

Hale Lane Peek Dennison and Howard
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1 CASE NO. 07 DC 015531B

2 DEPT NO. II

3 IN THE FIRST DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR CARSON CITY

07 DEC 12 P4:47

5 LAS VEGAS SANDS, LLC, a Nevada)
6 limited liability company,)

7 Plaintiff.)

8 vs.)

9 NEVADA STATE EDUCATION)
10 ASSOCIATION, a Nevada nonprofit)
11 Corporation; LYNN WARNE, an)
12 Individual; DOUG BACHE, an individual;)
13 TIM WEEKLEY, an individual; ROSS)
14 MILLER, in his capacity as Secretary)
15 of the State of Nevada; and DOES 1)
16 through 20, inclusive,)

17 Defendants.)

ALAN GLOYER
CLERK

**PLAINTIFF'S MOTION IN SUPPORT OF
COMPLAINT FOR DECLARATORY
RELIEF**

18 **I. BACKGROUND**

19 On November 19, 2007, the Nevada State Education Association ("NSEA") filed with the
20 Nevada Secretary of State the initiative entitled "Save Our Schools With Additional Funding"
21 ("Initiative"), pursuant to Article 19 of the Nevada Constitution and Chapter 295 of the Nevada
22 Revised Statutes. A copy of the Initiative is attached as Exhibit 1 to Plaintiff's Complaint and
23 filed concurrently herewith. The Initiative seeks to amend Article 11 of the Constitution of the
24 State of Nevada by creating a new section, designated Section 3A.

25 The Initiative declares that Nevada requires more money to enable school districts and
26 charter schools to attract and retain qualified employees and provide children with the education
27 they require to become productive adults. See Plaintiff's Complaint Exhibit 1. To achieve this
28 requirement, the Initiative seeks to increase the total amount of money for Nevada school
districts by amending the Nevada Constitution to include a three percent (3%) increase in
monthly gaming license fees from gaming licensees on all gross revenues that exceed one
million dollars (\$1,000,000.00). *Id.* The Initiative consistently declares that this is a "new" fee,

1 despite the fact that gaming licensees are already required to pay a six and three quarter percent
2 (6.75%) license fee, with some proceeds designated to support education in Nevada.

3 Besides seeking to accomplish its goal of increasing the total amount of money for
4 Nevada schools, the Initiative also proposes other additions to the Constitution that are unrelated
5 to its stated purpose. First, the Initiative requires that the proceeds of the increased gaming
6 license fee be distributed on a per-student basis, without taking into account available local
7 funding, which is a fundamental change from current Nevada law. *Id.* Current Nevada law
8 provides that money is distributed to school districts based on an equalized basis that takes into
9 account the availability of local revenues in each school district. This practice, also known as the
10 Nevada plan, ensures equal funding for the education of all children in the state, regardless of the
11 district in which they reside, and it also guarantees each child equal protection under the law.

12 Next, the Initiative dictates how school districts and charter schools must use the
13 proceeds from the increased gaming license fee in a fiscal year. *Id.* Specifically, at least forty
14 percent (40%) must be used to add instructional days to the school year, reduce overcrowding,
15 provide additional training to teachers, provide tutoring programs for students, prevent dropouts
16 or improve the achievement of students. *Id.* Another forty percent (40%) must be used to pay
17 the salaries and benefits of school district and charter school employees, other than
18 administrative employees. *Id.* If any proceeds remain, they must be used to provide incentive
19 pay for school district and charter school employees, other than administrative employees. *Id.*
20 Since adding instructional days to the school year requires an increase in salaries for the
21 additional days worked, providing additional training to teachers allows teachers to move up
22 "steps" on the salary scale, and since NSEA has historically argued that increasing salaries of
23 teachers will improve the achievement of students, it is plausible that teachers and other school
24 employees will be the only beneficiaries from the increased gaming license fee, even though the
25 Initiative is premised on saving our schools.

26 Beyond the gaming license fee increase, the Initiative proposes to establish a fundamental
27 and constitutional change to the Legislature's expressed authority to provide funding for public
28 schools. Specifically, the Initiative proposes that in each biennium, the Legislature must provide

1 an amount of *state* support for the operation of public schools that is not less than what it
2 provided for the 2007 to 2009 biennium. *Id.* The minimum funding requirement then increases
3 in future years as inflation and enrollment increases. *Id.* However, none of the proceeds from
4 the increased gaming license fee can be used to assist in paying the minimum funding
5 requirement, even if the state's general fund does not sustain the same growth as inflation and
6 school enrollment, as those proceeds are excluded from assisting funding the operation of
7 schools and reserved for increasing teacher salaries and benefits.

8 Although the language of the Initiative exceeds the scope of its purpose and proposes
9 additional provisions unrelated to increasing the amount of money available for Nevada schools
10 and charter schools by increasing a gaming license fee, the NSEA still disguises its Initiative in
11 its Description of Effect and attempts to mislead and misinform the voters of its purpose. The
12 following language is how the NSEA proposes its Initiative to those asked to sign the petition:

13 This measure would amend the Nevada Constitution to provide
14 additional funding for Nevada's school districts and charter
15 schools, to be spent for specified purposes, including programs to
16 improve student achievement and the payment of salaries and
17 benefits for teachers and other school employees, excluding
18 administrative employees. The funding would come from a new
19 monthly license fee, to be collected by the Nevada Gaming
20 Commission from certain gaming licensees, equal to 3 percent of
21 each licensee's monthly gross gaming revenue exceeding
22 \$1,000,000, as adjusted for inflation or deflation. To assure that
23 money now used for the support of schools is not diverted to other
24 purposes once money once money from the new license fee
25 becomes available, the Legislature would be required to fund the
26 public schools (K-12) in a biennial amount at least equal to the
27 amount of money provided for the 2007-2009 biennium, excluding
28 money from the new fee and certain federal money and adjusted for
changes in enrollment and inflation/deflation. An exception to the
minimum-funding requirement would exist for any year which the
Legislature determined that an emergency made compliance
impracticable. The Legislature would be authorized to refine the
definition of "gross revenue" for purposes of the new fee.

24 See Plaintiff's Complaint Exhibit 1, p. 5.

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1 **II. ANALYSIS**

2 **A. *The Initiative Is Void Because It Embraces More Than One Subject In Violation Of***
3 ***Section 295.009 Of The Nevada Revised Statutes.***

4 To facilitate the initiative process and avoid presenting voters with confusing petitions,
5 Nevada requires that initiative petitions embrace only one subject. Nev. Rev. Stat. §295.009.
6 Section 295.009 states that each petition for initiative must embrace one subject and matters
7 necessarily connected therewith and pertaining thereto. A petition for initiative embraces one
8 subject and matters necessarily connected therewith and pertaining thereto, if the parts of the
9 proposed initiative are functionally related and germane to each other in a way that provides
10 sufficient notice of the general subject of, and the interests likely to be affected by the proposed
11 initiative. *Nevadans for the Protection of Property Rights, Inc., v. Heller*, 122 Nev. 894, 141
12 P.3d. 1235, 1243 (2006).

13 The purpose of the single-subject requirement is to prevent petition drafters from
14 circulating confusing petitions that address multiple subjects. *Nevadans for the Protection of*
15 *Property Rights*, 122 Nev. 894, 141 P.3d. 1235, 1240 (2006). The single-subject requirement
16 serves to prevent voter confusion and promote informed decisions by narrowing the initiative.
17 *Id.* at 1240-1241 (citing, *Campbell v. Buckley*, 203 F.3d 738 (10th Cir. 2000)). The single-
18 subject requirement is a process measure that facilitates efficiency, veracity or clarity in the
19 initiative process. *Id.* at 1242 (citing *Buckley v. American Constitutional Law Foundation, Inc.*,
20 525 U.S. 182 (1999)).

21 The court's primary inquiry in determining if an initiative encompasses more than one
22 subject is to determine whether the initiative's parts are functionally related and germane to each
23 other. *Id.* at 1243. The court accomplishes this inquiry by determining the primary subject of
24 the initiative, and if the provisions are not functionally related and germane to that primary
25 subject, than it encompasses more than one subject. *Id.* at 1244.

26 In *Nevadans for the Protection of Property Rights*, the Nevada Supreme Court
27 determined that the initiative's primary subject was eminent domain. *Id.* The Court then
28 reviewed each provision of the initiative and determined that several specific provisions that

1 were broad, including those creating new fundamental property rights, were not functionally
2 related or germane to the primary subject of eminent domain. *Id.* at 1244 – 1245.

3 In the present action, the first step to verify that an Initiative only encompasses a single-
4 subject is to determine the primary subject of the Initiative. Subsection 1 of the Initiative
5 declares that “the school districts and charter schools of this state need more money to enable
6 them to attract and retain qualified employees *and* to provide the school children of this state
7 with the education they need to become productive and responsible adults. The purpose of the
8 this [Initiative] is to provide a means of increasing the total amount of money provided to
9 Nevada school districts and charter schools.” Further, the Initiative’s Description of Effect states
10 that “this measure would amend the Nevada Constitution to provide additional funding for
11 Nevada’s school districts and charter schools.” *See* Plaintiff’s Complaint Exhibit 1, p. 1. In its
12 very first subsection, the Initiative states three distinct purposes: 1) attracting and retaining
13 qualified employees; 2) providing school children of this state with the education they need to
14 become productive and responsible adults; and 3) providing a means to increase the amount of
15 funding available for Nevada’s schools.

16 In defining the purpose of an initiative, it is important not to define the purpose too
17 broadly. In his separate opinion in *Nevadans for the Protection of Property Rights*, Justice
18 Maupin accurately noted that the Court was unanimous in its determination that the petition at
19 issue in that case embraced multiple subjects:

20 The petitioners argue that the PISTOL petition deals with one
21 general subject, eminent domain. As stated, no member of this
22 tribunal agrees on that score because any rule supporting such a
23 broad interpretation would render meaningless the statute’s
attempt to limit the scope of individual proposed amendments to
the State Constitution.

24 *Nevadans for the Protection of Property Rights*, 141 P.3d at 1252 (Maupin, J., concurring and
25 dissenting). The PISTOL petition dealt broadly with property rights and the procedures for
26 enforcing property rights. *Id.* at 1238-39 (describing provisions of petition). The petitioners in
27 that case could have argued that the subject of their petition was private property rights. Such a
28 subject would have been so broad, however, that it would “render meaningless” NRS 295.009.

1 A petition that sought generally to increase education funding through a variety of means
2 would similarly be so broad as to render the statute meaningless.¹ Rather, the subject of this
3 Initiative is to increase the amount of funding available for Nevada's schools through a particular
4 means, increasing the gaming license fee from 6.75% to 9.75% on licensees generating more
5 than one million dollars in gross gaming revenue. Subsection 2 of the Initiative, which comes
6 right after the statement of its purpose in subsection 1, specifically states that "To increase the
7 amount of money available for the support and maintenance of the public schools as provided in
8 this [Initiative], the Nevada Gaming Commission shall charge and collect from each gaming
9 licensee a monthly license fee, at the rate of 3 percent, upon all the gross revenue of the licensee
10 which exceeds \$1,000,000 per calendar month" Exhibit 1, p. 1. This language would
11 certainly lead one to believe that the purpose of the Initiative is to use this specific means of
12 increasing school funding.

13 The next inquiry is to determine if all the Initiative's provisions are "functionally related"
14 and "germane" to the primary subject of providing a specific means to increase additional
15 funding for Nevada's schools. The Initiative's provisions that increase the gaming license fee,
16 provide that the Nevada Gaming Commission collect the proceeds of the fee and distribute those
17 proceeds to the State Treasurer which are then placed in a State Supplemental School Support
18 Fund are "functionally related" and "germane" to the primary subject. The amount of revenue
19 available for Nevada schools is increased by the additional gaming license fee, and the collection
20 and deposit in the State Supplemental School Support Fund makes sure the proceeds are used for
21 Nevada's schools. Therefore, the primary subject and purpose of the Initiative is accomplished
22 by subsections 2 through 4.

23 The Initiative's remaining provisions, however, are not functionally related or germane to
24 the primary subject of providing a specific means to increase additional funding for Nevada's
25 schools. Subsection 5 of the Initiative directs how the proceeds from the gaming license fee are

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27 ¹ "As the majority recognizes, the single-subject requirement has been implemented in several states and was
28 essentially designed to help facilitate the people's legislative process by promoting informed decisions and
preventing confusion, and in some cases, deception, that results when certain less-popular provisions are "log-
rolled" into a petition proposing an idea that the public generally favors." *Nevadans for the Protection of Property
Rights*, 141 P.3d at 1254 (Hardesty, J., concurring and dissenting).

1 to be distributed amongst the school districts. This proposed provision is related to
2 “distribution” and is in no way functionally related to the “means” to increase money available
3 for school districts. Further this provision creates a broad new required method of distribution,
4 based on a per-student basis, compared to the current method of an equalized basis. The broad
5 requirement is similar to the provision the Nevada Supreme Court found functionally unrelated
6 and invalid in *Nevadans for the Protection of Property Rights* because it creates a broad new
7 method contrary to current law that will have profound effects beyond those described in the
8 Initiative including unequal distributions and proportionally less money for certain school
9 districts.

10 Also, the Initiative’s proposed requirement on how school districts and charter schools
11 are required to use the proceeds is unrelated and independent of the primary subject. The
12 Initiative’s subject is to “provide a means of increasing” funds for schools by increasing gaming
13 license fees, which is unrelated to how school districts may “spend” money. Each school district
14 has different financial requirements and needs based on demands unique to each district. The
15 Initiative exceeds its subject by requiring that the proceeds it is allegedly raising to save schools
16 be used in reality to increase the salaries, benefits and incentives of teachers. The NSEA should
17 be required to file and circulate a separate petition to serve this distinct purpose.

18 The Initiative’s creation of a minimum-funding requirement is also not functionally
19 related or germane to the primary subject of the Initiative, and it creates broad and unprecedented
20 changes to the Nevada Constitution. The Initiative creates a new “minimum-funding
21 requirement” that requires the Legislature to fund the operation of public schools at an amount
22 not less than it did in 2007-2009. The Initiative’s language itself declares that this provision is
23 independent of the gaming license fee by stating it is excluded from the minimum-funding
24 requirement that must be provided each biennium. Further, the proposed minimum-funding
25 requirement is related to spending and appropriations, and is not functionally related or germane
26 to a “means” to increase the amount of money for Nevada’s schools.

27 The provision also proposes a broad and unprecedented change to the Nevada
28 Constitution. Article 11 of the Nevada Constitution grants the Legislature with the expressed

1 authority to provide the money it “deems sufficient” for the purpose to fund the operation of
2 public schools. Article 11 of the Nevada Constitution also provides the Legislature the express
3 power to fund for the support and maintenance of the public schools by “appropriation of the
4 general fund.” However, the Initiative’s minimum-funding requirement removes any Legislative
5 discretion to funding schools and creates its own definition of what are “sufficient” funds
6 required for the operation of schools. The provision amends express constitutional powers and
7 creates broad new requirements on government actions that is similar to the provision the
8 Nevada Supreme Court found invalid in *Nevadans for the Protection of Property Rights*.

9 The Initiative’s proposal of multiple subjects is likely to create confusion and uninformed
10 decisions amongst voters. As stated in *Nevadans for the Protection of Property Rights*, “the
11 single-subject requirement serves to prevent voter confusion and promote informed decisions by
12 narrowing the initiative.” 141 P.3d at 1240-1241. This Initiative has the likely result of
13 confusing voters because its has a greater effect on Nevada law then is stated in its purpose. The
14 Initiative tells voters that its purpose is to increase the amount of money available to Nevada
15 schools through a new license tax on gaming licensees, while in reality more than two-thirds
16 (2/3) of the proposed provisions conflict and change numerous constitutional and state delegated
17 powers, which are unrelated to increasing the amount of money available to Nevada schools. As
18 noted by Justice Maupin in agreeing with the majority’s conclusion that the PISTOL petition
19 violated the single-subject rule:

20 All of the clearly separate subjects embraced within the PISTOL
21 petition have dramatically differing ramifications and all require
22 that the signators and prospective voters accept the entirety of the
23 petition in order to obtain any of the proposed changes to the
24 Nevada Constitution. Accordingly, this multifaceted petition runs
25 afoul of the statutory command.

26 *Id.* at 1252 (Maupin, J., concurring and dissenting).

27 **B. *The Initiative Is Void Because the Description of Effect Is Misleading.***

28 Nev. Rev. Stat. §295.009 states that each petition for initiative must set forth, in no more
than 200 words, a description of effect of the initiative if the initiative is approved by the voters.
All initiative petitions are required to be filed with the Secretary of State with a Description of

1 Effect to provide sufficient information so that voters can intelligently evaluate whether to sign
2 an initiative petition, interested persons may make an informed decision to support or oppose the
3 petition and confusion can be avoided. *Nevadans for Nevada v. Beers*, 122 Nev. 930, 142 P.3d
4 339 (2006).

5 The Description of Effect must inform petition signers of the nature and purpose of the
6 initiative, and failure to do so effectively prevents them from knowing what they are signing.
7 *Stumpf v. Lau*, 108 Nev. 825, 839 P.2d 120 (1992). Failure to inform petition signers and voters
8 is “deceptive and misleading” and therefore the Petition is invalid. *Id.* (citing *In re Initiative*
9 *petition No. 344*, 797 P.2d 326 (Okla. 1990)).

10 In *Stumpf*, the Nevada Supreme Court reviewed an initiative petition that failed to define
11 the nature and purpose of an amendment to the Nevada Constitution. *Id.* at 831. The Nevada
12 Supreme Court noted that the Nevada Constitution is the fundamental law of the state and if it is
13 to be amended by an initiative, “potential signers are to be made specifically aware of the
14 solemnity of their act in signing that they may do so with full appreciation of the fact that they
15 are participating in an effort to change the fundamental law of their state.” *Id.* (citing *State ex re.*
16 *Scott v. Kirkpatrick*, 484 S.W.2d 161, 164 (Mo. 1872)). The Nevada Supreme Court held the
17 initiative petition invalid because it failed to inform the signers of the nature or effect of the
18 petition on the State Constitution. *Id.*

19 Further, the Description of Effect must also disclose all material provisions and
20 ramifications associated with the nature and effect and purpose of the petition. *Nevada Judges*
21 *Association v. Lau*, 112 Nev. 51, 910 P.2d 898 (1996). Failure to explain ramifications of the
22 proposed effect renders the initiative and its explanation potentially misleading. *Id.*

23 In *Nevada Judges Association*, the Nevada Supreme Court reviewed an initiative that
24 limited term limits for government officials. *Id.* at 53. The explanation of the initiative failed to
25 make clear the substantive changes to term limits, including the different effects on elected
26 officials depending on their branch of government. *Id.* at 60. The Nevada Supreme Court upheld
27 a challenge to the petition on the grounds that the wording of the explanation could have been
28 misleading. *Id.*

1 In the present action, the Description of Effect is misleading because it does not fully and
2 accurately describe the Initiative's nature and effect, purpose and consequences nor does it
3 disclose all material provisions and ramifications. In its entirety, the Description of Effect is
4 drafted to create an overall perception that the Initiative provides additional funding for
5 Nevada's schools through the increase in a new gaming license fee. However, this is deceiving
6 and misleading to petition signers because the purpose of this Initiative is not to provide
7 additional funding for schools but instead to increase salaries and benefits for teachers. Further,
8 the Description of Effect fails to inform petition signers of all the Initiative's effects because
9 there are numerous material provisions vaguely described or not disclosed at all in the
10 explanation that have substantial consequences on current constitutional provisions and state law.

11 The Description of Effect begins by stating that the additional funding will be spent for
12 specified purposes, "including programs to improve student achievement and the payment of
13 salaries and benefits for teachers and other school employees." This statement is misleading
14 because it creates a perception that the proceeds are equally distributed to improve student
15 achievement and to pay teacher's salaries, while in reality, the Initiative allows for the majority,
16 if not the entire proceeds from the increased gaming license fee to be distributed for the benefit
17 of teachers and other instructional employees. To insure petition signers are informed and not
18 deceived with regard to the purpose and effect of this provision, the Description of Effect should
19 disclose precisely how and where the school districts can use the proceeds.

20 The Description of Effect is also misleading because it presents the Initiative as a new
21 section to the Constitution, when in reality it is amending specific provisions of the Constitution
22 and current Nevada law. Specifically, the new monthly license fee applied to gaming licensees
23 is an increase to the already existing license fee of six and three-quarter percent (6.75%) charged
24 against gaming licenses in Nevada and provided for by law. In addition, the new "minimum-
25 funding requirement" and related provisions are amendments to Nevada Constitution provisions
26 that grant express authority to the Legislature to provide money it deems sufficient to the
27 operation, maintenance and support of public schools. However, the Description of Effect
28 deceives petition signers by stating that these are new laws added to the Nevada Constitution,

1 when they are actually changes to existing law. Similar to *Stumpf*, the Initiative is deceptive and
2 misleading because it proposes an amendment to the Nevada Constitution without informing the
3 petitioner signers of the nature or effect and ramifications it is having on existing constitutional
4 provisions and the law.

5 The Description of Effect also does not fully and accurately describe the Initiative's
6 purpose and financial consequences of the proposed minimum-funding requirement. The
7 Initiative creates a minimum-funding requirement and deceptively states the purpose is to make
8 sure the Legislature maintains current levels of funding for schools. However, the true purpose
9 of this provision is to guarantee that the Legislature does not appropriate proceeds from the new
10 gaming license fee, the majority of which is dedicated for teachers' salaries and benefits, to
11 assisting in the financing of schools. Quite ironically, the Initiative presents itself as the "Save
12 Our Schools With Additional Funding," however, the Initiative expressly forbids the Legislature
13 to use any of the additional funding created by the Initiative to assist in operating, supporting or
14 maintaining Nevada's schools.

15 Further, neither the Initiative nor the Description of Effect describes how the Legislature
16 will obtain the money to pay for the minimum-funding requirement, nor do they discuss the
17 possible financial consequences. By failing to disclose these material ramifications, the Initiative
18 is misleading voters that there are no ramifications from the minimum-funding requirement, such
19 as possible tax increases or spending cuts in other programs.

20 The Description of Effect concludes by stating the Legislature is authorized to refine the
21 definition of "gross revenue" for the purposes of the new gaming license fee. This sentence is
22 misleading and fails to disclose the material ramifications if the Legislature refines the definition
23 of "gross revenue" for the purposes of the new fee. The next sentence of Subsection 12 of the
24 Initiative provides the undisclosed ramifications, specifically that if the Legislature refines the
25 definition of "gross revenue" for the purpose of the new gaming license fee then that refined
26 definition must also be applied to all other revenue-based license fees imposed against gaming
27 licensees. Without including this material effect, petition signers are being deceived and are
28 unaware of the financial consequences on the State of Nevada if all revenue-based gaming

1 license fees (including the 6.75% currently imposed by statute) were affected by a change in the
2 definition of “gross revenue” for the purposes of the new fee.

3 Certain other material provisions of the Initiative are not even disclosed in the
4 Description of Effect and thereby does not inform petition signers of the full effect of the
5 Initiative. Specifically, the Description of Effect fails to disclose how the proceeds from the
6 increase in gaming license fees are distributed to school districts. The Initiative requires that the
7 proceeds from the gaming license fee are distributed on a per-student basis. Currently, Nevada
8 distributes money to school districts based on an equalized basis that takes into account the
9 resources available to each school district and not just the number of students in the district to
10 ensure equal funding for the education of all Nevada children. Since this provision is not
11 disclosed in the Description of Effect, petition signers will be unaware that they are creating
12 constitutional provisions that conflict with current Nevada law and which will lead to unequal
13 distributions amongst school districts and unequal treatment under the law subjecting the State of
14 Nevada to costly lawsuits for potential constitutional violations.

15 The Description of Effect fails to inform voters that it fundamentally alters the collective
16 bargaining relationship between school districts and school district employees. As more fully
17 discussed below, current Nevada law authorizes employee organizations to collectively bargain
18 with school districts and charter schools, including employee organizations comprised of
19 administrative employees.² The Initiative will provide a huge pot of money available for
20 collective bargaining on behalf of organizations representing teachers and other school district
21 employees, except administrative employees. Administrative employees will not be able to
22 collectively bargain for any of this new pot of money.

23 One possible ramification of this change might be that all of the money raised is spent on
24 salaries and benefits for employees. Another possible ramification is that teachers will end up
25 with substantially higher salaries than administrators, pressuring school districts to divert
26 revenues currently funding operations to administrator salaries.

27 ² The Initiative contains a definition of “administrative employee” that differs from the definition in the Local
28 Government Employee Management Relations Act. Compare Exhibit 1, p. 2 with Nev. Rev. Stat. § 288.025 (2007).
The Initiative will result in an implicit repeal of NRS 288.025 to the extent it conflicts with the Initiative. This
impact is not disclosed in the Description of Effect.

1 C. *The Petition Impermissibly Dictates Administrative Details*

2 In *Nevadans for the Protection of Property Rights*, 122 Nev. 894, 141 P. 3d 1235 (2006),
3 the Nevada Supreme Court held that:

4 [A]n initiative intending to amend our Constitution “must propose
5 policy – it may not dictate administrative details.” Including
6 administrative details in the Constitution would impermissibly
7 ignore its very definition as “original legislation” and would
8 effectively turn on its head the fundamental concept of the
9 Constitution as organic law. Initiatives proposing constitutional
amendments therefore must propose policy and not administrative
details, and we have recognized that preelection intervention is
warranted when an initiative fails to meet the threshold requirement
that it propose policy.

10 141 P.3d at 1249 (citing *Citizens for Train Trench Vote v. Reno*, 118 Nev. 574, 583, 53 P.3d 387,
11 392 (2002), *overruled in part on other grounds by Garvin v. District Court*, 118 Nev. 749, 59
12 P.3d 1180 (2002))(footnotes omitted). In that case, the Court determined that “the primary
13 subject of the initiative is unquestionably eminent domain” *Id.* at 1244. Nevertheless, the
14 Court struck down three sections of the proposed initiative as “distinctly administrative.” *Id.* at
15 1250.

16 The three sections that the Court struck down 1) stated that unpublished *eminent domain*
17 judicial opinions or orders shall be null and void; 2) prohibited a judge or justice who had not
18 been elected to a current term of office from issuing any ruling in an *eminent domain* proceeding;
19 and 3) granted property owners a right to preempt one judge and one justice in *eminent domain*
20 actions. *Id.* at 1249. All of these provisions were struck down because they directed “decisions
21 that have been delegated to the judiciary.” *Id.*

22 In this case, the Initiative specifically provides that funds generated by the increased fee
23 “must” be used by school districts and charter schools “so that in each fiscal year:

24 (1) Not less than 40 percent is used to add instructional days to
25 the school year, reduce overcrowding in schools and classrooms,
26 provide additional training to teachers and other instructional
employees, provide tutoring programs for students, prevent
dropouts or otherwise improve the achievement of students;

27 (2) Not less than 40 percent is used to pay the salaries and
28 benefits of employees, other than administrative employees, of
the school district or charter school; and

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(3) Any remaining money is used to provide incentive pay for employees, other than administrative employees, of the school district or charter school, and to pay or reimburse such employees for employment-related expenses incurred by them.

Initiative, § 6 (b). By specifically directing the manner in which school districts and charter schools “must” expend the funds appropriated, they are directing decisions that have been delegated to local school districts.

Moreover, the Local Government Employee Management Relations Act (the “Act”), codified in Chapter 288 of the Nevada Revised Statutes, authorizes local government employees to engage in collective bargaining. School districts and charter schools are specifically included as local government employers. Nev. Rev. Stat. § 288.060 (2007). Moreover, the Act defines the term “administrative employees.” Nev. Rev. Stat. § 288.025.

“Collective bargaining” is conducted between “representatives” of the local government employer and employee organizations. Nev. Rev. Stat. §§ 288.033; 288.150. Neither the local government representatives nor the employee organization are compelled to reach any agreement as long as they negotiate in good faith. *Id.* From the employer’s perspective, collective bargaining is a distinctly managerial or administrative function.

Salary or wage rates or other forms of direct monetary compensation are subjects of mandatory bargaining. Nev. Rev. Stat. § 288.150. In smaller school districts, administrative employees may be part of the same bargaining unit as teachers and other school district employees. Nev. Rev. Stat. § 288.170 (2).

Because the Initiative directs amounts that “must” be spent on “salaries or benefits of employees, other than administrative employees,” it dictates the outcome of collective bargaining between school districts and their employees, a “distinctly administrative” function. *Protection of Property Rights*, 122 Nev. 894, 141 P.3d at 1250. By prohibiting the use of the majority of the funds raised from being used for compensation of “administrative employees,” the Initiative interferes with both the local government employer’s administrative functions and the collective bargaining rights of employee organizations consisting of administrative employees. In smaller school districts, administrative employees and other school employees

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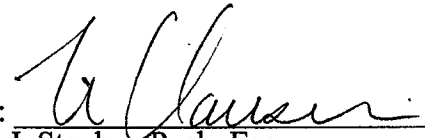
may be part of the same bargaining unit, placing the school district and the employee organization in the awkward position of having to determine how to comply with the mandate of the Initiative and still fairly represent all members of the bargaining unit. These are just a few of the dangers that arise when an initiative petition strays into the realm of administrative matters.

III. CONCLUSION

The NSEA's Initiative is fatally deficient in that it violates the one-subject rule, misleads signators and voters in its Description of Effect, and proposes administrative details. For all of the foregoing reasons, we respectfully request this court to declare the Initiative void.

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