IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA MINING ASSOCIATION, INC. Appellant, vs. ROBERT A. FULKERSON, PAMELA GALLOWAY, MICHAEL GINSBURG, HOWARD WATTS III, THE PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA, NEVADANS FOR FAIR MINING TAXES, AND ROSS MILLER, IN HIS CAPACITY AS SECRETARY OF STATE FOR THE STATE OF NEVADA, Respondents.	Supreme Court Docket No. 55732 Appeal from the FIRST JUDICIAL DISTRICT COURT, CARSON CITY, NEVADA THE HONORABLE JAMES E. WILSON, JR. District Judge District Court Case No. 10-OC-00053-1B

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APPELLANT'S REPLY BRIEF

JAMES L. WADHAMS, ESQ.
Nevada Bar No. 1115
MATTHEW T. MILONE, ESQ.
Nevada Bar No. 7448
JESSE A. WADHAMS, ESQ.
Nevada Bar No. 8710
BRADLEY SCOTT SCHRAGER, ESQ.
Nevada Bar No. 10217
JONES VARGAS
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, Nevada 89169
Telephone: (702) 862-3300
Facsimile: (702) 737-7705

Attorneys for Appellant
Nevada Mining Association, Inc.

JONES VARGAS
3773 Howard Hughes Parkway - Third Floor South
Las Vegas, Nevada 89169
Tel: (702) 862-3300 Fax: (702) 737-7705

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Appellant the NEVADA MINING ASSOCIATION ("NMA") here submits its Reply in support of its Opening Brief in this matter.

In summary: First, the NMA has not waived for purposes of appeal its contention that Proponent's initiative petition (the "Petition") constitutes an impermissible use of the initiative process. Second, impermissible use is not a substantive constitutional argument barred by *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 882-888, 141 P.3d 1224 (2006); rather, it is a procedural or subject matter challenge suitable for pre-election determination by this court. Third, Proponents' arguments in opposition concede that the Petition forms a command to the Nevada Legislature, and the NMA below demonstrates that the character of that command impermissibly binds the legislature in a manner exceeding the powers of initiative. Lastly, Proponents' arguments support rather than defeat the contention that the Petition violates N.R.S. 295.009(1)(a) & (2), the single-subject rule for initiatives. The Petition should be deemed invalid.

I.

ARGUMENT

A. The NMA Has Not Waived Its Argument That The Petition Is An Impermissible Use Of The Initiative Process

Without devoting excessive space to the issue, the NMA notes Proponents' argument that the impermissible use argument has been waived for purposes of appeal. As stated in Appellant's Opening Brief, 5-6, the NMA asserted, as its eighth claim for relief in its original complaint, that the Petition was an impermissible use of the initiative process on the specific basis of its forming a binding command to the legislature to enact a specific statute or statutes. R1, 12. Appellant argued the point in its briefing to the district court. R1, 16, 17, 25, 33-41 inclusive, 240, 253-254, 260. Appellant also raised this issue at oral argument. R2, 305-306.

The district court's Order granted relief on Appellant's claims regarding the Petition's description of effect, and specifically denied all other requested relief, including Appellant's eighth cause of action. R1, 284. The argument that the Petition constitutes an impermissible use of the initiative process has not been waived.

B. NMA's Impermissible Use Argument Is Not A Substantive Constitutional Argument Barred By *Herbst v. Heller*

Proponents are mistaken when they urge this Court to decline to determine whether the Petition constitutes an impermissible use of the initiative process due to the proscriptions announced in *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 882-888, 141 P.3d 1224 (2006).

The NMA understands the *Herbst* to warn parties that the Court will not entertain pre-election challenges that "allege that a measure, if approved, may violate substantive federal or state constitutional provisions." *Id,* 880. In *Herbst*, appellants argued, pre-election, that, if enacted, the Nevada Clean Indoor Air Act would violate the due process and equal protection clauses of the Nevada and United States Constitutions. This Court declined such review as premature, reasoning that the people might not approve the measure and, if they did, appellants would have available to them the remedy of post-election substantive challenge. *Id.*

Here, the NMA does not appeal the district court's decision regarding whether it could review the substantive constitutionality of the Petition. Instead, NMA presents to the Court that Proponents are improperly using the initiative process itself. It is "*not* the hypothetical question whether the law, if passed, would be constitutionally defective; rather, it is the present and ripe question whether the measure's proponents are entitled to invoke the direct legislation process at all." *Donovan v. Priest*, 326 Ark. 353, 359, 931 S.W.2d 119 (1996).

The NMA would not be in a position, after the successive elections necessary to adopt a constitutional initiative and enactment of the Petition, to argue that Proponents made impermissible use of the initiative process several years before. After passage and enactment, Proponents would not even be proper defendants in a challenge to the new law; the role of defending a substantive challenge to the measure's constitutional validity would fall to the Nevada Attorney General. The question is currently ripe, and falls into either the first or second *Herbst* categories of pre-election issues (procedural defects and/or subject matter deficiencies). *Herbst*, 882-884; *Nevadans for the Protection of Property Rights, Inc. v. Heller*, 122 Nev. 894, 915-916, 141 P.3d 1235 (2006) (claim

that a ballot measure impermissibly dictates administrative details rather than establishing legislation in violation of the powers of initiative would be considered by court pre-election).

C. The Petition Binds The Nevada Legislature To Enact Very Specific Statutes, And Therefore Violates That Body's Deliberative Authority

Proponents do not deny that the Petition is a command to the legislature or that the command is binding upon that body. In fact, they emphatically confirm both. They attempt to counter the NMA's assertions of impermissible use by contending 1) that it is perfectly acceptable to commandeer the legislature's deliberative prerogative through initiative, and 2) that the Petition does, in fact, leave plenty room for legislative deliberation because Nevada's tax on mineral proceeds is not a property tax, the five percent constitutional cap on property taxes does not apply to mineral proceeds, and the legislature can set the rate of taxation at whatever level it desires. As discussed below, both counterarguments are incorrect.

The NMA also rectifies Proponents' notion that it is mounting a separation of powers argument. This appeal is about the proper exercise of the initiative power, and separation of powers concerns arise only as the expected debris of allowing an impermissible command to the legislature to clutter the Nevada Constitution. But perhaps a separation of powers question is worth asking Proponents: Can the people, through the initiative process, command the governor to sign a particular bill? The legal answer is, of course, no, but a practical response would be that they would never need to do so. The people's legislative capacity is sufficient to enact laws without resort to such a command. Likewise, in the present context, "If the people have the power to enact a measure by initiative, they should do so directly." *American Federation of Labor-Congress of Industrial Organizations v. Eu*, 36 Cal.3d, 687, 714, 686 P.2d 609 (1984). The legislative power of the initiative is sufficient for Proponents to accomplish what instead they command the legislature to accomplish for them. Had they simply submitted a petition enacting the basic aims of their measure, this question never would have arisen.

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1. The power and authority of the Nevada Legislature to deliberate on legislative enactments is a fundamental aspect of the republican form of government

It is not credible to suggest that the imperative of legislative deliberation resides only in the language of Article V of the federal constitution, and is only violated in the context of initiative-based commands to a state legislature to attempt to amend the Constitution or call for a constitutional convention. Many of the cases cited in Appellant's Opening Brief concern initiatives that commanded state legislatures to attempt to amend the United States Constitution or convene constitutional conventions. Proponents, on that basis, narrow the principle of legislative deliberation to near-meaninglessness. The cases the NMA cites, however, speak broadly regarding what it means to sit as an elected body in a democratic republic:

The Montana Supreme Court: "The deliberative process must be unfettered by any limitations imposed by the people of the state."[1]

The Oklahoma Supreme Court: "Legislators must be free to deliberate and vote their own considered judgment, being responsible to their own constituents through the electoral process," and "legislative deliberation cannot exist where the outcome is a predetermined specific action." State legislators "cannot be compelled to cast a vote in obedience to an electorate's instructions."[2]

The Arkansas Supreme Court: Specific, binding commands to the legislature "virtually tie the hands of the individual members of the general Assembly such that they would no longer be part of a deliberative body acting independently in exercising their individual best judgments on every issue."[3] The Arkansas court refers to every issue that comes before the legislature, not just the issue of Article V amendment powers.

The Colorado Supreme Court: "The power delegated to elected representatives is the hallmark of a republic.... Ours is not a system of government that requires an elected representative to proceed in any particular or foreordained manner on any issue.... In our system,

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[1] *State ex rel. Harper v. Waltermire*, 213 Mont. 425, 431, 691 P.2d 826 (1984), quoting *Leser v. Garnett*, 258 U.S. 130, 42 S.Ct. 217 (1922).

[2] *In re Initiative Petition No. 364*, 930 P.2d 186, 192-193, 200 (Okla. 1996).

[3] *Donovan v. Priest*, 371.

the people set policy by choice, not control, of their elected representatives."[4] The court there spoke of *our system of government*, not merely our process for amending the federal constitution. This court also reached for the rarest of all judicial citations, the Guarantee Clause found in Article IV, Section 4 of the United States Constitution, to express its view of the fundamental nature of the legislative prerogative.

This is no "new rule" dreamed up by the NMA. Legislative deliberation is among the fundamental characteristics of a republic, and always has been. Legislatures—whether the United States Congress or the Nevada Legislature—cannot carry out their duties as representative bodies without protection of this principle. The Court can determine for itself whether this prerogative is, instead, as dispensable as Proponents suggest.

2. Proponents policy arguments and analogies are not accurate

Proponents argue that "if the NMA were correct [regarding impermissible use], no constitutional amendment could ever constrain a future legislature," and further that "it is difficult to imagine a constitutional amendment that would require no subsequent action on the part of the Legislature." Ans. Brief, 16, fn. 3, 20. Wrong, on both counts.

Each of the twenty-seven amendments to the United States Constitution, for example, either state positive declarations of rights or prohibitions on laws contravening certain standards. These all 'constrain' Congress, which "shall make no law respecting an establishment of religion" and cannot abridge "the right of citizens of the United States to vote... on account of sex." U.S. Const. Ams, I & XIX. Even the most recently adopted amendment, the twenty-seventh, states that "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." U.S. Const. Am. XXVII. These all limit the power of Congress in its lawmaking capacity without commanding it to take any particular course, pass any specific legislation, or requiring any subsequent action whatsoever.

At the state level, one need only look back at the Nevada Property Owners' Bill of Rights ("PISTOL") from 2006. R1, 58. A state constitutional amendment initiative, the measure stated

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[4] *Morrissey v. State*, 951 P.2d 911, 917 (Colo. 1998).

policies and declarations of rights, against which any subsequent legislative enactment would be interpreted and measured by courts. PISTOL did not command the legislature to enact any specific legislation, and did not require any subsequent legislation. *Id.* Neither of the other current circulating petitions to amend the Nevada Constitution—the two petitions comprising the Save Our Secret Ballot project—contains binding commands to the legislature to enact specific statutes. Neither do either legislative amendments, S.J.R. 2 and S.J.R 9, as discussed in Appellant's Opening Brief, 9. In other words, not only 'imaginable' but actually-existing state and federal constitutional amendments, both legislative and as submitted through initiative processes, proceed without infringing or even implicating legislative prerogatives in the manner that Proponents' Petition does.

Proponents point to current portions of the Nevada Constitution they contend require the passage of specific legislation. This appeal, however, concerns the limits and boundaries of the initiative power, not interpretation of the passages they cite. Yet even the cited provisions fail to support their arguments. First, the provisions identified were not the subject of initiative petitions, and did not, therefore, raise the question here: whether a command to the legislature to enact specific laws, contained in an initiative petition, exceeds the people's legislative capacity. Furthermore, the passages cited (for example, the provisions in Nev. Const. art. 4, sec. 18(2) regarding a two-thirds majority for revenue measures, or that in Nev. Const. art. 10, sec. 1(1) regarding uniform and equal taxation) are not of the kind at issue in the Petition, a command to draft and pass specific legislation. In fact, the principle of uniform and equal taxation requires deliberation, and functions as a standard against which courts will measure resulting taxation legislation.

Proponents try to soften the import of their Petition by claiming merely that it "*might* require" or *may* require" the Nevada Legislature to enact specific legislation.[5] Ans. Brief, 5, 16, 17 (emphasis added). But there is no *might* or *may* about it in this situation; the Petition places upon the legislature what Proponents below called a "duty" because the Petition "is not self-executing." Opening Brief, 6; R1, 194. Placing that duty upon the legislature inarguably impinges upon the

[5] The district court, of course, found in its ruling that Petition "mandates" the legislature to act. See Order, R1, 271.

deliberative authority and prerogative of that body. The only remaining question is the extent of that infringement.

3. There is no possible deliberation allowed by the Petition, because the legislature is commanded to enact a gross proceeds tax at the maximum constitutional rate of five percent

In mounting their argument that the Petition as written leaves plenty space for legislative deliberation, Proponents are forced to characterize Nevada's tax on mineral proceeds in ways completely at odds with legal precedent and the state constitution's plain text.

Proponents rest much of their opposition on the contention that Nevada's tax on mineral proceeds is not a property tax. Proponents are aware, however, from briefing before the district court that every decision of this Court over the last one hundred fifty years reviewing the tax on mineral proceeds has determined the tax to be an *ad valorem* property tax.

Proponents concede if the tax *is* a property tax then the Petition is an improper use of the initiative process and violates Nevada's single subject requirements. They are faced, therefore, with a dilemma: The tax they seek to alter is an *ad valorem* property tax, but they are unwilling to submit a petition that conforms to Nevada law. Instead, they argue that at some point in time the tax on mineral proceeds ceased being a property tax and, as such, the five percent limitation found in Nev. Const. art. 10, sec. 2 does not apply.

In *City of Virginia v. Chollar-Potosi Gold and Silver Mining Co.*, 2 Nev. 86 (1866), this Court found that "whilst the body of the mine remains untaxed, the ore taken out (for that is the primary proceeds of the mine), shall be subject to **the same *ad valorem* taxation as other property**." *City of Virginia*, at 92 (emphasis added). Further, this Court acknowledged that while the method of assessment of mineral proceeds is different than for other property, the nature of the tax is the same—an *ad valorem* property tax. *Id.* In this decision the Court also explained that the value of a mineral to the miner is not its gross sale price but rather that price less the costs of the mineral's extraction:

> It is evident that when ore is taken out of the mine it is not worth what it will yield; for if ore be taken out which, by working process will only yield twenty dollars per ton, and it costs twenty dollars to haul it to a mill and have it worked, it is really worth nothing;

City of Virginia at 92.[6]

In *State v. Eastabrook*, 3 Nev. 173 (1867), this Court again found that the tax on mineral proceeds was an "*ad valorem*" tax. *Eastabrook*, at 179. In 1868 this Court decided two cases in which it reaffirmed that the tax on mineral property is an *ad valorem* property tax on net proceeds in lieu of taxation of the mine, *State of Nevada v. A.M. Kruttschnitt*, 4 Nev. 178 (1868) and *State of Nevada v. Manhattan Silver Mining Co.*, 4 Nev. 318 (1868). In *Kruttschnitt*, this Court explained that "the constitution was so framed as to tax the proceeds of mines rather than the mines themselves" and that this tax "is an annual *ad valorem* tax on the whole proceeds of the mine." *Kruttschnitt*, at 200, 202. Then, in *Manhattan Silver* this Court made clear that "the constitution subjected the proceeds of mines, in lieu of the body of the mines, **especially to an *ad valorem* taxation**..."*Manhattan Silver*, at 332 (emphasis added).

In *Goldfield Consol. Co. v. State*, 35 Nev. 178, 127 P. 77, 80 (1912), this Court explained the constitutionally permissible system of *ad valorem* taxation of mineral property:

> A basic principle of all property taxation is that it should be uniform and equal, regardless of the method adopted to arrive at the result. This court, in *City of Virginia v. Chollar-Potosi M. Co.*, 2 Nev. 92, considering the provisions of article 10 of the Constitution, by Beatty, J., said: "The leading feature of this section is that the taxation shall be equal and uniform, and that the proceeds of the mines only shall be taxed. **In other words, whilst the body of the mine remains untaxed, the ore taken out (for that is the primary proceeds of the mine) shall be subject to the same ad valorem taxation as other property.**" We do not think the Legislature in proposing, or the people in adopting, the amendment to the section of the Constitution under consideration had any intention of changing "the leading feature of this section."

Goldfield, at 80 (emphasis added). Two years after *Goldfield* this Court again confirmed that "proceeds of mines" is "property subject to an ad valorem tax." *Esmeralda Co. v. Mineral Co.*, 37 Nev. 180, 181, 141 P. 73 (1914).

Perhaps the most damaging case for Proponents' position is *Consolidated Coppermines Corp. v. State*, 68 Nev. 298, 300-301, 231 P.2d 197 (1951), which held:

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[6] This Court has held consistently that the costs of extraction must be considered to determine the value of a mineral to its owner. *Dinwiddie Const. Co. v. Campbell*, 81 Nev. 469, 475-76 406 P.2d 294 (1965) (in conversion action, the measure of damages for minerals wrongfully taken from owner is market value less cost of extracting and marketing).

> There is no dispute as to the nature of the tax as provided by our revenue act [the tax on the proceeds of minerals]. **It is recognized by all parties that the tax is an ad valorem tax rather than an income tax or occupational license; the tax is not upon the mine itself nor upon the mining enterprise but is solely upon the proceeds of the mine.**

(emphasis added).

In summary:

Nevada cases holding that the taxation of net proceeds is an *ad valorem* property tax	**Nevada cases holding that the net proceeds tax anything other than a property tax**
- *City of Virginia v. Chollar-Potsoi Gold and Silver Mining Co.*, 2 Nev. 86 (1866) - *State v. Eastabrook*, 3 Nev. 173 (1867) - *State of Nevada v. A.M. Kruttschnitt*, 4 Nev. 178 (1868) - *State of Nevada v. Manhattan Silver Mining Co.*, 4 Nev. 318 (1868) - *Goldfield Consol. Co. v. State*, 35 Nev. 178 (1912) - *Esmeralda Co. v. Mineral Co.*, 37 Nev. 180, 141 P. 73 (1914) -*Consolidated Coppermines Corp. v. State*, 68 Nev. 298 (1951) -*Sun City Summerlin Comm. Ass'n v. State, Dept. of Taxation*, 113 Nev. 835 (1997) (adopting the holding in *Eastabrook*)	*None*

Proponents also misconstrue the application of Nev. Const. art. 10, sec. 1's language regarding "except mines and mining claims." This provision does not "exempt" mineral proceeds or alter their taxation from a property tax to something else; even the plain language of the provision only speaks of "mines and mining claims," not mineral proceeds. The function of Nev. Const. art. 10, sec. 1 is to subject mines and mining claims to the provisions of art. 10, sec. 5(3), where if one hundred dollars of labor has not been performed on the mine or mining claim in the preceding year, its surface land is taxed as real property pursuant to the particular county's *ad valorem* property tax

rate. If such labor has been performed, the mineral proceeds are taxed and no value is assessed upon the surface land of the mine or mining claim. This has always been the system for taxation in Nevada. *City of Virginia* at 92 (the 1865 Constitution provided that the "proceeds" of mines and mining claims "alone" shall subject to an *ad valorem* property tax in lieu of a tax on the mine); *Goldfield* at 80 ("whilst the body of the mine remains untaxed, the ore taken out ... shall be subject to the same ad valorem taxation as other property"); *Kruttschnitt* at 210-11 (subtraction of costs from gross yield is necessary to reach the "amount subject to taxation" in lieu of a tax on the mine). *State v. Tonopah Extension Mining Co.*, 49 Nev. 428, 248 P. 835, 837 (1926) (costs are deducted from gross sales price to reach "the value of the net proceeds for assessable purposes"); *Consolidated Coppermines*, 68 Nev. at 299 (proceeds of minerals taxed on an *ad valorem* basis in lieu of tax on the mine).

In order to raise an argument that the Petition's command does not infringe upon the deliberative prerogatives of the legislature, therefore, Proponents are forced to argue against long and consistent precedent regarding the nature of Nevada's tax on mineral proceeds, without countervailing authority of any kind. Further, they are forced to mischaracterize the taxation of mines, mining claims, and mineral proceeds under the state constitution.

Nevada's tax on mineral proceeds is and always has been an *ad valorem* property tax in lieu of taxation of the surface area of the mine.[7] As a property tax, in setting the rate of taxation upon mineral proceeds, the Nevada Legislature is bound by the terms of Nev. Const. art. 10, sec. 2:

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[7] Proponents also argue that the tax on mineral proceeds is a tax on money, not a tax on property. Ans. Brief, p. 2, ll. 5-7. Proponents' argument ignores that even though property taxes are paid in money (as is the case with most taxes) those monies are paid based on the value of the property. Proponents' view ignores that different types of property are often assessed in different manners for purposes of taxation.

This Court has long recognized that different assessment methods are permitted as long as the assessment is intended to reach a just valuation of the property. *City of Virginia* at 92-93 (absolute equality in assessments is known to be impossible); *Eastabrook* at 179 (Legislature may employ different methods to assess and tax property, "provided the object is to attain a just valuation"); *Nevada Tax Commission v. Southwest Gas Corp.*, 88 Nev. 309, 311-12, 497 P.2d 308, 309-10 (1972) ("There exists no absolute mathematical formula to establish market value."); *State v. Nevada Power Co.*, 80 Nev. 131, 390 P.2d 50 (1964); see also N.R.S. 361.227 (the assessment of commercial property for purposes of property taxation specifically includes consideration of income generated or expected by the property).

> Sec. 2. **Total tax levy for public purposes limited.** The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation.

The tax on mineral proceeds, therefore, cannot exceed five percent. Pursuant to Proponents' Petition, it cannot be set lower than five percent. There is no opportunity, therefore, for the legislature to deliberate in this regard; the Petition commands the legislature to enact a statute taxing the gross proceeds of minerals such as gold, silver, gypsum, and geothermal steam extracted in Nevada at a five percent rate.

D. The Petition Makes Separate Changes To Nevada's Tax Regime That Are Not Functionally Related To One Another

Proponents argue that "[s]imply because a procedure has been followed since 1865 does not mean a different procedure cannot be adopted for a new century and for changed circumstances." Ans. Brief, p. 12, ll. 9-10. Appellant does not disagree. The Petition, however, makes separate, radical changes to the current system of taxation in Nevada. This is not a challenge to the substantive merits of the Petition, but rather a failure to comply with the procedural requirements of NRS 295.009.

As stated in Appellant's Opening Brief, the Petition has at least three subjects:

1. A shift in the taxation of mineral property from the *ad valorem* property tax that has been in place since 1865 to a tax unrelated to the actual value of the property (the primary subject);
2. Changing the method of valuation of mineral property from net proceeds to gross proceeds; and,
3. Changing the constitutional structure of property tax rates to require that the legislature set the tax rate on mineral proceeds to "not less than" the constitutional maximum of five percent.

These subjects are distinct and not functionally related to each other.

Proponents never deny that the Petition includes three distinct subjects. First, they argue that the district court rejected Appellant's single subject argument. Ans. Brief, pp. 10-11. While true, Appellant has appealed the district court's decision to this Court for *de novo* review; it is the very point of appellate review. *Nevadans for the Protection of Property Rights, Inc. v. Heller*, 901

(Nevada Supreme Court's review of a district court's decision denying declaratory relief made in the absence of any factual dispute is de novo).

Next, Proponents allege that they are not engaging in logrolling a popular provision with an unpopular provision. Ans. Brief, pp. 11-12. In making this argument, Proponents' overemphasize whether any of the various subjects in the Petition are popular or unpopular. This is not the key inquiry, and not something with which this Court should concern itself. Proponents do not prevail on a single subject analysis by showing that they are not attaching an unpopular provision to a popular one, but rather by demonstrating that each part of an initiative petition is "functionally related and germane to one other" and that "every provision [is] functionally related and germane to the subject." *Nevadans for the Protection of Property Rights,* 907. This is a burden that Proponents cannot meet here. Even assuming that the change from "net" to "gross" may be functionally related to the primary subject of a fundamental shift in the nature of property taxation; changing the structure of tax rates in the Nevada Constitution by setting of the applicable rate to "not less than" five percent is not. Thus, the Petition is logrolling, regardless of the potential popularity or unpopularity of any of the proposed changes.

Finally, Proponents argue that the "changes" made by the Petition are simple and do not alter the scheme of taxation in Nevada. Beginning with this Court's decision in *City of Virginia* in 1866, it has been undisputed that in order to value mineral property, the state must consider the costs of extraction of the minerals before assessing the tax on mineral proceeds. The Petition proposes to ignore costs of extraction in the valuation of mineral property and, instead, to value mineral proceeds on a gross basis, at a five percent rate. Since Article 10, Section 2 of the Nevada Constitution was adopted in 1936, no property in Nevada has been required to be taxed at "not less than" the constitutional maximum rate of 5%. The Petition proposes this change. To argue these distinct changes do not alter taxation of mineral property ignores reality. Regardless of the substantive merit of these changes, they are both radical changes warranting separate petitions under NRS 295.009.

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II.

CONCLUSION

Based upon the foregoing, Appellant requests this Court find the Petition invalid, as an impermissible use of the initiative process, and/or as violating N.R.S. 295.009(1)(a) and (2), Nevada's single subject rule for initiative measures.

DATED this 19th day of May, 2010

JONES VARGAS

By: _____

JAMES L. WADHAMS, ESQ.
Nevada Bar No. 1115
MATTHEW T. MILONE, ESQ.
Nevada Bar No. 7448
BRADLEY SCOTT SCHRAGER, ESQ.
Nevada Bar No. 10217
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, Nevada 89169
Telephone: (702) 862-3300
Facsimile: (702) 737-7705

JESSE A. WADHAMS, ESQ.
Nevada Bar No. 8710
100 West Liberty, Twelfth Floor
Reno, Nevada 89501
Telephone: (775) 786-5000
Facsimile: (775) 786-1177

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 19th day of May, 2010

JONES VARGAS

By: _____
JAMES L. WADHAMS, ESQ.
Nevada Bar No. 1115
MATTHEW T. MILONE, ESQ.
Nevada Bar No. 7448
BRADLEY SCOTT SCHRAGER, ESQ.
Nevada Bar No. 10217
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, Nevada 89169
Telephone: (702) 862-3300
Facsimile: (702) 737-7705

JESSE A. WADHAMS, ESQ.
Nevada Bar No. 8710
100 West Liberty, Twelfth Floor
Reno, Nevada 89501
Telephone: (775) 786-5000
Facsimile: (775) 786-1177

CERTIFICATE OF SERVICE

Pursuant to Nev.R.App.P. 25 the undersigned hereby certifies that on the 19th day of May, 2010, a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF** was served on the party(ies) by emailing true and accurate copies and by mailing a copy thereof, first class mail, postage prepaid, to:

Don Springmeyer, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120

Attorneys for Defendants
Robert A. Fulkerson, Pamela Galloway, Michael Ginsburg, Howard Watts III, The Progressive Leadership Alliance of Nevada, and Nevadans for Fair Mining Taxes

Timothy Hay, Esq.
3440 Kauai Court, Ste. 204
Reno, Nevada 80509

Attorney for Defendants
Robert A. Fulkerson, Pamela Galloway, Michael Ginsburg, Howard Watts III, The Progressive Leadership Alliance of Nevada, and Nevadans for Fair Mining Taxes

Ross Miller
Secretary Of State For The State Of Nevada
101 North Carson Street, Suite 3
Carson City, Nevada 89701

Catherine Cortez Masto, Esq.
Attorney General
Kerry Benson
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
Attorneys for Defendant
Ross Miller, Nevada Secretary of State

Lea Ross
An Employee of JONES VARGAS