

IN THE SUPREME COURT OF THE STATE OF NEVADA

TAXPAYERS FOR THE PROTECTION  
OF NEVADA JOBS, A NEVADA NON-  
PROFIT ORGANIZATION,  
Appellant,  
vs.  
ARENA INITIATIVE COMMITTEE, AN  
ORGANIZED NEVADA BALLOT  
ADVOCACY GROUP; BRUCE L.  
WOODBURY, AN INDIVIDUAL, IN HIS  
CAPACITY AS THE SOLE OFFICER OF  
THE ARENA INITIATIVE  
COMMITTEE; AND ROSS MILLER, IN  
HIS CAPACITY AS SECRETARY OF  
STATE OF THE STATE OF NEVADA,  
Respondents.

No. 57157

**FILED**

AUG 01 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

TAXPAYERS FOR THE PROTECTION  
OF NEVADA JOBS, A NEVADA NON-  
PROFIT ORGANIZATION,  
Appellant,  
vs.  
ROSS MILLER, IN HIS CAPACITY AS  
SECRETARY OF STATE OF THE  
STATE OF NEVADA; AND ARENA  
INITIATIVE COMMITTEE, AN  
ORGANIZED NEVADA BALLOT  
ADVOCACY GROUP,  
Respondents.

No. 58350

ORDER GRANTING PETITION FOR REHEARING, VACATING  
PREVIOUS ORDER, AND REVERSING

These are consolidated appeals from district court orders refusing to invalidate a ballot initiative. Following this court's June 19, 2012, order affirming in part and reversing in part the district court's orders and remanding these matters to the district court, respondent Ross Miller petitioned for rehearing. Appellant Taxpayers for the Protection of Nevada Jobs and respondents Bruce L. Woodbury and Arena Initiative

Committee filed answers, and Miller replied thereto. Having considered the parties' arguments, we have determined that rehearing of these matters is warranted.<sup>1</sup> NRAP 40(c). Accordingly, we vacate our June 19, 2012, order, and we issue this order in its place.

In April 2010, the Clark County Board of County Commissioners (the Board) issued a request for information for a sports and entertainment arena in Clark County. Four developers presented proposals to the Board. The proposed arena sites were located throughout the Las Vegas Valley. After reviewing four unique arena proposals, including a proposal offered by the Las Vegas Arena Foundation (LVAFF) for an arena on the Las Vegas Strip that would be constructed using specially assessed public tax revenue on land contributed by Harrah's Entertainment, Inc., the Board unanimously voted to take no action.

Disappointed in the Board's decision, respondent Arena Initiative Committee (the Committee), steered by respondent Bruce Woodbury, the sole officer of LVAFF, sponsored an initiative petition entitled "Building an Arena for a Stronger Future" to amend NRS Chapter 244A in order to create a special tax district in Clark County, specifically on the Las Vegas Strip, for the purpose of constructing and maintaining an arena suitable for certain professional sports teams. The initiative petition requires the Board to adopt an ordinance imposing a 0.9 percent sales and use tax within a 3-mile radius of the proposed arena if the area also meets certain other requirements.

Harrah's, on behalf of the Committee, hired petition circulators to gather signatures in order for the initiative petition to be

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<sup>1</sup>We deny respondents Bruce L. Woodbury and Arena Initiative Committee's cross-petition for rehearing.

placed on the November 2012 general election ballot. After the Committee submitted petitions with signatures and affidavits executed by petition circulators to county clerks throughout Nevada, the Secretary of State certified the petition. Subsequently, appellant Taxpayers for the Protection of Nevada Jobs (the Taxpayers) filed a complaint for declaratory relief against the Committee, Woodbury, and the Secretary of State. The Taxpayers complained that, inter alia, the initiative petition was misleading and failed to disclose all material provisions and effects of the initiative. The district court denied the Taxpayers' complaint for declaratory relief, finding that the Committee's description of effect was straightforward, succinct, and nonargumentative.

Thereafter, the Taxpayers filed a complaint for declaratory and injunctive relief and a petition for writ of mandate and prohibition against the Committee and the Secretary of State, asserting that, inter alia, petition circulators failed to personally circulate each petition for signature. Although the district court denied the Taxpayers' complaint, the district court struck the signatures where the circulators did not personally circulate the petition. Despite the decrease in valid signatures, the Secretary of State recertified the petition. The Taxpayers timely appealed both district court orders denying relief.<sup>2</sup>

The description of effect violates NRS 295.009(1)(b)

The Taxpayers contend that the description of effect neglects to accurately inform voters of the location of the arena district and, as a result, does not inform voters that the initiative's requirements eliminate

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<sup>2</sup>The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

all but one of the competing arena proposals.<sup>3</sup> Conversely, the Committee argues that the description of effect properly discloses the full effects of the initiative. The initiative's description of effect sets forth, in full:

Initiative proposing statutory amendment requiring any county with population of 800,000 or more to impose additional 0.9% sales and use tax, the proceeds of which must be used for development/maintenance of a "qualifying" sports/entertainment arena. The tax will be imposed upon sales and uses occurring within 3 miles of a proposed qualifying arena and then only if they are within the unincorporated area of a Gaming Enterprise District. A qualifying arena must have or be: (1) at least 18,000 seats and suitable for an NBA and/or NHL team; (2) located on property not paid for with money from the additional tax; (3) within the created "arena district"; (4) at least 95,000 transient lodging rooms within a 2 mile radius of the arena property; and (5) no preferred usage to those involved in its development/maintenance. The Department of Taxation will collect the tax. If the Initiative is adopted during the 2011 Legislative session, the additional tax requirement goes into effect when Initiative becomes law. If the Initiative is not adopted by the Legislature, but approved by voters during the 2012 general election, it goes into effect upon a completion of the canvass of votes.

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<sup>3</sup>The Taxpayers also argue that (1) the district court erred in concluding that the initiative embraced only one subject, (2) the district court erred in concluding that the initiative does not dictate administrative details, (3) the district court erred in concluding that the Committee obtained enough valid signatures for the initiative to be certified by the Secretary of State, and (4) invalidating signatures gathered through fraudulent statements is the only remedy to deter future fraud. We have reviewed these contentions and conclude that they lack merit.

When the facts are not in dispute, this court reviews a district court's order denying declaratory relief de novo. Nevadans for Nevada v. Beers, 122 Nev. 930, 942, 142 P.3d 339, 347 (2006). Initially, we note that it is appropriate for this court to review a preelection challenge under NRS 295.009(1)(b), a statute requiring a description of effect of an initiative no more than 200 words long. Las Vegas Taxpayer Comm. v. City Council, 125 Nev. 165, 182, 208 P.3d 429, 440 (2009). We may not, however, review a preelection challenge to an initiative's substantive constitutionality, including whether the initiative petition violates Article 4, Sections 20 and 21 of the Nevada Constitution, see Clean Water Coalition v. The M Resort, 127 Nev. \_\_\_, \_\_\_, 255 P.3d 247, 256-59 (2011) (determining that revenue collected as a purported user fee was an unconstitutional local and special tax), because it is not ripe. Herbst Gaming, Inc. v. Sec'y of State, 122 Nev. 877, 887-88, 141 P.3d 1224, 1231 (2006).

Pursuant to NRS 295.009(1)(b), petition signature pages must set forth a description of effect, in not more than 200 words, that summarizes the effect of the proposed law. The description of effect "appears directly above the signature lines, as registered voters decide the threshold issue of whether they even want the initiative placed on the ballot." Beers, 122 Nev. at 940, 142 P.3d at 346. While the description of effect "need not be the best possible statement of a proposed measure's intent,' it nevertheless must still be 'straightforward, succinct, and nonargumentative.'" Las Vegas Taxpayer Comm., 125 Nev. at 183, 208 P.3d at 441 (quoting Herbst, 122 Nev. at 889, 141 P.3d at 1232). Those who sign initiative petitions "must be informed at the time of signing of the nature and effect of that which is proposed." Stumpf v. Lau, 108 Nev. 826, 833, 839 P.2d 120, 124 (1992), overruled in part on other grounds by Herbst, 122 Nev. at 888, 141 P.3d at 1231; see Beers, 122 Nev. at 939, 142

P.3d at 345 (explaining that the purpose of the statutory summary is to “prevent voter confusion and promote informed decisions” (quoting Campbell v. Buckley, 203 F.3d 738, 746 (10th Cir. 2000))). “Failure to so inform the signatories and voters is deceptive and misleading,” and thus invalidates the petition. Stumpf, 108 Nev. at 833, 839 P.2d at 124 (quoting In re Initiative Petition No. 344, 797 P.2d 326, 330 (Okla. 1990)). Lastly, the description must “accurately identify the consequences of the [initiative’s] passage.” Las Vegas Taxpayer Comm., 125 Nev. at 184, 208 P.3d at 441; see Nevada Judges Ass’n v. Lau, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996) (recognizing that while it is impossible “to explain all the conceivable implications of every initiative placed on a ballot[,]” the failure to explain material ramifications of the ballot initiative is potentially misleading).

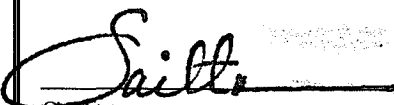
Counsel for the Committee indicated during oral argument that the geographic boundary of the initiative only encompasses 1,700 acres of land concentrated around property owned by Harrah’s. As a result of the restricted margins, the initiative would effectively prohibit all competing arena proposals, a significant detail that the description of effect does not disclose. Due to the description’s stringent and complex qualifications, most voters would not comprehend the true effect of the initiative—establishing a tax district in order to build an arena at a specific location on the Las Vegas Strip in Clark County. Statewide voters would assume that the other proposed arenas would qualify under this initiative. Because it fails to reveal the ramifications to the competing arena proposals and fails to inform voters of the precise location of the proposed arena, we conclude that the initiative’s description of effect is deceptive and materially misleading. See Las Vegas Taxpayer Comm.,

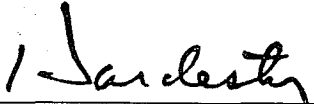
125 Nev. at 183-84, 208 P.3d at 441; Nevada Judges Ass'n, 112 Nev. at 59, 910 P.2d at 903.

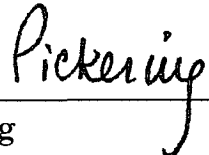
Under NRS 295.015(2)(b), if a description of the effect of an initiative required by NRS 295.009 is amended after the petition is placed on file with the Secretary of State, “[a]ny signatures that were collected on the original petition before it was amended are not valid.” Thus, because we conclude that the proposed initiative’s description of effect does not satisfy NRS 295.009(1)(b), the district court erred by refusing to invalidate the initiative, and all signatures obtained in support of the initiative with the misleading description of effect would not be valid on any amended petition with a revised description of effect. Accordingly, we reverse the district court’s orders.

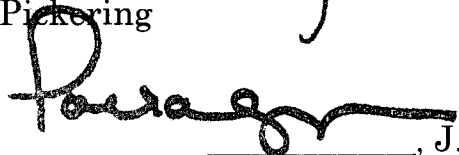
It is so ORDERED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Pickering

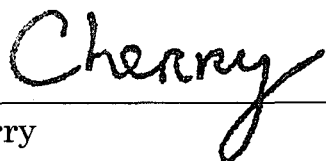
  
\_\_\_\_\_, J.  
Parraguirre

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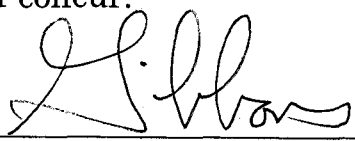
<sup>4</sup>In light of the nature and urgency of this matter, we suspend NRAP 41(a) and direct the clerk of this court to issue the remittitur forthwith. See Rogers v. Heller, 117 Nev. 169, 178 n.24, 18 P.3d 1034, 1040 n.24 (2001).

CHERRY, C.J., with whom GIBBONS, J., joins concurring in part and dissenting in part:

While I concur with the majority in reversing the district court's orders, I would remand this matter for further proceedings in the district court.

  
\_\_\_\_\_, C.J.  
Cherry

I concur.

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. James Todd Russell, District Judge  
Holland & Hart, LLP/Carson City  
Kaempfer Crowell Renshaw Gronauer & Fiorentino  
Pisanelli Bice, PLLC  
Attorney General/Carson City  
Carson City Clerk