

IN THE SUPREME COURT OF THE STATE OF NEVADA

JENNIFER FLEISCHMANN, AN
INDIVIDUAL,
Appellant,
vs.
FRANCISCO V. AGUILAR, IN HIS
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE; AND REPAIR
THE VOTE, A NEVADA POLITICAL
ACTION COMMITTEE,
Respondents.

No. 88307

FILED

MAY 24 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying declaratory and injunctive relief in a challenge to a ballot initiative. First Judicial District Court, Carson City; William A. Maddox, Judge.

Respondent Repair the Vote seeks to place an initiative on the ballot that would amend the Nevada Constitution to require voter identification at the polls. Appellant Jennifer Fleischmann filed a complaint in district court seeking declaratory and injunctive relief to prevent respondent the Secretary of State from placing the Initiative on the ballot.¹ The district court disagreed with Fleischmann's arguments that the description of effect is inadequate and that the Initiative includes an unfunded mandate. Thus, the district court denied Fleischmann's request for declaratory and injunctive relief. Fleischmann now appeals.

¹The Secretary of State was listed as a defendant below 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.

The Initiative does not include an unfunded mandate

First, Fleischmann argues that the district court erred by finding that the Initiative does not include an unfunded mandate. While the Nevada Constitution permits the people to propose constitutional amendments by initiative petition, that right is limited. Nev. Const., art. 19, § 2 (providing that the people's power to propose constitutional amendments by initiative petition is "subject to the limitations of section 6"). In particular, the people cannot propose an initiative that "makes an appropriation or otherwise requires the expenditure of money, unless such . . . amendment also imposes a sufficient tax, not prohibited by the constitution, or otherwise constitutionally provides for raising the necessary revenue." *Id.* at § 6; see also *Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296, 303 (2022) (concluding that Article 19, Section 6 applies to initiative petitions that propose a constitutional amendment). The challenger bears the burden to demonstrate that the initiative violates Article 19, Section 6. *Helton v. Nev. Voters First PAC*, 138 Nev. 483, 492, 512 P.3d 309, 318 (2022).

Fleischmann does not allege that the Initiative explicitly requires an expenditure or an appropriation. Instead, Fleischmann alleges that if the Initiative passes, the Legislature will have to make an appropriation to provide free identification to all voters who do not currently have the identification forms required under the Initiative; otherwise, the amendment will not comply with federal law. Fleischmann's argument thus hinges on a potential constitutional challenge to the amendment proposed by the Initiative—that the amendment will be unconstitutional absent a means for voters to obtain compliant identification without charge, which will require an appropriation or expenditure of money. However, we have held that substantive challenges to the constitutionality of initiatives are

improper at the preelection stage. *Greater Las Vegas Chamber of Com. v. Del Papa*, 106 Nev. 910, 916, 802 P.2d 1280, 1281 (1990) (concluding that this court cannot address the constitutionality of an initiative preelection); *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 888, 141 P.3d 1224, 1228-31 (2006) (adopting the majority position that preelection review of substantive challenges is improper). Because Fleishmann's argument hinges on the constitutionality of the Initiative, her challenge is a substantive challenge, which we cannot consider at this time. Thus, we conclude Fleischmann has failed to meet her burden of demonstrating that the Initiative violates Article 19, Section 6 of the Nevada Constitution.

The description of effect is legally sufficient

Fleischmann next argues that the district court erred in concluding that the Initiative's description of effect was legally sufficient. NRS 295.009(1)(b) requires each initiative to "[s]et forth, in not more than 200 words, a description of the effect of the initiative . . . if the initiative . . . is approved by the voters." A description of effect "must be a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals." *Educ. Init. PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013).

The Initiative's description of effect states, "If passed, this initiative would amend the State Constitution to require that all persons voting in person present an approved photo identification before being provided a ballot. It also requires that voters submitting a mail-in ballot provide additional verification of their identity when completing their mail-in ballot." While a better, lengthier description of effect could have been drafted, we conclude that the description of effect before us is legally

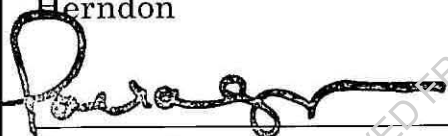
sufficient.² See *Helton*, 138 Nev. at 491, 512 P.3d at 317 (providing that “the sufficiency of a description of effect” does not depend “on whether someone else could have written it better”). Indeed, the description of effect addresses the primary objective of the Initiative and its intended effects—an amendment to the Nevada Constitution to require voters to present valid identification when voting in person at the polls. Based upon the foregoing, we

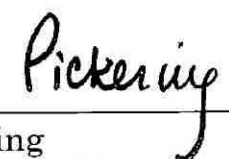
ORDER the judgment of the district court AFFIRMED.



Cadish, C.J.


Stiglich, J.


Herndon, J.


Parraguirre, J.


Pickering, J.


Lee, J.


Bell, J.

²In light of our conclusion that the description of effect is legally sufficient, we need not consider Repair the Vote’s argument that Fleischmann should not have been able to challenge the description of effect under NRS 295.061. Similarly, the parties present arguments regarding issue and claim preclusion based on a challenge to a similar initiative proposed in a prior election cycle. We conclude these arguments do not warrant a different result here, especially considering that the challenge to that prior initiative was never appealed to this court and the initiative was never placed on the ballot. Cf. *Personhood Nevada v. Bristol*, 126 Nev. 599, 605, 245 P.3d 572, 576 (2010) (stating that a district court order concerning a ballot initiative does not have preclusive effect in future litigation when the matter becomes moot before an appeal can be heard).

cc: Chief Judge, The First Judicial District Court
Hon. William A. Maddox, Senior Judge
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