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1 BRADLEY S. SCHRAGER, ESQ. (NSB 10217),
JOHN SAMBERG, ESQ. (NSB 10828)
2 DANIEL BRAVO, ESQ. (NSB 13078)
3 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, PLLC**
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
4 (702) 341-5200/Fax: (702) 341-5300
bschrager@wrslawyers.com
5 jsamberg@wrslawyers.com
dbravo@wrslawyers.com

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Attorneys for Plaintiffs

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

11 RORY REID, an individual; BEVERLY
12 ROGERS, an individual,

13 Plaintiffs,

14 vs.

15 BARBARA CEGAVSKE, in her official
16 capacity as NEVADA SECRETARY OF
STATE,

17 Defendant.

Case No.: *22ceev028 B*

Dept. No.: *I*

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
CHALLENGING INITIATIVE
PETITION C-04-2022 PURSUANT
TO NRS 295.061(1)**

**Priority Matter Pursuant to
NRS 295.061(1)**

Arbitration Exemption: Declaratory
and Injunctive Relief

22 Plaintiffs, RORY REID and BEVERLY ROGERS (collectively, "Plaintiffs"), file
23 this Complaint for declaratory and injunctive relief against Barbara Cegavske, in her
24 official capacity as the Nevada Secretary of State, pursuant to NRS 295.061,
25 NRS 30.030, and NRS 33.010. Plaintiffs allege and complain as follows:

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1 8. The Petition seeks to amend Article 11 of the Nevada Constitution by
2 adding a new section, which reads, in full:

3 No later than the school year commencing in 2025, and on an
4 ongoing basis thereafter, the Legislature shall provide by law for
5 the establishment of education freedom accounts by parents of
6 children being educated in Nevada. Parents shall be authorized to
7 use the funds in the accounts to pay for the education of their child
8 in full or in part in a school or educational environment that is not
9 a part of the uniform system of common schools established by the
10 Legislature. The Legislature shall appropriate money to fund each
11 account in an amount comparable to the amount of funding that
12 would otherwise be used to support the education of that child in
13 the uniform system of common schools. The Legislature shall
14 provide by law for an eligibility criteria for parents to establish an
15 education freedom account.

10 9. The Petition commands the Nevada Legislature to enact a statute or set
11 of statutes effecting its very specific terms. Specifically, the Petition commands the
12 Nevada Legislature to enact law, no later than the school year commencing in 2025,
13 that establishes a voucher-style program, or an education savings account that is
14 referred to as “education freedom accounts” (“EFA”) in the Petition, that would
15 authorize parents to use state money to pay for private school tuition.

16 10. The Petition impermissibly mandates a future Nevada Legislature to
17 appropriate money to fund each EFA in an amount comparable to the amount of
18 funding that would otherwise be used in the public school system.

19 11. The Petition commands the Nevada Legislature to enact law that creates
20 eligibility criteria for parents to establish an EFA. The Petition does not set forth the
21 eligibility criteria for the Nevada Legislature to then enact into law.

22 12. The constitutional amendment proposed by the Petition is not self-
23 executing—it requires the Nevada Legislature to provide by law during a future
24 legislative session for the establishment of the EFA.

25 13. The Petition is similar to the provisions of Senate Bill (S.B.) 302 (2015),
26 passed by the Nevada Legislature during the Regular Session in 2015, which the
27 Nevada Supreme Court struck down in *Schwartz v. Lopez*, 132 Nev. 732, 738, 382 P.3d
28 886, 891 (2016). The Nevada Supreme Court ruled that S.B. 302 had failed to

1 appropriate funds for the education savings accounts contemplated by the bill, and that
2 money that the Legislature had appropriated for K-12 public education could not be
3 used for that purpose, consistent with the constitutional mandates to fund public
4 education.

5 14. The Petition also runs afoul of Article 19, Section 6 of the Nevada
6 Constitution, which prohibits the “proposal of any statute or statutory amendment
7 which makes an appropriation or otherwise requires the expenditure of money, unless
8 such statute or amendment also imposes a sufficient tax, not prohibited by the
9 Constitution, or otherwise constitutionally provides for raising the necessary revenue.”

10 15. The Petition includes a description of effect as required by
11 NRS 295.009(1)(b), which reads, in full:

12 The initiative will provide parents with the ability to use funds
13 appropriated by the Legislature to pay for the education of their
14 child in a school or educational environment that is not a part of
15 the public school system. The initiative requires the Legislature to
16 establish an education freedom account program under which
parents may spend money appropriated by the Legislature into
those accounts to pay for some or all of their child’s education
outside the public school system. The Legislature must establish
an eligibility criteria for parents to establish an account.

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

23 See **Exhibit 1**, at 3.

24 **FIRST CAUSE OF ACTION**

25 **Violation of Description of Effect Requirement, NRS 295.009(1)(b)**

26 16. The foregoing paragraphs of this Complaint are re-alleged and fully
27 incorporated as if set forth in full herein.

1 17. NRS 295.009(1)(b) requires that initiative petitions “set forth, in not more
2 than 200 words, a description of the effect of the initiative or referendum if the
3 initiative or referendum is approved by the voters.”

4 18. “[A] description of effect ... [can]not be deceptive or misleading.” *Educ.*
5 *Initiative PAC v. Comm. to Protect Nevada Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879
6 (2013) (internal quotation marks and citation omitted). It must also “explain these
7 ramifications of the proposed amendment” in order to allow voters to make an informed
8 decision. *Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996).

9 19. Here, the description of effect is deficient, first, because it is deceptive or
10 misleading, and second, because it fails to provide essential information regarding the
11 Petition’s effects, including significant financial, legislative, and practical ramifications
12 that are necessary for voters to make informed decisions as to whether to support the
13 Petition.

14 20. The description of effect fails to disclose the financial burden placed on
15 the State Treasurer and the Department of Education, or of the fact that no revenue
16 source is established by the proposed Petition to pay for the substantial expenditures
17 required by the Petition.

18 21. While stating that “[g]enerating the revenue to fund the accounts could
19 necessitate a tax increase or a reduction in government services[,]” the description of
20 effect misleadingly fails to disclose that any funding appropriated for the contemplated
21 program would inevitably reduce the funding available funding for Nevada’s public
22 school system, leading to a deterioration in Nevada’s public school system.

23 22. Collectively, these omissions render it impossible for a potential signatory
24 to make an informed decision whether to sign the Petition.

25 23. Accordingly, the Petition is invalid and must be stricken, and the
26 Secretary of State should be enjoined from taking any further action upon it.

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1 the power of a succeeding legislature.” *Washington State Farm Bureau Fed’n v.*
2 *Gregoire*, 162 Wash. 2d 284, 301, 174 P.3d 1142, 1150 (2007). *See also Ex parte Collie*,
3 38 Cal. 2d 396, 398, 240 P.2d 275, 276 (1952) (“It is the general rule that one legislative
4 body cannot limit or restrict its own power or that of subsequent Legislatures and that
5 the act of one Legislature does not bind its successors.”).

6 30. The people acting through the initiative process can no more command
7 the Nevada Legislature to take specific legislative action than a current Legislature
8 can bind a future Legislature to act or deliberate or vote in a particular way.

9 31. The command to the Nevada Legislature contained in the Petition is
10 binding, and the deliberative function of the Legislature is impermissibly impaired.
11 The initiative process cannot be so employed.

12 32. Nevada legislators would not be free to deliberate and vote their own
13 considered judgment, being responsible to their own constituents, and they would no
14 longer be part of a deliberative body acting independently in exercising their individual
15 best judgments on the matters that come before them.

16 33. The Petition constitutes an impermissible use of the initiative process
17 because in commanding the Nevada Legislature to take specific action, it exceeds the
18 powers of direct democracy reserved to the people by the Nevada Constitution.

19 34. Accordingly, the Petition is invalid and must be stricken, and the
20 Secretary of State should be enjoined from taking any further action upon it.

21 THIRD CAUSE OF ACTION

22 **Violation of Unfunded Expenditure Prohibition, Nev. Const. Art. XIX, Sec. 6**

23 35. The foregoing paragraphs of this Complaint are re-alleged and fully
24 incorporated as if set forth in full herein.

25 36. Nevada Constitution Article 19, Section 6 prohibits any initiative that
26 “makes an appropriation or otherwise requires the expenditure of money, unless such
27 statute or amendment also imposes a sufficient tax, not prohibited by the Constitution,
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1 or otherwise constitutionally provides for raising the necessary revenue.” Nev. Const.
2 art. XIX, § 6.

3 37. “Section 6 applies to *all* proposed initiatives, without exception, and *does*
4 *not permit* any initiative that fails to comply with the stated conditions.” *Rogers v.*
5 *Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001) (emphases in original).

6 38. When an initiative violates this “threshold content restriction” by
7 mandating unfunded expenditures, it is void ab initio, and pre-election intervention by
8 Nevada courts is warranted. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 891, 141 P.3d
9 1224, 1233 (2006) (quoting *Rogers*, 117 Nev. at 173, 18 P.3d at 1036).

10 39. Here, the Petition mandates the Nevada Legislature appropriate money
11 to fund each EFA in an amount comparable to the amount of funding that would
12 otherwise be used in the public school system.

13 40. The Petition fails to impose any taxes or otherwise raise the necessary
14 revenue to either fund each EFA contemplated by the Petition, or to pay for the
15 administrative expenses that would necessarily have to be incurred in creating,
16 maintaining and administering the EFA program.

17 41. Although the wide-ranging changes mandated by the Petition would
18 unquestionably require expenditures of money, the Petition contains no tax or other
19 provision for their funding, thereby violating Article 19, Section 6.

20 42. Accordingly, the Petition is invalid and must be stricken, and the
21 Secretary of State should be enjoined from taking any further action upon it.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff asks this Court to enter an order:

3 A. Declaring that the Petition's description of effect does not comply with
4 NRS 295.009(1)(b) because it does not adequately inform voters of the Petitions
5 effects, and is therefore invalid;

6 B. Declaring that the Petition does not comply with Article 19, Section 6 of
7 the Nevada Constitution because it impermissibly mandates an unfunded
8 expenditure;

9 C. Declaring that the Petition represents an impermissible use of the
10 initiative process because it seeks to bind future Legislatures, in contravention of
11 laws;

12 D. Enjoining and prohibiting the Nevada Secretary of State from placing
13 the Petition on the 2022 general election ballot, or from taking further action upon it;

14 E. Awarding Plaintiffs their reasonable costs and attorneys' fees; and

15 F. Granting such other relief as the Court deems appropriate.

16 **AFFIRMATION**

17 The undersigned hereby affirm that the foregoing document does not contain
18 the social security number of any person.

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20 DATED this 22nd day of February, 2022

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22 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**

23 By: 

24 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)

JOHN SAMBERG, ESQ. (NSB 10828)

25 DANIEL BRAVO, ESQ. (NSB 13078)

3773 Howard Hughes Parkway, Suite 590 South

26 Las Vegas, Nevada 89169

702) 341-5200/Fax: (702) 341-5300

27 *Attorneys for Plaintiffs*

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NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

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

Education Freedom PAC

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

1. Erin Phillips

2.

3.

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

Education Freedom PAC

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 

Signature of Petition Filer

01/27/2022

Date

State of Nevada - Initiative Petition – Constitutional Amendment

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 11 of the Nevada Constitution is hereby amended by adding thereto a new section to read as follows:

- 1. No later than the school year commencing in 2025, and on an ongoing basis thereafter, the Legislature shall provide by law for the establishment of education freedom accounts by parents of children being educated in Nevada. Parents shall be authorized to use the funds in the accounts to pay for the education of their child in full or in part in a school or educational environment that is not a part of the uniform system of common schools established by the Legislature. The Legislature shall appropriate money to fund each account in an amount comparable to the amount of funding that would otherwise be used to support the education of that child in the uniform system of common schools. The Legislature shall provide by law for an eligibility criteria for parents to establish an education freedom account.***
- 2. Severability.** Should any part of this Act be declared invalid, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the remaining provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. This subsection shall be construed broadly to preserve and effectuate the declared purpose of this Act.

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

The initiative will provide parents with the ability to use funds appropriated by the Legislature to pay for the education of their child in a school or educational environment that is not a part of the public school system. The initiative requires the Legislature to establish an education freedom account program under which parents may spend money appropriated by the Legislature into those accounts to pay for some or all of their child's education outside the public school system. The Legislature must establish an eligibility criteria for parents to establish an account.

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

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

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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