

IN THE SUPREME COURT OF THE STATE OF NEVADA

WE THE PEOPLE NEVADA, BY AND
THROUGH ITS CHAIRMAN,
SHARRON ANGLE,
Petitioner,

vs.

ROSS MILLER, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF STATE
IN AND FOR THE STATE OF NEVADA,
Respondent.

No. 51735

FILED

JUL 16 2008

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges the constitutionality of NRS 295.056(3), which requires that a proposed initiative amending the Nevada Constitution be submitted “not later than the third Tuesday in May of an even-numbered year.”

In September 2007, petitioner We the People Nevada, a political action committee, through its chair, Sharron Angle, filed with respondent, the Secretary of State, its initiative petition entitled “The Nevada Property Tax Reform Initiative for Nevada.” The initiative was challenged twice in district court and each time the complainant stipulated to dismiss the challenge in exchange for We the People’s withdrawal of the initiative. Subsequently, in February 2008, We the People filed a third initiative petition that went unchallenged and it began circulating that initiative for signatures.

After circulating the initiative, NRS 295.056(3) required We the People to submit the requisite number of valid signatures, in proper

form, to the county clerk's office in each county where signatures were collected by May 20, 2008.¹ According to We the People, the individual delivering the required documentation to the Clark County Clerk's Office missed the deadline.² Although the Clark County Clerk accepted the documentation and apparently transmitted the signatures to the Secretary of State, the Secretary of State rejected the signatures as untimely. This writ petition followed. The Secretary of State has filed an answer, as directed.³

Generally, writs of mandamus and prohibition are available when no plain, speedy, and adequate legal remedy exists.⁴ A writ of mandamus is available to compel the performance of an act that the law

¹See NRS 295.056 (providing that initiatives proposing to amend the constitution "must be submitted not later than the third Tuesday in May of an even-numbered year" and requiring all documents submitted to more than one county clerk be submitted on the same day).

²We the People also acknowledges that it did not have enough signatures to have the initiative certified for the November 2008 ballot.

³Nevadans for Nevada, an organization formed by Nevada AFL-CIO, and the Legislature of the State of Nevada have each filed an amicus brief. The Nevada State Education Association has submitted an amicus brief and the Nevada Eagle Forum, Nevadans for Sound Government, Nevada Committee for Full Statehood, Nevada Concerned Citizens, Citizens in Action, Foundation to Protect and Defend the Nevada Constitution, Independent American Party, Nevada Families Education Foundation, Nevada Republican Liberty Caucus, Title of Liberty Foundation, People Organized for the Next Generation, and the Nevada Freedom Coalition, have jointly submitted an amicus brief. We grant the June 11 and June 19, 2008, motions for leave to file amicus briefs and we direct the clerk of this court to file the briefs provisionally received on those dates.

⁴See NRS 34.170; NRS 34.330.

requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion.⁵ The writ of mandamus's counterpart, the writ of prohibition, is available to arrest the extra jurisdictional exercise of judicial functions.⁶ Further, a writ may issue when "an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction."⁷ Both mandamus and prohibition are extraordinary remedies, and whether a petition will be considered is within our sole discretion.⁸ As petitioner, We the People bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.⁹

The primary issue raised in this writ petition concerns the interpretation of constitutional and statutory provisions. A statute's constitutionality is subject to de novo review.¹⁰ A presumption of validity is given to statutes and the challenging party bears the burden of showing

⁵NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁶NRS 34.320.

⁷Business Computer Rentals v. State Treas., 114 Nev. 63, 67, 953 P.2d 13, 15 (1998).

⁸See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

⁹Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); NRAP 21(a).

¹⁰Nevadans for Nevada v. Beers, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006).

that a statute is unconstitutional.¹¹ This presumption is rebutted, however, when the challenger clearly shows the statute's invalidity.¹² Unless ambiguous, a statute's language is applied in accordance with its plain meaning.¹³ And when the legislature's intent is clear from the plain language, this court will give effect to such intention and construe the statute's language to effectuate, rather than nullify, its manifest purpose.¹⁴

The rules of statutory construction apply to the interpretation of a constitutional provision.¹⁵ This court has recognized that "[t]he Nevada Constitution should be read as a whole, so as to give effect to and harmonize each provision."¹⁶ Thus, when possible, the interpretation of a statute or constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results.¹⁷

According to *We the People*, NRS 295.056(3), which provides that an initiative proposing to amend the constitution "must be submitted

¹¹Id.

¹²Id.

¹³California Commercial v. Amedeo Vegas I, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003).

¹⁴Sheriff v. Luqman, 101 Nev. 149, 155, 697 P.2d 107, 111 (1985).

¹⁵Harvey v. Dist. Ct., 117 Nev. 754, 763, 32 P.3d 1263, 1269 (2001).

¹⁶Nevadans for Nevada, 122 Nev. at 944, 142 P.3d at 348.

¹⁷Nevada Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999) (applying statutory rules of construction to NRS 455.200-455.240 to resolve whether an employer was entitled to immunity under Nevada's worker compensation laws).

not later than the third Tuesday in May of an even-numbered year,” violates Article 19, Sections 2(4) and 3(2) of the Nevada Constitution. Article 19, Section 2(4), provides that an initiative petition proposing to amend the constitution be filed with the Secretary of State not less than 90 days before any regular general election. Article 19, Section 3(2) states that for purposes of conducting preliminary signature verification, initiative petitions cannot be required to be filed more than “65 days earlier than is otherwise required by this Article.” According to We the People, under those two provisions the earliest date to submit initiatives for signature verification is 155 days from the general election, which falls on June 2 this year. Because NRS 295.056(3) sets the submission date earlier than June 2, We the People asserts that it is unconstitutional and the statute’s prior version is revived, setting this year’s deadline for submitting initiatives as June 17, 2008.¹⁸ Consequently, We the People submitted additional signatures on June 17, 2008, after this writ petition

¹⁸See former NRS 295.056(3) (amended in 2007) (providing that initiatives proposing to amend the constitution be submitted “not later than the third Tuesday in June”). We the People agrees with the amici briefs filed by Nevadans for Nevada, the Nevada State Education Association and jointly by the Nevada Eagle Forum, Nevadans for Sound Government, Nevada Committee for Full Statehood, Nevada Concerned Citizens, Citizens in Action, Foundation to Protect and Defend the Nevada Constitution, Independent American Party, Nevada Families Education Foundation, Nevada Republican Liberty Caucus, Title of Liberty Foundation, People Organized for the Next Generation, and the Nevada Freedom Coalition, that if NRS 295.056(3) is rendered unconstitutional, the prior version of that statute is revived, making the statutory deadline for submission of initiatives June 17, 2008. Thus, We the People stated at the June 13, 2008, NRAP 33 prehearing conference that it is no longer arguing that August 6, 2008, is a valid date.

was filed in this court, to the Washoe County and Clark County clerks to have its additional signatures verified in the event that this court declares that NRS 295.056(3) is unconstitutional.

Respondent Secretary of State argues that a plain reading of Article 19, Sections 2(4) and 3(2) reveals that NRS 295.056(3) is constitutional because the May 20 deadline occurs more than 90 days before the general election. In its amicus brief, the Nevada Legislature asserts that Article 19, Section 2(4) demonstrates that the 90 days provided for in this section merely denotes the minimum amount of time before the election by which initiative petitions must be filed with the Secretary of State. Also, it argues that Article 19, Section 2(4) provides specific authorization for the Legislature to prescribe another date by which the initiative petitions must be submitted for signature verification.¹⁹

The Nevadans for Nevada amicus brief contends that writ relief is precluded by the doctrines of laches and equitable estoppel. As it relates to the laches doctrine, Nevadans for Nevada assert that We the People's chair, Sharron Angle, was aware of the amended deadline from the time of its proposal to enactment by the Legislature and thus the challenge to the statute's constitutionality should have been addressed earlier.²⁰ With respect to Nevadans for Nevada's argument that equitable

¹⁹See Nev. Const. Art. 19, § 2(4) ("The circulation of the petition shall cease on the day the petition is filed with the Secretary of State or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest.").

²⁰In determining whether the doctrine of laches should preclude consideration of a petition for mandamus, it must be demonstrated that

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estoppel bars any relief to We the People, the Nevadans for Nevada contend that Angle acquiesced to moving the submission deadline from June to May in exchange for shortening the deadline for challenges to initiatives.²¹ According to Nevadans for Nevada, We the People should not benefit from obtaining shorter deadlines to challenge initiatives and then attack the shorter filing deadline.

After considering the parties' arguments, the arguments of amici curiae, and the supporting documents, we conclude that NRS 295.056(3) is unconstitutional in light of Article 19, Sections 2(4) and 3(2). Specifically, the Nevada Constitution provides that the provisions of Article 19 are self-executing.²² Although the Legislature may enact procedures to facilitate the initiative process, those procedures may not directly inhibit or restrict the powers reserved to the people under Article

... continued

(1) there was inexcusable delay in seeking the petition, (2) an implied waiver arose from petitioner's knowing acquiescence in existing conditions, and (3) prejudice resulted to the respondent. State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 148, 42 P.3d 233, 238 (2002).

²¹Equitable estoppel exists when (1) the party to be estopped is apprised of the true facts, (2) the party to be estopped intends that his conduct shall be acted upon or so acts that the party asserting estoppel has the right to believe it was so intended, (3) the party asserting estoppel is ignorant of the true state of facts, and (4) the party asserting estoppel relied to his detriment on the conduct of the party to be estopped. NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1160, 946 P.2d 163, 169 (1997).

²²Nev. Const. art. 19, § 5 (providing that the provisions of Article 19 are self-executing, but allowing the Legislature to enact procedures to facilitate the operation of the initiative process).

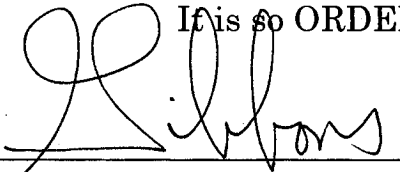
19.²³ The enactment of NRS 295.056(3) directly contravenes Article 19. Article 19, Section 3(2), provides that, for purposes of conducting preliminary signature verification, the Legislature may not require that initiatives be submitted more than 65 days earlier than what is otherwise required under Article 19. With regard to what Article 19 “otherwise requires,” Section 2(4) states that circulators of initiatives have until 90 days before the general election to file their initiative with the Secretary of State. Taken together, the submission deadline for signature verification may not be set earlier than 155 days from the general election. To construe Article 19, Section 2(4)’s not-less-than-90-days language as allowing the filing deadline to be set anytime earlier than 90 days before an election, as the Secretary of State and certain amicus curiae suggest, would directly inhibit the people’s initiative power, reserved to them under Article 19, Section 2(1). Because NRS 295.056(3) impermissibly established a submission deadline earlier than what is otherwise permitted, *i.e.*, May 20, that statute is invalid, and the June 17, 2008, deadline under that statute’s former version remains in effect.²⁴

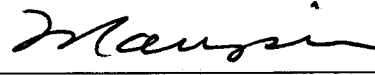
Accordingly, we grant the petition, and direct the clerk of this court to issue a writ of mandamus directing the Secretary of State to accept the signatures submitted on behalf of We the People that were

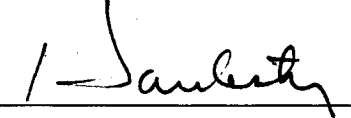
²³Nevadans for Nevada v. Beers, 122 Nev. 930, 142 P.3d 339 (2006); see Turley v. Bolin, 554 P.2d 1288, 1293 (Ariz. Ct. App. 1976) (holding that a shorter statutory deadline was invalid as it conflicted with the longer constitutional deadline for filing of initiative petitions).

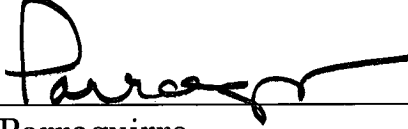
²⁴See Finger v. State, 117 Nev. 548, 576, 27 P.3d 66, 84 (2001) (providing that if a statute is declared unconstitutional, the statute has no effect and the prior governing statute remains in effect).

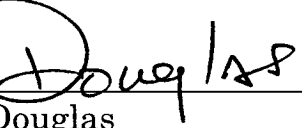
received by the county clerks on May 20 and June 17, including those apparently submitted to the Washoe County Clerk on June 17, 2008,²⁵ and directing the Secretary of State to order the county clerks to proceed with the verification process as outlined in NRS Chapter 293.

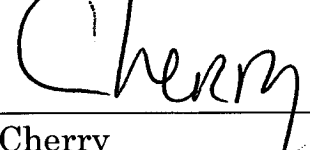
 It is so ORDERED.²⁶
Gibbons, C.J.


Maupin, J.


Hardesty, J.


Parraguirre, J.


Douglas, J.


Cherry, J.

²⁵Although the Clark County clerk provided a receipt to We the People for the additional signatures it submitted on June 17, 2008, according to We the People, the Washoe County clerk apparently refused to issue a receipt. See NRS 293.12758 (requiring issuance of a receipt to any person submitting an initiative for signature verification).

²⁶The Honorable Nancy M. Saitta, Justice, did not participate in the decision of this matter.

With respect to the Legislature's June 11, 2008, motion for permission to participate as amicus curiae in oral argument, in light of our June 16, 2008, order vacating oral argument we deny as moot the Legislature's motion.

As this matter warranted our expedited consideration and decision, this order is being entered for the purposes of providing the parties immediate resolution. Because this issue has statewide implications, however, an opinion in this matter will be forthcoming.

cc: Hansen Rasmussen, LLC
Attorney General Catherine Cortez Masto/Carson City
Don P. Chairez
Dyer, Lawrence, Penrose, Flaherty & Donaldson
Law Offices of Kermitt L. Waters
Legislative Counsel Bureau Legal Division
McCracken, Stemerman & Holsberry