IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON PHILLIPS, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR BRITTANY PHILLIPS; JESSE ORNELAS, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR HOWARD WATTS; THE REVEREND JOHN JEFFERY AUER, III; ROBERT A. FULKERSON; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; THE NEVADA STATE AFL-CIO; THE NEVADA YOUNG ACTIVIST PROJECT; AND THE STATE & LOCAL CHAPTER OF THE NATIONAL ORGANIZATION FOR WOMEN, NEVADA NOW AND SOUTHERN NEVADA NOW,
Petitioners,
vs.
DEAN HELLER, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF THE STATE OF NEVADA,
Respondent.

No. 43796

FILED

AUG 23 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus seeks to prevent the Secretary of State from placing an initiative to "Keep Our Doctors in Nevada" ("the initiative") on the November 2004 ballot. Petitioners contend that the initiative violates several provisions of the state and federal constitutions and that it misleads voters because it lacks information necessary to an understanding of the measure, and thus the initiative should be removed from the ballot.

According to the petition, the Secretary of State validated the required number of signatures for the initiative on December 3, 2002. Under the Nevada Constitution, the initiative then went to the Nevada

Legislature, which had forty days from the beginning of its 2003 session to take action on the initiative.[1] The Legislature failed to take action on the initiative, and an alternative measure failed to pass both houses before the end of the session. No further action was taken on the initiative after June 3, 2003. Thus, in accordance with the constitution, the initiative was placed on the ballot for the next-following general election in November 2004.[2] The instant writ petition was filed on August 18, 2004.

Petitioners present no reason or excuse for why they waited more than a year since it became apparent that the initiative would appear on the November 2004 ballot to file this petition, and instead filed it only two weeks before ballots are scheduled to be printed. In addition, if the initiative should pass, we would have ample opportunity to address the constitutionality of its provisions. For example, petitioners could bring a declaratory relief action,[3] or a medical malpractice plaintiff could challenge the initiative's provisions as applied to his or her case. Finally, petitioners present many complex arguments concerning the initiative's constitutionality, which should not be evaluated in haste. Were we to entertain this petition on the merits, we would be forced to either rush our consideration of important issues or disrupt the election proceedings by delaying our decision beyond the deadlines already in place.[4] We are not

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[1]See Nev. Const. Art. 19, § 2(3).

[2]See id.

[3]We make no determination at this time as to whether all of the petitioners would have standing to bring such an action.

[4]We note that our resources have already been strained due to the many other ballot issues already pending before us, all of which must be expedited.

persuaded that we should intervene in these circumstances, especially when petitioners' tardiness caused the "emergency," and they have offered no explanation for why they are so late in seeking relief.

We were faced with similar circumstances in Beebe v. Koontz.[5] The petitioners in Beebe were aware for a year or more that a referendum was to be placed on the November 1956 ballot, but they waited until October 4, 1956, to file their petition. We noted that the petition raised complicated issues, and that the parties cited a myriad of cases from this and other jurisdictions that would need to be properly analyzed to reach a correct and reasoned result.[6] We further recognized that this court had entertained several last-minute ballot challenges over the years, and that some limit must be set in terms of this court's accommodation of such litigants.[7] We thus concluded that:

> [w]here resort to this court is had to prevent an issue from being presented for popular election and when such resort is tardily had without showing of good cause for such lateness and when, due to such tardiness and the nature of the issues of law presented, orderly appellate consideration cannot be had without disruption of the process of election, this court will refuse determination of those issues on the merits.
>
> In the instant cases no explanation has been given to this court for the delay in seeking our determination upon the issues involved. One year has elapsed since the referendum petition was

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[5]72 Nev. 247, 252-54, 302 P.2d 486, 489-90 (1956).

[6]Id. at 249-52, 302 P.2d at 487-89.

[7]Id. at 252, 302 P.2d at 489.

filed with the secretary of state. The issues should then have become apparent.[8]

Similarly, in this case, the issues concerning the initiative have been apparent since the last legislative session ended in June 2003. Petitioners have offered no explanation, reason or excuse for why they waited well over a year to seek relief from this court. Finally, if the initiative passes, we may address petitioners' arguments concerning its constitutionality through other proceedings that will permit thorough, reasoned consideration.[9] Accordingly, we decline to exercise our discretion to entertain this writ petition on the merits at this time. We therefore deny the petition.[10]

It is so ORDERED.

Shearing, C.J.

Agosti, J.

Rose, J.

Becker, J.

Maupin, J.

Douglas, J.

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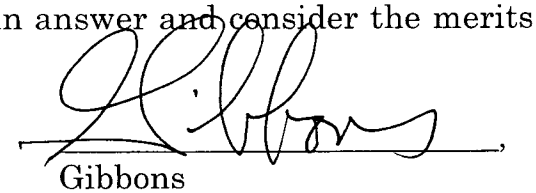
[8]Id. at 252-53, 302 P.2d at 489.

[9]See NRS 34.170 (providing that a writ of mandamus is appropriate when no plain, speedy or adequate remedy at law exists); Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646. 5 P.3d 569 (2000).

[10]See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (noting that issuance of a writ of mandamus is discretionary with this court).

GIBBONS, J., dissenting:

I dissent. I would order an answer and consider the merits of this petition.



_____, J.
Gibbons

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