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

3 MICHAEL D. ROSATI, an individual,  
4 OSBERIA SMITH, an individual

Plaintiffs,

5 vs.

6 OUR VOTE NEVADA PAC, a ballot  
7 advocacy group, SHARON ANGLE, an  
8 individual, ROSS MILLER, in his  
official capacity as Secretary of State,

Defendants.

Case No.

Dept. No.

10  
11 **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**  
12 **OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**  
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## **BACKGROUND**

On January 29, 2014, Defendants Our Vote Nevada PAC, a Ballot Advocacy Group, and Sharron Angle (together, “Proponents”) submitted the “Voter ID Initiative” (the “Initiative”) to the Secretary of State as a proposal to amend the Nevada Constitution and require, with very limited exceptions, the presentation of photographic voter identification prior to the exercise of the right to vote in person. The Initiative also would require the Legislature, in turn, to direct one or more State agencies to issue “voter identification cards” at “no charge” to registered voters who otherwise lack qualifying identification.

Of great import to the voters of Nevada, the Initiative will mandate the significant expenditure of Nevada’s financial resources without providing associated notice in the Description of Effect (“DOE”) and contains language that should be construed as deceptive. Secondly, and significantly, the DOE omits the fact that the Initiative would require additional undisclosed requirements on affected voters and that voters will also incur costs should the Initiative pass. As a third and distinct problem, the adoption of this Initiative will create disproportionate obstacles to the exercise of the franchise especially by racial minority voters, those in poverty, seniors, voters with disabilities, those who are homeless, and those with a religious objection to being photographed. Finally, the Initiative takes discretion away from the Legislature, as currently set forth in Article 2, Section 6 of the Nevada Constitution, to determine the appropriate steps to preserve the purity of elections, and to regulate the manner of holding and making returns of election. The DOE makes no mention of these material consequences. Without information about these material consequences, voters cannot make informed decisions.

1 For all these reasons, the Voter ID Initiative is an impermissible use of the initiative  
2 process. It fails to meet even the minimum legal requirements established to ensure that  
3 initiative petitions promote informed decisions and the voters' right to engage meaningfully in  
4 the initiative process. Consequently, the Court should declare that the Initiative is legally  
5 insufficient, void, and invalid and bar the Secretary of State from transmitting it to the Ballot.

### 6 7 **THE INITIATIVE PETITION**

8 On January 29, 2014, Defendants Our Vote Nevada PAC, a Ballot Advocacy Group,  
9 and Sharron Angle submitted the "Voter ID Initiative" to the Secretary of State as a proposal to  
10 amend the Nevada Constitution. Nevada Secretary of State, *2014 Initiative Petitions*, available  
11 at <http://nvsos.gov/Modules/ShowDocument.aspx?documentid=3192>. A true and correct copy  
12 of the Initiative petition filed with the Nevada Secretary of State's office is attached as Exhibit  
13 1 to Plaintiffs' Complaint for Declaratory and Injunctive Relief ("Ex. 1").

14 Our Vote PAC filed the following Description of Effect concurrently with the  
15 Initiative:

16 If enacted, this measure will add a new section to Article 2 of the Nevada  
17 Constitution doing the following:

18 1. The measure requires a registered voter who wishes to vote  
19 in person to present his or her proof of identity to the applicable election  
20 board officer. Acceptable forms of proof of identity are: (1) certain  
government-issued documents or identity cards that show a recognizable  
photograph of the person to whom the document or card was issued; (2) a  
voter identification card; or (3) certain documentation from an  
administrator of certain licensed health care facilities.

21 2. The measure requires the Legislature to direct by law one or  
22 more government entities to issue, at no cost, voter identification cards to  
registered voters who do not possess other types of proof of identity.

23 3. The measure provides that a voter identification card is valid as  
long as the person is registered to vote and resides at the address  
stated on the voter identification card.

4. The measure requires that a voter identification card include the name, address, date of birth, photograph and signature of the person to whom the card is issued.
5. The measure defines the terms “government entity” and “proof of identity.”

*See Init., Ex. 1. to Compl. at 2*

The DOE’s simple recitation of the terms of the proposed initiative does not satisfy statutory of judicial mandates. Most importantly, the Initiative fails to identify the material consequences of the adoption of the Voter ID Initiative. First, the DOE omits the fact that the Initiative will mandate the expenditure of significant financial resources by the State. Secondly, it fails to identify materials costs faced by individual voters. As a third and independent objection, the DOE does not describe the additional obstacles to exercise of the franchise that the Voter ID initiative will create for voters of color, those in poverty, seniors, voters with disabilities, those who are homeless, and those with a religious objection to being photographed. Finally, the Initiative fails to disclose that it is in derogation of the legislative powers currently established by Article 2, Section 6 of the Nevada Constitution. This provision charges the Legislature with determining the appropriate steps for preserving the purity of elections, as well as regulating the manner of holding and making returns of elections. Thus, the Initiative must fail because the Description of Effect is entirely misleading.

For all these reasons, the Court should declare that the Initiative is legally insufficient, void, and invalid and bar the Secretary of State from transmitting it to the Ballot. The existing description of effect is misleading and wholly fails to put voters on

1 notice of the breadth of the Initiative’s proposed changes and its intended and potential  
2 consequences.

### 3 **ARGUMENT**

4 The initiative is invalid because it includes a misleading and incomplete  
5 description of effect that fails to provide adequate notice to signers and voters of the  
6 breadth of the Initiative’s proposed changes. Thus it violates the requirement of N.R.S. §  
7 295.009(1)(b) that a fait and materially complete, accurate, and non-prejudicial  
8 description of effect be circulated to meaningfully inform voters of the material and  
9 potential consequences of an initiative should it pass into law.

10 Under Nevada law, a petition for initiative “must . . . [s]et forth, in not more than  
11 200 words, a description of the effect of the initiative[,]” should that initiative be voted  
12 into law. Nev. Rev. Stat. § 295.009(1)(b). This requirement furthers an important  
13 purpose: As the Nevada Supreme Court has explained, the description of effect is  
14 “significant as a tool to help prevent voter confusion and promote informed decisions.”  
15 *Las Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas*, 125 Nev.  
16 165,183, 208 P.3d 429, 441 (2009) (internal quotations omitted). The Supreme Court of  
17 Nevada also made clear that the description of effect is more than a “quick reference” to  
18 the actual language of the petition, noting that the description of effect is what registered  
19 voters read as they “decide the threshold issue of whether they even want the initiative  
20 placed on the ballot.” *Nevadans for Nev. v. Beers*, 122 Nev. 930, 940, 142 P.3d 339, 346  
21 (2006).

22 In *Las Vegas Taxpayer Accountability Committee*, the Court set forth three  
23 minimum requirements for a valid description of effect: (1) it cannot be “materially



misleading[;]” (2) it cannot “materially fail[] to accurately identify the consequences of the [initiative’s] passage[;]” and (3) it must be “straightforward, succinct, and nonargumentative.” 125 Nev. at 36-37; 208 P.3d at 440-41 (internal quotations omitted).

Notably, the failure to identify material consequences of an initiative is one significant way in which a description of effect can be misleading. *See, e.g., id.* (holding petition to repeal an existing city ordinance was “materially misleading because . . . it failed to inform the voters” of the full range of consequences of such repeal); *see also Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996) (invalidating Secretary of State’s ballot summary for term limits initiative because “failure to explain [the] ramifications” of the proposed amendment’s impact on the judiciary rendered it “potentially misleading”). In short, as described by the Supreme Court of Florida, the problem with misleading or incomplete descriptions often “lies not with what the summary says, *but, rather, with what it does not say.*” *See Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982) (emphasis added). The resulting harm of an initiative that fails to identify material consequences is that voters, uninformed of the intended and potential effects of an initiative, may very well be misled into endorsing an initiative with consequences they do not support.

For purposes of clarification, Plaintiffs are not seeking a description of “each and every consequence” or “every detail or effect” the Initiative may have. *Education Initiative PAC v. Committee to Protect Nevada*, 293 P.3d 874, 879, 881 (Nev. 2013) Nor are Plaintiffs contend looking for a description of “hypothetical effects or consequences of the Initiative.” *Id.* Instead, we believe that identification of the material consequences of an Initiative is mandated by NRS §§ 295.061(1), 295.009(1)(b) and Nevada Supreme

1 Court jurisprudence. *Education Initiative PAC*, supra; *Las Vegas Taxpayer*  
2 *Accountability Comm.*, 208 P.3d (“We agree with the district court that the description of  
3 effect materially fails to accurately identify the consequences of the referendum’s  
4 passage.”)

5 **I. THE DESCRIPTION OF EFFECT IS MISLEADING AND IT FAILS TO**  
6 **PROVIDE NOTICE OF MATERIAL CONSEQUENCES: SIGNIFICANT**  
7 **FINANCIAL EXPENDITURES BY THE STATE OF NEVADA**

8 There is no way that a voter will understand the extent of the Initiative’s impact from  
9 its Description of Effect. The Initiative’s language requires one or more as-yet-unspecified  
10 government entities to issue a voter ID card “at no charge,” which by its plain language and  
11 context refers to the transaction of obtaining a voter ID card. By contrast, the DOE uses  
12 different language -- the phrase “at no cost,” offset with commas, which could reasonably be  
13 understood to state that no financial costs at all will be associated with issuing voter ID cards.  
14 Thus, the voter may be lead to an affirmative misunderstanding that there is *no* financial  
15 impact.

16 An initiative mandates expenditures when “it leaves budgeting officials no discretion in  
17 appropriating or expending money mandated by the initiative – the budgeting official must  
18 approve the appropriation or expenditure, regardless of any other financial considerations.”  
19 *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890, 141 P. 3d 1224, 1233 (2006). The initiative  
20 therefore mandates expenditures because, as discussed below, it requires the legislature to  
21 implement the Initiative, which will require steps that cost money. See “Financial Impact of  
22 Voter ID Initiative,” Fiscal Analysis Division of the Legislative Counsel Bureau (Feb. 13,  
23 2014), available at <http://nvsos.gov/Modules/ShowDocument.aspx?documentid=3214>  
24 (“Financial Impact of Voter ID Initiative”). Nowhere does the DOE identify the fiscal  
25 consequences to the State of Nevada related to the government provision of voter identification  
26 cards, including the new administrative verification structure it would necessitate.

1 In Clark County, home to the roughly 70% of Nevada’s voters, Registrar Joe P. Garcia  
2 has stated that “If this initiative were to become law, it would place a heavy fiscal burden on  
3 our operations, and require the extra allocation of resources.” Declaration of Joe P. Garcia,  
4 Registrar of Voters for Clark County at paragraph 3. (Exhibit # 2). Additional resource  
5 demands would likely include: new equipment, training requirements, additional staff time,  
6 production of the ID cards, the provision of additional provisional ballots, the need for more  
7 staff, addressing delays, and the provision of voter education and outreach. *Id.* at ¶4.  
8 Ultimately, “the financial impact would be significant and would affect the County budget,”  
according to the Registrar. *Id.* at ¶5.

9 The fact that a proposed piece of legislation is, in effect, an unfunded mandate that is  
10 not self funding, and therefore impacts the finances of the state or one of its subdivisions is  
11 sufficiently material to require a fiscal note to be placed on any such piece of proposed  
12 legislation in the Legislature. This is explicitly set forth in Chapter III of the Legislative  
13 Manual.

14 A fiscal note is a document that details the fiscal effect of certain bills and  
15 resolutions and is attached to or becomes a part of the bill or resolution. An  
16 example of a fiscal note may be found in Appendix D. The statutory provisions  
17 regarding fiscal notes for bills and joint resolutions are found in NRS 218D.400  
through NRS 218D.495, inclusive. A bill or joint resolution is required  
to have a fiscal note if it meets any of the following criteria:

18 It creates or increases a fiscal liability or decreases revenue for the State  
government by more than \$2,000;...

19 Information regarding the necessity of a fiscal note can be found in the summary of the  
20 bill or joint resolution. All bills or joint resolutions which propose ballot questions have  
fiscal notes.

21 Chapter III of the 2013 Legislative Manual, (emphasis added)

22 The rationale for this is that an unfunded mandate creates a significant effect that may  
23 not be obvious from merely reading the text of the proposed bill. As the clear language of

Chapter III of the 2013 Legislative Manual notes, this is particularly true in the case of proposed ballot questions. Providing the voting public with information about the likely fiscal effect if such ballot question is enacted, is considered to be of paramount importance.

Therefore, it would be illogical to assume that the importance of this fiscal information would be any less because an initiative is proposed by a private citizen rather than the legislature. The fiscal impact is material either way.

In the 2013 session of the Legislature, two separate bills to require photo IDs for voting were introduced: 1) SB63, on behalf of the Secretary of State; and 2) AB 216, introduced by Assemblyman Hansen, et. al. Neither bill was enacted. Both, however, contained fiscal notes highlighting sizable impacts. For S.B.63, the Secretary of State estimated a cost of \$1,144,200 for FY 2013-2015 and beyond. SB 63, 2013 Leg., 77<sup>th</sup> Sess. (Nev. 2012); See Fiscal Note to S.B. 63, 2013 Leg., 77<sup>th</sup> Sess. (Nev. 2012) available at <https://www.leg.state.nv.us/Session/77th2013?FiscalNotes/824.pdf>. For AB 216, the Secretary of State estimated costs at \$811,000 for FY 2013-2015. The Fiscal Note to A.B. 216 further states that "Outside of requiring the Secretary of State's office to adopt regulations concerning the voter ID cards, the BDR is silent as to who pays for the system to produce the voter ID cards. If it were hardware, software, and annual maintenance) amongst the 17 counties, the Secretary of State's FY 2014 costs will have to increase by \$1,615,000 and the FY 2015 costs would have to increase by \$50,000." A.B. 216, 2013 Leg., 77<sup>th</sup> Sess. (Nev. 2012); See Fiscal Note to A.B. 216, 2013 Leg. 77<sup>th</sup> Sess. (Nev. 2012) available at <https://www.leg.state.nv.us/Session/77th2013?FiscalNotes/3865.pdf>.

Futhermore, it is worth noting that the fiscal notes for SB 63 and AB216 articulate only a minimum floor for costs associated with implementation of the photo ID initiative in Nevada. Estimates from the Voting Rights Institute suggest that Nevada would face costs ranging from \$3 to \$10 million for implementing photo ID requirements in a constitutional manner, and some analysis have concluded that the fiscal burden is significantly higher. "The Real Cost of Photo ID: An Unecessary, Expensive, and Intrusive Voter Restriction in a Time of Fiscal

1 Crisis,” The Voting Rights Institute, available at  
2 [http://assets.democrats.org/pdfs/photoid/Dems-report-real\\_costof\\_voting\\_ID.pdf](http://assets.democrats.org/pdfs/photoid/Dems-report-real_costof_voting_ID.pdf); *see also*,  
3 more specifically for Minnesota, which found that voter education would cost \$2.8 million in  
4 the first year of implementation, and \$1.5 million in the next election cycle,  
5 [http://www.mmb.state.mn.us/bis/fnts\\_leg/2011-12/H0089\\_1E.pdf](http://www.mmb.state.mn.us/bis/fnts_leg/2011-12/H0089_1E.pdf) (last visited Feb. 20, 2014).

6 The Brennan Center for Justice has reported that states imposing photo ID mandates  
7 must expend resources on a variety of supplemental tasks, in order to pass constitutional  
8 muster. The Brennan Center for Justice has reported that states imposing photo ID mandates  
9 must expend resources on a variety of supplemental tasks, in order to pass constitutional  
10 muster. These include: providing photo ID at no charge to all voters who lack specified  
11 government-issued identification; notifying voters who lack ID and facilitating the process to  
12 obtain one; informing and educating voters of new rules; hiring and training staff and poll  
13 workers; reformulating training manuals; administrative costs in purchasing ID machines; and  
14 altering state forms to comply with photo ID requirements; labor and overtime in processing  
15 increased numbers of affidavits and provisional ballots for those who appear to vote without  
16 requisite ID. *See* Vishal Agraharkar, Wendy Weiser, and Adam Skaggs, *The Cost of Voter ID*  
17 *Laws: What the Courts Say*, Brennan Center for Justice (2011), available at  
18 <http://www.brennancenter.org/publication/cost-voter-id-laws-what-courts-say>.

19 Certain fiscal costs necessarily flow from adoption of the Initiative, based on the  
20 requisite implementation of a variety of tasks, which are compulsory to pass constitutional  
21 muster. Case law establishes that courts will likely strike down photo ID laws if states fail to  
22 take the steps necessary to ensure that acceptable photo ID is readily accessible to all eligible  
23 voters and not unduly burdensome to obtain. *Cf. Crawford v. Marion County Election Bd.*,  
553 U.S. 181, 199 (2008); *Weinschenk v. State*, 203 S.W.3d 201, 214-15 (Mo. 2006)(regarding  
the time and advance planning required to obtain photo ID, including the several weeks  
required to obtain the underlying documentation such as a birth certificate, as “an onerous  
procedural requirement which effectively handicap[s] exercise of the franchise”)(quoting *Lane*

1 v. *Wilson*, 307 U.S. 268 (1939)); *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1345  
2 (N.D.Ga. 2006)(“Many voters who do not have driver’s licenses, passports, or other forms of  
3 photographic identification have no transportation to a voter registrar’s office or DDS service  
4 center, have impairments that preclude them from waiting in often-lengthy lines to obtain  
5 Voter ID cards or Photo ID cards, or cannot travel to a registrar’s office or a DDS service  
6 center during those locations’ usual hours of operation because the voters do not have  
7 transportation available.”).<sup>1</sup>

8 The fiscal impact upon the State is significant. Other states that have considered similar  
9 photo ID proposals have delivered fiscal notes estimating costs in the millions of dollars. For  
10 example, a State Fiscal Estimate for a Missouri bill proposing a photo ID requirement, which  
11 included the provision of free IDs, indicated that the proposal would cost the state \$3,741,882  
12 for FY13; \$1,915, 211 for FY14; \$4,383,720 for FY2015; \$1,875,237 for FY16; and  
13 \$2,803,758 for FY17. Committee on Legislative research: Oversight Division, *Truly Agreed to*  
14 *and Finally Passed HCS No. 2 for SB3*, June 7, 2011  
15 <http://www.moga.mo.gov/oversight/over11/fiscover/fSB0003.htm> Truly Agreed to and Finally  
16 passed HCS No. 2 for SB3 June 7, 2011). The analysis recognized that the state would also  
17 incur costs related to voter outreach and education efforts and associated administrative efforts  
18 as a result of the proposal. *Id.* This amounts to a total estimate of over \$10,000,000 in  
19 expenditures over the course of several fiscal years. *Id.*

20 Similarly, in North Carolina, where a legislative proposal called for a free ID and voter  
21 education efforts, the state estimated total costs as approaching \$3.2 million for the first year,  
22 and approximately \$375,000 in subsequent years. This included \$843,737 to print IDs in the  
23 first year, and \$64,743 in subsequent years. It also included Department of Motor Vehicles  
first year implementation costs of \$2,450, 341, and subsequent year costs of \$311,784 per

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<sup>1</sup> The State has acknowledged that the expenditures for a public education program would be required. *See* Financial Impact of Voter ID Initiative (“as a result of federal court rulings, the provisions of the Initiative requiring a registered voter to present his or her proof of identity to vote in person would require the Secretary of State to conduct an educational campaign to inform voters of the identification requirements specified within the Initiative”)

1 annum. The bill appropriated \$600,000 for voter education efforts.

2 <http://www.ncga.state.nc.us/Sessions/2011/FiscalNotes/House/PDF/HFN0351v1.pdf>

3 This Court should follow Nevada precedent that requires an initiative’s description of  
4 effect to explain, at a minimum, its material consequences. *See Las Vegas Taxpayer*  
5 *Accountability Comm.*, 125 Nev. at 37, 208 P.3d at 441 (holding referendum’s description of  
6 effect inadequate because it failed to “accurately inform” voters of the full range of  
7 consequences of the referendum’s passage); *see also Fred Meyer, Inc. v. Roberts*, 777 P.2d  
8 406, 409 (Or. 1989) (“the [description of effect] must be worded so that voters will understand  
9 the breadth of its impact.”); *Askew*, 421 So. 2d at 156 (“[t]he burden of informing the public  
10 should not fall only on the press and opponents of the measure – the ballot title and summary  
11 must do this”). The Initiative in this case attempts to ignore the significant fiscal effects with  
12 respect to highly material provisions of the proposal in its simplified Description of Effect.  
13 Doing so robs voters of the ability to make an informed decision. *Nevadans for Nev.*, 122 Nev.  
at 939, 142 P.3d at 345.

14 **II. THE DESCRIPTION OF EFFECT FAILS TO PROVIDE NOTICE OF**  
15 **MATERIAL CONSEQUENCES AND IS MISLEADING: SIGNIFICANT**  
16 **VOTER COSTS**

17 It is highly unlikely that eligible voters presented with the Initiative will appreciate  
18 the hidden costs associated with its potential enactment, and it is therefore misleading. For  
19 instance, almost every state with photo identification laws in force requires voters to  
20 provide official documentation, such as passports or birth certificates, to establish their  
21 identity, with the cost of obtaining such documents to be borne by the affected voters. In  
22 order to implement the Initiative, any adopted legislation will similarly require registered  
23 voters who lack the required “proof of identity” to provide supporting identifying  
documentation, at their own expense, to obtain a “voter identification card.”

1 Furthermore, the DOE does not disclose to voters reviewing the petition that they,  
2 their family members, or others, will bear the costs of obtaining supporting  
3 documentation every time they change their names or address if they require a voter  
4 identification card. A Brennan Center study shows that those living in poverty are less  
5 likely to have driver's licenses and therefore face greater obstacles obtaining photo IDs,  
6 due to a lack of work schedule flexibility as well as a lack of access to public  
7 transportation. Keesha Gaskins and Sundeep Iyer, *The Challenge of Obtaining Voter*  
8 *Identification*, Brennan Center for Justice, (July 29, 2012), available at  
9 [http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Challenge\\_of](http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Challenge_of_Obtaining_Voter_ID.pdf)  
10 [Obtaining\\_Voter\\_ID.pdf](http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Challenge_of_Obtaining_Voter_ID.pdf).

11 It is highly likely that any legislation adopted to implement the Initiative will  
12 require registered voters who lack the required "proof of identity" to travel in person at  
13 their own expense (potentially including lost wages) to state offices to obtain a "voter  
14 identification card." Nothing in the Initiative authorizes or requires providing the "voter  
15 identification card" remotely and photo identification laws in force in other states require  
16 in-person visits to obtain "free" identification cards.

17 Additionally, the DOE does not disclose to voters reviewing the petition that they,  
18 their family members, or others, will bear the costs of appearing in person every time  
19 they change their names or address if they require a voter identification card.  
20 For these reasons the Initiative is therefore legally insufficient, invalid, and is prohibited.  
21 See N.R.S. § 295.009(1)(b).

22 **III. THE DESCRIPTION OF EFFECT FAILS TO PROVIDE NOTICE OF**  
23 **MATERIAL CONSEQUENCES: SIGNIFICANT BURDENS ON EXERCISE OF**  
**THE FRANCHISE**



1  
2 Article. 2, Section 1 of the Nevada Constitution gives the right to vote to qualified  
3 citizens. The Initiative would amend the state constitution to place significant limitations  
4 on the ability of Nevadans to exercise that right. Accordingly the DOE requires probing  
5 scrutiny with respect to its description of the impact of those limitations..

6 The DOE is misleading because it fails to explain that adoption of the Initiative will  
7 place disproportionate burdens on the exercise of the franchise especially by voters of  
8 color, those in poverty, English as a second language speakers, seniors, voters with  
9 disabilities, those who are homeless, those who lack access to transportation, and those  
10 with a religious objection to being photographed.

11 According to 2012 U.S. Census Bureau figures, Nevada's population is  
12 significantly diverse. African Americans make up 8.9% (or 245,138) of the state's  
13 population. American Indian and Alaskan Native make up 1.6% (or 44,069) of the  
14 state's population, and Latinos make up 27.3% (or 751,939) of the state's population.  
15 (<http://quickfacts.census.gov/qfd/states/32000.html>) (Last accessed Feb. 19, 2014).  
16 Additionally, from 2008-2012, 14.2% (or 391,118) of these minorities lived at or below  
17 Federal poverty guidelines. *Id.*

18 The burdens of photo ID laws will disproportionately fall upon voters of color,  
19 who are less likely to possess qualifying photo ID. For example, one widely-recognized  
20 2006 study reported that African Americans possess "drivers' licenses at half the rate of  
21 whites," with only 22% of black men aged 18-24 in possession of a valid driver's  
22 license." See "Policy Brief on Voter Identification," Brennan Center for Justice  
23 (September 12, 2006), available at <http://www.brennancenter.org/analysis/policy-brief-voter-identification>. Latinos are similarly affected, with a 2012 study showing that 16  
percent of Latino voting age citizens (2.6 million) lack valid photo ID, compared with  
6% of whites. Jessica A. Gonzalez "New State Voting Laws: A Barrier to the Latino

1 Vote?,” Congressional Hispanic Caucus Institute White Paper, (April 15, 2012), available  
2 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2060460](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2060460).

3 Another study shows that those living in poverty are less likely to have driver’s  
4 licenses and therefore face greater obstacles obtaining photo IDs, due to a lack of work  
5 schedule flexibility as well as a lack of access to public transportation. *See* Keesha  
6 Gaskins and Sundeep Iyer, *supra*.

7 The burdens of photo ID laws disproportionately affect the elderly. According to  
8 the AARP, one in five seniors do not possess government issued IDs and in 2006, eight  
9 million individuals over 65 did not possess IDs. *See* Marsha Mercer, “Can We Still  
10 Vote?, Without a valid photo ID, many older Americans will not be allowed to vote this  
11 year,” AARP Bulletin, (August 30, 2012), available at [http://www.aarp.org/politics-](http://www.aarp.org/politics-society/government-elections/info-01-2012/voter-id-laws-impact-older-americans.html)  
[society/government-elections/info-01-2012/voter-id-laws-impact-older-americans.html](http://www.aarp.org/politics-society/government-elections/info-01-2012/voter-id-laws-impact-older-americans.html).

12 Voter ID laws also have a disproportional impact on women voters. According to the  
13 National Women’s Law Center, relying on U.S. Census Bureau data, women are “more  
14 likely to live in poverty than men. The poverty rate among adult women over 18 was 14.6  
15 percent in 2011, compared with 10.9 percent of men.” *See* Summary Table: Poverty  
16 Rates Among Women, Men, and Children, 2011, 2010, 2000, (September 17, 2012),  
17 available at [http://www.nwlc.org/resource/summary-table-poverty-rates-among-women-](http://www.nwlc.org/resource/summary-table-poverty-rates-among-women-men-and-children-2011-2010-2000)  
[men-and-children-2011-2010-2000](http://www.nwlc.org/resource/summary-table-poverty-rates-among-women-men-and-children-2011-2010-2000).

18 Additionally, the Initiative makes no accommodation or exception for voters who  
19 object for religious reasons to being photographed. The DOE makes a material omission  
20 by failing to mention the absence of such an accommodation or exception in the  
21 Initiative. The Initiative also makes no accommodation or exception for voters with  
22 disabilities. The DOE makes a material omission for failing to mention the absence of  
23 such an accommodation or exception in the Initiative.

For these reasons the DOE and Initiative are legally insufficient, invalid, and  
prohibited under N.R.S. § 295.009(1)(b).

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2 **IV. THE DESCRIPTION OF EFFECT IS MISLEADING BECAUSE IT FAILS**  
3 **TO PROVIDE NOTICE OF MATERIAL CONSEQUENCES: THE IMPACT ON**  
4 **A CORE CONSTITUTIONAL MANDATE**

5 The DOE is misleading because it fails to provide notice regarding the adverse  
6 impact it will have on Article 2, Section 6 of the Nevada Constitution, which states in  
7 relevant part that: “Provision shall be made by law...to preserve the purity of elections,  
8 and to regulate the manner of holding and making returns of the same....” The  
9 Legislature exercises the powers provided by Article 2, Section 6 of the Nevada  
10 Constitution to enact rules providing for appropriate forms of identification at the polls,  
11 which the Initiative would supersede. *See* N.R.S. § 295.277(2).

12 The DOE fails to notify voters that the Initiative diminishes the existing power of  
13 the Legislature, as currently set forth in Article 2, Section 6 of the Nevada Constitution,  
14 to determine the appropriate steps to preserve the purity of elections, and to regulate the  
15 manner of holding and making returns of election.

16 The Initiative is therefore legally insufficient, invalid, and prohibited under N.R.S.  
17 § 295.009(1)(b).

18 **CONCLUSION**

19 Nevada’s voters must be informed, at the very least, of the material consequences  
20 of the laws that are being proposed. Failing to explain these provisions, which are  
21 unquestionably material, misrepresents the Initiative to Nevadan voters. Given the extent  
22 of information omitted from the Description of Effect, it is hard to contemplate how  
23 voters can ascertain the implications and consequences of the Initiative they are being  
asked to sign. *See Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 37, 208 P.3d  
at 441. Because the Description of Effect inadequately informs voters of the full impact  
of the Initiative, it should be invalidated by this Court.

1           For the foregoing reasons, the Court should declare that the Initiative is legally  
2 insufficient, void, and invalid, and bar the Secretary of State from transmitting it to the  
3 Ballot.  
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