

Exhibit 6

Exhibit 6

Adam Hosmer-Henner, Partner
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Reply to: Reno

February 7, 2020

Via Email and U.S. Mail

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706
kevin@bensonlawnv.com

Re: *Rev. Leonard Jackson v. Fair Maps Nevada PAC et al.*

Dear Mr. Benson:

We understand that you have filed an appeal on behalf of Rev. Leonard Jackson (“Appellant”) in Case No. 19 OC 00209 1B, although we have not received the filing by mail or a courtesy copy of the same. This is a frivolous appeal filed solely for the purposes of delay as Appellant was not aggrieved by Judge Russell’s Order and so lacks standing to appeal pursuant to NRAP 3A(a). Furthermore, the amended petition filed by Respondent Fair Maps Nevada PAC contains an amended description that “may not be challenged” further in accordance with NRS 295.061(3). We therefore demand that you immediately withdraw the appeal. If we do not receive notification from you by **12:00 pm PST on Monday, February 10, 2020**, we will file a Motion to Dismiss and for Sanctions pursuant to NRAP 38(b).

The lawsuit filed by Appellant in Case No. 19 OC 00209 1B was transparently filed for the purposes of delaying Initiative Petition #C-02-2019 (“Petition”). While this type of gamesmanship is potentially contemplated by NRS 295.061, it is not permissible to frivolously extend the litigation once finality has been obtained. Respondent Fair Maps Nevada PAC has already begun gathering signatures in support of the amended petition, in reliance upon Judge Russell’s Order, and will be significantly harmed by the delay occasioned by the meritless appeal.

Appellant filed a Complaint on November 26, 2019 asserting three causes of action: 1) “Misleading Description of Effect: ‘Independent’”; 2) “Misleading Description of Effect: ‘Fair and competitive maps’”; and 3) “Misleading Description of Effect: ‘Practical and Fiscal Impacts.’” Judge Russell agreed with Appellant and entered an order providing full relief to Appellant on each of these causes of action, requiring the description of effect be amended in accordance with each of the defined challenges raised by Appellant. NRAP 3A(a) provides that only those parties who are “aggrieved by an appealable judgment or order may appeal from that judgment or order.” Appellant is not entitled to waste the judicial resources of the Nevada Supreme Court because he would have drafted a slightly different description of effect than what the Court ordered. Appellant’s successful challenge to the Petition provides Respondent with standing to appeal, but not Appellant.

Additionally, NRS 295.061 clearly states that if “a description of the effect of an initiative or referendum required pursuant to NRS 295.009 is challenged successfully pursuant to subsection 1 and such description is amended in compliance with the order of the court, the amended description may not be challenged.” Appellant successfully challenged the Petition’s description of effect, the Petition has been amended in compliance with the order of the court, and therefore Appellant is foreclosed from challenging the amended petition on appeal. This statute exists to provide finality so that a party cannot successively and endlessly challenge each new version of the description of effect. To the extent that Appellant seeks to challenge the initial description of effect, that challenge is resolved and moot. To the extent that Appellant seeks to challenge the revised description of effect, that challenge is foreclosed.

NRAP 38(a) states that if the “Supreme Court . . . determines that an appeal is frivolous, it may impose monetary sanctions.” NRAP 38(b) then provides that this sanction is appropriate “when circumstances indicate that an appeal has been taken or processed solely for purposes of delay . . . or whenever the appellate processes of the court have otherwise been misused, the court may, on its own motion, require the offending party to pay, as costs on appeal, such attorney fees as it deems appropriate to discourage like conduct in the future.” Appellant, as well

as his counsel, will be personally liable for these sanctions. *Bonaventura v. Ross*, No. 65897, 2014 WL 4406673, at *1 (Nev. Sept. 2, 2014) (granting motion to dismiss and for sanctions and ordering counsel to “personally pay” sanctions as a penalty for a frivolous appeal).

We look forward to your withdrawal of the appeal by **12:00 pm PST on Monday, February 10, 2020** or we will proceed as indicated above.

Sincerely,

/s/ Adam Hosmer-Henner

AHH:jn



Exhibit 5

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**MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-fourth Session
May 1, 2007**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara K. Cegavske at 1:42 p.m. on Tuesday, May 1, 2007, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Barbara K. Cegavske, Chair
Senator William J. Raggio, Vice Chair
Senator Warren B. Hardy II
Senator Bob Beers
Senator Bernice Mathews
Senator Valerie Wiener
Senator Steven A. Horsford

GUEST LEGISLATORS PRESENT:

Assemblywoman Heidi S. Gansert, Assembly District No. 25
Assemblywoman Peggy Pierce, Assembly District No. 3

STAFF MEMBERS PRESENT:

Kimberly Marsh Guinasso, Assembly Legal Counsel and Bill Drafting Adviser
Michelle L. Van Geel, Committee Policy Analyst
Brian Campolieti, Committee Secretary

OTHERS PRESENT:

Greg Smith, Administrator, Purchasing Division, Department of Administration
Janine Hansen, Nevada Eagle Forum
Lynn Chapman, Nevada Families
John L. Wagner, The Burke Consortium
Kyle Davis, Nevada Conservation League
Larry Lomax, Registrar of Voters, Elections, Clark County
Alan Glover, Clerk/Recorder, Carson City

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Matt Griffin, Deputy for Elections, Office of the Secretary of State
Nicolas Anthony, City of Reno
J. David Fraser, Executive Director, Nevada League of Cities and Municipalities

CHAIR CEGAVSKE:

I open the Committee with Assembly Bill (A.B.) 470.

ASSEMBLY BILL 470: Prohibits the Governor or any other state officer or employee from binding the State to the requirements of an international trade agreement without authorization by the Legislature. (BDR 19-1280)

ASSEMBLYWOMAN PEGGY PIERCE (Assembly District No. 3):

Assembly Bill 470 is a companion bill to Assembly Joint Resolution (A.J.R.) 10 which I presented last week. The subject behind both bills is free trade. As A.J.R. 10 dealt with free trade on a national level, A.B. 470 deals with free trade here in Nevada. Chapter 11 of the North American Free Trade Agreement (NAFTA) gives foreign investors the right to sue the federal government. This is a right U.S. citizens do not have. Foreign investors have the right to challenge much of what we do as Legislators in a trade tribunal. For example, a bill addressing environmental issues in Nevada can be challenged in a NAFTA tribunal. There have been dozens of free trade agreements which dozens of countries agreed to since NAFTA, and each agreement has its own chapter 11. Trade agreements since NAFTA encompass everything you cannot drop on your foot, including banking, telecommunications, postal services, tourism, transportation, waste disposal, oil and gas production, electricity, gaming and local land use. They also cover those services universally considered essential to human health and development like health care, education and drinking water.

ASSEMBLY JOINT RESOLUTION 10: Urges Congress not to reauthorize the "fast track" approval of international trade agreements. (BDR R-1295)

Any law the Nevada Legislature passes that touches those areas I just mentioned can be challenges in a trade tribunal. Remember, these tribunals are outside the United States. We do not have a place at the table, and there is no open meeting law. Assembly Bill 470 says that only this Legislature can bind Nevada to the provisions of a trade agreement. It further says the State of Nevada is not bound to trade agreements that were never agreed to by this Legislature. You may have the right to do this. The U.S. trade representative sets up a system called the State Point of Contact. Each state would have

someone who the U.S. trade representative would keep informed on the subject of trade agreements, someone who could agree to bind the state to a trade agreement, but the system has not worked well and there have been complaints about the hit-and-miss aspect of that arrangement. However, it set the standard that we have a choice whether Nevada is bound to trade agreements.

In the portfolio "Free Trade and the State of Nevada" ([Exhibit C](#), original is on file in the Research Library) which I provided for the Committee, there is a section entitled Nevada Actions. You will see a sheet from Global Trade Watch on Nevada that says, "good news for Nevada taxpayers." Following that are a couple of letters from Greg Smith, the administrator of the Purchasing Division, Department of Administration, asking that Nevada be carved out of a few trade agreements. If there is a hero in the trade story, I have been telling you, it is Mr. Smith. No one appreciates Mr. Smith's actions on behalf of Nevada more than I do. However, these important decisions on trade should not be left to Mr. Smith. These decisions should be made by those of us who have been elected to the Legislature. All previous and future trade agreements should be investigated and heard by us; whether to bind the state to them should be debated by us, and the decision on that question should be voted on by us. That is what [A.B. 470](#) proposes. I call your attention to the opinions of Brenda Erdoes, Legislative Counsel, Legal Division, Legislative Counsel Bureau, to the constitutionality and the appropriateness of [A.B. 470](#) in [Exhibit C](#). The world has changed much during my 50-plus years. Some of those changes are good and exciting. We owe it to the people who elected us to keep up with those changes and take responsibility for the decisions required of this state in a global world with its global markets in the twenty-first century. I urge the Committee's support of [A.B. 470](#).

GREG SMITH (Administrator, Purchasing Division, Department of Administration):
What the Purchasing Division does every day is ask the question if something is in the best interest of the state. In 2003 and 2005, former Governor Kenny C. Guinn was presented with a letter from the U.S. trade representative's office asking for Nevada's participation. He referred the matter to my office to gather information in which to make a recommendation. The first thing I noticed in this letter was that if there was no response, the state is automatically considered as a member of the agreement. In addition, once you are a member of the agreement, there is no way to withdraw. I was told by the U.S. trade representative's office that over 38 states were members of the agreement. However, I discovered that most of those states had no knowledge of

membership. The further I delved into the various trade agreements, the more confusing and complex they became. The terms and conditions we would be forced to abide by are existing complex procurements. It did not seem in the best interest of the state to overly complicate a Nevada procurement for someone in Battle Mountain to satisfy someone in Seoul, South Korea.

JANINE HANSEN (Nevada Eagle Forum):

We support A.B. 470. The Eagle Forum continues to oppose NAFTA, the General Agreement on Tariffs and Trade, the World Trade Organization and the Central America Free Trade Agreement. These trade agreements destroy our national sovereignty as well as our sovereignty as a state. By approving these agreements, the U.S. Congress is taking away the responsibilities of individual states to determine what is best for them with regard to environmental and labor regulations. It is important that the state assert its authority to protect Nevadans from international agreements. Foreign trade agreements have many pages of grants and vague authority to foreign tribunals on which foreign judges can force us to change our domestic laws. We ask all Legislators to protect Nevadans from what has been given away by the U.S. Congress. We need to control trade to protect individual people.

LYNN CHAPMAN (Nevada Families):

We support A.B. 470 as well. Free trade puts 30 million to 40 million American jobs at risk from outsourcing. Legislators represent the voice of the people of Nevada. We need you to watch out for our jobs and our families. Nevada needs A.B. 470 for our families and our future.

JOHN L. WAGNER (The Burke Consortium):

I support A.B. 470. When it comes to trust, we trust the members of this Legislature. I would much rather have our Legislators making trade agreements for Nevada than any other individual.

KYLE DAVIS (Nevada Conservation League):

We support A.B. 470. The environmental impacts of these trade agreements can be devastating. Assembly Bill 470 gives us another oversight opportunity to make sure Nevada's environment is adequately protected.

SENATOR WIENER:

I am looking at other state actions and it looks as though there is a sense of urgency around the country. How did you become engaged in this issue?

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ASSEMBLYWOMAN PIERCE:

I discovered 30 freshman members of the U.S. Congress who ran on trade were elected last year because they wanted a different direction on trade as well as more oversight. As states become aware of actions in international tribunals, they become educated as to how free trade affects them and their citizenry.

CHAIR CEGAUSKE:

I close the hearing on A.B. 470 and open the hearing on A.B. 322.

ASSEMBLY BILL 322 (1st Reprint): Revises certain provisions governing elections. (BDR 24-408)

ASSEMBLYWOMAN HEIDI S. GANSERT (Assembly District No. 25):

During the last session, we had some legislation on initiative petitions and we went with a disclosure of any funds over \$10,000 used to promote or defeat an initiative. The first part of A.B. 322 deals with questions on a ballot. If you have a question on a ballot and you are receiving or expending money to promote or defeat it, the same disclosure rules apply as with initiative petitions. The second part of A.B. 322 addresses changes to initiative petitions. If you have an initiative petition that gets challenged or changed, you need to refile it with the Secretary of State's Office and regather signatures.

CHAIR CEGAUSKE:

What was the change from the original bill to the reprint?

MS. GANSERT:

There was some cleanup in the language but no major changes.

MS. HANSEN:

I have no particular concern with A.B. 322, but it can be misused in different ways. We have concern that this bill could intimidate people and prohibit them from participating in the petitioning process. Placing a damper on individuals who challenge the establishment will not help the process.

CHAIR CEGAUSKE:

Assembly Bill 322 will also provide that a description of the ballot question cannot be challenged. Was that an issue last session?

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ASSEMBLYWOMAN GANSERT:

If the court orders you to change the summary in some particular way, once you fix it, you cannot be rechallenged if you mandated a court order. Currently, you can continue to challenge the same issue as many times within the time frame.

CHAIR CEGAUSKE:

I close the hearing on A.B. 322 and open the hearing on A.B. 342.

ASSEMBLY BILL 342 (1st Reprint): Makes various changes to the process of casting a mailing ballot in mailing precincts. (BDR 24-689)

ASSEMBLYWOMAN GANSERT:

Assembly Bill 342 concerns mail-only precincts. I had someone living outside Reno who went to vote on Election Day but was turned away because he lived in a mail-only precinct. For counties over 100,000, A.B. 342 enables voters to vote on Election Day if they choose to do so. For counties under 100,000, the county clerk may designate where polling places will accept mail-only voters to vote on Election Day.

SENATOR BEERS:

Did the clerks come and speak with you regarding this issue?

ASSEMBLYWOMAN GANSERT:

They did come and speak to the bill. In the large counties, early voting made it easier for them to allow anyone to vote wherever they wanted. However, during the general election, they will designate a polling place for mail-in precinct voters if they wish to vote in person.

CHAIR CEGAUSKE:

This is someone who is already registered and for whatever reason decides to vote in person. There was a case where someone voted twice. Would this bill take care of that issue or would it continue to exist?

ASSEMBLYWOMAN GANSERT:

This is only for the larger counties and does not address that issue.

SENATOR WIENER:

Concerning page 2, section 4, subsection 3, paragraph (b) of A.B. 342, is there a procedure to apply to vote in person? What are the logistics here?

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ASSEMBLYWOMAN GANSERT:

By applying, you show up in person to vote.

SENATOR WIENER:

That language is awkward. I thought the word "apply" was referring to filling out an application.

KIMBERLY MARSH GUINASSO (Assembly Legal Counsel and Bill Drafting Adviser):

The word "apply" was not used with the concept of filing an application. It means voters can utilize an assigned polling place if they wish to do so. We can take that word out without any problems.

LARRY LOMAX (Registrar of Voters, Elections, Clark County):

Clark County already allows what A.B. 342 requires. We have always allowed people in mailing precincts to vote early. Assembly Bill 342 will standardize our procedures throughout the other counties and establish a standard procedure.

CHAIR CEGAVSKE:

Is there any concern about the wording Senator Wiener brought forward?

MR. LOMAX:

We want to be sure it is clear so the voter can show up and vote without special paperwork.

CHAIR CEGAVSKE:

If we remove the word "apply" from the bill, would it create a burden?

MR. LOMAX:

It might clarify it.

MS. GANSERT:

I will accept that as an amendment.

CHAIR CEGAVSKE:

I close the hearing on A.B. 342 and open the hearing on A.B. 569.

ASSEMBLY BILL 569 (1st Reprint): Makes various changes relating to elections.
(BDR 24-322)

MR. LOMAX:

Assembly Bill 569 removes all old punch card language from *Nevada Revised Statutes* (NRS). It standardizes the term "roster book" for "poll book" and adds some terms and definitions such as provisional ballots from the Help America Vote Act of 2002. We now allow a candidate who filed to have seven days to withdraw after the close of candidate filing. The language provides that you can withdraw your withdrawal as long as you do it within the seven-day period.

SENATOR MATHEWS:

When a candidate who has withdrawn returns to pull the withdrawal, you should charge him an additional fee.

MR. LOMAX:

Currently, the bill does not address that issue. We had a situation in 2004 where the Secretary of State had not provided us the updates to the regulations until they came out on the day of the primary. Assembly Bill 569 requires the Secretary of State to have the regulations printed and distributed by December 31 of the year for seating the federal election. That would give the clerks enough time to train personnel.

Unopposed town advisory board members who file without competition will be declared elected. Now that Nevada uses the Sequoia AVC Edge voting machines, there is no need for voting receipts. Assembly Bill 569 will make them optional. Additionally, personal challenges were an issue raised during the 2006 election. The law states that to issue a challenge, you must live in the same precinct or district. We went to court about this because our interpretation of district meant the voting district. The challenge stated it meant a political district. A political district can be as large as a county, Congressional District or state. It makes no sense to have a law that regulates in order to issue a challenge, you must live in the same precinct or the same state. The judge subsequently ruled in our favor. We would like to strike the word "district" and make it that to issue a challenge, you must live in the same precinct. In addition, there are no restrictions placed upon someone issuing a challenge. We want to add the requirement of living in the same precinct and having personal knowledge. Right now, if I challenge you as not being a citizen, you would have to fill out an oath affirming you are a citizen. The challenger does not have to do anything. Assembly Bill 569 does not stop anyone from having the right to challenge, but it requires they have personal knowledge to challenge.

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Section 29 of A.B. 569 stipulates that an official absentee ballot may also be shipped by any class of mail if the Official Election Mail logo created by the U.S. Postal Service is placed on the ballot. This guarantees us the equivalent of first class service, even if we are not paying first class postage. During the 2006 election, mailing absentee ballots cost Clark County \$2.20 per mail piece. If we can reduce that to 69 cents per piece, we can save money without degradation in service to the voters.

SENATOR BEERS:

Could we add "or equivalent" to the language addressing the Official Election Mail logo in section 29? Assembly Bill 569 addresses the U.S. Postal Service's current policy and that could change in the future.

MR. LOMAX:

As long as it is clear. We only want the wording to allow us to send ballots out in the fastest and cheapest way possible. Page 20 of A.B. 569 addresses our request for polling places in small counties to be open for at least four hours on Saturdays during early voting. Some of the small counties say it is a waste of time for them to be open the full time period of 10 a.m. until 6 p.m. Page 27 of A.B. 569 intends to clarify that county clerks will provide the state and county party voter registration lists.

SENATOR BEERS:

My recollection is that this will soon become moot for the whole state.

MR. LOMAX:

Section 51, subsection 3 of A.B. 569 clarifies that a question can be pulled from the ballot as long as it is pulled before the deadline for submitting questions. This also clarifies that the county clerk will assign a number to a question so someone has responsibility.

CHAIR CEGAVSKE:

What is the purpose of changing "voter" to "applicant" on page 30 of A.B. 569?

MR. LOMAX:

Page 30 was another court case having to do with voter registration. We want to identify people who fill out a voter registration form as an applicant instead of a voter. When the form is satisfactorily completed, the applicant will be

considered a voter. The second issue on this page addresses the need for an affidavit if the applicant does not have a social security number or Nevada driver license. Assembly Bill 569 assigns the Secretary of State responsibility for standardizing a form that we will use as an affidavit.

CHAIR CEGAUSKE:

Why is "county clerk" crossed out on page 30, line 26 and replaced with "applicant"?

ALAN GLOVER (Clerk/Recorder, Carson City):

That is because we will have the applicant fill out the form, not the county clerk.

MR. LOMAX:

Page 32 of A.B. 569 gives the county clerk the authority to declare the elector's affidavit void if it contains handwritten additions, erasures or interlineations. This gives the county clerks direction on what to do if an applicant returns an affidavit with cross outs and marks added. We want to turn that in to our district attorney and let them decide if the applicant made changes that impact us as county clerks. Page 33 deals with written challenges as opposed to in-person challenges. To issue a written challenge, you will need to live in the same precinct and have personal knowledge. In the previous election, we had an individual submit about 13,000 letters challenging people throughout Clark County. They did not live in the same precinct or have personal knowledge. Each challenge essentially read that they heard in the media there were many illegal aliens in the precinct; therefore, they challenged people as not being who they said they were. It makes no sense to allow people to challenge in this way, and A.B. 569 will help us deal with this problem.

MR. GLOVER:

The last change in section 100 of A.B. 569 accommodates the Elko County Convention and Visitors Authority. I submitted a letter to the Committee ([Exhibit D](#)) from Winifred Smith, Elko County Clerk, which explains the reasons behind section 100. This would allow candidates who run unopposed to automatically be elected. This will save the county money in the future and help streamline the election process.

CHAIR CEGAVSKE:

It pleases me to see A.B. 569 cleaned up and how you look out for taxpayers and try to cut unnecessary costs wherever possible.

MS. HANSEN:

We have concern with section 53, subsection 7 of A.B. 569. Putting the determination of who has the right to vote in the hands of county clerks is inappropriate. They are not lawyers or experts and should not be granted this authority. It is unconstitutional to prohibit an individual from registering to vote on the grounds of religious or political beliefs. Some people may cross things out on registration forms because they have a particular religious belief. In that case, why should they be denied the right to vote? The greater issues of participation mean more than filling out a bureaucratic form.

CHAIR CEGAVSKE:

Section 53, subsection 7, paragraph (b) of A.B. 569 states that the district attorney will be the decider of whether a registration card will be processed.

MS. HANSEN:

This section is confusing and should be clarified. It also says the county clerk decides if the elector is not eligible to vote pursuant to NRS 293.485.

CHAIR CEGAVSKE:

If you continue through section 53, subsection 7 states the county clerk "shall immediately notify the elector and the district attorney of the county." The county clerk does not make that decision; the district attorney does.

MS. HANSEN:

That protects the county clerk. Regardless of who has the authority, we need to recognize that people have particular political or religious beliefs which need to be accommodated. Just because they do not fill out a form in an exact manner, their right to vote should not be taken away.

MATT GRIFFIN (Deputy for Elections, Office of the Secretary of State):

The distinction of section 53, subsection 7 of A.B. 569 is that the clerk may object to a form, but if so, they must refer it to the local district attorney's office. The word "object" is different from the word "reject."

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CHAIR CEGAVSKE:

I close the hearing on A.B. 569 and open the hearing on A.B. 570.

ASSEMBLY BILL 570 (1st Reprint): Revises certain provisions relating to elections. (BDR 24-429)

NICOLAS ANTHONY (City of Reno):

Assembly Bill 570 relates to the canvassing of elections and grants an enabling authority—not mandatory—to local governments to go from five days to six-working days to canvass election results. The reason this issue came up is because the Reno City Council meets on Wednesdays which is typically six-working days after a Tuesday election.

J. DAVID FRASER (Executive Director, Nevada League of Cities and Municipalities):

Several other cities are listed in sections 3 through 5 and they support A.B. 570 as well.

CHAIR CEGAVSKE:

I close the hearing on A.B. 570 and will accept a motion for A.B. 505.

ASSEMBLY BILL 505: Changes the period for the filing of declarations, acceptances and certificates of candidacy for certain judicial offices. (BDR 24-652)

SENATOR BEERS MOVED TO DO PASS A.B. 505.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CEGAVSKE:

If there is nothing more to come before this Committee, I adjourn the Senate Committee on Legislative Operations and Elections at 3:01 p.m.

RESPECTFULLY SUBMITTED:

Brian Campolieti,
Committee Secretary

APPROVED BY:

Senator Barbara K. Cegavske, Chair

DATE: _____

Exhibit 4

Exhibit 4

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DEPUTY

6
7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR CARSON CITY**

9
10
11 REV. LEONARD JACKSON,
12 Plaintiff,
13 v.
14 FAIR MAPS NEVADA PAC, and
BARBARA CEGAVSKE, in her official
15 capacity as Nevada Secretary of State,
16 Defendants.
17

Case No.: 19 DC 00209 B
Dept. No.: II

**COMPLAINT FOR
DECLARATORY RELIEF**

Priority Claimed: NRS 295.061(1)

**Arbitration Exemption:
Request for Declaratory and Injunctive
Relief.**

18
19 Plaintiff, Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of BENSON
20 LAW, LLC, seeks declaratory and injunctive relief against Defendants that the Redistricting
21 Commission Initiative Petition does not comply with the requirements of state law and therefore
22 cannot appear on the general election ballot for 2020. Plaintiff alleges and complains as follows:

23 **I. JURISDICTION**

24 1. This Court has jurisdiction pursuant to Nev. Const. Art. 6, § 6 and NRS 295.061(1).

25 **II. PARTIES**

26 2. Plaintiff Rev. Leonard Jackson is citizen of Nevada and a registered voter.

27 3. Defendant Fair Maps Nevada PAC is a proponent of a constitutional initiative petition
28 designated as #C-02-2019 by the Secretary of State. The initiative petition seeks to amend the

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1 Nevada Constitution to require that redistricting be performed by a commission rather than by the
2 Legislature (“the Petition”).

3 4. Defendant Barbara Cegavske is Nevada’s duly elected Secretary of State. She is sued
4 in her official capacity only. The Secretary’s duties include certifying the number of signatures on an
5 initiative petition and other processing necessary to place an initiative petition on the ballot.

6 **III. GENERAL ALLEGATIONS**

7 5. On November 4, 2019, Sondra Cosgrove, in connection with Defendant FAIR MAPS
8 NEVADA PAC, filed with the Secretary of State a Notice of Intent to Circulate Petition and a copy
9 of the Petition.

10 6. The Petition proposes to add a new Section 5A to Article 4, Section 5 of the Nevada
11 Constitution, which would be titled: “Apportionment; Creation of Independent Redistricting
12 Commission.”

13 7. The Petition would create the “Independent Redistricting Commission”
14 (“Commission”) within the legislative branch of state government. Starting in the year 2023, the
15 Commission would apportion the number of Senators and Assemblymen among the state legislative
16 districts and would apportion the number of representatives to the United States House of
17 Representatives among the congressional districts.

18 8. The Commission would consist of seven members. The Senate Majority Leader,
19 Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader each appoint one
20 commissioner. These four commissioners appoint three additional commissioners, each of whom has
21 not been registered or affiliated with either of the two largest political parties in the State within the
22 last four years, and is not registered or affiliated with the same political party as another
23 commissioner.

24 9. The commissioners cannot, within the four years preceding appointment and during
25 their term on the Commission, be a registered lobbyist, a candidate for partisan office, an elected
26 official to a partisan office, an officer or member of the governing body of a political party, a paid
27 consultant or employee of a partisan elected official, candidate, PAC, or caucus, an employee of the
28 Legislature or the State of Nevada, except the judicial branch, the armed forces, or a state institution

1 of higher education. Nor may a commissioner be related within the third degree of consanguinity or
2 affinity to any such individual.

3 10. All meetings of the Commission must be open to the public and the Commission shall
4 ensure that the public has the opportunity to view, present testimony, and participate in the hearings
5 before the Commission. All Commission materials shall be public records.

6 11. The Commission shall adopt a redistricting plan not later than July 1, 2023, and
7 thereafter not later than 180 from the release of the decennial census.

8 12. A final plan requires five affirmative votes, including votes from at least one
9 commissioner from each of the two largest political parties and one commissioner not registered or
10 affiliated with either of those parties.

11 13. The Commission must draw districts according to certain criteria, and must apply
12 those criteria in the order listed in the Petition. These criteria include ensuring that, on a statewide
13 basis, the districts “do not unduly advantage or disadvantage a political party.” The last criteria is that
14 the Commission may consider the number of politically competitive districts.

15 14. The Description of Effect of the Petition states in full:

16 This measure will amend the Nevada Constitution to establish an Independent Redistricting
17 Commission to oversee the mapping of fair and competitive electoral districts for the
18 Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

19 The Commission will consist of seven Nevada voters, four who will be appointed by the
20 leadership of the Nevada Legislature, and three who are unaffiliated with the two largest
21 political parties who will be appointed by the other four commissioners. Commissioners
22 may not be partisan candidates, lobbyists, or certain relatives of such individuals. All
23 meetings of the Commission shall be open to the public who shall have opportunities to
24 participate in hearings before the Commission.

25 The Commission will ensure, to the extent possible, that the electoral districts comply with
26 the United States Constitution, have an approximately equal number of inhabitants, are
27 geographically compact and contiguous, provide equal opportunities for racial and
28 language 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.

This amendment will require redistricting by the Commission beginning in 2023 and
thereafter following each federal census.

1 **FIRST CAUSE OF ACTION**

2 **(Misleading Description of Effect: “Independent”)**

3 15. The Petition’s Description of Effect is materially misleading and fails to comply with
4 NRS 295.009(1)(b) because the Description of Effect describes the Commission as an “independent”
5 redistricting commission when in fact the Commission is not independent.

6 16. The Commission is not independent because a majority of commissioners are directly
7 appointed by the legislative leadership of the two major political parties. Those commissioners in turn
8 appoint the remaining three commissioners. Thus there is no mechanism to ensure that any of the
9 commissioners are in fact independent of the legislative leadership of the two major parties.

10 17. Redistricting is an expensive and difficult process that requires substantial technical
11 expertise, specialized software, and personnel with knowledge and experience in the field. Moreover,
12 the Commission will need administrative assistance to manage its materials and to schedule, notice,
13 and hold public meetings.

14 18. The Commission is part of the legislative branch, but the Petition does not provide for
15 any funding or funding mechanism for the Commission. It does not require the Legislature to fund
16 the Commission at all. Therefore the Commission is not independent of the Legislature because the
17 Legislature can control its funding.

18 19. The Petition does not prohibit the commissioners from being appointed to or
19 becoming a candidate for any partisan office or government employment immediately after
20 approving a redistricting plan.

21 20. The ordinary definition of “independent” is: “free from outside control; not subject to
22 another’s authority.” Oxford English Dictionary (<https://www.lexico.com/en/definition/independent>,
23 last visited: Nov. 12, 2019).

24 21. Because the Commission is not independent of the Legislature, voters will be
25 materially misled by the Description of Effect’s statement that the Petition “will amend the Nevada
26 Constitution to establish an **Independent** Redistricting Commission...” (emphasis added).

27 22. The Petition’s Description of Effect therefore violates NRS 295.009(1)(b) and cannot
28 appear on the 2020 general election ballot.

1 **SECOND CAUSE OF ACTION**

2 **(Misleading Description of Effect: “Fair and competitive maps”)**

3 23. The Petition’s Description of Effect is materially misleading because it claims that the
4 Commission will oversee “the mapping of fair and competitive electoral districts,” but the Petition in
5 fact requires neither fairness nor competitiveness.

6 24. The criteria to be used in drawing maps adhere to the general requirements for
7 redistricting that are required under federal law to satisfy the Voting Rights Act and the one-person,
8 one-vote doctrine.

9 25. Beyond this, the Petition requires that the districts “do not unduly advantage or
10 disadvantage a political party.” The use of the word “unduly” indicates that the Petition is actually
11 designed and intended to tolerate *un*fairness as between the political parties, but to what degree is
12 unknown. The Petition sets forth no criteria for determining when a party is “unduly” advantaged or
13 disadvantaged. There will obviously be disagreement on that question and the lack of any guidelines
14 leaves the potential for every plan to be challenged through litigation.

15 26. Further, competitiveness is the very *last* of the criteria that the Commission is to
16 consider when drawing maps, and it is expressly subordinate to all the other criteria. The Commission
17 is only required to consider competitiveness “to the extent practicable.” Thus the Petition does not in
18 fact require that the Commission create, or even attempt to create, competitive districts.

19 27. Voters will be materially misled by the Description of Effect’s assertion that the
20 Commission will create “fair and competitive” maps, because the Petition does not require either.

21 28. The Petition’s Description of Effect therefore violates NRS 295.009(1)(b) and the
22 Petition cannot appear on the 2020 general election ballot.

23 **THIRD CAUSE OF ACTION**

24 **(Misleading Description of Effect: Practical and Fiscal Impacts)**

25 29. The Petition’s Description of Effect is deceptive and misleading because it fails to
26 inform voters of the practical ramifications of the Petition.

27 30. The Petition’s Description of Effect recites the language of the Petition stating that the
28 proposed Commission would draw new maps beginning in 2023, but it fails to inform voters of the

1 practical effects. It fails to inform voters that the Legislature will have just drawn maps in 2021,
2 which will be effective for only the 2022 election. It fails to inform voters that the Commission will
3 “undo” those maps and create new maps in 2023, thus potentially doubling the resources that would
4 otherwise be spent on redistricting following the 2020 census.

5 31. By failing to describe these material practical consequences, the Description of Effect
6 is deceptive. The Petition and therefore violates NRS 295.009(1)(b) and cannot appear on the 2020
7 general election ballot.

8 WHEREFORE, the Plaintiff Rev. Jackson respectfully requests that the Court enter an order:

- 9 1. Declaring that the Petition does not comply with NRS 295.009(1)(b) and is therefore
10 invalid;
- 11 2. Prohibiting the Secretary of State from placing the Petition on any ballot; and,
- 12 3. Granting any other relief the Court deems just.

13
14 Dated this 26th day of November, 2019.

15
16 BENSON LAW, LLC

17
18 By: 

19 KEVIN BENSON, ESQ.
20 Nevada State Bar No. 9970
21 123 W. Nye Lane, Suite #487
22 Carson City, NV 89706
23 Telephone: (775) 884-0838
24 Email: kevin@bensonlawnv.com

Exhibit 3

Exhibit 3

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2 Lucas Foletta, Esq. (NSBN 12154)
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*Attorneys for Defendant
Fair Maps Nevada PAC*

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AUBREY ROWLATT
CLERK

BY  DEPUTY

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

9 * * *

10 REV. LEONARD JACKSON,

11 Plaintiff,

12 vs.

13 FAIR MAPS NEVADA PAC, and
14 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,

15 Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

16 **ORDER**

17
18 This matter having come before this Court pursuant to Plaintiff Reverend Leonard
19 Jackson's Complaint for Declaratory Relief ("Complaint") and Plaintiff's Opening Brief in
20 Support of Complaint for Declaratory and Injunctive Relief ("Opening Brief"), and having
21 considered Defendant Fair Maps Nevada PAC's ("Fair Maps") Answer and Answering Brief in
22 Response to Plaintiff's Opening Brief in Support of Complaint for Declaratory and Injunctive
23 Relief ("Answering Brief") and Plaintiff's Reply Brief in Support of Complaint for Declaratory
24 Relief ("Reply Brief") as well as the arguments of counsel at the hearing held December 23,
25 2019, the Court finds as follows:

26 //

27 //

28

1 PROCEDURAL BACKGROUND

2 Fair Maps filed Initiative Petition #C-02-2019 (“Petition”) on November 4, 2019 to
3 amend the Nevada Constitution by adding a new section to the Nevada Constitution to establish
4 a redistricting commission to map electoral districts for members of the Nevada Senate, Nevada
5 Assembly, and Nevada’s delegation to the U.S. House of Representatives. The Petition includes
6 the following description of effect:

7 This measure will amend the Nevada Constitution to establish an
8 Independent Redistricting Commission to oversee the mapping of fair and
9 competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S.
10 House of Representatives.

11 The Commission will consist of seven Nevada voters, four who will be
12 appointed by the leadership of the Nevada Legislature, and three who are
13 unaffiliated with the two largest political parties who will be appointed by the
14 other four commissioners. Commissioners may not be partisan candidates,
15 lobbyists, or certain relatives of such individuals. All meetings of the Commission
16 shall be open to the public who shall have opportunities to participate in hearings
17 before the Commission.

18 The Commission will ensure, to the extent possible, that the electoral
19 districts comply with the United States Constitution, have an approximately equal
20 number of inhabitants, are geographically compact and contiguous, provide equal
21 opportunities for racial and language minorities to participate in the political
22 process, respect areas with recognized similarities of interests, including racial,
23 ethnic, economic, social, cultural, geographic, or historic identities, do not unduly
24 advantage or disadvantage a political party, and are politically competitive.

25 This amendment will require redistricting by the Commission beginning in
26 2023 and thereafter following each federal census.

27 Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he
28 argues that the Petition’s description of effect fails to comply with NRS 295.009(1)(b). More
specifically, he contends that description of the commission as independent and the description
of effect’s statement that the commission will oversee “the mapping of fair and competitive
electoral districts,” are materially misleading statements. Compl. ¶¶ 15 & 23. He also asserts
that the description of effect is deceptive and misleading because it fails to inform voters of a
specific practical effect of passage of the Petition—that the redistricting commission will “undo”
electoral maps generated by the Legislature in 2021 “thus potentially doubling the resources that
would otherwise be spent on redistricting following the 2020 census.” *Id.* at ¶¶ 30. Plaintiff’s
Complaint is limited to his challenge to the description of effect.

1 Fair Maps contends that the use of the term independent and the characterization of the
2 commission's objective of creating fair and competitive electoral districts is neither deceptive
3 nor misleading and amount to attacks on the policy reflected in the Petition and not the
4 description of effect. Ans. Br. 6-8. Fair Maps also contends that Plaintiff's claim that there will
5 be additional redistricting costs as a result of Petition is speculative and hypothetical and
6 therefore need not be addressed in the description of effect. *Id.* at 8-10.

7 **LEGAL STANDARDS**

8 Article 19, Section 2 of the Nevada Constitution enshrines the people's right to amend
9 the Nevada Constitution by initiative petition. Specifically it states that "the people reserve to
10 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
11 Nev. Const. art. 19, § 2(1). The Nevada Constitution further provides that the Legislature "may
12 provide by law for procedures to *facilitate* the operation thereof." *Id.* art. 19, § 5 (emphasis
13 added). In interpreting such laws, the courts "must make every effort to sustain and preserve the
14 people's constitutional right to amend their constitution through the initiative process."
15 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247
16 (2006).

17 NRS 295.009(1)(b) provides that a petition must "[s]et forth, in not more than 200
18 words, a description of the effect of the initiative . . . if the initiative . . . is approved by the
19 voters." NRS 295.009(1)(b). The Nevada Supreme Court has noted that "[a] description of effect
20 serves a limited purpose to facilitate the initiative process," and that a description of effect
21 should be reviewed with an eye toward that limited purpose. *Educ. Initiative PAC v. Comm. to*
22 *Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013). Thus, while a description of
23 effect need not "delineate every effect that an initiative will have," it must be "a straightforward,
24 succinct, and nonargumentative statement of what the initiative will accomplish and how it will
25 achieve those goals." *Id.* at 38, 293 P.3d at 876. A description of effect cannot "be deceptive or
26 misleading." *Id.* at 42, 293 P.3d at 879.

27 In reviewing a description of effect, "it is inappropriate to parse the meanings of the
28 words and phrases used in a description of effect" as closely as a reviewing court would a

1 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
2 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
3 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
4 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
5 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 In this case, the description of effect for the Petition does not meet the requirements of
8 NRS 295.009(1)(b). The description of effect could be argumentative or confusing or
9 misleading to voters as currently written. The description of effect does not adequately explain
10 to voters what is meant by the term “independent” or the phrase “fair and competitive.” The
11 Court further finds that the description of effect is inadequate in that it does not provide potential
12 signatories with enough information about the cost consequences of the Petition—specifically,
13 that it will result in the expenditure of state funds. *See, e.g., Nev. Judges Ass’n v. Lau*, 112 Nev.
14 51,59 (1996). The Petition also does not adequately inform voters that the Petition would result
15 in redistricting in 2023 after the Legislature has already drawn electoral districts after the 2020
16 Census.

17 The Court finds that the above-referenced deficiencies may be cured through the revised
18 description of effect provided herein. NRS 295.061(3) provides that “[i]f a description of the
19 effect of an initiative or referendum required pursuant to NRS 295.009 is challenged
20 successfully . . . and such description is amended in compliance with the order of the court, the
21 amended description may not be challenged.” NRS 295.061(3). Thus, the Court, in consultation
22 with the parties, identifies a new description of effect that satisfies the legal standard required by
23 NRS 295.061(3). This revised description of effect states:

24
25 “This measure will amend the Nevada Constitution to establish a redistricting
26 commission to map electoral districts for the Nevada Senate, Assembly, and U.S. House of
Representatives.

27 The Commission will have seven members, four who will be appointed by the leadership
28 of the Legislature, and three who are unaffiliated with the two largest political parties who will
be appointed by the other four commissioners. Commissioners may not be partisan candidates,

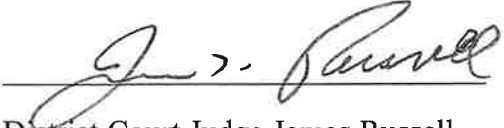
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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

9 This amendment requires redistricting after each federal census, beginning in 2023,
10 which could replace maps drawn by the Legislature after the 2020 census, and will result in the
11 expenditure of state funds to fund the Commission.”

12 **IT IS THEREFORE ORDERED** and declared that the description of effect filed with
13 the Secretary of State on November 4, 2019 failed to satisfy the requirements of NRS
14 295.009(1)(b). Thus, any signatures collected on the Petition containing the description of effect
15 are invalid. However, Defendant Fair Maps may re-file an amended petition with the revised
16 description of effect as set forth by this Order, which cures all deficiencies raised by Plaintiff
17 and identified by the Court. Upon re-filing, the description of effect will have been amended in
18 compliance with this Order and be accorded the finality set forth in NRS 295.061(3) and shall
19 not be subject to further challenge. NRS 295.061(3).

20 Dated this 2 day of ^{January} ~~December~~, ²⁰²⁰ ~~2019~~.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:

24 MCDONALD CARANO LLP

25 By: _____/s/ Adam Hosmer-Henner
26 Adam Hosmer-Henner, Esq. (NSBN 12779)
27 Lucas Foletta, Esq. (NSBN 12154)
28 MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
Attorneys for Defendant Fair Maps PAC

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2 day of January 2020 I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701



Chloe McClintick, Esq.
Law Clerk, Dept. 1

Exhibit 2

Exhibit 2

Adam Hosmer-Henner, Partner
ahosmerhenner@mcdonaldcarano.com

Reply to: Reno

December 17, 2019

Kevin Benson
Benson Law Nevada
123 W. Nye Lane #487
Carson City, NV 89706

Re: Case No.: 19 OC 00209 1B

Dear Kevin,

As you know, our firm represents Fair Maps Nevada PAC (“Fair Maps”), a Defendant in the lawsuit you filed on behalf of Rev. Leonard Jackson, Case No. 19 OC 00209 1B. Fair Maps has reviewed your client’s Complaint and Opening Brief and has now filed its Answer and Answering Brief in advance of the December 23, 2019 hearing, courtesy copies of which are enclosed.

While Fair Maps does not agree with Plaintiff’s assertion that the description of effect included with petition #C-02-2019 (“Petition”) is misleading, Fair Maps is interested in amicably resolving this litigation to ensure that the proposed amendment contained in the Petition can be debated on its merits in the political arena, where that debate belongs. Toward that end and without conceding that the description of effect requires amendment, Fair Maps drafted five alternative descriptions of effect designed to address the concerns raised by your client, which are attached as Exhibit 2 to the Answering Brief and enclosed herewith. If upon review your client agrees that one of these alternatives is satisfactory, Fair Maps proposes that the parties stipulate to the alternative description of effect and dismiss the instant litigation.

We look forward to your response prior to the December 23, 2019 hearing and please do not hesitate to contact us with any questions you may have.

Sincerely,



Adam Hosmer-Henner, Esq.

mcdonaldcarano.com

2300 West Sahara Avenue, Suite 1200 ■ Las Vegas, Nevada 89102 ■ 702.873.4100

100 West Liberty Street, Tenth Floor ■ Reno, Nevada 89501 ■ 775.788.2000

Mailing Address: P.O. Box 2670 ■ Reno, Nevada 89505

Encl: Answer, Answering Brief and Exhibits

cc: Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
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Barbara Cegasvke, Nevada Secretary of State
202 N. Carson Street
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9 *Attorneys for Defendant*
10 *Fair Maps Nevada PAC*

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BY V. Alegria
DEPUTY

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

13 * * *

14 REV. LEONARD JACKSON,
15
16 Plaintiff,
17
18 vs.
19
20 FAIR MAPS NEVADA PAC, and
21 BARBARA CEGAVSKE, in her official
22 capacity as Nevada Secretary of State,
23
24 Defendants.

Case No. 19 OC 00209 1B
Dept. No. I

25 **ANSWER TO COMPLAINT FOR DECLARATORY RELIEF**

26 Defendant FAIR MAPS NEVADA PAC, a registered Nevada political action committee
27 (“Fair Maps”), by and through its attorneys Adam Hosmer-Henner, Esq. and Lucas Foletta Esq.,
28 of MCDONALD CARANO LLP, hereby responds to the Complaint for Declaratory Relief
29 (“Complaint”) of Plaintiff as follows:

30 **INTRODUCTION**

- 31 1. The allegations of Paragraph 1 set forth legal conclusions to which no response is
32 necessary, but should any answer be required, Fair Maps denies the allegations of this
33 Paragraph.
- 34 2. Fair Maps is without knowledge or information sufficient to form a belief as to
35 the truth of the allegations contained in Paragraph 2 and on this basis denies the allegations of
36 this Paragraph.

- 1 3. Fair Maps denies the allegations contained in Paragraph 3.
- 2 4. Fair Maps is without knowledge or information sufficient to form a belief as to
- 3 the truth of the allegations contained in Paragraph 4 and on that basis denies the allegations of
- 4 this Paragraph.

GENERAL ALLEGATIONS

5 5. Fair Maps denies the allegations contained in Paragraph 5, except admits that the

6 constitutional initiative petition designated as #C-02-2019 (“Petition”) and related Notice of

7 Intent to Circulate Statewide Initiative or Referendum Petition (“Notice of Intent”) was filed on

8 November 4, 2019.

9 6. Fair Maps denies the allegations contained in Paragraph 6, except admits that the

10 Petition states as follows:

The People of the State of Nevada do enact as follows:

Section 1: Article 4, Section 5 of the Nevada Constitution is hereby amended to read as follows:

Section 5. Number of Senators and members of Assembly; apportionment.
Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third nor more than one-half of that of the members of the Assembly.

It shall be the mandatory duty of the Legislature at its first session after the taking of the decennial census of the United States in the year 1950, and after each subsequent decennial census, to fix by law the number of Senators and Assemblymen, and apportion them among the several counties of the State, or among legislative districts which may be established by law, according to the number of inhabitants in them, respectively.

Section 2: Article 4 of the Nevada Constitution is hereby amended by adding thereto new sections to be designated as Sections 5A, 5B and 5C, to read as follows:

Section 5A. Apportionment; Creation of Independent Redistricting Commission.

- 1. There is created within the legislative branch of state government the Independent Redistricting Commission. It shall be the duty of the Commission in the year 2023, and after each subsequent decennial census of the United States, to apportion the number of Senators and Assemblymen among legislative districts established by the Commission and to apportion the number of representatives in the United States House of Representatives among districts established by the Commission.***
- 2. The Commission shall be composed of seven members who are registered and eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3. The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader shall each appoint one Commissioner. The four Commissioners appointed in this manner shall appoint three additional Commissioners, each of whom, for at least four years immediately preceding their appointment, has not been registered or affiliated with the largest political party or the***

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second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.

3. Within four years preceding appointment and during their term, no Commissioner may be a registered lobbyist; a candidate for a federal, state, or partisan local office; an elected official to a federal, state, or partisan local office; an officer or member of the governing body of a national, state, or local political party; a paid consultant or employee of a federal, state, or partisan local elected official or candidate, or of a political action committee, or of a committee sponsored by a political party, or of a committee that seeks to influence elections to federal, state, or partisan local offices; an employee of the Legislature; an employee of the State of Nevada, except for employees in the judicial branch, the armed forces, or a state institution of higher education; or related within the third degree of consanguinity or affinity to any individual disqualified under this subsection.

4. The term of office of each Commissioner shall expire once the Commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete and shall expire no later than the release of the following decennial census of the United States.

5. All meetings of the Commission shall be open to the public. The Commission shall ensure that the public has opportunities to view, present testimony, and participate in hearings before the Commission. All Commission materials shall be public records.

6. The Commission shall adopt rules to govern its administration and operation.

7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

Section 5B. Criteria for Determination of Districts; Approval of Final Plans.

1. In adopting a redistricting plan, the Independent Redistricting Commission shall use the following criteria, in the order listed, to draw districts: Ensure that districts comply with the United States Constitution and applicable federal law; Ensure that districts have an approximately equal number of inhabitants; Ensure that districts are geographically contiguous; Ensure that districts are not drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or elect representatives of their choice, whether by themselves or voting in concert with other persons; Ensure that districts, when considered on a statewide basis, do not unduly advantage or disadvantage a political party; Ensure that districts reflect, to the extent possible, county, city, and township boundaries; Minimize, to the extent practicable, the division of communities of interest, meaning an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities, but not including common relationships with political parties or political candidates; Ensure that districts are reasonably compact; and to the extent practicable, after complying with the requirements above, consider the number of politically competitive districts, measured by creating a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses.

2. Not later than July 1, 2023, and thereafter not later than 180 days from the release of the decennial census of the United States, the Commission shall approve a redistricting plan for the Nevada State Senate, the Nevada State Assembly, and Nevada's Congressional Districts, after providing public notice of each proposed final plan and allowing sufficient time for public review and comment. A final plan may be approved by the Commission only upon at least five affirmative votes, including at least one Commissioner registered with the largest political party, one Commissioner registered with the second largest political party, and one Commissioner not registered or affiliated with the largest or second largest political party, according to voter

1 *registration data published by the Secretary of State as of the earliest day in January*
2 *of the redistricting year.*

3 **Section 5C. Severability.**

4 *Should any part of this Amendment be declared invalid, or the application thereof to*
5 *any person, thing, or circumstance be held invalid, such invalidity shall not affect the*
6 *remaining provisions or application of this Amendment which can be given effect*
7 *without the invalid provision or application, and to this end the provisions of this*
8 *Amendment are declared to be severable. This Section shall be construed broadly to*
9 *preserve and effectuate the purpose of this Amendment.*

10 7. Fair Maps denies the allegations contained in Paragraph 7, except admits that the
11 text of the Petition is as stated in Paragraph 6 of this Answer.

12 8. Fair Maps denies the allegations contained in Paragraph 8, except admits that the
13 text of the Petition is as stated in Paragraph 6 of this Answer.

14 9. Fair Maps denies the allegations contained in Paragraph 9, except admits that the
15 text of the Petition is as stated in Paragraph 6 of this Answer.

16 10. Fair Maps denies the allegations contained in Paragraph 10, except admits that
17 the text of the Petition is as stated in Paragraph 6 of this Answer.

18 11. Fair Maps denies the allegations contained in Paragraph 11, except admits that
19 the text of the Petition is as stated in Paragraph 6 of this Answer.

20 12. Fair Maps denies the allegations contained in Paragraph 12, except admits that
21 the text of the Petition is as stated in Paragraph 6 of this Answer.

22 13. Fair Maps denies the allegations contained in Paragraph 13, except admits that
23 the text of the Petition is as stated in Paragraph 6 of this Answer.

24 14. Fair Maps denies the allegations contained in Paragraph 14, except admits that
25 the text of the Description of Effect states:

26 This measure will amend the Nevada Constitution to establish an Independent
27 Redistricting Commission to oversee the mapping of fair and competitive electoral
28 districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

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

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The Commission will ensure, to the extent possible, that the electoral districts comply with the United States Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment will require redistricting by the Commission beginning in 2023 and thereafter following each federal census.

FIRST CAUSE OF ACTION

(Misleading Description of Effect: “Independent”)

- 15. Fair Maps denies the allegations contained in Paragraph 15.
- 16. Fair Maps denies the allegations contained in Paragraph 16.
- 17. Fair Maps denies the allegations contained in Paragraph 17.
- 18. Fair Maps denies the allegations contained in Paragraph 18.
- 19. Fair Maps denies the allegations contained in Paragraph 19.
- 20. Fair Maps denies the allegations contained in Paragraph 20.
- 21. Fair Maps denies the allegations contained in Paragraph 21.
- 22. Fair Maps denies the allegations contained in Paragraph 22.

SECOND CAUSE OF ACTION

(Misleading Description of Effect: “Fair and competitive maps”)

- 23. Fair Maps denies the allegations contained in Paragraph 23.
- 24. Fair Maps denies the allegations contained in Paragraph 24.
- 25. Fair Maps denies the allegations contained in Paragraph 25.
- 26. Fair Maps denies the allegations contained in Paragraph 26.
- 27. Fair Maps denies the allegations contained in Paragraph 27.
- 28. Fair Maps denies the allegations contained in Paragraph 28.

THIRD CAUSE OF ACTION

(Misleading Description of Effect: “Practical and Fiscal Impacts”)

- 29. Fair Maps denies the allegations contained in Paragraph 29.
- 30. Fair Maps denies the allegations contained in Paragraph 30.

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31. Fair Maps denies the allegations contained in Paragraph 31.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses to the Complaint and to each cause of action, claim and allegation contained therein, Fair Maps alleges as follows:

1. Neither the Complaint nor any cause of action therein states a claim for which relief may be granted.
2. That the allegations in the Complaint are barred by any applicable equitable doctrine.
3. That all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were unavailable upon the filing of the Answer. Therefore, Fair Maps reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

PRAYER FOR RELIEF

WHEREFORE, Fair Maps prays as follows:

1. That Plaintiff take nothing by way of the Complaint and that the same be dismissed with prejudice;
2. That the Petition is valid and complies with Nevada law;
3. In the alternative that the Petition, with a revised or amended description of effect, is valid and complies with Nevada law;
4. That judgment be entered in favor of Fair Maps;
5. For an award of attorney's fees and costs incurred in the defense of this action;
and
6. For such other and further relief as the Court deems just and proper under all the circumstances of this mater.

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AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

Dated: December 13, 2019

MCDONALD CARANO

By: 
Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Defendant Fair Maps Nevada PAC

1 **CERTIFICATE OF SERVICE**

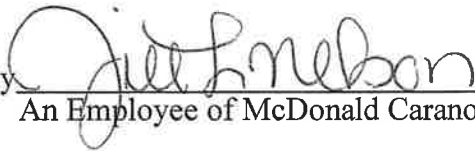
2 I hereby certify that I am an employee of McDONALD CARANO LLP and that on
3 December 13, 2019, I served the within **ANSWER TO COMPLAINT FOR**
4 **DECLARATORY RELIEF** on the parties in said case by placing a true copy thereof in the
5 United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501
6 addressed as follows:

7 Kevin Benson, Esq.
8 Benson Law, LLC
9 123 Nye Lane, Suite #487
10 Carson City, NV 89706

11 I am familiar with the firm's practice for collection and processing of correspondence for
12 mailing with the United States Postal Service. The envelope addressed to the parties were
13 sealed and placed for collection by the firm's messengers and will be deposited today with the
14 United States Postal Service in the ordinary course of business.

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

16 Executed on December 13, 2019 at Reno, Nevada.

17 By 
18 An Employee of McDonald Carano LLP

19 4837-7475-6526, v. 1

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McDONALD  CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
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*Attorneys for Defendant
Fair Maps Nevada PAC*

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

* * *

10 REV. LEONARD JACKSON,
11
12 Plaintiff,
13
14 vs.
15 FAIR MAPS NEVADA PAC, and
16 BARBARA CEGAVSKE, in her official
17 capacity as Nevada Secretary of State,
18
19 Defendants.

Case No. 19 OC 00209 1B
Dept. No. I

**DEFENDANT FAIR MAPS NEVADA PAC's ANSWERING BRIEF
IN RESPONSE TO PLAINTIFF'S OPENING BRIEF IN SUPPORT OF COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

20 Defendant FAIR MAPS NEVADA PAC, a registered Nevada political action committee
21 ("Fair Maps"), by and through its attorneys Adam Hosmer-Henner, Esq. and Lucas Foletta, Esq.
22 of MCDONALD CARANO LLP, hereby submits its Answering Brief in Response to Plaintiff Rev.
23 Leonard Jackson's ("Plaintiff") Opening Brief in Support of Complaint for Declaratory Relief
24 and Injunctive Relief ("Opening Brief" or "Op. Br."). This Answering Brief is supported by the
25 following Memorandum of Points and Authorities, the pleadings and papers on file with the
26 Court, and any oral argument entertained by the Court at a hearing in this matter.

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I. INTRODUCTION

The only consistency within Plaintiff’s lawsuit is that it is an attempt to defend one anti-democratic tactic, political and racial gerrymandering, through the use of another anti-democratic tactic, meritless pre-election litigation to keep ballot initiatives away from the voters. *See, e.g., Rucho v. Common Cause*, 139 S. Ct. 2484, 2525 (2019) (Kagan, J., dissenting) (describing gerrymandering as “anti-democratic in the most profound sense”). Plaintiff directly seeks to prevent Fair Maps’ Initiative Petition #C-02-2019 (“Petition”), Exhibit 1, from “appear[ing] on the general election ballot for 2020.” Op. Br. 1. Yet throughout the Opening Brief, Plaintiff struggles to articulate a basis for its opposition to the Petition and instead seems to argue that the Petition does not go far enough. Op. Br. 6 (arguing that the proposed amendment does not completely remove “political influence over individual commissioners and the Commission itself”); Op. Br. 9-10 (arguing that the proposed amendment “requires neither fairness nor competitiveness” but only makes it a factor to be considered “to the extent practicable”). As Plaintiff’s arguments reflect policy differences rather than legal objections, Plaintiff’s remedy is to propose an alternative initiative to the public, not to litigate against Fair Maps’ Petition.

The description of effect, limited to two-hundred words, must be considered holistically and not hyper-technically. Fair Maps’s Petition seeks to transfer responsibility for redistricting from the Nevada Legislature to a newly established commission. Ex. 1. Plaintiff introduces policy arguments about the description of effect that should be reserved for the political process or ballot arguments rather than the courtroom. The description of effect, however, accurately and succinctly describes the proposed amendment to voters and need not address Plaintiff’s policy objections. If Plaintiff disagrees with this policy, he may decline to sign the Petition or campaign against it, but policy disagreements do not render the description of effect legally invalid.

Most importantly, while Plaintiff asks the Court to prohibit the Petition from appearing on the ballot, this is relief that the Court cannot grant. As the sole challenge in this litigation is based on the Petition’s description of effect, the sole relief that the Court can grant is to amend the description of effect based on its factual findings. Fair Maps has proactively provided five

1 alternative descriptions of effect attached to this Answering Brief. Exhibit 2. Should the Court
2 accept any of Plaintiff's arguments, it can select an alternative description from Exhibit 2; Fair
3 Maps can provide additional alternatives consistent with the Court's factual findings in this
4 matter; or the Court can further amend the description of effect. Under no circumstance can the
5 Petition, which Plaintiff does not challenge, be barred from the ballot in violation of Nevadans'
6 right to propose amendments to the Nevada Constitution.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 Fair Maps filed the Petition on November 4, 2019 to amend the Nevada Constitution by
9 adding a new section, Section 5A, to the Nevada Constitution. Ex. 1. The Petition includes the
10 following description of effect:

11 This measure will amend the Nevada Constitution to establish an
12 Independent Redistricting Commission to oversee the mapping of fair and
13 competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S.
14 House of Representatives.

15 The Commission will consist of seven Nevada voters, four who will be
16 appointed by the leadership of the Nevada Legislature, and three who are
17 unaffiliated with the two largest political parties who will be appointed by the
18 other four commissioners. Commissioners may not be partisan candidates,
19 lobbyists, or certain relatives of such individuals. All meetings of the Commission
20 shall be open to the public who shall have opportunities to participate in hearings
21 before the Commission.

22 The Commission will ensure, to the extent possible, that the electoral
23 districts comply with the United States Constitution, have an approximately equal
24 number of inhabitants, are geographically compact and contiguous, provide equal
25 opportunities for racial and language minorities to participate in the political
26 process, respect areas with recognized similarities of interests, including racial,
27 ethnic, economic, social, cultural, geographic, or historic identities, do not unduly
28 advantage or disadvantage a political party, and are politically competitive.

This amendment will require redistricting by the Commission beginning in
2023 and thereafter following each federal census.

Ex. 1.

Plaintiff filed a Complaint and the Opening Brief on November 26, 2019, which was the
last possible day (resulting in maximum delay) to file such a Complaint pursuant to NRS
295.065(1). The Complaint is limited to a challenge of the Petition's description of effect.

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1 **III. LEGAL STANDARD**

2 Article 19, Section 2 of the Nevada Constitution enshrines the people’s right to amend
3 the Nevada Constitution by initiative petition. Specifically, it states that “the people reserve to
4 themselves the power to propose, by initiative petition, . . . amendments to this Constitution.”
5 Nev. Const. art. 19, § 2(1). The Nevada Constitution further provides that the Legislature “may
6 provide by law for procedures to *facilitate* the operation thereof.” *Id.* art. 19, § 5 (emphasis
7 added). In interpreting such laws, the courts “must make every effort to sustain and preserve the
8 people’s constitutional right to amend their constitution through the initiative process.”
9 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247
10 (2006).

11 NRS 295.009(1)(b) provides that a petition must “[s]et forth, in not more than 200
12 words, a description of the effect of the initiative . . . if the initiative . . . is approved by the
13 voters.” NRS 295.009(1)(b). The Nevada Supreme Court has noted that “[a] description of effect
14 serves a limited purpose to facilitate the initiative process,” and that a description of effect
15 should be reviewed with an eye toward that limited purpose. *Educ. Initiative PAC v. Comm. to*
16 *Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013). Thus, while a description of
17 effect need not “delineate every effect that an initiative will have,” it must be “a straightforward,
18 succinct, and nonargumentative statement of what the initiative will accomplish and how it will
19 achieve those goals.” *Id.* at 38, 293 P.3d at 876. A description of effect cannot “be deceptive or
20 misleading.” *Id.* at 42, 293 P.3d at 879.

21 In reviewing a description of effect, “it is inappropriate to parse the meanings of the
22 words and phrases used in a description of effect” as closely as a reviewing court would a
23 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
24 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
25 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
26 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
27 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

28 //

1 **IV. ARGUMENT**

2 “The [gerrymandering] practices challenged in these cases imperil our system of
3 government. Part of the Court’s role in that system is to defend its foundations. None is more
4 important than free and fair elections.” *Rucho*, 139 S. Ct. at 2525 (Kagan, J., dissenting). In
5 response to the majority decision in *Rucho* where the U.S. Supreme Court held that partisan
6 gerrymandering claims were nonjusticiable political questions, political initiatives have been
7 launched across the country to protect voting rights. *See* League of Women Voters of the US,
8 *Redistricting*, LWV (last visited Dec. 17, 2019), <https://www.lwv.org/voting-rights/redistricting>,
9 (“We promote transparent and accountable redistricting processes and to end hyper-partisan
10 practices that don't benefit constituents. We believe responsibility for fair redistricting should be
11 vested in an independent special commission, with membership that reflects the diversity of the
12 unit of government. The League works in states across the country to pass ballot initiatives to
13 institute independent redistricting commissions.”). The Petition is part of this nationwide effort
14 and seeks to amend the Nevada Constitution to transfer responsibility for redistricting from the
15 Nevada Legislature to a newly established independent commission.

16 Plaintiff concedes that the current redistricting process is politicized insofar as it is
17 conducted by the Legislature. Despite this concession, Plaintiff seems to argue that Fair Maps
18 should have gone farther—created more independence and fairness in redistricting—in order to
19 support the language in the description of effect. Instead of proposing an alternative description
20 of effect to correspond more closely to his interpretation of the Petition or proposing a separate
21 initiative, Plaintiff requests that the Court preclude the Petition from reaching the ballot. This
22 clearly reveals Plaintiff’s interest is not in the accuracy of the description of effect, but rather in
23 preserving the status quo.

24 Plaintiff’s central argument is that the proposed redistricting commission is not
25 sufficiently insulated from political pressure to prevent partisan gerrymandering because four of
26 the seven members of the commission will be appointed by members of the Legislature. He
27 contends that as a result, the districts it generates will not be fair and competitive, and therefore
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the description of effect’s characterization of the commission as independent and the districts it will be asked to generate as fair and competitive is improper. Op. Br. 8-10.

A. Describing the Redistricting Commission as Independent is Neither Deceptive nor Misleading.

Plaintiff asserts that the redistricting commission described in the Petition is not independent because a majority of its members will be appointed by legislative leadership and because the Legislature will determine whether and to what extent to fund the commission. Op. Br. 4-9. Plaintiff asserts that the Petition would allow the Legislature “to exercise substantial, if not total, control over the Commission by determining whom to appoint and how or whether to fund the Commission.” *Id.* at 9. Plaintiff then contends that because the commission does not meet his definition of independent, the description of effect’s reference to the creation of an “independent redistricting commission” is misleading and deceptive because the commission will not be immune from the political influence of the Legislature. *Id.* at 8-9.

The Nevada Supreme Court has held that in reviewing a description of effect, the court “must take a holistic approach to determine whether the description is a straightforward, succinct, and nonargumentative summary of an initiative’s purpose and how that purpose is achieved.” *Educ. Initiative PAC*, 129 Nev. at 48, 293 P.3d at 883. This is the opposite of Plaintiff’s textual approach that turns on differing definitions of the word independent. Plaintiff asks the Court to do exactly what the Nevada Supreme Court has said it cannot do—parse the meanings of words or phrases in the Petition. *See id.*

The description of effect states clearly the purpose of the Petition: to amend the Nevada Constitution to establish an independent redistricting commission to oversee the mapping of fair and competitive electoral districts in Nevada. Ex. 1. It states with equal clarity how that purpose will be achieved: (1) by ensuring that the commission is composed of a bipartisan group of Nevada voters; (2) by requiring transparency in the mapping process; and (3) by providing specific criteria for the commission to employ in drawing electoral districts. *Id.*

Contrary to Plaintiff’s assertions, the characterization of the redistricting commission as independent is not only accurate but entirely consistent with the purpose of the Petition. In the

1 context of the Petition, independence connotes the fact that the decisions of the commission will
2 not be subject to substantive control, oversight, or review of the Legislature. Toward this end,
3 the Petition explicitly removes the mapping responsibility from the Legislature, stating that
4 “[t]he powers granted to the Commission are legislative functions not subject to *the control or*
5 *approval of the Legislature and are exclusively reserved to the Commission.*” Ex. 1 (emphasis
6 added). Thus, the Legislature has no authority to review, modify or amend those decisions,
7 rendering the acts of the commission independent of the Legislature’s control. That the
8 Legislature will appoint four of the seven members of the commission and have some control
9 over its funding level does not change this fact.

10 Plaintiff’s citation to *Las Vegas Taxpayer Accountability Committee v. City Council of*
11 *Las Vegas*, 125 Nev. 165, 208 P.3d 429 (2009), is unpersuasive. While Plaintiff correctly points
12 out that in that case the Nevada Supreme Court found the description of effect at issue to be
13 misleading and deceptive, it did so because “the description of effect materially fails to
14 accurately identify the consequences of the referendum’s passage.” *Id.* at 184, 208 P.3d at 441.
15 The material failure identified by the court was that the petition at issue would have affected all
16 redevelopment plans, not just new redevelopment plans as stated by the description of effect. *Id.*
17 In this case, the characterization of the commission as independent cannot reasonably be
18 construed to be a material failure to identify a consequence of the passage of the Petition.
19 Independent is merely an adjective used to describe the nature of the commission. Plaintiff may
20 disagree with the characterization, but the characterization in no way supports the conclusion
21 that an effect of the Petition is not included.

22 Even if Plaintiff could persuade the Court that the term independent was misleading, the
23 description of effect can be amended to incorporate this finding by modifying or excising the
24 term.

25 **B. The Petition Promotes Fair and Competitive Electoral Districts.**

26 Plaintiff opposes the Petition and argues that it will not result in fair and competitive
27 electoral districts. Op. Br. 9. Plaintiff’s argument is not tied to the test that this Court must
28 employ in evaluating the description of effect. As the Nevada Supreme Court has held, the

1 description of effect “need not be the best possible statement of a proposed measure’s intent,”
2 *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 889, 141 P.3d 1224, 1232 (2006), but “must be a
3 straightforward, succinct, and nonargumentative statement of what the initiative will accomplish
4 and how it will achieve those goals,” *Educ. Initiative PAC*, 129 Nev. at 38, 293 P.3d at 876. In
5 this case, the description informs the reader about the purpose of the Petition as the
6 establishment of an independent redistricting commission to oversee the adoption of fair and
7 competitive electoral maps. Ex. 1. And, it further specifies how the commission will do that. *Id.*
8 While Plaintiff is entitled to his opinion about whether the process contemplated will, in fact,
9 result in fair and competitive maps, the ultimate result is not relevant to whether the description
10 of effect accurately states the Petition’s purpose and how it intends to achieve it. Plaintiff does
11 not call into question the accuracy of the description of effect as a summary of the purpose of the
12 Petition, but instead registers disagreement with the likelihood that the structure of the Petition
13 will bring that purpose to fruition. That is not the legal test as it is a decision for the voters.

14 Plaintiff’s attempt to support his argument by claiming that the Petition invites or allows
15 various types of unfairness—in particular, partisan bias—is unavailing. Op. Br. 10. Plaintiff’s
16 argument turns on his assertion that various types of unfairness *could* affect the commission’s
17 processes such that the electoral maps it draws do not meet his definition of fair and competitive.
18 Here, again, Plaintiff’s argument fails because it is a critique of the Petition and not the
19 description of effect.

20 Even if Plaintiff could persuade the Court that the description of effect is invalid as
21 related to the definitions of fair and competitive, the description of effect can be amended to
22 incorporate the Court’s findings.

23 **C. Any Financial Impact of the Petition Is Hypothetical, Arguable, and Not a**
24 **Significant Aspect of the Petition.**

25 Plaintiff cannot do any more than guess as to whether the Petition will increase or
26 decrease the costs of redistricting in Nevada. The Nevada Constitution currently imposes a
27 “mandatory duty” upon the Nevada Legislature “at its first session after the taking of the
28 decennial census” to apportion the “number of Senators and Assemblymen . . . among legislative

1 districts which may be established by law, according to the number of inhabitants in them.” Nev.
2 Const. art. 4, § 5. Plaintiff does not provide the Court with any facts that could be determined
3 with certainty as to how the administrative costs of redistricting would be affected by the
4 Petition. Thus, these arguments should be reserved for the committees preparing the “pros and
5 cons for the ballot.” *Educ. Initiative PAC*, 129 Nev. at 45, 293 P.3d at 881.

6 A description of effect “does not necessarily need to explain every effect, or hypothetical
7 effects, but it does need to accurately set forth the main consequences of the referendum's
8 passage.” *No Solar Tax PAC v. Citizens for Solar & Energy Fairness*, No. 70146, 2016 WL
9 4182739, at *2 (Nev. Aug. 4, 2016). Plaintiff challenges the description of effect as failing to
10 inform voters of certain costs allegedly associated with the commission. Op. Br. 10. Plaintiff
11 claims redistricting is expensive but that the Petition fails to identify and describe these costs,
12 and he further claims the process contemplated by the Petition will result in additional litigation
13 costs. *Id.* at 10-11. He also claims that the Petition fails to note that the commission “will ‘undo’
14 whatever maps are drawn by the Legislature in 2021,” which will result in additional costs. *Id.*
15 Because these are all hypothetical effects based on Plaintiff’s unfounded speculation, they need
16 not be included in the description of effect.

17 Plaintiff’s argument regarding costs is based solely on his unsupported assertion that
18 certain hypothetical effects should be referenced in the description of effect. Op. Br. 12 (listing a
19 practical consequence as “potentially doubling the cost of redistricting for the 2020 census”).
20 First, there is no certainty that the proposed amendment would increase the costs of redistricting
21 and it is equally or more probable that the costs of redistricting would be reduced. The Petition
22 establishes a single redistricting process for each census cycle, while the Legislature can
23 currently re-draw the lines as many times as the Legislature deems appropriate. Moreover, the
24 cost of legislative redistricting can be very high for taxpayers, especially if the Legislature is
25 required to work in a special session. Second, there is no requirement that the Commission
26 “undo” any maps drawn by the Legislature in 2021. Op. Br. 11. The Commission has the option
27 to adopt the same maps drawn by the Legislature if the maps comply with the proposed
28 amendment. What the Legislature and Commission may choose to do in the future is not an

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effect that can be definitively conveyed to voters. Finally, Plaintiff’s assertion that there will be more litigation because of the standard imposed by the Petition is pure speculation. Legislative redistricting regularly draws legal challenges both in Nevada and nationally.

The administrative costs of redistricting are not part of the primary purpose of the Petition, nor do they represent a significant effect of the Petition. In *Coalition for Nevada’s Future v. RIP Commerce Tax, Inc., PAC*, the Nevada Supreme Court found that the referendum would “unbalance the state budget,” No. 69501, 2016 WL 2842925, at *4 (Nev. May 11, 2016), and in *Prevent Sanctuary Cities v. Haley*, the Nevada Supreme Court found that the initiative would “limit the power of local governments to address matters of local concern by impinging on their ability . . . to implement and carry out city programs and functions for the effective operation of local governments, such as policies regarding public health and safety.” No. 74966, 2018 WL 2272955, at *4 (Nev. May 16, 2018) (quotation marks omitted). The hypothetical and arguable administrative costs of the Petition are not of the same scope, import, or certainty as the above cases.

Even if Plaintiff could persuade the Court that the description of effect is invalid as related to the costs of redistricting, the description of effect can be amended to incorporate the Court’s findings.

D. The Court Can Amend the Description of Effect to Address Plaintiff’s Concerns.

The proponent of an initiative is afforded the opportunity to amend a description of effect to resolve any inadequacies identified by the Court. NRS 295.061(3). While the description of effect contained within the Petition is legally sufficient and holistically sound, in order to reach an amicable resolution and expedite the proceedings, Fair Maps has proactively drafted five alternative descriptions of effect for the Court’s consideration. Ex. 2. Should the Court determine that the Petition’s description of effect requires amendment, Fair Maps requests that the Court consider one of the alternative descriptions of effect or further revise the description of effect in accordance with the Court’s findings.

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In no event is Plaintiff entitled to the requested relief of prohibiting the Petition from appearing on the ballot. Such a result would deny the people's right to propose amendments to their principal governing document.

V. CONCLUSION


For all of the above reasons, the Court should deny Plaintiff's attempt to keep the Petition off the ballot.

Dated this 17th day of December, 2019.

AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

MCDONALD CARANO LLP

By: 
Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Defendant Fair Maps PAC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on December 17, 2019, I served the foregoing on the parties in said case by placing a true copy thereof in the United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501 addressed as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Barbara Cegasvke, Nevada Secretary of State
202 N. Carson Street
Carson City, NV 89701

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed to the 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 December 12, 2019 at Reno, Nevada.

By 
An Employee of McDonald Carano LLP

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McDONALD & CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
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Exhibit 1

Exhibit 1

State of Nevada - Initiative Petition – Constitutional Amendment

C-02-2019

FILED NV SOS
2019 NOV 4 PM 4:16

EXPLANATION: Matter in *bolded italics* is new language to be added to the Nevada Constitution by this Amendment. Matter in strikethrough is existing language in the Nevada Constitution to be deleted by this Amendment.

The People of the State of Nevada do enact as follows:

Section 1: Article 4, Section 5 of the Nevada Constitution is hereby amended to read as follows:

Section 5. Number of Senators and members of Assembly; apportionment. ~~Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third nor more than one-half of that of the members of the Assembly.~~

It shall be the mandatory duty of the Legislature at its first session after the taking of the decennial census of the United States in the year 1950, and after each subsequent decennial census, to fix by law the number of Senators and Assemblymen, ~~and apportion them among the several counties of the State, or among legislative districts which may be established by law, according to the number of inhabitants in them, respectively.~~

Section 2: Article 4 of the Nevada Constitution is hereby amended by adding thereto new sections to be designated as Sections 5A, 5B and 5C, to read as follows:

Section 5A. Apportionment; Creation of Independent Redistricting Commission.

- 1. There is created within the legislative branch of state government the Independent Redistricting Commission. It shall be the duty of the Commission in the year 2023, and after each subsequent decennial census of the United States, to apportion the number of Senators and Assemblymen among legislative districts established by the Commission and to apportion the number of representatives in the United States House of Representatives among districts established by the Commission.*
- 2. The Commission shall be composed of seven members who are registered and eligible to vote in Nevada, and who satisfy the qualification standards in subsection 3. The Senate Majority Leader, Senate Minority Leader, Speaker of the Assembly, and Assembly Minority Leader shall each appoint one Commissioner. The four Commissioners appointed in this manner shall appoint three additional Commissioners, each of whom, for at least four years immediately preceding their appointment, has not been registered or affiliated with the largest political party or the second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year, and none of whom, if registered or affiliated with a political party, is affiliated or registered with the same political party as another Commissioner.*
- 3. Within four years preceding appointment and during their term, no Commissioner may be a registered lobbyist; a candidate for a federal, state, or partisan local office; an elected official to a federal, state, or partisan local office; an officer or member of the governing body of a national, state, or local political party; a paid consultant or employee of a federal, state, or partisan local elected official or candidate, or of a political action committee, or of a committee sponsored by a political party, or of a committee that seeks to influence elections to federal, state, or partisan local offices; an employee of the Legislature; an employee of the State of Nevada, except for employees in the judicial branch, the armed forces, or a state institution of higher education; or related within the third degree of consanguinity or affinity to any individual disqualified under this subsection.*
- 4. The term of office of each Commissioner shall expire once the Commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete and shall expire no later than the release of the following decennial census of the United States.*

5. All meetings of the Commission shall be open to the public. The Commission shall ensure that the public has opportunities to view, present testimony, and participate in hearings before the Commission. All Commission materials shall be public records.

6. The Commission shall adopt rules to govern its administration and operation.

7. The powers granted to the Commission are legislative functions not subject to the control or approval of the Legislature and are exclusively reserved to the Commission.

Section 5B. Criteria for Determination of Districts; Approval of Final Plans.

1. In adopting a redistricting plan, the Independent Redistricting Commission shall use the following criteria, in the order listed, to draw districts: Ensure that districts comply with the United States Constitution and applicable federal law; Ensure that districts have an approximately equal number of inhabitants; Ensure that districts are geographically contiguous; Ensure that districts are not drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or elect representatives of their choice, whether by themselves or voting in concert with other persons; Ensure that districts, when considered on a statewide basis, do not unduly advantage or disadvantage a political party; Ensure that districts reflect, to the extent possible, county, city, and township boundaries; Minimize, to the extent practicable, the division of communities of interest, meaning an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities, but not including common relationships with political parties or political candidates; Ensure that districts are reasonably compact; and to the extent practicable, after complying with the requirements above, consider the number of politically competitive districts, measured by creating a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses.

2. Not later than July 1, 2023, and thereafter not later than 180 days from the release of the decennial census of the United States, the Commission shall approve a redistricting plan for the Nevada State Senate, the Nevada State Assembly, and Nevada's Congressional Districts, after providing public notice of each proposed final plan and allowing sufficient time for public review and comment. A final plan may be approved by the Commission only upon at least five affirmative votes, including at least one Commissioner registered with the largest political party, one Commissioner registered with the second largest political party, and one Commissioner not registered or affiliated with the largest or second largest political party, according to voter registration data published by the Secretary of State as of the earliest day in January of the redistricting year.

Section 5C. Severability.

Should any part of this Amendment be declared invalid, or the application thereof to any person, thing, or circumstance be held invalid, such invalidity shall not affect the remaining provisions or application of this Amendment which can be given effect without the invalid provision or application, and to this end the provisions of this Amendment are declared to be severable. This Section shall be construed broadly to preserve and effectuate the purpose of this Amendment.

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

This measure will amend the Nevada Constitution to establish an Independent Redistricting Commission to oversee the mapping of fair and competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

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

The Commission will ensure, to the extent possible, that the electoral districts comply with the United States Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment will require redistricting by the Commission beginning in 2023 and thereafter following each federal census.

County of _____ **(Only registered voters of this county may sign below)**
 Petition District _____ **(Only registered voters of this petition district may sign below)**

This Space For
Office Use Only

1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE _____ DATE _____ / /	CITY _____	COUNTY _____
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE _____ DATE _____ / /	CITY _____	COUNTY _____
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE _____ DATE _____ / /	CITY _____	COUNTY _____
4	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE _____ DATE _____ / /	CITY _____	COUNTY _____
5	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE _____ DATE _____ / /	CITY _____	COUNTY _____

DESCRIPTION OF EFFECT

This measure will amend the Nevada Constitution to establish an Independent Redistricting Commission to oversee the mapping of fair and competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

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

The Commission will ensure, to the extent possible, that the electoral districts comply with the United States Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment will require redistricting by the Commission beginning in 2023 and thereafter following each federal census.

County of _____
 Petition District _____

(Only registered voters of this county may sign below)

(Only registered voters of this petition district may sign below)

This Space For
Office Use Only

6	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	DATE	CITY COUNTY
7	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	DATE	CITY COUNTY

Place Affidavit on last page of document.

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)

COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this _____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

**NOTICE OF INTENT TO CIRCULATE
STATEWIDE INITIATIVE OR
REFERENDUM PETITION**

FILED NV SOS
2019 NOV 4 PM 4:14

State of Nevada



Secretary of State Barbara K. Cegavske

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Sondra Cosgrove

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Sondra Cosgrove
- 2.
- 3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X Sondra Cosgrove
Signature of Petition Filer

11/4/2019
Date

Exhibit 2

Exhibit 2

Exhibit 2 – Proposed Alternative Descriptions of Effect

Alternative 1

A. Redline Version

This measure will amend the Nevada Constitution to establish ~~an Independent Redistricting Commission~~ a citizen redistricting commission to oversee the mapping of ~~fair and competitive~~ electoral districts for the Nevada Senate, ~~Nevada~~ Assembly, and U.S. House of Representatives.

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

The Commission will ensure, to the extent possible, that the ~~electoral~~ districts comply with the ~~United States~~ U.S. Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment will require redistricting by the Commission beginning in 2023 and ~~thereafter~~ following each federal census and may, but is not certain to, result in the expenditure of state funds that would not have otherwise been spent.

B. Clean Version

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

The Commission will have seven members, four appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by the other four commissioners. Commissioners may not be partisan candidates, lobbyists, or certain relatives of such individuals. All meetings of the Commission shall be open to the public. The Commission will ensure, to the extent possible, that the districts comply with the U.S. Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment will require redistricting by the Commission beginning in 2023 and following each federal census and may, but is not certain to, result in the expenditure of state funds that would not have otherwise been spent.

Alternative 2

A. Redline Version

This measure will amend the Nevada Constitution to establish ~~an Independent Redistricting Commission~~ a redistricting commission to oversee the mapping of ~~fair and competitive~~ electoral districts for the Nevada Senate, ~~Nevada~~ Assembly, and U.S. House of Representatives.

The Commission will ~~consist of~~ have seven ~~members~~ Nevada voters, four who will be appointed by the leadership of the ~~Nevada~~ Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by the other four commissioners. Commissioners may not be partisan candidates, lobbyists, or certain relatives of such individuals. ~~All m~~ Meetings of the Commission shall be open to the public ~~who shall have opportunities to participate in hearings before the Commission.~~

The Commission will ensure, to the extent possible, that the ~~electoral~~ districts comply with the ~~United States~~ U.S. Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment will require redistricting ~~by the Commission~~ beginning in 2023 and ~~thereafter following~~ after each federal census and may, but is not certain to, increase the cost of redistricting in the short term.

B. Clean Version

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

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

The Commission will ensure, to the extent possible, that the districts comply with the U.S. Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment will require redistricting beginning in 2023 and after each federal census and may, but is not certain to, increase the cost of redistricting in the short term.

Alternative 3

A. Redline Version

This measure will amend the Nevada Constitution to establish ~~an Independent Redistricting Commission~~ a citizen redistricting commission to oversee the mapping of ~~fair and competitive~~ electoral districts for the Nevada Senate, ~~Nevada~~ Assembly, and U.S. House of Representatives.

The Commission will ~~consist of~~ have seven ~~Nevada voters~~ members, four who will be appointed by a bipartisan group of Nevada legislators ~~the leadership of the Nevada Legislature~~, and three who ~~will be~~ are ~~unaffiliated with the two largest political parties~~ who will be appointed ~~appointed~~ by the other four commissioners. ~~The legislator appointed commissioners are prohibited from appointing commissioners that are affiliated with the two largest political parties.~~ Commissioners may not be partisan candidates, lobbyists, or certain relatives of such individuals. ~~All meetings of the Commission shall be open to the public who shall have opportunities to participate in hearings before the Commission.~~

The mapping of electoral districts by the commission will ensure to the extent practicable against the influence of partisan politics in the creation of electoral districts. The Commission will be legally bound to

~~The Commission will ensure, to the extent possible and among other things, that the electoral districts comply with the United States Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.~~

~~This amendment will require redistricting by the Commission beginning in 2023 and thereafter following each federal census may, but is not certain to, require the expenditure of additional state funds on redistricting.~~

B. Clean Version

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

The Commission will have seven members, four who will be appointed by a bipartisan group of Nevada legislators and three who will be appointed by the other four commissioners. The legislator appointed commissioners are prohibited from appointing commissioners that are affiliated with the two largest political parties. Commissioners may not be partisan candidates, lobbyists, or certain relatives of such individuals.

The mapping of electoral districts by the commission will ensure to the extent practicable against the influence of partisan politics in the creation of electoral districts. The Commission will be legally bound to ensure, to the extent possible and among other things, that the electoral districts comply with the United States Constitution, provide equal opportunities for racial and language minorities to participate in the political process, respect areas with recognized similarities of interests, including racial, ethnic, economic, social, cultural, geographic, or historic identities, and are politically competitive.

This amendment will require redistricting beginning in 2023 and may, but is not certain to, require the expenditure of additional state funds on redistricting.

Alternative 4

A. Redline Version

This measure will amend the Nevada Constitution to establish an Independent Redistricting Commission ~~a commission that will to oversee the mapping of fair and competitive~~ draw the electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will consist of seven Nevada voters, four who ~~will be~~ are appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by ~~the other four commissioners~~ those four. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals ~~partisan candidates, lobbyists, or certain relatives of such individuals. The Commission will require funding by the legislature to perform its duties. All meetings of the Commission meetings shall will~~ be open to the public, ~~who and the public will shall~~ shall have opportunities to participate in ~~hearings before the Commission~~ hearings.

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

This amendment will require the redrawing of districts in 2023 and after each federal census. ~~redistricting by the Commission beginning in 2023 and thereafter following each federal census.~~

B. Clean Version

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

The Commission will consist of seven Nevada voters, four who are appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by those four. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals. The Commission will require funding by the legislature to perform its duties. Commission meetings will be open to the public, and the public will have opportunities to participate in Commission hearings.

The Commission will ensure, to the extent possible, that the electoral districts comply with the United States Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment will require the redrawing of districts in 2023 and after each federal census.

Alternative 5

A. Redline Version

This measure will amend the Nevada Constitution to establish an Independent Redistricting Commission ~~commission to to oversee the mapping of fair and competitive~~ draw the electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

The Commission will consist of seven Nevada voters, four who ~~will be~~ appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by ~~the other four commissioner~~ those four. Commissioners may not be ~~elected officials, candidates, lobbyists, or certain relatives of such individuals~~ partisan candidates, lobbyists, or certain relatives of such individuals. The Commission will require funding by the legislature to perform its duties. All meetings of the Commission meetings shall will be open to the public ~~who shall have opportunities to~~ who may participate in ~~hearings before the Commission~~ hearings.

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

This amendment ~~will require~~ requires ~~the redrawing of districts in 2023 and after each federal census.~~ redistricting by the Commission beginning in 2023 and thereafter following each federal census. ~~and may require expending additional state funds on redistricting.~~

B. Clean Version

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

The Commission will consist of seven Nevada voters, four who are appointed by the leadership of the Nevada Legislature, and three who are unaffiliated with the two largest political parties who will be appointed by those four. Commissioners may not be elected officials, candidates, lobbyists, or certain relatives of such individuals. The Commission will require funding by the legislature to perform its duties. Commission meetings will be open to the public who may participate in Commission hearings.

The Commission will ensure, to the extent possible, that the electoral districts comply with the U.S. Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment requires the redrawing of districts in 2023 and after each federal census and may require expending additional state funds on redistricting.

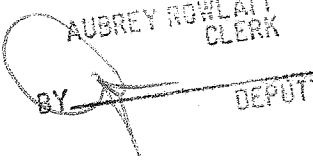
Exhibit 1

Exhibit 1

BENSON LAW NEVADA
123 W. Nye Lane, Suite 478
Carson City, NV 89706
(775) 884-0838

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KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
BENSON LAW, LLC.
123 W. Nye Lane, Suite #487
Carson City, NV 89706
Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com
Attorneys for Plaintiff

REC'D & FILED
2020 FEB -5 PM 2:40
AUBREY ROWLATT
CLERK
BY  DEPUTY

Electronically Filed
Feb 12 2020 10:45 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

REV. LEONARD JACKSON,
Plaintiff,

v.

FAIR MAPS NEVADA PAC, and
BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,

Defendants.

Case No.: 19 OC 00209 1B

Dept. No.: I

NOTICE OF APPEAL

Plaintiff Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of Benson Law Nevada, hereby appeals the Order entered by the District Court on January 2, 2020 and served on January 6, 2020.

Dated this 5th day of February, 2020.

BENSON LAW, LLC

By: 

KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
123 W. Nye Lane, Suite #487
Carson City, NV 89706
Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com

BENSON LAW NEVADA
123 W. Nye Lane, Suite 478
Carson City, NV 89706
(775) 884-0838

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of Benson Law, LLC, and that on this date, I caused the foregoing Notice of Appeal to be served to all parties to this action by:

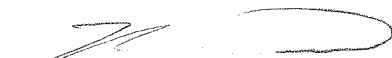
- Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada
- Hand-delivery - via Reno/Carson Messenger Service
- Facsimile
- E-Mail (courtesy copy)
- Federal Express, UPS, or other overnight delivery
- E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
- E-filing through the federal courts' CM / ECF filing and service system.

fully addressed as follows:

Adam Hosmer-Henner
Lucas Folletta
McDONALD CARANO
100 West Liberty Street, Tenth Floor
Reno, Nevada 89501
Attorneys for Defendant Fair Maps

Greg Zunino
Office of the Attorney General
100 N. Carson Street
Carson City, Nevada 89701
Attorneys for Defendant Secretary of State

Dated: 2/5/20


An employee of Benson Law, LLC

BENSON LAW NEVADA
123 W. Nye Lane, Suite 478
Carson City, NV 89706
(775) 884-0838

1 KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
2 BENSON LAW, LLC.
123 W. Nye Lane, Suite #487
3 Carson City, NV 89706
4 Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com
5 Attorneys for Plaintiff

REC'D & FILED
2020 FEB -5 PM 2:40
AUBREY ROWLATT
CLERK
BY _____ DEPUTY

6
7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR CARSON CITY**

9
10 REV. LEONARD JACKSON,
11 Plaintiff,
12 v.
13 FAIR MAPS NEVADA PAC, and
BARBARA CEGAVSKE, in her official
14 capacity as Nevada Secretary of State,
15 Defendants.

Case No.: 19 OC 00209 1B
Dept. No.: I

CASE APPEAL STATEMENT

17 Plaintiff Rev. Leonard Jackson, by and through counsel, Kevin Benson, Esq. of Benson Law
18 Nevada, hereby submits the Case Appeal Statement:

19 **1. Name of appellant filing this case appeal statement:**

20 Rev. Leonard Jackson

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

22 The Honorable James T. Russell.

23 **3. Identify each appellant and the name and address of appellate counsel:**

24 The only appellant is Rev. Leonard Jackson, represented by Kevin Benson of Benson Law
25 Nevada, 123 W. Nye Lane, Suite 487, Carson City NV 89706.

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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent:

Respondent: Fair Maps Nevada
Counsel: Adam Hosmer-Henner
Lucas Folletta
McDONALD CARANO
100 West Liberty Street, Tenth Floor
Reno, Nevada 89501

Respondent: Barbara Cegavske, Secretary of State
Counsel: Greg Zunino
Office of the Attorney General
100 N. Carson Street
Carson City, Nevada 89701

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 such order):

All attorneys identified above are licensed to practice in Nevada.

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

Retained.

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

Retained.

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

No.

9. Indicate the date the proceedings commenced in the district court:

November 26, 2019.

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

This is a challenge to a ballot initiative pursuant to NRS 295.061 and 295.009(1)(b) based on the initiative's inaccurate and misleading language and description of effect. The initiative's

1 description of effect stated, among other things, that it would create an “independent” redistricting
2 commission to draw “fair and competitive” electoral districts.

3 The Plaintiff alleged, among other things, that this description is false and misleading because
4 the commission the initiative would create is not in fact “independent,” nor does the initiative
5 actually require the commission to create “fair and competitive” electoral districts.

6 The Defendant conceded that it was inaccurate and misleading to represent the commission as
7 “independent” and to represent to voters that it would create “fair and competitive” districts. The
8 Defendant requested the district court to rewrite and approve the description of effect. The Plaintiff
9 argued that the district court lacked authority to rewrite the initiative’s description of effect, and that
10 the district court’s role is simply to make findings regarding the adequacy of the description included
11 with the initiative. In light of the Defendant’s concession that the proposed commission would not in
12 fact be “independent,” the Plaintiff also argued that the text of the initiative itself is misleading
13 because it prominently states that it is creating the “Independent Redistricting Commission” in the
14 legislative branch of government.

15 The district court agreed with Plaintiff that the description of effect was inaccurate and
16 misleading, and violated NRS 295.009(1)(b). However, the district court proceeded to rewrite the
17 description of effect, and stated in its order that it did so “in consultation with the parties.” Plaintiff
18 did not assent to this process, and did not “consult” with the district court or the opposing party on
19 the rewritten description of effect. Plaintiff maintained that the district court lacked the authority to
20 rewrite the description of effect.

21 Additionally, the district court failed to make specific findings of fact or law regarding the
22 actual effect of the initiative and the inadequacy of the description of effect. The district court also
23 failed to make any ruling regarding the misleading language in the initiative itself.

24 **11. Indicate whether the case has previously been the subject of an appeal to or original writ**
25 **proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**
26 **number of the prior proceeding:**

26 None.

27 ////

28 ////

BENSON LAW NEVADA
123 W. Nye Lane, Suite 478
Carson City, NV 89706
(775) 884-0838

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


No.

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

This case is not likely to settle because it involves an interpretation of the district court's role and jurisdiction under NRS 295.061.

Dated this 5th day of February, 2020.

BENSON LAW, LLC

By: 

KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
123 W. Nye Lane, Suite #487
Carson City, NV 89706
Telephone: (775) 884-0838
Email: kevin@bensonlawnv.com

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of Benson Law, LLC, and that on this date, I caused the foregoing Case Appeal Statement to be served to all parties to this action by:

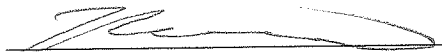
- Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada
- Hand-delivery - via Reno/Carson Messenger Service
- Facsimile
- E-Mail (courtesy copy)
- Federal Express, UPS, or other overnight delivery
- E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
- E-filing through the federal courts' CM / ECF filing and service system.

fully addressed as follows:

Adam Hosmer-Henner
Lucas Folletta
McDONALD CARANO
100 West Liberty Street, Tenth Floor
Reno, Nevada 89501
Attorneys for Defendant Fair Maps

Greg Zunino
Office of the Attorney General
100 N. Carson Street
Carson City, Nevada 89701
Attorneys for Defendant Secretary of State

Dated: 2/5/20


An employee of Benson Law, LLC

Judge: RUSSELL, JUDGE JAMES
TODD

Case No. 19 OC 00209 1B

Ticket No.
CTN:

JACKSON, REV LEONARD

By:

-vs-

CEGAVSKE, BARBARA DRSPND

By: ATTORNEY GENERAL OFFICE
HEROE'S MEMORIAL BLDG.
CAPITOL COMPLEX
CARSON CITY, NV 89710

Dob: Sex:
Lic: Sid:
FAIR MAPS NEVADA PAC DRSPND

By:

Dob: Sex:
Lic: Sid:

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

JACKSON, REV LEONARD PLNTPET 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	02/05/20	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
2	02/05/20	NOTICE OF APPEAL Receipt: 64083 Date: 02/05/2020	1BCCOOPER	24.00	0.00
3	01/07/20	SUMMARY JUDGMENT	1BSBARAJAS	0.00	0.00
4	01/06/20	NOTICE OF ENTRY OF ORDER	1BSBARAJAS	0.00	0.00
5	01/06/20	STIPULATED DISMISSAL	1BSBARAJAS	0.00	0.00
6	01/02/20	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BSBARAJAS	0.00	0.00
7	01/02/20	ORDER	1BSBARAJAS	0.00	0.00
8	12/23/19	HEARING HELD: The following event: PETITION HEARING scheduled for 12/23/2019 at 2:30 pm has been resulted as follows: Result: HEARING HELD Judge: RUSSELL, JUDGE JAMES TODD Location: DEPT I	1BJHIGGINS	0.00	0.00
9	12/20/19	REQUEST FOR SUBMISSION	1BJHIGGINS	0.00	0.00
10	12/20/19	REPLY BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY RELIEF	1BJHIGGINS	0.00	0.00
11	12/20/19	WAIVER OF SERVICE	1BJHIGGINS	0.00	0.00
12	12/20/19	NOTICE OF APPEARANCE AS COUNSEL OF RECORD	1BJHIGGINS	0.00	0.00
13	12/18/19	DEFENDANT FAIR MAPS NEVADA PAC'S ANSWERING BRIEF IN RESPONSE TO PLAINTIFF'S OPENING BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND	1BJULIEH	0.00	0.00

INJUNCTIVE RELIEF

No.	Filed	Action	Operator	Fine/Cost	Due
14	12/16/19	ORDER SETTING HEARING	1BVANESSA	0.00	0.00
15	12/13/19	ANSWER TO COMPLAINT FOR DECLARATORY RELIEF	DATA2	0.00	0.00
16	12/13/19	ACCEPTANCE AND WAIVER OF SERVICE	DATA2	0.00	0.00
17	12/10/19	ORDER TO SET FOR HEARING	1BJULIEH	0.00	0.00
18	12/06/19	RECEIPT	1BJULIEH	0.00	0.00
19	12/05/19	NOTICE OF ASSIGNMENT BY CLERK	1BCCOOPER	0.00	0.00
20	12/04/19	PEREMPTORY CHALLENGE OF JUDGE	1BCCOOPER	0.00	0.00
21	12/04/19	NOTICE OF APPEARANCE Receipt: 63163 Date: 12/05/2019	1BCCOOPER	218.00	0.00
22	12/02/19	ISSUING SUMMONS & ADD'L SUMMONS	1BCCOOPER	0.00	0.00
23	11/26/19	OPENING BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	1BCCOOPER	0.00	0.00
24	11/26/19	COMPLAINT FOR DECLARATORY RELIEF Receipt: 63081 Date: 11/27/2019	1BCCOOPER	265.00	0.00
Total:				507.00	0.00
Totals By: COST				507.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

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1 Adam Hosmer-Henner, Esq. (NSBN 12779)
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4 ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

5 *Attorneys for Defendant*
6 *Fair Maps Nevada PAC*

REC'D & FILED ✓

2020 JAN -2 PM 12: 15

AUBREY ROWLATT
CLERK

BY 
DEPUTY

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

9 * * *

10 REV. LEONARD JACKSON,
11 Plaintiff,
12 vs.
13 FAIR MAPS NEVADA PAC, and
14 BARBARA CEGAVSKE, in her official
15 capacity as Nevada Secretary of State,
16 Defendants.

Case No. 19 OC 00209 1B
Dept. No. I

[PROPOSED] ORDER

17 **ORDER**

18 This matter having come before this Court pursuant to Plaintiff Reverend Leonard
19 Jackson's Complaint for Declaratory Relief ("Complaint") and Plaintiff's Opening Brief in
20 Support of Complaint for Declaratory and Injunctive Relief ("Opening Brief"), and having
21 considered Defendant Fair Maps Nevada PAC's ("Fair Maps") Answer and Answering Brief in
22 Response to Plaintiff's Opening Brief in Support of Complaint for Declaratory and Injunctive
23 Relief ("Answering Brief") and Plaintiff's Reply Brief in Support of Complaint for Declaratory
24 Relief ("Reply Brief") as well as the arguments of counsel at the hearing held December 23,
25 2019, the Court finds as follows:

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PROCEDURAL BACKGROUND

Fair Maps filed Initiative Petition #C-02-2019 (“Petition”) on November 4, 2019 to amend the Nevada Constitution by adding a new section to the Nevada Constitution to establish a redistricting commission to map electoral districts for members of the Nevada Senate, Nevada Assembly, and Nevada’s delegation to the U.S. House of Representatives. The Petition includes the following description of effect:

This measure will amend the Nevada Constitution to establish an Independent Redistricting Commission to oversee the mapping of fair and competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S. House of Representatives.

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

The Commission will ensure, to the extent possible, that the electoral districts comply with the United States Constitution, have an approximately equal number of inhabitants, are geographically compact and contiguous, provide equal opportunities for racial and language 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.

This amendment will require redistricting by the Commission beginning in 2023 and thereafter following each federal census.

Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he argues that the Petition’s description of effect fails to comply with NRS 295.009(1)(b). More specifically, he contends that description of the commission as independent and the description of effect’s statement that the commission will oversee “the mapping of fair and competitive electoral districts,” are materially misleading statements. Compl. ¶¶ 15 & 23. He also asserts that the description of effect is deceptive and misleading because it fails to inform voters of a specific practical effect of passage of the Petition—that the redistricting commission will “undo” electoral maps generated by the Legislature in 2021 “thus potentially doubling the resources that would otherwise be spent on redistricting following the 2020 census.” *Id.* at ¶¶ 30. Plaintiff’s Complaint is limited to his challenge to the description of effect.

1 Fair Maps contends that the use of the term independent and the characterization of the
2 commission's objective of creating fair and competitive electoral districts is neither deceptive
3 nor misleading and amount to attacks on the policy reflected in the Petition and not the
4 description of effect. Ans. Br. 6-8. Fair Maps also contends that Plaintiff's claim that there will
5 be additional redistricting costs as a result of Petition is speculative and hypothetical and
6 therefore need not be addressed in the description of effect. *Id.* at 8-10.

7 **LEGAL STANDARDS**

8 Article 19, Section 2 of the Nevada Constitution enshrines the people's right to amend
9 the Nevada Constitution by initiative petition. Specifically it states that "the people reserve to
10 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
11 Nev. Const. art. 19, § 2(1). The Nevada Constitution further provides that the Legislature "may
12 provide by law for procedures to *facilitate* the operation thereof." *Id.* art. 19, § 5 (emphasis
13 added). In interpreting such laws, the courts "must make every effort to sustain and preserve the
14 people's constitutional right to amend their constitution through the initiative process."
15 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247
16 (2006).

17 NRS 295.009(1)(b) provides that a petition must "[s]et forth, in not more than 200
18 words, a description of the effect of the initiative . . . if the initiative . . . is approved by the
19 voters." NRS 295.009(1)(b). The Nevada Supreme Court has noted that "[a] description of effect
20 serves a limited purpose to facilitate the initiative process," and that a description of effect
21 should be reviewed with an eye toward that limited purpose. *Educ. Initiative PAC v. Comm. to*
22 *Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013). Thus, while a description of
23 effect need not "delineate every effect that an initiative will have," it must be "a straightforward,
24 succinct, and nonargumentative statement of what the initiative will accomplish and how it will
25 achieve those goals." *Id.* at 38, 293 P.3d at 876. A description of effect cannot "be deceptive or
26 misleading." *Id.* at 42, 293 P.3d at 879.

27 In reviewing a description of effect, "it is inappropriate to parse the meanings of the
28 words and phrases used in a description of effect" as closely as a reviewing court would a

1 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
2 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
3 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
4 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
5 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 In this case, the description of effect for the Petition does not meet the requirements of
8 NRS 295.009(1)(b). The description of effect could be argumentative or confusing or
9 misleading to voters as currently written. The description of effect does not adequately explain
10 to voters what is meant by the term “independent” or the phrase “fair and competitive.” The
11 Court further finds that the description of effect is inadequate in that it does not provide potential
12 signatories with enough information about the cost consequences of the Petition—specifically,
13 that it will result in the expenditure of state funds. *See, e.g., Nev. Judges Ass’n v. Lau*, 112 Nev.
14 51,59 (1996). The Petition also does not adequately inform voters that the Petition would result
15 in redistricting in 2023 after the Legislature has already drawn electoral districts after the 2020
16 Census.

17 The Court finds that the above-referenced deficiencies may be cured through the revised
18 description of effect provided herein. NRS 295.061(3) provides that “[i]f a description of the
19 effect of an initiative or referendum required pursuant to NRS 295.009 is challenged
20 successfully . . . and such description is amended in compliance with the order of the court, the
21 amended description may not be challenged.” NRS 295.061(3). Thus, the Court, in consultation
22 with the parties, identifies a new description of effect that satisfies the legal standard required by
23 NRS 295.061(3). This revised description of effect states:

24
25 “This measure will amend the Nevada Constitution to establish a redistricting
26 commission to map electoral districts for the Nevada Senate, Assembly, and U.S. House of
27 Representatives.
28 The Commission will have seven members, four who will be appointed by the leadership
of the Legislature, and three who are unaffiliated with the two largest political parties who will
be appointed by the other four commissioners. Commissioners may not be partisan candidates,

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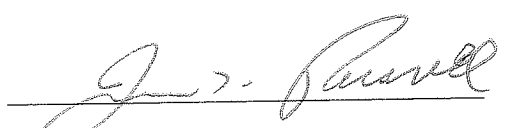
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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

9 This amendment requires redistricting after each federal census, beginning in 2023,
10 which could replace maps drawn by the Legislature after the 2020 census, and will result in the
11 expenditure of state funds to fund the Commission.”

12 **IT IS THEREFORE ORDERED** and declared that the description of effect filed with
13 the Secretary of State on November 4, 2019 failed to satisfy the requirements of NRS
14 295.009(1)(b). Thus, any signatures collected on the Petition containing the description of effect
15 are invalid. However, Defendant Fair Maps may re-file an amended petition with the revised
16 description of effect as set forth by this Order, which cures all deficiencies raised by Plaintiff
17 and identified by the Court. Upon re-filing, the description of effect will have been amended in
18 compliance with this Order and be accorded the finality set forth in NRS 295.061(3) and shall
19 not be subject to further challenge. NRS 295.061(3).

20 Dated this 2 day of ^{January 2020} December, 2019.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:
24 MCDONALD CARANO LLP

25 By: _____/s/ Adam Hosmer-Henner_____
26 Adam Hosmer-Henner, Esq. (NSBN 12779)
27 Lucas Foletta, Esq. (NSBN 12154)
28 MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
Attorneys for Defendant Fair Maps PAC

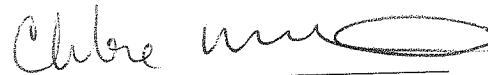
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2 day of January 2020 I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701



Chloe McClintick, Esq.
Law Clerk, Dept. 1

1 Adam Hosmer-Henner, Esq. (NSBN 12779)
2 Lucas Foletta, Esq. (NSBN 12154)
3 McDONALD CARANO
4 100 West Liberty Street, 10th Floor
5 Reno, NV 89501
6 (775) 788-2000
7 ahosmerhenner@mcdonaldcarano.com
8 lfoletta@mcdonaldcarano.com

9 *Attorneys for Defendant*
10 *Fair Maps Nevada PAC*

REC'D & FILED ✓
2020 JAN -6 PM 3:25
AUDREY ROWLATT
CLERK
BY *Audrey Rowlatt*
DEPUTY

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

13 * * *

14 REV. LEONARD JACKSON,
15
16 Plaintiff,
17
18 vs.
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20 FAIR MAPS NEVADA PAC, and
21 BARBARA CEGAVSKE, in her official
22 capacity as Nevada Secretary of State,
23
24 Defendants.
25

Case No. 19 OC 00209 1B
Dept. No. I

26 **NOTICE OF ENTRY OF ORDER**

27 PLEASE TAKE NOTICE that on January 2, 2020, the above-entitled Court entered its
28 Order. A true and correct copy of that Order is attached hereto.

Dated: January 6, 2020

McDONALD CARANO LLP

By: *A*
Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Attorneys for Defendant Fair Maps PAC

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

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on January 6, 2020, I served the foregoing on the parties in said case by placing a true copy thereof in the United States Post Office mail at 100 West Liberty Street, Tenth Floor, Reno, NV 89501 addressed as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

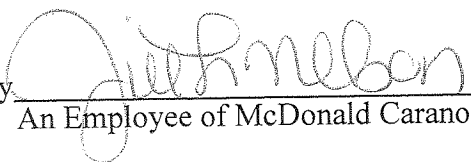
Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Barbara Cegasvke, Nevada Secretary of State
202 N. Carson Street
Carson City, NV 89701

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope addressed to the 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 6, 2020 at Reno, Nevada.

By 
An Employee of McDonald Carano LLP

McDONALD CARANO
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1 Adam Hosmer-Henner, Esq. (NSBN 12779)
2 Lucas Foletta, Esq. (NSBN 12154)
3 McDONALD CARANO
4 100 West Liberty Street, 10th Floor
5 Reno, NV 89501
6 (775) 788-2000
7 ahosmerhenner@mcdonaldcarano.com
8 lfoletta@mcdonaldcarano.com

*Attorneys for Defendant
Fair Maps Nevada PAC*

REC'D & FILED

2020 JAN -2 PM 12:15

AUBREY ROWLATT
CLERK

BY  DEPUTY

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

12 * * *

13 REV. LEONARD JACKSON,

14 Plaintiff,

15 vs.

16 FAIR MAPS NEVADA PAC, and
17 BARBARA CEGAVSKE, in her official
18 capacity as Nevada Secretary of State,

19 Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

20 **ORDER**

21 This matter having come before this Court pursuant to Plaintiff Reverend Leonard
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26 Relief ("Answering Brief") and Plaintiff's Reply Brief in Support of Complaint for Declaratory
27 Relief ("Reply Brief") as well as the arguments of counsel at the hearing held December 23,
28 2019, the Court finds as follows:

//

//

PROCEDURAL BACKGROUND

1
2 Fair Maps filed Initiative Petition #C-02-2019 (“Petition”) on November 4, 2019 to
3 amend the Nevada Constitution by adding a new section to the Nevada Constitution to establish
4 a redistricting commission to map electoral districts for members of the Nevada Senate, Nevada
5 Assembly, and Nevada’s delegation to the U.S. House of Representatives. The Petition includes
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25 This amendment will require redistricting by the Commission beginning in
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27 Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he
28 argues that the Petition’s description of effect fails to comply with NRS 295.009(1)(b). More
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1 Fair Maps contends that the use of the term independent and the characterization of the
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4 description of effect. Ans. Br. 6-8. Fair Maps also contends that Plaintiff's claim that there will
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7 **LEGAL STANDARDS**

8 Article 19, Section 2 of the Nevada Constitution enshrines the people's right to amend
9 the Nevada Constitution by initiative petition. Specifically it states that "the people reserve to
10 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
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26 misleading." *Id.* at 42, 293 P.3d at 879.

27 In reviewing a description of effect, "it is inappropriate to parse the meanings of the
28 words and phrases used in a description of effect" as closely as a reviewing court would a

1 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
2 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
3 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
4 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
5 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 In this case, the description of effect for the Petition does not meet the requirements of
8 NRS 295.009(1)(b). The description of effect could be argumentative or confusing or
9 misleading to voters as currently written. The description of effect does not adequately explain
10 to voters what is meant by the term “independent” or the phrase “fair and competitive.” The
11 Court further finds that the description of effect is inadequate in that it does not provide potential
12 signatories with enough information about the cost consequences of the Petition—specifically,
13 that it will result in the expenditure of state funds. *See, e.g., Nev. Judges Ass’n v. Lau*, 112 Nev.
14 51,59 (1996). The Petition also does not adequately inform voters that the Petition would result
15 in redistricting in 2023 after the Legislature has already drawn electoral districts after the 2020
16 Census.

17 The Court finds that the above-referenced deficiencies may be cured through the revised
18 description of effect provided herein. NRS 295.061(3) provides that “[i]f a description of the
19 effect of an initiative or referendum required pursuant to NRS 295.009 is challenged
20 successfully . . . and such description is amended in compliance with the order of the court, the
21 amended description may not be challenged.” NRS 295.061(3). Thus, the Court, in consultation
22 with the parties, identifies a new description of effect that satisfies the legal standard required by
23 NRS 295.061(3). This revised description of effect states:

24
25 “This measure will amend the Nevada Constitution to establish a redistricting
26 commission to map electoral districts for the Nevada Senate, Assembly, and U.S. House of
Representatives.

27 The Commission will have seven members, four who will be appointed by the leadership
28 of the Legislature, and three who are unaffiliated with the two largest political parties who will
be appointed by the other four commissioners. Commissioners may not be partisan candidates,

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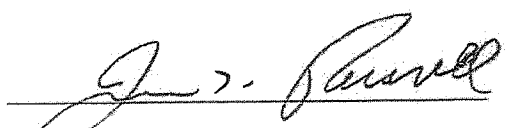
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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

9 This amendment requires redistricting after each federal census, beginning in 2023,
10 which could replace maps drawn by the Legislature after the 2020 census, and will result in the
11 expenditure of state funds to fund the Commission.”

12 **IT IS THEREFORE ORDERED** and declared that the description of effect filed with
13 the Secretary of State on November 4, 2019 failed to satisfy the requirements of NRS
14 295.009(1)(b). Thus, any signatures collected on the Petition containing the description of effect
15 are invalid. However, Defendant Fair Maps may re-file an amended petition with the revised
16 description of effect as set forth by this Order, which cures all deficiencies raised by Plaintiff
17 and identified by the Court. Upon re-filing, the description of effect will have been amended in
18 compliance with this Order and be accorded the finality set forth in NRS 295.061(3) and shall
19 not be subject to further challenge. NRS 295.061(3).

20 Dated this 2 day of ~~December~~ ^{January}, 2020.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:
24 MCDONALD CARANO LLP

25 By: _____/s/ Adam Hosmer-Henner_____
26 Adam Hosmer-Henner, Esq. (NSBN 12779)
27 Lucas Foletta, Esq. (NSBN 12154)
28 MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501
Attorneys for Defendant Fair Maps PAC

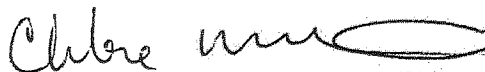
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2 day of January 2020 I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Kevin K. Benson, Esq.
123 West Nye Lane, Suite 487
Carson City, NV 89706

Adam Hosmer-Henner, Esq.
Lucas Foletta, Esq.
MCDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, NV 89501

Gregory L. Zunino, Esq.
100 N Carson Street
Carson City, NV 89701



Chloe McClintick, Esq.
Law Clerk, Dept. 1

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 19 OC 00209 1B

TITLE: REV. LEONARD JACKSON VS FAIR
MAPS NEVADA PAC, AND BARBARA
CEGAVSKE, IN HER OFFICIAL
CAPACITY AS NEVADA SECRETARY
OF STATE

12/23/19 – DEPT. I – HONORABLE JAMES T. RUSSELL
J. Higgins, Clerk – Not Reported

PETITION FOR DECLARATORY RELIEF

Present: Kevin Benson, counsel for Petitioner; Adam Hosmer-Henner, counsel for Fair Maps;
Gregory Zunino, Deputy A.G.

Statements were made by Court.

Benson and Hosmer-Henner present arguments.

Statements were made by Court.

COURT ORDERED: It likes alternative number two with the following change. It doesn't like the word "independent", it is removing that. It also likes the fact to remove "fair and competitive" because it doesn't know how these districts are going to come about and where they are going to end up. The balance of number two it likes except the end of it "this amendment will require redistricting beginning in 2023", it can't do much about that. It likes the language "which will result in the expenses of state funds to fund the commission".

Statements were made by Court and Zunino.

COURT ORDERED: Benson and Hosmer-Henner to prepare Orders for the Court and provide them to the Court within 10 days.

Statements were made by Court and Benson who clarified that the Court is not requiring that it include the language that it is going to undo what was done in 2021.

COURT ORDERED: No, it doesn't know how they are going to fix that, 2023 is going to be what it is.

Hosmer-Henner indicated they could include a statement that it would require a redistricting in 2023 which could replace the legislative maps in 2021.

COURT ORDERED: You can add that if you want, that clarifies it.

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.

DISTRICT COURT CIVIL COVER SHEET

Carson City County, Nevada

Case No. 19DC00309 JB JJ
(Assigned by Clerk's Office)

REC'D & FILED

2019 NOV 26 PM 3:43

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

Plaintiff(s) (name/address/phone): Rev. Leonard Jackson	Defendant(s) (name/address/phone): Fair Maps Nevada PO-Box 751271 Las Vegas, NV 89136
Attorney (name/address/phone): Kevin Benson - 123 W. Nye Lane, #487 Carson City, NV 89706 (775) 884-0838	Attorney (name/address/phone):

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

Civil Case Filing Types

<p>Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Foreclosure Mediation Assistance <input type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p>Negligence</p> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p>Malpractice</p> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p>Torts</p> <p>Other Torts</p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<p>Probate</p> <p>Probate (select case type and estate value)</p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p>Estate Value</p> <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-\$20,000 <input type="checkbox"/> \$2,500 or less	<p>Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<p>Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<p>Civil Writ</p> <p>Civil Writ</p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum	<p>Other Civil Filing</p> <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<p>Other Civil Filing</p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

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

11/26/2019

Date



Signature of initiating party or representative

See other side for family-related case filings.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

<p>REV. LEONARD JACKSON,</p> <p>Appellant,</p> <p>vs.</p> <p>FAIR MAPS NEVADA PAC; AND BARBARA K. CEGAVSKE, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE,</p> <p>Respondents.</p>	<p>Case No.: 80563</p> <p>District Court Case No. 19OC002091B</p>	<p>Electronically Filed Feb 18 2020 04:06 p.m. Elizabeth A. Brown Clerk of Supreme Court</p>
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MOTION TO DISMISS AND FOR SANCTIONS

Adam Hosmer-Henner, Esq. (NSBN 12779)
Lucas Foletta, Esq. (NSBN 12154)
McDonald Carano LLP
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
Telephone: (775) 788-2000
ahosmerhenner@mcdonaldcarano.com
lfoletta@mcdonaldcarano.com

Attorneys for Respondent Fair Maps Nevada PAC

NRAP 26.1 DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

There are no parent corporations for Respondent Fair Maps Nevada PAC or publicly held companies owning 10% or more of Respondent's stock.

Respondent has been represented throughout this action by Adam Hosmer-Henner, Esq. and Lucas Foletta, Esq. of McDonald Carano LLP.

DATED: February 18, 2020.

McDONALD CARANO LLP

By /s/ Adam Hosmer-Henner
Adam Hosmer-Henner (NSBN 12779)
Lucas Foletta (NSBN 12154)
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
*Attorneys for Respondent Fair Maps
Nevada PAC*

I. INTRODUCTION

Appellant Rev. Leonard Jackson (“Appellant” or “Rev. Jackson”) prevailed at the district court by successfully challenging the description of effect for Initiative Petition #C-02-2019 (“Petition”). Despite this result, Appellant still filed the instant appeal, unmistakably revealing Appellant’s purpose to delay the political process for the Petition and prevent or impede Respondent Fair Maps Nevada PAC (“Respondent” or “Fair Maps”) from collecting signatures for or fundraising in support of the Petition. Appellant lacks standing to appeal as he is not aggrieved, NRAP 3A(a), and further, the appeal is barred by NRS 295.061(3) because the description of effect was amended by the district court and so “may not be challenged” thereafter. Accordingly, this Court should dismiss this appeal as frivolous and award Respondent sanctions against both Appellant and his counsel pursuant to NRAP 38.

Time is of the essence in ballot question litigation. *See Coal. for Nevada's Future v. RIP Commerce Tax, Inc.*, 132 Nev. 956 (2016) (unpublished) (“In light of the nature and urgency of this matter, we suspend NRAP 41(a) and direct the clerk of this court to issue the

remittitur forthwith.”) Respondent must submit signatures in support of its Petition by June 24, 2020. NRS 295.056(3). Based on the Court’s current schedule, Appellant’s opening brief is not even due until June 11, 2020. Regardless of the ultimate legal result, an opponent of a ballot question can obtain a practical victory by delaying the process until the gathering of signatures is no longer feasible. What separates this case from other ballot question cases though, is the unmistakable misuse of the appellate process for the sole purpose of delay as Appellant was already the prevailing party and received full relief at the district court.

Unless appeals, such as this one, are promptly dismissed and discouraged, nothing stops opponents of ballot questions from appealing – win or lose – to draw out the legal process and frustrate the democratic process. NRAP 38(b) should be applied in precisely this situation as it provides for monetary sanctions when “circumstances indicate that an appeal has been taken or processed solely for the purposes of delay.” With the filing of this frivolous appeal, there now can be no doubt that Appellant’s interest is not in revising the description of effect, but in drawing out the legal process for as long as

possible. This Court should dismiss the appeal and impose monetary sanctions to punish Appellant and deter future misconduct.

II. Appellant Has Exhibited a Consistent Pattern of Delay.

Appellant filed a Complaint challenging the Petition on November 26, 2019, the last possible day to file such an action. NRS 265.061(1). This appeal was filed on February 5, 2020, the last possible day to appeal. Furthermore, the Certificate of Service on Appellant's Notice of Appeal states that all parties (including Respondent) were served on February 5, 2020 via U.S. Mail and "E-mail (courtesy copy)" by an employee of Benson Law, LLC. **Exhibit 1**, Notice of Appeal. At the time of this filing on February 18, 2020, Respondent still has not received a copy of the Notice of Appeal either through U.S. Mail or E-mail and had to obtain copies directly from the First Judicial District Court.

Furthermore, despite the 15-day deadline to "set the matter for hearing" pursuant to NRS 295.061(3), Appellant unsuccessfully sought to delay the hearing even further during the hearing setting with the district court. Respondent, on the other hand, committed to and met an expedited briefing schedule. Thereafter, Respondent sent Appellant a letter on December 17, 2019 stating that while it "does not agree with

Plaintiff's assertion that the description of effect included with [the Petition] is misleading, Fair Maps is interested in amicably resolving this litigation." **Exhibit 2**, Dec. 17, 2019 Letter to K. Benson. Respondent provided Appellant with five alternative descriptions of effect that were revised in accordance with Appellant's complaint. Appellant utterly failed to respond to this letter. During the December 23, 2019 hearing, the district court asked Appellant whether any of the proposed alternative descriptions of effect would be acceptable. Appellant ducked this question as well and refused to comment on any of the proposed descriptions. To Appellant, there will always be something wrong with the description of effect, because the true goal is only to tie up the Petition in frivolous litigation.

III. Appellant Lacks Standing to Appeal.

A. Under the Definitions in NRAP 3A(a), Appellant is Not an Aggrieved Party.

Appellant prevailed in full at the district court and is therefore not an "aggrieved" party who may appeal. NRAP 3A(a) (providing that only a "party who is aggrieved by an appealable judgment or order may appeal from that judgment or order . . .") Pursuant to this Court's interpretation of NRAP 3A(a), a party is "aggrieved" when a "judgment

adversely and substantially affects either a personal right or a property right.” *Roth v. Bayerische Motoren Werke Aktiengesellschaft*, 124 Nev. 1504, 238 P.3d 851 (2008). A party who has prevailed below cannot be said to be aggrieved. *Calloway v. City of Reno*, 116 Nev. 250, 271, 993 P.2d 1259, 1272 (2000) (dismissing cross-appeal for lack of jurisdiction, holding that because “the City prevailed in the district court, the City is not an aggrieved party”).

The relief requested by Appellant in his Complaint was that the Court “enter an order: 1. Declaring that the Petition does not comply with NRS 295.009(1)(b) and is therefore invalid; 2.) Prohibiting the Secretary of State from placing the Petition on any ballot; and, 3. Granting any other relief the Court deems just.” The district court entered an order declaring that the Petition “failed to satisfy the requirements of NRS 295.009(1)(b)” and invalidating “any signatures collected on the Petition containing the description of effect.” **Exhibit 3, Order**. Appellant obtained the full relief requested in his Complaint and therefore this appeal should be dismissed. *Comm'n on Ethics of State v. Carrigan*, 126 Nev. 701, 367 P.3d 759 (2010) (“cross-appellant prevailed below, and as a result, it appeared that cross-appellant was not an

aggrieved party with standing to appeal”); *Webb, ex rel. Webb v. Clark Cty. Sch. Dist.*, 125 Nev. 611, 617–18, 218 P.3d 1239, 1244 (2009) (dismissing appeal because “the district court awarded Webb damages in the amount of \$27,270, we conclude that Webb was not denied any equitable or legal rights”).

Appellant cannot plausibly demonstrate how the district court’s Order was adverse. Appellant filed a Complaint on November 26, 2019 asserting three causes of action: 1) “Misleading Description of Effect: ‘Independent’”; 2) “Misleading Description of Effect: ‘Fair and competitive maps’”; and 3) “Misleading Description of Effect: ‘Practical and Fiscal Impacts.’” **Exhibit 4**, Complaint. Judge Russell agreed with Appellant and entered an order providing full relief on each of these causes of action, requiring the description of effect be amended in accordance with each of the defined challenges raised by Appellant. Furthermore, Appellant was required to include all challenges and supporting documents at one time, together with the first filing of the complaint. NRS 295.061(1) (“All affidavits and documents in support of the challenge must be filed with the complaint.”) No new arguments or evidence can be raised through motion practice or on appeal.

Finally, Appellant cannot maintain a piecemeal appeal from a specific portion of the Order whether it is a finding of fact or a conclusion of law. In *Ford v. Showboat Operating Co.*, this Court held that “no court rule or statute provides for an appeal from a finding of fact or from a conclusion of law.” 110 Nev. 752, 756, 877 P.2d 546, 549 (1994) (“A party who prevails in the district court and who does not wish to alter any rights of the parties arising from the judgment is not aggrieved by the judgment.”) As Appellant obtained the requested declaratory relief, he cannot maintain an appeal that would have no additional effect, other than to affirm the relief already provided.

B. Appellant’s Frivolous Appeal is Barred by Statute.

Nevada law explicitly prevents this type of appeal in order to stop successive, interminable challenges to a petition’s description of effect. “If a description of the effect of an initiative or referendum . . . is challenged successfully pursuant to subsection 1 and such description is amended in compliance with the order of the court, the amended description may not be challenged.” NRS 295.061(3). Here, Appellant successfully challenged the description of effect, which was then amended in strict compliance with the district court’s order.

Consequently, the amended description of effect cannot be further challenged in this appeal or in a separate proceeding so as to prevent unlimited hyper-technical nitpicking of the description. *Educ. Init. v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 49, 293 P.3d 874, 883–84 (2013) (holding that “a hyper-technical examination of whether the description covers each and every aspect of the initiative” is not required and that “a statutory interpretation-style construction of the description, in which the meaning and purpose of each word and phrase contained in the description of effect are examined, is not appropriate”).

This interpretation of NRS 295.061(3) is fully supported by the relevant legislative history. Committee Chair Cegavske asked: “Assembly Bill 322 will also provide that a description of the ballot question cannot be challenged. Was that an issue last session?” **Exhibit 5**, Sen. Committee on Legislative Operations and Elections, May 1, 2007, pages 5-6. Assemblywoman Gansert, the sponsor of Assembly Bill 322, replied: “If the court orders you to change the summary in some particular way, once you fix it, you cannot be rechallenged if you mandated a court order. [sic] Currently, you can continue to challenge

the same issue as many times within the time frame.” *Id.* Assembly Bill 322 was enacted and added NRS 295.061(3) to the statutory scheme.

This Court “has consistently held that the right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.” *Ford*, 110 Nev. at 756. Pursuant to the plain language of NRS 295.061(3), once the description of effect is amended in compliance with the order of the court, no further challenge is permitted.

IV. This Appeal Justifies Sanctions.

NRAP 38 permits the imposition of monetary sanctions when “an appeal has frivolously been taken or been processed in a frivolous manner, when circumstances indicate that an appeal has been taken or processed solely for purposes of delay . . . or whenever the appellate processes of the court have otherwise been misused.” The sanctions may include “such attorney fees as [the Court] deems appropriate to discourage like conduct in the future.” NRAP 38(b).

The requested sanctions are necessary to “discourage like conduct in the future.” *Id.* Time is of the essence in this case and others like it. NRS 295.061(1) sets forth an expedited hearing schedule and gives this

type of action priority. Yet, these precautions and priorities become meaningless if every opponent of a petition can appeal regardless of the result below.

Appellant and his counsel were fully informed of these issues prior to the filing of this Motion. **Exhibit 6**, Feb. 7, 2020 Letter to K. Benson. Appellant was asked to withdraw the appeal and warned that a request for sanctions would ensue. Once again, Appellant failed to even provide a response to this letter. At every step, Appellant has been provided an opportunity to resolve the substantive merits of this dispute without additional litigation, and at every step, Appellant has remained silent and frivolously prolonged the case. Sanctions are fully justified here.

V. CONCLUSION

For all of the above reasons, Respondent asks the Court to dismiss the instant appeal and impose monetary sanctions pursuant to NRAP 38. Appellant has already received full relief from the district court and has only one objective from this appeal – delay.

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Affirmation: Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: February 18, 2020.

McDONALD CARANO LLP

By /s/ Adam Hosmer-Henner
Adam Hosmer-Henner (NSBN 12779)
Lucas Foletta (NSBN 12154)
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
*Attorneys for Respondent Fair Maps
Nevada PAC*

CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 27(d), I hereby certify that this motion 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 this motion has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point font, Century Schoolbook style. I further certify that this motion complies with the page limits of NRAP 27(d)(2) does not exceed 10 pages, calculated in accordance with the exclusions of NRAP 32(a)(7)(C).

Pursuant to NRAP 28.2, I hereby certify that I have read this motion, 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 motion complies with all applicable Nevada Rules of Appellate Procedure.

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I understand that I may be subject to sanctions in the event that this motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: February 18, 2020.

McDONALD CARANO LLP

By /s/ Adam Hosmer-Henner
Adam Hosmer-Henner (NSBN 12779)
Lucas Foletta (NSBN 12154)
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
*Attorneys for Respondent Fair Maps
Nevada PAC*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on February 18, 2020, I served the foregoing document on the parties in said case by electronically filing via the Court's e-filing system, as follows:

Kevin Benson, Esq.
Benson Law, LLC
123 Nye Lane, Suite #487
Carson City, NV 89706

Aaron D. Ford, Esq.
Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

DATED: February 18, 2020.

By /s/ Jill Nelson
Jill Nelson

INDEX OF EXHIBITS

EXHIBIT #	DESCRIPTION	NUMBER OF PAGES
1	Notice of Appeal	25
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3	Order	6
4	Complaint	6
5	Legislative History of AB 322	13
6	Feb. 7, 2020 Letter to Kevin Benson	3