

BALLOT INITIATIVE LAW– VALIDITY AND REVIEW

Summary:

Appellants appealed a district court order that allowed the Las Vegas City Council to withhold two measures from a ballot. Appellants said the City Council did not have the authority to withhold the measures because of substantive concerns. Appellants also argued that the measures complied with Nevada statutes governing the content of ballot initiatives.

Disposition/Outcome:

Rejected in part and affirmed in part. This court rejected the district court's decision that a City Council could keep a measure off a ballot because of substantive concerns. This court affirmed all other parts of the district court's decision, including its application of two statutes to municipal ballot initiatives and a finding that neither measure complied with Nevada law.

Factual & Procedural History:

Two associations that objected to a city hall redevelopment project in Las Vegas circulated petitions for ballot initiatives. The measures aimed to put limits on public financing for such projects. On January 22, 2009, the organizations submitted the petitions to the Las Vegas City Clerk with more than twice the minimum number of signatures to put a pair of ballot initiatives to city voters. However, the Las Vegas mayor already had announced on December 19, 2008, that the measures would not appear on the ballot.

On March 4, 2009, the Las Vegas City Council announced it would not place the measures on the ballot. The council members did not claim the petitions lacked sufficient signatures or were procedurally invalid. Instead, the council drew support from an opinion by the City Attorney's office.

Less than a week later, the organizations filed in the Nevada Supreme Court an original petition for a writ of mandamus, arguing that time restraints required immediate supreme court action. The supreme court allowed in opposing briefs and heard oral arguments. The supreme court then denied the mandamus petition, suggesting that the organizations seek expedited proceedings through the district court.

On April 10, 2009, the organizations sought mandamus and declaratory relief in the district court. A hearing took place on April 15 and 16, 2009. Notably, the Las Vegas City Attorney pointed to shortcomings in the measures that warranted the City Council keeping them off the ballot. The district court concluded on April 17, 2009, that it could not compel the City to place invalid measures on the ballot. The court found both municipal ballot questions were invalid under NRS 295.009. That statute limits a ballot item to a single subject and requires a description of effect to accompany the item.

Discussion:

Standard of review

The standard of review is de novo, even though an abuse of discretion standard usually applies when reviewing a district court's decision to deny extraordinary writ relief.²

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1. The ministerial duty to place procedurally proper measures on the ballot

The district court sided with the City's stance that city leaders could evaluate the ballot measures. In doing so, it rejected the organizations' argument that the City Clerk had a ministerial duty to place on the ballot measures that met procedural requirements.

a. Procedural requirements for placing measures on the ballot

After collecting enough signatures to put a proposed ordinance on a Nevada ballot, a party submits those signatures to the City Clerk's office.³ Upon verifying the signatures, the City Clerk gives a certificate to the City Council that "is a final determination as to the sufficiency of the petition."⁴ However, a district court may review that "final determination" on an expedited basis.⁵ Meanwhile, the City Council must decide whether to enact the proposed ordinance itself or to put the proposal on the next ballot.⁶

Nothing in the statutory scheme gives the City Council authority to withhold a procedurally adequate measure from its ballot.

b. Under authority interpreting similar statutes, the City has no discretion to refuse to place procedurally valid measures on the ballot

Decisions in neighboring jurisdictions comport with the plain language of Nevada's statutory provisions that prohibit a City Council from withholding a procedurally valid measure from a ballot.

The Arizona Supreme Court in *Williams v. Parrack*⁷ affirmed a mandamus order to the Phoenix City Council that required the body to place a proposed initiative on a ballot. The council had argued that the measure was beyond its powers to handle initiatives, but a city charter section bound the council to put the measure to the voters.⁸

Similarly, California case law does not allow government bodies to reject ballot initiatives because of concerns about the substantive validity of the underlying measures. Instead, California requires that a court address those substantive concerns.⁹

c. Nevada's precedent does not support the City's contention that it has no ministerial duty to place procedurally valid measures on the ballot

Two Nevada cases presented by the respondents – and subscribed to by the district court – do not address a city council's ministerial duty under NRS 295.215(1) and therefore do not absolve the City Council's actions. This opinion rejects the trial court's ruling.

The first case, *State v. Reno City Council*,¹⁰ was published in 1913 and did not address the statutes present in this case.

² See *Nevadans for Prop. Rights v. Sec'y of State*, 141 P.3d 1235, 1240 (2006).

³ NEV. REV. STAT. 295.205 (2007).

⁴ NEV. REV. STAT. 295.210(2) (2005).

⁵ NEV. REV. STAT. 295.210(4) (2005).

⁶ NEV. REV. STAT. 295.215(1)-(2) (2005).

⁷ *Williams v. Parrack*, 319 P.2d 989, 990 (Ariz. 1957).

⁸ *Id.*

⁹ See *Schmitz v. Younger*, 577 P.2d 652 (Cal. 1978), *Farley v. Healey*, 431 P.2d 650, 653 (Cal. 1967)

¹⁰ *State v. Reno City Council*, 136 P. 110 (1913).

The second case, *Glover v. Concerned Citizens for Fuji Park*,¹¹ addressed other issues besides the ministerial duties imposed by NRS 295.215(1) that applied to a situation in which the Carson City Board of Supervisors refused to place a measure on a ballot.

Under the modern statutory scheme, the only way a city council can keep a procedurally sufficient measure off a ballot is to obtain a district court judgment that the proposed measure is invalid. Because the city had a mere ministerial duty – and not a duty to evaluate the substantive validity of the measures – respondents did not have the burden of proof to demonstrate, at the district court, that the measures were clearly invalid.

2. Application of two Nevada statutes to the municipal ballot measures

a. NRS 295.009's single-subject and description-of-effect requirements apply to municipal ballot measures

NRS 295.009 requires each petition for initiative or referendum to (1) concern a single subject and (2) describe its effect in no more than 200 words. The statute's plain language¹² and purposes¹³ do not indicate that it applies only to statewide measures, so therefore the statute applies to municipal ballot measures.

b. NRS 295.061 does not apply to municipal measures, either directly or through Las Vegas City Charter section 5.030

NRS 295.061 imposes a deadline for bringing challenges to a measure that may violate NRS 295.009. The plain language of NRS 295.061 indicates it only applies to statewide initiatives. It specifically refers to measures filed with the Secretary of State and directs challenges to the First Judicial District Court. Therefore, NRS 295.061 applies only to statewide measures¹⁴ and did not prevent the Las Vegas City Council from raising concerns about the two measures.

3. Compliance of ballot initiatives with Nevada law

a. The Taxpayer Accountability Initiative violates the single-subject requirement

The appellant organizations said the initiative involved only one subject: "voter approval for use of taxpayer funds to finance large new development projects." Respondents said the initiative concerned lease-purchase agreements and redevelopment plans.

An initiative meets the single-subject requirement if its elements are "functionally related" and "germane" to each other and to the initiative's purpose or subject.¹⁵

The description accompanying the Taxpayer Accountability Initiative never used the words "taxpayer" or "accountability," nor did it articulate an overarching purpose or theme. The district court determined the initiative involved two unrelated sections. This court decried the use

¹¹ *Glover v. Concerned Citizens for Fuji Park*, 50 P.3d 546 (2002), *overruled in part on other grounds by* *Garvin v. Dist. Ct.*, 59 P.3d 1180, 1190 n.71 (2002).

¹² A statute should be given its plain meaning, unless doing so violates the act's spirit. *McKay v. Bd. Of Supervisors*, 102 Nev. 644 (1986).

¹³ The purpose of this statute is described in *Nevadans for Prop. Rights*, 141 P.3d at 1242 and *Nevadans for Nevada v. Beers*, 142 P.3d 339, 345 (2006).

¹⁴ City councils are responsible for enacting their own deadlines for challenging single-subject and description-of-effect requirement under NEV. REV. STAT. 293C.110.

¹⁵ NEV. REV. STAT. § 295.009 (2005); *Nevadans for Prop. Rights*, 141 P.3d at 1243.

of "excessive generality" to put two issues on a ballot.¹⁶ Therefore, this court found the Taxpayer Accountability Initiative was invalid.

b. The Redevelopment Reform Referendum's description of effect is materially misleading

The substantive validity of this referendum was ripe for review before election because it was a statutory requirement under NRS 295.009(1)(b). The district court determined that the referendum was materially misleading¹⁷ because it incorrectly implied that it would forestall only future redevelopment projects. In fact, it would have halted the City of Las Vegas' ongoing redevelopment project. The district court was correct in its finding of fact and its ruling that the referendum was invalid.

Conclusion:

The City Council had a duty to place the measures on the ballot, regardless of its objections to the measures' substantive validity. The district court's findings that the measures were substantively invalid were affirmed because they violate the single-subject and description-of-effect requirements in NRS 295.009, which applies to municipal ballot initiatives.

¹⁶ The decision comports with case law in California such as *Senate of the State of Cal. v. Jones*, 988 P.2d 1089 (Cal. 1999)

¹⁷ A violation of NEV. REV. STAT. § 295.009(1)(b) (2005) would occur. The statute requires a description summarizing the proposed law.