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13 *Attorneys for Intervenor Fair Maps Nevada*

14 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR CARSON CITY**

16 ERIC JENG, an individual,

Case No.: 23 OC 000137 1B

17 Plaintiff,

Dept. No.: II

18 vs.

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

22 Defendant.

23 **FAIR MAPS NEVADA'S MOTION TO DISMISS COMPLAINT FOR DECLARATORY**
24 **AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-04-2023**

25 Intervenor Fair Maps Nevada, a Nevada political action committee ("Fair Maps"), by
26 and through its attorneys, hereby moves the Court to dismiss Plaintiff Eric Jeng's ("Plaintiff")
27 Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2023
28 ("Compl.") This motion is supported by the following Memorandum of Points and Authorities,
the pleadings and papers on file with the Court, and any oral argument entertained by the Court
at a hearing in this matter.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The Court should reject Plaintiff’s attempt to obstruct Fair Maps’ constitutional right to
4 access the ballot. Due to unnecessary delays caused by Plaintiff’s deliberate acts, a hearing on
5 the challenge to Petition C-04-2023 (“Petition”) has not been set or heard, despite a clear
6 mandate from NRS 295.061(1) that a hearing be set no later than 15 days after a complaint is
7 filed. Indeed, despite the Legislature’s recognition of the critical need for expediency in ballot
8 petition challenges, Fair Maps must now incur significant detriment as a result of the delays in
9 this challenge. Accordingly, the Court must dismiss Plaintiff’s case.

10 **II. FACTUAL AND PROCEDURAL BACKGROUND**

11 Fair Maps filed the Petition on November 14, 2023 to amend the Nevada Constitution.
12 Complaint (“Compl.”), Ex. 1. Plaintiff filed a Complaint for Declaratory and Injunctive Relief
13 and an Opening Brief in Support of Complaint for Declaratory and Injunctive Relief on
14 December 7, 2023. *See generally* Compl. Fair Maps filed an Answering Brief in response to
15 Plaintiff’s MPA on December 26, 2023. On January 3, 2024, Plaintiff filed a Reply in support
16 of the MPA. Despite the Complaint being filed over one month prior to this instant Motion, a
17 hearing has not been set for the matter.

18 **III. ARGUMENT**

19 NRS 295.061(1) requires the district court to set a hearing for challenges to initiative
20 petitions “not later than 15 days after the complaint is filed and shall give priority to such a
21 complaint over all other matters pending with the court, except for criminal proceedings.” The
22 Nevada Supreme Court has emphasized that “district courts must make every effort to comply
23 with the expedited, statutory time frame for considering initiative challenges.” *Education*
24 *Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 301 (2022). Given that Plaintiff
25 filed his Complaint on December 7, 2023, the district court only had until December 29, 2023
26 to hold a hearing. Despite the 15-day hearing requirement, at the time of this motion, a hearing
27 has not been held—or even set.

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1 Moreover, Plaintiff took unnecessary steps to delay this court’s consideration of the
2 Complaint. Plaintiff waited until the last possible day under NRS 295.061(1) to challenge the
3 Petition. Plaintiff then filed an unnecessary preemptory challenge knowing no judge in the First
4 Judicial District Court is available to hear the case. This preemptory challenge requires the case
5 to be assigned to a Senior Judge.

6 This delay has resulted in significant detriment to Fair Maps for whose protection the
7 procedural requirements of NRS 295.061 exist. Fair Maps must rapidly collect signatures from
8 “10 percent or more of the voters who voted in the entire State at the last preceding general
9 election.” Nev. Const. art. 19, § 2(2). Every day this matter is pending is a day Fair Maps loses
10 in circulating a court-approved Petition. *See Nevadans for Nev. v. Beers*, 122 Nev. 930, 940,
11 142 P.3d 339, 345 (2006) (holding that an initiative petition without a compliant description of
12 effect is not operative). Indeed, dilatory tactics like these have been condoned by courts. *See,*
13 *e.g., Pest Comm. v. Miller*, 626 F.3d 1097, 1109 (9th Cir. 2010) (recognizing “that challenges
14 by opponents have tied initiative petitions up in litigation for extended periods of time or that,
15 in some cases, they have left the proponents without sufficient time to gather signatures”).
16 Because a hearing has not been held in the statutorily required time, this matter must be
17 dismissed.

18 **IV. CONCLUSION**

19 For all of the above reasons, the Court should deny Plaintiff’s attempt to keep the Petition
20 off the ballot and dismiss Plaintiff’s suit.

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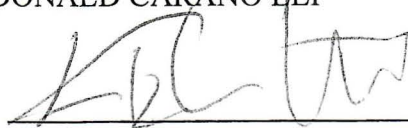
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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain any personal information, as defined in NRS 603A.040.

Dated this 22nd day of January, 2024.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I hereby certify that I am an employee of McDonald Carano LLP and that on January 22, 2024, I served the within **MOTION TO DISMISS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION C-04-2023** 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. Schrage, Esq.
Daniel Bravo, Esq.
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


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 January 22, 2024 at Reno, Nevada.

By 
An employee of McDonald Carano LLP