  
10 approved by the voters.”

11           The Nevada Supreme Court has recognized that “this descriptive language is what  
12 appears directly above the signature lines, as registered voters decide the threshold issue of  
13 whether they even want the initiative placed on the ballot.” *Nevadans for Nevada v. Beers*, 122  
14 Nev. 930, 940, 142 P.3d 339, 346 (2006). Additionally, the court has explained that an accurate  
15 Description of Effect “is significant as a tool to help ‘prevent voter confusion and promote  
16 informed decisions.’” *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las*  
17 *Vegas*, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009) (quoting *Beers*, 122 Nev. at 939, 142 P.3d  
18 at 345).  
19

20           An accurate and complete Description of Effect is critical to ensuring “the people’s right  
21 to meaningfully engage in the initiative process.” *Beers*, 122 Nev. At 940, 142 P.3d at 345. A  
22 Description of Effect must “accurately identify the consequences of the referendum’s passage.”  
23 *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. At 184, 208 P.3d at 441.

24           While a Description of Effect need not explain hypothetical effects or mention every  
25 possible effect of the Referendum Petition, it “must be straightforward, succinct, and

1 nonargumentative, and it must not be deceptive or misleading.” *Educ. Initiative PAC v. Comm.*  
2 *to Protect Nev. Jobs*, 129 Nev. Adv. Op. 5, 293 P.3d 874, 879 (2013).

3 Here the description and effect provided is as follows:

4 If passed, this initiative would amend the State Constitution to require that all persons  
5 voting in person present an approved photo identification before being provided a ballot.  
6 It also requires that voters submitting a mail-in ballot provide additional verification of  
7 their identify when completing their mail-in ballot using the number provided on their  
8 voter registration form when they registered to vote.

9 The very purpose of the 200 words is to “accurately identify the consequences of  
10 the referendum’s passage.” *Las Vegas Taxpayer Accountability Comm.*, 125 Nev.  
11 165, 184, 208 P.3d 429, 441. The description *supra*, more than adequately describes the what the  
12 initiative seeks and the effect of same.

13 Plaintiff seeks to have every hypothetical situation included in the 200-word description  
14 required. NRS 295.009 specifically requires the description to set forth “the effect of the  
15 initiative or referendum if the initiative or referendum is *approved* by the voters.”  
16 NRS295.009(1)(b).

17 **3. The Petition Does Not Violate the Nevada Constitution’s Prohibition of**  
18 **Initiatives that Mandate Unfunded Expenditures**

19 Plaintiff cites to Article 19 section 6 of the Nevada Constitution in her argument that the  
20 initiative mandates expenditures or is an initiative that makes and appropriation or otherwise  
21 requires and expenditure of money. Plaintiff deliberately conflates this, as the Initiative does not  
22 mandate an expenditure or appropriation nor does it require an expenditure of money.

23 Nevada Constitution article 19, section 2(1) provides that the initiative process is  
24 “subject to the limitations of [article 19, section 6].” Article 19, section 6, in turn, “does not  
25 permit the proposal of any statute or statutory amendment which makes an appropriation or



1 otherwise requires the expenditure of money, unless such statute or amendment also imposes  
2 a sufficient tax, not prohibited by the constitution, or otherwise constitutionally provides for  
3 raising the necessary revenue.”

4 First and foremost, Plaintiff cites to *Heller v Rogers* 117 Nev. 169, 18 P.3d 1034 (2001)  
5 in support of their allegations. In *Rogers*, the Petitioners circulated an initiative called  
6 “Nevada Tax Fairness and Quality School Funding Accountability Act,” and would amend the  
7 Nevada Revised Statutes by adding a new chapter to Title 32, Revenue and Taxation, and  
8 amending various statutes, basically for the purpose of increasing funding to Nevada’s public  
9 schools. The Petition in *Rogers*, was specific and called for appropriation of funds, which is  
10 completely distinguished from the Petition *sub judice*.  
11

12 Here, Plaintiffs reliance on *Rogers* is fatally flawed and an allegation that the initiative  
13 makes and appropriation or requires the expenditure of money is meritless, unfounded and  
14 purely speculative. Plaintiff alleges that Nevada, would have to expend substantial funds on  
15 voter education and public outreach.

16 Plaintiff concedes that Nevada provides for free ID. <sup>1</sup> See also Nevada Dep’t of Motor  
17 Vehicles, Nevada Identification cards, <http://dmvnev.com/idcards.htm> and yet wildly claims that  
18 it will come only with significant public expense. Plaintiff therefore falsely claims that the  
19 Petition violates Article 19 Section 6, when the Petition should not even trigger a discussion  
20 of same.  
21

22 Plaintiff also provides a series of financial speculations as to costs of such changes and  
23 applies them to the Petition *sub judice*, disregarding the ability of Nevadans to obtain  
24 government issued identification for free. Plaintiff’s phantasmagoria insinuates that requiring  
25

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<sup>1</sup> Plaintiff Brief Pg 3 lns 2-6.

1 each voter provide identification is somehow a novel and frowned upon idea. However,  
2 arguments that requiring identification is a form of voter suppression have failed and continue  
3 to fail in Courts across the Nation, including the United States Supreme Court. *See Brnovich*  
4 *v. Democratic National Committee* 594 U.S. \_\_\_\_ (2021), *Crawford v. Marion County Election*  
5 *Board* 128 S. Ct. 1610; 170 L. Ed. 2d 574 (2008).

6 Accordingly, this Plaintiff's argument fails along with attempts to irrationally obstruct a  
7 Petition for same by using false obstacles of characterization of hypothetical fiscal narratives that  
8 simply do not exist.  
9


10 **IV.**

11 **CONCLUSION**

12 Based on the above-mentioned points and authorities, Defendants respectfully request  
13 that this honorable court dismiss Plaintiff's Complaint with prejudice.

14 Respectfully submitted this 11<sup>th</sup> day of April, 2022.

15 CHATTAH LAW GROUP

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**CERTIFICATE OF MAILING**

I hereby Certify that on the 11<sup>th</sup> day of April, 2022, I personally served a true copy of the foregoing DEFENDANTS MOTION TO DISMISS by the Courts electronic service system pursuant to Administrative Order 14-2 to all registered parties:

/s/ Sigal Chattah

An Agent of Chattah Law Group



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