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Friday, July 22, 2022

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Via email, certified mail, and physical copy to the North Las Vegas City Council Members and the Office of the Clerk

City Council
City of North Las Vegas
North Las Vegas City Hall
2250 Las Vegas Boulevard North
North Las Vegas, Nevada 89030

Dear Members of the North Las Vegas City Council:

Pursuant to NRS § 295.210(3), we, the Petitioners' Committee for Nevadans for Neighborhood Stability ("the Committee") and voters and constituents of the City of North Las Vegas, request a review by the City Council at its next meeting (which we understand is scheduled for August 3[1]) of the City Clerk's July 19 "Certificate as to Sufficiency of Petition" ("Certificate") that determined that the petition is insufficient.[2]

On July 1 the Committee turned in 3,396 signatures in support of the petition. This is more than seven times 476, the number of signatures required by the Nevada Constitution and Nevada statutes to qualify an initiative for the November 2022 ballot. The City Clerk reviewed 500 of the signatures and determined that 407, or 81%, of the signatures were valid. Applying that ratio to all of the signatures submitted would yield 2,751, far more than are necessary for sufficiency.[3]

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[1] "Meetings: City Council meetings are held the 1st and 3rd Wednesday of every month at 4:00 p.m. in the Council Chambers at North Las Vegas City Hall, 2250 Las Vegas Boulevard North." http://www.cityofnorthlasvegas.com/departments/city_clerk/access_city_agendas_and_minutes/city_council_info.php .

[2] The Committee received the Certificate in the mail two days ago, on Wednesday, July 20, so this request for the Council's review of the Certificate is due today. If the City Council disapproves the Certificate, the petition will satisfy the statutory requirements for sufficiency as explained below, and the Council may either adopt the proposed ordinance in full or refer it to the voters in the general election. See N.R.S. § 295.215. If the City Council approves the Certificate, the Committee may – and will – seek immediate judicial review in district court. See N.R.S. § 295.210(4).

[3] This figure is based on 3,396 submitted signatures, which is the consistent result of the Committee's multiple careful counts before submission. The Certificate, however, states that 3,308 signatures – 88 fewer – were submitted. We believe that number is incorrect, and that the City Council should require the City Clerk to recount the signatures submitted when she

Yet, in a startling and troubling determination that violates the State's law and undermines the will of the citizens of North Las Vegas, the City Clerk concluded that the petition was insufficient for two reasons: (1) the number of valid signatures required was 3,968, calculated at 15% of the voters who voted in the City's June 14, 2022 primary election; and (2) "[t]he proposed ordinance circulated for signatures is different than the one set out in full in the Affidavit of Petition Committee" because the former "contains the additional words, 'The people of the state of Nevada do enact as follows:'" and "is also different in style (findings are in bold and pagination is different)."

Both reasons are legally deficient, as explained more fully below. First, the Clerk was required by the Nevada Constitution and statutes to calculate the required number of signatures based on the voter turnout – 3,169 – in the City's last *general* municipal election, held on June 11, 2019, as the City Clerk herself so advised the Committee when it set out to gather the signatures. Second, cited "differen[ces]" are non-substantive and the petition substantially complied with the law's requirements, which the Nevada Supreme Court has repeatedly held is the applicable standard for determining adherence to statutory requirements governing the initiative process.

The Committee respectfully requests the City Council to review and disapprove the Certificate, and instruct the City Clerk immediately to complete her review by using 476 as the required number of valid signatures for sufficiency. The Committee further requests the opportunity to address the City Council at its next meeting when it considers this matter.

1. The City Clerk Violated the Nevada Constitution by Using the June 14, 2022 Primary Election Rather Than the June 11, 2019 General Election to Determine the Required Number of Valid Signatures

The City Clerk relied on the June 14, 2022 primary election as the referent election to determine whether the Committee turned in a sufficient number of valid signatures. This violated the express requirement of the Nevada Constitution which establishes that the proper referent election is last preceding *general* election:

> Powers of initiative and referendum of registered voters of counties and municipalities. The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality. In counties and municipalities initiative petitions may be instituted by a number of registered voters equal to 15 percent or more of the voters who voted at the *last preceding general county or municipal election*. Referendum petitions may be instituted by 10 percent or more of such voters.

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completes a lawful determination as we request. But as explained below, regardless of which figure is correct far more valid signatures were submitted than were required.

NEV. CONST. art. XIX, § 4 (emphasis added). The only proper construction of this language is straightforward: the adjective "general" modifies both "county…election" and "municipal election"; "general" would not apply to "municipal election" only if the text separated the two elections entirely by saying "the last preceding general county election or the last preceding municipal election". *See, e.g.,* A. Scalia & B.A. Garner, *Reading Law: The Interpretation of Legal Texts 147* (2012) ("When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series.").

The June 14, 2022 election was a *primary* election, not a *general* election. *See* City of North Las Vegas City Charter, Art. V, Sec. 5.020(2)(b) ("A primary municipal election must be held...[b]eginning in 2022, on the second Tuesday in June of each even-numbered year."). Indeed, this was a closed primary election in that voters could vote only for candidates in the party in which they are registered. The "last preceding general...municipal election" took place on June 11, 2019, as required. See *id*., Art. V, Sec. 5.010(1) ("On the second Tuesday after the first Monday in June 2019, there must be elected, at a general municipal election to be held for that purpose, two Council Members, who shall hold office until their successors have been elected and qualified pursuant to subsection 4."). And, in that election, 3,169 voters cast ballots.[4]

This more than three-year gap between the last preceding and the next general elections in the City is a unique occurrence due, of course, to Assembly Bill 50, which required the City and other municipalities to change their schedule of odd-year elections to even-numbered years beginning in 2022, and entailed the extensions by one year of some elected terms of office in order to accommodate that transition. As the Legislative Counsel's Digest to A.B. 50 explained:

> Certain charter cities currently hold general municipal elections in June of odd-numbered years (Boulder City, Caliente, Henderson, Las Vegas, North Las Vegas and Yerington). Sections 17-50 of this bill amend the charter of each of those cities to require that the cities hold their city elections on the same dates as the statewide election cycle in even-numbered years. Section 52 of this bill provides for the terms of office of officials of such cities who were elected in 2017 or who will be elected in 2019, and the terms of office of municipal judges who were elected to 6-year terms in 2015 or 2017 or who will be elected in 2019, to be extended by 1 year to allow for the transition to the statewide election cycle.

The applicable state statute predicates the 15% signature sufficiency figure on "a number of registered voters of the city equal to 15 percent or more of the number of voters who voted at

[4] http://www.cityofnorthlasvegas.com/CCED%20Summary%20Report-June11-2019.pdf. This election was in keeping with the City's longtime electoral schedule, under which every two years two Members of the Council are elected, each to a four-year term, and once every four years the Mayor is also elected for a four-year term. That is still the schedule, except that the elections are held in even-numbered years.

the last preceding city election." N.R.S. § 295.205(2). The statute does not define its term "city election". But that does not matter, as the Constitution defines that term to mean the general election. *See Strickland v. Waymire*, 235 P.3d 605, 613 (Nev. 2010) ("The constitution may not be construed according to a statute enacted pursuant thereto; rather, statutes must be construed consistent with the constitution – and rejected if inconsistent therewith.") (internal quotation marks and citations omitted). And, as discussed further below, the Nevada Supreme Court has made clear that where a requirement governing the initiative process is found in the *Constitution* (as distinct from a statute), adherence to that requirement must be strict. *See Nevadans for Nevada v. Beers*, 122 Nev. 930 (2006)..

Moreover, it was unnecessary for the statute to define "city election" further because under the statutory schedule in almost all instances "the last preceding city election" *could only be the last preceding general election*. Unchanged by AB 50, the initiative statute requires that an initiative petition be submitted to the City Clerk for verification "not later than" 180 days after the affidavit was filed to commence the initiative proceeding or 130 days "before the election." N.R.S. § 295.205(5). The term "election" here too does not mean by its lack of a modifier either a primary or a general election, but only the latter: "The vote of the city on the proposed…ordinance must be held at the next general city election or general election." N.R.S. § 295.15(2). So, if the date 130 days before the general election when the initiative could be voted occurs sooner than 180 days after the affidavit is filed, then the 130-day point is the deadline to submit the signatures. That is exactly what happened to the Committee's petition: the Committee filed its affidavit on May 18, so it had just 44 days within which to collect signatures before the statutory July 1 deadline. And, before AB 50 redid the municipal election schedule, a "category one" city such as North Las Vegas held its primary election on the first Tuesday after the first Monday of April and its general election on the second Tuesday after the first Monday in June, see A.B. 50, Secs. 3.8, 5, 7.2, 7.4.[5] Accordingly, the primary occurred at most about 70 days before the general election, so the 130-day deadline occurred about 60 days *before the primary*, at a time when, of course, "the last preceding city election" could only be "the last preceding general…municipal election."

With the change to a June-November primary-general sequence, it is now possible for the first time for an initiative petition's signatures to be timely submitted during the narrow temporal window between the mid-June primary and the 130-day pre-general deadline a few weeks later, as happened with the Committee's petition. But the specific constitutional directive that it's "the last preceding general…municipal election" that counts deprives the City Clerk, or the City Council, from construing the "city election" language in N.R.S. § 295.205(2) to mean the primary in that circumstance any more than it could construe "the election" in N.R.S. § 295.205(5) to mean the primary. "Last preceding" was not a moving target before A.B. 50 was enacted, and it isn't now.

[5] The same was true of a "category two" city. See A.B. 50, Secs. 5, 7.2, 7.4. A "category three" city held only general elections. See *id*., Secs. 6.2, 6.4.

Indeed, the City Clerk herself explicitly confirmed to the Committee that the June 11, 2019 general election was the referent election for their 2022 petition. As set forth by Committee representative Mario Yedidia in his attached sworn declaration, on March 8, 2022 he engaged in a telephone conversation with the City Clerk during which he asked her which preceding election the City Clerk would use in calculating the number of valid signatures when the petition was later submitted, and she advised him that it would be the June 11, 2019 election. The City Clerk did not suggest that this could change if the petition were timely submitted after the then-scheduled June 14, 2022 primary. Nor did the City Clerk advise the Committee differently between the primary and the July 1 submission of the petition, or during the City Clerk's review of the petition's sufficiency until the Committee finally received the Certificate this past Wednesday – far too late, of course, to comply with her about-face conclusion if it were legally correct. This moving of the goalposts was manifestly unfair and, whatever the intent, utterly deceptive, and the City Council should reject it.

But not only is the City Clerk's conclusion legally incorrect, if accepted it would be unfair and disruptive of the people's right of initiative petition generally, and not just to the Committee's petitioning effort. If the mid-June primary election turnout could determine the number of required valid initiative petition signatures, then the only *practical* deadline for submitting a petition would be *before* the primary – that is, even sooner than the 130 days actually imposed by the statute, because petitioners could not possibly know until *after* the primary how many valid signatures are due, and the 130-day pre-general deadline would be just a couple of weeks afterward. Indeed, the interval between learning and having to satisfy the sufficiency requirement would be even much smaller, because the number of primary voters is established only when the primary vote is *certified*, and that does not have to occur until 15 days *after* the primary, see N.R.S. § 293.190 – in the case of this year's June 14 primary, by June 29, a mere *two days* before the July 1 petition submission deadline. This would be an absurd result. And it would be equally absurd if a petition that is submitted the day *before* a June primary could be supported by fewer or more valid signatures, as the case might be, than a petition – including even a competing one – that is submitted the day *after* the primary, yet both could be presented to the voters at the same general election in November.

Plainly, neither of these situations – undermining the 130-day deadline and creating a two-tier signature qualification standard for the same general election – was intended by either the voters who adopted Article 19 of the Constitution or the Legislature that enacted its implementing statutes and A.B. 30. The City Council should reject the City Clerk's misconstruction of the law that produces these results.

2. The Petition Substantially Complies with the Applicable Requirements of Nevada Law, and the City Clerk Applied the Wrong Legal Standard in Denying the Petition's Sufficiency

In addition to relying on the wrong referent election in violation of the Nevada

Constitution and statutes, the City Clerk applied the wrong legal standard in basing her denial of sufficiency on insignificant differences between the ordinance submitted by the Committee in its affidavit and the ordinance submitted by the Committee with the petition signatures.

The City Clerk cites three differences between the two texts in support of her determination that the petition is insufficient: (1) that the latter version contains the additional words "The people of the state of Nevada do enact as follows:", (2) that the findings are in a bolded typeface in the latter version; and (3) that the pagination of the two versions differs. These minor variations have no effect on the meaning of the proposed ordinance or on the signers' ability to understand that meaning, nor could they have possibly mattered to the City's examination of the ordinance's potential fiscal effect. They do not – standing alone or in combination – form a valid basis for ruling the petition insufficient.

Again, the Nevada Constitution makes plain that "[t]he initiative and referendum powers … are further reserved to the registered voters of … each municipality as to all local, special and municipal legislation of every kind in and for such … municipality." NEV. CONST. art. XIX, § 4. The only constitutionally-specified limitation on this fundamental right of popular self-governance is that the municipal initiative "be instituted by a number of registered voters equal to 15 percent or more of the voters who voted at the last preceding general…municipal election." All of the other procedural requirements governing a municipal initiative petition's initiation, circulation, submission and review originate in statute. *See generally* N.R.S. §§ 295.195 – 295.220; 295.250 – 295.290.

The distinction between constitutional and statutory requirements is critical because it determines the standard by which a petition's compliance with a particular requirement must be reviewed. Nevada Supreme Court precedent is clear that "substantial compliance is the correct standard" for reviewing a petitioner's adherence to the statutory requirements found in title 24 of the Revised Statutes. *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 682 (2008). The substantial compliance standard "accords proper deference to the people's initiative power," *id*., and gives due weight to the requirements of N.R.S. § 293.127 that title 24 be "liberally construed to ensure that the real will of the electors is not defeated by informality[.]" *Eller Media Co. v. City of Reno*, 118 Nev. 767, 771 (2002). Substantial compliance occurs when a statute's "reasonable purpose" is fulfilled. *Miller*, 124 Nev. at 686.

The City Clerk does not point to a specific provision in the statute that demands her insufficiency determination, so the Committee is left to assume that her reasoning depends on the requirement that a petitioners' committee file an affidavit "setting out in full the proposed initiative ordinance[.]" N.R.S. § 295.205(1)(d). That provision is not accompanied by any further details as to the ordinance's required form, but its purpose is readily apparent: it provides a voter with an opportunity to review the proposed ordinance even if the petitioners' committee does not seek out his or her signature, and it provides the City the information necessary to determine any anticipated financial effect, as required by N.R.S. § 295.205(4).

Not one of the three differences cited by the City Clerk has any bearing on the meaning of the proposed ordinance. The presence or absence of the phrase "The people of the state of Nevada do enact as follows:", a difference in the typeface, and a change in pagination do not deprive a North Las Vegas voter of any information about the meaning of the ordinance, nor could they plausibly lead to any confusion about which initiative petition is under consideration. And, unlike the error at issue in *Nevadans for Nevada*, these differences do nothing to alter the ordinance's scope.[6] The City cannot reasonably claim that its examination of the potential fiscal effect of the ordinance depends on an initial phrase, typeface or page numbers.

In fact, had the Committee used the City Clerk's own sample forms to collect signatures, the difference in text would have occurred just the same. Exhibit A to the "General Information, Initiatives & Referenda" packet that the City Clerk provided to the Petitioners' Committee provides a form for the initiating affidavit. The form provides a blank space in which a committee may write the text of the proposed ordinance, labeled "Full text of Ordinance or Ordinance Sought to be Reconsidered." This section is *not* preceded by the phrase "The people of the State of Nevada do enact as follows." However, that phrase *does* appear at the top of page 1 of Exhibit B in that packet, which contains the blank pages provided by the City Clerk for a petitioners' committee's use in collecting signatures. Notably, the phrase appears above and outside of the blank box labeled "Full Text of the Proposed Measure," indicating that a petitioners' committee *should* insert the same text that it used to fill in the similarly-labeled blank space on the affidavit. In other words, any petitioners' committee that uses the City Clerk's forms and follows their obvious instructions will submit a petition with the same difference in text that the Clerk now cites as a reason to find our petition in sufficient. Neither that difference, nor the change in typeface or pagination, means that the Committee failed to substantially comply with the statute.

Conclusion

Based on the foregoing, the Committee respectfully requests that the City Council disapprove the City Clerk's Certificate, and instruct the City Clerk immediately to determine the sufficiency of the petition on the basis that 476 valid signature are required. Again, the Committee requests the opportunity to address the City Council when it considers the matter at its August 3 meeting.

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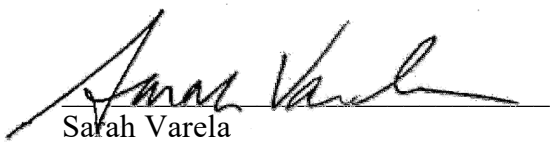
[6] As noted above, the Nevada Supreme Court's decision in *Nevadans for Nevada* turned on a *constitutional* requirement, namely, that a statute proposed by initiative petition must be filed with the Secretary of State prior to circulation. The fact that it was a constitutional requirement and not a statutory one, as is the case here, led the court to apply a *strict* compliance standard.

Thank you for your consideration.



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On behalf of the Petitioners' Committee

Attachment: Declaration of Mario Yedidia

cc: Nevadans for Neighborhood Stability Petitioners' Committee –
Aretha Wilder, North Las Vegas renter
Melanie Arizmendi, North Las Vegas youth resident
Pastor Ender Austin III, North Las Vegas homeowner
Hadiza Sadiq, North Las Vegas homeowner
Isabel Alejandra Saldana, North Las Vegas renter
Jackie Rodgers, City Clerk, City of North Las Vegas
Ted Pappageorge, Secretary-Treasurer for the Culinary Union

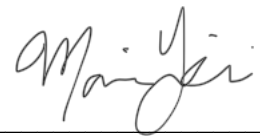
DECLARATION OF MARIO YEDIDIA

1. I am the National Field Director of UNITE HERE, a national labor organization. I have also been working with the petitioner committee Nevadans for Neighborhood Stability ("the Committee") since its inception to circulate and qualify its initiative petition for the November 8, 2022 general election.

2. On March 8, 2022, on behalf of the Committee I telephoned Jackie Rodgers, the City Clerk of the City of Las Vegas, and asked her what was the last preceding election for the Committee's purpose of calculating the number of valid signatures that the Committee would have to secure in order to submit a legally sufficient petition. Ms. Rodgers replied that the election was the June 11, 2019 general municipal election.

3. Neither during that telephone call nor at any time since then until the issuance of the July 20 "Certificate as to Sufficiency of Petition" did the City Clerk or any other employee of her office inform or advise, or even suggest to, the Committee otherwise, including that the June 14, 2022 primary was the referent election for the petition.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.



Mario Yedidia

Dated: July 22, 2022