

SUPREME COURT OF NEVADA

Heller v. Give Nevada A Raise, Inc., 120 Nev. 481

93 P.3d 746 (2004) · Decided September 2, 2004

SUMMARY

The Nevada Supreme Court held that Article 19, Section 3(1) of the Nevada Constitution, requiring each initiative-petition document to include an affidavit from a signing registered voter, severely burdened political speech protected by the First Amendment. The court concluded that the affidavit requirement was not narrowly tailored to serve the State’s interest in protecting the integrity of the initiative process because less restrictive safeguards existed. The court affirmed the district court’s order qualifying the previously disqualified signatures and placing the initiatives on the ballot.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam; Maupin
JURISDICTION	Nevada
DECIDED	September 2, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court judgment declaring Article 19, Section 3(1) of the Nevada Constitution unconstitutional under the First Amendment and ordering the Secretary of State to qualify previously disqualified signatures and place two initiatives on the ballot.
STANDARD OF REVIEW	De novo review applies to a district court's judgment granting declaratory and permanent injunctive relief in the absence of disputed facts; statutory-construction issues underlying declaratory relief are also reviewed de novo.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential
PARTIES	Secretary of State Dean Heller, Nevada State Medical Association, Las Vegas Chamber of Commerce v. Give Nevada A Raise, Inc., Danny Thompson, People for a Better Nevada, Carmen Cashman

TOPICS

- first amendment
- free speech
- strict scrutiny
- ballot access
- election administration

PRACTICE AREAS

constitutional law

election law

appellate procedure

QUESTIONS PRESENTED

1. Whether Article 19, Section 3(1) of the Nevada Constitution, requiring each initiative-petition document to be accompanied by an affidavit executed by a signer who attests to the genuineness of the signatures and the signatories' voter-registration status, severely burdens political speech under the First Amendment.
2. Whether the Section 3(1) affidavit requirement survives strict scrutiny.
3. Whether the district court properly ordered the Secretary of State to qualify the previously disqualified signatures and place the initiatives on the ballot.

HOLDINGS

1. The requirement severely burdens core political speech because it effectively compels either the use of registered-voter circulators or a two-person circulation team consisting of an unregistered circulator and a registered voter willing to sign and notarize an affidavit for each petition booklet.
2. The Section 3(1) requirement is unconstitutional because it is not narrowly tailored to serve the assumed compelling interest in protecting the integrity and reliability of the initiative process.
3. The district court's judgment ordering the Secretary of State to qualify the previously disqualified signatures and place both initiatives on the ballot is affirmed.

KEY QUOTATIONS

"We affirm because Section 3(1)'s requirement that an initiative-petition document be accompanied by a signatory's affidavit impermissibly burdens political speech by either compelling the use of only registered voters as circulators or compelling unregistered circulators to be accompanied by a registered voter who is willing to sign a petition booklet and execute an affidavit under oath authenticating that booklet's signatures." (483)

"Consequently, Section 3(1) does not survive strict constitutional scrutiny." (492)

FACTUAL BACKGROUND

Give Nevada A Raise, Inc., sponsored a minimum-wage initiative and gathered more than the number of signatures needed for ballot qualification, while People for a Better Nevada sponsored an initiative concerning frivolous lawsuits and legal rights. The Secretary of State discounted thousands of signatures because the petition booklets were not accompanied by affidavits executed by registered voters who had signed the particular booklets. Nevada's constitutional scheme allowed only registered voters to execute the required affidavits, effectively requiring unregistered circulators to obtain the assistance of registered voters from the relevant county. The resulting loss of signatures left both initiatives short of the number required for placement on the November 2004 general-election ballot.

PROCEDURAL HISTORY

Give Nevada A Raise, Inc., sued the Nevada Secretary of State for declaratory, injunctive, and writ relief after signatures on its minimum-wage initiative were discounted because petition booklets lacked affidavits executed by booklet signers. People for a Better Nevada intervened based on the same issue, and the Nevada State Medical Association and Las Vegas Chamber of Commerce intervened in opposition to one initiative. After a bench trial, the district court invalidated the affidavit requirements and ordered the initiatives placed on the ballot. The Secretary, Medical Association, and Chamber appealed.

DISPOSITION

affirmed

CASES CITED

- Lundberg v. Koontz, 82 Nev. 360, 418 P.2d 808 (1966)
- Stumpf v. Lau, 108 Nev. 826, 839 P.2d 120 (1992)
- Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182 (1999)
- University System v. DR Partners, 117 Nev. 195, 18 P.3d 1042 (2001)
- County of Clark v. Upchurch, 114 Nev. 749, 961 P.2d 754 (1998)
- Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997)
- Morrill v. Weaver, 224 F. Supp. 2d 882 (E.D. Pa. 2002)
- Chandler v. City of Arvada, Colorado, 292 F.3d 1236 (10th Cir. 2002)
- Molinari v. Powers, 82 F. Supp. 2d 57 (E.D.N.Y. 2000)
- Lerman v. Board of Elections in City of New York, 232 F.3d 135 (2d Cir. 2000)
- KZPZ Broadcasting v. Black Canyon Citizens, 13 P.3d 772 (Ariz. Ct. App. 2000)
- State ex rel. Herr v. Laxalt, 84 Nev. 382, 441 P.2d 687 (1968)
- Krislov v. Rednour, 226 F.3d 851 (7th Cir. 2000)
- Burk v. Augusta-Richmond County, 365 F.3d 1247 (11th Cir. 2004)
- Goldstein v. Chestnut Ridge Volunteer Fire Co., 218 F.3d 337 (4th Cir. 2000)