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AUDREY ROWLAND
CLERK

BY  DEPUTY

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

RORY REID, AN INDIVIDUAL.

BEVERLY ROGERS, AN INDIVIDUAL, CASE NO.: 22-0C-00028 1B

Plaintiffs,

DEPT. NO. I

Vs.

**BARBARA CEGAVSKE, in her
Official capacity as NEVADA
SECRETARY OF STATE,**

Defendant,

EDUCATION FREEDOM PAC,

**Intervenors, aligned
as Defendant.**

PART A

**DISCUSSION OF DECISION
INVALIDATING PETITION TO
AMEND THE NEVADA
CONSTITUTION TO OFFER
SEQUESTERED FUNDING
ALTERNATIVES GOING OUTSIDE
SCHOOL DISTRICTS TO
PARENTS OF SCHOOL AGE
CHILDREN**

PART B

ORDER ENJOINING PETITION

**On March 29, 2022, this Court scheduled a priority hearing in
Carson City to address a recently filed Initiative to Amend the Nevada**

1 **Constitution. Present in Court were counsel for Plaintiffs Rory Reid**
2 **and Beverly Rogers, Bradley S. Schrager and counsel for Education**
3 **Freedom PAC, (hereinafter EFP) Lucas Foletta. Appearing by ZOOM**
4 **was Craig Newby, Esq., representing the Secretary of State's Office,**
5 **who has an administrative stake in the outcome, but properly took a**
6 **neutral stance on the merits of the case.**
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8

9
10 **The first order of business was the issue of a possibility of**
11 **consolidating the instant case with Case No. 22 OC 00027 1B,**
12 **BEVERLY ROGERS, an individual; RORY REID, an individual, Plaintiffs,**
13 **vs. BARBARA CEGAVSKE, in her Official Capacity as NEVADA**
14 **SECRETARY OF STATE, Defendant, and EDUCATION FREEDOM PAC,**
15 **Intervenors, aligned as Defendant.**
16
17

18 **THE COURT DECIDED NOT TO MERGE THESE TWO CASES BUT TWO**
19

20 **OTHER CASES PROBABLY MERGE**

21 **From here on out the case which is covered by this Decision may**
22 **be informally referred to as "Reid/281B" and the companion case**
23 **which goes in a separate direction, so it will be referred to as**
24 **"Rogers/271B", containing the last digits of the case numbers.**
25
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27
28

1 **Counsel, in effect, has stipulated to maintaining the**
2 **separateness of Reid/281B and Rogers/271B.**

3 **The latter, Rogers/271B, has features which are entirely missing**
4 **in the first case, as it is an elaborate scheme for administering a**
5 **major fund through the Department of the Treasurer with many**
6 **different timelines for the signature gathering, and other provisions**
7 **which touch and concern *different* sections of Article 19 of Nevada's**
8 **Constitution.**

9 **Consolidating at this time would cause nothing more than**
10 **additional confusion, so the cases will be separately adjudicated, and**
11 **this Decision pertains only to Reid/281B: the Constitutional route.**

12 **THE COURT WILL *NOT* DISMISS THE COMPLAINT ON PROCEDURAL**

13 **GROUND**

14 **The will defer whether to consolidate "REID I" with "REID II".**

15 **A motion has been made by Intervenor/Defendant to summarily**
16 **decide the case based on procedural grounds such as the Intervenor's**
17 **Complaint that states they have been deprived of the time necessary**

1 under NRS 295.061 to deal with the Complaint which challenges the
2 Petition with Secretary of State.¹

3
4 The two Carson City judges were off the case by the time this
5 Court received the file (and that file was incomplete until the end of
6 last week).

7
8 The Court immediately saw the priority, closed the pleadings and
9 set the matter for hearing within ten days.

10
11 The spirit if not the letter of the rule was observed and even if
12 Plaintiffs didn't first join the Intervenors in their Complaint, there is
13 insufficient cause or proof of improper gamesmanship to grant
14 dismissal.

15
16
17 The Motion to dismiss may be and hereby is DENIED.

18
19 THE PETITION MUST BE INVALIDATED BECAUSE LACK OF CLARITY

20 OF CONSEQUENCES IN THE DECLARATION OF EFFECT (WHIZZY,

21 WHIZZY, WHIZZY HOW TO HIDE THE FUNDING ISSUE)

22
23 The Intervenors are playing the great old Western shell game
24 with walnut husks and a single, hard, green pea, when they fail to

25
26
27 ¹ As soon as this case was received by this Judge, after the recusal of the
28 Carson City Judges and served, the oral arguments hearing was set for
Tuesday, Marcy 29, 2022, at 1:00 p.m., and thus the spirit, if not the
letter, of the calendar priority was observed.

1 describe the enormous fiscal impact of this Initiative on the budget of
2 most, if not all, of the school districts in the State of Nevada.

3
4 In this allegory, funding is the “pea”, and “there you see it; there
5 you don’t.”

6
7 And it is ingenious, because the funding used for the program
8 could theoretically be taken from other budgets for road, prisons, law
9 enforcement, motor vehicles, etc., because it is not designated
10 funding as that term has become to be known.

11
12 Two decisions by our Supreme Court inform this Decision as
13 primary authority and contravene the Intervenor’s standing.

14
15 The controlling cases are *Herbst Gaming, Inc. v. Heller*, 122 Nev
16 877, 890, 141 P.3d 1224, 1232-33 (2006) and *Rogers v. Heller*, 117
17 Nev. 169, 173, 18 P.3d 1034, 1036 (2001).

18
19
20 A third case, *Schwartz v. Lopez*, 132 Nev. 732, 738, 382 P.3d 886,
21 891 (2016), offers a valuable precedent, but is probably more
22 applicable to the companion case where the Initiative, once passed,
23 creates a new statute instead of a Constitutional Amendment.
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1 **In *Schwartz*, the High Court examined the constitutionality of a**
2 **Senate bill establishing an educational savings account not all that**
3 **dissimilar to the one under discussion in the companion case.**
4

5 **So, the *Schwartz* discussion will be reserved for the companion**
6 **opinion but is cited here for its reinforcement of the other precedents.**
7

8 **Before addressing the two earlier controlling precedents, the**
9 **Court needs to sit back and define a few terms which are peculiar to**
10 **this area of jurisprudence.**
11

12 **The most scrutinized term for the purposes of this Decision is**
13 **contained in a sheaf of documents that are shown the prospective**
14 **signatory, called a "Declaration of Effect" (sometimes hereinafter**
15 **referred to as a "DOE"). The citizens are asked to consider joining**
16 **others in starting a process of amending the Constitution of the State**
17 **of Nevada for the purpose of establishing education accounts called**
18 **"Education Freedom Accounts", which, when funded, may then be**
19 **used at the parents' discretion to educate children outside the public**
20 **school system.**
21
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25 **Obviously, this would be the first phase of two referendums**
26 **before this amendment is authorized to change the Constitution.**
27
28

1 **The Declaration of Effect is the key document because it is read just**
2 **before the proponent hands a page for signature to a prospect who**
3 **can then peruse the language in its two paragraphs at his or her**
4 **leisure.**

5
6 **But the issue most often discussed when these initiatives have**
7 **been challenged, is, that however terse the description, it MUST**
8 **contain sufficient clarity to put the prospective signatories in such a**
9 **state of mind where they comprehensively, if not necessarily perfectly,**
10 **understand the ramifications of the passage.**

11
12 **Sometimes in these cases, confusing language in the DOE is**
13 **actually changed by the Court for clarity; sometimes counsel will work**
14 **together with the Court for the purpose of altering the Declaration of**
15 **Effect (DOE) effect for that same purpose.**

16
17 **In this case, this Court holds that there is a material omission in**
18 **the Declaration of Effect by reason of its failure to set forth a clean**
19 **and understandable impact statement of direct and collateral fiscal**
20 **ramifications that a normal voter should know about before he or she**
21 **affixes a signature to the petition.**

1 **To help expand upon this finding, the Court is going to embellish**
2 **upon the hypothetical it posed during the oral arguments.**

3 **Please presume, hypothetically, that the rancher's wife, who we**
4 **will call Norma L. Goodman, along with her husband, together have a**
5 **small alfalfa farm in Lyon County, stops at a Yerington grocery store.**

6 **A pleasant young proponent of the initiative shows her the requisite**
7 **documents and Norma asks him to explain what is meant by the**
8 **Declaration of Effect.**

9 **She tells the proponent that she and her husband have not 1, but**
10 **three children; the two older children are enrolled in the public schools**
11 **in Lyon County and the six year old is getting ready for matriculation**
12 **into the public elementary school, but he has special needs and is**
13 **currently the subject of Individual Educational Plan, referred to as an**
14 **"IEP", because he has been placed on the autism spectrum.**

15 **This wife, mother and taxpayer reveals that she and her husband**
16 **are just delighted with the education the older children are receiving,**
17 **but they are looking into a church affiliated group which has created a**
18 **special program for autistic children, to help her youngest son as they**
19 **approach decisions, they have no expertise to deal with.**

1 **She asks the following questions:**

2 **1. Norma: "If I sign this petition and it becomes law, are my**
3
4 **husband and I going to be required to pay the amounts set forth in in**
5 **the Declaration?**

6 **The Pleasant Responder: "The answer to that question is No, it**
7
8 **is free to your family; you guys get direct control over the per-pupil**
9
10 **calculation at the time which may be higher than the amounts**
11 **suggested in this Declaration. Congrats."**

12 **In any given fiscal year, as noted by Plaintiffs' counsel, Brad**
13
14 **Schrager, the actual amounts are likely to be higher than the amounts**
15 **quoted as they are subject to any number of adjustments to account**
16 **for variables in the "per pupil" calculation.**

17 **To its credit, the Declaration states clearly that the program**
18
19 **doesn't commence until 2025 and that the numbers quoted are just**
20 **"examples" of base level funding, but the examples are misleadingly**
21 **low, and that could be easily corrected.**

22 **But, the omission that is fatal to this initiative, in the Court's**
23
24 **opinion, is that it is misleading when it comes to answering the**
25
26 **mother's second question:**
27
28

1 **2. Norma: "Since we are so happy with the schooling for our two**
2 **older children, this initiative won't have any effect on the revenues to**
3 **support their school, will it?"**

4
5 **The Pleasant Responder: "Well it is hard to say, and it is entirely**
6 **too speculative at this point in time."**

7
8 **The truth, of course, is that outcomes can spread all over the**
9 **board.**

10
11 **If Lyon County has few citizens electing to receive the benefit,**
12 **the impact may be minimal. But if the County were to eventually go**
13 **60% in favor of the alternative schooling, the effect might seriously**
14 **affect the programs, teachers, custodians, physical environment,**
15 **electives, and the rest of the infrastructure for the entire School**
16 **District.**

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20 **However, the DOE altogether sidesteps the important issue, and**
21 **try as it might, the Court cannot come up with alternate language that**
22 **isn't equally confusing.**

23
24 **The Pleasant Proponent should add, "Well Norma, it could be**
25 **zero, or something small, or it could have a major effect as far as your**
26 **older children go."**
27
28

1 **If this initiative were to pass muster and send the matter to the**
2 **electorate, and if a significant number of people were to exercise their**
3 **rights to vote for it, in some cases it might have a huge effect on**
4 **school districts, and Intervenors know it.**

5
6 **Later, it says, “generating the revenue to fund the accounts**
7 **could necessitate a tax increase or a reduction in government**
8 **services.”**

9
10
11 **But the notice is too tepid.**

12 **For one thing, it talks about “could” when the truth is that if the**
13 **Initiative gets traction at the ballot box, the verb should be “will”.**

14 **Again, to their credit, the DOE states that the Initiative “will**
15 **result in the expenditure of state funds...”.**

16 **Later, it says “generating the revenue to fund the account could**
17 **necessitate a tax increase or a reduction in government services”.**

18 **The Court holds that it is absolutely essential for the people to**
19 **know that if a sufficient number of voters have chosen to appropriate**
20 **monies otherwise going to the School District, then once becoming the**
21 **Law, the amendment to the Constitution has a most solemn and**
22 **powerful effect on the public education system.**

1 **However, clothed in a topcoat of bright colors or in camouflaged**
2 **colors; the operator manipulating the “funding pea” is still whizzing it**
3 **around the table topped with poker felt.**

4
5 **The proposed initiative will have a pronounced effect on the**
6 **education system in the State of Nevada and it would leave a future**
7 **Legislature with a harness around its neck and shoulders that would**
8 **prevent it from exercising its discretion to fulfill its duties to see to the**
9 **education of children in our state. Thus, it illegally usurps the function**
10 **from a future Legislature.**

11 **The description of effect is deemed legally misleading.**

12
13
14 **Thus, the Court holds that to pass constitutional muster, the**
15 **Declaration of effect must articulately set forth language that the**
16 **funds distributed into EFA account may diminish the revenues**
17 **available to the State for funding of public schools and/or other public**
18 **works in major way.**

19
20 **Every dollar that is sent to an EFP to give parents the right to**
21 **choose programs outside the School District for their children,**
22 **reduces, dollar by dollar, the funds available to the School Districts or**
23 **other Public Work to achieve their mission.**

1 **In other words, if enough people opt for the outcome suggested**
2 **by this initiative, then are the School Districts, statewide, in major**
3 **trouble in being able to balance their books?**

4
5 **Let's say that the proponents, who are the Intervenor and**
6 **Defendants in this case, are able, under the time frame, to get at least**
7 **140,777 signatures to open the gates to a process which would**
8 **substantially change public education three years from now.**

9
10
11 **Let's also say that 10% of the people who sign the petition are**
12 **just interested. Maybe 90% are committed; they wait the three years**
13 **and become a part of the constituency that makes the alternate**
14 **schooling availability the Law of the Land. Simple math says that just**
15 **that slice of voters approving final rendition will cost upward of a**
16 **BILLION DOLLARS, using the approximate \$7,000.00 per pupil figure.**
17 **(Rough average of fictional figures used by Intervenor of \$6,980.00**
18 **and \$7,074.00).**

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23 **ALTERNATIVELY, THE SCHEME IS AN UNFUNDED MANDATE**

24 **The Court, as an alternative remedy, rules in part B that the**
25 **Intervenor's Petition and Initiative is just the kind of unfunded**
26 **mandate which under strong authority is prohibited in Nevada.**
27
28

1 **In *Rogers v. Heller, supra*, 63,000 voters signed Initiative**
2 **Documents, called, generally, “Nevada Tax and Fairness and Quality**
3 **School Funding Accountability Act”.**

4
5 **A group of business entities, afraid of the fiscal consequences,**
6 **challenged the Initiative, as was done here.**

7
8 **In no uncertain terms, our Supreme Court made the following**
9 **pronouncement, *Rogers, supra*, 117 Nev. 169 @ p. 173 (2001):**

10
11 **“Nevada Constitution article 19, section 2(1) provides that the**
12 **Initiative process is “subject to the limitations of [article 19**
13 **section 6].” Article 19, section 6, in turn “does not permit**
14 **the proposal of any statute or statutory amendment which**
15 **makes an appropriation or otherwise requires the expenditure**
16 **of money, unless such statute or amendment also imposes a**
17 **sufficient tax, not prohibited by the constitution, or otherwise**
18 **constitutionally provides for raising the necessary revenue.”**
19 **Section 6 applies to *all* proposed initiatives, without exception,**
20 **and *does not permit* any initiative that fails to comply with**
21 **the stated conditions. Consequently, section 6 is a**
22 **threshold content restriction, under which we must address**
23 **the Initiative’s validity. If the Initiative does not comply with**
24 **section 6, then the Initiative is void.**

25
26 **In *Rogers*, the High Court was asked to examine whether**
27 **proposed funding sources would “do the trick,” so to speak and**
28 **provide fair revenues to sustain the Initiative.**

1 **A 4% tax in that case would have generated more than a quarter**
2 **of a BILLION dollars for the program, but even that amount was**
3 **deemed deficient.**

4
5 **Thus, the law in the State of Nevada precludes Constitutional**
6 **Initiatives that don't set forth a viable funding mechanism.**

7
8 **In accord with the holding in *Rogers*, is the more recent case of**
9 ***Herbst, Id.***

10
11 ***Herbst* is, factually and in some part, legally, a very different**
12 **case from *Rogers, supra*.**

13
14 **It involves how and whether smoking in business**
15 **establishments, not schooling alternatives;**

16 **A previous decision affirming a broad scope of pre-**
17 **election challenges was overturned;**

18 **Pre-election challenges that reach Constitutional**
19 **Mandates are eliminated;**

20
21 **[NOTE: this refers to claims of Constitutional substance, gone**
22 **awry, not challenges made through initiative process as to whether it**
23 **is valid in the first instance.]**

24
25 ***Herbst* tells us: as different as they are factually and even though**
26 **Reid/281B relies on Constitutional Article 19, Section 4, while**
27

1 Rogers/271B relies upon Section 3, they are both governed by Section
2 6 – the revenue mandate.

3
4 So, the Reid/281B Petition is judicially determined to be non-
5 viable for two separate, albeit related, reasons.

6
7 1. The DOE is short of crucial information regarding funding
8 impacts;

9
10 2. The Initiative represents an unfunded mandate prohibited by
11 Nevada Law. Article 19, Sec. 6 is quoted in full:

12
13
14 ***“Sec. 6. Limitation on initiative making appropriation***
15 ***or requiring expenditure of money. This Article does not***
16 ***permit the proposal of any statute or statutory***
17 ***amendment which makes an appropriation or otherwise***
18 ***requires the expenditure of money, unless such***
19 ***statute or amendment also imposes a sufficient tax,***
20 ***not prohibited by the Constitution, or otherwise***
constitutionally provides for raising the necessary
revenue.” (emphasis supplied)

21
22 Anytime a legislature enactment is needed to fund a Bill,
23 traditionally all bills with fiscal import have to specify the exact
24 source of revenue.
25
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PART B ORDER

This Judge has historically encouraged attorneys who prevail in a given matter to suggest language for the Order they will have to defend on appeal.

So, in that connection, the Court acknowledges and adopts much of the proposed order proffered by Plaintiffs' counsel as follows:

This matter having come before this Court pursuant to Plaintiffs, Rory Reid and Beverly Rogers ("Plaintiffs") Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition C-04-2022, and Plaintiffs' Memorandum of Points and Authorities in Support of the Complaint, and having considered Intervenor Defendant, Education Freedom PAC ("Intervenor"), Answer and Answering Brief in Response to Plaintiffs' Memorandum of Points and Authorities in Support of the Complaint, Plaintiffs' Reply in Support of the Complaint, and oral argument from counsel for both Plaintiffs and Intervenor, the Court finds as follows:

STATEMENT OF FACTS

On January 31, 2022, Erin Phillips, on behalf of Education Freedom PAC, filed Initiative Petition C-04-2022 (the "Petition") with

1 the Secretary of State of Nevada, proposing to amend Article 11 of the
2 Nevada Constitution to require the Nevada Legislature to create an
3 education saving account program, known in the Petition as
4 “education freedom accounts” (“EFA”), for K-12 students to attend
5 schools and educational programs outside the uniform system of
6 common public schools established pursuant to the Nevada
7 Constitution. The Petition seeks to add a new section to Article II,
8 which reads, in full:
9

12 **No later than the school year commencing in 2025, and**
13 **on an ongoing basis thereafter, the Legislature shall**
14 **provide by law for the establishment of education**
15 **freedom accounts by parents of children being educated**
16 **in Nevada. Parents shall be authorized to use the funds**
17 **in the accounts to pay for the education of their child in**
18 **full or in part in a school or educational environment that**
19 **is not a part of the uniform system of common schools**
20 **established by the Legislature. The Legislature shall**
21 **appropriate money to fund each account in an amount**
22 **comparable to the amount of funding that would otherwise**
23 **be used to support the education of that child in the**
24 **uniform system of common schools. The Legislature**
25 **shall provide by law for an eligibility criteria for parents**
26 **to establish an education freedom account.**

27 **The Petition includes a description of effect as required by NRS**
28 **295.009(1)(b), which reads, in full:**

The initiative will provide parents with the ability to use

1 funds appropriated by the Legislature to pay for the
2 education of their child in a school or educational
3 environment that is not a part of the public school
4 system. The initiative requires the Legislature to
5 establish an education freedom account program under
6 which parents may spend money appropriated by the
7 Legislature into those accounts to pay for some or all
8 of their child's education outside the public school
9 system. The Legislature must establish an eligibility
10 criteria for parents to establish an account.

11 The initiative will result in the expenditure of state
12 funds to fund the accounts in an amount comparable to
13 the public support that would be used to support the
14 education of the child for whose benefit the account
15 has been established in a public school. For Fiscal
16 Year 2021-2022, the Legislature determined the statewide
17 base per pupil amount to be \$6,980 per pupil. For
18 Fiscal Year 2022-2023, that amount is \$7,074 per pupil
19 Generating the revenue to fund the accounts *could*
20 necessitate a tax increase or a reduction in government
21 services. The Legislature must establish the program
22 by the start of the school year that commences
23 in 2025. (emphasis supplied)

24 STANDARD OF LAW

25 Nevada law requires that any initiative petition "[e]mbrace but
26 one subject and matters necessarily connected therewith and
27 pertaining thereto." NRS 295.009(1)(a). Additionally, Article 19,
28 Section 6 of the Nevada Constitution prohibits any initiative that
"makes an appropriation or otherwise requires the expenditure of

1 money, unless such statute or amendment also imposed a sufficient
2 tax, not prohibited by the Constitution, or otherwise constitutionally
3 provides for raising the necessary revenue.” Nev. Const. Art. 19, Sec.
4
5 6. Finally, initiatives description of effect “must be straightforward,
6 succinct, and nonargumentative, and it must not be deceptive or
7 misleading.” *Edu. Initiative PAC v. Comm. To Protect Nev. Jobs*, 129
8 Nev. 35, 37, 293 P.3d 874, 876 (2013) (internal quotation marks and
9 citation marks omitted).
10
11

12 ANALYSIS AND CONCLUSIONS OF LAW

13

14 The Petition violates NRS 295.009(1)(b) because it does not
15 inform voters of the effects of the Petition. A description of effect
16 must present enough information for a potential signer to make an
17 informed decision about whether to support the initiative; the failure
18 to meet this requirement renders an initiative invalid. *See e.g., Nev.*
19 *Judges Ass’n v. Lau*, 112 Nev. 51,59 (1996) (rejecting initiative’s
20 description of effect for “failure to explain [certain] ramifications of
21 the proposed amendment,” which “renders the initiative and its
22 explanation potentially misleading”).
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1 **The description of effect is invalid because it is confusing,**
2 **misleading, and omits discussion of many of the Petition's most**
3 **significant ramifications. For example, the description incorrectly**
4 **conflates "the public support that would support the education of the**
5 **child" with the statewide average base per-pupil amount, a completely**
6 **different figure describing only a portion of per-pupil "public support."**

7
8
9 **The most recent K-12 funding legislation describes "total public**
10 **support as:**

11
12 **"[A]ll money appropriated directly for the support of the**
13 **public schools in this State, including, without limitation,**
14 **the statewide base per pupil funding amount, adjusted base per**
15 **pupil funding, additional weighted funding and all money**
16 **appropriated for a specific program or purpose in support of**
17 **the public schools, and all other money projected to be**
18 **received for the support of the public schools from taxes,**
19 **fees and other revenues authorized by state law, excluding**
20 **any money provided by the Federal Government directly**
21 **to a public school or school district or otherwise provided**
22 **on a one-time basis in response to an emergency."**

23 **SB458, Sec. 2(2)(2021)/**

24 **The Legislature calculated the average total public support per**
25 **pupil at \$10,204 for FY 2020-2021 and \$10,290 for FY 2022-2023. The**
26 **description of effect provides signatories with significantly smaller**
27 **per-pupil figures, \$6,980 and \$7,074, respectively. It cites the**
28

1 statewide average base per-pupil funding levels despite the initiative
2 requiring EFA accounts fund an amount comparable to “public support
3 that would support the education of the child for whose benefit the
4 account has been established in a public school,” which would include
5 funding beyond the statewide base per pupil amount. Likewise, the
6 description of effect completely omits the variable per-pupil funding
7 support that any given student might receive in determining a
8 comparable per-pupil funding amount for the EFA. The description of
9 effect incorrectly describes “the public support that would support the
10 education of *the child*” in narrow terms that does not reflect the actual
11 funding that an individual student might receive, and consequently,
12 the actual financial impact to taxpayers and local district budgets.
13 The Petition’s description of effect states that “[g]enerating the
14 revenue to fund the accounts could necessitate a tax increase or a
15 reduction in government services[,]” and misleadingly fails to disclose
16 that any funding appropriated for the contemplated program would
17 inevitably reduce the funding available for Nevada’s public school
18 system.
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1 **Secondly, the Petition is invalid because it mandates**
2 **expenditures without providing reciprocal revenues in violation of**
3 **Article 19, Section 6 of the Nevada Constitution. An initiative need not**
4 **“by its terms appropriate money” to violate the prohibition. *Herbst***
5 ***Gaming, Inc. v. Heller*, 122 Nev. 877, 890 n.40, 141 P.3d 1224, 1233**
6 **n.40 (2006) (citing *State ex rel Card v. Kaufman*, 517 S.W.2d 78, 80**
7 **(Mo. 1974)). Rather, “an initiative makes an appropriation or**
8 **expenditure when it leaves budgeting officials no discretion in**
9 **appropriating or expending the money mandated by the initiative –the**
10 **budgeting official must approve the appropriation or expenditure,**
11 **regardless of any other financial considerations.” *Id.* At 890. “If the**
12 **Initiative does not comply with section 6, then the Initiative is void” in**
13 **its entirety, and the offending provision cannot be severed to render it**
14 **constitutional. *Id.* at 173, 177-78. This is what the Petition does. The**
15 **Petition mandates the Nevada Legislature appropriate money to fund**
16 **each EFA in an amount comparable to the amount of funding that**
17 **would otherwise be used in the public school system. The very first**
18 **sentence of the second paragraph of the Petition’s description**
19 **declares that “[t]he initiative will result in the expenditure of state**
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1 **funds[.]” The Petition fails to impose any taxes or otherwise raise the**
2 **necessary revenue to either fund the EFAs contemplated by the**
3 **Petition, or to pay for the administrative expenses that would**
4 **necessarily have to be incurred in creating, maintaining, and**
5 **administering the EFA program.**


6
7
8 **Finally, the Petition impermissibly commands the Nevada**
9 **Legislature to enact a statute or set of statutes effecting its terms,**
10 **which violates the inherent deliberative functions of the Nevada**
11 **Legislature. The Petition’s command to the Nevada Legislature is**
12 **purportedly binding, and Nevada legislators would not be free to**
13 **deliberate and vote their own considered judgment, being responsible**
14 **to their own considered judgment, being responsible to their own**
15 **constituents, and they would no longer be part of a deliberative body**
16 **acting independently in exercising their individual best judgments on**
17 **the matters that come before them. The outcome of the specific**
18 **action mandated by the Petition – passage of a statute or statutes**
19 **affecting the term of the initiative – would be predetermined. No**
20 **initiative may compel such a result.**
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IT IS THEREFORE ORDERED and declared that Initiative Petition C-04-2022 is legally deficient because it violates the description of effect requirement of NRS 295.009; the Petition constitutes an impermissible unfunded governmental mandate; and the Petition impermissibly commands the Nevada Legislature to enact a statute or set of statutes effecting its terms.

IT IS FURTHER ORDERED and declared that Intervenor-Defendant Education Freedom PAC, its proponents, officers, or agents, are hereby enjoined from collecting signatures in support of the Petition and from submitting any signatures for verification pursuant to NRS 293.1276, and any signatures previously collected are declared invalid.

IT IS FURTHER ORDERED and declared that Defendant Secretary of State Barbara Cegavske is enjoined from placing the Petition on the ballot.

DATED THIS 11 **day of April, 2022.**


CHARLES M. McGEE
SR. Judge on Assignment

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CERTIFICATE OF MAILING

I hereby certify that on this day, April 12, 2022, I emailed a
copy of **DECISION INVALIDATING PETITION TO AMEND THE NEVADA
CONSTITUTION TO OFFER SEQUESTERED FUNDING ALTERNATIVES
GOING OOUTSIDE DISTRICTS TO PARENTS OF SCHOOL AGE
CHILDREN to:**

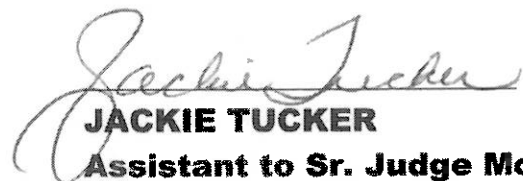
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