

**In the
Supreme Court of the State of Nevada**

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Elizabeth A. Brown
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BARBARA CEGAVSKE, in her
official capacity as NEVADA
SECRETARY OF STATE,

Appellant,

vs.

ROBERT HOLLOWOOD, an
individual, et al.,

Respondents.

Case No.: 84420

First Judicial District Court
Case No.: 21 OC 00182 1B

RESPONDENTS' ANSWERING BRIEF

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N.R.A.P. 26.1 DISCLOSURE

The undersigned counsel of record certifies that there are no persons or entities as described in N.R.A.P. 26.1(a) that must be disclosed.

The following law firms have appeared and/or are expected to appear in this Court on behalf of Respondents.

1. WOLF RIFKIN SCHULMAN SHAPIRO & RABKIN LLP; and
2. McLETCHIE LAW.

DATED this 15th day of April, 2022.

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ASSENT TO APPELLANT’S JURISDICTIONAL STATEMENT

Respondents Robert Hollowood, Kenneth Belknap, Nevadans for Fair Gaming Taxes PAC, and Fund Our Schools PAC agree with Appellant Barbara Cegavske’s (the “Secretary”) jurisdictional statement.

ASSENT TO APPELLANT'S ROUTING STATEMENT

Respondents agree with the Secretary that this appeal is presumptively retained by the Supreme Court, pursuant to N.R.A.P. 17(a)(2) and 17(a)(11).

RESTATEMENT OF THE ISSUES

Respondents here restate, for accuracy, the issue before the Court on this appeal:

Did the district court err in concluding that NRS 295.026 is a statute facilitating the initiative process, within the powers of the Legislature to enact, and therefore is constitutional?

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Respondents are the official responsible parties for two initiative petitions filed with the Nevada Secretary of State's office in 2020 (S-01-2020, the "Gaming Tax Initiative," and S-02-2020, the "Sales Tax Initiative," collectively the "Initiatives" or the "Petitions"). In 2021, Respondents sought to exercise their statutory rights to withdraw the Initiatives and prevent their placement on the 2022 General Election ballot. The Secretary had stated that she will place the Initiatives on the ballot, in derogation of Respondents' rights, so Respondents brought suit to prevent her from doing so. Subsequently, the district court issued writs of mandamus and prohibition, ordering the Secretary to permit withdrawal of the Initiatives and preventing their placement on the upcoming ballot.

The legal questions at issue in this action are concise. NRS 295.026, the statute under which initiative proponents are permitted to withdraw their measures, says exactly what it says, its text speaks for itself, and "when the words of the statute have a definite and ordinary meaning, this court will not look beyond the plain language, unless it is clear that

this meaning was not intended.” *Carson-Tahoe Hosp. v. Building & Const. Trades Council of Northern Nevada*, 122 Nev. 218, 220, 128 P.3d 1065, 1066-1067 (2006) (internal quotations omitted). What decides this appeal is whether the district court was indeed correct in determining NRS 295.026 is a statute that facilitates the initiative process, and therefore is constitutionally proper.

In her brief, the Secretary relies upon a particularly crabbed reading of Article 19, Section 2 of the Nevada Constitution, arguing that the text of that section mandates that she “shall” place the Petitions on the general election ballot once they are submitted to her office; that she has no discretion to do otherwise; that the constitutional command is so clear that no Legislative direction may interfere with that process; that her duties to the People mandate this interpretation; and that, consequently, NRS 295.026 is unconstitutional and unenforceable.

This approach, however, disregards the express authority given to the Legislature by Article 19, Section 5 to “provide by law for procedures to facilitate the operation” of the people’s initiative power. *See Nev. Const. art. 19, § 5*. Numerous statutes have been enacted pursuant to that constitutional provision, and, in her role as the State’s chief elections

officer, the Secretary herself undertakes all manner of duties to regulate, shape, foster, permit, and facilitate the rights of Nevadans to the initiative process, all of which flows from statutes and powers originating in Article 19, Section 5.

The Nevada Legislature has determined, in its wisdom, that the ability to withdraw filed initiative petitions, during a particular interval before the general election, is a useful right to be bestowed upon proponents of ballot measures—who are also part of and acting on behalf of “the people”—and that such a mechanism assists in facilitating the process by which citizens act in their legislative capacities under the Nevada Constitution. The Secretary, therefore, has a nondiscretionary duty to permit Respondents to withdraw the Initiatives, and they are thus entitled to writs of mandamus and prohibition as ordered by the district court. The Secretary’s unilateral declaration that NRS 295.026 is unconstitutional is unsustainable and beyond her authority, and the decision of the district court should be affirmed.

II. STATEMENT OF FACTS AND PERTINENT PROCEDURAL AND LEGISLATIVE HISTORY

Respondents are in general agreement with the facts the Secretary does state in this matter. She omits, however, salient facts regarding the

enactment of NRS 295.026, the statute she is, effectively, contending is unconstitutional because it conflicts with her conception of her duties.

Respondents submitted to the Secretary their requests to withdraw each of the Initiatives, pursuant to NRS 295.026. *See* Joint Appendix (“J.A.”), at 58, 73. These withdrawal forms are prepared and provided by the office of the Secretary of State, for use by initiative proponents like Respondents. Nowhere on the form is there any mention of a reason why, deadline by which, or legal argument under which the Secretary would refuse to permit withdrawal. *Id.* Neither does the Secretary of State’s website (www.nvsos.gov/sos/elections, last visited Apr. 12, 2022) indicate any legal limitation on the withdrawal of an initiative petition, except to say that the law requires “the names of up to three individuals who are authorized to withdraw or amend the petition[.]” *See* <https://www.nvsos.gov/sos/elections/initiatives-referenda> (last visited Apr. 12, 2022).

During the entirety of Respondents’ participation in the initiative process—from the moment of submission of their first Initiative on January 14, 2020, until the issuance of the Secretary’s letter announcing she would reject any attempt to withdraw the measures, on September

7, 2021—there was no indication that the rights of initiative proponents to withdraw the measures, as clearly described in Nevada law, were somehow susceptible to denial by the Secretary of State. In fact, the Secretary was the *sponsor* of the legislation that codified Respondents’ right to withdraw filed initiative petitions, in 2017, as described below. Furthermore, despite more than four years during which the Secretary could have either proposed and enacted regulations regarding NRS 295.026, or brought this matter to the attention of three successive Regular Sessions of the Nevada Legislature, she did none of these things.

A. Assembly Bill 45 (2017)

Prior to 2017, there existed no express mechanism by which proponents of a particular initiative or referendum could formally withdraw their petitions after filing. At the 2017 Regular Session of the Nevada Legislature, the Secretary of State identified this gap in the law and encouraged the Legislature to adopt Sections 30–33 of Assembly Bill 45 (2017). J.A. 107-198. A.B. 45 was, in fact, the Secretary’s bill.

The addition of a withdrawal provision was necessary, the Secretary’s office testified,

[B]ecause, right now, there is no formal process in law to withdraw an initiative or referendum petition that is filed

with the Secretary of State's Office. There have been petitions filed with our office in the past to which we granted a withdrawal when the petition sponsors asked for it. There is no formal mechanism in law to do that. What we wanted to do with sections 30 and 31 was include an official mechanism whereby a person who submitted a referendum or initiative petition with our office could then officially withdraw it.

Testimony of Wayne Thorley, Deputy Secretary of State, in support of A.B. 45, Assembly Committee on Legislative Operations and Elections, April 11, 2017. J.A. 147.

On the Senate side, Mr. Thorley repeated this sentiment:

We have had in the past, even in this last election cycle, a person file a petition and request it to be withdrawn. We did withdraw the petition, but we do not have an official mechanism to withdraw it. We would like to have that kind of guidance in statute.

Senate Committee on Legislative Operations and Elections, May 3, 2017. J.A. 190.

The exact statutory language sought by the Secretary of State in 2017, which was eventually enacted in the same form as drafted and submitted in the bill she sponsored, was as follows:

Sec. 30. Chapter 295 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A petition for initiative or referendum may be withdrawn if a person authorized pursuant to NRS

295.015 to withdraw the petition submits a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State.

2. Once a petition for initiative or referendum is withdrawn pursuant to subsection 1, no further action may be taken on that petition.

See Enrolled Text of A.B. 45 (2017), page 56, available at https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB45_EN.pdf (last visited Apr. 12, 2022).

As part of this legislation, initiative proponents were required, under NRS 295.015, to authorize up to three persons who could legally withdraw a filed petition upon notification to the Secretary's office. The Secretary prescribed a form for just this purpose. J.A. 30.

As is demonstrated by the clear text of the statute, no time restrictions existed limiting the right of an initiative proponent to withdraw his or her measure under NRS 295.026 as enacted in 2017. Neither, at any juncture, did the Secretary or representatives of her office testifying before the Legislature comment upon a need for any such restriction, or request any such amendment, or make reference in any way to a conflict or tension between the language the Secretary encouraged the Legislature to enact and Article 19, Section 2 of the

Nevada Constitution. Neither does the form the Secretary prescribed for the use of proponents wishing to withdraw their initiative petitions make any mention of a period within which such a request must be made in order to comport with the Secretary's current interpretation of Nevada Constitution. Legislatively, the Secretary received exactly what she had requested: official, express guidance from the Legislature regarding the ability of initiative proponents to withdraw their measure so that her office need no longer proceed informally, as it had been doing. In the wake of the passage and enactment of A.B. 45 and its codification at NRS 295.026, the Secretary neither proposed nor enacted any regulations designed to addressing any limitations or clarifications she believed were necessary to the proper functioning of the new law.

B. Assembly Bill 321 (2021)

Under A.B. 45 (2017), the only limitation regarding the period within which the proponents of an initiative petition must withdraw their petition would, presumably, be connected to the finalization and printing of general election ballots. This stands to reason. There is a point at which, with a general election on the immediate horizon, ballots must be locked and unchangeable, no matter the circumstances, because of

preparations for production of the ballots, the sending out of overseas and military ballots, and a general requirement of finality to avoid voter confusion. The Nevada Legislature has recognized this, by enacting, for example, the requirement that as of 5:00 p.m. on the fourth Friday of July, even death will not cause a general election candidate's name to come off the November ballot. *See* NRS 293.368(3).

During its 2021 Regular Session, the Nevada Legislature amended NRS 295.026 to address more explicitly the issue of the exact period for initiative withdrawal. In Assembly Bill 321 (2021), at Section 84.5, the right to withdraw initiative petitions was limited in time by a reasonable deadline:

Sec. 84.5. NRS 295.026 is hereby amended to read as follows:

295.026 1. A petition for initiative or referendum may be withdrawn if a person authorized pursuant to NRS 295.015 to withdraw the petition submits a notice of withdrawal to the Secretary of State on a form prescribed by the Secretary of State.

Any such notice of withdrawal of:

(a) A petition for initiative that proposes a statute or an amendment to a statute must be submitted to the Secretary of State not later than 90 days before the election at which the question of approval or disapproval of the initiative will appear

on the ballot;

(b) A petition for initiative that proposes an amendment to the Constitution must be submitted to the Secretary of State not later than 90 days before the first election at which the question of approval or disapproval of the initiative will appear on the ballot; or

(c) A petition for referendum must be submitted to the Secretary of State not later than 90 days before the election at which the question of approval or disapproval of the referendum will appear on the ballot.

2. Once a petition for initiative or referendum is withdrawn pursuant to subsection 1, no further action may be taken on that petition.

See Enrolled Text of A.B. 321 (2021), page 65, available at https://www.leg.state.nv.us/Session/81st2021/Bills/AB/AB321_EN.pdf

(last visited Apr. 12, 2022). Initiative proponents wishing to withdraw their measures now are required to do so by early August of the election year, to ensure it was achieved before final preparation and printing of the general election ballot materials.¹

In summary, in 2017 the Nevada Legislature clearly established

¹ The 2022 General Election will be held on Tuesday, November 8, 2022. The deadline for withdrawal of ballot initiatives this year, therefore, will be Wednesday, August 10, 2022.

the rights of initiative proponents to withdraw their petitions, and in 2021 it refined that right by limiting it in time so that ballot indeterminacy and voter confusion would be avoided, all with the cooperation and assent of the Secretary of State during the legislative process. It is against this backdrop that Respondents submitted to the Secretary their formal requests to withdraw the Initiatives.

III. ARGUMENT

A. NRS 295.026 Is Presumed To Be Constitutional

This matter requires, effectively, determination of the constitutionality of NRS 295.026. Per Article 19, Section 5 of the Nevada Constitution, “the legislature may provide by law for procedures to facilitate the operation” of the constitution’s provisions establishing Nevada’s initiative and referendum processes. Nev. Const. art. 19, § 5.

In promulgating NRS 295.026, the Legislature is presumed to have acted constitutionally. *See Schwartz v. Lopez*, 132 Nev. 732, 745, 382 P.3d 886 (2016) (“In considering a constitutional challenge to a statute, we must start with the presumption in favor of constitutionality, and therefore we will interfere only when the Constitution is clearly violated.”) (citations omitted). Moreover, where a statute is susceptible to

both a constitutional and an unconstitutional interpretation, courts are obliged to construe the statute so that it does not violate the constitution. *Sheriff v. Wu*, 101 Nev. 687, 708 P.2d 305 (1985).

In Nevada, the language of a statute should be given its plain meaning. *We the People Nevada v. Secretary of State*, 124 Nev. 874, 881, 192 P.3d 1166, 1170-71 (2008). When facially clear, a court should not go beyond the language of the statute in determining its meaning. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986); *see also Las Vegas Taxpayer Comm. v. City Council*, 125 Nev. 17, 208 P.3d 429, 437 (2009) (explaining that a statute's meaning is plain when it is "facially clear"). A statute is ambiguous if it "is capable of being understood in two or more senses by reasonably informed persons." *McKay*, 102 Nev. at 649, 730 P.2d at 442. If a statute is ambiguous or lacks plain meaning, "a court should consult other sources such as legislative history, legislative intent and analogous statutory provisions." *State, Div. of Insurance v. State Farm*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000).

Here, there is no ambiguity. The language of NRS 295.026 is clear and express. The same is true of the text of Article 19, Section 2.

Therefore, in sum, if there is a rational legislative purpose to NRS 295.026, and the duties under their terms may be complied with while avoiding constitutional conflict, the Court should determine that NRS 295.026 is valid as a measure enacted in facilitation of the initiative process. Permitting withdrawal of initiative measures as a facilitation of the process as a whole is the manner in which this Court should interpret NRS 295.026 and Nev. Const. Article 19 together.

B. Harmonizing NRS 295.026 And Nev. Const. Article 19

Under NRS 295.026, the Secretary must accept and act upon a duly-submitted notice of withdrawal of an initiative, such as those submitted here by Respondents. *See* NRS 295.026. Article 19 of the Nevada Constitution evinces no contrary command, and her duty to submit an initiative petition to the voters upon its compliance with all laws and procedures enacted to establish and facilitate the process is not undermined.

Nothing in Article 19 contravenes the Legislature's ability to enact a provision permitting proponents from withdrawing initiative measures. The Secretary need not submit any of the petitions at issue here to the voters until November of 2022, and NRS 295.026 designates a

withdrawal deadline ninety days prior to that time. *See* NRS 295.026. Respondents here submitted their withdrawal notices, respectively, 16 and 13 months before the general election. In harmonizing the statute with the constitutional provision, any initiative petition that is not withdrawn before the deadline in 295.026 is submitted to the voters at the general election, and any measure withdrawn under its terms in no way prevents the Secretary from submitting to the electorate any measures that have met all legal requirements. The Secretary “shall,” in this construction, submit to the voters of Nevada initiative petitions that have met all requirements under law for her to do so; the absence of withdrawal by proponents is now, in the judgment of the Nevada Legislature, among those legal requirements.

C. NRS 295.026 Is A Statute Facilitating The Initiative Process

1. Many types of statutory requirements facilitate the initiative process

There are any number of requirements for initiative measures to meet before the Secretary may submit them to the voters at an election, and only a few of them are contemplated expressly by the Nevada Constitution. Most fall under the category of facilitating legislation

pursuant to Article 19, Section 5. For example, the Legislature has determined that *prima facie* showing of statewide support for a particular measure facilitates the initiative process generally, and requires signatures to be collected equally from four separate petition districts. See NRS 295.012. Nothing in the Nevada Constitution requires this, and in fact the express language of Article 19, Section 2 could be argued to exclude this requirement, if not for the Legislature’s ability to enact laws facilitating the process. The Secretary would neither accept nor place upon the ballot any measure—statutory, constitutional, or a referendum—that had not complied with NRS 295.012, despite the use of “shall” in Article 19 regarding signature-gathering requirements.²

Nothing in Article 19 describes the formal requirements of the petition documents themselves, failure to comply with which can mean disqualification of an entire initiative.³ Yet the Legislature has enacted

² Article 19, Section 2(2): “An initiative petition shall be in the form required by Section 3 of this Article and shall be proposed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election in not less than 75 percent of the counties in the State, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire State at the last preceding general election.” Nev. Const. art. 19, § 2.

³ See *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669,

statutory provisions regarding those subjects and the Secretary has promulgated regulations establishing their details. *See* NRS 295.055; NAC 295.020. Likewise, the ability of voters to remove their names from initiative petitions after signing is not a right afforded by the Nevada Constitution, yet the Legislature has permitted it by statute (NRS 295.055), and the Secretary has enacted regulations governing the procedure (NAC 295.050). Similarly, in the present instance, the Nevada Legislature has determined, pursuant to its Article 19, Section 5 powers, that a process for withdrawal of proposed initiative measures, with plenty time before the general election in order to avoid prejudice or confusion, aids the conduct of direct democracy generally in this state. It is not the province of the Secretary of State to contradict that determination.

The Legislature, in enacting both versions of NRS 295.026, is presumed not only to know its own legal limitations and the meaning of the state constitution, but also to have knowledge of the Nevada

191 P.3d 1138 (2008) (affirming district court's decision to disqualify initiatives based on defective circulator affidavit relied upon by proponents and found on a publication prepared by the Secretary of State).

judiciary's decisions regarding facilitating legislation under Article 19., Section 5. Certainly, "although the Legislature may enact laws to facilitate the operation of the initiative process such as NRS 295.009, [courts], in interpreting and applying such laws, must make every effort to sustain and preserve the people's constitutional right to amend their constitution through the initiative process." *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006) (internal quotation marks and citations omitted). The single-subject rule and the requirement of a description of effect (NRS 295.009) are, themselves, examples of requirements adopted in facilitation of the initiative process, but that have no specific, express authorization in the Nevada Constitution. *See Education Init. v. Comm. to Protect Jobs*, 129 Nev. 35, 37-38, 293 P.3d 874 (2013) (discussing "facilitation" versus "obstruction" of people's right to initiative).⁴ And although they create limitations that bind petition proponents, in some ways making the process more difficult, they still are considered to be "facilitating" the process because they clarify, make less confusing, expedite, or otherwise

⁴ *See also Nevadans for Nevada v. Beers*, 122 Nev. 930, 939, 142 P.3d 339 (2006); *Las Vegas Taxpayer Accountability Committee v. City Council of the City of Las Vegas*, 125 Nev. 165, 177, 208 P.3d 429 (2009).

make the initiative procedure more intelligible and accessible to Nevadans.

2. The Secretary incorrectly argues that NRS 295.026 obstructs the people's rights to the initiative process

Here, unlike the single-subject rule, the description of effect requirement, or the petition district signature mandate (all of which are valid exercises of the legislative prerogative to facilitate the initiative process, but which appear on their faces to restrict some aspects of a petition proponent's freedom in the process), NRS 295.026 actually *expands and adds to* the rights of initiative proponents. Previously, as the Secretary's staff described in legislative hearings, there was no formal process for withdrawal of an initiative petition; withdrawal was achieved *ad hoc*, informally, at the Secretary's own discretion, with no guidance or predictability.

Now, with enactment of NRS 295.026, proponents like Respondents have a clear deadline and mechanism for withdrawal. Furthermore, as the Attorney General points out in his Attorney General Opinion 2021-04, J.A. 60-71, the Secretary's position would result in differing and confusing deadlines for withdrawal of petitions depending upon whether

they are statutory initiatives, constitutional initiatives, or referenda. This is unworkable and unreasonable. NRS 295.026 brings all types of ballot measures within a uniform withdrawal calendar. Again, this is a useful innovation. In the judgment of the Legislature, NRS 295.026 is a useful innovation facilitating and streamlining the initiative process as a whole.

In contrast, the Secretary’s conduct essentially has declared NRS 295.026 to be unconstitutional.⁵ To be exact, the Secretary’s appears to consider only the 2021 amendment to NRS 295.026—the sections establishing the 90-day pre-election deadlines for submission of withdrawal requests—to be unconstitutional and of no effect. She argues that the only lawful withdrawal window for a statutory initiative closes at the moment (or moments) during a legislative session in which the Legislature either rejects the petition submitted to it, or at the expiration

⁵ This is problematic in its own right. A fundamental feature of our system of government is that, while input of an agency may retain some persuasive value for a reviewing court, it is solely this Court’s duty to interpret the constitution. *See, i.e., MDC Rest., LLC v. Eighth Judicial Dist. Court*, 134 Nev. 315, 320, 419 P.3d 148, 152-53 (2018) (recognizing that interpretation of “the meaning of a provision in the Nevada constitution... is a responsibility that [the court] cannot abdicate to an agency”).

of the 40-day period within which the Legislature is required to act upon qualified initiatives. At whichever of those points occurs first, her argument goes, the die is cast: the Secretary “shall” submit the question to the voters at the next general election—a date that is at least **20 months away** at that point in time—and that no statute may alter the duty imposed upon her to do so.

The problem with this approach is that it is far too narrow a reading of Article 19 of the Nevada Constitution, of the ability of the Legislature to enact measures facilitating the initiative process, and of the duty of the Secretary of State to place measures on the statewide ballot that have complied with the law. Clearly, statutes enacted pursuant to Article 19, Section 5 may not “obstruct, rather than facilitate, the people’s right to the initiative process.” *Education Init. v. Comm. to Protect Jobs*, 129 Nev. at 38, 293 P.3d at 876. But the Secretary makes no attempt to harmonize NRS 295.026 with the constitutional text, and affords no respect to the role of the Legislature. The weight of interpretation the Secretary places on the term “shall” in determining her role in the initiative process is, in the current circumstances, textually unjustified and legally unsustainable. Nothing in law supports the Secretary’s notion that the

“rights to” a particular initiative petition belong, in order, (1) the entity who drafts the petition; then, (2) the 10 percent or more of voters who sign the petition; and finally, (3) the electorate, each stage giving way to the next in an opaque sequencing. Opening Br., at 12.

The Secretary cites to *State v. Scott*, 52 Nev. 216, 285 P. 511 (1930), in support of the assertion that “verification” is the moment when “jurisdiction” over an initiative petition passes, irreversibly, to the “electorate,” the moment after which a fuse is lit that cannot be extinguished.⁶ Opening Br., at 19. The text of the *Scott* decision itself does not support this interpretation. In discussing the potential for signature withdrawals by petition signers, the *Scott* Court stated that “[i]n the absence of something in statute permitting it, no individual signer, nor indeed, all the signers, could thereafter withdraw or erase their names from the petition.” *Id.*, 52 Nev. 216, 285 P. at 515. The *Scott* Court

⁶ This is also a bit confusing. Verification by the county clerks and the Secretary of the submitted signatures takes place in and around December of the year before a regular session of the Nevada Legislature. A verified petition is then transmitted to the Legislature “as soon as the Legislature convenes and organizes.” Nev. Const. Art. 19, Sec. 2(3). The Legislature then can adopt the measure as law, propose an alternative measure on the same subject that proceeds to the ballot along with the initiative, or reject/take no action upon the measure. *Id.*

assumed, therefore, that the Legislature could enact statutory provisions permitting post-verification withdrawal, which, subsequently, in 1985, it did. *See* NRS 295.055; NAC 295.050.

The Secretary's claim is that the constitutional text precludes the Legislature from enacting post-verification withdrawal as a facilitation of the process. This means the Legislature cannot make accommodation in the process for the prospect, between submission of an initiative petition and a general election nearly two years later, of some set of intervening social, cultural, or political events, some subsequent legislation, any ongoing good-faith political negotiations, or a war, or a recession, or a worldwide pandemic—or the collapse of a tax-targeted industry as a result of war, recession, or pandemic—anything that might give initiative proponents pause as to whether their measure should go forward. In the Secretary's reasoning, nothing can justify a statute permitting withdrawal once the signatures have been verified. This is bad legal reasoning, and terrible public policy.

The rights of the people to the initiative process are important and should be protected, certainly. But it does no good to imagine Respondents as somehow artificially separate from "the people." The

electorate has the right to consider measures that appear on the ballot, but it is proponents, acting in the legislative capacity afforded them by direct democracy, who create the measures and shepherd them onto the ballot.⁷ The Secretary maintains that NRS 295.026 obstructs and burdens the rights of “the people” to enact or reject proposed legislation, but this reading is an empty appeal to an illusory “people.” NRS 295.026, in the judgment of the elected representatives of the people, is a useful addition to the initiative process and a positive expansion of proponents’ rights to engage in the fullness of direct democracy. The statute, and the Legislature’s discretion to enact such statutes, should be upheld.

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⁷ The distinct role of that the proponents of an initiative have in the process has been recognized by the California Supreme Court. *See Perry v. Brown*, 52 Cal. 4th 1116, 1142, 265 P.3d 1002, 1017-18 (2011) (“the official proponents of an initiative measure are recognized as having a distinct role—involving both authority and responsibilities that differ from other supporters of the measure—with regard to the initiative measure the proponents have sponsored.”).

IV. CONCLUSION

For the foregoing reasons, the decision and order of the district court should be affirmed, and the writs of mandamus and prohibition issue against the Secretary.

DATED this 15th day of April, 2022.

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CERTIFICATE OF COMPLIANCE

1. I certify that this Brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5) and the type style requirements of N.R.A.P. 32(a)(6) because it has been prepared in a proportionally-spaced typeface, size 14, Century Schoolbook.

2. I further certify that this Brief complies with the type-volume limitations of N.R.A.P. 32(a)(7) because, excluding the parts of the Brief exempted by N.R.A.P. 32(a)(7)(C), it contains 5,219 words.

3. Finally, I hereby certify that I have read this 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 N.R.A.P. 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 15th day of April, 2022.

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I hereby certify that on this 15th day of April, 2022, a true and correct copy of the **RESPONDENTS' ANSWERING BRIEF** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

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