

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERMAN RATTNER; NANCY
NOLETTE; FRANK L. FISHER; LINDA
ROBERTSHAW; DON L. SHETTEL, JR.;
AND DOLORES GABAY,
Appellants,
vs.
THE CITY OF BOULDER CITY AND
COUNTY OF CLARK,
Respondents.

No. 47795

FILED

SEP 08 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a ballot initiative action. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

The underlying action concerns approximately 107,412 acres of land in the Eldorado Valley, in the southwest portion of Boulder City. In 1995, respondent City of Boulder City acquired the Eldorado Valley land from the Colorado River Commission of Nevada. Thereafter, Boulder City dedicated to respondent Clark County an easement on approximately 85,000 acres of the land for an endangered species preserve.

To force Boulder City to either sell or preserve the Eldorado Valley land, appellants, six Boulder City residents comprising the Petitioner's Committee, filed with the Boulder City clerk six "Affidavit[s] of Petitioner's Committee for Purpose of Initiative," requesting to place the ensuing initiative petitions on Boulder City's general election ballot. Thereafter, the Petitioner's Committee collected signatures on four of these petitions.

Two petitions, the so-called sell initiatives, propose that Boulder City's charter be amended or that an ordinance be enacted to sell

the Eldorado Valley land (i.e., one sell initiative proposes to amend Boulder City's charter, while the other proposes to enact an ordinance). The other two petitions, the so-called preserve initiatives, propose that Boulder City's charter be amended or that an ordinance be enacted to preserve the Eldorado Valley land in perpetuity.

The Petitioner's Committee collected the requisite number of signatures on all four initiative petitions, submitting them to the Boulder City clerk for validation. Before the clerk determined that sufficient signatures had been gathered, Boulder City instituted the underlying action seeking declaratory, injunctive, and extraordinary relief, to prevent the clerk from placing the initiative petitions on the ballot. The clerk subsequently validated the petitions. Thereafter, Boulder City filed a motion for "Declaratory Order, Injunction, and Writ of Mandamus or Prohibition." The Petitioner's Committee opposed the motion and moved for summary judgment. Meanwhile, respondent Clark County, based on its easement on the Eldorado Valley land, moved to intervene.

The district court granted Boulder City's and Clark County's motions and denied summary judgment to the Petitioner's Committee. In particular, the district court's order declared the sell and preserve initiatives invalid, and granted Boulder City injunctive and extraordinary relief prohibiting the initiatives from being placed on the ballot. In this, the district court reasoned that the initiatives concerned administrative acts not within the electorate's initiative power. The Petitioner's Committee has appealed.

An initiative or referendum is subject to a pre-election challenge based on the threshold constitutional requirement that it

propose only legislation.¹ Specifically, in Garvin v. District Court, we reaffirmed that “the initiative and referendum powers reserved to the people, although broad, are limited to legislation and do not extend to administrative matters.”² Garvin also reiterated the test adopted in Forman v. Eagle Thrifty Drugs & Markets for distinguishing between legislative and administrative measures:

“An ordinance originating or enacting a permanent law or laying down a rule of conduct or course of policy for the guidance of the citizens or their officers and agents is purely legislative in character, and referable, but an ordinance which simply puts into execution previously-declared policies, or previously-enacted laws, is

¹Garvin v. Dist. Ct., 118 Nev. 749, 766, 59 P.3d 1180, 1191 (2002).

²Id. at 751, 59 P.3d at 1181. The Petitioner’s Committee maintains that limiting the electorate’s initiative power to legislative acts violates the Nevada and United States Constitutions. With respect to the United States Constitution, the Petitioner’s Committee cites the United States Supreme Court’s decision in Cuyahoga Falls v. Buckeye Community Hope Foundation, 538 U.S. 188 (2003). This decision, however, simply provides that, “as a matter of federal constitutional law,” the United States Supreme Court has rejected the distinction between legislative and administrative initiatives and referenda. Id. at 199. This decision, moreover, concurrently acknowledges that the distinction may exist as a matter of state law. Id.

With respect to the Nevada Constitution, article 19, section four pertinently states that “[t]he initiative and referendum powers . . . are . . . reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind.” The Nevada Constitution thus “[b]y its plain terms” limits the electorate’s initiative power to legislative matters. See Garvin, 118 Nev. at 763, 59 P.3d at 1189. Accordingly, the Petitioner’s Committee’s arguments are unavailing.

administrative or executive in character, and not referable.”³

Indeed, as this court has clarified, “regardless whether an initiative proposes enactment of a new statute or ordinance, or a new provision in a constitution or city charter, or an amendment to any of these types of laws, it must propose policy—it may not dictate administrative details.”⁴ This requirement prevents the electorate from destroying or impeding the efficient administration of governmental affairs.⁵

On appeal, the Petitioner’s Committee argues that the sell and preserve initiatives propose legislative acts because, together, the initiatives present three “clear and profound” policy choices: 1) to prevent virtually all development in the Eldorado Valley land; 2) to vastly expand

³89 Nev. 533, 537, 516 P.2d 1234, 1236 (1973), overruled on other grounds by Garvin, 118 Nev. 749, 755, 59 P.3d 1180, 1184 (quoting Denman v. Quin, 116 S.W.2d 783, 786 (Tex. App. 1938)).

⁴Citizens for Train Trench Vote v. Reno, 118 Nev. 574, 583, 53 P.3d 387, 392 (2002).

⁵See Glover v. Concerned Citizens for Fuji Park, 118 Nev. 488, 495, 50 P.3d 546, 550 (2002); accord Hopping v. Council of City of Richmond, 150 P. 977, 979 (Cal 1915):

To allow [the initiative power] to be invoked to annul or delay executive conduct would destroy the efficiency necessary to the successful administration of the business affairs of a city. In many cases it would entirely prevent the exercise of the executive power necessary to carry out the acts determined upon by the legislative department. In the absence of a very clear declaration to the contrary, it must be presumed that the power of [initiative] was intended to apply solely to the legislative powers of the city.

development in the Eldorado Valley land, beyond the “present nominal policy of limiting development;” and 3) to “permit the [Boulder City] council to continue the present haphazard, ad hoc course they have been following.”

As the Petitioner’s Committee’s initiatives concern only a single parcel, however, the initiatives are necessarily administrative. We have consistently held that an initiative dictating the use or non-use of specific municipal property fails to contain the policy elements necessary to bring the proposal within the electorate’s initiative power.⁶ In particular, in Garvin, we overruled Forman to the extent that it suggested city zoning processes were never subject to the electorate’s initiative powers.⁷ In so doing, however, we noted that an initiative creating a general land-use policy (establishing a commercial buffer zone around elementary and junior high schools) seemed legislative, but the land-specific referendum at issue in Forman (merely rezoning a single parcel owned by one entity) seemed administrative.⁸ Garvin likewise reaffirmed

⁶See Garvin, 118 Nev. at 755, 59 P.3d at 1184 (recognizing that an initiative proposing a general zoning policy seemed legislative, while a land-specific zoning referendum seemed administrative); Fuji Park, 118 Nev. at 495, 50 P.3d at 550 (2002) (concluding that an initiative calling for the preservation of specific city-owned property, as opposed to setting forth a new course of policy regarding the manner in which the city made real property decisions, was administrative); Train Trench, 118 Nev. at 583-84, 53 P.3d at 393 (concluding that an initiative prohibiting the construction of a particular public works project, rather than establishing a course of policy regarding public works projects, was administrative).

⁷See Garvin, 118 Nev. at 765, 59 P.3d 1190.

⁸Id. at 755, 59 P.3d at 1184.

Glover v. Concerned Citizens for Fuji Park's⁹ and Citizens for Train Trench Vote v. Reno's¹⁰ conclusions that land-specific measures are administrative and thus excepted from the electorate's initiative power.¹¹ Consequently, we have expressly left intact the prohibition on administrative, land-specific acts.

The Petitioner's Committee's sell initiatives call for the transfer and sale of a specific parcel of municipal land, albeit a substantial one. Therefore, the initiatives do not set forth a new course of policy to guide citizens or their officers and agents regarding the way in which Boulder City makes land use decisions. Put differently, though the sell initiatives dictate Boulder City's approach as regards the Eldorado Valley land, they do not set a concrete course of policy to guide Boulder City's land use decisions generally.

And the sell initiatives dictate transitory, administrative details concerning the proposed land sale, specifically directing the following: that the city settle all claims concerning the land; that the city transfer the land, for \$1.00, to a trust; that a non-profit, tax-exempt trust be established to receive the land; that the Petitioner's Committee serve as trustees; that the city cooperate with the Petitioner's Committee to execute any documents and to make any zoning changes or any de-annexations, as needed; that the land be sold for the highest value; that 90 percent of the resulting proceeds be distributed to certain Boulder City

⁹118 Nev. 488, 50 P.3d 546.

¹⁰118 Nev. 574, 53 P.3d 387.

¹¹See Garvin, 118 Nev. at 765 nn. 71-72, 59 P.3d at 1190-91, nn.71-72.

residents; and that 10 percent of the resulting proceeds be allocated to the trustees, Boulder City debt, education, and the community, among other things. The significant time and resources implicated by implementing these administrative details illuminates the policy underlying the administrative act exception: to prevent the electorate from destroying or impeding the efficient administration of governmental affairs.¹² Accordingly, because the sell initiatives concern specific municipal property, fail to define a concrete course of policy regarding Boulder City's land use decisions and, moreover, set forth the administrative details with respect to the sale of this specific municipal property, the sell initiatives propose measures not subject to the electorate's initiative powers.¹³

The preserve initiatives likewise propose measures not subject to the electorate's initiative power. Specifically, the preserve initiatives attempt to preserve the Eldorado Valley land in perpetuity, prohibiting Boulder City from acting to "sell, lease, or otherwise dispose" of the land and directing Boulder City to preserve the Eldorado Valley land exclusively for a desert tortoise preserve, public recreation land, and solar power peaking stations. These restrictions mirror a recital from the Eldorado Valley land sale contract entered into when Boulder City

¹²See Fuji Park, 118 Nev. at 495, 50 P.3d at 550.

¹³The Petitioner's Committee, citing the Texas Court of Appeals decision in Humphrey v. Balli, 61 S.W.3d 519 (Tex. App. 2001), argues that land sales are legislative acts. But Humphrey is factually distinguishable from the underlying matter and not binding authority on this court. As discussed, this court has consistently concluded that initiatives concerning a city's decisions with respect to particular municipal property do not constitute legislative measures. See Fuji Park, 118 Nev. at 495, 50 P.3d at 550; Train Trench, 118 Nev. 583-84, 53 P.3d at 393.

acquired the land from the Colorado River Commission.¹⁴ But an initiative petition calling for the preservation of one specific municipal parcel does not meaningfully set forth a new course of policy to guide citizens or their officers and agents regarding the way in which a municipality makes decisions about its real property.¹⁵ In light of this rule set forth in Fuji Park and reaffirmed in Garvin, the preserve initiatives fail to implement a new permanent course of policy to guide Boulder City officials' future land use decisions.¹⁶ Thus, the Petitioner's Committee's preserve initiatives also concern matters not within the electorate's initiative power.¹⁷

¹⁴This recital notwithstanding, under section 144(1) of Boulder City's charter, the Eldorado Valley Land currently may also be used for "utility lines, easements, roads, rights-of-way, communication towers, antennas and similar governmental uses and for existing lease and lease options." Under section 144(2), moreover, the Eldorado Valley land, with voter approval, may be used for any "residential, commercial or industrial development . . . [or any use] other than the uses listed in section 1."

¹⁵See Fuji Park, 118 Nev. at 495, 50 P.3d at 550. We note that, with respect to the conservation easement—nearly four-fifths of the Eldorado Valley land—the preserve initiatives propose nothing new. The conservation easement grant already limits use of the land burdened by the easement in the same way that the preserve initiatives propose. And as discussed, an initiative must change policy, proposing a new course to guide municipal decision-making. Initiatives must not simply reaffirm existing policy. Id.

¹⁶See Garvin, 118 Nev. at 765 n.71, 59 P.3d at 1190 n.71; Fuji Park, 118 Nev. at 495, 50 P.3d at 550.

¹⁷The Petitioner's Committee asserts that, if an initiative concerns legislative and administrative acts, as the Petitioner's Committee contends the sell and preserve initiatives, at the very least, do, the legislative aspect should prevail and, in and of itself, warrants placement of the initiative on the ballot. The Petitioner's Committee cites Garvin in

continued on next page . . .

Accordingly, because we conclude, as a threshold matter, that neither the sell nor preserve initiatives propose measures subject to the electorate's initiative power, we affirm the district court's judgment.

It is so ORDERED.

Rose, C.J.
Rose

Becker, J.
Becker

Maupin, J.
Maupin

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

... continued

support of this argument: "the initiative power should be broadly construed with all doubts resolved in its favor." 118 Nev. at 760, 59 P.3d at 1187 (citing Associated Home Builders v. City of Livermore, 557 P.2d 473, 480 (Cal. 1976)). This statement in Garvin, however, was not establishing an analytical framework to determine an initiative's threshold validity as the Petitioner's Committee suggests, but rather, was describing the analysis underlying a decision of the California Supreme Court. Id. And to the extent that Garvin may be interpreted to adopt this approach for determining an initiative's threshold validity, Garvin concurrently reaffirmed the rule in Fuji Park and Train Trench—that initiatives concerning specific municipal land do not constitute legislative acts. Therefore, even broadly construing the electorate's initiative power does not alter the analysis. Garvin, 118 Nev. at 765 nn.71-72, 59 P.3d at 1190-91 nn.71-72.

cc: Hon. Kathy A. Hardcastle, District Judge
Travis Chandler
Boulder City Attorney
Clark County District Attorney David J. Roger/Civil Division
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk