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7 *Attorneys for Intervenor Fair Maps Nevada*

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WILLIAM STITT CLERK
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BY *[Signature]* Mar 11 2024 10:47 AM
Elizabeth A. Brown
Clerk of Supreme Court

9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR CARSON CITY**

11 * * *

12 ERIC JENG, an individual,

13 Plaintiffs,

14 vs.

15 FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
16 STATE,

17 Defendant,

18 and

19 FAIR MAPS NEVADA, a Nevada political
action committee,

20 Intervenor-Defendant.
21

Case No.: 23 OC 000138 1B

Dept. No.: II

NOTICE OF APPEAL

22 **NOTICE OF APPEAL**

23 Notice is hereby given that Intervenor Fair Maps Nevada appeals to the Nevada
24 Supreme Court from the Order Voiding Petition C-03-2023 dated March 6, 2024, notice of

25 ///

26 ///

27 ///

28 ///

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

1 entry of which was filed on March 6, 2024, and all other interlocutory judgments, orders, and
2 rulings by the District Court made appealable by the foregoing.

3 Dated: March 7, 2024.

4 McDONALD CARANO LLP

5
6 By: 

7 Lucas Foletta, Esq. (NSBN 12154)

8 Joshua Hicks (NSBN 6679)

9 Adam Hosmer-Henner (NSBN 12779)

10 Katrina Weil (NSBN 16152)

11 100 W. Liberty Street, Tenth Floor

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14 *Attorneys for Fair Maps Nevada*

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO
3 LLP and that on March 7, 2024, I served the within **NOTICE OF APPEAL** on the parties in said
4 case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in
5 the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501
6 addressed as follows:

7 Bradley S. Schrager, Esq.
8 Daniel Bravo, Esq.
9 6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113

Laena St-Jules, Esq.
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

10 David R. Fox
11 Elias Law Group LLP
12 250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001

13 I am familiar with the firm's practice for collection and processing of correspondence for
14 mailing with the United States Postal Service.

15 The envelopes addressed to the above parties were sealed and placed for collection by the
16 firm's messengers and will be deposited today with the United States Postal Service in the ordinary
17 course of business.

18 I declare under penalty of perjury that the foregoing is true and correct.

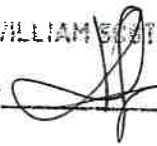
19 Executed on March 7, 2024 at Reno, Nevada.

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21 
22 _____
23 Employee of McDonald Carano LLP
24
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28

ORIGINAL

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7 *Attorneys for Intervenor Fair Maps Nevada*

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CLERK
BY  DEPUTY

9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR CARSON CITY**

11 * * *

12 ERIC JENG, an individual,

Case No.: 23 OC 000138 1B

13 Plaintiffs,

Dept. No.: II

14 vs.

15 FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE,

**FAIR MAPS NEVADA'S CASE APPEAL
STATEMENT**

17 Defendant,

18 and

19 FAIR MAPS NEVADA, a Nevada political
action committee,

20 Intervenor-Defendant.

22 **FAIR MAPS NEVADA'S CASE APPEAL STATEMENT**

23 Intervenor Fair Maps Nevada submits the following Case Appeal Statement pursuant to
24 NRAP 3(f):

25 **1. Name of Appellant filing this Case Appeal Statement:**

26 Fair Maps Nevada.

27 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

28

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020



1 The Honorable Robert E. Estes, Senior Judge, Department 2, First Judicial District
2 Court.

3 **3. Identify each appellant and the name and address of counsel for each**
4 **appellant:**

5 Appellant: Fair Maps Nevada
6 Represented by: Lucas Foletta, Esq. (NSBN 12154)
7 Joshua Hicks, Esq. (NSBN 66679)
8 Adam Hosmer-Henner, Esq. (NSBN 12779)
9 Katrina Weil, Esq. (NSBN 16152)
10 McDONALD CARANO LLP
11 100 West Liberty Street, 10th Floor
12 Reno, NV 89501

13 **4. Identify each respondent and the name and address of appellate counsel, if**
14 **known, for each respondent (if the name of a respondent's appellate counsel is unknown,**
15 **indicate as much and provide the name and address of that respondent's trial counsel):**

16 Respondent: Eric Jeng
17 Trial Counsel: Bradley S. Schrage, Esq. (NSBN 10217)
18 Daniel Bravo, Esq. (NSBN 13078)
19 BRAVO SCHRAGER LLP
20 6675 South Tenaya Way, Suite 200
21 Las Vegas, Nevada 89113
22 David R. Fox, Esq. (NSBN 16536)
23 ELIAS LAW GROUP LLP
24 250 Massachusetts Avenue NW, Suite 400
25 Washington, D.C. 20001

26 Respondent: Francisco Aguilar, in his Official Capacity as Nevada
27 Secretary of State

28 Trial Counsel: Aaron D. Ford, Esq. (NSBN 7704)
Laena St-Jules, Esq. (NSBN 15156)
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

5. Indicate whether any attorney identified above in response to question 3 or 4
is not licensed to practice law in Nevada, and if so, whether the district court granted that
attorney permission to appear under SCR 42 (attach a copy of any district court order

1 **granting such permission):**

2 N/A.

3 **6. Indicate whether appellant was represented by appointed or retained counsel**
4 **in the district court:**

5 Retained counsel.

6 **7. Indicate whether appellant is represented by appointed or retained counsel on**
7 **appeal:**

8 Retained counsel.

9 **8. Indicate whether appellant was granted leave to proceed in forma pauperis,**
10 **and the date of entry of the district court order granting such leave:**

11 N/A.

12 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
13 **complaint, indictment, information, or petition was filed):**

14 December 7, 2023.

15 **10. Provide a brief description of the nature of the action and result in the district**
16 **court, including the type of judgment or order being appealed and the relief granted by the**
17 **district court:**

18 Appellant Fair Maps filed Petition C-03-2023 (“Petition”) on November 14, 2023 to
19 amend the Nevada Constitution. Respondent Eric Jeng filed a Complaint for Declaratory Relief
20 and an Opening Brief in Support of the Complaint for Declaratory and Injunctive Relief on
21 December 7, 2023, contending the Petition unlawfully mandates an unfunded expenditure and that
22 the Petition’s description of effect rendered it legally insufficient.

23 Appellant Fair Maps filed an Answering Brief in Response to Respondent Eric Jeng’s
24 Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive
25 Relief (“Answering Brief”) on December 26, 2023. As set forth in the Answering Brief, the
26 Petition does not mandate an unfunded expenditure. Further, the description of effect, as revised
27 in the district court’s order, is sufficient under NRS 295.009(1)(b). As a result, the Petition was
28 not void under Article 19, Section 6 of the Nevada Constitution and the revised description of

1 effect was sufficient. Fair Maps should have thus been permitted to re-file an amended petition
2 with the revised description of effect that should be accorded the finality set forth in NRS
3 295.061(3).

4 On March 6, 2024, the district court entered its Order Voiding Petition C-04-2023, which
5 Fair Maps now appeals.

6 **11. Indicate whether the case has previously been the subject of an appeal to or**
7 **original writ proceeding in the Supreme Court, and if so, the caption and Supreme Court**
8 **Docket number of the prior proceeding:**

9 N/A.

10 **12. Indicate whether this appeal involves child custody or visitation:**

11 N/A.

12 **13. If this is a civil case, indicate whether this appeal involves the possibility of**
13 **settlement:**

14 There is no likelihood of settlement in this election case for which time is of the
15 essence.

16 Dated: March 7, 2024.

17 McDONALD CARANO LLP

18
19 By: 

20 Lucas Foletta, Esq. (NSBN 12154)
21 Joshua Hicks (NSBN 6679)
22 Adam Hosmer-Henner (NSBN 12779)
23 Katrina Weil (NSBN 16152)
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26 Telephone: (775) 788-2000

27 *Attorneys for Fair Maps Nevada*
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on March 7, 2024, I served the within **FAIR MAPS NEVADA'S CASE APPEAL STATEMENT** on the parties in said case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:


- | | |
|----------------------------------|--------------------------------|
| Bradley S. Schrager, Esq. | Laena St-Jules, Esq. |
| Daniel Bravo, Esq. | Office of the Attorney General |
| 6675 South Tenaya Way, Suite 200 | 100 North Carson Street |
| Las Vegas, NV 89113 | Carson City, NV 89701-4717 |
- David R. Fox
Elias Law Group LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service.

The envelopes addressed to the above parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 7, 2024 at Reno, Nevada.



Employee of McDonald Carano LLP

Judge: ESTES, ROBERT E

Case No. 23 OC 00138 1B
Ticket No.
CTN:

JENG, ERIC

By:

AGUILAR, FRANCISCO V DRSPND

-vs-

By:

Dob: Sex:
Lic: Sid:
NEVADA SECRETARY OF STATE DRSPND

By:

Dob: Sex:
Lic: Sid:

Plate#: Make: Year: Accident: Type: Venue: Location:

JENG, ERIC PLNTPET
FAIR MAPS NEVADA IVNR

Bond: Set:
Type: Posted:

Charges:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	03/07/24	NOTICE OF DEFICIENCY IN NOTICE OF APPEAL	1BPETERSON	0.00	0.00
2	03/07/24	APPEAL BOND DEPOSIT Receipt: 83826 Date: 03/07/2024 Receipt 83826 reversed by 83828 on 03/07/2024 Receipt: 83829 Date: 03/07/2024	1BPETERSON	500.00	0.00
3	03/07/24	NOTICE OF POSTING BOND	1BPETERSON	0.00	0.00
4	03/07/24	FAIR MAPS NEVADA'S CASE APPEAL STATEMENT	1BPETERSON	0.00	0.00
5	03/07/24	NOTICE OF APPEAL FILED	1BPETERSON	24.00	24.00
6	03/07/24	ORDER	1BCCOOPER	0.00	0.00
7	03/06/24	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
8	02/15/24	HEARING HELD: The following event: PETITION HEARING scheduled for 02/15/2024 at 9:00 am has been resulted as follows: Result: HEARING HELD Judge: ESTES, ROBERT E Location: FIRST JUDICIAL DISTRICT COURT	1BSBARAJAS	0.00	0.00
9	02/08/24	REQUEST FOR SUBMISSION (2)	1BPETERSON	0.00	0.00
10	02/08/24	RESPONSE IN OPPOSITION TO FAIR MAPS NEVADA'S MOTION TO DISMISS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023	1BPETERSON	0.00	0.00
11	02/08/24	RESPONSE IN OPPOSITION TO FAIR MAPS NEVADA'S MOTION TO STRIKE A PORTION OF PLAINTIFF'S REPLY PETITION C-03-2023	1BPETERSON	0.00	0.00
12	02/08/24	TELEPHONE CONFERENCE MEMO	1BSBARAJAS	0.00	0.00

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No.	Filed	Action	Operator	Fine/Cost	Due
13	02/08/24	HEARING HELD: The following event: STATUS CHECK scheduled for 02/08/2024 at 9:00 am has been resulted as follows: Result: HEARING HELD Judge: ESTES, ROBERT E Location: FIRST JUDICIAL DISTRICT COURT	1BSBARAJAS	0.00	0.00
14	02/07/24	STIPULATION AND ORDER REGARDING INTERVENTION	1BSBARAJAS	0.00	0.00
15	02/07/24	TELEPHONE CONFERENCE MEMO	1BSBARAJAS	0.00	0.00
16	02/06/24	HEARING DATE MEMO	1BSBARAJAS	0.00	0.00
17	02/05/24	MEMORANDUM OF TEMPORARY ASSIGNMENT - SENIOR JUDGE ROBERT E. ESTES	1BVANESSA	0.00	0.00
18	01/25/24	FAIR MAPS NEVADA'S REQUEST FOR SUBMISSION	1BPETERSON	0.00	0.00
19	01/24/24	AFFIDAVIT OF MAILING	1BVANESSA	0.00	0.00
20	01/24/24	MEMORANDUM OF TEMPORARY ASSIGNMENT - SENIOR JUDGE ROBERT E. ESTES	1BVANESSA	0.00	0.00
21	01/22/24	SECRETARY OF STATE'S LIMITED RESPONSE TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITIOIN C-03-2023	1BPETERSON	0.00	0.00
22	01/22/24	SECRETARY OF STATE'S ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITIONER C-03-2023	1BPETERSON	218.00	0.00
23	01/22/24	FAIR MAPS NEVADA'S MOTIO TO STRIKE A PROTION OF PLAINTIFF'S REPLY, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SUR-REPLY	1BPETERSON	0.00	0.00
24	01/22/24	FAIR MAPS NEVADA'S MOTION TO DISMISS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITTOINER C-03-02023	1BPETERSON	0.00	0.00
25	01/08/24	JUDGE CASELOAD TRANSFER	aputz	0.00	0.00
26	01/04/24	REPLY IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-04-02023	1BPETERSON	0.00	0.00
27	12/26/23	FAIR MAPS NEVADA'S ANSWERING BRIEF IN RESPONSE TO PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023	1BCFRANZ	0.00	0.00
28	12/18/23	ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INAITATIVE PETITION C-03-2023 Receipt: 82743 Date: 12/18/2023	1BDORTIZ	218.00	0.00
29	12/15/23	ORDER TRANSFERRING CASE TO SENIOR JUDGE	1BVANESSA	0.00	0.00
30	12/14/23	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
31	12/13/23	AFFIDAVIT OF SERVICE	1BPETERSON	0.00	0.00
32	12/13/23	SUMMONS	1BPETERSON	0.00	0.00
33	12/13/23	NOTICE OF ASSIGNMENT BY CLERK	1BDORTIZ	0.00	0.00
34	12/12/23	PEREMPTORY CHALLENGE OF JUDGE	1BDORTIZ	0.00	0.00
35	12/07/23	ISSUING SUMMONS	1BDORTIZ	0.00	0.00
36	12/07/23	INITIAL APPEARANCE FEE DISCLOSURE	1BDORTIZ	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due	
37	12/07/23	PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023	1BDORTIZ	0.00	0.00	
38	12/07/23	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023 Receipt: 82537 Date: 12/07/2023	1BDORTIZ	265.00	0.00	
Total:				1,225.00	24.00	
Totals By:				COST	725.00	24.00
				HOLDING	500.00	0.00
				INFORMATION	0.00	0.00
*** End of Report ***						

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BRAVO SCHRAGER LLP

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11 250 Massachusetts Avenue NW, Suite 400
12 Washington, D.C. 20001
13 Tele.: (202) 968-4490
14 Email: dfox@elias.law

15 *Attorneys for Plaintiff*

16 **IN THE FIRST JUDICIAL DISTRICT COURT**
17 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

18 ERIC JENG, an individual,
19 Plaintiff,

20 vs.

21 FRANCISCO V. AGUILAR, in his
22 official capacity as NEVADA
23 SECRETARY OF STATE,
24 Defendant,

25 and

26 FAIR MAPS NEVADA,
27 Intervenor-Defendant.

Case No.: 23 OC 000137 1B

Dept. No.: II

28 ERIC JENG, an individual,
Plaintiff,

vs.

FRANCISCO V. AGUILAR, in his
official capacity as NEVADA
SECRETARY OF STATE,


Case No.: 23 OC 000138 1B

Dept. No.: II

REC'D & FILED

2024 MAR -6 AM 8:21

WILLIAM SCOTT HOEN
CLERK

BY  DEPUTY

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1 Defendant,
2 and
3 FAIR MAPS NEVADA,
4 Intervenor-Defendant.

5
6 **[PROPOSED] ORDER**

7 These matters came before the Court pursuant to Plaintiff Eric Jeng's
8 Complaints for Declaratory and Injunctive Relief challenging Initiative Petition C-
9 04-2023 (in Case No. 23 OC 000137 1B) and Initiative Petition C-03-2023 (in Case
10 No. 23 OC 000138 1B), Plaintiff's Memorandum of Points and Authorities in Support
11 of the Complaint in each case, Intervenor Fair Maps Nevada's Answering Brief in
12 each case, and Plaintiff's Reply in each case. Also before the Court in each case are
13 Fair Maps Nevada's Motion to Dismiss the Complaint ("Motion to Dismiss") and Fair
14 Maps Nevada's Motion to Strike a portion of Plaintiff's reply brief ("Motion to Strike"),
15 as well as Plaintiff's Oppositions to those motions. Defendant Secretary of State
16 Aguilar has taken no position on any issue in either case. Having considered the
17 parties' filings and the arguments of counsel at the February 15, 2024, hearing, the
18 Court rules as follows:

19 **PROCEDURAL BACKGROUND**

20 Fair Maps Nevada filed Initiative Petitions C-03-2023 and C-04-2023
21 ("Petition" or "Petitions") on November 14, 2023. Each Petition would amend the
22 Nevada Constitution to establish a new, seven-member state body called the
23 "Independent Redistricting Commission," and require that the Commission, rather
24 than the Legislature itself, undertake redistricting of Nevada's state legislative plans
25 and congressional districts after each decennial census. The Petitions impose a host
26 of procedural and substantive requirements that the Commission would be required
27 to follow in carrying out this task. Petition C-04-2023 would additionally require that
28

1 the Commission redraw Nevada's state legislative plans and congressional districts
2 in 2027. The Petitions are otherwise identical. Petition C-03-2023 includes the
3 following description of effect:

4 This measure will amend the Nevada Constitution to establish a
5 redistricting commission to map electoral districts for the Nevada
Senate, Assembly, and U.S. House of Representatives.

6 The Commission will have seven members, four who will be
7 appointed by the leadership of the Legislature, and three who are
8 unaffiliated with the two largest political parties who will be appointed
9 by the other four commissioners. Commissioners may not be partisan
candidates, lobbyists, or certain relatives of such individuals.
Commission meetings shall be open to the public which shall have
opportunities to participate in hearings.

10 The Commission will ensure, to the extent possible, that the
11 districts comply with the U.S. Constitution, have an approximately
12 equal number of inhabitants, are geographically compact and
13 contiguous, provide equal opportunities for racial and language
14 minorities to participate in the political process, respect areas with
recognized similarities of interests, including racial, ethnic, economic,
social, cultural, geographic, or historic identities, do not unduly
advantage or disadvantage a political party, and are politically
competitive.

15 This amendment will require redistricting following each federal
16 census.

17 Petition C-04-2023's description of effect replaces the last paragraph with the
18 following: "This amendment will require redistricting following the 2026 election and
19 each federal census thereafter."

20 Plaintiff filed a separate Complaint and Memorandum of Points and
21 Authorities in Support of Complaint for Declaratory and Injunctive Relief
22 Challenging each of the Petitions on December 7, 2023. He alleged that each Petition
23 unlawfully mandates an unfunded expenditure in violation of Article 19, Section 6 of
24 the Nevada Constitution. He also contended that each Petition has a description of
25 effect that fails to comply with NRS 295.009(1)(b) and is deficient because it does not
26 explain that the Petition will result in the expenditure of state funds. After
27 intervening, Fair Maps Nevada filed a responsive brief regarding each Petition on
28

1 December 26, 2023. Plaintiff filed a reply brief regarding each Petition on January 4,
2 2024. Eighteen days later, on January 22, Fair Maps Nevada filed its Motion to
3 Dismiss and Motion to Strike in each case. Plaintiff opposed both motions in both
4 cases on February 8.

5 On February 15, 2024, the Court held an omnibus hearing on all pending
6 matters in both cases. At the conclusion of the hearing, the Court orally denied the
7 Motions to Dismiss and the Motions to Strike, and the Court held on the merits that
8 both Petitions violate Article 19, Section 6's prohibition on unfunded mandates and
9 contain legally deficient descriptions of effect. This written Order follows.

10 LEGAL STANDARDS

11 Article 19, Section 6's prohibition on initiative petitions that mandate
12 unfunded expenditures is a "threshold content restriction" and voids any initiative
13 that does not comply. *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d
14 296, 303 (2022) (quoting *Rogers v. Heller*, 117 Nev. 169, 173 (2001) (per curiam)).
15 Nevada law also allows challenges to an initiative petition where the description of
16 effect is deficient, see NRS 295.061. Both such challenges are "properly evaluated at
17 the preelection stage." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890 & n.38, 141
18 P.3d 1224, 1233 & n.38 (2006) (per curiam) (citing *Rogers*, 117 Nev. At 173, 18 P.3d
19 at 1036).

20 FINDINGS OF FACT AND CONCLUSIONS OF LAW

21 I. The Motions to Dismiss

22 Fair Maps Nevada's Motions to Dismiss are denied. Although NRS 295.061(1)
23 directs courts to set matters challenging the legal sufficiency of initiative petitions
24 "for hearing not later than 15 days after the complaint is filed," the Supreme Court
25 has held that deadline "directory," rather than "mandatory," and explained that it
26 would be "harsh and absurd to dismiss a party's challenge to an initiative merely
27 because the district court failed or was not able to set the hearing within 15 days
28

1 through no fault of the party filing the complaint.” *Reid*, 512 P.3d at 301. The facts of
2 *Reid* are nearly identical to the facts here: in both cases, the delay was partially
3 attributable to the preemption of an assigned judge under Nev. Sup. Ct. R. 48.1(1)
4 under circumstances where no replacement was readily available. *See id.* at 300. The
5 undersigned set this case for a hearing on the earliest possible date after being
6 assigned to the case in late January. There is therefore no basis for dismissing the
7 challenges.

8 II. The Motions to Strike

9 Fair Maps Nevada’s Motions to Strike a portion of Plaintiff’s replies are denied.
10 Under First Judicial District Court Rule 3.9, “[t]he purpose of a reply is to rebut facts,
11 law, or argument raised in the opposition.” Plaintiff’s replies appropriately raised
12 issue preclusion to rebut Fair Maps Nevada’s arguments that the Petitions would not
13 require an expenditure of government funds, which were directly inconsistent with
14 the holding of *Jackson v. Fair Maps Nevada PAC*, No. 19-OC-209 1B (1st Jud. Dist.
15 Ct. Nev. Jan. 2, 2020), *aff’d*, No. 80563 (Nev. July 24, 2020). Moreover, because
16 Plaintiff had already discussed and relied upon *Jackson* in his Complaints and
17 opening memoranda of law, Fair Maps Nevada had the opportunity to address
18 *Jackson* in its response briefs but chose not to do so.

19 Fair Maps Nevada’s alternative request to file sur-reply briefs is denied as
20 moot. The Court has considered the arguments in the proposed sur-reply briefs and,
21 for the reasons given below, they do not affect the Court’s conclusions in this matter.

22 III. The Petitions violate Article 19, Section 6.

23 Article 19, Section 6 of the Nevada Constitution prohibits initiative petitions
24 that “make[] an appropriation or otherwise require[] the expenditure of money, unless
25 [they] also impose[] a sufficient tax, not prohibited by the Constitution, or otherwise
26 constitutionally provide[] for raising the necessary revenue.” Accordingly, when an
27 initiative “create[es] a new requirement for the appropriation of state funding that
28

1 does not now exist and provides no discretion to the Legislature about whether to
2 appropriate or expend the money” but does not provide for raising the necessary
3 revenue, it does not comply with Article 19, Section 6 and is thus void. *Reid*, 512 P.3d
4 at 303–04.

5 The Court concludes that the Petitions violate Article 19, Section 6 because
6 they would require the expenditure of state funds but would not raise any revenue.
7 The Petitions would create a new government body, the Commission, and mandate
8 that it undertake legislative redistricting, subject to detailed procedural and
9 substantive requirements. Complying with these requirements will invariably
10 require government expenditures. And the Petitions undeniably do not raise any
11 revenue.

12 Issue preclusion bars Fair Maps Nevada from denying that the Petitions will
13 require a government expenditure. The First Judicial District Court addressed a
14 materially identical petition in 2020 and held that it “will result in the expenditure
15 of state funds[.]” Order at 4, *Jackson v. Fair Maps Nev. PAC*, No. 19-OC-00209 1B
16 (Nev. 1st Jud. Dist. Ct. Jan. 2, 2020), *aff’d*, 136 Nev. 832, 467 P.3d 635 (2020). Issue
17 preclusion applies where (1) the prior litigation involved “the same fact issue,” even
18 if the legal claims are “substantially different,” provided that (2) the prior ruling was
19 on the merits and became final, (3) the party to be precluded was a party to the prior
20 action, and (4), the issue was “actually and necessarily litigated.” *Five Star Cap. Corp.*
21 *v. Ruby*, 124 Nev. 1048, 1053, 1055, 194 P.3d 709, 712–13 (2008) (quoting *LaForge v.*
22 *State, Univ. & Cmty. Coll. Sys. Of Nev.*, 116 Nev. 415, 420, 421, 997 P.2d 130, 134
23 (2000)).

24 Here, the Petitions are substantively almost identical to the petition at issue
25 in *Jackson*. Fair Maps Nevada’s briefing, including its sur-reply, never articulated
26 any factual distinction between the petition in *Jackson* and the Petitions before the
27 Court now. Fair Maps Nevada therefore waived any such distinction. The ruling in
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1 *Jackson* was on the merits, and it became final when Fair Maps Nevada chose to moot
2 its cross-appeal of that issue by declining to pursue it. *Jackson v. Fair Maps Nevada*,
3 No. 803563 (Nev. July 24, 2020); see *Personhood Nevada v. Bristol*, 126 Nev. 599, 605,
4 245 P.3d 572, 576 (2010). Fair Maps Nevada was a party in *Jackson*. And the issue
5 of whether the petition would require a government expenditure was actually
6 litigated, with the plaintiff in that case raising, and the Court accepting, many of the
7 same arguments made in this case.

8 The Court would conclude that the Petitions violate Article 19, Section 6 even
9 if Fair Maps Nevada were not precluded from arguing that the Petitions do not
10 require the expenditure of state funds. The Court considers it obvious that the
11 creation of a new, seven-member government body tasked with undertaking a
12 mandatory, difficult task will require an expenditure of government funds. And that
13 conclusion is confirmed by Nevada's own past experience with redistricting, the
14 experiences of other states that have authorized redistricting commissions like the
15 one the Petition would create anew in Nevada, and the detailed requirements of the
16 Petition itself. The Court reaches this conclusion as to both Petitions. Petition C-04-
17 2023 would additionally require an extra round of redistricting in 2027, that would
18 not otherwise be mandatory, and therefore requires an additional expenditure of
19 state funds as well.

20 Fair Maps Nevada's argument that the Petitions would merely shift
21 expenditures from the Legislature to the Commission does not resolve this problem.
22 The Commission is an entirely new body whose members cannot be current
23 legislators. And the required expenditure to fund the Commission would be a new,
24 mandatory expenditure. Under Article 19, Section 6, that required expenditure must
25 be offset by new "tax or revenue" raised by the Petitions. *Rogers*, 117 Nev. at 177, 18
26 P.3d at 1038. A reduction in costs elsewhere—such as in the Legislature's operational
27 budget—does not suffice. And regardless, nothing in the Petitions requires the
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1 Legislature to cover the Commission's expenses by reducing its own operational
2 budget.

3 The Court therefore holds that the Petitions violate Article 19, Section 6
4 because they mandate a government expenditure to fund the Commission, without
5 raising the necessary revenue to pay for it.

6 **IV. The Petitions' descriptions of effect are invalid.**

7 For similar reasons, the Petitions' descriptions of effect are unlawful. Under
8 NRS 295.009(1)(b), initiative petitions must "set forth, in not more than 200 words, a
9 description of the effect of the initiative or referendum if the initiative or referendum
10 is approved by the voters." The description of effect "must not be deceptive or
11 misleading," *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293
12 P.3d 874, 879 (2013), and must "explain the[] ramifications of the proposed
13 amendment" to allow voters to make an informed decision, *Nev. Judges Ass'n v. Lau*,
14 112 Nev. 51, 59, 910 P.2d 898, 903 (1996). To accurately explain the consequences of
15 the initiative, the description must identify "the need for or nature of the revenue
16 source" to fund the proposed initiative. *Reid*, 512 P.3d at 304.

17 The Petitions' original descriptions of effect fail to explain that the Petitions
18 will result in the expenditure of state funds to fund the Commission. As explained
19 above, Fair Maps Nevada is precluded from denying that the Petitions would require
20 a state expenditure, and the Court in any event independently concludes that they
21 would require such an expenditure. The descriptions of effect must reflect that fact.
22 *Id.* Without that information, the descriptions fail to sufficiently "identify what the
23 law proposes and how it intends to achieve that proposal." *Educ. Initiative PAC*, 129
24 Nev. at 42, 293 P.3d at 879. Moreover, the description of effect for Petition C-04-2023
25 is also deficient for failing to explain that the Petition would require mid-cycle
26 redistricting and invalidate the existing legislative plans and congressional districts
27 early, in 2027, when they would otherwise remain in force until 2031.

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1 Fair Maps Nevada's proposed amended descriptions of effect do not adequately
2 remedy these problems. These descriptions propose adding one sentence stating that
3 "[t]he existing and ongoing expense" of redistricting "will be shifted to the
4 Commission but will remain based in the legislative branch." This revision does not
5 cure the problem, because it describes a *shift* in expenditures rather than an increase
6 in expenditures, and because nothing in the Petitions requires that the Legislature
7 offset the cost of the Commission by reducing the Legislature's own operational
8 budget. The proposed amended descriptions of effect therefore remain inadequate.
9 And no change to the descriptions of effect could resolve the fact that the Petitions'
10 substance includes an unfunded mandate in violation of Article 19, Section 6.

11 Accordingly, for the reasons set forth above, and good cause appearing,
12 Fair Maps Nevada's Motions to Dismiss and Motions to Strike are **DENIED**;
13 Fair Maps Nevada's alternative request for leave to file a sur-reply brief is
14 **DENIED AS MOOT**; and

15 **IT IS HEREBY ORDERED** and declared that Petition C-03-2023 and
16 Petition C-04-2023 are *void ab initio* because they violate Article 19, Section 6 of the
17 Nevada Constitution, and that their descriptions of effect fail to satisfy the
18 requirements of NRS 295.009(1)(b). The Secretary of State is enjoined from taking
19 any action on the Petitions.

20 Bradley S. Schragger shall serve a notice of entry of the order on all parties and
21 file proof of such service within 7 days after the date the Court sent the order to the
22 attorney.

23 **IT IS SO ORDERED.**

24 Dated this 6th day of March, 2024.
25 ~~February~~

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27 _____
28 DISTRICT COURT JUDGE

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Respectfully submitted by:

BRAVO SCHRAGER LLP

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Attorneys for Plaintiff

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FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 23 OC 00138 & 23 OC 00137 1B TITLE: ERIC JENG VS FRANCISCO AGUILAR; NEVADA SECRETARY OF STATE

02/15/24 – DEPT. II – SENIOR JUDGE ROBERT ESTES
S. Barajas, Clerk – Not Reported

PETITION HEARING

Present: Via Zoom, Judge Robert Estes; Bradley Schrage & David Fox, counsel for Plaintiff; Senior Deputy Attorney General Laena St-Jules, counsel for Defendant; Adam Hosmer-Henner, Joshua Hicks, & Lucas Foletta, counsel for Intervenor.

Statements were made by Court.

Counsel gave opening arguments.

Court took recess.

Matter resumed.

Court stated Its finding of facts and conclusion of law.

COURT ORDERED: The motion to dismiss the complaint is denied.

Court stated Its finding of facts and conclusion of law.

COURT ORDERED: Fox and Schrage to prepare the order.

Upon inquiry by the Court, Fox indicated he would have the order ready by Tuesday.

Further statements were made by Court and counsel.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 23 OC 00137 & 23 OC 00138 1B TITLE: ERIC JENG VS FRANISCO AGUILAR;
NEVADA SECRETATRY OF STATE

02/08/24 – DEPT. II – HONORABLE Robert E. Estes
S. Barajas, Clerk – Not Reported

STATUS CHECK

Present: Via Zoom, Judge Robert Estes; Bradley Schragger & David Fox, counsel for Petitioner; Lucas Foletta & Laena St-Jules, counsel for Defendants.

Statements were made by Court.

Statements were made by Fox regarding a hearing not being held within fifteen days of the petition being filed and requested petition not be dismissed. Foletta in response requested a hearing to be set sooner and vacate the March 8, 2024, hearing. St-Jules in response.

Further statements were made by Court and counsel.

Upon inquiry by the Court, counsel agreed to having the next hearing virtually.

COURT ORDERED: It will set a hearing for February 15, 2024, at 9:00 a.m.

Upon inquiry by the Court and Foletta who indicated the difference regarding both cases.

Statements were made by Court.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

REC'D & FILED

2024 MAR -7 PM 4:51

WILLIAM SCOTT HOEN
CLERK
BY  DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

ERIC JENG, an individual,

Case No.: 23 OC 00138 1B

Plaintiff,

Dept. No.: II

vs.

FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE

**NOTICE OF DEFICIENCY IN NOTICE
OF APPEAL**

and

FAIR MAPS NEVADA, a Nevada political
action committee,

Defendant.

PLEASE TAKE NOTICE that a Notice of Appeal was filed March 7, 2024, in the
above-entitled action despite the fact that there appears to be the following deficiency(ies) noted
by the Clerk at the time of filing:

- \$24.00 District Court filing fee not paid.
- \$250.00 filing fee for the Clerk of the Supreme Court not paid.
- Document not signed.
- Document presented was not an original.
- Case Appeal Statement not filed.
- No proof of service upon opposing counsel/litigant.
- Other

DATED this 7th day of March, 2024.



WILLIAM SCOTT HOEN, CLERK

By , Deputy

ORIGINAL

DISTRICT COURT CIVIL COVER SHEET

Carson City County, Nevada
Case No. 230000138-1B
(Assigned by Clerk's Office)

REC'D & FILED
2023 DEC -7 AM 9:29

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): ERIC JENG
Defendant(s) (name/address/phone): FRANCISCO V. AGUILAR
Attorney (name/address/phone): Bradley S. Schragar, Esq., Daniel Bravo, Esq., 66775 S. Tenaya Way Suite 200 Las Vegas NV 89113 (702) 996-1724; and David R. Fox, Esq., 250 Massachusetts Ave NW, Suite 400, Washington DC 20001

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property: Landlord/Tenant, Title to Property, Other Real Property
Negligence: Auto, Premises Liability, Other Negligence
Malpractice: Medical/Dental, Legal, Accounting, Other Malpractice
Torts: Other Torts: Product Liability, Intentional Misconduct, Employment Tort, Insurance Tort, Other Tort
Probate: Probate (select case type and estate value), Estate Value
Construction Defect & Contract: Construction Defect, Contract Case
Judicial Review/Appeal: Judicial Review, Nevada State Agency Appeal, Appeal Other
Civil Writ: Writ of Habeas Corpus, Writ of Mandamus, Writ of Quo Warrant, Writ of Prohibition, Other Civil Writ
Other Civil Filing: Compromise of Minor's Claim, Foreign Judgment, Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

12/06/23
Date

Signature of initiating party or representative

See other side for family-related case filings.