IN THE SUPREME COURT OF THE STATE OF NEVADA

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BARBARA CEGAVSKE, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE, Appellant, vs. ROBERT HOLLOWOOD, et al. Respondents.	**Supreme Court Case No. 84420** District Court No.: 21 OC 00182 1B

APPELLANT'S REPLY BRIEF

Appeal from the First Judicial District Court
Judge James E. Wilson Jr., Case No. 21 OC 00182 1B.

Wayne Klomp, Esq.
Nevada Bar No. 10109
GREAT BASIN LAW
1783 Trek Trail
Reno, Nevada 89521
(775) 770-0386
wayne@greatbasinlawyer.com
Attorney for Appellant Barbara Cegavske

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I. Introduction and Summary

The Nevada Constitution is clear on its face as to both the duties and rights governing the initiative petition process including: (1) the right of a proponent to suggest and circulate a petition; (2) the rights of 10% of the voters to propose a petition; (3) the duty of the Legislature to adopt the petition, reject it, or take no action; (4) the duty of the Secretary of State to place the rejected or passed-over petition on the ballot; and (5) the right of the electorate to "enact or reject" the proposed petition. In their Answering Briefs,[1] Petition Sponsors (collectively Respondents Mr. Hollowood, Mr. Belknap, Nevadans For Fair Gaming Taxes PAC, and Fund Our Schools PAC) and Intervenors (collectively Respondents Nevada Resort Association and Vegas Chamber) ignore the plain language of the Constitution by concluding that no right to propose or vote on a proposed petition exists on the face of the Constitution—those are the only rights specifically reserved to the people.

The Nevada Constitution affirmatively directs and charges the Secretary of State with the duty to protect the people's rights to propose and vote on petitions by

[1] Appellant's Reply Brief responds jointly to the Answering Briefs of both the Petition Sponsors and the Intervenors. Because both Answering Briefs are titled "Respondents' Answering Brief," each brief is identified by party (either Petition Sponsors or Intervenors) throughout this Reply.

placing them on the ballot so that the electorate may "enact or reject" those petitions—she "shall submit the question of approval or disapproval . . . to a vote of the voters . . . ." Nev Const. art. 19, § 2(3).

A statute which facially conflicts with the plain language of the Nevada Constitution cannot be construed harmoniously when it abrogates the constitutional rights of the people to vote on a petition and the duty of the Secretary of State to protect those rights which the people have expressly reserved to themselves. Petition Sponsors and Intervenors fail to employ cannons of constitutional interpretation when they conclude that the Constitution "does not establish a right of the public to vote on an initiative petition simply because it has been proposed." Intervenors' Brief at 34. The Constitution states exactly the opposite: "the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution, **and to enact or reject them at the polls**." Nev. Const. art. 19, § 2(1) (emphasis added). Nothing in either of the Respondents' Answering Briefs illustrate how the withdrawal of a proposed initiative petition protects the constitutional voting rights the people have reserved to themselves in the initiative process.

None of Petition Sponsors' or Intervenors' remaining arguments are availing. First, although the Legislature can "facilitate" the initiative process by statute, it cannot enact statutes which make it more difficult for the people to exercise their

constitutional rights or which remove those rights entirely. But withdrawal of a verified petition does exactly that.

Next, Respondents argue that the people have not reserved any rights in the initiative process to themselves, and that the withdrawal of a verified initiative petition "*expands and adds to* the rights of initiative proponents" [Petition Sponsors' Brief at 21] while it "empowers the people to engage with the Legislature" [Intervenors' Brief at 18]. But those positions are undermined by the fact that expansion of the rights of the initiative proponent eliminates the constitutionally guaranteed right reserved to at least 10% of the voters to propose a law and the people's reserved right to vote on the proposal. And that expansion of right conflicts with the Secretary's duty to protect the rights reserved to the people.

Further, Intervenors suggest that NRS 295.026 is constitutional because it removes an initiative petition from the constitutional process making the petition "void." Intervenors' Answering Brief at 24-26. But a statute which terminates the constitutional rights of the people cannot avoid unconstitutionality by removing the petition (and the voters' rights) from the constitutional process.

Finally, the Constitution protects the initiative petition process regardless of whether the proposed initiative petitions are favorable or unenviable. The Legislature cannot grant itself an expanded role in the process nor can it supplant its judgment for that of the people to enact or reject the proposed petition. The

Constitution makes it clear that the Legislature can enact the petition without change, reject the petition, or pass. Even if the Legislature adopts a different measure on the same subject or amends the statute to address the same issue as the petition, the petition still goes to a vote of the people. Nev. Const. art. 19, § 2(3).

For those reasons, the decision of the district court must be reversed.

II. The Withdrawal Statute Cannot Be Harmonized with the Express Language of the Nevada Constitution Because NRS 295.026 Eliminates the Rights Reserved to the People to Enact or Reject Petitions.

Although Petition Sponsors point out that a statute is presumed constitutional, that presumption is overcome when a statute clearly conflicts with the constitution. *Allen v. Nevada*, 100 Nev. 130, 133-34, 676 P.2d 792, 794 (1984). Such is the case here.

A. Petition Sponsors and Intervenors Ignore the Plain Reading of the Constitution that the Voting Rights Are Reserved to the People.

The rights to propose a question in and vote on an initiative petition are rights the people expressly reserve to themselves in Article 19, Section 2(1). Despite this clear reservation of rights, Petition Sponsors maintain that "the Secretary must accept and act upon a duly submitted notice of withdrawal of an initiative . . . . Article 19 of the Nevada Constitution evinces no contrary command . . . ." Petition Sponsors' Brief at 16. Similarly, Intervenors state that the Secretary "wrongly presumes that the constitution grants a right to the public to vote on an initiative once

it has been proposed" and that the right to vote on a petition "invents a constitutional right by isolating language from the constitution and case law to fashion a right that is not supported by the actual purpose of Art. 19, Sec. 2(1)." Intervenors' Brief at 12, 27.

As this Court noted, once a voter decides to propose a law,

> Has he not the right to assume, and should not the law protect him in the assumption, that he will have the opportunity to vote for the matters which he has petitioned for? In fact, is not the whole theory of initiative legislation based upon the security that the legislation proposed and petitioned for by the people shall be voted upon at the polls by them without interference, revision, or mutilation by any official or set of officials.

Rogers v. Heller, 117 Nev. 169, 178, 18 P.3d 1034 (2001) (internal citation and punctuation omitted). The *Rogers* court in declining to sever portions of an initiative petition which would have rendered it constitutional concluded that "our constitution prevents the Legislature from changing or amending a proposed petition that is under consideration." *Id.* By analogy, a worse offense than striking portions of a petition or altering it is the Legislative tampering with the right to vote on it at all. But that is what the Legislature has done and what NRS 295.026 allows.

B. The Constitution Provides Textual Support Compelling the Secretary to Place Proposed Initiatives on the Ballot.

Petition Sponsors and Intervenors argue that there is nothing in the Constitution which supports the Secretary's mandatory duty to place verified, proposed initiatives on the ballot. Petition Sponsors' Brief at 16; Intervenors Brief at 28. But in addition to the mandatory language compelling the Secretary of State to place verified initiatives on the ballot, the constitutional text provides additional support for the reservation of the right to vote on a proposed petition. Specifically, Article 19, Section 2(3) dictates what acts the Legislature can take on a proposed initiative—and that does not involve negotiating away the right to propose or enact/reject a petition. The Legislature's choice of actions determines the Secretary's obligations. Each possible scenario is an "if/then," and the Secretary's obligations depend on which "if" the Legislature opts to pursue—but all of the Legislature's "ifs" result in placing the petition on the ballot unless the Legislature enacts the petition in its entirety. In the event the Legislature enacts a measure different from the petition on the same subject, the specific process for that eventuality ***still involves a vote of the people on the exact question raised in the initiative petition:***

> If the Legislature rejects such proposed statute or amendment, the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the Governor, **the**

> **question of approval or disapproval of each measure shall be submitted by the Secretary of State to a vote of the voters** at the next succeeding general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law.

Nev. Const. art. 19, § 2(3) (emphasis added).[2] Similarly, if the Legislature amends the actual statute addressed in the initiative petition, "the Secretary of State in submitting the statute to the voters for approval or disapproval of the proposed amendment shall include the amendment made by the Legislature." *Id.*

Petition Sponsors contend that "[n]othing in Article 19 contravenes the Legislature's ability to enact a provision permitting proponents from withdrawing initiative measures." Petition Sponsors' Brief at 16. And Intervenors similarly argue that "[n]othing in the Nevada Constitution expressly prohibits or otherwise addresses withdrawal of an initiative petition that has been filed with the Secretary of State." Intervenors' Brief at 28. In fact, there are several such provisions including those cited above that dictate the Secretary of State's obligation to place the petition on the ballot and the express reservation of rights by the people. Nev. Const. art. 19, § 2(1) & 2(3). Those provisions are "self-executing," and the Legislature can only

[2] It is not clear that this provision applies to the facts of this case because the Legislature never expressly rejected the Initiative Petitions, instead taking no action within the first 40 days of the 2021 Session. But this provision provides further support that the Legislature cannot enact separate measures or amend the same statute and avoid a vote on proposed initiative petitions.

facilitate those mandatory provisions. Nev. Const. art. 19, § 5; *see also infra* § III (discussing Legislature's limited authority to facilitate Article 19).

However, nowhere does the constitutional initiative process provide that the Legislature can address questions raised in a petition by alternative means and thereby avoid a vote of the people. Petition Sponsors and Intervenors argue that the absence of a constitutional prohibition on the Legislature allows it to provide for withdrawal. That position violates the axiom *expression unius est exclusion alterius*, the expression of one thing is the exclusion of another. This Court has concluded that the "affirmation of a distinct policy upon any specific point in a state constitution implies the negation of any power in the legislature to establish a different policy." *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) (internal citation omitted). Stated another way, "an express inhibition is not necessary." *Id.*

This Court has gone so far as to state that even a petition which may be held unconstitutional must be placed on the ballot despite the apparent futility. *Greater Las Vegas Chamber of Commerce v. Del Papa*, 106 Nev. 910, 917, 802 P.2d 1280, 1281-82 (1990). In that case, the plaintiff challenged the constitutionality of an initiative petition because "various constitutional defects were apparent on the face" of the ballot question. *Id.* at 915, 802 P.2d at 1280. Even assuming the unconstitutionality of the petition, the Court stated that "this would be an insufficient reason to preclude the people of this state from exercising their right to vote for or

against an initiative petition." *Id.* at 916, 802 p.2d at 1281. The Court concluded that "there is great political utility in allowing the people to vote on the measure. Such a vote communicates clearly to the representative branches of government the popular sentiment on a particular issue or issues." *Id.* at 917, 802 P.2d at 1282.

Although the facts differ, the analogy remains—this Court has historically recognized the rights of the voters to enact or reject an initiative petition, even where it may later be determined to be unconstitutional. *See also*, *Rea v. City of Reno*, 76 Nev. 483, 357 P.2d 585 (1960) (declaring a statute unconstitutional where it provided for enactment of a municipal ordinance without a vote of the people).

C. The Court Need Not Go Beyond the Plain Language of the Constitution to Determine that NRS 295.026 Contradicts the Constitutional Process—And the Legislative History Is Unavailing to Respondents.

The Parties appear to be in concert regarding the reading of NRS 295.026—their interpretations do not differ, and the statute is facially clear. *See* Petition Sponsors' Brief at 15 ("there is no ambiguity. The language of NRS 295.026 is clear and express."); Intervenors' Brief at 7 (the plain language of NRS 295.026 provides for withdrawal of an initiative petition), *citing* JA 65 (AGO).

Because NRS 295.026 is clear on its face and there is no disagreement as to what it means, this Court need not look to the legislative history to determine its meaning. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) ("Where a statute is clear on its face, a court may not go beyond the language

of the statute in determining the legislature's intent."). However, Petition Sponsors refer to facts in the legislative history which they incorrectly believe support their position. Petition Sponsors' Brief at 8-11. Although the Secretary of State proposed AB 45 (2017) which resulted in the adoption of NRS 295.026 in its original form, she did so because there was no mechanism for withdrawal of defective petitions. JA 254. The Secretary affirmed that "the concept of withdrawal of filed initiative petitions arose as a housekeeping tool to eliminate defective, incomplete, or unused petitions from the active records." *Id.* And this position is consistent with the Legislature's ability to facilitate the initiative process—nothing in the Constitution conveys a right to "enact or reject" an unverified petition which 10% of the voters have not proposed.

Further, some testimony before the Legislature indicated that the Secretary of State's Office had received requests for withdrawal of petitions. *See* Petition Sponsors' Brief at 9. But the Secretary confirmed in this litigation that, in her time as Secretary of State and based upon research of the historical records, there has never been "a single petition that the petition sponsor has withdrawn once the required signatures have been submitted for verification." *Id.* Further, the original statute did not contain any time frames for withdrawal. NRS 295.026 (2017). If the statute contemplated withdrawal of verified petitions, it would have included time frames to avoid last-minute, pre-election withdrawals that complicated the

ballot formatting and printing process. The fact that no timetable for withdrawal was included is additional evidence (if it were needed) that the statute proposed by the Secretary was not originally intended to permit withdrawal of verified petitions that had been submitted to the Legislature.

The original purpose of NRS 295.026 is reflected in the legislative history of Assembly Bill 45 when Wayne Thorley, Deputy Secretary for Elections noted that "[t]here have been petitions filed with our office in the past to which we granted a withdrawal when the petition sponsors asked for it." JA 147 (Assembly Comm. on Legislative Operations & Elections, Minutes dated April 11, 2017, at 7). This was in response to a question about defective or unconstitutional petitions, and the concern over whether the petition could be refiled with the Secretary of State. *Id.* (Assemblyman Ohrenschall). The discussion surrounded petitions filed for circulation, not petitions submitted for signature verification.

It is clear from the legislative history that the Legislature passed the 2021 amendments to NRS 295.026 in the waning hours of the legislative session without the Secretary's knowledge. She was not consulted in the 2021 amendment process. JA 254-55. The constitutionality of NRS 295.026 is not saved by its legislative history.

D. The Conclusions of the Court in *Rea v. City of Reno* Guide the Outcome of this Appeal Because that Decision Emphasizes the Right to Vote on Proposed Initiative Petitions and the Limitation of Legislative Power to Inhibit that Right.

Intervenors complain that the quotations in the Secretary of State's Opening Brief from *Rea v. City of Reno*, 76 Nev. 483, 357 P.2d 585 (1960) are "extremely misleading." Intervenors' Brief at 39-42. Intervenors argue the Court should not rely on that case because the facts differ. That case involved a statute requiring a municipality to adopt a petition without a vote of the people, but which had been proposed by 60% of the eligible voters. *Id.* The holding in *Rea* emphasizes the importance this Court historically placed on the rights of the voters to "enact or reject" ballot initiatives. Even where the super-majority of voters had proposed the initiative petition, the voters right to "enact or reject" the initiative petition was inviolate. *Rea*, 76 Nev. at 486, 357 P.2d at 586. Intervenors' both misapprehend the utility of that case and the analogous principles emphasized by that court—the Constitution still does not contemplate a verified petition without a ballot.

The *Rea* court recognized the rights of the majority (or super-majority) to enact an initiative, but also the rights of the minority to voice their rejection of the petition. *Id.* The statute which called for adoption of the initiative without a vote of the people was ruled unconstitutional because the Legislature "went beyond the said powers granted to it by the constitution, because it failed to provide therein for the submission of proposed charter amendments to the decision of the voters at the

polls." *Id.* This is consistent with the Court's language in another case where it considered striking a portion of a petition to make it constitutional. *Rogers*, 117 Nev. at 172, 18 P.3d at 1036 ("is not the whole theory of initiative legislature based upon the security that the legislation proposed and petitioned for by the people shall be voted upon at the polls . . . .?"). The constitutional voting rights of the people are paramount—either to effect change as the majority or to voice opposition as the minority. The Legislature cannot permit the removal of those rights.

Even the Intervenors acknowledge that the *Rea* court held that the Constitution "provides for a process in which laws are *proposed* by the initiative process, but can only be enacted *at the polls*." Intervenors Brief at 40. Yet Intervenors misunderstand the Secretary of State's argument regarding the Legislature's adoption of AB 495 (2021). Clearly AB 495 did not amend the statute raised in the Initiative Petitions. But the adoption of AB 495 effectively terminated the initiative process without a vote because the Petition Sponsors agreed, as part of the bargain, to withdraw the Initiative Petitions. *See* Petition Sponsors' Brief at 5-6.

Finally, the *Rea* court adopted a definition of initiative that is instructive here. Initiative "is the right of a specified number of the electorate to unite in proposing laws to the legislative body, which, after due consideration **must submit the same to the vote of the people for their approval or disapproval**." *Rea*, 76 Nev. at 487,

357 P.2d at 587, *quoting* Bouv. Law. Dict. 1569 (Rawle 3d Rev.) (emphasis added). Despite the differing facts, *Rea* supports the conclusion in this case that "the constitution does not contemplate the initiative without a ballot." *Id.* at 486, 357 P.2d at 586.

E. The Initiative Process in Other States Are Dissimilar to the Mandatory Language in the Nevada Constitution and Have No Bearing on this Appeal.

As a policy matter, Intervenors suggest that an initiative process which allows for legislative bargaining is better than the process provided in the Nevada Constitution; and because other states allow for withdrawal of an initiative petition that somehow renders NRS 295.026 constitutional. Intervenors' Brief at 17-23. However, the initiative processes in other states are different and do not contain the same, mandatory language used in the Nevada Constitution to place the petition on the ballot—the process in other states with completely different constitutional and statutory language cannot provide the constitutional basis for NRS 295.026.

For example, California law permits withdrawal of the measure "at any time before filing the petition with the appropriate elections official" or for a statewide initiative or referendum, "at any time before the Secretary of State certifies that the measure has qualified for the ballot pursuant to Section 9033." Cal. Elec. Cod. § 9604 (a) & (b). In Nevada, there is no separate certification process for the measure

to go to the ballot. Instead, the process is complete upon verification of signatures when the Secretary of State sends the petition to the Legislature.

And the California, Colorado, Ohio, Oregon, and South Dakota constitutional provisions have no 40-day legislative action requirement before the secretary of state is required to submit the question to a vote.

Further, the Colorado Constitution is entirely different from the Nevada Constitution, merely requiring that "[i]n submitting the same and in all matters pertaining to the form of all petitions, the secretary of state and all other officers shall be guided by the general laws." Colo. Const. art. V, § 1(7). That constitution is not as restrictive of the legislature's ability to regulate the process as Nevada's where any statute must "facilitate" the initiative process. Nev. Const. art 19, § 5. The Colorado general withdrawal statute allows withdrawal of an initiative petition within 60 days prior to the election. Colo. Rev. Stat. § 1-40-134.

Other states also allow withdrawal of an initiative petition, but only prior to submission of the petition for verification of signatures. *E.g.*, Or. Rev. Stat. § 250.029. And the Missouri statute cited by Intervenors only permits withdrawal of a petition during circulation and is silent on withdrawal after certification and publication by the secretary of state. *Compare* Mo. Rev. Stat. § 116.115 (upon withdrawal "the proposed petition shall no longer be circulated . . . ."), *with* Mo. Rev. Stat. § 116.240 (secretary of state sends certified copy of ballot to be

published). This is consistent with Nevada's own signature withdrawal statute which only allows a signor to withdraw her signature "at any time before the petition is filed with the county clerk." NRS 295.055(4).[3]

Regardless of the process in other states, Nevada's initiative process is unique. The law in other states provides no support to Intervenors.

III. A Statute Which Hinders or Eliminates the Rights of the Voters Does Not Facilitate the Initiative Process and Exceeds the Authority of the Legislature.

Both the Petition Sponsors and the Intervenors argue that NRS 295.026 is a constitutional use of the Legislature's power to "facilitate" the initiative process; and they cite case law examples of the proper use of that Legislative power. *See* Sponsors' Brief at 17-20; Intervenors' Brief at 17-18. Petition Sponsors state that NRS 295.026 need only have a "rational legislative purpose" to pass constitutional muster. Petition Sponsors' Brief at 16. But there is no "rational purpose" standard upon which NRS 295.026 can lean.

The Legislature can only enact statutes to facilitate the initiative petition process (Nev. Const. art. 19, § 5); and those statutes must directly "facilitate the provisions of Article 19." *Nevadans for the Protection of Prop Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). In other words, the statutes

[3] The circulator files the petition with the county clerks for verification of signatures. NRS 295.056(1).

can only facilitate the process that already exists in Article 19 of the Constitution. The Legislature cannot create new processes such as withdrawal. Legislative enactments cannot "unreasonably inhibit the powers reserved to the people in Article 19." *We The People Nev. ex rel. Angle v. Miller*, 124 Nev. 874, 886-87, 192 P.3d 1166, 1174 (2008). Mirriam-Webster's Online Dictionary (2022) further defines "facilitate" as "to make easier; help bring about."

This Court has ruled that many of the Legislature's procedural statutes facilitate Article 19 because those statutes aid the people in the exercise of their reserved powers. For example, a statute that limits a petition to a single subject "facilitates the initiative process by preventing drafters from circulating confusing petitions that address multiple subjects." *Heller*, 122 Nev. at 902, 141 P.3d at 1240 (single-subject also did not limit people's ability to legislate because a second petition could be submitted on additional topics). This Court also ruled that the description of effect required by NRS 295.009 facilitates the right to meaningfully engage in the initiative process in part because it prevents voter confusion and promotes informed decisions. *Nevadans for Nevada v. Beers*, 122 Nev. 930, 939-40, 142. P.3d 339, 345 (2006).

But statutes which hinder the exercise of the rights of the people do not facilitate the constitutional process—they do not "make easier or less difficult" the process. Thus, a statute could not shorten the time of a proponent to gather

signatures. *We the People of Nevada*, 124 Nev. at 891; 192 P.3d at 1178. A statute could not require a municipality to pass a question proposed by a super-majority of the electorate because the constitutional process requires a vote of the people. *Rea*, 76 Nev. at 487, 357 P.2d at 587.

Here, the withdrawal of a verified petition does not facilitate the exercise of constitutional rights of the people—it eliminates those rights making it impossible for the people to propose initiatives or vote on them unless the Legislature allows the petition to proceed. The Legislature exceeded its authority to facilitate the process when it adopted NRS 295.026 permitting withdrawal of verified petitions.

IV. The Effect of the Withdrawal Statute Must Be Construed in Light of the Constitutional Process—A Process Which Does Not Contemplate Withdrawal.

Intervenors suggest that NRS 295.026 is constitutional because "a withdrawn petition is the equivalent of a void petition." Intervenors' Brief at 24. Intervenors claim ignores the constitutional rights of the people and the Secretary's duties to protect those rights by conveying a verified petition to the voters. The claim is contrary to how the Constitution and statutes are interpreted together—the Constitution is not construed according to contradictory statutes. *Foley v. Kennedy*, 110 Nev. 1295, 1300, 885 P.2d 583, 586 (1995). "[R]ather, statutes must be construed consistent with the constitution and, where necessary, in a manner supportive of their constitutionality." *Id.* But Intervenors interpretation that NRS

295.026 can constitutionally remove a viable, verified petition from the constitutional process ignores this cannon of construction. The correct inquiry is whether the statute offends the constitutional process and can be read in harmony with the constitution—not whether the constitution can be read in harmony with the withdrawal statute.

As support, Intervenors cite to a case in which the court refused to sever unconstitutional portions of an initiative petition which did not comply with the constitutional requirement of raising taxes to support an appropriation of funds. *Rogers v. Heller*, 117 Nev. 169, 172, 18 P.3d 1035, 1036 (2001). The court declared the unconstitutional petition void and determined that "the Secretary of State's transmittal of the Initiative to the Legislature was ineffective." *Id.* at 178, 18 P.3d at 1040. That case did not involve a viable petition; it was constitutionally infirm and void (in contrast with voidable).

In this instance, no party claims that the Initiative Petitions are defective or unconstitutional. Rather, Intervenors claim that "a withdrawn petition is not a valid petition and it cannot be submitted to the voters at a general election." Intervenors' Brief at 26. Intervenors suggest a false equivalency—an unconstitutionally void petition or a "procedurally invalid" petition is not the same as an impermissibly withdrawn petition or even a voidable petition. Intervenors' Brief at 46. The statute authorizing withdrawal must be construed in light of the constitutional process—a

process in which the people have reserved to themselves the right to vote on a proposed petition safeguarded by the Secretary of State's mandatory obligation to submit those petitions to the electorate.

Further, the *Rogers* court recognized that the 10% of the electorate who propose a petition should have "the opportunity and right to vote for the matters which he has petitioned for . . . ." 117 Nev. at 178, 18 P.3d at 1040, *citing Bennet v. Drullard*, 149 P. 368, 370 (Cal. Ct. App. 1915). Although that decision references the right to vote on the form of the petition signed, the same principle applies to the right to vote at all—those who propose a petition by affixing their signatures should have the right to vote on the petition which they aided in proposing.

V. The Withdrawal Statute Expands Rights of Initiative Proponents in a Manner that Interferes with the Constitutional Rights Reserved to the People.

Petition Sponsors suggest that NRS 295.026 is constitutional because it "actually *expands and adds to* the rights of initiative proponents." Petition Sponsors' Brief at 21. Intervenors also suggest that withdrawal is a natural extension of the "special rights and responsibilities" of the entity who circulates the petition. Intervenors' Brief at 32. But any expansion of rights granted by the Legislature cannot interfere with the exercise of the electorate's rights specifically reserved to propose and vote upon a verified petition or the Secretary's duty to protect those

rights. *E.g.*, *We The People*, 124 Nev. at 886-87, 192 P.3d at 587 (legislative enactments cannot "unreasonably inhibit the powers reserved to the people in Article 19.").

The Constitution thus provides the limit on the rights the Legislature can bestow within the constitutional initiative process—the enactment cannot hinder the exercise of the rights reserved to the people and those facilitating statutes must relate to the provision already contained in Article 19. A proponent cannot take direct action that conflicts with the Constitution, such as withdrawing a verified petition to which jurisdiction has attached for the people to "enact or reject" that petition. *See State v. Scott*, 52 Nev. 216, 231, 285 P. 511 (1930) (signors cannot withdraw signatures after signatures are verified).

While true that the circulator of a petition has certain responsibilities, including filing the petition prior to circulation, drafting a description of effect, and identifying authorized persons, Intervenors confuse those responsibilities with "rights" of a circulator. The right of a circulator is to draft the language as she wants and offer the petition to the voters. But a circulator cannot propose a petition to the Legislature or demand a vote. Only 10% of the voters can propose a petition to the Legislature and ultimately to the voters to enact or reject. Nev. Const. art. 19, § 2(2). The voters therefore reserve to themselves that right to propose and to enact or

reject—it is not for the Legislature to expand the rights of the circulator by allowing withdrawal of the initiative petition once it has been verified.

VI. The Legislature's Role in the Initiative Process Is Restricted to the Constitutional Process—The Legislature Cannot Expand Its Own Rights at the Expense of the Voters.

Intervenors argue that the power reserved to the people to enact or reject a petition does not confer a right upon the people. Intervenors' Brief at 37-38. Instead, Intervenors argue, that the reservation of power is "about ensuring that the Legislature was not the only entity with the authority to make law." *Id.* at 38. But by adopting a withdrawal statute, the Legislature does exactly that—it ensures that the power to make law remains in the Legislature if it can convince one "authorized representative" that a different proposed law is better than the proposed petition. Intervenors argue that withdrawal facilitates the initiative process because "withdrawal can play a vital role in the initiative process when the Legislature chooses to respond, whether directly or indirectly, to the concerns of the people provided through an initiative petition." Intervenors' Brief at 17. But this ignores the constitutional language governing the Legislature's role in the initiative process.

The Legislature's obligations under the initiative process are set forth in the Constitution. It can adopt a petition as proposed, it can reject the petition, or it can refuse to do anything. Nev. Const. art. 19, § 2(3). If the Legislature rejects a petition, the Governor or the Legislature may propose "a different measure on the

same subject," but the question raised in the initiative petition still goes to the voters. Nev Const. art 19, § 2 ("each measure shall be submitted by the Secretary of State to a vote of the voters at the next succeeding general election."). If the Legislature amends the same statute as the petition proposes to amend, "the Secretary of State in submitting the statute to the voters for approval or disapproval of the proposed amendment shall include the amendment made by the Legislature." *Id.*

Intervenors complain that "the Secretary does not directly address the advantages that come from an initiative process that contains a procedure for withdrawal and why the Legislature was within its political discretion to enact such a procedure under Art. 19, Sec. 5." Intervenors Brief at 23. Whether or not the process is more favorable if a petition can be withdrawn after verification is not for the Secretary to determine. Nor is the Secretary in a position to determine the prudence of including the detailed initiative process in the Constitution and limiting Legislative authority in that process. *Cf. Wilson v. Koontz*, 76 Nev. 33, 38, 348 P.2d 231, 233 (1960) (noting that courts would not question the wisdom of making the initiative process part of the Constitution). Rather, the Secretary's obligations in the initiative process are set forth in the Constitution—she shall place a verified petition on the ballot.

The Constitution is clear—once 10% of the voters propose an initiative petition, the Secretary of State "shall" present that question to the voters to approve

or disapprove. It is not for the Legislature or the initiative proponents to determine that different action is more favorable or advantageous—that is the exact right the people have reserved to themselves.

Conclusion

The text of the Constitution is clear—the Secretary of State shall place initiative petitions on the ballot for the people to exercise their rights to both propose initiative petitions and to enact or reject them. For this reason, the district court should be reversed, and the Initiative Petitions placed on the ballot in the November 2022 general election.

Dated this 22nd day of April, 2022.

/s/ Wayne Klomp

Wayne Klomp, Esq.
Nevada Bar No. 10109
GREAT BASIN LAW
1783 Trek Trail
Reno, Nevada 89521
(775) 770-0386
Attorney for Appellant Barbara Cegavske

Attorney's Certificate

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2021 and a font of Times New Roman.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points, and contains 5,819 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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

Dated this 22nd day of April, 2022.

/s/ Wayne Klomp

Wayne Klomp, Esq.
Nevada Bar No. 10109
GREAT BASIN LAW
1783 Trek Trail
Reno, Nevada 89521
(775) 770-0386
wayne@greatbasinlawyer.com

Attorney for Appellant Barbara Cegavske

CERTIFICATE OF SERVICE

I hereby certify that on this date, the foregoing **APPELLANT'S REPLY BRIEF** was served on the individuals registered to receive service pursuant to the Court's electronic filing system. Service was also completed via electronic mail pursuant to a stipulation of the parties, and completed on the following individuals as shown:

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

Bradley S. Schrager, Esq.
bschrager@wrslawyers.com
Daniel Bravo, Esq.
dbravo@wrslawyers.com
John Samberg, Esq.
jsamberg@wrslawyers.com
Eric Levinrad, Esq.
elevinrad@wrslawyers.com

MCLETCHIE LAW

Margaret A. McLetchie
maggie@nvlitigation.com

Attorneys for Respondents Robert Hollowood et al.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Joel D. Henriod, Esq.
JHenriod@LewisRoca.com
Daniel F. Polsenberg, Esq.
DPolsenberg@LewisRoca.com
Kory J. Koerperich
KKoerperich@LewisRoca.com

Attorneys Respondents Nevada Resort Association and Vegas Chamber

Dated: April 22, 2022.

/s/ Wayne Klomp
Wayne Klomp