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Laura Lomeli

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Nevadans for Reprod. Freedom vs. Washington (Ballot Issue) [State of Nevada], 140 Nev. Adv. Op. 28 (Apr. 18, 2024)¹

THE DISTRICT COURT ERRED IN ENJOINING THE REPRODUCTIVE RIGHTS INITIATIVE FROM BEING PLACED ON THE 2024 BALLOT, AS THE PETITION HAS A SINGLE SUBJECT RELATED TO REPRODUCTIVE FREEDOM, ALL PROVISIONS ARE RELATED AND GERMANE, THE DESCRIPTION IS LEGALLY SUFFICIENT, AND THERE IS NO REQUIREMENT OF EXPENDITURE OF MONEY.

Summary

The Nevada Constitution gives the people the authority to place an initiative on the ballot to make law directly by proposing legislation and constitutional amendments. Initiative petitions that comply with Nevada's single-subject requirement, provide a legally sufficient description of its effect, and include a revenue source if it requires state expenditure of funds meets the requirements need to place the initiative on the ballot. Accordingly, the Nevada Supreme Court reversed the lower court's decision to block the initiative from being placed in the 2024 ballot.

Background

In September 2023, Nevadans for Reproductive Freedom (NRF) filed an initiative petition aiming to establish a constitutional right to reproductive freedom, encompassing a broad range of pregnancy-related medical procedures. Donna Washington and the Coalition for Parents and Children challenged the petition in court, arguing that it violated the single-subject rule, had a misleading description of effect, and required state expenditures without providing revenue. The district court agreed and issued an injunction against the petition.

Discussion

The initiative petition complies with the single-subject requirement

The Nevada Supreme Court considered whether the initiative petition complied with the statutes single-subject requirement. NRF argued that because the petition contained a single subject which was "creating and defining a fundamental right to reproductive freedom," the district court erred in blocking the initiative from being placed on the ballot. Nevada law requires, "[e]ach petition for initiative or referendum must ... [e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto."² In order to meet this single-subject requirement the petition provisions must be "functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative."³ Courts have determined this by assessing the initiative's core objective and evaluating whether each component aligns with that objective.⁴ The Nevada Supreme Court ultimately held that the initiative petition complied with the single-subject requirement—emphasizing how an initiative petition can propose more than one change

¹ By Laura Lomeli.

² NRS 295.009(1).

³ NRS 295.009(2).

⁴ *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller (NPPRI)*, 122 Nev. 894, 907–09, 141 P.3d 1235, 1243 (2006); *Las Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas (LVTAC)*, 125 Nev. 165, 176, 208 P.3d 429, 436 (2009).

while still remaining compliant with the single-subject requirement.⁵ Thus, an initiative petition that focuses on establishing a fundamental right to reproductive freedom, although proposing changes to several different medical procedures, may still be addressed within a single petition so long as all provision pertain to reproductive matters.

The description of effect is legally sufficient

The Nevada Supreme Court assessed whether the initiative's description of effect adhered to statutory requirements, particularly NRS 295.009(1)(b). NRS 295.009(1)(b) specifically mandates a succinct summary of 200 words or less.⁶ NRF contended that the description complied with this statute, offering a straightforward overview of the initiative's goals and methods. Despite the district court's assertion of its insufficiency, the Supreme Court disagreed, emphasizing the requirement for the description to be "a straightforward, succinct, and nonargumentative summary" of the initiative's objectives and methods.⁷ The court reasoned that the description need not address every potential implication but should instead provide a clear outline of the initiative's intent, which the NRF's description achieved effectively. Thus, the court upheld the legality of the initiative's description of effect.

The initiative petition does not require an expenditure of money

The Nevada Supreme Court rejected the district court's assertion that the initiative breached the state constitution by necessitating expenditure without providing a revenue source. According to Article 19, Section 6 of the Nevada Constitution, any statute or amendment requiring expenditure must also outline a revenue plan. The district court concluded that the initiative mandated the creation of a board to assess abortion practices, implying a financial burden. However, the Supreme Court disagreed, noting that existing legal frameworks could address standards of care without the need for a new entity. Furthermore, the court found Washington failed to substantiate the claim of financial burden, concluding that the initiative did not violate constitutional provisions concerning expenditure.

Conclusion

The Nevada Supreme Court reversed the lower court's decision to uphold Washington's challenge to the initiative petition, preventing it from being placed on the ballot. The petition's single subject is the establishment of a right to reproductive freedom, with all provisions clearly related to this goal and its description deemed legally sufficient. Washington did not demonstrate that the petition necessitated any expenditure of money, the court reversed the district court's order, allowing the initiative to be placed on the 2024 ballot.

⁵ Helton v. Nev. Voters First PAC, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022).

⁶ NRS 295.009(1)(b).

⁷ Helton v. Nev. Voters First PAC, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022). (quoting Educ. Initiative, 129 Nev. at 37, 293 P.3d at 876).