

1 Case No. 04-01150A

2 Dept No. II

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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IN AND FOR CARSON CITY

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8 NEVADA TAXPAYERS ASSOCIATION,
a Nevada not-for-profit corporation (NTA);
9 GREATER RENO-SPARKS
CHAMBER OF COMMERCE,
10 a Nevada not-for-profit corporation;
NEVADA MOTOR TRANSPORT ASSOCIATION, INC.,
11 a Nevada corporation; JOHN R. GIBSON,
an individual and FRED D. GIBSON,
12 Chairman of the Board of Directors of NTA

13 Plaintiffs/Petitioners

14 v.

15 DEAN HELLER, in his official capacity as
Secretary of State of the State of Nevada,

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Defendant/Respondent

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and

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19 NEVADANS FOR SOUND GOVERNMENT, a political
action committee,

20 Real Party in Interest/Defendant

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**REQUEST THAT THIS COURT DECIDE THE CONSTITUTIONALITY
OF THE REFERENDUM PETITION EVEN IF
SAID PETITION FAILS THE RECOUNT**

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1. This Court has scheduled a hearing at 9:00 a.m. on Monday, August 30 on whether the Referendum Petition of Nevadans for Sound Government (“NSG”), a political action committee, the Real Party in Interest/Defendant, is unconstitutional as asserted by the Plaintiffs/Petitioners.

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- 1 2. The County Clerks of the counties of Nevada are presently conducting a recount to
2 determine if there are sufficient qualified signatures supporting the Referendum Petition to
3 cause its placement on the general election ballot for approval or disapproval by the
4 voters in this coming general election.
- 5 3. If the Referendum Petition fails to receive sufficient qualified signatures to place it on the
6 general election ballot, Nevadans for Sound Government, a political action committee,
7 the Real Party in Interest / Defendant herein, has announced its intention to litigate the
8 question of whether such failure to obtain sufficient signatures was the result of
9 government interference and harassment, and potentially whether the counties employed
10 the proper procedure in counting and validating signatures on the petition, placing the
11 general election ballot in controversy and uncertainty while litigation of those factual
12 issues are heard by the District Court and the Nevada Supreme Court. In short, even if
13 the Secretary of State refuses to certify the petition as having sufficient signatures, the
14 constitutional challenges in this case are still be ripe for determination if NSG takes any
15 action to place the question on the general election ballot.
- 16 4. Therefore, Plaintiffs/Petitioners request, even if the Referendum Petition is determined to
17 have failed to have received sufficient signatures to place it on the general election ballot,
18 that this Court, in the interest of judicial efficiency and economy determine the issues
19 raised in the complaint of plaintiffs/petitioners as to whether the Referendum Petition is
20 void and cannot be properly approved by the voters and cannot properly be
21 implemented, were it approved by the voters, because it is violative of the Nevada
22 constitution.

23 Specifically, the Referendum Petition is plainly violative of the Nevada Constitution for the
24 following reasons:

- 25 1. The Referendum Petition asserts Article 19, Section 1 of the Nevada Constitution to
26 repeal the challenged statutes, rather than seeking a public vote to approve or disapprove
27 of the taxing statutes. The Referendum Petition is therefore void.

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2. The Referendum Petition violates the requirements of Article 19, Section 3, clause 1, of the Nevada constitution requiring that “each Referendum Petition...shall include the full text of the measure proposed.” The Referendum Petition merely refers to section and chapter numbers of the session laws without disclosing their subject matter, as required by the constitution. The Referendum Petition is therefore void. (Unlike the requirements of the 1955 petition addressing the sales tax, the constitution was later amended to require disclosure of the full text of the proposal.)
3. The Referendum Petition is misleading and vague because it fails to inform voters as to its true nature and effect. It is therefore void under *Stumpf v. Lau*, 108 Nev. 826, 832-33, 839 P.2d 120 (1992).
4. Because the Referendum Petition is so vague and confusing it is impossible for a proper ballot question to be drafted in compliance with Article 19, Section 5 of the Nevada constitution and Nevada Revised Statute 295.045(4). The Referendum Petition is therefore void.
5. The Referendum Petition violates Article 19, Section 6 of the Nevada constitution which requires appropriations for expenditure must have a sufficient tax or revenue to pay for it. The Referendum Petition repeals taxes, and fails to provide sufficient tax revenue to pay for the appropriations left in place. For that reason the Referendum Petition is void.
6. The Referendum Petition failed to obtain sufficient signatures within the time allowed and is therefore void under Article 19, Section 1, clause 2 of the Nevada constitution and Nevada Revised Statutes §§ 295.054(2) and 295.056(4). For that reason it is void.

Dated this 24th day of August, 2004.

Submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano Wilson LLP and that I served a true and correct copy of the foregoing REQUEST THAT THIS COURT DECIDE THE

1 CONSTITUTIONALITY OF THE REFERENDUM PETITION EVEN IF SAID PETITION FAILS

2 THE RECOUNT on August 24, 2004 by facsimile and by depositing same in the United States Mail,

3 postage prepaid thereon, upon the following:

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