



IN THE SUPREME COURT OF THE STATE OF NEVADA

SUE BURTCH,
Appellant,
vs.
FRANCISCO V. AGUILAR, IN HIS
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE; PROTECT
GIRLS' SPORTS PAC, A POLITICAL
ACTION COMMITTEE; JAMES
CAVILIA, AN INDIVIDUAL; BEN
KIECKHEFER, AN INDIVIDUAL; AND
CHRISSIE HASTIE, AN INDIVIDUAL,
Respondents.

No. 92408

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying declaratory or injunctive relief in an election matter. First Judicial District Court, Carson City; Jason Woodbury, Judge.

Respondents Protect Girls' Sports PAC, James Cavilia, Ben Kieckhefer, and Chrissie Hastie (collectively PGS) seek to place an initiative on the ballot. The initiative would amend the Nevada Constitution to recognize an exception to Article 1, § 24, such that participation in State-funded sports or athletic competitions must be based on the athlete's biological sex assigned at birth. Appellant Sue Burtch challenged the initiative in district court. Burtch raised three issues relevant to this appeal: that the initiative (1) included impermissible administrative details, (2) impermissibly directed branches of government to take certain actions, and (3) included a legally insufficient description of effect. The district court modified the initiative's description of effect but otherwise rejected Burtch's claims and denied the request to enjoin respondent

Secretary of State from placing the initiative on the 2026 ballot. Burtch appealed.¹

The party challenging an initiative bears the burden of demonstrating the initiative is invalid. *Helton v. Nev. Voters First PAC* , 138 Nev. 483, 485-86, 512 P.3d 309, 313 (2022). And where, as here, “the district court resolved the challenge to the initiative in the absence of any factual dispute, our review is de novo.” *Id.* at 486, 512 P.3d at 313.

First, Burtch argues the petition includes impermissible administrative details. We disagree, as the initiative is legislative in nature and not an impermissible administrative act. *See Citizens for Pub. Train Trench Vote v. City of Reno* , 118 Nev. 574, 581-82, 53 P.3d 387, 391 (2002), *overruled in part on other grounds by Garvin v. Ninth Jud. Dist. Ct.* , 118 Nev. 749, 59 P.3d 1180 (2002) (noting the people’s “initiative power applies only to legislation . . . it does not extend to administrative acts”). An initiative “must propose policy—it may not dictate administrative details.” *Id.* at 583, 53 P.3d at 392; *see also Nevadans for the Prot. of Prop. Rts., Inc. v. Heller*, 122 Nev. 894, 898, 141 P.3d 1235, 1238 (2006) (specifying this requirement applies to initiatives proposing constitutional amendments). Here, the initiative is policy-oriented and proposes a new, permanent law by creating an exception to Article 1 , § 24 of the Nevada Constitution and restricting participation in athletic competitions based on the participant’s assigned sex at birth. It does not dictate specific administrative details of this policy, such as how sex determinations are made or how athletic competitions are designated. And it does not specifically direct the day-to-

¹The Secretary of State, listed as a respondent on appeal, filed a limited response below and before this court indicating that the secretary does not take a position in this matter.



day operations of any government body or agency. *Cf. Heller*, 122 Nev. at 915-16, 141 P.3d at 1249-50 (finding sections of an initiative's proposed constitutional amendment that concerned the "day-to-day operations of Nevada's court system" to be "distinctly administrative"). And the fact that an initiative involves an area already subject to regulation or governed by existing statutes neither renders it void, nor renders it administrative in character. *See, e.g., Eller Media Co. v. City of Reno*, 118 Nev. 767, 772, 59 P.3d 437, 440 (2002) (finding an initiative prohibiting off-premises billboards legislative in character, despite the City of Reno already regulating off-premise advertising); *Nevadans for Reprod. Freedom v. Washington*, 140 Nev., Adv. Op. 28, 546 P.3d 801, 806 (2024) (allowing an initiative to be placed on the ballot whose subject matter was "covered under various chapters of the Nevada Revised Statutes"). Accordingly, we conclude the initiative does not include impermissible administrative details.

Second, Burtch argues the initiative improperly requires action by the Legislature and other government bodies, like the Board of Regents of the Nevada System of Higher Education (NSHE). But the cases Burtch cites do not support that argument. In *Reid*, the proposed constitutional amendment "merely direct[ed] the Legislature to enact laws creating education freedom accounts." *Educ. Freedom PAC v. Reid*, 138 Nev. 513, 523, 512 P.3d 296, 305 (2022). And *Miller* only held that NSHE was not part of the judicial, legislative, or executive departments when considering a separation-of-powers issue arising from a state senator's dual employment with NSHE. *Nev. Pol'y Rsch. Inst., Inc. v. Miller*, 140 Nev. Adv. Op. 69, 558 P.3d 319, 327 (2024). *Miller* never stated the Legislature could not direct NSHE. Thus, Burtch does not demonstrate the initiative is invalid in this



regard. *See Helton*, 138 Nev. at 485-86, 512 P.3d at 313 (noting the burden is on the party challenging the initiative).

Finally, we consider the legal sufficiency of the modified description of effect. PGS contends that NRS 295.061(3) precludes Burtch from challenging the modified description of effect. We disagree. NRS 295.061(3) states that if an initiative's description of effect is successfully challenged and the "description is amended in compliance with the order of the court, the amended description may not be challenged. " This provision limits further challenges to the modified description of effect in the district court, not on appeal from the district court 's order resolving the initial challenge and modifying the description. *Compare* NRS 295.061(3), *with* NRS 295.061(1) (providing that a description of effect can be "challenged by filing a complaint" in district court and cross-referencing subsection (3)). Thus, we conclude Burtch may challenge the modified description in this appeal.

The description of effect, as revised by the district court, states:

Article I, §24 of the Nevada Constitution provides that equality of rights under the law shall not be denied or abridged by the State or any of its political subdivisions on account of gender identity or expression, among other characteristics.

If enacted, this measure would amend the Nevada Constitution to establish an exception to Article I, §24 by requiring eligibility for State-funded sports or athletic competitions to be based upon each participant's biological sex as recorded at birth rather than gender identity or gender expression. The proposal would require the State, its political subdivisions, and athletic programs utilizing State funds, including those of public schools and colleges and the entities that govern them, to categorize



each sport or competition as male, female, or coeducational/mixed-sex.

The proposed exception to Article I, §24 would prohibit a biological male from participating in a sport or competition designated for females. It would also prohibit a biological female from participating in a sport or competition designated for males unless no comparable female sport or competition is offered. Both biological males and biological females would be permitted to participate in a sport or competition designated as coeducational or mixed-sex.

This description identifies the initiative's purpose, to base participation in State-funded sex-designated sports and athletic competitions on the participant's biological sex assigned at birth, and how that purpose is to be achieved, through a constitutional amendment. *Helton*, 138 Nev. at 491, 512 P.3d at 317 (explaining that a description of effect must address the effect the initiative petition is designed to achieve). The description of effect is, as required, "straightforward, succinct, and nonargumentative." *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009) (quoting *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 889, 141 P.3d 1224, 1232 (2006)). And most of the issues Burtch feels should have been addressed in the description need not be included because they would be argumentative, hypothetical, or outside the scope of what is required for a description of effect. *See id.* (noting a description of effect should not be argumentative); *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013) (noting a description of effect "does not need to mention every possible effect of an initiative," nor must it "explain 'hypothetical' effects of an initiative"). Thus, Burtch has not demonstrated that the modified description of effect



falls short of the required standard. Accordingly, we

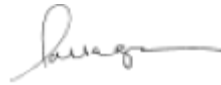
ORDER the judgment of the district court AFFIRMED. ²



Herndon, C.J.



Pickering, J.



Parraguirre, J.



Bell, J.



Cadish, J.



Lee, J.

cc: Hon. Jason Woodbury, District Judge
Bravo Schrage, LLP
Attorney General/Carson City
Allison MacKenzie, Ltd.
Carson City Clerk

²The Honorable Lidia Stiglich, Justice, did not participate in the decision of this matter.

