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Restoring Integrity in State Elections PAC*

**FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY**

EMILY PERSAUD-ZAMORA, an individual,
Plaintiff,

vs.

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

and

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

Case No.: 22 OC 00071 IB

Dept. No.: I

**INTERVENOR-DEFENDANT R.I.S.E. NEVADA – RESTORING INTEGRITY IN STATE
ELECTIONS’ REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION
S-05-2022**

Intervenor-Defendant, R.I.S.E. Nevada – Restoring Integrity in State Elections (“R.I.S.E.”),
by and through its counsel, Armstrong Teasdale LLP, hereby submits this Reply in Support of its
Motion to Dismiss Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-
05-2022.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The plain language of NRS 295.061(1)—the statute that Plaintiff indisputably filed her
3 Complaint—does not authorize an unfunded mandate challenge at this stage of the proceeding.
4 Plaintiff seemingly agrees that there are limitations for early challenges under NRS 295.061(1), but
5 asks this Court to ignore plain language and hear her unfunded mandate challenge for one simple
6 reason: because it has been done before. This Court should reject this practice, which prematurely
7 suffocates the democratic process by denying the people of Nevada the right to even decide whether
8 to sign on to an initiative petition.

9 In opposition, Plaintiff argues that her unfunded mandate challenge is a pre-election
10 threshold challenge outside the purview of NRS 295.061 such that the legislatively mandated
11 procedural timeline for challenges does not apply. This Court should find otherwise based on the
12 plain language of NRS 295.061, and dismiss as premature and unripe the unfunded mandate
13 challenge.

14 Plaintiff first points to *PEST Committee v. Miller*, 648 F.Supp.2d 1202 (D. Nev. 2009).
15 *PEST Committee* is not binding authority and is inapposite. *PEST Committee* is a federal decision
16 out of the District of Nevada holding that legal challenges brought under NRS 295.061 do not
17 constitutionally burden free speech. *See id.* at 1216-17. To the extent this federal district court
18 decision is considered, it should be limited to that finding alone. Moreover, because the sole
19 question before the federal court was whether allowing early challenges to the one-subject and
20 description-of-effect requirements chilled speech, the federal district court only analyzed subsection
21 1 of NRS 295.061. *Id.* at 1216. The federal district court never addressed the nature and scope of
22 “legal sufficiency” challenges under NRS 295.061(2).

23 Plaintiff next points out that the Nevada Supreme Court has decided appeals arising out of
24 unfunded mandate challenges filed pre-certification by the Secretary of State. As an appellate court,
25 the Supreme Court will not supply an argument on a party’s behalf, but reviews only the issues the
26 parties present. *See Senjab v. Alhulaibi*, 137 Nev. Adv. Op. 64, 497 P.3d 618, 619 (2021).
27 Furthermore, where an issue was not first raised at the trial court, the Supreme Court routinely
28 declines appellate review. *See State of Washington v. Bagley*, 114 Nev. 788, 792, 963 P.2d 498, 501

1 (1998). Plaintiff alludes to “extensive precedent” but fails it cite to anything in those appeals
2 indicating that those parties ever made similar ripeness challenge on appeal (or at the district court
3 level). As such, Plaintiff’s reliance on prior practice falls flat.

4 Plaintiff’s final contention is that “legal sufficiency” within NRS 295.061(2) is a term of art
5 that applies to challenges respecting the Secretary of State’s signature verification process set forth
6 in NRS 293.1277 and NRS 293.1278. Plaintiff fails to provide any legal support for her contention.

7 As recognized in numerous cases, NRS 295.061 provides the legislatively enacted procedural
8 mechanism for pre-election challenges to statewide initiatives. *See Las Vegas Taxpayer*
9 *Accountability Committee v. City Counsel of City of Las Vegas*, 125 Nev. 165, 178, 208 P.3d 429,
10 437-38 (2009). Subsection 1 permits challenges before an initiative is circulated to eligible voters
11 for qualifying signatures. Thus, early challenges are limited to only matters embraced by NRS
12 295.009, which have been characterized as requirements that “prevent voter confusion and promote
13 informed decision making.” *See id.* at 176-77, 208 P.3d at 436-37. On the other hand, an initiative
14 petition that is certified by the Secretary of State to go to the legislature or be placed on the ballot is
15 ripe for judicial review for pre-election threshold issues. Judicial review before that time would be
16 advisory because the initiative petition may fail to qualify in the first place. Moreover, Plaintiff’s
17 efficiency argument ignores the purpose of early challenges under NRS 295.061(1), which is to
18 bring and resolve single-subject and description-of-effect challenges early so as to not unreasonably
19 delay signature gathering. Initiative proponents should be allowed to focus on signature gathering,
20 not defending multiple challenges.

21 For the forgoing reasons, this Court should grant R.I.S.E.’s motion, and dismiss Plaintiff’s
22 unfunded mandate challenge because the claim is not yet ripe for judicial review.

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The undersigned hereby affirms that the preceding document does not contain the personal information or social security number of any person.

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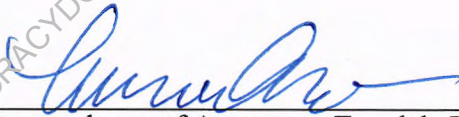
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 14th day of July, 2022, the foregoing **INTERVENOR-**
3 **DEFENDANT R.I.S.E. NEVADA – RESTORING INTEGRITY IN STATE ELECTIONS’**
4 **REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT FOR DECLARATORY**
5 **AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION S-05-2022** was
6 served via email to the following counsel of record pursuant to a written agreement among the
7 parties and a courtesy copy to the JEA:

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An employee of Armstrong Teasdale LLP