


BENSON LAW NEVADA
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KEVIN BENSON, ESQ.
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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.
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CERTIFICATE OF SERVICE

Pursuant to NRCPC 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:

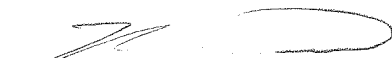
- Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada
- Hand-delivery - via Reno/Carson Messenger Service
- Facsimile
- E-Mail (courtesy copy)
- Federal Express, UPS, or other overnight delivery
- E-filing pursuant to Section IV of District 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

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Email: kevin@bensonalawnv.com
5 Attorneys for Plaintiff

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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 ////

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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: 

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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: Accident:
 Type:
 Venue:
 Location:

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 *** | | | | | |

MCDONALD CARANO
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1 Adam Hosmer-Henner, Esq. (NSBN 12779)
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2 MCDONALD CARANO
100 West Liberty Street, 10th Floor
3 Reno, NV 89501
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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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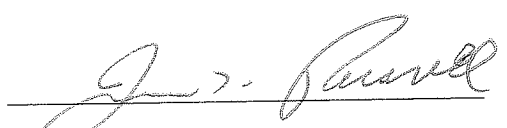
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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

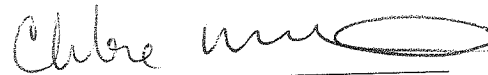
CERTIFICATE OF MAILING

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
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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)
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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,
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16 Plaintiff,
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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
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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

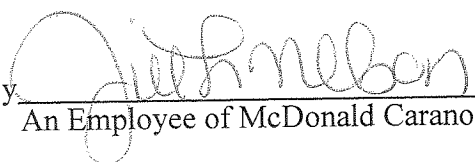
Greg Zunino, Esq.
State of Nevada, Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

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

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1 Adam Hosmer-Henner, Esq. (NSBN 12779)
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*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
22 Jackson's Complaint for Declaratory Relief ("Complaint") and Plaintiff's Opening Brief in
23 Support of Complaint for Declaratory and Injunctive Relief ("Opening Brief"), and having
24 considered Defendant Fair Maps Nevada PAC's ("Fair Maps") Answer and Answering Brief in
25 Response to Plaintiff's Opening Brief in Support of Complaint for Declaratory and Injunctive
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
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,

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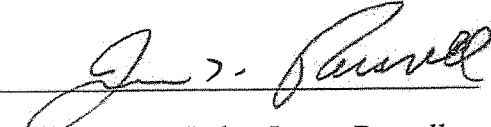
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

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
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Attorneys for Defendant Fair Maps PAC

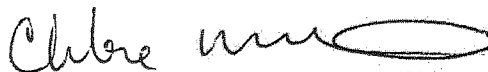
CERTIFICATE OF MAILING

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.