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

EMMILY BRISTOL; MINDY HSU RPh.;
WILLIAM RAMOS, M.D.;

Plaintiffs,

vs.

PERSONHOOD NEVADA, a Ballot
Advocacy Group; RICHARD ZISER; OLAF
VANCURA; and KENNETH WILSON,
individuals; ROSS MILLER, in his official
capacity as Secretary of State of Nevada,

Defendants.

Case No. 09 DC 00506 1B
Dept. No. J

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**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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1 The initiative petition identified on the Secretary of State's website as "Personhood
2 Nevada Petition" seeks to impose sweeping and drastic changes to the Nevada Constitution and
3 countless provisions of state and local laws. It utterly fails to inform voters of the breadth of
4 these changes, much less accurately describe its intended purposes and consequences. The
5 initiative petition is thus an impermissible use of the initiative process and fails to meet even the
6 minimum legal requirements established to ensure that initiative petitions promote informed
7 decisions and the voter's right to engage meaningfully in the initiative process.

8 THE INITIATIVE PETITION

9 On October 21, 2009, Personhood Nevada, a ballot advocacy group, Richard Ziser, Olaf
10 Vancura, and Kenneth Wilson (together, "Proponents") submitted the initiative petition to the
11 Secretary of State. A true and correct copy of the initiative petition filed with the Nevada
12 Secretary of State's office is attached as Exhibit 1 to Plaintiffs' Complaint for Declaratory and
13 Injunctive Relief [hereinafter "Complaint"].

14 The initiative petition proposes to add "a new section designated Section 23" to "Article
15 1 of the Constitution of the State of Nevada" that, in its entirety, would read as follows: "In the
16 great state of Nevada, the term 'person' applies to every human being" (the language proposed
17 by the petition will hereinafter be referred to as the "Initiative"). Complaint Ex. 1.

18 The initiative petition contains a Description of Effect that states:

19 The Nevada constitution states, 'No person shall be deprived of life,
20 liberty or property without due process of law.' Currently, some
21 Nevadans are deprived of their inalienable civil rights, specifically their
fundamental right to live, due to an arbitrary and discriminatory
distinction between person and human being.

22 While the state has no authority to grant Inalienable rights, it has the
23 obligation to protect them.

24 This amendment therefore applies the term "person" to every human
being. "Human being" includes everyone possessing a human genome
specific for an individual member of the human species, from the

1 beginning of his or her biological development, without discrimination as
2 to age, health, reproduction method, function, physical or mental
dependency, or cognitive ability.

3 This amendment benefits all Nevadans by guaranteeing, as envisioned by
4 our founding fathers, that no one shall be deprived of life, liberty or
5 property without due process of law. It eliminates discrimination against
Nevadans at the beginning of life and prohibits state intrusion in end of
life decisions.

6 This amendment codifies the inalienable right to life for everyone, young
7 or old, healthy or ill, conscious or unconscious, born or unborn. It assures
protection and dignity to our children, our infirmed and our seniors.

8 *Id.*

9 ANALYSIS

10 The initiative petition is invalid in at least three independent respects. If, as Proponents
11 have stated, the Initiative redefines "persons" to include fertilized eggs, embryos, and fetuses, the
12 Initiative (1) proposes multiple changes to different provisions of the Nevada Constitution and
13 countless unrelated provisions of Nevada law in violation of the single-subject requirement of
14 Nevada Revised Statutes Sections 295.009(1)(a) and (2); and (2) impermissibly seeks to revise
15 the Nevada Constitution, a process that can only be accomplished through a constitutional
16 convention, Nev. Const. art. 16, §2, not the citizen initiative process. Third, under any reading of
17 the Initiative, the Description of Effect is inaccurate and misleading and violates the requirement
18 of Nevada Revised Statutes Section 295.009 (1)(b) that a fair and materially complete, accurate,
19 and non-prejudicial description of effect be circulated to meaningfully inform voters of the
20 material and potential consequences of an initiative should it pass into law.

21 Because the initiative petition violates the single-subject rule and constitutes an
22 impermissible attempt at constitutional revision, the Court should declare it invalid and enjoin
23 the Secretary of State from placing the Initiative on the ballot. Even if the Court determines that
24 the initiative petition embraces only a single subject (which it does not), it is invalid and the

1 Initiative still must be enjoined from going on the ballot because the existing description of
2 effect is misleading and wholly fails to put voters on notice of the breadth of the Initiative's
3 proposed changes and its intended and potential consequences.

4 **I. THE INITIATIVE PETITION IS INVALID BECAUSE IT VIOLATES THE**
5 **SINGLE-SUBJECT REQUIREMENT**

6 The Initiative violates each of the requirements and core principles of the single-subject
7 rule by proposing multiple unrelated and sweeping changes to Nevada law, while utterly failing
8 to give voters notice of these changes. If, as the Initiative itself indicates, it applies to all aspects
9 of Nevada law and, as Proponents have stated, the Initiative redefines "persons" to include
10 fertilized eggs, embryos, and fetuses, then it necessarily embraces a multitude of constitutional
11 and statutory subjects. Such an excessively general and far-reaching proposal, that gives no
12 notice of the multitude of subjects and interests likely to be affected, violates the single-subject
13 rule.

14 Nevada Revised Statutes Section 295.009(1)(a) states that "[e]ach petition for initiative or
15 referendum must . . . [e]mbrace but one subject and matters necessarily connected therewith and
16 pertaining thereto" Subsection (2) further defines the "one subject" requirement set forth in
17 subsection (1)(a):

18 A petition for initiative . . . embraces but one subject and matters
19 necessarily connected therewith and pertaining thereto, if the parts of the
20 proposed initiative . . . are functionally related and germane to each other
in a way that provides sufficient notice of the general subject of, and of the
interests likely to be affected by, the proposed initiative or referendum.

21 Nev. Rev. Stat. § 295.009(2). The Nevada Supreme Court has made clear that this requirement
22 is met only if each part of the initiative (1) is functionally related and germane to each other and
23 the initiative's primary purpose or subject and (2) provides sufficient notice of the subject
24 addressed in it and the interests likely to be affected by it. *See Nevadans for the Prot. of Prop.*

1 *Rights, Inc. v. Heller*, 122 Nev. 894, 906-09, 141 P.3d 1235, 1243-45 (2006); *see also Las Vegas*
2 *Taxpayer Accountability Comm. v. City Council of Las Vegas*, 125 Nev. 17, 208 P.3d 429, 439
3 (2009). The single-subject requirement serves the important purposes of “promoting informed
4 decisions” and “preventing the enactment of unpopular provisions by attaching them to more
5 attractive proposals,” *i.e.*, “logrolling.” *Las Vegas Taxpayer Accountability Comm.*, 208 P.3d at
6 437 (citing *Nevadans for the Prot. of Prop. Rights*, 122 Nev. at 905, 141 P.3d at 1242).

7 **A. The Initiative Amends Multiple Sections Of The Nevada Constitution And**
8 **Countless Provisions Of Nevada Law.**

9 The Initiative itself merely provides: “In the great state of Nevada, the term ‘person’
10 applies to every human being.” It does not define the term “human being,” and the terms
11 “person” and “human being” in their commonly understood sense mean essentially the same
12 thing.¹ *See American Heritage Dictionary of the English Language* (2009) (defining person as
13 “a living human”); *see also infra* Part III(A). Based on the Description of Effect, however, it
14 appears that the Proponents of the Initiative intend the term “human being” to include “everyone
15 possessing a human genome specific for an individual member of the human species, from the
16 beginning of his or her biological development.” Proponents intend this proposed definition of
17 the term “person” to encompass a fertilized human egg, as well as every subsequent stage of
18 biological development. *See* PersonhoodUSA.com, What is personhood?,

19 ¹ To the extent the terms “human being” and “person” are commonly understood
20 to mean the same thing, the Initiative could be read simply to codify the plain meaning of
21 the term “person” and not make any substantive changes in the law. While Nevada
22 courts have never directly addressed this issue, it is surely an improper use of the
23 initiative power – and certainly a waste of the State’s and voters’ resources – to propose a
24 constitutional amendment that, if passed, would not substantively change or affect the
law. In fact, it is questionable whether such a proposal could even be deemed a
constitutional “amendment” – that is, an alteration or addition – and thus a proper use of
the initiative power. *See* Nev. Const. art. 19, § 2 (“the people reserve to themselves the
power to propose, by initiative petition, statutes and amendments to statutes and
amendments to this Constitution”).

1 <http://www.personhoodusa.com/node/1> (last visited Nov. 10, 2009) (“a fully human and unique
2 individual exists at the moment of fertilization and continues to grow through various stages of
3 development in a continuum (barring tragedy) until natural death from old age”)² Thus, if the
4 Proponents’ definition of the term “person” is adopted, the Initiative would newly extend the
5 meaning of the term “person” to include fertilized eggs, embryos, and fetuses. Under such a
6 scenario, the Initiative would amend multiple sections of the Nevada Constitution and countless
7 provisions of Nevada law covering a multitude of subjects.

8 First, the Initiative would amend the word “person” throughout the Nevada Constitution.
9 It proposes a new, independent section to the Constitution that is not tied or limited to any
10 particular existing section or provision of the Constitution, but rather would amend the
11 Constitution in each of the many clauses and sections where the words “person,” “persons,”
12 “people,” and presumably “men” and “citizens” as well, appear. These terms appear in many
13 sections of the Constitution, including, to start, a number of core provisions, such as the
14 inalienable rights clause, Nev. Const. art. 1, § 1, the purpose of government clause, Nev. Const.
15 art. 1, § 2, the liberty of conscience clause, Nev. Const. art. 1, § 4, the rights of victims of crime
16 clause, Nev. Const. art. 1, § 8, the due process clause, Nev. Const. art. 1, § 8, the liberty of
17 speech clause, Nev. Const. art. 1, § 9, the right to assemble clause, Nev. Const. art. 1, § 10, and
18 the right against unreasonable search and seizure, Nev. Const. art. 1, § 18.

19 Second, the text of the Initiative is drafted so broadly – indeed, it applies “[i]n the great
20 state of Nevada,” not only to the Nevada Constitution – that it would expand the meaning of the
21 term “person” in countless state statutes, rules, and regulations; municipal codes and ordinances;
22

23
24 ² “Personhood USA” is the national organization of which Personhood Nevada is
a part. See PersonhoodUSA.com, Nevada, <http://www.personhoodusa.com/group/nevada>
(last visited Nov. 10, 2009).

1 and common law.³ A cursory search reveals that the term “person” appears thousands of times
2 in Nevada statutes alone, including in areas of criminal law, tort law, family law, eligibility for
3 government benefits, and even traffic law, to name a few.

4 **B. The Constitutional Amendments And Changes To Other Areas Of Nevada**
5 **Law Proposed By The Initiative Are Not Functionally Related Or Germane**
6 **To Each Other Or The Initiative’s Primary Purpose Or Subject.**

7 The many constitutional amendments and changes to other areas of Nevada law that the
8 Initiative imposes could not be more wide-ranging and diverse. These widespread and disparate
9 changes bear no functional relationship or germaneness to each other. For instance, the
10 constitutional amendments alone embrace subjects ranging from the right to life to unreasonable
11 search and seizure. And the changes to other areas of Nevada law encompass subjects as distinct
12 as criminal law and eligibility for government benefits. An initiative that effectively proposes
13 changes to both the constitutional right against unreasonable search and seizure and statutory
14 eligibility for government benefits – and in a single phrase no less – is logrolling at its most
15 extreme and certainly does not promote informed decisions.

16 In addition—to the extent a primary purpose or subject is even discernible – the multiple
17 changes to the Nevada Constitution and other areas of Nevada law imposed by the Initiative are
18 unrelated to its primary purpose or subject. To determine an initiative’s purpose or subject, the
19 Nevada Supreme Court “looks to its textual language and the proponents’ arguments.” *Las*

20 ³ Even if the Initiative’s immediate change in law is limited to the Nevada
21 Constitution, litigation could be filed challenging the exclusion of fertilized eggs,
22 embryos, and fetuses from any law that references “persons,” claiming that the exclusion
23 violates inalienable rights, due process, or other constitutional rights of these newly-
24 recognized “persons.” Similarly, prosecutors and law enforcement officials could
determine that existing criminal laws require full protection of the fertilized eggs,
embryos, and fetuses newly recognized as “persons” in the Constitution. Also, the
Initiative, if passed, would provide a basis for the Legislature to amend existing laws to
clarify that statutory rights or responsibilities applicable to “persons” also apply to
fertilized eggs, embryos, and fetuses.

1 *Vegas Taxpayer Accountability Comm.*, 208 P.3d at 439; see also *Nevadans for the Prot. of*
2 *Prop. Rights*, 122 Nev. at 907-08, 141 P.3d at 1243-44.

3 As in *Las Vegas Taxpayer Accountability Committee*, it is “difficult to discern the
4 measure’s primary purpose in order to evaluate whether its provisions are ‘functionally related’
5 or ‘germane’ to that purpose.” 208 P.3d at 439. As explained above, the language of the
6 Initiative does not define the term “human being” or otherwise suggest that it is redefining the
7 existing meaning of the term “person.” Moreover, the textual language does not suggest the
8 Initiative is tethered or limited to a particular constitutional provision or section. The
9 Description of Effect suggests that the purpose or subject of the Initiative is to extend the
10 protections of the due process clause and the inalienable rights clause of the Nevada Constitution
11 to “every human being,” including fertilized eggs, embryos, and fetuses. But of course, many of
12 the Initiative’s proposed amendments to the Nevada Constitution – and certainly the changes to
13 other wide-ranging and diverse areas of Nevada law – have nothing to do with this purpose.

14 In statements to the press, Proponents have claimed that “[t]he whole purpose of the
15 petition is the protection of human rights and civil rights for all humans.” See Ed Vogel & Ben
16 Spillman, *Nevada abortion statute targeted*, Las Vegas Review Journal, Oct. 22, 2009, available
17 at <http://www.lvrj.com/news/nevada-abortion-statute-targeted-65465632.html> (quote by Richard
18 Ziser). Proponents have also acknowledged that the purpose of the law is to ban abortion. See
19 Ed Vogel, *Personhood Nevada: Initiative part of U.S. drive*, Las Vegas Review Journal, Oct. 24,
20 2009, available at <http://www.lvrj.com/news/initiative-part-of-us-drive-65892397.html> (“Ziser
21 [the proponent] acknowledged that the petition might be opposed by some conservatives because
22 it would prohibit abortion even in cases of rape or incest.”).

23 But if the primary purpose is “the protection of human rights and civil rights for all
24 humans,” including fertilized eggs, embryos, and fetuses, that articulation of purpose is

1 excessively general and therefore violates the single-subject rule. “[A]n initiative proponent may
2 not circumvent the single-subject rule by phrasing the proposed law’s purpose in terms of
3 excessive generality.” *Las Vegas Taxpayer Accountability Comm.*, 208 P.3d at 439. “[T]he
4 protection of human rights and civil rights for all humans” is no doubt excessively general – and
5 even more general than other topics that have been deemed to violate the rule against “excessive
6 generality,” including “public disclosure, *i.e.*, truth in advertising” and “voter approval.” *Id.* at
7 440. Indeed, the purpose of protecting the human rights and civil rights for all humans,
8 including fertilized eggs, embryos, and fetuses, is such a nebulous and expansive concept that it
9 could conceivably include virtually any area of constitutional law and countless areas of
10 statutory, regulatory, and common law, which is precisely what the single-subject requirement
11 prohibits. Under this broad goal, Proponents could argue that the failure to expand the reach of
12 any law, constitutional or otherwise, to include fertilized eggs, embryos, and fetuses – regardless
13 of how different those laws are and how different the impacts of changing those laws would be –
14 would violate the human and civil rights of those newly-recognized persons.

15 And of course, if protecting the human and civil rights of all humans is really all just
16 aimed at banning abortion, the vast majority of the constitutional provisions and statutes to
17 which the Initiative applies are not related to this purpose. Moreover, the Initiative equally seeks
18 to and/or may ban many other types of reproductive health services that are not related to
19 abortion, including certain forms of contraception, treatment for ectopic pregnancy and
20 miscarriage, infertility treatment, as well as stem cell research. *See infra* Part III(B)(2).

21 Nothing in the Nevada single-subject requirement prevents Proponents from addressing
22 the multiple diverse subjects they seek to address here. *See Nevadans for the Protection of*
23 *Property Rights*, 122 Nev. at 906-07, 141 P.3d at 1243. It simply requires them to address those
24 separate subjects in separate petitions. *Id.* Proponents have failed to do so here but instead tried

1 – in one fell swoop – to amend countless unrelated subjects and hope to sell this to the voters as
2 one – which is precisely what the single-subject rule prohibits.

3 **C. The Language Of The Initiative Fails To Provide Sufficient Notice Of The**
4 **Subjects It Addresses Or The Interests Likely To Be Affected By It.**

5 In *Nevadans for the Protection of Property Rights*, the Court made clear that to satisfy the
6 single-subject requirement, the text of an initiative must also provide sufficient notice of the
7 subjects addressed and interests likely to be affected. 122 Nev. at 907-08, 141 P.3d at 1244. For
8 this reason, in striking down a provision as violating the single-subject requirement, the Court
9 stated that, in addition to the fact that the provision embraced multiple subjects that were not
10 “functionally related” or “germane” to the primary subject, the provision was additionally flawed
11 because the text of the initiative “clearly fail[ed] to provide sufficient notice of the wide array of
12 subjects addressed in [it] or the interests likely to be affected by it.” *Id.*, 122 Nev. at 909, 141
13 P.3d at 1245.

14 The Initiative is exactly like the provision struck down in *Nevadans for the Protection of*
15 *Property Rights*. It does not provide any – much less sufficient – notice of the wide array of
16 subjects addressed in it. Again, the Initiative merely states “In the great state of Nevada, the
17 term ‘person’ applies to every human being.” As explained above, the Initiative does not define
18 the term “human being,” and the terms “human being” and “person” are commonly understood
19 to mean essentially the same thing. Thus, voters have no notice from the single-phrase Initiative
20 that it proposes *any* change, much less the sweeping and drastic changes it would impose.

21 Even assuming for the sake of argument that “the protection of the human rights and civil
22 rights for all humans” including fertilized eggs, embryos, and fetuses, and/or “banning abortion”
23 were the primary purposes or subjects of the initiative, the Initiative itself gives absolutely no
24 notice of these subjects. It does not mention human rights or civil rights. Nor does it mention

1 fertilized eggs, embryos, or fetuses. Finally, it does not mention abortion.

2 Likewise, the Initiative fails to provide any notice of the interests likely to be affected by
3 it. Because the Initiative amends countless unrelated sections in the Nevada Constitution and
4 other state laws, it is likely to affect innumerable legal rights, responsibilities, and relationships.
5 But the Initiative wholly fails even to hint at – much less give sufficient notice of – any of these
6 effects, much less the Proponents’ intended effects of banning abortion as well as other
7 reproductive health care services. *See infra* Part III(B)(2). The Initiative’s utter failure to reveal
8 these effects to the voters, many of which are likely to be unpopular – including banning certain
9 forms of contraception and treatment for ectopic pregnancy, miscarriage, and infertility – is just
10 one more logrolling tactic and one more reason why the initiative is deceptive, fails to satisfy the
11 notice requirement of the single-subject rule, and is therefore invalid.

12 **II. THE INITIATIVE PETITION IS INVALID BECAUSE IT PROPOSES A**
13 **REVISION TO THE CONSTITUTION**

14 The Initiative seeks to expand the term “person” to include fertilized eggs, embryos, and
15 fetuses. Given the breadth of the proposed changes, *see supra* Part I, the Initiative cannot be
16 characterized as a single “amendment” to the Constitution: it is a drastic revision. Because the
17 citizen initiative process cannot be used to revise the Constitution, this Initiative must be
18 declared void. *See Nevada Resort Ass’n v. Waters*, No. 08 OC 00005 1B (Nev. D. Ct. Feb. 27,
19 2008) (holding that initiative petitions were invalid, in part, because they proposed a change to
20 the Nevada Constitution that could not be proposed through the initiative process); *Glover v.*
21 *Concerned Citizens for Fuji Park*, 118 Nev. 488, 498, 50 P.3d 546, 552 (2002) (because “[t]here
22 is little value in putting a measure before the people that they have no power to enact,” the
23 proper remedy for an initiative that fails to meet this threshold requirement is to declare it void),
24 *partially overruled on other grounds by Garvin v. Ninth Judicial Dist. Court ex rel. County of*

1 *Douglas*, 118 Nev. 749, 753, 59 P.3d 1180, 1182, (2002).

2 The Nevada Constitution is clear that the process by which amendments can be proposed
3 and enacted is entirely different from the process for making revisions. Specifically, Article 16,
4 Section 1 provides that any “amendments to this Constitution may be proposed in the Senate or
5 Assembly,” and enacted if ultimately approved by the Legislature and the people of the State.
6 The power to amend the Constitution is also reserved to the people through the citizen initiative
7 process. Nev. Const. art. 19, §2(1). However, only the legislature can initiate the process
8 required to “cause a revision of th[e] entire Constitution”. Nev. Const. art. 16, §2. In order to
9 revise the Constitution, the legislature must first by a vote of two thirds in each house
10 “recommend to the electors at the next election for Members of the Legislature, to vote for or
11 against a convention” More importantly, Section 2 of Article 19 which declares that “the
12 people reserve to themselves the power to propose, by initiative petition, . . . amendments to
13 th[e] Constitution” does not express any power or procedure for citizen initiated constitutional
14 revision. *See also PEST Committee v. Miller*, No. 2:08-cv-01248, 2009 WL 2524745, *2 (D.
15 Nev. 2009) (“Through an initiative, Nevadans cannot revise their entire Constitution; this may
16 only be done by constitutional convention.”).

17 Courts in states with similar constitutional provisions that distinguish between an
18 amendment and a revision have ruled that a revision (as opposed to an amendment) is a change
19 that “substantially alters” the preexisting constitutional scheme. *See, e.g., Raven v. Deukmejian*,
20 801 P.2d 1077, 1089 (Cal. 1990). “The process of amendment, on the other hand, is proper for
21 those changes which are ‘few, simple, independent, and of comparatively small importance.’”
22 *Bess v. Ulmer*, 985 P.2d 979, 987 (Alaska 1999) (citing Judge John A. Jameson, *A Treatise on*
23 *Constitutional Conventions; Their History, Powers, and Modes of Proceeding* § 540 (Callahan
24 and Company 1887)). “Basically, revision suggests fundamental change, while amendment is a

1 correction of detail.” *Citizens Protecting Michigan’s Constitution v. Secretary of State*, 761
2 N.W.2d 210, 223 (Mich. Ct. App. 2008) (quoting *Kelly v. Laing*, 242 N.W. 891 (Mich. 1932)).

3 Thus, whether a proposed initiative constitutes an amendment or a revision is both a
4 quantitative and qualitative question; substantial changes in either respect could amount to a
5 revision. *Raven*, 801 P.2d at 1085. A measure effecting widespread deletions, additions and
6 amendments involving many constitutional articles, as well as a relatively simple enactment
7 which accomplishes far-reaching changes, can amount to a revision. *Id.* at 1087; *see also*
8 *McFadden v. Jordan*, 196 P.2d 787, 797 (Cal. 1948) (rejecting argument that revision must
9 involve changes affecting all sections of the Constitution; this would be “such an arbitrary and
10 strained minimization of difference between amend and revise”).

11 The Initiative would accomplish substantial and far-reaching changes to the Nevada
12 Constitution, both quantitatively and qualitatively. As explained in detail above, while the
13 Initiative purports only to add one new section to the Constitution, it would amend the
14 Constitution in each of the many clauses and sections where the word “person,” “persons,”
15 “people,” and presumably “men” and “citizens” as well, appear. Changing the meaning of these
16 terms in each place they appear in the Constitution would constitute a sweeping re-conception of
17 the scope of a multitude of rights under the Nevada Constitution – entailing both the expansion
18 and retraction of critical rights.⁴ In other words, it gives fertilized eggs, embryos and fetuses

19
20
21 ⁴ To the extent that interpreting the word person in a particular section or article
22 would have absurd results in certain instances, this is just another reason why such a
23 sweeping change to the Constitution cannot be achieved through the citizen initiative
24 process, and certainly not in the manner that the Initiative proposes. To make such a
drastic change to the Constitution would require a consideration of the Constitution as a
whole at a constitutional convention. *Cf. Bess v. Ulmer*, 985 P.2d 979, 987 (Alaska
1999) (holding that the core determination of whether a measure is an amendment or a
revision is “whether the changes are so significant as to create a need to consider the
constitution as an organic whole”).

1 new rights, and at the same time seeks to take away existing rights to contraception and abortion.

2 *See infra* Part III(B)(2). As the California Supreme Court stated long ago,

3 If the proponents of the measure, instead of relying on the guise of an
4 additional article . . . had frankly recast the instrument in every detail in
5 which it would be affected by the changes they seek if they had recast it to
6 accomplish exactly the ends they avowedly seek . . . so that all the changes
would fit in as integral parts of a coherent and consistent whole, then the
fact of revision might be more obvious on the surface but it could be no
more real in substance.

7 *McFadden*, 196 P.2d at 799.

8 Nor are the changes to the Constitution that the Initiative proposes “simple” or “of
9 comparatively small importance.” *See Bess v. Ulmer*, 985 P.2d at 987. Affording all of the core
10 rights and privileges found in the Constitution to fertilized eggs, embryos, and fetuses –
11 including the right to life, due process, equal protection, and the right against unreasonable
12 search or seizure – would be a fundamental and drastic change to how our government has
13 operated since its inception. Altering the Constitution in such a manner would “substantially
14 alter[] the preexisting constitutional scheme or framework . . . used by courts in interpreting and
15 enforcing state constitutional protections.” *See Raven*, 801 P.2d at 1089.

16 Accordingly, because this Initiative, if passed, would effectively amount to a
17 constitutional revision, and voters do not have the power to enact a revision to the Constitution,
18 this Court should find this Initiative invalid.

19 **III. THE INITIATIVE PETITION IS INVALID BECAUSE THE DESCRIPTION OF**
20 **EFFECT WILL MISLEAD RATHER THAN ACCURATELY INFORM VOTERS**
21 **OF THE INITIATIVE’S PURPOSE AND EFFECTS**

22 For all the reasons asserted above in Parts I and II, the initiative petition is invalid and the
23 Initiative cannot be placed on the ballot. But even if this Court should disagree with Plaintiffs’
24 arguments that the Initiative violates the single-subject rule and process for a constitutional
revision, it contains another critical legal flaw: the Description of Effect is entirely misleading.

1 Thus, the Court should declare the initiative petition invalid and prohibit the Initiative from
2 going on the ballot because the Description of Effect prepared by the Proponents completely fails
3 to apprise voters of the multitude of legal changes and consequences that could result from its
4 enactment and is materially misleading.

5 The misleading aspects of the Description of Effect are multifold. Under Nevada law, a
6 petition for initiative that is put to the voters “must . . . [s]et forth, in not more than 200 words, a
7 description of the effect of the initiative,” should that initiative be voted into law. Nev. Rev.
8 Stat. § 295.009 (1)(b). As the Nevada Supreme Court has repeatedly held, and most recently set
9 forth in *Las Vegas Taxpayer Accountability Committee*, the description of effect is “significant as
10 a tool to help prevent voter confusion and promote informed decisions.” 208 P.3d at 441
11 (internal quotation marks omitted) (affirming lower court decision holding local referendum
12 invalid where description of effect was materially misleading). The basic and fundamental
13 requirement that a petition truthfully and fully inform voters of the nature and effect of that
14 which is proposed is critical for ensuring “the people's right to meaningfully engage in the
15 initiative process.” *Nevadans for Nev. v. Beers*, 122 Nev. 930, 940, 142 P.3d 339, 345 (2006).

16 In *Las Vegas Taxpayer Accountability Committee*, the Court set forth three minimum
17 requirements for a valid description of effect: 1) it cannot be “materially misleading;” 2) it
18 cannot “materially fail[] to accurately identify the consequences of the [initiative’s] passage;”
19 and 3) it must be “straightforward, succinct, and nonargumentative.” 208 P.3d at 441 (internal
20 quotation marks omitted).

21 Notably, the failure to identify material consequences of an initiative is one significant
22 way in which a description of effect can be misleading. *See, e.g., id.* (holding petition to repeal
23 an existing city ordinance was “materially misleading because . . . it failed to inform the voters”
24 of the full range of consequences of such repeal); *see also Nev. Judges Ass’n v. Lau*, 112 Nev.

1 51, 59, 910 P.2d 898, 903 (1996) (invalidating Secretary of State's ballot summary for term
2 limits initiative because "failure to explain the[] ramifications" of the proposed amendment's
3 impact on the judiciary rendered it "potentially misleading").⁵ In short, as described by the
4 Supreme Court of Florida, the problem with misleading or incomplete descriptions often "lies
5 not with what the summary says, *but, rather, with what it does not say.*" *Askew v. Firestone*, 421
6 So.2d 151, 156 (Fla. 1982) (emphasis added). The resulting harm is that voters, uninformed of
7 the intended and potential effects of an initiative, may very well be misled into passing into law
8 an initiative with consequences they do not support.

9 Finally, consistent with the requirement that a description of effect be straightforward,
10 succinct and nonargumentative, decisions of the Nevada Supreme Court and other state courts
11 hold that it is inappropriate for a description of effect to promote emotional characterizations,
12 including political catch phrases, which create prejudice rather than present a balanced and
13 informative explanation of effects. For example, in the related context of reviewing the
14 summaries of a referendum already qualified for the ballot, the Nevada Supreme Court struck
15 down the Secretary of State's arguments for and against the initiative on these grounds. The
16 Secretary's arguments characterized the referendum as presenting the question of whether "the
17 people" or "the legislature" should decide how abortion is regulated. *Choose Life Campaign 90*
18 *v. Del Papa*, 106 Nev. 802, 806, 801 P.2d 1384, 1387 (1990). The Court held that such
19 "arguments were particularly unfair because they appealed to the natural tendency in people to
20 want to be in control, and misrepresented the role of the legislature in our system of
21 government." *Id.* Likewise, the Arkansas Supreme Court follows the rule that "catch phrases"

22
23
24 ⁵ Relatedly, sister courts have rejected as misleading vague or euphemistic phrases that are "designed to cloak in semantic obscurity the actual nature of the proposed" initiative. *See, e.g., Christian Civic Action Comm. v. McCuen*, 884 S.W.2d 605, 609 (Ark. 1994) (holding ballot description was misleading).

1 or “slogans” that “tend to mislead or give partisan coloring to the merit of a proposal” are
2 impermissible. *Kurrus v. Priest*, 29 S.W.3d 669, 672 (Ark. 2000).

3 Under these standards for ensuring fair and accurate notice to voters of an initiative’s
4 consequences, the Proponents’ Description of Effect for the Initiative is impermissible.

5 **A. Under Any Reading Of The Initiative, The Description Of Effect Is**
6 **Materially Misleading.**

7 As explained above in Part I, the text of the Initiative merely states that a “person”
8 includes a “human being.” It does not define the term “human being” or otherwise suggest that it
9 is expanding the common or legal meaning of the term “person.” If this were the extent of the
10 Initiative’s intended impact (or non-impact), the Description of Effect would simply state that the
11 initiative merely codifies the current legal meaning of the term “person” and would make no
12 substantive changes in the law. However, as discussed above in Part I(B), the purpose of the
13 Initiative appears to be to create new legal protections for fertilized eggs, embryos and fetuses.
14 However, the Description of Effect is not straightforward in acknowledging this. Instead, the
15 Description of Effect pretends that the term “human being” is already commonly understood or
16 defined as “everyone possessing a human genome specific for an individual member of the
17 human species, from the beginning of his or her biological development.” This is wholly
18 misleading. No common dictionary definition of “person” or “human being” remotely resembles
19 this description. To the contrary, “person” and “human being” are generally defined
20 synonymously, or interchangeably, and simply as “distinguished from an animal or thing.”
21 *Webster’s Third New International Dictionary, Unabridged 1686* (Merriam-Webster 2002).⁶

22
23 ⁶ See also *American Heritage Dictionary of the English Language* (Houghton
24 Mifflin Company 2009) (defining “person” as “[a] living human”); available at
<http://www.thefreedictionary.com/person>; *Webster’s New World College Dictionary*
(Michael Agnes, ed., Webster’s New World 2004) (defining the term “human being” to
mean “a person”); *Dictionary.com* (defining “person” to mean “a human being, whether

1 Thus, the Description of Effect is misleading in its failure to forthrightly acknowledge that the
2 Initiative's use of the term "human being," represents an understanding far outside existing
3 common or legal usage.

4 To the extent the Description of Effect seeks to give the term "human being" legal
5 meaning that is not in the text of the Initiative itself, it is also misleading. A description of effect
6 serves to describe or summarize what an initiative says and does – it is not a back door for
7 proponents to expand the legal meaning or significance of the initiative itself.

8 **B. Even If The Initiative Could Incorporate Proponents' Definition Of The**
9 **Term "Human Being," The Description Of Effect Is Materially Misleading**
10 **And Fails To Inform Voters Of The Substantial Consequences Of The**
11 **Initiative.**

12 Even assuming *arguendo* that the term "human being" in the Initiative means what the
13 Proponents say it means, the Description of Effect is still invalid. At the outset, the Description
14 of Effect does not directly apprise voters that the confusing definition of the term "human
15 being"— "everyone possessing a human genome specific for an individual member of the human
16 species, from the beginning of his or her biological development" – encompasses human
17 fertilized eggs, embryos, and fetuses. *See supra* at Part I(A). But assuming this is what "human
18 being" will mean if the Initiative passes, the Description of Effect is misleading because it fails
19 to explain that the Initiative would amend multiple provisions of the state Constitution and a
20 wide array of state and local laws to apply in this way. In addition, the Description of Effect
21 fails to advise voters that the Initiative is intended to and could take away existing legal rights
22 under the federal and state Constitutions and Nevada law, including a voter referendum passed
23 into law almost twenty years ago. Thus, the Description of Effect does not serve its intended

24 man, woman, or child" and defining "human being" to mean "a person, esp. as distinguished from other animals or as representing the human species"), *available at*
<http://dictionary.reference.com>.

1 role “to help ‘prevent voter confusion and promote informed decisions.’” *Las Vegas Taxpayer*
2 *Accountability Committee*, 208 P.3d at 441 (quoting *Beers*, 142 P.3d at 345). To the contrary, it
3 will deceive and mislead voters.

4 **1. The Description Of Effect Fails To Explain Or Even Acknowledge**
5 **That The Initiative Would Amend Multiple Provisions Of The Nevada**
6 **Constitution And Other Areas Of Law.**

7 As explained in detail above in Part I, at best, the Description of Effect suggests that the
8 Initiative extends the protections of the due process clause and potentially the inalienable rights
9 clause of the state constitution to fertilized eggs, embryos, and fetuses. It utterly fails to mention,
10 much less explain, that the Initiative also carries ramifications for many other rights and
11 protections under the Constitution. Focusing solely on at most two sections of the Constitution,
12 while failing even to reference the fact that many other constitutional provisions also explicitly
13 apply to “persons,” is a material and deceptive omission that will mislead voters regarding the
14 potentially far-reaching impact of the initiative.

15 Likewise, the Initiative also changes the meaning of the term person in countless
16 provisions of state statutes, rules and regulations, municipal codes and ordinances, and common
17 law – including in areas as different as criminal law and traffic law. *See supra* Part I(A). But the
18 Description of Effect fails to advise voters that the Initiative would impose any change
19 whatsoever on Nevada’s statutory, and regulatory provisions – much less ones this numerous and
20 diverse.

21 **2. The Description Of Effect Fails To Explain That The Initiative Is**
22 **Intended To Take Away Fundamental Rights And Repeal Existing**
23 **Law.**

24 The Description of Effect fails to put voters on notice that the proposed amendment seeks
to *take away* liberty and due process rights currently recognized under the federal and Nevada
Constitutions and laws. Instead, the description affirmatively, and inaccurately, states that the

1 Initiative would “benefit[] all Nevadans by guaranteeing . . . that no one shall be deprived of life,
2 liberty or property without due process of law.” But, as discussed above and discussed further
3 below, the Proponents have publicly stated that the Initiative would jeopardize the existing right
4 of women to receive abortion care. If so, it would equally jeopardize the existing right of women
5 to access common forms of birth control and to access other reproductive health services. Such a
6 result would deprive Nevadans of their long-standing liberty and due process rights specifically
7 protected by federal constitutional guarantees and Nevada statutory law. *See, e.g., Roe v. Wade*,
8 410 U.S. 113, 153, 165-66 (1973) (holding Fourteenth Amendment Due Process Clause protects
9 right of women to access abortion); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (holding use of
10 contraception protected under constitutional right of privacy); Nev. Rev. Stat. §442.250
11 (regulating right of women to access abortion).

12 Indeed, the Description of Effect nowhere mentions one of the specific, and publicly
13 admitted, purposes of the Initiative – banning all abortions. By this omission, the Description
14 fails to put voters on notice that approval of this Initiative could repeal a previously enacted voter
15 referendum that *protects* access to abortion. In 1990, Nevada voters passed a codification, under
16 Nevada Law, of a woman’s right to have an abortion. *See* Nev. Rev. Stat. § 442.250. To the
17 extent the current Initiative is intended to repeal the prior voter referendum protecting a woman’s
18 right to abortion, the failure to explicitly advise voters that they may very well be *undoing* their
19 prior enactment is misleading and deceptive.

20 Likewise, the Description of Effect does not give voters notice that the Initiative also
21 appears calculated to ban and/or may ban a wide range of other healthcare services and medical
22 research, including but not limited to the following:

23 a. Common Forms of Birth Control: Insofar as virtually all methods of prescription
24 contraception (including oral contraception (often referred to as “the pill”); implantable

1 contraception; injectable contraception, intra-uterine device (“IUD”), contraceptive patch, and
2 contraceptive ring) sometimes work by preventing a fertilized egg from implanting into the
3 uterine lining, the Initiative seeks to ban these widely-used and effective forms of birth control.
4 If the term “person” constitutionally and legally applies to the human fertilized egg and all
5 subsequent stages of biological development, it appears that these common forms of birth control
6 could become illegal. It also appears that medical providers, pharmacists, and women could be
7 exposed to criminal prosecution and penalties for prescribing, dispensing or using birth control.
8 In addition, they could be subject to civil suits on behalf of fertilized eggs that did not implant
9 for having provided or used birth control, and/or, in the case of medical providers and
10 pharmacists, to licensing consequences and/or other legal consequences. *See* Aff. of Anna
11 Themis Contomitros, M.D. (attached hereto as Exhibit 1) (“Contomitros Affidavit”) ¶¶ 6-22; *see*
12 *also* PersonhoodUSA.com, Scare Tactic Alert, *available at*, [http://www.personhoodusa.com/](http://www.personhoodusa.com/content/scare-tactic-alert)
13 [content/scare-tactic-alert](http://www.personhoodusa.com/content/scare-tactic-alert) (last visited Nov. 11, 2009) (explaining that barrier methods of
14 contraception – such as condoms – will not be affected, but methods that may prevent
15 implantation of a fertilized egg will be prohibited).

16 b. Treatment for Ectopic Pregnancy: When a woman has an ectopic pregnancy (that
17 is, an abnormal pregnancy in which the fertilized egg implants and begins to develop anywhere
18 other than in the endometrial lining of the uterus; such pregnancies are virtually never viable but
19 can cause life-threatening complications for the woman), it is standard treatment to use
20 medication or surgery to end the pregnancy. If the term “person” is constitutionally and legally
21 applied to include all stages of biological development from the human fertilized egg onward,
22 standard-of-care treatment for ectopic pregnancy could become illegal because it would cause
23 the demise of the embryo or fetus. Moreover, it appears that medical providers and women
24 could be exposed to criminal prosecution and penalties, and civil suits on behalf of the embryo or

1 fetus for having provided or undergone treatment for an ectopic pregnancy, and/or, in the case of
2 medical providers, to licensing consequences and/or other legal consequences. *See* Contomitos
3 Aff. ¶¶ 23-30.

4 c. Common Methods of Fertility Treatment: Current common methods of treating
5 infertility can result in the creation of fertilized eggs and/or embryos that never implant into the
6 uterine lining. If the term “person” is constitutionally and legally applied to the human fertilized
7 egg and all subsequent stages of biological development, it may become legally impermissible to
8 create “persons” that are never implanted in utero. Moreover, it appears that medical providers
9 and women could be exposed to criminal prosecution and penalties, civil suits on behalf of un-
10 implanted human fertilized eggs or embryos, and/or, in the case of medical providers, to
11 licensing consequences and/or other legal consequences. *Id.* ¶¶ 34-36; *see also*
12 PersonhoodUSA.com, Scare Tactic Alert, [http://www.personhoodusa.com/content/scare-tactic-](http://www.personhoodusa.com/content/scare-tactic-alert)
13 alert (last visited Nov. 11, 2009) (explaining that current methods of fertility treatment would be
14 banned by a personhood amendment).

15 d. Treatment of Miscarriage and Women Who Miscarry: When a woman is
16 experiencing an “inevitable” abortion or an “incomplete” abortion – which are often referred to
17 as miscarriage or spontaneous abortion, and can cause serious risk to the woman’s health if not
18 treated – the indicated treatment is often an induced abortion. If the term “person” is
19 constitutionally and legally applied to the human fertilized egg and all subsequent stages of
20 biological development, completing the miscarriage could be illegal because it would cause the
21 demise of a newly-defined “person.” In addition, women who have a miscarriage could be
22 investigated by law enforcement or social services to determine if they did something (for
23 example, drank alcohol, smoked cigarettes), or failed to do something (for example, take prenatal
24 vitamins, eat well), that might have contributed to the miscarriage. If so, women could face

1 criminal or civil charges for having caused or contributed to the death of a “person.”

2 e. Stem Cell Research and Treatments: Embryonic stem cell research, which the
3 National Institutes of Health and other leading medical researchers believe offers potential for
4 treating diseases such as diabetes, Parkinson’s disease, heart disease and others, could be
5 prohibited if the term “person” is constitutionally and legally applied to the human fertilized egg
6 and all subsequent stages of biological development.

7 While a description of effect need not explain every single possible consequence of the
8 changes an initiative would make if passed, the Description of Effect’s failure to identify *any* of
9 the most material intended and potential consequences of this Initiative is misleading and
10 deceptive.

11 **C. The Description Of Effect Inaccurately And Prejudicially Suggests That The
12 Initiative Would Create New Protections For The Elderly And Sick.**

13 Finally, the Description of Effect falsely claims that the Initiative would somehow
14 strengthen, or replace missing, due process and equal protection rights for the elderly, and people
15 who are physically or mentally infirm or disabled. *See* Complaint Ex. 1 (“This amendment . . .
16 prohibits state intrusion in the end of life decisions. This amendment codifies the inalienable
17 right to life for everyone, young or old, healthy or ill, conscious or unconscious, born or unborn.
18 It assures protection and dignity to our children, our infirmed and our seniors.”). Yet there is no
19 question that the elderly and the disabled are *already* fully protected by the constitutional
20 guarantees of life, liberty, due process, and equal protection. Thus, the only way in which the
21 Initiative can possibly change the reach of Nevada’s due process and equal protection guarantees
22 is by creating full legal and constitutional “personhood” for fertilized eggs, embryos and fetuses.
23 To suggest that this change would also, for example, enhance the rights of seniors, is simply
24 untrue.

1 The Description of Effect is not only inaccurate in this regard, it also purposefully
2 invokes language intended to tap into voters' emotions and concerns about government
3 mistreatment of the elderly and disabled. The description is rife with statements like "state
4 intrusion in end of life decisions" and "discrimination as to age [and] health," and the dignity of
5 "our infirmed and our seniors." References to end of life decisions and discrimination against
6 the elderly and infirm serve no clear purpose other than to evoke concerns connected to the
7 public debate about health care reform. In the health care debate, some have expressed the view
8 that government regulation of health care will lead to the denial of critical, and life-sustaining, or
9 "end of life," care for the elderly and disabled.⁷ Indeed, the sponsors of the Initiative have raised
10 these very concerns in their public statements promoting the Initiative.⁸ As discussed above, the
11 Initiative in no way directly, or even indirectly, creates new law regarding end of life decisions
12 or health care for the elderly or disabled. Thus, sprinkling the Description of Effect with catch
13 phrases that improperly connect the Initiative to debates in health care reform is an
14 impermissible attempt to "give partisan coloring to a proposal." *Kurrus*, 29 S.W. 3d at 672.

15 _____
16 ⁷ See, e.g., Sarah Palin Editorial, *Obama and the Bureaucratization of Health*
17 *Care*, Wall St. J., Sept. 8, 2009, available at
18 <http://online.wsj.com/article/SB10001424052970203440104574400581157986024.html>;
19 John Dorschner, *End-of-life dialogue stifled in healthcare reform debate*, Miami Herald,
Aug. 15, 2009, available at <http://www.miamiherald.com/news/nation/story/1187064.html>; Kate Snow, John Gever & Dan Childs, *Experts Debunk Health Care Reform Bill's 'Death Panel' Rule*, ABC News, Aug. 11, 2009, available at <http://abcnews.go.com/Health/Wellness/story?id=8295708&page=1>.

20 ⁸ See Sandra Chereb, *Abortion Rights Advocates Study Nevada Initiative*, Nevada
21 Appeal, Oct. 23, 2009 ("Ziser said besides protecting the unborn, defining a person
22 would alleviate fears raised during the health care reform debate about end-of-life
23 issues."), available at <http://www.nevadaappeal.com/article/20091023/NEWS/910229952/0/FRONTPAGE>; Press Release, Personhood
24 Nevada, *Nevada Coalition Introduces Historic Campaign to Affirm All Humans as Persons*, Oct. 22, 2009 ("With an ever more oppressive federal government lacking leadership in protecting the weakest and most vulnerable in our midst, the people of Nevada are taking necessary action to correct this injustice."), available at <http://www.personhoodusa.com/content/nevada-coalition-introduces-historic-campaign-affirm-all-humans-are-persons>.


1 In order to overcome all the foregoing deficiencies, a permissible description would, at
2 the very least, straightforwardly – and without inaccurate and prejudicial slogans – explain that
3 passage of the Initiative would have consequences for numerous provisions of the Nevada
4 Constitution and laws; and create a conflict with, and potential undermining of, existing due
5 process rights and access to legal and protected health services such as abortion, birth control,
6 treatment for ectopic pregnancies and miscarriages, and fertility treatment. Because the
7 accompanying Description of Effect does none of this, the Initiative cannot be placed on the
8 ballot.

9 **CONCLUSION**

10 For the foregoing reasons, the Court should declare the initiative petition invalid and
11 enjoin the Secretary of State from placing the Initiative on the ballot.

12 DATED this 12th day of November 2009.

13 **KAEMPFER CROWELL RENSHAW GRONAUER
14 & FIORENTINO**

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PLANNED PARENTHOOD OF AMERICA, INC.
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Attorneys for Plaintiffs

*Application for Pro Hac Vice forthcoming
**Application for Pro Hac Vice submitted to Nevada State Bar

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCPC 5(b), I certify that I am an employee of Kaempfer, Crowell,
3 Renshaw, Gronauer & Fiorentino, and that on this date I served the foregoing PLAINTIFFS'
4 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT
5 FOR DECLARATORY AND INJUNCTIVE RELIEF on this 12th day of November, 2009 on
6 the parties set forth below via US Mail, postage prepaid at Carson City, Nevada to the
7 following:

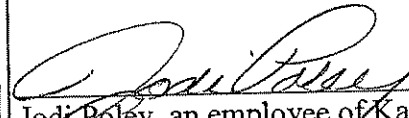
8 Personhood Nevada
9 P.O. Box 81737
10 Las Vegas, NV 89180

11 Richard Ziser
12 P.O. Box 81737
13 Las Vegas, NV 89180

14 Olaf Vancura
15 P.O. Box 81737
16 Las Vegas, NV 89180

17 Kenneth Wilson
18 P.O. Box 81737
19 Las Vegas, NV 89180

20 Ross Miller,
21 Secretary of State
22 State of Nevada
23 101 N. Carson Street
24 Carson City NV 89701

25 
26 Jodi Poley, an employee of Kaempfer,
27 Crowell, Renshaw, Gronauer & Fiorentino

INDEX TO EXHIBITS

Exhibit Number	Description	No. of Pages
1	Affidavit of Anna Themis Contomitros, M.D.	18

EXHIBIT 1

EXHIBIT 1

1 1. I am a board-certified obstetrician-gynecologist, licensed to practice in Nevada.
2 Since 2006, I have had a full-service private gynecology practice in Las Vegas, where I provide all
3 facets of gynecological care, including cancer screenings, preconception counseling, hysterectomy
4 and pelvic floor surgery, genetic counseling, contraceptive counseling and services, infertility
5 treatments, and first trimester abortion care. In addition to my private practice, I have also worked
6 and continue to work as an assistant surgeon and collaborator with Dr. Futoran of the Women's
7 Cancer Center of Nevada. I have done so for the last 6 years.

8 2. I received my medical degree from George Washington University School of
9 Medicine, and did my Residency in Obstetrics and Gynecology at Beth Israel Hospital in Boston,
10 which is a teaching hospital of the Harvard University Medical School. I was a clinical instructor of
11 both Obstetrics and Gynecology and Reproductive Biology at Harvard for several years. I also
12 obtained a Master's Degree in Health Policy and Management from the Harvard School of Public
13 Health. A copy of my Curriculum Vitae is attached as Exhibit A.

14 3. I hold the opinions in this declaration to a reasonable degree of medical certainty.

15 4. I understand that an Initiative Petition has been filed with the Nevada Secretary of
16 State that proposes to add a new section to the Nevada Constitution, which states: "In the great state
17 of Nevada, the term 'person' applies to every human being" ("Initiative"). I have read the
18 Description of Effect written by the proponents of the Initiative. The Description of Effect is
19 confusing and does not state clearly and concretely the effects the Initiative will or might have,
20 based on its description of the term "human being" – one that does not reflect any medical definition.
21 I am concerned that it could lead to bans on common contraceptive drugs and devices, as well as
22 common health care procedures – such as infertility treatments, life-saving treatments of ectopic
23

1 pregnancy and miscarriage, and all abortions (even to save the life of the pregnant woman), which
2 would have serious safety consequences to the health of those seeking them.

3 5. In the paragraphs below, I discuss how the Initiative could impact the provision of
4 reproductive health care and stem cell research, and could affect women who miscarry.

5 **Potential Impact on Common Forms of Birth Control**

6 6. A contraceptive is a drug or device that prevents, rather than terminates, a pregnancy.
7 The U.S. Food and Drug Administration (“FDA”) has approved seven methods of reversible
8 prescription contraception: oral contraception (often referred to as “the pill”); implantable
9 contraception; injectable contraception; intra-uterine device (“IUD”); contraceptive patch;
10 contraceptive ring; and female barrier methods (such as diaphragm and cervical cap). In addition,
11 the FDA has approved emergency contraception (also known as the “morning after pill”).

12 7. In order to understand how contraceptives work, and why they could be banned by
13 the Initiative, it is necessary to understand how and when fertilization of an ovum occurs in relation
14 to when a pregnancy commences.

15 a. Fertilization

16 8. The time during which fertilization may occur, varies considerably – both from
17 woman to woman, but also from month to month in any individual woman.

18 9. A number of variables determine whether or not an ovum is fertilized, none of which
19 can be easily or accurately predicted. These variables include, but are not limited to: the total
20 number of days of a particular menstrual cycle; the day upon which the woman ovulates; how long
21 that particular ovum remains viable; whether or not the mature ovum is swept into the fallopian tube
22 after being extruded from the ovary; when and how often during the month intercourse occurs
23 (especially in terms of the temporal relationship between intercourse and ovulation); and how long

1 the man's spermatozoa remain viable after ejaculation. Medical science has yet to be able to predict
2 any of these factors with reasonable certainty.

3 10. If the ovum becomes fertilized, it does so during the first 24 to 48 hours during which
4 it is traversing the fallopian tube. If fertilized, the ovum will then begin to grow and divide while
5 travelling to the uterus, and, if the tube and the entrance to the uterus are successfully negotiated,
6 will reach the uterus around 2 to 3 days after fertilization.

7 11. Any number of things may occur to prevent implantation of the fertilized ovum into
8 the endometrial lining, such as disintegration of the conceptus (usually as a result of either a
9 chromosomal anomaly or poor hormonal support from the ovary upon which the fertilized ovum is
10 dependent), premature implantation in the fallopian tube (which results in potentially life-threatening
11 "ectopic pregnancy," which I discuss below), and arrival in the uterine cavity at a point in time that
12 is either too early or too late for the uterine lining to be properly receptive. During this time, the
13 woman does not know if the ovum is fertilized; she feels no differently than at any other point in her
14 cycle. Moreover, it is estimated that approximately 70% of fertilized ova disintegrate or are simply
15 flushed out of the body with the menses, with only 30% successfully travelling the fallopian tube to
16 begin the implantation process. This phenomenon is termed "embryonic wastage", and is not
17 considered a miscarriage; it is considered to be a normal part of our human biology.

18 b. Commencement of Pregnancy

19 12. Fertilization of an ovum by a male spermatozoon does not begin a human pregnancy.
20 Rather, it is a well-documented fact in medical science that pregnancy begins when the fertilized
21 ovum implants into the endometrial lining of the uterus.

22 13. This understanding is reflected in the texts and papers of the American College of
23 Obstetricians and Gynecologists (ACOG), the leading organization for obstetrician-gynecologists in

1 this country. See ACOG, *Obstetric-Gynecologic Terminology* 299, 327 (Edward C. Hughes ed.,
2 F.A. Davis Co. 1972).

3 14. It is also the understanding of the Food and Drug Administration (FDA). See FDA,
4 Prescription drug products; certain combined oral contraceptives for use as postcoital emergency
5 contraception, 62 Fed. Reg. 8609, 8611 (Feb. 25, 1997) (FDA officials confirm that emergency
6 contraceptive pills prevent pregnancy by inhibiting steps prior to implantation).

7 15. If pregnancy were considered to begin with fertilization, rather than implantation, it
8 would lead to absurd conclusions, perspectives, and, potentially, policies. For example, a woman
9 attempting to become pregnant by means of in vitro fertilization would be considered pregnant once
10 a sperm and egg united in a petri dish, even if the fertilized ovum never implanted.

11 c. How Contraception Works

12 16. The “barrier” methods of contraception – including diaphragms and cervical caps –
13 attempt to block sperm from entering the woman’s uterus, thus preventing fertilization.

14 17. All of the other methods of prescription contraception work by one or a combination
15 of the following four mechanisms: (1) preventing ovulation, (2) altering the consistency of the
16 cervical mucous, which prevents the sperm from rapidly or successfully travelling through the cervix
17 and into the uterus, (3) affecting ciliary transport within the fallopian tubes, and (4) thinning the
18 endometrial lining, thereby making it unreceptive to implantation of a fertilized egg.

19 18. The first three potential mechanisms of action of prescription contraceptives prevent
20 fertilization, while the fourth prevents implantation. The precise manner in which pregnancy is
21 prevented in any given menstrual cycle is largely unknown (and unknowable).

22

23

1 19. Regardless of which mechanism of action prevents a woman from becoming pregnant
2 in any menstrual cycle, all contraceptives work prior to implantation of a fertilized egg. None of the
3 FDA-approved methods of contraception terminate an established pregnancy.

4 d. Impact on Availability and Use of Birth Control

5 20. If “person” is redefined to include “everyone possessing a human genome . . . from
6 the beginning of his biological development,” as the Description of Effect states (and which I
7 understand the sponsors intend to mean from the moment of fertilization), hormonal birth control
8 methods (such as the pill, the patch, the ring, emergency contraception, and others) could become
9 illegal. This is because, as I explain above, these methods sometimes work by preventing a fertilized
10 egg and the early blastocyst (which would be redefined to be a “person” under Nevada law) from
11 implanting into the uterine lining.

12 21. I fear that if this provision passes, medical providers, pharmacists, and women could
13 be exposed to criminal prosecution and penalties for prescribing, dispensing or using birth control.
14 In addition, they could be subject to civil suits on behalf of fertilized eggs that did not implant for
15 having provided or used birth control, and/or, in the case of medical providers and pharmacists, to
16 licensing consequences and/or other legal consequences.

17 22. A reduction in access to and availability of contraception would have serious public
18 health consequences. Contraception is an integral part of basic health care for most women of
19 reproductive age. From a public health perspective, access to contraception services reduces both
20 maternal and infant mortality rates. See Achievements in Public Health, 1900-1999: Family
21 Planning, 48 Morbidity and Mortality Wkly Rep. 1073 (1999). Indeed, the Centers for Disease and
22 Control have called access to family planning and contraceptive services one of the ten great public
23 health achievements of the twentieth century. Ten Great Public Health Achievements – United

1 States, 1900-1999, 48 Morbidity and Morality Wkly. Rep. 241, 242 (1999). Because the Initiative
2 could effectively ban this critical part of basic health care for women, the Description of Effect
3 should clearly so state.

4 **Potential Impact on Treatment for Ectopic Pregnancy**

5 23. A common complication of pregnancy is called "ectopic pregnancy." An ectopic
6 pregnancy occurs whenever a fertilized egg – called a "blastocyst" at this stage – implants anywhere
7 other than in the endometrial lining of the uterus. The vast majority of ectopic pregnancies involve a
8 fertilized egg implanting in one of the fallopian tubes. Despite implanting in an organ where in
9 virtually all cases it cannot survive to term, in an ectopic pregnancy the embryo (the name for a
10 developing organism from implantation to 10 weeks gestation, as measured from the first day of the
11 woman's last menstrual period, or LMP) or fetus (the name for a developing organism, from 10
12 weeks LMP until birth) can survive for weeks, or in rare cases even months.

13 24. Presently, more than 1 in every 100 pregnancies in the United States is ectopic. In
14 some places, there is 1 ectopic pregnancy for every 25 babies born. Ectopic pregnancy is a leading
15 obstetrical cause of maternal death in the United States.

16 25. A fertilized egg that implants in one of the fallopian tubes may subsequently extrude
17 into the peritoneal cavity. Such a "tubal abortion" typically occurs spontaneously and can result in
18 hemorrhage. Portions of the pregnancy may remain behind, blocking the tube and potentially giving
19 rise to both hemorrhage and infection.

20 26. A fertilized egg implanted in a fallopian tube may also cause the tube to rupture,
21 resulting in hemorrhage. In a small number of cases, the embryo or fetus will reattach within the
22 peritoneal cavity after the tube ruptures, giving rise to an extremely dangerous condition called
23

1 “abdominal pregnancy.” Delaying surgical intervention where such a pregnancy exists carries with
2 it the risk of sudden bleeding within the abdominal cavity.

3 27. In addition to life- or health-threatening hemorrhage, a ruptured tubal pregnancy can
4 cause scarring of the tube, which can then result in either compromised fertility or infertility. This
5 result occurs in at least half of all ruptured tubal pregnancies. An ectopic pregnancy can also attach
6 to various organs, including the ovaries, the liver, and the intestines. These organs can be
7 permanently compromised by the pregnancy.

8 28. An ectopic pregnancy generally requires either surgical or medical intervention –
9 either of which results in the demise of the embryo or fetus.

10 29. If “person” is redefined to include “everyone possessing a human genome . . . from
11 the beginning of his biological development,” as the Description of Effect states, standard-of-care
12 treatment for ectopic pregnancy could become illegal because it would cause the demise of the
13 embryo or fetus, which would – post-enactment – be considered a “person” under Nevada law.
14 Under this scenario, it appears that medical providers (including nurses and other staff at medical
15 facilities) and women could be exposed to criminal prosecution and penalties, as well as civil suits
16 on behalf of the embryo or fetus for having provided or undergone treatment for an ectopic
17 pregnancy, and/or, in the case of medical providers, to licensing consequences and/or other legal
18 consequences. Hospitals, too, could face liability if a physician terminates an ectopic pregnancy at
19 its facilities. I am very concerned that delays in treatment due to legal uncertainties and fear of
20 liability will delay care, putting pregnant women at risk of serious harm and even death.

21 30. Because ectopic pregnancy is a fairly common, potentially life-threatening obstetric
22 condition for which treatment may become unavailable in Nevada if the Initiative is enacted, I
23

1 believe it is critical that the Description of Effect advise voters of this potential impact of enacting
2 this provision.

3 **Potential Impact on All Abortions**

4 31. If “person” is redefined to include “everyone possessing a human genome . . . from
5 the beginning of his biological development,” as the Description of Effect states, any and all
6 abortions could become illegal. By definition, abortion results in the demise of the embryo or fetus.
7 If the embryo or fetus had – by virtue of the Initiative– all of the same legal rights as citizens
8 (regardless of why the abortion was performed, including if it were necessary to save the woman’s
9 life), I fear that performing an abortion would inevitably not be permitted.

10 32. I also fear that, if this provision is enacted, medical providers and women could be
11 exposed to criminal prosecution and penalties, as well as civil suits on behalf of the embryo or fetus
12 for having provided or undergone an abortion. In addition, medical providers could be subjected to
13 licensing consequences for performing any abortion.

14 33. Abortion is one of the safest, most-commonly performed medical procedures in this
15 country. Because abortion may become unavailable in Nevada if the Initiative is enacted, I believe it
16 is critical that the Description of Effect advise voters of this potential impact of enacting the
17 Initiative.

18 **Potential Impact on Common Methods of Fertility Treatment**

19 34. If “person” is redefined to include “everyone possessing a human genome . . . from
20 the beginning of his biological development” – as the Description of Effect states – some of the most
21 common methods of fertility treatment could become illegal in Nevada. This is because some
22 common methods of treating infertility can result in the creation of fertilized eggs and/or embryos
23

1 that never implant into the uterine lining. If the Initiative became law, I fear that it would become
2 legally impermissible to create “persons” that are never implanted in utero.

3 35. I also fear that medical providers and women who provide or have fertility treatments
4 despite the Initiative could be exposed to criminal prosecution and penalties, civil suits on behalf of
5 un-implanted human fertilized eggs or embryos, and/or, in the case of medical providers, to licensing
6 consequences and/or other legal consequences.

7 36. Because in vitro fertilization and other common fertility treatments may become
8 unavailable in Nevada if the Initiative is enacted, I believe it is critical that the Description of Effect
9 advise voters of this potential impact of enacting this provision.

10 **Potential Impact on Treatment of Miscarriage and on Women Who Miscarry**

11 37. Among the most common complications of pregnancy are “threatened abortion,”
12 “inevitable” abortion, and “incomplete” abortion, which are often referred to as miscarriage or
13 spontaneous abortion. A patient experiencing these conditions typically presents with abdominal
14 pain and vaginal bleeding. If she is bleeding, but the cervix is not dilated, the spontaneous abortion
15 is “threatened,” but not certain. If there is bleeding and cervical dilation, the spontaneous abortion is
16 “inevitable.” If there is bleeding, cervical dilation, and fetal tissue in the vaginal canal, the
17 spontaneous abortion has begun, but is incomplete. An ultrasound performed when the woman
18 presents with any one of these conditions often confirms the presence of fetal cardiac activity. Thus,
19 if the Initiative were enacted, completing the miscarriage surgically – as is often medically indicated
20 – could be illegal because it would cause the demise of a newly-defined “person.”

21 38. The indicated treatment for inevitable and incomplete abortion is often an induced
22 abortion, usually by curettage through the already dilated cervix, though sometimes with medication.

23

1 39. Failure to complete the pregnancy termination surgically in a woman with inevitable
2 or incomplete abortion places her at risk of excruciating pain, significant hemorrhage and/or
3 infection. I believe this would also violate the applicable standard of care

4 40. Because standard-of-care treatment of miscarriage may become unavailable in
5 Nevada if the Initiative is enacted, I believe it is critical that the Description of Effect advise voters
6 of this potential impact of enacting this provision.

7 41. I am also concerned that the Description of Effect does not advise voters that if this
8 provision becomes law, women who have a miscarriage could be investigated by law enforcement or
9 social services to determine if they did something (for example, drank alcohol, smoked cigarettes),
10 or failed to do something (for example, take prenatal vitamins, eat well), that might have contributed
11 to the miscarriage. If so, the woman could face criminal or civil charges for having caused or
12 contributed to the death of a "person." Given how common embryonic wastage and miscarriage is, I
13 believe voters should know that enacting this provision could result in miscarriage being treated as a
14 crime that merits investigation.

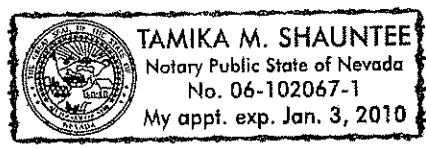
15 **Potential Impact on Stem Cell Research and Treatments**

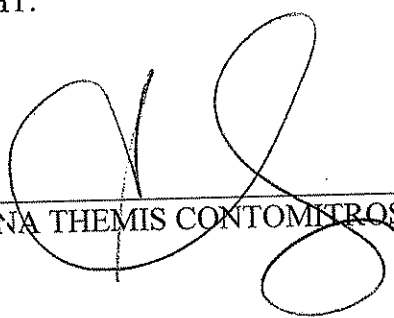
16 42. Finally, I believe that the Description of Effect is inadequate because it does not
17 advise voters that if this provision is enacted, embryonic stem cell research could be prohibited in
18 Nevada. Given that the National Institutes of Health and other leading medical researchers believe
19 that stem cell research offers potential for treating diseases such as diabetes, Parkinson's disease,
20 heart disease and others, in my opinion the voters of this State would want to know that it could be
21 banned if the Initiative passes.

22 43. In conclusion, the Initiative appears to be calculated to force medical providers to
23 provide care in a manner that violates many of the current standards of care in this community.

1 But the Description of Effect does not so advise voters. Nor does the Description of Effect
2 describe the potential impacts of implementing this provision in terms of: law enforcement; loss
3 of physicians, nurses, and other hospital personnel; loss of fertility clinics, and clinics that
4 provide family planning services. If this Initiative passes, the changes to the provision and
5 availability of all reproductive health services could be sweeping, with potentially catastrophic
6 consequences to the provision of health care in Nevada, but the description of effect does not
7 address this at all.

8 FURTHER AFFIANT SAYETH NAUGHT.



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11
12

ANNA THEMIS CONTOMITROS, M.D.

13 SUBSCRIBED AND SWORN TO BEFORE ME by Anna
14 Themis Contomitros this 11th day of November, 2009.

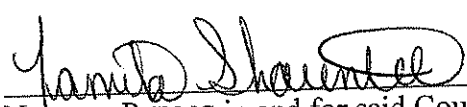
15 
16 NOTARY PUBLIC in and for said County and State

EXHIBIT A

EXHIBIT A

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PROFESSIONAL EXPERIENCE

Woman to Woman Gynecology, LLC Private Practice- Physician	2/2006 – present
Women's Cancer Center of Nevada Assistant Surgeon Independent collaborator of Dr Robert Futoran	04/2003 - present
Women's Care Center Staff Gynecologist Family Planning Practitioner	05/2004 – 11/2005
SYGYN Reproductive Health Consultation Firm- Education Ambassador of the Greek Foreign Ministry. Principal	2001- present Athens, GREECE
Kentriki Kliniki Athinon Consultant-Gynecologist	2001- present Athens, GREECE
Women's Cancer Center of Nevada Surgeon and Member of Gynecologic Oncology Unit	4/1998-8/1998 Las Vegas, NV
Dimmock Health Center Gynecologist	1992 Boston, MA
Harvard Community Health Plan Brigham and Women's Hospital HMO Staff Obstetrician and Gynecologist	1992 - 1996 Boston, MA
Beth Israel Hospital Harvard Medical School Residency training in Obstetrics and Gynecology	1988 -1992 Boston, MA

EDUCATION-DEGREES

Women's Cancer Center of Nevada Dr Robert Futoran 3131 Lacanada St #110 Las Vegas, NV 89109 702-693-6870	Gynecologic Oncology Training Independent Fellowship	1998 4/2003-2007 Las Vegas, NV
American Board of Obstetrics and Gynecology (ABOG)	ABOG Fellow No. 31815	Certification 1994 Recertification 2004
Harvard University Beth Israel Hospital	Obstetrics and Gynecology Residency Training	7/1988 – 6/1992 Boston, MA
George Washington University School of Medicine	Doctor of Medicine	8/1984 -5/1987 Washington, DC
Harvard University School of Public Health	Master of Science Health Policy and Management	1983, 1988 Boston, MA
Tufts University	Bachelor of Science Chemistry and Biology	1981 - 1982 Boston, MA

TEACHING EXPERIENCE

Albany Medical School Extramural Instructor of Community Medicine Emphasis on Women's Health		2002 Athens, GREECE
Harvard University Medical School Brigham and Women's Hospital Lecturer, Clinical Instructor		1988 - 1996 Boston, MA
Harvard University Medical School Reproductive Biology, Obstetrics and Gynecology Clinical Instructor		1988 - 1996 Boston, MA
Tufts University French Department		1981 - 1982 Boston, MA

Teaching Assistant

RESEARCH EXPERIENCE

- | | |
|--|-----------------------------------|
| Clinical research on Juvenile Granulosa cell tumors of the ovary in pre-adolescent girls | 2001
Athens,
GREECE |
| Clinical research and collaborative study of prevalence of pre-cancerous cervical lesions, with the application of cervicography in the study of this disease | 1991
Plateau
Central, HAITI |
| Harvard Institute for International Development
Economic Analysis of Primary Health Care delivery system of Costa Rica, Latin America
Public Health Researcher | 1987
Boston, MA |
| George Washington University Medical School
Clinical Chemistry Laboratory Assistant | 1984 - 1987
Washington,
DC |
| Harvard School of Public Health
Center for Technology Assessment
Meta-analysis studies
Public Health Researcher | 1983
Boston, MA |
| Department of Immunogenetics
Research Assistant | 1981 - 1982
Boston, MA |
| Vulvodynia and hyperoxalouria
Investigation of new diagnostic and treatment modalities | 2002-2003
Athens, Greece |

PROFESSIONAL DISTINCTIONS

Keys of Excellence Award Recognizing 'Excellence in Medical Care' as perceived by patients.	1996 Boston, MA
Harvard Community Health Plan	1995 Boston, MA
<ul style="list-style-type: none">• Diamond Award Doctor of the Year for 'Excellence in Clinical Services, Education and Patient Care.' Elected by the medical community of Harvard Community Health Plan.• Janowitz Award Recognizing 'Excellence in Teaching Harvard Medical Residents'. Elected by the medical residents	1994 Boston, MA
Harvard Medical School Multiple teaching awards in the training and teaching medical students	1988 – 1992 Boston, MA

MEDICAL LICENSES

California Medical License	#685556 Active status	1999-2007
Georgia Medical License	# 048341 Active status	1999-2007
Massachusetts Medical License	# 73988 Active status	1987-2007
Nevada Medical License	# 8564 Active status	1997-2007
Greek Medical License	# 8330/99 Active status	2000-2007

COMMUNITY SERVICE

Hellenic American Union-EAU

Member of the Board of Directors

HAU is a non profit organization dedicated to creating Hellenic-American collaborations in areas of Education and Culture.

2002-present

Athens,
GREECE

Department of Public Health of the City of Cambridge
Volunteer as health educator and consultant regarding adolescent sexuality and health.

1995 - 1997

Boston, MA

MEMBERSHIPS

Hellenic Medical Association

2000 - 2005

American College of OB/GYNs

1995 - present

LANGUAGES

English, Greek, and French fluently