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9 *Attorneys for Plaintiffs*  
10 *Fair Maps Nevada PAC, Sondra Cosgrove,*  
11 *Douglas Goodman, and Robert MacDonald*

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 FAIR MAPS NEVADA, a Nevada political  
15 action committee, SONDRA COSGROVE,  
16 DOUGLAS GOODMAN, and ROBERT  
17 MACDONALD,

18 Plaintiffs,

19 v.

20 BARBARA CEGAVSKE, in her official  
21 capacity as Nevada Secretary of State,  
22 JOSEPH P. GLORIA, in his official capacity  
23 as Clark County Registrar of Voters, DEANNE  
24 SPIKULA, in her official capacity as Washoe  
25 County Registrar of Voters, KRISTINA  
26 JAKEMAN, in her official capacity as Elko  
27 County Clerk, SADIE SULLIVAN, in her  
28 official capacity as Lander County Clerk,  
LACEY DONALDSON, in her official  
capacity as Pershing County Clerk-Treasurer,  
VANESSA STEVENS, in her official capacity  
as Storey County Clerk-Treasurer, NICHOLE  
BALDWIN, in her official capacity as White  
Pine County Clerk, SANDRA MERLINO, in  
her official capacity as Nye County Clerk,  
TAMMI RAE SPERO, in her official capacity  
as Humboldt County Clerk, KATHY LEWIS,  
in her official capacity as Douglas County  
Clerk-Treasurer, LINDA ROTHERY, in her  
official capacity as Churchill County Clerk-  
Treasurer, LACINDA ELGAN, in her official  
capacity as Esmeralda County Clerk-Treasurer,  
LISA C. LLOYD, in her official capacity as  
Lincoln County Clerk, LISA HOEHNA, in her  
official capacity as Eureka County Clerk,  
CHRISTOPHER NEPPER, in his official

Case No.:

**PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

1 capacity as Mineral County Clerk-Treasurer,  
2 NIKKI BRYAN, in her official capacity as  
3 Lyon County Clerk-Treasurer, and AUBREY  
4 ROWLATT, in her official capacity as Carson  
5 City Clerk-Recorder,  
6  
7 Defendants.

8 Plaintiffs Fair Maps Nevada (“Fair Maps”), Sondra Cosgrove, Douglas Goodman and  
9 Robert MacDonald by and through their undersigned counsel, respectfully move this Court,  
10 pursuant to Federal Rule of Civil Procedure 65 for a Preliminary Injunction enjoining Defendants  
11 from requiring Fair Maps to: (1) collect hand signatures, (2) affixed in the physical presence of  
12 the Initiative circulator, and (3) by the time prescribed in NRS 295.056(3), June 24, 2020, in order  
13 to qualify Amended Initiative Petition C-02-2019 (the “Initiative”) for the November ballot. This  
14 Motion is based upon the following Memorandum of Points and Authorities, the Complaint and  
15 exhibits thereto, the Declarations filed concurrently herewith, the pleadings and papers on file  
16 herein, and such other evidence and argument as the Court may allow.

17 **I. INTRODUCTION**

18 Fair Maps proposes to amend the Nevada Constitution to provide for the establishment of  
19 an independent redistricting commission to draw Nevada’s electoral maps for the State Senate,  
20 Assembly and U.S. House of Representatives. Toward that end and in order to limit partisan  
21 gerrymandering, Fair Maps filed the Initiative. (Ex. A, Decl. of Laura Hale ¶ 4.)

22 Since the Initiative was filed, however, the Covid-19 pandemic (“Pandemic”) has gripped  
23 our state and country. In response, all levels of the government have issued social distancing  
24 requirements and stay-at-home directives that preclude the interpersonal contact necessary to  
25 gather signatures to qualify the Initiative, and other initiatives, for the 2020 ballot in compliance  
26 with existing regulations.

27 In recognition of this difficulty, Fair Maps requested relief from the Secretary of State (the  
28 “Secretary”), Nevada’s chief elections officer. (*Id.* ¶ 20.) Fair Maps requested that (1) the  
Secretary extend the deadline for submitting the Initiative for verification (June 24, 2020), (2)

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1 clarify that Fair Maps may circulate the Initiative electronically, and (3) clarify that signers may  
 2 sign the Initiative using electronic signatures. (*Id.*; Compl., Ex. 25, at 3-4.) The Secretary refused,  
 3 indicating that Nevada statutes preclude both actions. (Hale Decl. ¶ 20; Compl., Ex. 26 at 1.)  
 4 The Secretary refused notwithstanding the fact that she previously ordered that Nevada’s June 9,  
 5 2020 primary would be conducted by all mail contrary to certain written requirements of Nevada  
 6 election law. (*See* Compl., Ex. 19.) This Court recently held that such action was valid under the  
 7 Secretary’s authority pursuant to NRS 293.247(4), which provides that the Secretary may, in  
 8 connection her duties as chief election officer, “provide interpretations and take other actions  
 9 necessary for the effective administration of the statutes and regulations governing the conduct of  
 10 primary, general, special and district elections in this State.” *Paher v. Cegavske*, No. 3:20-CV-  
 11 00243-MMD-WGC, 2020 WL 2089813, at \*8-10 (D. Nev. Apr. 30, 2020). The Secretary insists  
 12 on enforcing her interpretation of the signature gathering requirements as if the stay-at-home  
 13 directives “had no impact on the rights of candidates and the people who may wish to vote for  
 14 them.” *Esshaki v. Whitmer*, No. 2:20-cv-10831-TGB, 2020 WL 1910154, at \*1 (E.D. Mich. Apr.  
 15 20, 2020) (extending deadline to accept signatures).

16 In light of the Secretary’s action, this Court should take immediate action to preserve  
 17 Plaintiffs’ constitutionally protected rights to circulate the Initiative and vote on the same.  
 18 Otherwise, the Secretary’s interpretation and application of NRS 295.056(3) and NRS  
 19 295.0575(1) and (5) will unduly burden Plaintiffs’ constitutionally protected rights.

## 20 **II. STATEMENT OF FACTS**

### 21 **A. The Initiative**

22 On November 4, 2019, Fair Maps filed Initiative Petition C-02-2019 pursuant to Article  
 23 19, Section 2. (Hale Decl. ¶ 4; Compl., Ex. 1.) If enacted, the Initiative will amend the Nevada  
 24 State Constitution to provide for an independent redistricting commission to map electoral districts  
 25 for the Nevada Senate, Assembly and U.S. House of Representatives. (Hale Decl. ¶ 4.) On  
 26 November 26, 2019, a lawsuit was brought challenging the legal sufficiency of the description of  
 27 effect appended to the Initiative. (*Id.* ¶ 5.) On January 7, 2020, Fair Maps filed Amended Initiative  
 28 Petition C-02-2019 to reflect changes made to the description of effect following resolution of the

1 case in district court. (Compl. ¶ 31.) While Fair Maps continued and will continue to gather  
 2 signatures in support of the Initiative, the challenger to the Initiative appealed to the Nevada  
 3 Supreme Court where issues relating to the Initiative remain pending. (Compl. ¶ 32.)

4 Pursuant to the Nevada State Constitution, in order to qualify the Initiative for inclusion  
 5 on the November 2020 ballot, the Initiative must be signed “by a number of registered voters equal  
 6 to 10 percent or more of the number of voters who voted at the last preceding general election in  
 7 not less than 75 percent of the counties in the State, but the total number of registered voters  
 8 signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the  
 9 entire State at the last preceding general election.” Nev. Const. art. 19, § 2(2). This year, that  
 10 means Fair Maps must collect 97,598 signatures. *Filing a Constitutional Initiative*, Nev. Sec’y of  
 11 State, <https://www.nvsos.gov/sos/elections/initiatives-referenda/filing-a-constitutional-initiative>  
 12 (last visited May 5, 2020).

13 NRS 295.056(3) establishes the date by which the proponent of an initiative petition must  
 14 submit petition documents for verification to the county clerks. NRS 205.056(3). Where, as here,  
 15 the initiative petition proposes an amendment to the Nevada State Constitution, the deadline is the  
 16 fifteenth day after the primary election. *Id.* This year, that date falls on June 24, 2020 as Nevada’s  
 17 primary is scheduled to be held on June 9. *See id.* Included with each document of the Initiative  
 18 must be a circulator’s affidavit. NRS 295.0575. Pursuant to NRS 295.0575, the affidavit must,  
 19 among other thing, affirm that the circulator “personally circulated the document,” and “the  
 20 signatures were affixed in the circulator’s presence.” NRS 295.0575(1), (5).

## 21 **B. The Pandemic**

22 The COVID-19 pandemic (“Pandemic”) has resulted in the near total cessation of public  
 23 activity in Nevada. This necessary public health action is the result of the adoption of guidance  
 24 by the federal government and adherence to legal directives issue by the Governor of the State of  
 25 Nevada. On January 30, 2020, the World Health Organization declared that the novel coronavirus  
 26 (COVID-19) constitutes a Public Health Emergency of International Concern. (Compl., Ex. 2 at  
 27 2.) On January 31, 2020, President Donald Trump suspended entry into the United States by all  
 28 foreign nationals who had traveled to China in the past 14 days. (*Id.*, Ex. 3 at 3-6.) On February

1 24, 2020, President Trump asked Congress to allocate \$2.5 billion for a COVID-19 response. (*Id.*,  
2 Ex. 4 at 3.)

3 On February 25, 2020, the Director of the National Center for Immunization and  
4 Respiratory Diseases at the Centers for Disease Control and Prevention (“CDC”) announced that  
5 “[d]isruption to everyday life may be severe” as a result of the virus. (*Id.*, Ex. 5 at 2). Regarding  
6 the spread, the Director stated that “[i]t’s not so much a question of if this will happen anymore  
7 but rather more of a question exactly when this will happen,” and called upon the American public  
8 to “work with us to prepare.” (*Id.*, Ex. 5 at 1.) On February 26, 2020, CDC officials stated that  
9 “[n]on-pharmaceutical interventions or NPIs will be the most important tools in our response to  
10 this virus,” and that such NPIs included “social distancing measures.” (*Id.*, Ex. 6 at 1-2.) On  
11 February 27, 2020, the CDC issued further guidance recommending that affected local  
12 communities practice “social distancing” measures, including reducing the frequency of large  
13 gatherings and limiting the number of attendees. (*Id.*, Ex. 7.) On March 13, 2020, the President  
14 declared a national state of emergency regarding COVID-19. (*Id.*, Ex. 8 at 2-3.)

15 On March 16, the President recommended broad social distancing guidelines for all  
16 Americans to “slow the spread” of COVID-19. (*Id.*, Ex. 10.) The guidance was initially for a  
17 fifteen-day effective period. (*Id.*) On April 2, 2020, President Trump extended the for thirty-  
18 days. (*Id.*, Ex. 11.) The CDC also issued guidance requesting that Americans engage in social  
19 distancing, including, but not limited to, maintaining a distance of six feet between persons. (*Id.*,  
20 Ex. 9.)

21 President Trump’s social distancing guidelines focus on reducing interpersonal contact of  
22 all Americans. His guidelines recommend the following actions, among others:

- 23 • Listen to and follow the direction of your **STATE AND LOCAL**  
24 **AUTHORITIES**
- 25 • **IF YOU FEEL SICK**, stay home. Do not go to work. Contact your medical  
26 provider.
- 27  
28

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- 1           • **IF SOMEONE IN YOUR HOUSEHOLD HAS TESTED POSITIVE** for the
- 2            Coronavirus, keep the entire household at home. Do not go to work. Do not go to
- 3            school. Contact your medical provider.
- 4           • **IF YOU ARE AN OLDER PERSON**, stay at home and away from other people.
- 5           • **IF YOU ARE A PERSON WITH A SERIOUS UNDELRYING HEALTH**
- 6            **CONDITION** that can put you at increased risk . . . , stay home and away from
- 7            other people. (*Id.*, Ex. 11 at 1.)

8    The President’s guidance includes direction specifically for people that are healthy:

- 9           • Work or engage in schooling **FROM HOME** wherever possible.
- 10          • **AVOID SOCIAL GATHERINGS** in groups of 10 or more people.
- 11          • Avoid eating and drinking at bars, restaurants, and food courts—**USE DRIVE-**
- 12          **THRU, PICKUP, OR DELIVERY OPTIONS.** (*Id.*, Ex. 11 at 2.)

13           On March 12, 2020 Governor Sisolak issued a Declaration of Emergency to facilitate the  
14    State’s response to the Pandemic. (*Id.*, Ex. 12.) Since issuing the Declaration of Emergency,  
15    Governor Sisolak has issued several legal directives consistent with the President’s guidelines and  
16    the CDC’s recommendations drastically limiting interpersonal contact in Nevada.

17           On March 31, 2020, Governor Sisolak issued a “stay at home” order. (*Id.*, Ex. 13.) In that  
18    order, Emergency Directive 010, the Governor extended his March 12 Declaration of Emergency  
19    through April 30, 2020. (*Id.*, Ex. 13 § 1.) He further ordered all Nevadans to stay in their home  
20    and not gather socially, subject to certain limited exceptions. (*Id.*, Ex 13 § 2.)

21           Although Emergency Directive 010 “does not prohibit individuals from engaging in  
22    outdoor activity, including without limitation, activities such as hiking, walking, or running,”  
23    individuals engaging in that activity must comply with Emergency Directive 007, maintain at least  
24    6 feet distancing from other individuals, and not congregate in groups beyond their household  
25    members. (*Id.*, Ex. 13 § 6.) The Governor issued Emergency Directive 007 on March 24, 2020.  
26    (*Id.*, Ex. 14.) That order imposes certain social distancing requirements on Nevadans. (*Id.*)  
27    Specifically, it provides that, with the exception of persons residing in the same household,  
28    Nevadans must “to the extent practicable, abide by social distancing practices by maintaining a

1 minimum six-foot distance between persons in public spaces, whether privately or publicly  
 2 owned.” (*Id.*, Ex. 14 § 2.) It also requires that local governments limit Nevadans use of  
 3 recreational spaces. (*Id.*, Ex. 14 § 3.) Individuals that violate the social distancing restrictions in  
 4 the order are subject to criminal and civil penalties. (*Id.*, Ex. 14 §§ 5-6.)

5 In addition to the restrictions identified above, Governor Sisolak closed non-essential  
 6 business, including many retail establishments. (*Id.*, Ex. 15 §§ 1-3.) Governor Sisolak also  
 7 ordered the closure of state buildings. (*Id.*, Ex. 16 at 2.) Local governments have taken similar  
 8 action and agreed to use their enforcement authority to enforce the Governor’s directives. (*Id.*,  
 9 Ex. 17.) On April 29, 2020, Governor Sisolak extended his stay at home order through May 15,  
 10 2020. (*Id.*, Ex. 18 § 8.)

### 11 C. Signature gathering during the Pandemic

12 The Governor’s actions make it extremely difficult to collect signatures to qualify the  
 13 Initiative for the ballot in a traditional in-person manner. (Hale Decl. ¶¶ 7-14.) Under normal  
 14 circumstances, signatures are gathered using a variety of methods, all of which require  
 15 interpersonal contact inconsistent with the mandated social distancing. (*Id.* ¶¶ 9-10.) Eligible  
 16 voters are contacted door-to-door at their homes, in front of retail establishments, restaurants and  
 17 entertainment venues, or in or around government buildings to solicit their interest in signing a  
 18 petition. (*Id.* ¶ 10.) If, after a brief conversation, an individual is interested in signing the petition,  
 19 the person signs the same piece of paper—most likely using the same pen—that others have  
 20 signed. (*Id.*)

21 In the current environment, traditional signature gathering is extremely difficult and it is  
 22 implausible that Fair Maps will meet NRS 295.056(3)’s submission deadline. (*Id.* ¶¶ 8, 17.)  
 23 Nevadans have been ordered to stay at home. (*Id.* ¶ 12; Compl., Ex. 13.) Most government  
 24 buildings are closed. (Compl., Ex. 16 at 2.) Restaurants, bars and entertainments venues are  
 25 closed. (Hale Decl. ¶ 12; *see also* Compl., Ex. 15 §§ 1-3.) Many retail establishments are closed.  
 26 (*See* Compl., Ex. 15 §§ 1-3.) Public events have been canceled *en masse*. (Hale Decl. ¶ 12.)  
 27 People are prohibited from gathering in parks in substantial numbers, and individuals must adhere  
 28

1 to the extent practicable to a six-foot social distancing limitation. (Compl., Ex. 13 § 6, Ex. 14 §  
2 3.)

3 It is extremely challenging to gather physical ink signatures on hard copy documents in  
4 the time allotted as is traditionally done to qualify an initiative petition for the ballot. (See Hale  
5 Decl. ¶¶ 8, 16.) It is equally challenging to satisfy the circulator’s affidavit requirement in the  
6 traditional manner—by personal observation of signatures affixed in the presence of the circulator.  
7 (*Id.*)

8 That notwithstanding, with respect to the signatures themselves and the circulator’s  
9 affidavit requirements, Nevada law may be satisfied through alternative means. Electronic  
10 signatures may be used to execute an initiative petition and the circulator’s affidavit requirement  
11 is satisfied where the circulator circulates a petition electronically for electronic signature.  
12 Electronic signatures are widely utilized in Nevada in other contexts, including, court filings,  
13 business license filings, and corporate filings. See, e.g., NRS 75.070 (defining “Sign” for purposes  
14 of NRS Chapter 75, General Provisions Title 7, Business Associations, Securities and  
15 Commodities).

16 As detailed below, any application of the statutes to require otherwise impermissibly  
17 infringes Plaintiffs’ constitutional rights, both state and Federal.

18 **D. Nevada and other states have taken action to protect political speech in light**  
19 **of COVID-19**

20 On March 24, 2020, the Secretary announced that Nevada would conduct its June 9, 2020  
21 primary election by all mail out of concerns for the health and safety of voters and poll workers  
22 related to the Pandemic. (Compl., Ex. 19.) In doing so, the Secretary authorized all Nevada voters  
23 to vote by absentee ballot and required that all registered voters in Nevada be mailed an absentee  
24 ballot. (*Id.*) No voter will be required to request an absentee ballot to receive one; however, the  
25 Secretary also ordered that one polling place in each county be available to voters “accommodate  
26 same-day voter registration, as well as assist voters who have issues with the ballot that was mailed  
27 to them.” (*Id.*)  
28

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1 In mandating that the primary be conducted by all mail, the Secretary did so despite the  
2 fact that an all-mail primary conflicts with certain provisions of Nevada election law, including  
3 the following: NRS 293.272, which requires that most Nevadans who register to vote by mail or  
4 computer must, for the first election in which the person votes at which that registration is valid,  
5 vote in person unless he or she has previously voted in the county in which he or she is registered  
6 to vote.

7 In addition to taking precautions to safeguard the primary election, the Secretary has  
8 suspended in person transactions at her office and is accepting all election filings electronically.  
9 (Compl., Ex. 20.) Other jurisdictions in the United States have responded to the Pandemic by  
10 changing election processes and rules for elections and petitions to accommodate political speech  
11 in the midst of the Pandemic.

12 Ohio postponed their 2020 primary election until April 28, 2020. (Compl., Ex. 21.) Ohio  
13 conducted the election almost exclusively by mail and vote centers only opened for people with  
14 disabilities to vote in person. (*see id.*). On March 25, 2020, a Virginia state court granted a  
15 preliminary injunction and ordered a reduction in the number of signatures needed for candidates  
16 to enter Virginia's primary election from 10,000 to 3,000. The court found that "the circumstances  
17 as they exist in the Commonwealth of Virginia and across the United States are not normal right  
18 now," and that the regulations requiring the signatures were not narrowly tailored because they  
19 "do[ ] not provide for emergency circumstances, like those that currently exist." *Faulkner v. Va.*  
20 *Dep't of Elections*, No. CL 20-1456, slip op. at 3 (Va. Cir. Ct. Mar. 25, 2020) (attached to the  
21 Complaint as Exhibit 22).

22 On April 17, 2020, the Massachusetts Supreme Judicial Court, Massachusetts' highest  
23 court, ordered three forms of relief for candidates seeking access to the ballot: first a reduction in  
24 the signature requirements by 50%, second an extension of the deadlines for filing of signatures,  
25 and third, a requirement that the Secretary of State accept electronic rather than wet-ink original  
26 signatures. The court agreed with petitioners that "these extraordinary times of a declared state  
27 of emergency arising from the COVID-19 pandemic create an undue burden on prospective  
28

1 candidate’s constitutional right to seek elective office.” *Goldstein v. Sec’y of Commonwealth*, 142  
2 N.E.3d 560, 564 (Mass. 2020) (attached to the Complaint as Exhibit 23.)

3 On April 20, 2020, a federal court in Michigan granted a motion for preliminary injunction  
4 reducing the state signature requirement for a candidate to Michigan’s Eleventh Congressional  
5 District after finding that “the State’s actions in the form of enforcing both the Stay-at-Home  
6 Order and the statutory ballot-access requirements operate in tandem to impose a severe burden”  
7 on the Plaintiff. *Esshaki*, 2020 WL 1910154, at \*1 (attached to the Complaint at Exhibit 24.)

8 **E Nevada Secretary of State and the Initiative**

9 On April 20, 2020, Fair Maps’ counsel contacted the Secretary and made two requests.  
10 (Hale Decl. ¶ 20.) Fair Maps requested that the Secretary authorize Fair Maps to circulate the  
11 Initiative electronically and allow signers to sign electronically. (Compl., Ex. 25 at 3.) Plaintiff  
12 also requested that the Secretary extend the deadline for submission of the Initiative for  
13 verification by at least six weeks. (*Id.*, Ex. 25 at 4.) By letter of the same day, the Secretary  
14 denied Plaintiff’s requests. (*Id.*, Ex. 26 at 1.)

15 **III. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 65 governs the issuance of preliminary injunctions. Fed.  
17 R. Civ. P. 65. To qualify for a preliminary injunction, a plaintiff must satisfy four requirements:  
18 “(1) a likelihood of success on the merits; (2) a likelihood of irreparable harm; (3) that the balance  
19 of equities favors the plaintiff; and (4) that the injunction is in the public interest.” *Paher*, 2020  
20 WL 2089831, at \*4. “A plaintiff may also satisfy the first and third prongs by showing serious  
21 questions going to the merits of the case and that a balancing of hardships tips sharply in plaintiff’s  
22 favor.” *Id.* (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

23 **IV. ARGUMENT**

24 As articulated below, Plaintiffs have met their burden with respect to these factors and  
25 therefore a preliminary injunction should issue.

26 //

27 //

28 //

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1           **A. Plaintiffs are entitled to a preliminary injunction because Plaintiffs**  
 2           **will suffer irreparable harm if their constitutional rights are**  
 3           **infringed.**

4           Precluding the inclusion of the Initiative on the November ballot will unconstitutionally  
 5           infringe Plaintiffs’ right to engage in political speech by circulating and, in the case of individual  
 6           voters, voting on, an amendment to the Nevada Constitution. This infringement constitutes  
 7           irreparable injury for which the issuance of a preliminary junction is appropriate. *See Sanchez v.*  
 8           *Cegavske*, 214 F. Supp. 3d 961, 976 (D. Nev. 2016) (citing *Cardona v. Oakland Unified Sch.*  
 9           *Dist., Cal.*, 785 F. Supp. 837, 840 (N.D. Cal. 1992) (“Abridgement or dilution of a right so  
 10           fundamental as the right to vote constitutes irreparable injury.”)). In the cases of impairment of  
 11           constitutional rights, courts have regularly held that “[t]he loss of First Amendment freedoms, for  
 12           even minimal periods of time, unquestionably constitutes irreparable injury.” *See, e.g., Elrod v.*  
 13           *Burns*, 427 U.S. 347, 373-74 (1976) (citing *N.Y. Times Co. v. United States*, 403 U.S. 713 (1971));  
 14           *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). The Ninth Circuit has held  
 15           that the harm is “particularly irreparable where . . . a plaintiff seeks to engage in political speech,  
 16           as ‘timing is of the essence in politics’ and ‘[a] delay of even a day or two may be intolerable.’”  
 17           *Klein*, 584 F.3d at 1208 (second alteration in original) (quoting *Long Beach Area Peace Network*  
 18           *v. City of Long Beach*, 522 F.3d 1010, 1020 (9th Cir. 2008), amended and superseded, 574 F.3d  
 19           1011 (2009)).

20           Here, COVID-19 and the related social distancing measures imposed by federal, state and  
 21           local government make it highly unlikely that Fair Maps will be able to satisfy Nevada’s statutory  
 22           requirements for qualifying the Initiative for the November 2020 ballot. As Laura Hale states in  
 23           her declaration, it is not feasible to gather ink signatures on a petition circulated by hand in an  
 24           environment where interpersonal contact is generally advised against and in many cases  
 25           prohibited. (Hale Decl. ¶¶ 8-14.) Any attempt to gather signatures would subject petition  
 26           circulators and the general public to a health risk, and expose circulators to potential criminal and  
 27           civil liability. (*Id.*; *see also* Compl., Ex. 14 §§ 5-6.)

28           What’s more, voters are particularly likely in the current environment to avoid petition  
 circulators, especially those at heightened risk for COVID-19 complications. As Robert

1 MacDonalD states in his declaration, as a voter with a heightened risk of COVID-19  
 2 complications, he has heeded the social distancing guidance and mandates and essentially  
 3 sheltered in place since they were imposed. (Ex. B, Decl. of Robert MacDonalD ¶ 6.) Although  
 4 he would like to sign the Initiative, he does not feel comfortable engaging in the interpersonal  
 5 contact necessary to do so. (*Id.* ¶ 7.) Thus, even if the Initiative could be circulated, voters would  
 6 likely avoid contact with the circulators.

7 The difficulty of gathering the requisite signatures in the current environment is  
 8 exacerbated by the fact that there is no clear indication when the social distancing mandates will  
 9 be lifted—to say nothing of when Nevadans will feel comfortable leaving their homes and  
 10 engaging with signature gatherers. The Governor has extended his own stay-at-home order twice  
 11 already, and it now will stand through at least May 15, 2020. (Compl., Ex. 18 § 8.) Consequently,  
 12 it is unlikely that social distancing will be eased in time for Plaintiffs to qualify the Initiative for  
 13 the November ballot in the traditional manner by June 24, 2020.

14 In light of these facts, requiring Fair Maps to gather close to 100,000 ink signatures by  
 15 June 24 is implausible. Consequently, the Secretary’s interpretation that the Initiative cannot be  
 16 circulated electronically for electronic signature and her refusal to allow the Initiative to be  
 17 submitted for verification after June 24, 2020 will cause Plaintiffs to lose the opportunity to qualify  
 18 the Initiative for the ballot and to vote for the same. As constitutionally protected activity, the  
 19 Secretary’s intransigence will therefore cause irreparable harm. There is no remedy available to  
 20 give effect to these rights or compensate Plaintiffs for their loss. An injunction preventing the  
 21 harm from occurring is the only suitable remedy.

22 **B. Plaintiffs are entitled to a preliminary injunction because they are**  
 23 **likely to succeed on the merits of their claims.**

24 Plaintiffs have a likelihood of success on at least one, if not all, of their claims against  
 25 Defendants. Plaintiffs allege thirteen claims. There are six claims relating to the constitutionality  
 26 of the Secretary’s failure to extend the deadline for submitting the Initiative for verification no  
 27 later than June 24, 2020 and six claims relating to the Secretary’s interpretation that NRS 295.0575  
 28 will not accommodate the use of electronic means to circulate and sign the Initiative. (Compl. ¶¶

1 76-168.) Plaintiffs also seek a declaratory order that the Secretary’s interpretation of NRS  
2 295.0575 is incorrect. (*Id.* ¶¶ 169-174.)

3 Plaintiffs’ constitutional claims allege that the Secretary’s actions violate their right to  
4 engage in political speech by preventing them from circulating and qualifying the Initiative for  
5 the November ballot 2020 and further prevents them from voting on the Initiative in the November  
6 election. (*Id.* ¶¶ 76-168.) Plaintiffs claim that these actions violate the First and Fourteenth  
7 Amendments to the U.S. Constitution and various provisions of the Nevada Constitution,  
8 including Article 9, Section 1 (right to speech), Article 19, Section 2(1) (right to circulate an  
9 initiative petition), and Article 2, Section 1 (right to vote). (*Id.*)

10 Federal courts evaluating challenges to laws that regulate the election process apply the  
11 framework from *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S.  
12 428 (1992). Under *Burdick*’s balancing and means-end fit framework, strict scrutiny is applied  
13 when the First or Fourteenth Amendment rights are subject to “‘severe’ restrictions.” *Pub.*  
14 *Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 (9th Cir. 2016) (quoting *Burdick*, 504  
15 U.S. at 434). However, “when a state election law provision imposes only ‘reasonable,  
16 nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the  
17 State’s important regulatory interests are generally sufficient to justify’ the restrictions.” *Id.*

18 **i. The challenged requirements impose a severe burden on**  
19 **Plaintiffs’ constitutional rights.**

20 The challenged requirements impose a severe burden on Plaintiffs’ First Amendment  
21 Rights by impeding their ability earn a place on the ballot. What’s more, they prevent Plaintiffs  
22 and other Nevada voters from voting on the Initiative in the November election. These restrictions  
23 are undoubtedly severe and therefore strict scrutiny applies to the challenged restrictions. *Angle*  
24 *v. Miller*, 673 F.3d 1122, 1133 (9th Cir. 2012). The United States Supreme Court has held that  
25 the circulation of ballot petitions is “core political speech” where First Amendment protection is  
26 at its “zenith.” *Meyer v. Grant*, 486 U.S. 414, 421-422, 425 (1988). The Nevada Supreme Court  
27 has clarified that Nevadans’ right to engage in political speech as articulated by the Nevada  
28 Constitution, including the right to circulate a ballot petition, is subject to First Amendment

1 analysis. *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 100 P.3d 179, 187 (Nev.  
2 2004) (concluding that the protections afforded by Article 1, Section 9 and Article 19, Section 2  
3 are subject to First Amendment analysis).

4 In light of the restrictions imposed by the government in response to the Pandemic,  
5 requiring that the Initiative be submitted for verification no later than June 24, 2020 and precluding  
6 the use of electronic means to circulate and sign the Initiative cannot withstand strict scrutiny.

7 As Laura Hale points out in her declaration, in the current environment traditional  
8 signature gathering is extremely difficult and it is implausible that Plaintiff will meet NRS  
9 295.056(3)'s submission deadline. (Hale Decl. ¶¶ 8, 17.) Nevadans have been ordered to stay at  
10 home, and most government buildings are closed. (*Id.* ¶ 12; Compl., Ex. 13 § 2, Ex. 16 at 2.)  
11 Restaurants, bars and entertainments venues are closed. (Hale Decl. ¶ 12; *see also* Compl., Ex.  
12 15 §§ 1-3.) Many retail establishments are closed. (*See* Compl., Ex. 15 §§ 1-3.) Public events  
13 have been canceled *en masse*. (Hale Decl. ¶ 12.) These are all places Fair Maps had intended to  
14 send circulators. (*Id.* ¶ 11.)

15 What's more, individuals must adhere to the extent practicable to a six-foot social  
16 distancing limitation. (Compl., Ex. 14 § 2.) Thus, as Douglas Goodman points out, even if he  
17 wanted to circulate the Initiative, it would be practically impossible to do so without breaching  
18 the six-foot social distancing limit. (Ex. C, Decl. of Douglas Goodman ¶¶ 7-8.)

19 Even if the Initiative could somehow be circulated at a distance, voters would be reticent  
20 to sign. As Robert MacDonald states, he wants to sign the Initiative but cannot do so because he  
21 is strictly adhering to social distancing protocols. (MacDonald Decl. ¶ 7.) As a person with a  
22 preexisting condition that presents a higher likelihood of severe COVID-19 complications, he  
23 does not feel comfortable risking interpersonal contact to sign the Initiative. (*Id.* ¶¶ 5-7.)

24 The combination of the closure of public spaces, the prohibition on public gatherings, and  
25 the requirement to maintain social distancing makes it highly unlikely Plaintiffs will qualify the  
26 Initiative for the ballot. Complicating matters is the fact that, as explained above, it is not clear  
27 when these restrictions will be lifted. Even if the social distancing restrictions were eased today,  
28 it is unlikely Plaintiffs would have a reasonable opportunity to qualify the Initiative for the ballot.

1 Consequently, voters like Sondra Cosgrove who have already signed the Initiative and want to  
2 vote on it in November will not be able to do so. (Ex. D, Decl. of Sondra Cosgrove ¶¶ 6-9.)

3 **ii. The State’s interest in preventing fraud and ensuring the Initiative is**  
4 **properly verified does not justify the burden impose by the challenged**  
5 **restrictions.**

6 There is no government interest that justifies the near-total abridgment of Plaintiffs’  
7 constitutional rights in this election cycle.

8 **a. Electronic circulation and signing**

9 Circulating the Initiative electronically and allowing electronic signatures will satisfy the  
10 State’s interest in preventing fraud. Electronically transmitted documents and signatures are relied  
11 upon—and legally recognized as valid—in a number of contexts, including general business  
12 transactions. *E.g.*, NRS 75.070 (for purposes of Title 7 of the NRS (Business Associations,  
13 Securities and Commodities) defining “Sign” to mean “with the present intent to authenticate or  
14 adopt a record or identify oneself: 1. To execute or otherwise adopt a tangible symbol, name, word  
15 or mark, including, without limitation, any manual, facsimile or confirmed signature; or 2. To  
16 attach to or logically associate with an electronic transmission an electronic sound, symbol or  
17 process, including, without limitation, an electronic signature, in an electronic transmission.”).

18 The State’s interest against the occurrence of fraud is no less significant in these areas than  
19 in the area of initiative petitions. Consequently, there is no reason the State’s interest in preventing  
20 fraud with respect to initiative petitions should require a heightened standard, particularly, where  
21 as here, doing so would prevent Plaintiffs from exercising their constitutional rights.

22 That this is the case is underscored by the fact that discrepancies in the physical signatures  
23 compared by county clerks in the verification process (as between the signature on the initiative  
24 petition and that on file with the registrar) is not a basis for disqualifying the signature. NRS  
25 295.260(3) (providing that “a petition must not be certified insufficient for lack of the required  
26 number of valid signatures if, in the absence of other proof of disqualification, any signature on  
27 the face thereof does not exactly correspond with the signature appearing on the file or list of  
28 registered voters used by the county or city clerk and the identity of the signer can be ascertained  
from the face of the petition”).

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1 It is further underscored by the fact that an electronic verification process is used in voter  
2 registration. As Deputy Secretary of State Wayne Thorley pointed out in *Paher*, “When voter  
3 registration applicants register (1) by mail, (2) through the DMV by appearing in person or using  
4 the DMV's on-line system, or (3) via the Secretary of State's on-line system, the overwhelming  
5 majority of those applicants are positively matched to the personal identifiers on file with the  
6 [Department of Motor Vehicles] or the [Social Security Administration]. The match is made  
7 through automated systems, and to the best of my knowledge, the systems are highly reliable.”  
8 (Ex. E ¶ 2.) Thus, there is no clear State interest in insisting that physical signatures be employed  
9 on a physically and personally circulated initiative petition.

10 Perhaps more importantly, the Secretary's interpretation of NRS 295.0575 to preclude the  
11 electronic circulation and signing of the Initiative is incorrect. The plain language of NRS  
12 295.0575 allows for the electronic circulation and signing of the Initiative. NRS 295.0575(1)  
13 requires that “the circulator personally circulated the document.” NRS 295.0575(1). However,  
14 there is nothing in the statute that precludes the circulator from personally circulating the  
15 document by electronic means. Any interpretation otherwise would read into the statute a  
16 requirement that does not exist.

17 NRS 295.0575(5) provides that the circulator must affirm “[t]hat all the signatures were  
18 affixed in the circulator's presence.” NRS 295.0575(5). However, the statute does not require a  
19 hand signature, nor does it require that the circulator be physically present. Thus, like with respect  
20 to other requirements of NRS 295.0575, the Secretary's interpretation requires one to read  
21 language into the statute that does not exist. Despite her contention, electronic signatures may be  
22 used to execute the Initiative and the circulator's presence may be deemed present by way of the  
23 electronic circulation of an initiative petition that is signed electronically.

24 Even if the statute could be construed to require hand signatures and the personal physical  
25 circulation of the Initiative, in the current environment electronic circulation and electronic  
26 signatures constitutes substantial compliance such that the requirements of the statute are satisfied.  
27 In *Las Vegas Convention and Visitor's Authority*, 124 Nev. 669 (2020) the Nevada Supreme Court  
28 has held that substantial compliance with the circulator's affidavit requirements is sufficient to



1 prove compliance with the statute. *Las Vegas Convention and Visitor's Auth. v. Miller*, 191 P.3d  
 2 1138, 1149 (Nev. 2008). In an environment where interpersonal contact is not possible, the  
 3 electronic circulation and signing of the Initiative meets the substantial compliance standard. *See*  
 4 *id.* (holding that substantial compliance occurs where each element of the circulator's affidavit is  
 5 attempted). Such compliance is no less reliable than the traditional means.

6 **b. The verification deadline**

7 As to the State's interest in ensuring that the Initiative is properly verified, that interest too  
 8 can be satisfied through a means that does not prevent Plaintiffs from exercising their  
 9 constitutional rights. Submitting the Initiative for verification on June 24, 2020 will afford the  
 10 county clerks 131 days to verify the Initiative, notify the Secretary of that fact and for ballots to  
 11 be printed. *See* NRS 295.056(3) (calculating days from June 24, 2020 through November 3, 2020,  
 12 the date of the general election). Allowing Plaintiffs additional time to secure the requisite  
 13 signatures will not prevent the county clerks from having the time they need to verify the Initiative.  
 14 That process can be accomplished in less than the time traditionally allotted.

15 **iii. Other courts that have considered the impact of COVID-19**  
 16 **have taken action similar to what Plaintiffs request here.**

17 In *Esshaki v. Whitmer*, the District Court for the Eastern District of Michigan enjoined  
 18 several of Michigan's requirements for signature gathering for candidate ballot access as severe  
 19 burdens unsupported by a compelling state interest in light of the COVID-19 pandemic. In doing  
 20 so, the court stated that the State's social distancing order "ha[ve] pulled the rug out from under  
 21 [candidates'] ability to collect signatures," have "shuttered" the locations and events at which  
 22 signatures are normally gathered, leave only "prohibitively expensive" means to obtain signatures.  
 23 *Esshaki*, 2020 WL 1910154, at \*6. The court stated further that "[a]bsent relief, Plaintiff[ ] lack[s]  
 24 a viable, alternative means to procure the signatures he needs" and thus "he faces virtual exclusion  
 25 from the ballot." *Id.*

26 The court then addressed COVID-19 specifically, noting that it "ha[d] little trouble  
 27 concluding that the unprecedented—though understandably necessary—restrictions on daily life  
 28 . . . when combined with the ballot access requirements . . . have created a severe burden on

1 Plaintiff’s exercise of his free speech and free association rights under the First Amendment, as  
 2 well as his due process and equal protection rights under the Fourteenth Amendment—as  
 3 expressed in his effort to place his name on the ballot for elective office.” *Id.* (footnote omitted).

4 The court also rejected the State’s argument that its interest in ensuring that candidates  
 5 have sufficient support to qualify for the ballot justified the signature requirement at issue. The  
 6 court concluded that the social distancing restrictions dictated by COVID-19 “effectively halted  
 7 signature-gathering by traditional means, reducing the available time prescribed by the Michigan  
 8 Legislature to gather one thousand signatures by twenty-nine days.” *Id.* at \*7. The remedy ordered  
 9 by the court was to “reduce the signature requirement to account for the lost twenty-nine days.”  
 10 *Id.* The court entered an injunction that (1) reduced by half the number of signatures required for  
 11 ballot access, (2) extended the deadline to submit signatures, and (3) required the state to  
 12 implement a “user-friendly” system to “permit signatures to be gathered through the use of  
 13 electronic mail” and to permit the signature to be “appropriately witnessed . . . through digital  
 14 means.” *Id.* at \*10.

15 The *Esshaki* court is not the only one to take such action. In *Faulkner*, a Virginia state  
 16 court entered an injunction reducing the signature requirement for candidates to qualify for the  
 17 ballot in light of COVID-19, concluding that Virginia’s signature requirement as applied to the  
 18 plaintiff-candidate infringed on his First Amendment rights. *Faulkner*, slip op. at 2-4 (attached as  
 19 Ex. 24 to the Complaint).

20 In *Democratic National Committee v. Bostelmann*, the District Court for the Western  
 21 District of Wisconsin extended the deadline to request absentee ballot, the deadline to postmark  
 22 absentee ballot to election day, and deadline for absentee ballots to be received to six days after  
 23 election, in light of severe burdens caused by COVID-19 and the undue burden otherwise  
 24 applicable statutory requirements worked on the plaintiffs’ constitutional rights. No. 20-cv-249-  
 25 wmc, 2020 WL 1638374 at \*22 (W.D. Wis. Apr. 2, 2020).

26 This Court should reach the same conclusion that other courts have reached, that the  
 27 unprecedented restrictions on social interaction dictated by COVID-19 and related government  
 28

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1 guidance and prohibitions makes the State’s action to prevent Plaintiffs from exercising their  
 2 constitutional rights untenable and unconstitutional.

3 **C. Plaintiffs are entitled to a preliminary injunction because the balance of**  
 4 **equities and public interest favor Plaintiffs**

5 Where the government is a party, the Court must consider the balance of equities and  
 6 public interest in relation to the issuance of a preliminary injunction together. *Drakes Bay Oyster*  
 7 *Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435  
 8 (2009)). In doing so, the Court must “balance the interests of all parties and weigh the damage to  
 9 each.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (citation omitted).

10 In this case, the balance of equities and the public interest demand that a preliminary  
 11 injunction issue. In the absence of action by this Court, Plaintiffs’ constitutional rights will be  
 12 abridged, irreparably harming Plaintiffs who will have no reasonable recourse in the absence of  
 13 injunctive relief. The harm caused will damage not only Plaintiffs’ constitutional rights but also  
 14 the integrity of Nevada’s political process to the detriment of all Nevadans. In light of the fact  
 15 that the interest of the State at stake can be satisfied through less restrictive means, there is no  
 16 reason not to grant the relief requested. *See Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir.  
 17 2012) (“[T]he loss of First Amendment freedoms, for even minimal periods of time,  
 18 unquestionably constitutes irreparable injury.” (quoting *Elrod v. Burns*, 427 U.S. 347, 373  
 19 (1976))); *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005) (recognizing that a  
 20 “colorable First Amendment claim” is “irreparable injury sufficient to merit the grant of relief”).

21 While the State may have an interest in the orderly conduct of elections and of preventing  
 22 ballots from being crowded with non-serious initiatives, these interests are not undermined by the  
 23 relief sought by Plaintiffs.

24 **V. CONCLUSION**

25 In light of the foregoing, the Court should grant Plaintiffs’ request for a preliminary  
 26 injunction on an expedited basis. COVID-19 and social distancing restrictions make it highly  
 27 unlikely Plaintiffs will be able to exercise their constitutional rights to engage in political speech,  
 28 place the Initiative on the ballot, and vote on measures of their choices. Consequently, the

1 Secretary's interpretation of NRS Chapter 295 in the current climate and the Secretary's failure to  
2 authorize alternative means to satisfy the procedural requirements for qualifying the Initiative for  
3 the November ballot effects an unconstitutional violation of Plaintiffs' rights. This Court must  
4 take action to preserve those rights and prevent Plaintiffs from suffering irreparable harm.

5 DATED: May 6, 2020

Respectfully submitted:

6  
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