

In the
Supreme Court of the State of Nevada

FAIR MAPS NEVADA, a political
action committee,

Appellant,

vs.

ERIC JENG, an individual; and
FRANCISCO V. AGUILAR, in his
official capacity as NEVADA
SECRETARY OF STATE,

Respondents.

Electronically Filed
Mar 13 2024 01:24 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 88263

First Judicial District Court
Case Nos.: 23 OC 00137 1B
23 OC 000138 1B

**RESPONDENT ERIC JENG'S PARTIAL OPPOSITION TO
APPELLANT'S EMERGENCY MOTION TO EXPEDITE AND
RESOLVE APPEAL ON DISTRICT COURT RECORD**

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)
DANIEL BRAVO, ESQ. (NSB 13078)
BRAVO SCHRAGER LLP
6675 S. Tenaya Way, Suite 200
Las Vegas, Nevada 89113

DAVID R. FOX, ESQ. (NSB 16536)
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20001

Attorneys for Respondent Eric Jeng

BRAVO SCHRAGER LLP

NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in NRAP 26.1(a) that must be disclosed.

The following law firms have appeared and/or are expected to appear in this Court on behalf of Respondent Eric Jeng:

Bradley Schragger, Esq. and Daniel Bravo, Esq. of Bravo Schragger LLP.

David R. Fox, Esq. of Elias Law Group LLP.

Dated this 13th day of March, 2024.

BRAVO SCHRAGER LLP

By: /s/ Bradley S. Schragger

Bradley S. Schragger, Esq. (NSB 10217)
Daniel Bravo, Esq. (NSB 13078)
6675 South Tenaya Way, Suite 200
Las Vegas, Nevada 89113
Tele.: (702) 996-1724
Email: bradley@bravoschrager.com
Email: daniel@bravoschrager.com

David R. Fox, Esq. (NSB 16536)
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20001
Tele.: (202) 968-4490
Email: dfox@elias.law

Attorneys for Respondent Eric Jeng

Respondent Eric Jeng (“Jeng”) submits his Partial Opposition to Appellant Fair Maps Nevada’s Emergency Motion to Expedite and Resolve Appeal on the District Court Record, which was filed on March 11, 2024. While Jeng agrees with Fair Maps Nevada that the Court should expedite this matter, he opposes Fair Maps Nevada’s motion to resolve this matter on the district court record, without briefing in this Court. This opposition is based on the following Memorandum of Points and Authorities and the papers on file with this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Jeng agrees with Fair Maps Nevada that this appeal should be expedited to allow it to be resolved before the June 26, 2024, deadline for the submission of signatures to the Secretary of State. But Jeng objects to resolution of this appeal based solely on the district court record, without briefing in this Court. The district court record includes three separate sets of motions and briefs raising discrete issues, and Jeng believes that the Court would benefit from the submission of appellate briefs that comprehensively and cohesively address the issues before the

Court. Jeng proposes a schedule below that would allow submission of such briefs well in advance of the June 26 deadline.

II. PROCEDURAL HISTORY

Fair Maps Nevada filed Initiative Petitions C-03-2023 and C-04-2023 (“Petition” or “Petitions”) on November 14, 2023. Each Petition would amend the Nevada Constitution to establish a new, seven-member state body called the “Independent Redistricting Commission,” and require that the Commission, rather than the Legislature itself, undertake redistricting of Nevada’s state legislative plans and congressional districts after each decennial census. The Petitions would impose a host of procedural and substantive requirements that the Commission would be required to follow in carrying out this task, and Petition C-04-2023 would additionally require that the Commission redraw Nevada’s state legislative plans and congressional districts in 2027.

Jeng timely filed a Complaint and Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief challenging each of the Petitions on December 7, 2023. He alleged that each Petition unlawfully mandates an unfunded expenditure in violation

of Article 19, Section 6 of the Nevada Constitution. He also contended that each Petition has a description of effect that fails to comply with NRS 295.009(1)(b) and is deficient because it does not explain that the Petition will result in the expenditure of state funds. Fair Maps Nevada filed a responsive brief regarding each Petition on December 26, 2023, and Jeng filed a reply brief regarding each Petition on January 4, 2024. Two and a half weeks later, on January 22, Fair Maps Nevada then filed in each case both a Motion to Dismiss because the case was not heard within 15 days of filing, *see* NRS 295.061(1), and a Motion to Strike an issue preclusion argument from Jeng's reply or, alternatively, to file a sur-reply regarding issue preclusion. Jeng opposed the motions on February 8.

On February 15, 2024, the District Court held an omnibus hearing on all pending matters in both cases. At the conclusion of the hearing, the District Court orally denied the Motions to Dismiss and the Motions to Strike and held on the merits that both Petitions violate Article 19, Section 6's prohibition on unfunded mandates and contain legally deficient descriptions of effect. The District Court issued its written order on March 6, 2024.

III. ARGUMENT

Jeng agrees that the Court should expedite this appeal and decide it before the June 26, 2024, deadline for the submission of signatures to the Secretary of State. But Jeng objects to Fair Maps Nevada's suggestion that the appeal be decided on the district court record, without the submission of appellate briefs to this Court. Jeng requests that the Court instead order an expedited briefing schedule and set the case for argument as soon as possible.

Consideration of this appeal based solely on the briefs submitted to the district court would complicate the Court's review by requiring the Court to comb through three separate sets of briefs submitted to the district court: (1) a brief, opposition, and reply on the merits; (2) a motion to dismiss and an opposition to it; and (3) a motion to strike (with an attached proposed sur-reply) and an opposition to it. Without an appellate brief from Fair Maps Nevada presenting a consolidated set of issues and supporting arguments, the Court and Jeng would be left in the dark until oral argument regarding which arguments from which filings Fair Maps Nevada is still pursuing. And the Court and Jeng would likewise be left guessing as to Fair Maps Nevada's responses to the

district court's rejection of those arguments in the written order in this case.

Appellate briefing is especially important here for another reason: at least two of the arguments Fair Maps Nevada raised in the district court are directly foreclosed by controlling precedent from this Court. *See* Order at 3–4, *Jeng v. Aguilar*, Nos. 23-OC-137 & 23-OC-138 (1st Jud. Dist. Ct. Nev. Mar. 6, 2024). In particular, Fair Maps Nevada argued that Article 19, Section 6's prohibition on unfunded mandates does not apply to proposed constitutional amendments, *but see Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 303 (2022) (rejecting this argument), and that the cases should be dismissed because the district court did not hear them within 15 days of filing, *but see id.* at 301 (rejecting dismissal under identical circumstances).

Without appellate briefing, Jeng has no way to know whether Fair Maps Nevada intends to press these arguments on appeal. And if so, Jeng should have the opportunity to brief the *stare decisis* considerations applicable to a request to overturn such recent precedent. *See, e.g., Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008). That analysis is, of course, distinct from the analysis Jeng offered in the district court,

which had “no choice but to follow the precedent.” *Harris v. State*, 133 Nev. 683, 691, 407 P.3d 348, 355 (2017).

Jeng therefore respectfully request that the Court deny Fair Maps Nevada’s motion to resolve the appeal on the district court record, grant the motion to expedite, and order the following schedule for submission of briefs and hearing of oral arguments:

1. Appellant Fair Maps Nevada will file its Opening Brief and the entire record before the district court by March 29, 2024.

2. Respondents Jeng and Secretary of State Aguilar will file their respective Answering Briefs by April 19, 2024.

3. Appellant Fair Maps Nevada will file its Reply Brief by April 26, 2024.

4. Respondent Jeng respectfully asks the Court to schedule argument as soon thereafter as the Court’s docket permits.

///

///

///

///

///

Dated this 13th day of March, 2024.

BRAVO SCHRAGER LLP

By: /s/ Bradley S. Schrager

Bradley S. Schrager, Esq. (NSB 10217)

Daniel Bravo, Esq. (NSB 13078)

6675 South Tenaya Way, Suite 200

Las Vegas, Nevada 89113

Tele.: (702) 996-1724

Email: bradley@bravoschrager.com

Email: daniel@bravoschrager.com

David R. Fox, Esq. (NSB 16536)

ELIAS LAW GROUP LLP

250 Massachusetts Avenue NW, Suite 400

Washington, D.C. 20001

Tele.: (202) 968-4490

Email: dfox@elias.law

Attorneys for Respondent Eric Jeng

CERTIFICATE OF COMPLIANCE

1. I certify that this Opposition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally-spaced typeface, size 14, Century Schoolbook.

2. I further certify that this Opposition complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the Opposition exempted by NRAP 32(a)(7)(C), it contains 1120 words.

3. Finally, I hereby certify that I have read this Opposition, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Opposition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the Opposition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the Opposition is not in

conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 13th day of March, 2024.

BRAVO SCHRAGER LLP

By: /s/ Bradley S. Schrager
Bradley S. Schrager, Esq. (NSB 10217)
Daniel Bravo, Esq. (NSB 13078)
6675 South Tenaya Way, Suite 200
Las Vegas, Nevada 89113
Tele.: (702) 996-1724
Email: bradley@bravoschrager.com
Email: daniel@bravoschrager.com

David R. Fox, Esq. (NSB 16536)
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20001
Tele.: (202) 968-4490
Email: dfox@elias.law

Attorneys for Respondent Eric Jeng

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2024, a true and correct copy of **RESPONDENT ERIC JENG'S PARTIAL OPPOSITION TO APPELLANT'S EMERGENCY MOTION TO EXPEDITE AND RESOLVE APPEAL ON DISTRICT COURT RECORD** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

By: /s/ Dannielle Fresquez
Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP

RETRIEVED FROM DEMOCRACYDOCKET.COM