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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  
21 STATE,

22 Defendant,

23 and

24 R.I.S.E. NEVADA- Restoring-Integrity in State  
25 Elections PAC,

26 Intervenor-Defendant.

Case No.: 22 OC 00071 1B

Dept. No.: I

~~PROPOSED~~ FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

1 This matter comes before this Court pursuant to Plaintiff Emily Persaud-Zamora's  
2 Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-05-2022 and her  
3 Memorandum of Points and Authorities in Support of the Complaint. In response, Defendant  
4 Secretary of State Barbara Cegavske ("Defendant") filed a Limited Response and Intervenor-  
5 Defendant R.I.S.E. Nevada ("Proponent") filed an Opposition and a Motion to Dismiss Plaintiff's  
6 claim under Article 19, Section 6 of the Nevada Constitution, which Plaintiff opposed.

7 The Court, having reviewed the papers and pleadings on file, hearing oral argument from  
8 Plaintiff, Defendant and Proponent, and being fully advised, and good cause appearing, finds,  
9 concludes, and orders as follows:

10 **FINDINGS OF FACT**<sup>1</sup>

11 On May 13, 2022, Raja Mourey, on behalf of R.I.S.E. Nevada – Restoring Integrity in State  
12 Elections political action committee, filed Initiative Petition S-05-2022, styled as the "Initiative to  
13 Restore Integrity of State Elections" (the "Petition"), with the Nevada Secretary of State.

14 The Petition seeks to amend Chapter 293 of NRS by adding the language below:

- 15 ***1. A person who does not possess any document bearing his or her signature***  
16 ***and picture may request from the Secretary of State a special identification***  
17 ***document bearing his or her signature and picture.***
- 18 ***2. The special identification document is only valid for the purpose of***  
19 ***identifying a voter at a polling place under NRS 293.277.***
- 20 ***3. The Secretary of State shall furnish upon request a special identification***  
21 ***document to any person who is eligible to vote.***
- 22 ***4. The Secretary of State shall reallocate existing funds to cover any expenditure***  
23 ***necessary to facilitate the issuance of a special identification document under***  
24 ***subsection 1.***
- 25 ***5. The county clerk, with the approval of the Secretary of State, shall:***
  - 26 ***(a) Amend the voter registration card to include an option for a voter to***  
27 ***request a special identification document; and***
  - 28 ***(b) Prescribe a procedure for the issuance of a special identification***  
***document under subsection 1.***

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26 <sup>1</sup> Any findings of fact which are more appropriately considered conclusions of law shall be  
27 treated as such, and any conclusions of law which are more appropriately considered findings of  
28 fact shall be treated as such.

1 The Petition also seeks to amend NRS 293.277 by adding the language in bold italics and  
2 deleting the strikethrough language as follows:

3 1. Except as otherwise provided in NRS 293.283, 293.541 and 293.5772 to  
4 293.5887, inclusive, if a person's name appears in the roster or if the person  
5 provides an affirmation pursuant to NRS 293.525, ***and he or she presents valid***  
6 ***photographic identification***, the person is entitled to vote and must sign his or her  
7 name in the roster or on a signature card when he or she applies to vote. The  
8 signature must be compared by an election board officer with the signature or a  
9 facsimile thereof on the person's application to register to vote or one of the forms  
10 of identification listed in subsection 2.

11 2. Except as otherwise provided in NRS 293.2725, the forms of identification which  
12 may be used individually to identify a voter at the polling place are:

- 13 a. The voter registration card issued to the voter ***accompanied by another form of***  
14 ***identification bearing the voter's picture***;  
15 b. A driver's license;  
16 c. An identification card issued by the Department of Motor Vehicles;  
17 d. A military identification card; or  
18 e. Any other form of identification issued by a governmental agency which  
19 contains the voter's signature and ~~physical description or picture~~.

20 3. The county clerk shall prescribe a procedure, approved by the Secretary of State,  
21 to verify that the voter has not already voted in that county in the current election.

22 *See Exhibit 1 to Plaintiff's Complaint ("Ex. 1"), a true and accurate copy of the Notice of Intent*  
23 *to Circulate Statewide Initiative or Referendum Petition associated with Initiative Petition S-05-*  
24 *2022.*

25 The Petition's description of effect reads, in full:

26 If passed, this statutory measure would require all voters voting in person at a  
27 Nevada polling place to present photographic identification before casting a  
28 ballot. The measure would also require the Secretary of State to create a special  
photographic identification document for voting purposes. The new  
photographic identification document will be issued upon request to any  
eligible voter in Nevada.

Ex. 1 at 3.

On June 6, 2022, Plaintiff initiated this action, raising two issues which, she argues, should  
preclude the Petition from being circulated for signature gathering or considered by Nevada voters.

1 First, Plaintiff argues that the proposed statute, if enacted, would violate Article 19, Section 6 of  
2 the Nevada Constitution by failing to provide for a funding mechanism for the changes it proposes,  
3 including the creation of a new form of photo ID for voting, which will necessarily require the  
4 expenditure of public funds. Second, Plaintiff argues that the description of effect does not comply  
5 with Nevada law because it omits key effects of the Petition, includes false statements about the  
6 Petition’s proposed changes, and is deceptive, confusing, and misleading. Plaintiff asked this Court  
7 to enjoin the Secretary of State from taking any further action on the Petition and prohibiting the  
8 Petition from being submitted to the Legislature and placed on the general election ballot.

9 In response to Plaintiff’s Complaint, Proponent filed an opposition arguing first that the  
10 description of effect provided a straightforward, succinct, and non-argumentative summary of  
11 what the initiative was designed to achieve and how it intended to reach those goals. Proponent  
12 also argued that Plaintiff failed to offer actual evidence that the initiative proposal required an  
13 expenditure of funds.

14 Proponent also filed a partial motion to dismiss Plaintiff’s unfunded mandate claim under  
15 Article 19, Section 6, contending that the claim is not ripe for the Court’s review because pursuant  
16 to NRS 295.061(b), it should have been filed after the Nevada Secretary of State certified the  
17 initiative petition as sufficient. Plaintiff opposed the motion, arguing that unfunded mandate  
18 challenges are not subject to the procedural restrictions outlined in NRS 295.061 and her claim is  
19 a timely pre-election challenge, which the Nevada Supreme Court has repeatedly considered when  
20 brought under the same time frame as Plaintiff brings her challenge.

## 21 ANALYSIS AND CONCLUSIONS OF LAW

### 22 **A. Plaintiff’s Challenge under Article 19, Section 6 is Ripe for Review.**

23 A case is ripe for review when “the degree to which the harm alleged by the party seeking  
24 review is sufficiently concrete, rather than remote or hypothetical, [and] yield[s] a justiciable  
25 controversy.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887-88, 141 P.3d 1224, 1230-31  
26 (2006). Although the substantive constitutionality of a ballot initiative is generally not ripe for  
27 review until the initiative is enacted, *see id.* at 884, 141 P.3d at 1229, the Nevada Supreme Court  
28

1 has held that compliance with Article 19, Section 6’s appropriation or expenditure provision is a  
2 “threshold content restriction” that “is properly evaluated at the preelection stage,” *id.* at 890 n.38,  
3 141 P.3d at 1233 (quoting *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001)), and  
4 has decided many such challenges brought at the same stage that Plaintiff’s challenge was filed.

5 The Court concludes that Plaintiff’s unfunded mandate challenge under Article 19, Section  
6 6 is timely and ripe for review. As an initial matter, the Court finds that NRS 295.061 does not  
7 encompass an unfunded mandate challenge. *See PEST Comm. v. Miller*, 648 F. Supp. 2d 1202,  
8 1216 & n.7 (D. Nev. 2009), *aff’d*, 626 F.3d 1097 (9th Cir. 2010). In *PEST Committee v. Miller*,  
9 the federal court for the District of Nevada directly addressed whether an unfunded mandate  
10 challenge is subject to NRS 295.061 and concluded that it is not. *Id.* *PEST Committee* is directly  
11 on point and persuasive here. In that case, the court considered a challenge to Nevada’s single-  
12 subject rule under the First Amendment. The court held that NRS 295.061 does not create a private  
13 right of action because “private parties may bring nonsubstantive, pre-election challenges to  
14 initiatives without NRS 295.061.” *Id.* It went on to list the multiple types of challenges that Nevada  
15 courts have heard outside of NRS 295.061, including that “an initiative requires an expenditure of  
16 money without raising the necessary revenue” under Article 19, Section 6, and concluded that  
17 “NRS 295.061 encompasses none of these pre-election challenges.” *Id.* (citing *Herbst Gaming*,  
18 141 P.3d at 1233). Thus, the court explained, “Plaintiffs’ asserted interpretation—that NRS  
19 295.061 creates a private right of action—is inconsistent with the widespread practice in Nevada  
20 courts of hearing pre-election challenges where no specific statute authorizes such challenges.” *Id.*  
21 at 1216–17. Rather, NRS 295.061(1) “is a ‘procedural mechanism for asserting challenges to a  
22 measure based on the single-subject requirement and the description of effect.’” *Id.* at 1217  
23 (quoting *Las Vegas Taxpayer Accountability Comm. v. City Council of the City of Las Vegas*, 125  
24 Nev. 17, 208 P.3d 429, 438 (2009)).

25 And, indeed, Nevada courts, including the Nevada Supreme Court, have repeatedly  
26 considered challenges brought against proposed petitions alleging that they amount to unfunded  
27 mandates in violation of Article 19, Section 6 on the same timeline that Plaintiff proceeds under  
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1 here. These decisions include two decided by the Nevada Supreme Court as recently as just a few  
2 weeks ago. On June 28, 2022, the Nevada Supreme Court reached the merits on two unfunded  
3 mandate challenges during the signature gathering phase and *before* the Secretary certified the  
4 petition as sufficient. *See, e.g., Education Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47 (2022)  
5 (invalidating petition requiring an appropriation for education accounts without a reciprocal  
6 funding mechanism where unfunded mandate challenge was raised in accordance with the timing  
7 set forth in NRS 295.061(1)); *Helton v. Nevada Voters First PAC*, 138 Nev. Adv. Op. 45 (2022)  
8 (same timing for plaintiff’s challenge, although the court declined to invalidate petition under  
9 Article 19, Section 6).

10 Proponent does not address the routine practice of Nevada state courts and instead contends  
11 that an unfunded mandate challenge must relate to the “legal sufficiency” of the Petition pursuant  
12 to NRS 295.061(2) and thus may only be raised *after* the Petition has been circulated for signatures  
13 and the Secretary of State has certified the petition as sufficient. Mot. to Dismiss at 7.<sup>2</sup> The Court  
14 rejects this argument. The Court agrees with the district court’s conclusion in *PEST Committee*,  
15 which properly found that NRS 295.061 does not provide the exclusive procedural grounds for a  
16 pre-election challenge. Indeed, several other kinds of commonly recognized pre-election  
17 challenges also fall outside of NRS 295.061, including challenges alleging an initiative seeks to  
18 legislate administrative details, or that an initiative petition is really a referendum. *PEST Comm.*,  
19 648 F. Supp. at 1216 (citations omitted). Further, nothing in NRS 295.061 indicates that the statute  
20 provides the *exclusive* procedures for filing pre-election challenges. Its plain language addresses  
21 only three types of pre-election challenges and there is no “catch all” language to capture other  
22 proper pre-election challenges recognized by Nevada courts.

23 Moreover, an unfunded mandate claim challenges a *threshold* content restriction on a  
24 Petition, not its “legal sufficiency” as that term is used in NRS 295.061. *See Herbst Gaming*, 122

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26  
27 <sup>2</sup> NRS 295.061(2) provides that “[t]he legal sufficiency of a petition for initiative . . . may  
28 be challenged by filing a complaint in district court not later than 7 days . . . after the petition is  
certified as sufficient by the Secretary of State.”

1 Nev. at 886, 141 P.3d at 1230. In the context of that statute, “legal sufficiency” is a term of art that  
2 refers to a very specific aspect of the petition process, not—as Proponent seems to believe—a  
3 catch-all for any challenge that is not based on the single subject or description of effect  
4 requirements. Procedurally, after a petition is submitted with the county clerks, if the clerks  
5 determine that the raw count of the total is 100 percent or more of the required number needed,  
6 the clerks verify the signatures. *See* NRS 293.1278. Assuming the petition contains enough  
7 signatures after the clerks complete the statistical sampling of the signature verification process,  
8 the Secretary makes a determination that the petition is “*sufficient*.” NRS 293.1277 (emphasis  
9 added). “Legal sufficiency” challenges accordingly relate to the Secretary’s sufficiency  
10 determination, including whether enough valid signatures have been collected or if the clerk’s  
11 verification sampling was proper. There is no basis for concluding that the term also encompasses  
12 the threshold question of whether the Petition creates an unfunded mandate.

13 This conclusion also makes sense as a practical matter. Nothing about the Secretary’s  
14 certification of a petition as sufficient makes an unfunded mandate challenge suddenly ripe for  
15 review. Indeed, it is apparent on from the face of many Petitions, particularly this one, whether an  
16 expenditure or appropriation would be required without a reciprocal funding mechanism included.  
17 Whether signatures have been properly tabulated and the Secretary made a proper sufficiency  
18 determination are questions unrelated to funding for the Petition or the required expenditures.  
19 Moreover, the Secretary’s sufficiency determination cannot possibly be evaluated until after the  
20 signatures have been gathered and the petitions submitted to the Secretary for this purpose. If  
21 anything, considering unfunded mandate challenges earlier improves the efficiency of the Petition  
22 process and avoids wasting resources gathering signatures for a facially invalid Petition. Indeed,  
23 even if NRS 295.061 did restrict Plaintiff’s ability to raise an unfunded mandate challenge prior  
24 to certification, the remedy would be to dismiss Plaintiff’s claim without prejudice, so that she can  
25 bring it at a later date. That would be an extremely inefficient process, given that the threshold  
26 constitutional violation is already evident from the face of the proposed Petition itself.

27 The Court finds that Plaintiff has appropriately raised her unfunded mandate challenge at  
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1 the pre-election stage. Plaintiff raised a description of effect challenge to the Petition under NRS  
2 295.061(2) and timely filed her Complaint within 15 days of when the Petition was placed on file  
3 with the Secretary pursuant to NRS 295.015 and Plaintiff brought her claim under Article 16,  
4 Section 6 at the same time. Thus, this Court has jurisdiction to hear both of Plaintiff's pre-election  
5 challenges to the Petition.

6 **B. The Petition Violates the Nevada Constitution's Prohibition on Initiatives that**  
7 **Mandate Unfunded Expenditures.**

8 Article 19, Section 6 of the Nevada Constitution prohibits any initiative that "makes an  
9 appropriation or otherwise requires the expenditure of money, unless such statute or amendment  
10 also imposes a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally  
11 provides for raising the necessary revenue." Nev. Const. art. 19, § 6. "Section 6 applies to all  
12 proposed initiatives, without exception, and does not permit any initiative that fails to comply with  
13 the stated conditions." *Rogers*, 117 Nev. at 173. "If the Initiative does not comply with section 6,  
14 then the Initiative is void" in its entirety, and the offending provision cannot be severed to render  
15 it constitutional. *Id.* at 173, 177-78.

16 Nevada prohibits initiatives that require appropriations or expenditures to "prevent[] the  
17 electorate from creating the deficit that would result if government officials were forced to set  
18 aside or pay money without generating the funds to do so." *Herbst Gaming*, 122 Nev. at 891. "[A]n  
19 appropriation is the setting aside of funds, and an expenditure of money is the payment of funds."  
20 *Rogers*, 117 Nev. at 173. Thus, an initiative need not "by its terms appropriate money" to violate  
21 the prohibition. *Herbst Gaming*, 122 Nev. at 890 n.40 (citing *State ex rel. Card v. Kaufman*, 517  
22 S.W.2d 78, 80 (Mo. 1974)). Rather, "an initiative makes an appropriation or expenditure when it  
23 leaves budgeting officials no discretion in appropriating or expending the money mandated by the  
24 initiative—the budgeting official must approve the appropriation or expenditure, regardless of any  
25 other financial considerations." *Id.* at 890.

26 The Court concludes that the Petition is invalid because it mandates expenditures  
27 without providing reciprocal revenues. These expenditures are *required* by the Petition, whose  
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1 measures cannot be achieved without them. That the new requirements mandated by the Petition  
2 come at a cost is beyond dispute: the Petition text facially acknowledges that an expenditure of  
3 money is necessary to achieve the proposal because it includes the following language: “The  
4 Secretary of State shall reallocate existing funds to cover any expenditure necessary to facilitate  
5 the issuance of a special identification document under subsection 1.” Ex. 1 at 2. As the Nevada  
6 Supreme Court held in *Rogers*, 117 Nev. at 173, this triggers Section 6’s prohibition on unfunded  
7 mandates because it requires an expenditure that would not otherwise exist—that is, “the payment  
8 of funds” for a particular purpose. *Id.* It is no answer to say that government officials may use  
9 existing funding to cover these expenditures; the Nevada Supreme Court has repeatedly rejected  
10 that argument.

11 In *Rogers v. Heller*, for example, the Court considered an initiative that would have  
12 required Nevada to fund education at a given level and imposed a new tax to cover the difference  
13 between that level and then-current education funding. 117 Nev. at 175-76. The Court rejected the  
14 supposition that the “appropriation” to be considered was only the difference between current  
15 funding levels and those that the initiative would mandate. *Id.* at 176. Because “the Legislature is  
16 under no continuing obligation to fund education in any particular amount” and has broad  
17 discretion to set funding at whatever level it deems appropriate, the Court ruled that “the *entire*  
18 amount is a new requirement” that must be considered when deciding whether the initiative  
19 complied with Section 6. *Id.* at 175-76 (emphasis added). The new tax would have been insufficient  
20 to cover the entirety of the required spending, and the Nevada Supreme Court ruled the initiative  
21 was void. *Id.* at 176-77, 18 P.3d at 1039.

22 Similarly, in the opinion recently issued by the Nevada Supreme Court in *Education*  
23 *Freedom PAC*, 138 Nev. Adv. Op. 47, the Court invalidated a petition that would have required  
24 an appropriation to fund education accounts without raising funds, leaving it to the Legislature to  
25 decide how to effectuate the accounts. The Court held, “[t]he fact that the initiative leaves it up to  
26 the Legislature to determine how to fund the proposed change does not exclude the initiative from  
27 the funding mandate.” *Id.* at \*6. The initiative was an unfunded mandate because it “is creating a  
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1 new requirement for the appropriation of state funding that does not now exist and provides no  
2 discretion to the Legislature about whether to appropriate or expend the money.” *Id.* Thus, “[i]t  
3 requires the Legislature to fund the education freedom accounts” in violation of Article 19, Section  
4 6. *Id.*

5 Even if it were to use only existing funding, the Petition would eliminate the Legislature’s  
6 discretion to lower present funding below the level necessary to fund the changes it mandates, as  
7 well as budgeting officials’ discretion to decline to spend money for the purposes the Petition  
8 directs. The Petition accordingly leaves “budgeting officials no discretion in appropriating or  
9 expending the money mandated by the initiative—the budgeting official must approve the  
10 appropriation or expenditure” to comply with its provisions. *Herbst Gaming*, 122 Nev. at 890.  
11 And, because no portion of the Petition “provides for raising the necessary revenue,” as Article  
12 19, Section 6 requires, it is void *ab initio*. *Rogers*, 117 Nev. at 173.

13 **C. The Petition’s Description of Effect is Valid.**

14 A challenger may bring suit against a petition on the grounds that the description of the  
15 initiative’s effect is deficient pursuant to NRS 295.061. NRS 295.009(1)(b) requires that each  
16 initiative must “[s]et forth, in not more than 200 words, a description of the effect of the initiative  
17 or referendum if the initiative or referendum is approved by the voters.” “[A] description of effect  
18 must identify what the law proposes and how it intends to achieve that proposal.” *Educ. Initiative*  
19 *PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013). The purpose is  
20 to “prevent voter confusion and promote informed decisions.” *Nevadans for Nev. v. Beers*, 122  
21 Nev. 930, 939, 142 P.3d 339, 345 (2006). “The importance of the description of effect cannot be  
22 minimized, as it is what the voters see when deciding whether to even sign a petition.” *Coal. for*  
23 *Nev.’s Future v. RIP Com. Tax, Inc.*, No. 69501, 2016 WL 2841915 at \*2 (2016) (unpublished  
24 disposition) (citing *Educ. Initiative PAC*, 129 Nev. at 37). The Nevada Supreme Court has held  
25 that “a description of effect must be straightforward, succinct, and non-argumentative, and it must  
26 not be deceptive or misleading.” *Educ. Initiative PAC*, 129 Nev. at 42.

1 The Court rejects each of Plaintiff's challenges and concludes that the Description of Effect  
2 here meets the requirements of NRS 295.009(1)(b) because it provides a straightforward, succinct,  
3 and nonargumentative summary of what the initiative petition is designed to achieve and how it  
4 intends to reach those goals and it is not deceptive or misleading.

5 **ORDER**

6 **IT IS THEREFORE ORDERED** and declared that Plaintiff's claim under Article 19,  
7 Section 6 of the Nevada Constitution is ripe for the Court's review and Intervenor-Defendant's  
8 Motion to Dismiss this claim is denied.

9 **IT IS FURTHER ORDERED** and declared that Initiative Petition S-05-2022 is legally  
10 deficient because it constitutes an impermissible unfunded governmental mandate in violation of  
11 Article 19, Section 6 of the Nevada Constitution, and therefore, is void.

12 **IT IS FURTHER ORDERED** and declared that Defendant Secretary of State is enjoined  
13 from taking any further action on Initiative Petition S-05-2022, including submitting it to the  
14 Legislature or placing it on the ballot.

15 Date this 29 day of July, 2022.

16  
17   
District Court Judge

18 Submitted by:

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20 JOHN SAMBERG, ESQ. (NSB 10828)  
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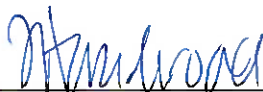
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRC 5(b), I certify that I am an employee of the First Judicial District  
3 Court, and that on July 21, 2022, I deposited for mailing, postage paid, at Carson City,  
4 Nevada, a true and correct copy of the foregoing Order addressed as follows:

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