

*U. and Community C. Sys. of Nev. v. Nevadans For Sound Gov't., 120 Nev. Adv. Op. 81 (Nov. 10, 2004).*¹

CONSTITUTIONAL LAW

Summary

Respondent, Nevadans for Sound Government (NSG) is a political organization that gathers signatures on government owned property. NSG filed an action in district court alleging actions taken by Regional Transportation Commission of Washoe County (RTC) and University and Community College System of Nevada (UCCSN) unlawfully restricted access to RTC and UCCSN properties for signature collecting purposes. The district court concluded that certain actions by appellants unlawfully violated respondent's constitutional and statutory rights. The supreme court reversed the decision that respondent's constitutional rights were violated, and partially affirmed the decision that its statutory rights were violated.

RTC Property

RTC required that signature collectors submit a request form at least three days before the date of the intended signature collecting activity. The form included a guideline that designated areas for signature gathering "such that ... [patrons] may use another path that does not go by signature gatherers or may pass them at a reasonable distance." However, these precise locations were not stated on the form. The request form also asked for other information including: the name, telephone number, organization, and subject for the petition. It also asked whether the petition is for city, county, or state elections. RTC required that the signature collector sign the form, thereby agreeing to comply with RTC guidelines.

On May 6, 2004 an NSG director and her companions began gathering signatures at the RTC premises. RTC employees told the NSG director that she must sign the authorization form, but she refused. Eventually, the signature gatherers were arrested by Reno police officers.

UCCSN Property

Like RTC, University of Nevada Las Vegas (UNLV) also has a form that signature collectors must sign. On May 18, 2004 an NSG signature gatherer arrived at UNLV to collect signatures near Artemis W. Ham Concert Hall (Ham Hall). That same night, a private political event was scheduled at Ham Hall. The signature gatherer was told by UNLV police that he had to leave UNLV property. He refused to leave, and was subsequently arrested.

ISSUE I – Constitutional Challenge

Whether the RTC and UNLV policies are reasonable under a constitutional analysis. Specifically, the policies concerning advance notice, identification of the

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petition's subject and the petition circulator, pre-authorization, physical placement of designated signature-gathering area, and the requirement that a petition circulator agree, in writing, to abide by certain guidelines.

DISPOSITION I

All of the restrictions are reasonable and all are related to RTC's and UCCSN's goals of promoting safety. There is no indication that either RTC or UCCSN policies were applied to NSG in a discriminatory matter.

ISSUE II – Statutory Challenge

Whether the RTC and UNLV policies comport with NRS 293.127565, the Nevada statute regulating use of public buildings to gather signatures.

DISPOSITION II

UNLV's policy did not infringe upon NRS 293.127565 because Ham Hall was occupied by a private party for a private event. Because Ham Hall was in use for private purposes, it was not considered a public building, and did not fall within the statute's purview.

By contrast, RTC's policy unreasonably denied NSG the full enjoyment of its statutory right to gather signatures. RTC's restriction requiring a petition circulator to agree to abide by its guidelines worked to unreasonably deny NSG its statutory right to use the RTC premises for signature-gathering purposes. The strict application of a precise advance notice requirement had the potential to unreasonably deny petition circulators their statutory right to gather signatures in government buildings. Furthermore, the RTC provision requiring that the designated area be one that may be completely avoided by the public had the potential to defeat the public building accessibility purposes of the statute.

Commentary

State of the Law Before *Nevadans For Sound Gov't.*

Before *Nevadans For Sound Gov't.* it was unclear what restrictions were constitutionally and statutorily appropriate to place upon petition gatherers working on government property.

Effect of *Nevadans For Sound Gov't.* on Current Law

Nevadans For Sound Gov't. interprets NRS 293.127565 liberally to provide petition circulators areas at public buildings in which to conduct signature-gathering activities. It establishes that any policy which restricts a petition circulator must comport with the spirit and intent of NRS 293.127565.

CONCLUSION

A restriction placed upon petition gatherers at public buildings that is allowed under a constitutional analysis, may nevertheless be inappropriate under NRS 293.127565.