

1

SCHOOLS OVER STADIUMS, A NEVADA COMMITTEE FOR POLITICAL ACTION; DAWN ETCHEVERRY, AN INDIVIDUAL; CHRISTOPHER DALY, AN INDIVIDUAL; AND ANDREA DEMICHIELI, AN INDIVIDUAL, Appellants,

v.

DANNY THOMPSON, AN INDIVIDUAL; THOMAS MORLEY, AN INDIVIDUAL; AND FRANCISCO V. AGUILAR, IN HIS OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE, Respondents.

No. 87613

Supreme Court of Nevada

May 13, 2024

ORDER OF AFFIRMANCE

CADISH, C.J.

This is an appeal from a district court judgment in a declaratory and injunctive relief action challenging a ballot referendum. First Judicial District Court, Carson City; James Todd Russell, Judge.

In the 35th Special Legislative Session, the Nevada Legislature passed Senate Bill No. 1 (S.B. 1) authorizing the Clark County Stadium Authority to build a Major League Baseball stadium in Clark County and to establish a method to finance the stadium's construction. See S.B. 1, 35th Special Session Ch. 1 (Nev. 2023). S.B. 1, as passed, contains a total of 46 sections. In September 2023, appellant Schools Over Stadiums PAC (SOS) filed a notice of intent to circulate a petition to place a referendum (the Stadium Referendum) asking voters to disapprove select portions of S.B. 1 on the November 2024 general election ballot. Specifically, the Stadium

2

Referendum seeks to strike S.B. 1's sections

authorizing or committing State funds to finance the stadium project. Accordingly, the Stadium Referendum asks voters to approve or disapprove only those sections of S.B. 1 that reference State funding.

Respondents Danny Thompson and Thomas Morley (collectively, Thompson) filed a complaint seeking injunctive and declaratory relief.^[1] The district court granted the requested relief, declaring the Stadium Referendum invalid because it (1) violates the full text requirement of Article 19, Section 3 of the Nevada Constitution; and (2) contains a legally inadequate description of effect. The district court also granted injunctive relief, enjoining SOS from circulating the petition to collect signatures, invalidating any previously collected signatures, and enjoining the Secretary of State from placing the Stadium Referendum on the ballot. This appeal followed.

The petition violates the full-text requirement of the Nevada Constitution

Having considered the **parties'** briefs and appendices and having heard oral argument, we conclude that the district court did not err in granting Thompson's requested relief. See *Educ. Init. PAC v. Comrn. to Protect Nev. Jobs*, 129 Nev. 35, 41, 293 P.3d 874, 878 (2013) ("When a district court's decision to grant declaratory and injunctive relief depends on a pure question of law, our review is de novo."); *Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017) ("'[Q]uestions of law, including questions of constitutional interpretation and statutory construction,' are reviewed de

3

novo." (quoting *Lawrence v. Clark Cnty.*, 127 Nev. 390, 393, 254 P.3d 606, 608(2011))).

The Stadium Referendum seeks to refer S.B. 1 to the voters for approval or disapproval of the State's funding obligations under that bill. Though a person may refer only part of a statute or resolution to a vote of the people, see Nev. Const, art. 19 § 1(1) (providing that a person may "circulate a petition that a statute or

resolution or part thereof... be submitted to a vote of the people") (emphasis added), "(e)ach referendum petition . . . shall include the full text of the measure proposed." *Id.*, art. 19 § 3(1); see also NRS 295.0575(6) (requiring the circulator of a referendum petition to swear "[t]hat each signer had an opportunity before signing to read the full text of the act or resolution on which . . . referendum is demanded"). "[T]he requirement that each signer be given the opportunity to review a measure's full text serves the purpose of ensuring that signers know what they are supporting." *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 686, 191 P.3d 1138, 1149 (2008). Although the dissent cites *Schnell v. Appling*, 395 P.2d 113 (Or. 1964) to support its view of what constitutes the "full text of the measure proposed," we note that Oregon's Constitution, unlike Nevada's Constitution, only requires the full text of a proposed measure be included with initiative petitions, not referendums. Compare Or. Const, art. IV, § 1(2)(d) (requiring "[a]n initiative petition [to] include the full text of the proposed law or amendment to the Constitution") and Or. Const, art. IV, § 1(3) (listing procedural requirements for referendum petitions) with Nev. Const, art. 19, § 3(1) (requiring the "full text of the measure proposed" for both initiative and referendum petitions); see also *Kerr v. Bradbury*, 89 P.3d 1227, 1232-33 (Or. 2004) (discussing *Schnell* and the enactment history of Oregon's full text requirement). Considering the purpose and language of the full-text

4

requirement and the language of the particular petition at issue here, we conclude that S.B. 1 must be included in the petition in its entirety to provide voters the complete context of the proposed measure so that they can understand what the law is now and what the law will be should they approve or disapprove the parts of S.B. 1 that are being submitted to a vote of the people.^[2]

The petition's description of effect is inadequate

NRS 295.009(1)(b) requires referendum petitions to "[s]et forth, in not more than 200 words, a description of the effect of the . . . referendum if the . . . referendum is approved by the voters." A petition's description of effect "must be a straightforward, succinct, and nonargumentative summary of what the [referendum] is designed to achieve and how it intends to reach those goals." *Educ. Init. PAC*, 129 Nev. at 37, 293 P.3d at 876. Further, the description of effect must "not be deceptive or misleading." *Id.* at 42, 293 P.3d at 879.

The description of effect at issue here reads as follows:

SB 1 established a financing process to construct a Major League Baseball stadium in Clark County, using up to \$380 million taxpayer dollars. Section 29 pledged State taxes and Clark County taxes to pay bonds to be issued by Clark County; Section 30 created a State credit enhancement (line of credit), initially funded by Section 41, for Clark County to draw upon to pay the bonds; the Legislature did not pledge the full faith and credit of the State and

5

reserved the right to change parts of Section 29 (pledged State taxes) and all of Section 30 (State credit enhancement). This petition demands that the pledge of State (not Clark County) taxes and the use of the State's credit to pay the stadium bonds be subject to a vote of the People. If a majority of voters disapprove these components of SB 1, the bracketed and struck through portions shown on this petition would be voided, which could result in the stadium not being built. If a majority of voters approve these sections of SB 1, these sections would remain as enacted by the Legislature and could not be

changed or repealed except by direct vote of the People.

This description explains the general effect of a referendum, but it does not describe the practical effects of this specific referendum. The description is also misleading. For example, the statement that S.B. 1 allows Clark

County to use "up to \$380 million taxpayer dollars" suggests that these are existing State funds being used to build the stadium and does not inform signers that a portion of those funds are to be generated from specified sources within the sports and entertainment improvement district. Thus, it fails to straightforwardly and succinctly inform signatories about what the referendum proposes and thereby fails to "prevent voter confusion and promote informed decisions." *Educ. Init. PAC*, 129 Nev. at 42-43, 293 P.3d at 879-880 (quoting *Nevadans for Nevada v. Beers*, 122 Nev. 930, 939-40, 142 P.3d 339, 345 (2006)). We therefore conclude that the district court properly found the description of effect is inadequate.

Because the petition violates the constitution's full-text requirement and the description of effect does not comply with statutory requirements, we conclude the district court properly enjoined SOS from circulating the petition and the Secretary of State from placing the petition on the general election ballot. Accordingly, we

6

ORDER the judgment of the district court AFFIRMED.

STIGLICH, J., HERNDON, J.,
PARRAGUIRRE, J., BELL, J.

PICKERING, J., dissenting:

S.B. 1 was passed into law by special session of the Nevada Legislature in June of 2023. As enacted, S.B. 1 contains 46 separate sections and spans 66 single-spaced pages. The Stadium Referendum only asks voters to weigh in on those sections of S.B. 1 that provide for

state-level credit and financial support for the Major League Baseball stadium, and it reprints in full those sections concerning these matters that it proposes voters disapprove. I submit that this satisfies the Nevada Constitution's requirement that the referendum include the "full text of the measure proposed." I would also find the description of effect adequate. Limited by law to 200 words, the description of effect conveys that, if approved, the Stadium Referendum would withdraw State credit and financial support for the stadium project, which in turn could prevent the stadium from being built. For these reasons, I would reverse, not affirm, and therefore respectfully dissent.

Article 19, Section 1 of the Nevada Constitution provides that a referendum petition can seek a vote of the people as to "a statute . . . or part

7

thereof enacted by the legislature." Nev. Const. art. 19, § 1(1) (emphasis added). Article 19, Section 3, in turn, requires that a referendum petition "include the full text of *the measure proposed*." As noted in *Coalition for Nevada's Future v. RIP Commerce Tax, Inc.*, "the Nevada Constitution requires no particular form for a referendum petition, except that it include the full text of the proposed measure." No. 69501, 2016 WL 2842925 at *2 (Nev. May 11, 2016) (Order Affirming in Part, Reversing in Part, and Remanding). The referendum petition in that case, which, like here, presented only select sections of an enacted bill to the voters for approval or disapproval, met this "full-text" standard. *See id.* In addressing a similar constitutional "full-text" provision for referendum petitions, the Supreme Judicial Court of Massachusetts has concluded that "the full text of the . . . measure proposed by the petition" means only "the proposed law in the [] precise terms that will become law if adopted." *Opinion of the Justices*, 34 N.E.2d 431, 433-34 (Mass. 1941). The Supreme Court of Oregon has also addressed a similar "full-text" provision, reasoning that "[n]o useful purpose would be served by quoting at length either the related statutes referred to in the proposed measure but

left unchanged thereby or the statutes to be repealed thereby." *Schnell v. Appling*, 395 P.2d 113, 114 (Or. 1964). A ballot initiative petition "must carry the exact language of the proposed measure. It need include nothing more." *Id.*; cf. 1A Sutherland Statutory Construction, *Amendment of an act by reference to its title* § 22:28 (7th ed. 2009) ("If . . . less than all [sections of an act] are amended, it is sufficient to set out as amended such section or sections, without setting out the entire act as amended. This is true although other sections of the act are amended by implication . . .").

Reading and harmonizing Article 19, Sections 1 and 3 of the Nevada Constitution together, as we should, achieves a similar result:

8

referendum petition submitting a portion of a statute to a vote of the people requires only that portion of the statute be included in the referendum petition, and "nothing more." *Schnell*, 395 P.2d at 114; see also *We the People Nevada ex rel Angle v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008) ("when possible, the interpretation of a statute or constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results").

The "measure proposed" by the Stadium Referendum is to remove the State from any baseball stadium credit support or other funding obligations. It follows that to meet the "full text of the measure proposed" requirement, the voters need only see what is being changed—those select portions of S.B. 1 that are being proposed for the people's consideration. See *Proposal*, Black's Law Dictionary (11th ed. 2019) (defining "proposal" as "[something offered for consideration or acceptance]"). The Referendum attaches the full-text of each section it refers to the voters, with the language it asks voters to disapprove shown by conventional strike-outs. Voters do not need to understand, much less to read, all 46 sections and 66 pages of S.B. 1 to consider whether to approve or disapprove the State's stadium funding obligations. By

interpreting Article 19, Section 3's "full text requirement" as demanding the inclusion of provisions that are not being submitted to a vote of the people, the district court improperly "read language into the [Constitution] that it does not contain . . ." *Legis. of Nev. v. Settelmeyer*, 137 Nev. 231, 237, 486 P.3d 1276, 1282 (2021). By affirming the district court's error, the majority ignores the plain text of the Nevada Constitution and imposes a new form requirement for referendum petitions that we previously held did not exist. See *RIP Commerce Tax*, 2016 WL 2842925 at *2. I would thus conclude that the Stadium Referendum complies with the Nevada Constitution's full-text requirement.

9

I also disagree with the majority's conclusion that the Stadium Referendum's description of effect is legally deficient. "[T]he sufficiency of a description of effect depends not on whether someone else could have written it better but instead on whether, as written, it is 'a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals.'" *Helton v. Nev. Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 317-18 (2022) (quoting *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). Given the 200-word limit, I believe that the Stadium Referendum's description of effect fairly describes the referendum process and the general effect it would have: If the voters vote to disapprove the sections of S.B. 1 it seeks referendum on, it would remove State financial support for the stadium project, and removing that support could jeopardize the project and result in the stadium not being built. Although "a challenger will always be able to find some ramification . . . or provision" which it feels is not adequately addressed, *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 317, a "description of effect cannot constitutionally be required to delineate every effect that a [referendum] will have . . ." *Educ. Initiative*, 129 Nev. 35, 37-38, 293 P.3d 874, 876. Thus, I would conclude that the description of effect is legally sufficient.

I dissent.

PICKERING, J.

Notes:

LEE, J., concurring in part and dissenting in part:

^[1] The Secretary of State was listed as a defendant but did not file an answer and took no position on the matter at the hearing. Likewise, the Secretary has filed an answering brief on appeal that takes no position.

I concur with those portions of the majority's decision discussing the petition's inadequate description of effect in violation of NRS 295.009(1)(b).

^[2] To the extent the dissent relies on *Coalition for Nevada's Future v. RIP Commerce Tax, Inc.*, No. 69501, 2016 WL 2842925 at *2 (Nev. May 11, 2016) (Order Affirming in Part, Reversing in Part, and Remanding), as an example of a referendum petition presenting less than all sections of a bill to the voters for approval or disapproval, we note that the parties in *RIP Commerce Tax* did not raise the issue of whether the petition also complied with Section 3's full text requirement.

10

However, I do not agree with the majority's conclusion that the petition violated Nevada Constitution article 19, section 3(1) by failing to put forth the "full text of the measure proposed." Accordingly, I join the dissent's order as it pertains to the full text requirement.

Hon. James Todd Russell, District Judge
