

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUCATION FREEDOM PAC,  
Appellant,  
vs.  
BEVERLY ROGERS, AN INDIVIDUAL;  
RORY REID, AN INDIVIDUAL; AND  
BARBARA K. CEGAVSKE, IN HER  
OFFICIAL CAPACITY AS NEVADA  
SECRETARY OF STATE,  
Respondents.

No. 84735

FILED

SEP 12 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order enjoining an initiative petition's circulation and placement on the ballot. First Judicial District Court, Carson City; Charles M. McGee, Senior Judge.

Appellant Education Freedom PAC (EFP) seeks to place an initiative on the ballot that would establish education freedom accounts for parents to use on their child's education if their child is educated outside of the public school system. The initiative does not include a funding provision and instead provides that the additions proposed to NRS Chapter 394 would not become effective unless the Legislature funds them. Respondents Beverly Rogers and Rory Reid (collectively referred to as Rogers) filed a complaint for declaratory and injunctive relief challenging the initiative petition. The district court granted the requested relief, invalidating the initiative petition and enjoining EFP from circulating it for signatures and enjoining the Secretary of State from placing it on the ballot on the basis that the initiative created an unfunded mandate in violation of Article 19, Section 6 of the Nevada Constitution.

Article 19, Section 6 of the Nevada Constitution "does not permit the proposal of any statute or statutory amendment which makes an

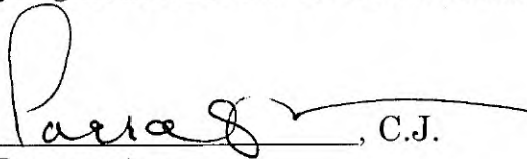
appropriation or otherwise requires the expenditure of money, unless such statute or amendment also imposes a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides for raising the necessary revenue.” *See also* Nev. Const. art. 19, § 2(1) (stating that the people’s power to legislate by initiative petition is “subject to the limitations of Section 6 of this Article”). In applying Article 19, Section 6, we have recognized that an initiative that “make[s] an appropriation or requires an expenditure of money” is void if it does not also provide for the necessary revenue to fund the appropriation or expenditure. *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036 (2001). If, like here, the district court resolves the challenge to an initiative petition in the absence of any factual dispute, our review is de novo. *Helton v. Nev. Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309 (2022).

We recently affirmed a district court order invalidating an initiative petition proposed by EFP that also proposed an education-freedom-account program without a funding provision, but that petition sought to do so through an amendment to the Nevada Constitution. *Education Freedom PAC v. Reid (Education Freedom I)*, 138 Nev., Adv. Op. 47, 512 P.3d 296 (2022). We explained in that opinion that one cannot escape the funding requirement in Article 19, Section 6 by leaving it up to the Legislature to determine how to fund the expenditures required by changes proposed in an initiative petition. *Id.*

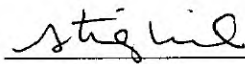
With the initiative petition at issue here, EFP proposes a statutory scheme that requires the expenditure of money but leaves to the Legislature whether and how to fund that expenditure. The petition creates a program for education freedom accounts that will require appropriations and expenditures for the program to exist. Yet, the petition does not include

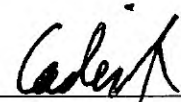
any funding provisions. The initiative process does not permit petition proponents to propose statutes that may never take effect because they rely on the Legislature to enact legislation effectuating them. Thus, we conclude the district court properly determined that the initiative petition was void for failing to comply with Article 19, Section 6 of the Nevada Constitution.<sup>1</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

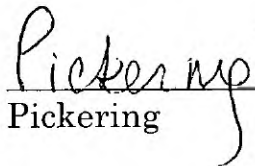
  
\_\_\_\_\_, C.J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Cadish

  
\_\_\_\_\_, J.  
Silver

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Herndon

cc: Chief Judge, The First Judicial District Court  
Hon. Charles M. McGee, Senior Judge  
Hutchison & Steffen, LLC/Reno  
Attorney General/Carson City  
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP  
First District Court Clerk

<sup>1</sup>In light of our conclusion here, we need not reach the other two issues addressed in the district court's order.