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10 **IN THE FIRST JUDICIAL DISTRICT COURT**
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 ERIC JENG, an individual,
13
14 Plaintiff,

15 vs.

16 FRANCISCO V. AGUILAR, in his
official capacity as NEVADA
17 SECRETARY OF STATE,
18 Defendant,

19 and

20 Fair Maps Nevada,
21 Intervenor-Defendant.

Case No.: 23 OC 000138 IB

Dept. No.: II

**RESPONSE IN OPPOSITION TO
FAIR MAPS NEVADA'S MOTION
TO DISMISS COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-03-2023**

22 Fair Maps Nevada's motion to dismiss urges this Court to take action that
23 would run directly contrary to controlling precedent from the Nevada Supreme Court.
24 The Court held just two years ago, concerning the very statute at issue here, that "it
25 would be harsh and absurd to dismiss a party's challenge to an initiative merely
26 because the district court failed or was not able to set the hearing within 15 days" as
27 NRS 295.061(1) requires. *Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d
28

1 296, 301 (2022). The Court therefore held that, while “district courts must make every
2 effort to comply with” the 15-day deadline, a court’s failure to meet that deadline
3 provides no basis for dismissal. *Id.*

4 Fair Maps Nevada makes no effort to distinguish *Education Freedom PAC*, and
5 it controls here. There, just as here, the district court was unable to set a hearing on
6 an initiative-petition challenge within the 15-day statutory deadline in NRS
7 295.061(1). *Educ. Freedom PAC*, 138 Nev., Adv. Op. 47, 512 P.3d at 300–01. And
8 there, just as here, the delay was partly caused by the challenger exercising his right
9 to preempt the assigned judge in a circumstance where no other active judge was
10 available. *Id.* at 300; Nev. Sup. Ct. R. 48.1. *Education Freedom PAC* therefore
11 addresses *exactly the circumstances of this case* when it holds that the statutory
12 requirement to set the hearing within 15 days after the filing of the complaint is
13 “directory,” not mandatory, and that it is *not* a basis for dismissal. *Educ. Freedom*
14 *PAC*, 138 Nev., Adv. Op. 47, 512 P.3d at 300–01. And *Education Freedom PAC* makes
15 clear that the 15-day deadline applies to *district courts*, not to challengers, demanding
16 that the *courts* “make every effort to comply with the expedited, statutory time frame
17 for considering initiative challenges.” *Id.*

18 Moreover, contrary to Fair Maps Nevada’s argument, Plaintiff is not
19 responsible for the delay in this case being heard. Plaintiff timely filed this action
20 under the very tight, 15-day statutory deadline. NRS 295.061(1). The fact that
21 Plaintiff filed on the last day of that short period makes no difference to the 15-day
22 hearing deadline, because that deadline runs *from the filing of the Complaint*. And
23 Plaintiff’s preemption of the initially assigned judge just three business days after
24 filing of the Complaint does nothing to distinguish *Education Freedom PAC*, where
25 the judge was also preempted under materially identical circumstances.

26 Finally, if any of the parties is to blame for this case not being heard within
27 the 15-day deadline, it is Fair Maps Nevada. Plaintiff timely commenced this case on
28

1 December 7, 2023, by simultaneously filing both its Complaint and a brief on the
2 merits. Plaintiff informed Fair Maps Nevada of the challenge the very next day. But
3 Fair Maps Nevada then waited *eighteen days* before filing its response brief on
4 December 26—a delay that is completely inconsistent with Fair Maps Nevada’s
5 position now that the matter must be dismissed because it was not heard by
6 December 22, fifteen days after the Complaint was filed and four days before Fair
7 Maps Nevada even filed its response.

8 **CONCLUSION**

9 The motion to dismiss should be denied.

10 **AFFIRMATION**

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

13 DATED this 7th day of February, 2024.

14
15
16 By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2024, a true and correct copy of the **RESPONSE IN OPPOSITION TO FAIR MAPS NEVADA’S MOTION TO DISMISS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-03-2023** was served upon all parties via electronic mailing to the following:

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