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Attorneys for **Plaintiffs**

12  
13 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
14 IN AND FOR CARSON CITY

15 EMMILY BRISTOL; MINDY HSU RPh.;  
WILLIAM RAMOS, M.D.;  
16  
17 Plaintiffs,

18 vs.

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

Case No. D9 OC 00506 1B  
Dept. No. I

23 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

24 For their Complaint, Plaintiffs allege:

REC'D & FILED  
2009 NOV 12 PM 4:00  
ALAN GLOVER  
BY M. K. KEE CLERK  
DEPT. I

1           1.     On October 21, 2009, Defendants Personhood Nevada, Richard Ziser, Olaf  
2 Vancura, and Kenneth Wilson filed an initiative petition that proposes effectively to reshape the  
3 current application of Nevada’s Constitution and laws. The initiative seeks to expand the  
4 meaning of the term “person” throughout the Nevada Constitution and Nevada laws to include  
5 fertilized eggs, embryos, and fetuses. Proponents have alleged that a goal of these proposed  
6 changes is to take away Nevadans’ existing rights to a range of constitutionally protected and  
7 legal medical services including abortion and contraception. Proponents’ proposed changes  
8 could also ban treatment for ectopic pregnancies, miscarriages, and infertility, and prohibit stem  
9 cell and other biomedical research. However, neither the initiative, nor its description of effect,  
10 give voters any notice that this initiative, if passed, seeks to change numerous provisions of  
11 Nevada law or the drastic and sweeping consequences that could flow from such changes.

12           2.     Plaintiffs thus bring this action, pursuant to Nevada Revised Statutes Sections  
13 30.030, 33.010, and 295.061<sup>1</sup>, to challenge the validity of the initiative petition on the basis that  
14 it does not meet the minimum legal requirements for a valid citizen initiative petition.  
15 Specifically, the initiative fails to comply with the single-subject requirement, and the  
16 description of effect is inaccurate and wholly misleading. Plaintiffs also challenge the initiative  
17 petition on the grounds that it proposes a constitutional revision, not an amendment, and thus is  
18 an impermissible use of the initiative process. Accordingly, Plaintiffs seek a declaration that the  
19 initiative petition is invalid and an injunction prohibiting Defendant Miller from placing the  
20 initiative on the 2010 general election ballot.

**PARTIES**

21  
22           3.     Plaintiff Emmily Bristol is a resident and registered voter in Las Vegas, Nevada.  
23

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24           <sup>1</sup> Nevada Revised Statutes Section 295.061(1) requires that the Court set this matter for hearing not later than 15 days after the filing of this Complaint.

1           4.       Plaintiff Mindy Hsu, RPh., Pharm.D., is a resident and registered voter in Sparks,  
2 Nevada. Dr. Hsu practices as a registered pharmacist in Reno and Sparks, Nevada.

3           5.       Plaintiff William Douglas Ramos, M.D., is a resident and registered voter in Las  
4 Vegas, Nevada. Dr. Ramos has been a board-certified obstetrician-gynecologist for over thirty  
5 years and is licensed to practice medicine in Nevada.

6           6.       Defendant Personhood Nevada is named herein as a proponent of the initiative  
7 petition. Upon information and belief, Personhood Nevada is a ballot advocacy group organized  
8 and existing pursuant to Chapter 294A of the Nevada Revised Statutes. Upon information and  
9 belief, Personhood Nevada is a member of Personhood USA.

10          7.       Defendant Richard Ziser is named herein as a proponent of the initiative petition.  
11 Upon information and belief, Richard Ziser is an individual, and at all times relevant herein, was  
12 and is a resident of the State of Nevada. Upon information and belief, Richard Ziser is a board  
13 member, the campaign manager, and the resident agent of Personhood Nevada.

14          8.       Defendant Olaf Vancura is named herein as a proponent of the initiative petition.  
15 Upon information and belief, Olaf Vancura is an individual, and at all times relevant herein, was  
16 and is a resident of the State of Nevada. Upon information and belief, Olaf Vancura is an officer  
17 of and the president of Personhood Nevada.

18          9.       Defendant Kenneth Wilson is named herein as a proponent of the initiative  
19 petition. Upon information and belief, Kenneth Wilson is an officer of Personhood Nevada and  
20 the president of Personhood USA.

21          10.      Defendant Ross Miller is named herein in his official capacity as the duly elected  
22 Secretary of State of the State of Nevada. Ross Miller, in his capacity as Secretary of State, is  
23 the chief elections officer of the State of Nevada, charged with administering and enforcing  
24 Nevada's election laws. As a duty of the constitutional office of Secretary of State, Ross Miller

1 is responsible for qualifying initiatives for submission to the Nevada legislature and/or the  
2 Nevada electorate and for disqualifying initiatives which are determined to be invalid.

3 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

4 11. On October 21, 2009, Defendants Personhood Nevada, Ziser, Vancura, and  
5 Wilson ("proponents") submitted the initiative petition to Defendant Secretary of State through  
6 their resident agent Richard Ziser. A copy of the initiative petition is attached hereto as Exhibit 1  
7 (hereinafter "Ex. 1").

8 12. The initiative proposes to add "a new section designated Section 23" to "Article 1  
9 of the Constitution of the State of Nevada" that, in its entirety, would read as follows: "In the  
10 great state of Nevada, the term 'person' applies to every human being." See Ex. 1.

11 13. Filed concurrently with the initiative is the following description of effect:

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

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

18 This amendment therefore applies the term "person" to every human being.  
19 "Human being" includes everyone possessing a human genome specific for an  
20 individual member of the human species, from the beginning of his or her  
21 biological development, without discrimination as to age, health, reproduction  
22 method, function, physical or mental dependency, or cognitive ability.

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

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

30 See Ex. 1.

31 14. The text of the initiative does not define the term "human being."

1 15. The description of effect confusingly and incorrectly states that the term “human  
2 being” includes “everyone possessing a human genome specific for an individual member of the  
3 human species, from the beginning of his or her biological development.” This is not the  
4 commonly understood, or legal, definition of human being.

5 16. Though nowhere mentioned in the initiative text, nor clearly explained in the  
6 description of effect, upon information and belief, the proponents have publicly acknowledged  
7 that an intended purpose and effect of the initiative petition is, *inter alia*, prohibiting all abortions  
8 and preventing the use of the common forms of contraception. The initiative could also ban  
9 treatment for ectopic pregnancies, miscarriages, and infertility, and prohibit stem cell and other  
10 biomedical research.

11 17. The potential consequences of the initiative petition, particularly potentially  
12 banning a wide range of reproductive health services, would harm the health and well being of  
13 Nevadans, and could place physicians, pharmacists, and other health professionals at risk of  
14 criminal or civil liability for providing treatment and services consistent with the standard of care  
15 and their best medical and professional judgment.

16 **FIRST CLAIM FOR RELIEF**

17 **(Declaratory and Injunctive Relief –**

18 **Violation of Nev. Rev. Stat. §§ 295.009(1)(a) and (2) – Single-Subject)**

19 18. Plaintiffs hereby incorporate Paragraphs 1 through 17 as though fully set forth  
20 herein.

21 19. Nevada Revised Statutes Section 295.009(1)(a) requires that an initiative be  
22 limited to “one subject and matters necessarily connected therewith and pertaining thereto.”  
23 Nevada Revised Statutes Section 295.009(2) provides that the parts of the initiative must be  
24 “functionally related and germane to each other in a way that provides sufficient notice of the

1 general subject of, and of the interests likely to be affected by, the proposed initiative.” The  
2 purpose of this requirement is to promote informed decisions and prevent the enactment of  
3 unpopular provisions by attaching them to or concealing them in more popular measures.

4 20. If the understanding of “human being,” set forth in the description of effect is  
5 applied to the initiative, the initiative would extend a multitude of unrelated constitutional and  
6 statutory laws to newly-recognized “persons”: fertilized eggs, embryos, and fetuses. Under this  
7 scenario, the initiative violates the single-subject requirements by proposing multiple changes to  
8 the Nevada Constitution and other areas of Nevada law that are not functionally related and  
9 germane to each other or the primary purpose or subject of the initiative in a way that provides  
10 sufficient notice of the subjects addressed in the initiative and the many interests likely to be  
11 affected by it.

12 21. The initiative amends multiple constitutional provisions including, *inter alia*, the  
13 inalienable rights clause, the rights of victims of crime clause, the due process clause, and the  
14 unreasonable search and seizure clause, as well as Nevada laws covering a multitude of subjects,  
15 including criminal law, tort law, family law, eligibility for government benefits, and even traffic  
16 law. Most of these multiple changes proposed by the initiative are not functionally related and  
17 germane to each other, nor to any of the alleged purposes or subjects of the initiative.

18 22. The initiative fails to give sufficient notice to the voters about these diverse  
19 subjects. Likewise, the initiative fails to notify voters that it seeks to curtail existing  
20 constitutional rights and protections, it seeks to ban abortion and a whole host of forms of  
21 contraception, and it could ban treatment for ectopic pregnancy, miscarriage, and infertility; and  
22 stem-cell research.

23 23. The initiative violates the single-subject requirement.

24 /././

1 **SECOND CLAIM FOR RELIEF**

2 **(Declaratory and Injunctive Relief – Impermissible Use of the Initiative Process)**

3 24. Plaintiffs hereby incorporate Paragraphs 1 through 23 as though fully set forth  
4 herein.

5 25. The Nevada Constitution distinguishes between constitutional “amendments,”  
6 which can be proposed by initiative, and “revisions,” which cannot.

7 26. Constitutional revisions may only be initiated by the legislature. Article 16,  
8 Section 2 of the Nevada Constitution states that to “cause a revision of th[e] entire Constitution”  
9 the legislature must first by a vote of two-thirds in each house “recommend to the electors at the  
10 next election for Members of the Legislature, to vote for or against a convention . . . .”

11 27. Article 19, Section 2, of the Nevada Constitution, which reserves the power to  
12 propose a constitutional amendment by initiative petition, does not additionally permit  
13 constitutional revision through the citizen initiative petition process.

14 28. The initiative petition proposes sweeping changes to core provisions of the  
15 Nevada Constitution – including the inalienable rights clause, the due process clause, the liberty  
16 of speech and conscience clauses, the right to assemble clause, and the unreasonable search and  
17 seizure clause. This amounts to a wholesale “revision,” rather than an “amendment,” of the  
18 Nevada Constitution.

19 29. The initiative petition is thus unauthorized under Article 16, and constitutes an  
20 impermissible use of the Article 19 initiative process, which is limited to constitutional  
21 amendments.

22 /././

23 /././

24 /././

1 **THIRD CLAIM FOR RELIEF**

2 **(Declaratory and Injunctive Relief –**

3 **Violation of Nev. Rev. Stat. § 295.009(1)(b) – Description of Effect)**

4 30. Plaintiffs hereby incorporate Paragraphs 1 through 29 as though fully set forth  
5 herein.

6 31. Nevada Revised Statutes Section 295.009(1)(b) requires that an initiative petition  
7 set forth, in not more than 200 words, a “description of the effect of the initiative . . . if the  
8 initiative . . . is approved by the voters.” The purpose of the description of effect is to help  
9 prevent voter confusion and promote informed decisions. It cannot be materially misleading, it  
10 cannot materially fail to identify the consequences of the initiative’s passage, and it must be  
11 straightforward, succinct, and nonargumentative.

12 32. The description of effect is materially misleading and materially fails to identify  
13 the consequences of the initiative’s passage in multiple ways.

14 33. First, the description of effect describes the term “human being” in a confusing  
15 manner and in a way that is not consistent with its commonly, or legally, understood meaning.

16 34. Second, the description of effect fails to explain that the initiative would amend  
17 multiple provisions of the Nevada Constitution and of Nevada law.

18 35. Third, the description of effect fails to advise voters that it seeks to take away  
19 existing legal rights under the federal and state constitutions and Nevada law, including a prior  
20 voter referendum regulating abortion. Specifically, it fails to advise voters of material  
21 consequences that could flow from passage of the initiative including banning all abortions;  
22 banning common forms of birth control; and banning treatments for ectopic pregnancy,  
23 miscarriage, and infertility – as well as prohibiting stem-cell and other biomedical research.

24 // // //



1 36. Finally, the description of effect inaccurately and prejudicially suggests that the  
2 initiative would create new protections for the elderly and sick.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs pray that this Court:

5 1. declare that the initiative petition is invalid for failing to comply with the single-  
6 subject requirement set forth in Nevada Revised Statutes Sections 295.009(1)(a) and (2);

7 2. declare that the initiative petition is invalid because it is an impermissible attempt  
8 to revise the constitution by citizen initiative, which is not authorized under Article 19, Section 2  
9 or Article 16, Section 2 of the Nevada Constitution;

10 3. declare that the initiative petition is invalid because the description of effect is  
11 inaccurate and wholly misleading in violation of Nevada Revised Statutes Section 295.009(1)(b);

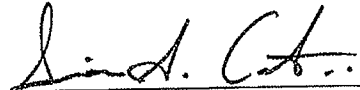
12 4. enjoin Defendant Miller from placing the initiative on the 2010 general election  
13 ballot;

14 /././.  
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22 /././.  
23 /././.  
24 /././.

- 1 5. award Plaintiffs' their reasonable costs and attorneys' fees; and
- 2 6. grant such other relief as the Court deems appropriate.

3 DATED this 12<sup>th</sup> day of November 2009.

4 **KAEMPFER CROWELL RENSHAW GRONAUER**  
 5 **& FIORENTINO**

6 BY: 

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 (212) 549-2633

22 ***Attorneys for Plaintiffs***

23 \*Application for Pro Hac Vice forthcoming

24 \*\*Application for Pro Hac Vice submitted to Nevada State Bar

## INDEX TO EXHIBITS

Exhibit Number	Description	No. of Pages
1	Initiative Petition	2

EXHIBIT 1

EXHIBIT 1

ROSS MILLER  
 SECRETARY OF STATE

2009 OCT 21 PM 2:11

State of Nevada

**Initiative Petition**

The People of the State of Nevada do enact as follows:

RESOLVED, That a new section designated Section 23 be added to Article 1 of the Constitution of the State of Nevada to read as follows:

**"In the great state of Nevada, the term 'person' applies to every human being."**

**DESCRIPTION OF EFFECT**

The Nevada constitution states, "No person shall be deprived of life, liberty or property, without due process of law." Currently, some 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.

While the state has no authority to grant inalienable rights, it has the obligation to protect them.

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

This amendment benefits all Nevadans by guaranteeing, as envisioned by our founding fathers, that no one shall be deprived of life, liberty or 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.

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

County of \_\_\_\_\_ (Only registered voters of this county may sign below)

		Petitioner District	
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	CITY	COUNTY
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	CITY	COUNTY
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	CITY	COUNTY
4	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	CITY	COUNTY
5	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	CITY	COUNTY
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	YOUR SIGNATURE	CITY	COUNTY
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	YOUR SIGNATURE	CITY	COUNTY

**Initiative Petition**

**State of Nevada**

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	YOUR SIGNATURE	CITY	COUNTY
12	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE	CITY	COUNTY

**THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED.**

**AFFIDAVIT OF CIRCULATOR  
(TO BE SIGNED BY CIRCULATOR)**

STATE OF NEVADA \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, (print name) being first duly sworn or having affirmed under penalty of perjury, depose and say: (1) that I reside at \_\_\_\_\_ (print street, city and state)  
 (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe each person who signed was at the time of signing a registered voter in the county residence; (6) the number of signatures thereon is \_\_\_\_\_ and (7) that each signer had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Subscribed and sworn to or affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_ Signature of Circulator

Notary Public or person authorized to administer oath