

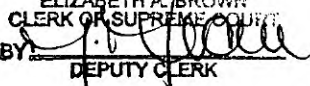
IN THE SUPREME COURT OF THE STATE OF NEVADA

FAIR MAPS NEVADA,
Appellant,
vs.
ERIC JENG, AN INDIVIDUAL; AND
FRANCISCO V. AGUILAR, IN HIS
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE,
Respondents.

No. 88263

FILED

MAY 10 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order, filed jointly in two separate cases, declaring invalid two initiative petitions seeking to amend the Nevada Constitution. First Judicial District Court, Carson City; Robert E. Estes, Senior Judge.

Appellant Fair Maps Nevada filed two initiative petitions with the Secretary of State, respondent Cisco Aguilar.¹ Both initiatives propose to amend the Nevada Constitution to create a seven-member Redistricting Commission that would be responsible for drawing the electoral district maps for Nevada's Senate and Assembly and the U.S. House of Representatives following each federal census. The only difference between the two initiatives is that one of them requires the Redistricting Commission to redraw the districts following the 2026 election.

In December 2023, respondent Eric Jeng filed a complaint for declaratory relief, seeking a determination that the initiatives are invalid.

¹Aguilar has represented to the district court and this court that he takes no position regarding these proceedings.

As relevant here, Jeng’s complaint alleged that the initiatives violate Article 19, Section 6 of the Nevada Constitution, which “does not permit the proposal of any statute or statutory amendment which makes an appropriation or otherwise requires the expenditure of money, unless such statute or amendment also imposes a sufficient tax, not prohibited by the Constitution, or otherwise constitutionally provides for raising the necessary revenue.” (emphasis added). Specifically, Jeng alleged that creating the Redistricting Commission would require an expenditure of money and that Fair Maps’ initiatives did not provide a mechanism for raising funds to do so.²

Later in December 2023, Fair Maps responded to Jeng’s points and authorities. Fair Maps argued that the initiatives do not require the expenditure of additional State funds because the Commission, if created, would essentially be “saving” the Legislature’s time (and money) by doing work that the Legislature would otherwise have been required to do. Alternatively, Fair Maps argued that the appointed Commission members could serve on a volunteer basis, which would not require the expenditure of additional State funds. Shortly after filing its response, Fair Maps filed a motion to dismiss Jeng’s complaint because the district court had not set the matter for a hearing within 15 days of Jeng’s complaint being filed, as is required by NRS 295.061(2).

On February 15, 2024, the district court held a hearing at which it indicated that it would (1) deny Fair Maps’ motion to dismiss Jeng’s

²Jeng’s complaint also challenged the descriptions of effect and suggested that Fair Maps’ initiatives were barred by issue preclusion. In light of our resolution of this appeal, we need not address the parties’ arguments with respect to those issues.

complaint for failure to comply with NRS 295.061(2), and (2) declare Fair Maps' initiatives invalid because they provide for an unfunded expenditure of money in violation of Article 19, Section 6. On March 6, 2024, the district court entered a written order reflecting as much and enjoined the Secretary of State from taking further action with respect to Fair Maps' initiative petitions.

Fair Maps now appeals. Fair Maps' arguments implicate our de novo review because they involve questions of law. See *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875, 877 (2014) (reviewing de novo the interpretation of this court's caselaw); *Helton v. Nev. Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022) ("Because the district court resolved the challenge to the initiative in the absence of any factual dispute, our review is de novo.").

Fair Maps preliminarily argues that we should revisit our decision in *Education Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296 (2022), which unanimously held that NRS 295.061(2) is directory, not mandatory. That decision reasoned that "[i]t would be harsh and absurd to dismiss a party's challenge to an initiative merely because the district court failed or was not able to set the hearing within 15 days through no fault of the party filing the complaint." 512 P.3d at 301. Fair Maps contends that *Reid* is unworkable, in that it allows initiative opponents (such as Jeng) to unduly delay the signature-gathering process by instituting litigation and prolonging that litigation in order to effectively eliminate the time for an initiative proponent (such as Fair Maps) to gather the required number of signatures.

We conclude that principles of stare decisis weigh against revisiting *Reid*. Although compelling reasons for overturning precedent

include when the prior decision was “badly reasoned” or “unworkable,” *A Cab, LLC v. Murray*, 137 Nev. 805, 810, 501 P.3d 961, 969 (2021), we are unconvinced that *Reid* is such a decision. Thus, we decline to revisit *Reid*.

We nevertheless reiterate that the district court should use every effort to abide by NRS 295.061(2) because, as we explained in *Reid*, “initiative deadlines in general are relatively short” and “challenges to initiative petitions could be used as a delay tactic to prevent an initiative from being placed on the ballot.” 512 P.3d at 301. In this case, we find no reversible error based on the district court’s failure to set the matter for hearing within NRS 295.061(2)’s 15-day time frame.

Fair Maps next argues that the district court erred in determining that its initiative petitions violate Article 19, Section 6.³ It first contends that Jeng presented no admissible evidence that the proposed constitutional amendments, if approved by the voters, would require the expenditure of money. We disagree. Jeng provided reports from California, Arizona, and Ohio, all of which indicated that establishing a redistricting commission in those states would cost millions of dollars. Jeng also provided reports from the Nevada Legislature demonstrating that past redistricting efforts were expensive and time-consuming. These reports support the conclusion that creating a Redistricting Commission would require the expenditure of money for purposes of Article 19, Section 6.⁴

³Fair Maps also urges us to revisit *Reid*’s holding that Article 19, Section 6 applies to initiative petitions that propose constitutional amendments. For the same reasons that we decline to revisit *Reid* regarding our analysis of NRS 295.061(2), we decline to do so with respect to our analysis of Article 19, Section 6.

⁴To the extent that Fair Maps contends Jeng’s evidence was inadmissible, we decline to consider this contention because Fair Maps did

Fair Maps next contends that Jeng presented no evidence that the initiatives would require an *additional* expenditure of money. In this, Fair Maps suggests that the Commissioners could be unpaid volunteers and that any money required to create and maintain the Redistricting Commission would be offset by what the Legislature currently spends on the redistricting process. But Article 19, Section 6 expressly requires that a ballot initiative that “makes an appropriation or otherwise requires the expenditure of money” must “provide[] for raising the necessary revenue.” By its terms, Article 19, Section 6 requires Fair Maps’ initiatives to *themselves* raise the necessary revenue to create and maintain the Redistricting Commission; it is not enough to simply hope that savings elsewhere will offset the Redistricting Commission’s costs.

Finally, Fair Maps argues that its initiatives are analogous to the initiative that we determined was compliant with Article 19, Section 6 in *Helton v. Nevada Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309 (2022). In *Helton*, the initiative proponents sought to amend the Nevada Constitution to implement a ranked-choice voting system wherein voters would list the preferred candidates in order, as opposed to picking just one. *Id.* at 313. On appeal, we determined that the initiative complied with Article 19, Section 6 because the opponent had failed to provide evidence that the initiative, if enacted, would require the Nevada Secretary of State to spend more money to prepare a ballot. *Id.* at 318.

not raise any admissibility-related arguments in district court aside from a passing reference at the February 15, 2024, hearing. *See Est. of Adams v. Fallini*, 132 Nev. 814, 822 n.5, 386 P.3d 621, 626 n.5 (2016) (holding that a party waives evidentiary objections “by failing to raise them during the proceedings below”).

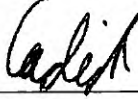
Helton is distinguishable. In contrast to the initiative in that case, which could be effectuated through existing governmental entities and processes, Fair Maps' initiatives, if enacted, will create an entirely new governmental entity.

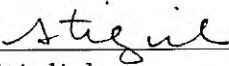
Our recent decision in *Nevadans for Reproductive Freedom v. Washington*, 140 Nev., Adv. Op. 28, ___ P.3d ___ (2024), is distinguishable for similar reasons. The initiative petition at issue in that case proposed a constitutional amendment to recognize a right to reproductive freedom. A district court determined that the initiative required an expenditure of money to create a board to determine if abortions are performed within the standard of care. In concluding that the district court erred, we observed that the initiative did not "clearly contemplate a new State entity to determine the standard of care or to evaluate whether a provider performed within the standard of care." 140 Nev., Adv. Op. 28 at 14. We further observed that current laws and procedures could address a situation where a provider's care fell below the standard of care and that existing entities in state government could be tasked with adopting any regulations regarding the standard of care. *Id.* at 14-15. Unlike the initiative petition at issue in that case, Fair Maps' initiative petitions clearly require a new State entity to conduct redistricting.


The reports offered by Jeng below and common sense tell us that the creation and maintenance of a new Redistricting Commission will require an expenditure of money. The initiative petitions do not, however, provide a means to generate the revenue to support that expenditure. The district court therefore correctly determined that the initiatives violate Article 19, Section 6, and it properly enjoined the Secretary of State from

taking further action with respect to Fair Maps' initiative petitions.
Consistent with the foregoing, we


ORDER the judgment of the district court AFFIRMED.

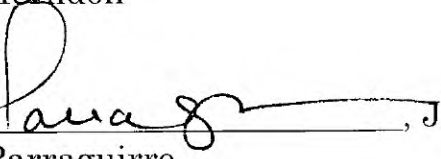

_____, C.J.
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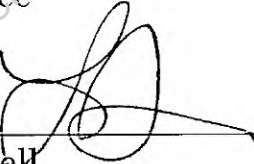

_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre


_____, J.
Bell

cc: Chief Judge, The First Judicial District Court
Hon. Robert E. Estes, Senior Judge
McDonald Carano LLP/Reno
Attorney General/Carson City
Bravo Schrager, LLP
Elias Law Group LLP/Wash DC
Attorney General/Las Vegas
Carson City Clerk