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12
13 **IN THE FIRST JUDICIAL DISTRICT COURT**
14 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

15
16 EMILY PERSAUD-ZAMORA, an individual,
17 Plaintiff,

18 vs.

19 BARBARA CEGAVSKE, in her official
20 capacity as NEVADA SECRETARY OF
STATE,
21 Defendant,

22 and

23 R.I.S.E. Nevada – Restore Integrity in State
24 Elections PAC,
25 Intervenor-Defendant,

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BY C. COLEMAN
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Case No.: 22 OC 00071 1B
Dept. No.: I

**REPLY IN SUPPORT OF
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION S-05-2022**

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1 For the reasons discussed in Plaintiff’s opening brief (and addressed further in this reply),
2 Initiative Petition S-05-2022 (the “Petition”) should be invalidated. Intervenor-Defendant R.I.S.E.
3 Nevada (“Proponent”) provides no reason to find otherwise.

4 *First*, the Petition violates Article 19, Section 6’s prohibition on unfunded mandates, which
5 prevents initiatives from requiring any expenditure unless the initiative imposes a sufficient tax or
6 “otherwise constitutionally provides for raising the necessary revenue” to cover the new costs.¹
7 Because the Petition orders the Secretary to “*reallocate* existing funds” to cover necessary
8 expenditures associated with creating a new photo ID for voting purposes and indisputably lacks
9 any reciprocal mechanism for *raising* necessary funds, the Petition is invalid. Proponent’s claim
10 that Plaintiff’s unfunded mandate challenge is based on “pure supposition,” Opp. at 9, is
11 demonstrably wrong. The Petition itself mandates the creation of a new photo ID for voting
12 purposes and directs the Secretary to reallocate funds for this purpose. That alone is sufficient to
13 find it violates the unfunded mandate prohibition. But Plaintiff also relies on numerous studies
14 documenting the costs of creating new photo IDs and on the Fiscal Analysis Division of the
15 Legislative Counsel Bureau’s multiple findings that mandating a new photo ID for voting purposes
16 would increase expenditures *in Nevada*. As for Proponent’s alternative argument that the Petition
17 is not an unfunded mandate because the Secretary of State has “discretion” in how to implement
18 the Petition’s proposed changes and how to reallocate funds to cover its expenditures, the Nevada
19 Supreme Court has already rejected it. Simply put, because the new voter ID program required by
20 the Petition cannot be accomplished without some funding—whether newly appropriated or
21 reallocated—it violates Article 19, Section 6’s prohibition on unfunded mandates.

22 *Second*, the Petition is separately invalid because of the fatal flaws in its description of
23 effect. Proponent attempts to minimize the description of effect’s multiple material omissions and
24 misstatements by repeatedly bemoaning the 200-word limit and contending that the description is
25 “straightforward, succinct, and nonargumentative.” Opp. at 3, 4, and 6. But Proponent’s

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27 ¹ This Court has jurisdiction to hear the unfunded mandate challenge for the reasons
28 discussed in Plaintiff’s separately filed opposition to Proponent’s motion to dismiss.

1 description is only 60 words, leaving ample space for an accurate recitation of the Petition’s effects
2 as NRS 295.009(1)(b) requires. The Petition does not comply with Nevada law, and the Court
3 should enjoin the Secretary from taking any further action on it.

4 **I. ARGUMENT**

5 **A. The Petition fails to fund required expenditures in violation of Article 19, Section 6.**

6 Article 19, Section 6 of the Nevada Constitution prohibits initiatives that fail to fund new
7 required spending. Proponent’s primary response to Plaintiff’s argument that the Petition violates
8 this provision is to attempt to avoid review altogether, by seeking dismissal of this challenge on
9 procedural grounds. For the reasons discussed in Plaintiff’s opposition to the motion to dismiss,
10 this Court has jurisdiction to hear this challenge now. On the merits, Proponent fares no better.

11 *First*, rather than provide any evidence refuting the obvious costs associated with
12 designing, administering, and issuing a new photo ID for voting, Proponent downplays these costs
13 as “pure supposition” and inaccurately claims that Plaintiff’s “only support” lies in studies and
14 articles “from other jurisdictions.” Opp. at 9. In fact, among the evidence relied upon by Plaintiff
15 are prior fiscal analysis reports *from Nevada* showing that the state has at least twice concluded
16 that a petition that would create a new form of photo ID for voting would require an expenditure
17 of public funds. Memo. at p. 5-6. There is no substantive difference between the voter ID cards
18 required by the prior initiatives and those required here, and Proponent points to none.²

19 *Second*, Proponent argues that the Petition is not an unfunded mandate because it does not
20 require an expenditure “in any set amount or percentage as a new requirement that otherwise does
21 not exist, but leaves implementation of the proposed changes to the discretion of government
22 officials.” Opp. at 8. But the Nevada Supreme Court has rejected this position, holding that existing
23 funding cannot be used to offset an initiative’s costs and exempt it from Article 19, Section 6. *See*
24 Memo. at 6 (citing *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001)). And in

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26 ² Proponent’s reliance on the recent advisory opinion in *Helton v. Nevada Voters First PAC*,
27 138 Nev. Adv. Op. 45 (2022), is misplaced. *See id.* (finding Helton “did not provide any evidence
28 regarding the expected costs to make the proposed changes to the Nevada election system” and
only cited to costs in two other jurisdictions).

1 considering whether a petition violates the provision, courts do not ask whether it takes away
2 officials' discretion to decide *where* or *how* to spend money to implement the initiative, or whether
3 it sets a certain percentage of spending. They ask whether it takes away officials' discretion to
4 decide *whether* to spend the money in the first place. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877,
5 890, 141 P.3d 1224, 1233 (2006) (asking whether, if initiative is passed, "the budgeting official
6 must approve the appropriation or expenditure regardless of any other financial considerations").

7 The Petition's voter ID program cannot be accomplished without the expenditure of some
8 funds. This is clear from its face, which requires the Secretary to "reallocate" existing funds for
9 this purpose, Ex. 1 to Memo. at 1, and it is also clear from the evidence cited by Plaintiff, including
10 fiscal analyses from Nevada itself. The hypothetical possibility suggested by Proponent, that "there
11 is no guarantee that any eligible voters will request the new photographic identification document,"
12 Opp. at 9, does not allow officials to *ignore* the Petition's mandate to create a new ID. Officials
13 cannot play a wait-and-see game to decide whether to design a new photo ID until one is requested;
14 they must have the program in place well before any election, to ensure that no voter is denied
15 their fundamental right to vote if no ID is available.

16 Proponent's position is also contrary to the Nevada Supreme Court's decision in *Education*
17 *Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47 (2022), from a few weeks ago. There, the Court
18 invalidated a petition that would have required an appropriation to fund education accounts without
19 raising funds, leaving it to the Legislature to decide how to effectuate the accounts. *Id.* The Court
20 held "[t]he fact that the initiative leaves it up to the Legislature to determine how to fund the
21 proposed change does not exclude the initiative from the funding mandate." *Id.* at *6. The initiative
22 was an unfunded mandate because it "is creating a new requirement for the appropriation of state
23 funding that does not now exist and provides no discretion to the Legislature about whether to
24 appropriate or expend the money." *Id.* Thus, "[i]t requires the Legislature to fund the education
25 freedom accounts" in violation of Article 19, Section 6. *Id.* For the same reasons, the Petition here
26 must be invalidated.

1 **B. The Petition’s description of effect is legally insufficient.**

2 The Petition is also separately invalid because it violates Nevada law governing
3 descriptions of effect. The purpose of the description of effect is to “prevent voter confusion and
4 promote informed decisions.” *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345
5 (2006). The Nevada Supreme Court has repeatedly held that “a description of effect must be
6 straightforward, succinct, and non-argumentative, *and it must not be deceptive or misleading.*”
7 *Educ. Init. v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013) (emphasis
8 added). Plaintiff’s criticism of the description is *not* that it fails to give an “exhaustive exposition”
9 of all possible effects, Opp. at 3, but that it is statutorily inadequate because it is deceptive and
10 misleading. Specifically, the description falsely describes the consequences of the initiative’s
11 passage, inaccurately describes who would have a right to request a new photo ID, and makes
12 material omissions about the initiative’s impact on how Nevadans register to vote and cure ballots.

13 The description inaccurately claims that the measure “would require all voters voting in
14 person at a Nevada polling place to present photographic identification before casting a ballot,”
15 even though voters may cast provisional ballots in person at a Nevada polling place without
16 presenting photographic identification. *See* Memo. at 8. Proponent characterizes this as a
17 “hypothetical argument,” but it is not. The initiative’s proposed amendment to NRS 293.277(1)
18 would permit the casting of provisional ballots in multiple situations without presenting photo
19 identification. *See id.* Proponent asserts that provisional ballots are different than regular ballots.
20 Opp. at 4. This argument is frivolous. A ballot is the means by which a voter casts their vote, and
21 a vote cast by provisional ballot, once verified, has the same weight as a vote cast by a regular
22 ballot. *See* NRS 293.5832(4); 293.5847(4); 293.5872. The description plainly and falsely conveys
23 that the initiative will require all in-person voters, without exception, to present photo
24 identification before casting a ballot. *See* Ex. 1 at 3; Opp. at 4-5.

25 The description also incorrectly claims that a photo ID “will be issued upon request to any
26 eligible voter,” in direct contraction with the proposed statutory amendment which would *limit* the
27 right to request an ID to only those people who do “not possess any document bearing his or her
28

1 signature and picture.” Memo. at 9. Proponent’s insistence that the contradictory statements are
2 both true because they share the common element of a voter request for ID only adds to the
3 confusion. Opp. at 5. Proponent’s reliance on *Las Vegas Taxpayer Accountability Committee v.*
4 *City Council of Las Vegas* is misplaced. *See id.* There, the Nevada Supreme Court found a
5 description to be materially misleading because it claimed to halt only future redevelopment
6 projects while the proposed language of the statutory amendment would halt future *and existing*
7 redevelopment projects. 125 Nev. 165, 184, 208 P.3d 429, 441 (2009). Proponent’s description
8 here is similarly materially misleading because it claims to extend the right to request a free photo
9 ID to *any voter who requests one*, even though the language of the proposed statutory amendment
10 clearly limits that right to a defined subset of voters.

11 Proponent asserts that the description’s failure to mention the initiative’s direct and
12 significant effect on Nevada’s voter registration and mail ballot cure processes is an immaterial
13 omission because the description of effect need merely “summarize ‘what the initiative is designed
14 to achieve and how it intends to reach those goals.’” Opp. at 6. While it is true that the description
15 does not need to explain every effect or hypothetical effects, it does need to accurately describe
16 the main consequences of the initiative. *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at
17 184, 208 P.3d at 441. Changes to the processes for voter registration and remediation of absentee
18 ballots flagged for rejection are material to how Nevadans vote. Nevada courts have repeatedly
19 found material omissions about a proposed initiative’s effect to be violations of NRS 295.009(1).
20 *See* Memo. at 11 (citing *Las Vegas Taxpayer Accountability Comm.*, 208 P.3d at 441; *Stumpf v.*
21 *Lau*, 108 Nev. 826, 833, 839 P.2d 120, 124 (1992)); *see also Educ. Freedom PAC*, 138 Nev. Adv.
22 Op. 47.

23 II. CONCLUSION

24 For reasons discussed, the Petition is legally deficient. Plaintiff’s requested relief should
25 be granted.
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1 **AFFIRMATION**

2 The undersigned hereby affirm that the foregoing document does not contain the social
3 security number of any person.

4 DATED this 8th day of July, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2022, a true and correct copy of the **REPLY IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION S-05-2022** was served upon all parties via electronic mailing to the following:

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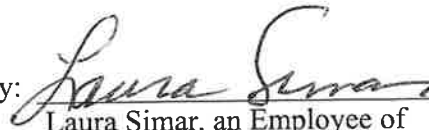
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