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### Scenic Nevada, Inc. v. City of Reno, 132 Nev. Adv. Op. 48 (June 30, 2016)

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## CONSTITUTIONAL LAW

### **Summary**

The Nevada Constitution, Article 19, § 2(3), prohibits the Legislature from amending or repealing a voter initiative statute for the first three years after it takes effect. The Court held that this three year moratorium also applies to voter-initiated municipal ordinances. The Court, therefore, upheld the lower court's denial of declaratory relief because the legislature passed/reenacted the challenged ordinance after the moratorium expired.

### **Background**

In 2000, Scenic Nevada, Inc. (Appellant) advocated for and helped pass a City of Reno ("City") voter initiative prohibiting new billboard construction.<sup>2</sup> Within three years of the initiative's effect, the City enacted two billboard-related ordinances. The Conforming Ordinance interpreted the initiative as putting a cap on the number of existing billboards.<sup>3</sup> The Banking Ordinance allowed owners of existing billboards to remove their billboard and "bank" a receipt for its relocation within the next 15 years.<sup>4</sup>

In 2012, the City passed the Digital Ordinance.<sup>5</sup> This ordinance set standards and created other exceptions regarding illumination for digital billboards. Additionally, the Digital Ordinance reenacted and amended the Conforming and Banking Ordinances.

Appellant filed a complaint against the City on November 16, 2012, alleging that digital billboards erected under the Digital Ordinance are new billboards in violation of the 2000 initiative. Further, any digital billboards erected under either the Conforming or Banking Ordinances are also in violation because those ordinances were passed during the three year legislative moratorium. The district court granted the City's motion to dismiss. Appellant amended its complaint, and after a bench trial, the district court entered judgment for the City. Appellant appealed.

### **Discussion**

Appellant argued that the Nevada Constitution creates a three year legislative moratorium that prevents amendment or repeal of a voter approved initiative.<sup>6</sup> Further, the Nevada Constitution extends the initiative power to ". . . registered voters of each county and each municipality as to all local, special, and municipal legislation of every kind. . . ."<sup>7</sup> The three year moratorium, therefore, applies to the initiative-based municipal ordinances, just as it does to initiative-based state statutes.

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<sup>1</sup> By Paul George

<sup>2</sup> The 2000 initiative was known as Ballot Question R-1, and is now codified as Reno Municipal Code (RMC) § 18.16.902(a).

<sup>3</sup> Ordinance No. 5295, enacted January 22, 2002, codified as RMC § 18.16.902(b).

<sup>4</sup> Ordinance No. 5461, enacted June 11, 2003, codified as RMC § 18.16.908.

<sup>5</sup> Ordinance No. 6258, enacted October 24, 2012, codified as RMC § 18.16.905.

<sup>6</sup> NEV. CONST. art. 19 §2(3).

<sup>7</sup> NEV. CONST. art 19 §4.

The City argued that NRS 295.220 treats municipal initiative ordinances “in the same manner [as though] adopted by the [City] council.” Further, the Reno City Charter (RCC), §2.080, allows ordinances to be “enacted on one day, and subsequently amended, annulled, repealed, set aside or suspended any time thereafter.” The three year moratorium, therefore, should not apply to initiative-based municipal ordinances.

Any statute susceptible to both constitutional and unconstitutional interpretation must be construed as to not violate the constitution.<sup>8</sup> The Court disagreed with the City’s application of the moratorium, because the City’s interpretation would allow for immediate repeal of a voter-approved initiative, thereby contradicting constitutional protection afforded to voter initiatives. NRS 295.220 therefore applies after expiration of the three year moratorium.

The Conforming and Banking Ordinances were passed during the three year moratorium, and are consequently void *ab initio*. Despite being void, their amendment and reenactment in 2012 with the Digital Ordinance, nine years after expiration of the legislative moratorium, cured their constitutional defect. Hence, the Court denied Appellant’s claim for relief.

### **Conclusion**

The Court affirmed the lower court’s denial of declaratory relief because the three-year legislative moratorium imposed by the Nevada Constitution Article 19, §2(3), applies to municipalities through Article 19, §4. A constitutional defect in an ordinance can be cured by subsequent reenactment/amendment in a bill not subject to the original infirmity.<sup>9</sup>

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<sup>8</sup> Whitehead v. Nevada Comm’n on Judicial Discipline, 110 Nev. 874, 883, 878 P.2d 913, 919 (1994).

<sup>9</sup> See 1A Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 22.31 (7<sup>th</sup> ed. 2009).