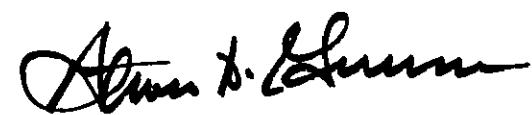


**DISTRICT COURT
CLARK COUNTY NEVADA**



-oOo-

CLERK OF THE COURT

ROBERT T. BEERS, STAVROS)
ANTHONY, LOIS TARKANIAN,)
SUZETTE LAGRANGE-MIRANDA,)
LISA MAYO, individually and PARKS)
PROTECTION COMMITTEE, a Nevada)
Political Action Committee,)

CASE NO.: A712892
DEPT. NO.: XXX

Petitioners,)

vs.)

THE CITY OF LAS VEGAS and)
LUANN D. HOLMES, Acting City Clerk)
Of the City of Las Vegas or any or all)
Persons Acting in a Similar Position,)

**ORDER RE: PETITION FOR
WRIT OF MANDAMUS**

Respondents.)

The above-referenced matter came on before the Court on Wednesday, February 04, 2015, before Judge Jerry Wiese, with regard to the Petitioner's Petition for Writ of Mandamus.

PROCEDURAL HISTORY

The Petition for Writ of Mandamus was filed on January 23, 2015. Several judges recused, one was preempted, and on or about Friday, January 30, 2015, the case was reassigned to Department 30. Petitioners requested that a Hearing be set within three (3) days, pursuant to NRS 295.105. Although the Court did not believe that NRS 295.105(4) applied, (because at the time the case was reassigned to Department 30, the Court was not provided with any documentation that there had been a final determination as to the sufficiency of the petition), nevertheless the Court set the hearing for Wednesday, February 4, 2015. On that date, the Petitioner, Robert Beers,

1 was present with his attorney, Craig Mueller, Esq. The City of Las Vegas was
2 represented by Bradford Jerbic, Esq., and Philip Byrnes, Esq. Each side presented
3 written briefs, and argued orally to the Court. Having considered the briefs and
4 exhibits presented by each side, as well as the oral arguments presented, the Court now
5 issues the following Order.
6

7 **LEGAL STANDARD**

8 Pursuant to NRS 34.160, a writ of mandamus may be issued by a judge of the
9 district court to “compel the performance of an act which the law especially enjoins as a
10 duty resulting from an office, trust or station; or to compel the admission of a party to
11 the use and enjoyment of a right or office to which the party is entitled and to which the
12 party is unlawfully precluded by such inferior tribunal, corporation, board or person.”
13

14 (NRS 34.160)

15 **FACTUAL HISTORY**

16 This case arises from a ballot initiative petition, in which the Petitioners seek to
17 place on the next election ballot an initiative which would preclude the City of Las
18 Vegas from giving, investing, or lending any of its revenue or assets, or those of its
19 Redevelopment Agency, for a Major League Soccer (MLS) stadium in Symphony Park.
20 On or about December 17, 2015, the City of Las Vegas, through the City Council, voted
21 4-3 to approve funding and gifts for use to a private developer to construct a soccer
22 stadium in Symphony Park. The vote resulted in a determination that the city would
23 give approximately \$100,000,000 in land, improvements, cash, free taxes, and
24 facilities for the development of the soccer stadium. The members of the City Council,
25 who voted against the City’s contribution of funds for this pursuit, along with others,
26 filed an affidavit indicating their intent to circulate a petition on behalf of the Parks
27
28

1 Protection Committee. The Affidavit of Intent was filed on or about January 6, 2015.

2 The Affidavit of Intent indicated that the full text of the Charter Amendment" proposed
3 was:

4
5 A new ordinance is added to the City of Las Vegas Charter that reads "The City of
6 Las Vegas is hereby prohibited from contributing, investing or lending any of its
7 revenue or assets, or those of its Redevelopment Agency, for a Major League
8 Soccer (MLS) stadium in Symphony Park."

9 On January 7, 2015, Beverly Bridges (City Clerk) and LuAnn Holmes (Acting
10 City Clerk) sent Councilman Beers a letter indicating that in accordance with NRS
11 295.205(2), the petition needed a minimum of 2,306 qualified signatures, and that it
12 needed to be submitted to the Las Vegas Clerk's Office by January 24, 2015.

13 On January 13, 2015, LuAnn Holmes (Acting City Clerk) sent another letter to
14 Councilman Beers indicating that the petition would be treated as an initiative petition
15 under Nevada Constitution Article 19, Section 4, and NRS 295.200. Ms. Holmes' letter
16 further indicated that the petition needed a minimum of 8,258 qualified signatures,
17 which were still due to the Las Vegas Clerk's Office by January 24, 2015.

18 On January 19, 2015, Mr. Beers apparently sent a letter to the Clerk's Office
19 indicating why he believed that 2,306 instead of 8,258 signatures were needed for the
20 petition.
21

22 On January 20, 2015, the City Attorney, Bradford Jerbic, sent Mr. Beers a letter
23 indicating that the City was bound by the Nevada Constitution which required 8,258
24 qualified signatures, and further denied Mr. Beers' request for a one-week extension.
25

26 On January 29, 2015, LuAnn Holmes (Acting City Clerk) sent a letter to Joseph
27 Gloria, the Registrar of Voters, indicating receipt of the "Petition Raw Count," and
28 noting that a total of 9811 signatures were submitted. Pursuant to NRS 295.260(2) the

1 Acting City Clerk directed the Clark County Registrar of Voters to randomly examine
2 500 signatures, and verify the sufficiency of the petition.

3 On January 30, 2015, Joseph Gloria, the Clerk/Registrar of Voters, certified the
4 results of the signature examination, and determined the total number of valid
5 signatures on the petition to be 6,966.
6

7 Also on January 30, 2015, LuAnn Holmes (Acting City Clerk) certified the
8 results of the initiative petition, and documented that the 6,966 valid signatures did not
9 meet the minimum requirement of 8,258. She consequently certified that "the
10 initiative petition does not fulfill the requirements of NRS 295.210," and she certified
11 the petition as "insufficient."
12

13 **LEGAL ANALYSIS**

14 The City has made various arguments in its effort to convince the Court of the
15 defects and insufficiencies in the petition submitted by the Petitioners. One of those
16 arguments was that the Petitioners incorrectly and inappropriately submitted the
17 petition as one to amend the City Charter, and that NRS 295 is limited to municipal
18 ordinances. The City contends that a proposed amendment to the City Charter must
19 comply with NRS 268.010, and that NRS 295 is inapplicable to such an effort.
20

21 Interestingly, in the briefs submitted to the Court, and during oral argument in this
22 matter, the Court was strongly encouraged to read and pay particular attention to the
23 case of *Las Vegas Taxpayer Accountability Committee v. City Council of the City of*
24 *Las Vegas*, 125 Nev. 165, 208 P.3d 429 (2009). The Court notes that the Taxpayer
25 Accountability Committee case, dealt with two petitions circulated in 2008 and 2009.
26 Interestingly, the Taxpayer Accountability Act Initiative (which the Court referred to as
27 the Taxpayer Initiative, proposed to "amend the Las Vegas Charter to add a new section
28

1 with two provisions." *Id.*, at 170. The Nevada Supreme Court did not address the issue
2 of whether NRS 295 or NRS 268.010 applied, but analyzed the case specifically with
3 regard to NRS 295.205's procedures for placing petitions on a municipal ballot. By
4 implication, the Nevada Supreme Court seems to have approved of the use of NRS
5 295.205 for amending a City Charter.¹
6

7 The City has also raised the "legislative vs administrative" distinction, and cited
8 to several cases, including *Citizens for Train Trench Vote v. Reno*, 113 Nev. 574, 53
9 P.3d 387 (2002), and *Glover v. Concerned Citizens for Fuji Park & Fairgrounds*, 118
10 Nev. 488, 50 P.3d 546 (2002), as support for the position that administrative actions of
11 a municipal government are not subject to challenge by an initiative petition. Again,
12 the Court believes that the more recent case of *Las Vegas Taxpayer Accountability*
13 *Committee v. City Council of the City of Las Vegas*, 125 Nev. 165, 208 P.3d 429 (2009),
14 is instructive. In that case, the proposed "Taxpayer initiative" would "amend the Las
15 Vegas Charter" and add a section which would "require voter approval for lease-
16 purchase arrangements that obligate the city to pay more than \$2 million per year. . ."
17 *Id.*, at 170. Although the Court's ultimate analysis and holding in that case were based
18 upon the City's refusal to put the measure on the ballot, even though there was a
19 finding that it was procedurally valid, the Court impliedly acknowledged the validity of
20 such a petition, which would limit the amount that the City could spend, subject to
21 voter approval. That seems to be the very same issue that is the subject of the present
22 Petition.
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28 ¹ The Court acknowledges that NRS 268.010 sets forth specific methods of amending a city charter, and further notes that sub paragraph (2)(b) includes language indicating that a petition needs to be signed by registered voters of the city equal to 15 percent or more of the voters who voted at the last preceding "general city election". .

1 The primary issue presented by the parties in this case is the interpretation of
2 NRS 295.205(2), and whether such statute conflicts with or can be read in harmony
3 with Article 19, Section 4 of the Nevada Constitution. NRS 295.205(2) reads as follows:
4

5 Initiative petitions must be signed by a number of registered voters of the city
6 equal to 15 percent or more of the number of voters who voted at the ***last
preceding city election.*** (emphasis added).

7 Article 19, Section 4 of the Nevada Constitution reads as follows:

8 **Sec. 4. Powers of initiative and referendum of registered voters of**
9 **counties and municipalities.** The initiative and referendum powers
10 provided for in this article are further reserved to the registered voters of each
11 county and each municipality as to all local, special and municipal legislation of
12 every kind in or for such county or municipality. In counties and municipalities
13 initiative petitions may be instituted by a number of registered voters equal to 15
14 percent or more of the voters who voted at the ***last preceding general
county or municipal election.*** . . . (emphasis added).

15 The essence of the issue presented to this Court is whether the term "general"
16 applies to the terms "county" and "municipal," or whether it only applies to "county."
17 While the parties did not present the Court with evidence specific to the prior election
18 numbers, the parties seem to agree that if the term "general" applies to both "county"
19 and "municipal" then the appropriate number of signatures required for the petition
20 would be 8,258, based on the last "general municipal" election. On the other hand, the
21 parties also seem to agree that if the term "general" only applies to "county," and not to
22 "municipal," then the appropriate number of signatures required for the petition would
23 be 2,306, based on the "last municipal election."

24 The City argues that the Nevada Constitution is the supreme law in the state,
25 and that when the statute and the constitution conflict, the Court must follow and
26 uphold the Constitution. The City contends that Article 19, Section 4 of the
27 Constitution is "plain and unambiguous" The Petitioners, on the other hand, do not
28 see the statute and the Constitution as conflicting, because they contend that the term

1 "general" in the Constitution, does not apply to the term "municipal election," and
2 consequently, the statute and the Constitution are in harmony with each other. The
3 Petitioners provide a discussion of disjunctive versus conjunctive, which really is not
4 persuasive to this Court. Both parties attempt to persuade the Court with the
5 legislative history, but the Court does not find the legislative history compelling either.
6 The Court finds the City's discussion regarding the legislative history of BDR 24-104
7 actually supportive of the Petitioner's arguments. The City's Responsive Brief contains
8 the following:
9

10
11 The BDR, drafted in strict accordance with Article 19, recommended that NRS
12 295.205 contain the following language: "Initiative petitions must be signed by
13 registered voters of the city equal in number to 15 percent or more of the voters
14 who voted at the *last preceding general municipal election.*"²

15 The City points out that when Assembly Bill 37 was first read into the record in 1967, it
16 included the above-referenced language, but when it was read in a second time, the
17 term "general" had been omitted. Although the City believes that the omission of the
18 term "general" must have been a mistake, it could just as likely have been a deliberate
19 omission.

20 Upon first reading, this Court interpreted the language of Article 19, Section 4 as
21 "***last preceding general county or general municipal election.***" After further
22 consideration, however, the Court concludes that if the drafters of the Nevada
23 Constitution had intended the language to refer to the last preceding "general
24 municipal election," they could easily have included the term "general" before
25 "municipal election." Instead, they only used the term "general" before "county." The
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27
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² City's Responsive Pleading at pg. 11, [emphasis added by the City], citing the December 16, 1966 Legislative Commission of the Legislative Council bureau.

1 Court finds the phrase to be ambiguous, and unfortunately, the legislative history is not
2 clear enough to provide any real guidance on the issue.

3 As the Petitioners have indicated in their pleadings, the Nevada Supreme Court
4 has instructed that “when possible, the interpretation of a statute or constitutional
5 provision will be harmonized with other statutes or provisions to avoid unreasonable or
6 absurd results. Conversely, if a constitutional provision’s language is subject to more
7 than one reasonable, although inconsistent, interpretation, the court may look to the
8 provision’s legislative history and the constitutional scheme as a whole to determine
9 what the Nevada Constitution’s framer’s intended.” *We the People Nevada v. Sec’y of*
10 *State*, 124 Nev. 874, 192 P.3d 1166 (2008), citing *Nevadans for Nevada v. Beers*, 122
11 *Nev. 930, 944, 142 P.3d 339, 348 (2006).*

14 This Court finds that the Nevada Constitutional language is subject to more than
15 one reasonable, though inconsistent, interpretation. The legislative history has not
16 provided any real guidance to this Court. When the Court looks, however, at the
17 “constitutional scheme as a whole,” and the fact that we have provided methods by
18 which the people can petition for new laws, and for modification of laws, the Court is
19 convinced that those learned individuals who drafted the Nevada Constitution, those
20 who have modified it since its initial ratification, as well as those who were involved in
21 the drafting of the United States Constitution, were concerned with establishing and
22 maintaining a government “of the people, by the people, [and] for the people.” (See
23 Abraham Lincoln’s 1863 *Gettysburg Address*). If the issue is whether or not the
24 “people” who reside in the City of Las Vegas get a “say” in whether or not the City
25 should fund a Major League Soccer (MLS) stadium, or not, this Court will not deprive
26 the people of their right to express their voices on the ballot.
27
28

1 This Court concludes that by reading Article 19, Section 4 of the Constitution,
2 relating to the "last preceding municipal election," without reference to the word
3 "general," that this is the most reasonable interpretation of the Constitution, and that
4 such an interpretation does "harmonize" the Nevada Constitution with NRS
5 295.205(2).
6

7 The Court has considered all other arguments and issues raised by each of the
8 parties and finds and concludes that an analysis of the remaining issues, cases, and
9 arguments, is unnecessary. Any "finding" in this order that would be more
10 appropriately considered a "conclusion," should be so considered, and vice versa.
11

12 **ORDER**

13 Based upon the foregoing, and good cause appearing,
14

15 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that the Petition
16 for Writ of Mandamus is hereby **GRANTED**.

17 The Clerk of the Court is hereby **ORDERED TO ISSUE A WRIT OF**
18 **MANDAMUS**, compelling the Respondents, THE CITY OF LAS VEGAS, and LUANN
19 D. HOLMES (Acting City Clerk), and/or all persons acting in a similar position, to
20 follow NRS 295.205(2), and Article 19, Section 4, of the Nevada State Constitution, and
21 to accept 2,306 signatures as sufficient for the subject Initiative Petition.
22

23
24 DATED this 6th day of February, 2015.

25
26
27 
28 _____
JERRY A. WIESE II
DISTRICT COURT JUDGE, DEPT. 30
EIGHTH JUDICIAL DIST. COURT