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1 Case No.: 14 OC 00029 1B

2 Dept. No.: I

3 ~~Case No.: 14 OC 00030 1B~~

4 ~~Dept. No.: I~~

ALAN GLOVER

BY  CLERK
DEPUTY

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8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

10 EMMANUEL D. ALFARO and ROSA
11 MENDOZA, individuals,

12 Plaintiffs,

13 vs.

14 OUR VOTE NEVADA PAC, a registered
15 Nevada Political Action Committee;
16 ROBERT FEE, in his capacity as officer of
17 OUR VOTE NEVADA PAC; and ROSS
18 MILLER, in his official capacity as
Secretary of State,

19 Defendants.

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20 MICHAEL D. ROSATI, and OSBERIA
21 ("BARRY") SMITH, individuals,

22 Plaintiffs,

23 vs.

24 OUR VOTE NEVADA PAC, a Ballot
25 Advocacy Group; SHARRON ANGLE, an
26 individual; and ROSS MILLER, in his
27 official capacity as Secretary of State of
Nevada,

28 Defendants.

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PROPOSED JOINT ORDER

This matter comes before the Court in the above-captioned cases on Plaintiffs' Complaints for Declaratory and Injunctive Relief and their Opening Briefs in Support of Complaint for Declaratory and Injunctive Relief. All Defendants have filed Answers. Defendants Our Vote Nevada PAC and Robert Fee filed a "Reply In Opposition to Plaintiffs' Memorandum In Support of the Complaint" in Case No. 14 OC 00029 (the "Alfaro Matter") and Defendants Our Vote Nevada PAC and Sharron Angle (Our Vote Nevada PAC, Mr. Fee, and Ms. Angle are referred to herein collectively as "Our Vote Nevada PAC") filed a brief with an identical title in Case No. 14 OC 00030 (the "Rosati Matter"); both sets of Plaintiffs filed individual replies and, at the Court's direction, proposed 200 Word Descriptions of Effect; and Our Vote Nevada PAC then filed a "Response to Alfaro and Mendoza's Reply to Defendants Opposition to Plaintiffs' Memorandum In Support of the Complaint and Defendants' Objections to Plaintiffs' Proposed 200 Word Description of Effect" in the Alfaro Matter, and a "Response to Plaintiffs Rosati and Smith's Reply to Defendants Opposition to Plaintiffs' Memorandum In Support of the Complaint, and Defendants' Objections to Plaintiffs' Proposed 200 Word Description of Effect" in the Rosati Matter. The Court held a hearing and heard argument on the issues raised in the Complaints and the papers on May 7, 2014.¹

This Court, having reviewed the papers and pleadings on file herein, considered oral argument, and being fully advised in the premises, enters its Order as follows:

NRS 295.009 states, in relevant part:

1. Each petition for initiative or referendum must:
 - (a) Embrace but one subject and matters necessarily connected therewith and pertaining thereto; and
 - (b) Set forth, in not more than 200 words, a description of the effect of the initiative or referendum if the initiative or referendum is

¹ A hearing was originally set for April 9, 2014, but was continued upon the motion of Defendant Our Vote Nevada PAC.

1 approved by the voters. The description must appear on each
2 signature page of the petition.

3 The importance of the description of effect is illustrated in subsection (1)(b), which
4 requires the description to appear on each signature page of the petition. *See also Nevadans for*
5 *Nevada v. Beers*, 122 Nev. 930, 142 P.3d 339, 345 (2006) (noting that the description “is what
6 appears directly above the signature lines, as registered voters decide the threshold issue of
7 whether they even want the initiative placed on the ballot.”) The Description of Effect is part of
8 the petition, and must be filed with the proposed amendment. Accordingly, a challenge to the
9 Description of Effect is a challenge to the validity of the entirety of the petition, and the Court, in
10 its review, may consider all of the language in the petition for its analysis. *Id.* at 940.

11 The Nevada Supreme Court has explained that the description of effect “facilitate[s] the
12 people’s right to meaningfully engage in the initiative process.” *See Nevadans for Nevada*, 142
13 P.3d at 345. The requirement “serves to prevent voter confusion and promote informed
14 decisions.” *Id.* (quoting *Campbell v. Buckley*, 203 F.3d 738, 745-46 (19th Cir. 2000)). In *PEST*
15 *Committee v. Miller*, 648 F.Supp.2d 1202 (D. Nev. 2009), the Nevada federal district court
16 stated:

17 Further, the Court also concludes that Nevada’s important interests
18 justify the description of effect requirement. In *Nevadans for Nevada v.*
19 *Beers*, the Nevada Supreme Court recognized that NRS
20 295.009’s description-of-effect requirement, like its single-subject
21 requirement, serves to prevent voter confusion and promote informed
22 decision making. 122 Nev. 930, 142 P.3d 339, 345 (2006). These
23 interests are important to the integrity of Nevada’s election process, and
24 the description-of-effect requirement is a reasonable, nondiscriminatory
25 way of furthering those interests.

26 *Id.* at 1215; *see also Educ. Initiative PAC v. Committee to Protect Nev. Jobs*, 129 Nev. Adv. Op.
27 5, 293 P. 3d 874 (2013) (citing this language in *Beers* approvingly).

28 Recently, in *Education Initiative PAC v. Committee to Protect Nevada Jobs*, 129 Nev.
Adv. Op. 5, 293 P. 3d 874 (2013), the Nevada Supreme Court had occasion to consider the
Description of Effect standard and held that, “[g]iven the 200-word limit imposed on these

1 descriptions, they cannot constitutionally be required to explain every detail or effect that an
2 initiative may have,” especially where the proposed initiative is particularly lengthy. *Id.* at 882.
3 Accordingly, “[w]hen reviewing a description of effect, the district court must take a holistic
4 approach to determine whether the description is a straightforward, succinct, and
5 nonargumentative summary of an initiative’s purpose and how that purpose is achieved, and
6 whether the information contained in the description is correct and does not misrepresent what
7 the initiative will accomplish and how it intends to achieve those goals.” *Id.* at 883; *see also Las*
8 *Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas*, 125 Nev. 165, 208 P.3d
9 429 (2009) (finding that a description of effect did not satisfy NRS 295.009(1)(b) where it
10 “materially fail[ed] to accurately identify the consequences of the referendum’s passage”).

11
12 In their Response to Alfaro and Mendoza’s Reply to Defendants Opposition to Plaintiffs’
13 Memorandum In Support of the Complaint and Defendants’ Objections to Plaintiffs’ Proposed
14 200 Word Description of Effect, Defendants Our Vote Nevada PAC conceded that the
15 Description of Effect filed with their Petition failed to include a material fact about the proposed
16 change to the law. Specifically, Defendants “recognize” that the Description of Effect should
17 have advised potential signatories that the Petition “requires photo identification in order to vote
18 in person.” Defs.’ May 6, 2014 Br. in the Alfaro Matter, at 8. In their Response to Rosati and
19 Smith’s Reply to Defendants Opposition to Plaintiffs’ Memorandum In Support of the Complaint
20 and Defendants’ Objections to Plaintiffs’ Proposed 200 Word Description of Effect, and at oral
21 argument, Defendants Our Vote Nevada PAC noted their non-opposition to changing the
22 Description of Effect’s language indicating that photo ID’s would be issued “at no cost” to
23 language indicating that the photo ID’s would be “free.” Defs.’ May 6, 2014 Br. in the Rosati
24 Matter, at 3.

25 The Court has carefully reviewed all of the parties’ papers and finds that Defendants have
26 failed to satisfy the legal requirements set forth in NRS 295.009 and the Nevada Supreme Court
27 cases interpreting that provision, because they have omitted facts that are material to a
28 signatory’s evaluation of the Petition. The Petition is deficient in the following ways:

1 *First*, as Our Vote Nevada PAC's counsel, Joel Hansen, has conceded, the Petition fails
2 to put potential signatories on notice that the law would require *photographic* "proof of identity"
3 in order to vote. This omission is materially misleading because it could cause voters who are in
4 favor of some form of proof of identity short of photographic identification to mistakenly
5 endorse the Petition.

6 *Second*, the Description of Effect's use of the terminology "certain government
7 documents" is materially misleading insofar as it fails to inform potential signatories that only
8 identification issued by the state of Nevada, the federal government, or a recognized Indian tribe
9 are acceptable under the Petition. Thus, as currently written, a potential signatory could easily
10 and reasonably (but mistakenly) assume that other forms of often-used governmental
11 identification, including for example an out-of-state driver's license would be acceptable under
12 the Petition.

13 *Finally*, both Plaintiffs groups presented uncontroverted evidence and Defendants have
14 admitted, that the Petition will require an expenditure of state and/or local funds for the "free"
15 voter identification program that it would require, but the Description of Effect fails to make any
16 mention of that inevitable price tag. This is also a material omission that is relevant to the
17 consideration of the Petition by potential signatories.

18 Additionally, as Our Vote Nevada PAC noted in their briefing and at oral argument, they
19 do not oppose changing the Description of Effect's language indicating that photo ID's would be
20 issued "at no cost" to language indicating that the photo ID's would be "free." As a result, there
21 is no remaining dispute on this issue, and the Court will order this change as requested by the
22 Rosati Plaintiffs.

23 Based upon the pleadings and hearings in this matter, the Court has drafted a description
24 of effect which, in the Court's opinion, would satisfy the legal standard set forth above for
25 Defendants' Petition as written. See Exhibit "A".

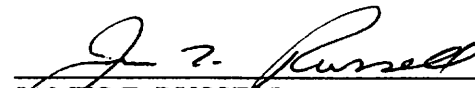
26 Based upon the above, the Court finds that the Description of Effect filed with the
27 Secretary of State is materially misleading, and any amendments or revisions to the description
28

1 of effect must be accomplished by Defendants by withdrawing the current petition and re-filing
2 an amended petition with a revised Description of Effect with the Secretary of State, under NRS
3 295.009, 295.015 and Article 19, Section 2 of the Nevada Constitution. Any signatures collected
4 prior to this revision are invalid.


5 Because these deficiencies render the Description of Effect misleading and therefore
6 invalid, they also invalidate the Petition before the Court. With respect to Plaintiffs' remaining
7 claims, the Court declines to review and passes no judgment on their merits, and they have not
8 been considered as part of the Court's Order.

9 IT IS THEREFORE ORDERED that the Court hereby finds in favor of Plaintiffs and
10 grants the relief requested in Plaintiffs' Complaints for Declaratory and Injunctive Relief
11 pursuant to those claims challenging the Description of Effect. Plaintiffs' remaining claims are
12 dismissed without prejudice.
13

14 DATED this 13~~th~~ day of May, 2014.

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17 
18 JAMES T. RUSSELL
District Court Judge

19
20 Submitted by:

21 
22 Matthew M. Griffin, Esq.
23 Nevada Bar No. 8097
24 1400 S. Virginia St., Ste A
25 Reno NV 89502
26 (775) 323-1240
27
28

CERTIFICATE OF MAILING

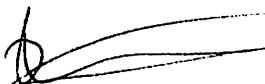
I hereby certify that on the 13th day of May, 2014, I served a copy of the foregoing
Order by placing the foregoing in the United States Mail, postage prepaid, addressed as follows:

Matthew M. Griffin, Esq.
401 S. Curry St.
Carson City, NV 89703

Marc E. Elias, Esq.
700 13th Street, N.W., Ste. 600
Washington, D.C. 20005

Joel F. Hansen, Esq.
1835 Village Center Circle
Las Vegas, NV 89134

Kevin Benson, Esq.
100 N. Carson St.
Carson City, NV 89701



Angela Jeffries
Judicial Assistant, Dept. 1

If enacted, this measure will add a new section to Article 2 of the Nevada Constitution doing the following:

- The measure requires a registered voter who wishes to vote in person to present **photographic** proof of identity to the applicable election board officer. Acceptable forms of proof of identity are: (1) **State of Nevada or federal government** documents or identity cards that show a recognizable photograph of the person to whom the document or card was issued; (2) a voter identification card; or (3) ~~certain~~ documentation from an administrator of certain licensed health care facilities.
- The measure requires the Legislature to direct by law one or more governmental entities to issue **free** voter identification cards to registered voters who do not possess other types of proof of identity, **at a financial cost to the state**.
- The measure provides that a voter identification card is valid as long as the person is registered to vote and resides at the address stated on the voter identification card.
- The measure requires that a voter identification card include the name, address, date of birth, photograph and signature of the person to whom the card is issued.
- The measure defines the terms “governmental entity” and “proof of identity.”

199 words