

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

7-23-2022

Helton v. Nev. Voters First PAC, 138 Nev. Adv. Op. 115 (June 28, 2022)

Servando Martinez

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



Part of the **Law Commons**

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.

**STATUTORY APPLICATION: APPLICABILITY OF NRS 295.009(2) IN BALLOT
INITIATIVE MATTERS**

Summary

In an opinion drafted by Justice Herndon, the Court considered whether the description of effect articulates an overarching purpose and explains how provisions relate to a single subject. This appeal involves the requirements for Initiative petitions as set forth by the Nevada Constitution. In this appeal, the Court addresses three of them: the single-subject requirement, the description-of-effect requirement, and the funding requirement for a proposal that makes an appropriation or requires the expenditure of money. First, the Court clarified that even if an initiative petition proposes more than one change to Nevada law, it may still meet the single-subject requirement, provided that the proposed changes are functionally related and germane to each other and a single subject. They then concluded that that the initiative petition's description of effect is straightforward, succinct, and nonargumentative. Finally, the Court concluded that the appellant failed to demonstrate that the proposal requires the expenditure of money without providing a funding source. Therefore, the Court used this rationale to affirm the district court's order rejecting appellant's complaint challenging the initiative petition.

Facts and Procedural History

This opinion comes from an appeal from an Eighth Judicial District Court order denying a challenge to a ballot measure. Respondent Nevada Voters First PAC (NVF) sought to place the Better Voting Nevada Initiative (BVN Initiative) on the ballot for the upcoming general election. Appellant Helton filed a complaint challenging the BVN Initiative and seeking to enjoin

¹ By Servando Martinez.

respondent Secretary of State from placing the BVN Initiative on the 2022 general election ballot. Primarily, the district court rejected Helton's challenge, concluding that (1) the BVN Initiative embraced a single subject, (2) that there is nothing misleading in the description of effect, and (3) that there was no evidence the BVN Initiative creates an unfunded mandate for the expenditure of money.²

Discussion

The Court reiterate that courts typically will consider challenges to an initiative petition pre-election in limited circumstances, such as when those challenges are based on the petition's compliance with the single-subject requirement, the statutory requirement for the description of effect, or the preclusion against unfunded mandates.²

The EVN Initiative complies with the single subject requirement

Helton argued that the BVN Initiative violates the single subject requirement because it presents two separate policy changes that could be brought in separate initiative petitions: (1) nonpartisan open primaries and (2) general election ranked-choice voting. He contended each change is so distinct that any characterization of the petition's subject would have to be excessively general to encompass both changes. Further, he asserted that by including two separate policy changes, the petition improperly logrolls them to improve the chance that voters will approve both. The Court, however, uses distinguishing rationale to disagree and clarify that “even if an initiative petition proposes more than one change, each of which could be brought in separate initiative petitions, the proper consideration is whether the changes are functionally related and germane to

² See *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 883-84, 141 P.3d 1224, 1228 (2006).

each other and the petition's subject.”³ The single subject requirement “facilitates the initiative process by preventing petition drafters from circulating confusing petitions that address multiple subjects.”⁴ Considering single-subject challenges, the court first determined the initiative's purpose or subject and then determined if each provision is functionally related and germane to each other and the initiative's purpose or subject.⁵ The court also looked at whether the description of effect articulated an overarching purpose and explains how provisions relate to a single subject.⁶ The Court determined that both changes proposed in the BVN Initiative concern the election process in Nevada and more specifically how candidates for the specifically defined partisan offices are presented to voters and elected. The Court finalized their analysis by referring to an Alaska court’s analysis that they found particularly persuasive and supportive of their conclusion that the BVN Initiative’s two proposed changes comply with Nevada’s single-subject requirement.⁷ With this rationale, the Court concluded that even though the BVN Initiative proposes two changes, because those changes are functionally related and germane to each other and the subject of the framework of how specified officeholders are presented to voters and elected, the initiative does not violate the single-subject requirement.⁵ Accordingly, the Court determined that the district court did not err in rejecting Helton's request for injunctive relief based on a violation of the single-subject requirement.

³ See NEV. REV. STAT. 295.009(1) (providing that “[e]ach petition for initiative or referendum must ... [e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto”).

⁴ *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006).

⁵ See *Las Vegas Taxpayer Accountability Committee v. City Council of Las Vegas*, 125 Nev. at 180, 208 P.3d at 439 (“To determine the initiative's purpose or subject, this court looks to its textual language and the proponents' arguments.”).

⁶ *Id.*

⁷ In *Meyer v. Alaskans for Better Elections*, the Supreme Court of Alaska rejected a single-subject challenge to a similar initiative petition. *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 499 (Alaska 2020). The Alaska court concluded that the proposed changes “relate to the elections process and share the common thread of reforming current election laws.”

The description of effect complies with NRS 295.009

Helton argued that the BVN Initiative's description of effect is legally insufficient because it misstates or neglects to mention many of its most significant ramifications. Specifically, Helton asserted that the description of effect (1) failed to address party affiliation and how the party listed on the ballot next to the candidate's name does not indicate support from that party; (2) minimized the changes to the general election by inaccurately stating that currently a candidate must receive 50% of the vote to win, when Nevada has a plurality-to-win system; (3) failed to mention that if a voter does not rank all of the candidates, their vote may not count; and (4) failed to address the training and voter outreach necessary for polling officials and the public to understand the new system. However, the Court found that Helton did not meet his burden of demonstrating the description of effect included in the initiative petition is statutorily inadequate, reiterating that because the statute limits the description of effect to 200 words, the description necessarily will be short and will not address or thoroughly explain every provision in, or possible ramification of, the initiative. Finding that Helton had not demonstrated that the BVN Initiative's description of effect fell short of that standard, the Court concluded that the district court did not err in denying Helton's request for injunctive relief based on an insufficient description of effect.

Helton failed to demonstrate the BVN Initiative proposes a change requiring an appropriation or the expenditure of money

Helton contended that the BVN Initiative must be invalidated because the changes it proposes will require the expenditure of money and the petition includes no provisions to fund that expenditure, which violates Article 19, Section 6 of the Nevada Constitution. The district court originally concluded that Helton's assertion that the BVN Initiative would require an expenditure of money to implement was unsupported speculation. Helton's failure to provide evidence showing

that the proposals in the BVN Initiative require the expenditure of money defeats his argument in this regard. Accordingly, the Court concluded the district court properly denied Helton's unfunded mandate challenge to the BVN Initiative.

Conclusion

The Court here found that the district court did not err in denying Helton's challenge to the BVN Initiative and his request for an injunction preventing the Secretary of State from placing the BVN Initiative on the ballot. Finding that the BVN Initiative's proposed changes are functionally related and germane to each other and the subject of the framework of how specified officeholders are presented to voters and elected, the Court stated that the initiative did not violate the single-subject requirement. Further, as the BVN Initiative's description of effect is a straightforward, succinct, and nonargumentative summary of the goals the initiative is designed to achieve and how it intends to reach those goals, the Court states that it has met the statutory requirements for a description of effect. Concluding that Helton had not demonstrated the BVN Initiative proposes a change that requires the expenditure of money, the Court affirmed the district court's order denying Helton's complaint for injunctive relief.

Dissent

The opinion is joined by a dissent by Justice Cadish, along with Justices Hardesty and Stiglich, on the basis that the EVN initiative does not meet the single subject requirement and that the description of effect was inadequate.