

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

9-25-2008

Summary of *We the People Nev. v. Sec'y of State*, 124 Nev. Adv. Op. No. 75

Richard Manhattan
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Constitutional Law Commons](#)

Recommended Citation

Manhattan, Richard, "Summary of *We the People Nev. v. Sec'y of State*, 124 Nev. Adv. Op. No. 75" (2008).
Nevada Supreme Court Summaries. 409.
<https://scholars.law.unlv.edu/nvscs/409>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

We the People Nev. v. Sec’y of State, 124 Nev. Adv. Op. No. 75 (Sept. 25, 2008)¹

CONSTITUTIONAL LAW – BALLOT INITIATIVES

Summary

Original petition for writ of mandamus to challenge a statutory filing deadline for ballot initiatives proposing constitutional amendments.

Disposition/Outcome

The Court issued *per curiam* a writ of mandamus to (1) set the submission deadline for initiatives proposing constitutional amendments, and (2) order defendant Secretary of State to accept signatures submitted for verification by plaintiff in support of its proposed initiative.

Factual and Procedural History

In 2007, the Nevada legislature amended NRS 295.056(3) to set the submission deadline² for ballot initiatives to be on May 20th prior to an election—roughly 30 days earlier than by prior law. Ostensibly, the 2007 amendment was enacted to lengthen the signature verification period for the Secretary of State, thereby allowing more time to verify signatures. As a consequence, however, the statute shortened the time period allotted for petitioners to gather signatures.

In February 2008, We the People filed notice of its intent to collect signatures in support of a proposed ballot initiative. Despite good-faith attempts to meet the aforementioned amended submission deadline, We the People gathered signatures until June 17 thereby bringing the political action committee in compliance with the pre-2007 statutory deadline.

Plaintiff We the People petitioned the Nevada Supreme Court for a writ of mandamus or prohibition to challenge the 2007 statutory deadline on constitutional grounds. Its petition argues that the 2007 law is void because it sets a submission date earlier than permitted by Article 19 of the Nevada Constitution. Defendant Secretary of State rejoins that Article 19 provides for legislative flexibility in setting the submission deadline for ballot initiatives.

Sitting *en banc*, the Court exercised its original jurisdiction to hear the challenge.

Discussion

The Court’s *de novo* review of competing statutory interpretations ultimately hinged upon ambiguous language found in Article 19, Section 2(4). That section sets a constitutional submission deadline for initiatives not less than 90 days before an election. Whether this deadline is fixed³ or flexible⁴ was the inconsistent interpretation requiring judicial resolution.

¹ By Richard Manhattan.

² The distinction here is between the **filing deadline**—the date by which a petitioner must register intent to collect signatures—and the **submission deadline**—the (later) date by which signatures must be submitted for verification.

Article 19, Section 2(4)

I. Legislative Intent

Legislative amendments to Section 2(4) indicate that the 90 day deadline is fixed. In its original version, a 30 day deadline applied. Then in 1962 and again in 1972, the Legislature amended the Constitution—changing the deadline to 60 and 90 days respectively. The Court felt such constitutional maneuvers belied any assertion of legislative flexibility to set the deadline by statute. Were it truly within the Legislature’s discretion to alter the deadline by statute—rather than by the rigor of constitutional amendment—it most certainly would have done so.

II. Constitutional Scheme

Nevada’s constitutional scheme advises against a grant of Legislative power to shorten the time allotted for petitioners to gather signatures in support of ballot initiatives. First, while Article 19, Section 5 empowers lawmakers to author guidelines that facilitate initiative certification, no legislative act can negate the fact that Article 19 is self-executing. Through Article 19’s self-execution clause, Nevadans have reserved the right to the initiative process to themselves. Thus, the Court held that “the Legislature may not unreasonably inhibit the powers reserved to the people in Article 19.”

Second, the Court felt that the internal structure of Article 19 requires a fixed deadline to defend the people’s rights under that provision. Section 2(4) sets the filing date for an initiative (i.e., prior to collecting signatures) as September 1st of the year before an election. Allowing the Legislature flexibility to set a submission deadline that falls earlier—not less than but *more* than 90 days before the general election—would reduce the signature gathering period for initiatives. Such an outcome would unreasonably impair the peoples’ right to the initiative process.

Third, Article 19, Section 3(2) grants the Legislature only limited authority to set the final submission deadline for ballot initiatives. The section was proposed in response to a request by the Secretary of State for more time to verify signatures. Though it permits the Legislature to extend the submission deadline for initiatives by up to 65 days, Section 3(2) was meant to comply with the pre-existing framework of Article 19. Thus, contrary to connoting flexibility, it provides further support that the submission deadline is fixed.

Conclusion

³ Plaintiff We the People argues for a fixed deadline on grounds that the statute allows for signature gathering “up until and including 90 days before the general election.”

⁴ Defendant Secretary of State argues for a flexible deadline on grounds that the language does not prohibit the Legislature from setting the deadline “anytime earlier than 90 days before a general election.”

The instant decision corrects a constitutional ambiguity concerning certain state ballot initiatives. The legislature may not set a submission deadline that falls earlier than the time prescribed in Article 19.