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FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CHELSEA CHEN; an individual; CASE NO. 11 OC 00328 1B
MINDY HSU, an individual; DEPT. 2
CHRISTINA ANN LYDON, an individual; WESLEY RICHARD LYDON, an individual; KEITH REISINGER, an individual; and AMY GALLACHER, an individual: JUDGEMENT

Plaintiffs,
vs.

NEVADA PROLIFE COALITION PAC, a Nevada ballot advocacy group; ROSS MILLER, in his official Capacity as the Nevada Secretary of State:

Defendants.

BACKGROUND

Nevada Prolife Coalition PAC, a ballot advocacy group, filed an initiative petition with the Nevada Secretary of State. The initiative seeks to amend Article 1 of the Nevada Constitution by adding the following as Section 23:

Article 1. Sec. 23. Unalienable right to life of every prenatal person is protected.

The intentional taking of a prenatal person's life shall never be allowed in this State. For the purpose of this section only, the term "prenatal person" includes every human being at all stages of biological development before birth.

The initiative includes the following Description of Effect:

1 All persons are endowed by their creator with certain unalienable
2 rights and among these is the right to life. Guaranteeing personhood for
3 the prenatal human being has the effect of making illegal intentional acts
4 which kill such persons, including elective, surgical and/or chemical
5 abortion and fetal homicide.

6 The United States Supreme Court stated in *Roe vs. Wade*, “If this
7 suggestion of personhood is established, the appellant’s case, of course,
8 collapses, for the fetus’ right to life would be guaranteed specifically by
9 the [14th] amendment.” Therefore, establishing personhood for every
10 prenatal, human being in Nevada constitutionally protects that person’s
11 unalienable right to life irrespective of race, sex, age, size, location,
12 viability, dependency, perceived handicap/disability, physical, mental
13 level of function or biological development.

14 *Roe vs Wade* also stated no laws existed in 1973 which defined the
15 prenatal human being as a person. No longer true today, thirty-eight
16 states, including Nevada, have enacted fetal homicide laws, with
17 abortion being the only required exception. The majority of states’ fetal
18 homicide laws protect prenatal persons from earliest stages of
19 pregnancy. Endowing personhood prohibits fetal homicide during all
20 stages of every prenatal person’s biological development and ends
21 intentional abortion.

22 Petitioners, Chelsea Chen, Mindy Hsu, Christina Ann Lydon, Wesley
23 Richard Lydon, Keith Reisinger, and Amy Gallacher, Nevada residents and
24 voters, filed this lawsuit which asks the court to declare the initiative invalid
25 and to enjoin the Secretary of State from including the initiative on the 2012
26 general election ballot. Petitioners assert the initiative violates the single-
27 subject requirement of NRS 295.009(1)(a) and (2), and the Description of
28 Effect is inaccurate and misleading in violation of NRS 295.009(1)(b).

The parties submitted briefs and the court heard oral argument.

STANDARD OF REVIEW

Nevada Constitution, Article 19, Section 2(1) reserves to “the people ...
themselves” the power to propose constitutional amendments by initiative. The
legislature enacted laws,¹ including NRS 295.009, to facilitate the initiative
process. Because the right to initiate change in our state constitution through
initiatives is one of the basic powers enumerated in the constitution, Nevada

¹Nev. Const. Art. 19 §5.

1 has a strong public policy of upholding the initiative power whenever possible.²
2 “[I]n interpreting and applying such [facilitative] laws [a court] must make
3 every effort to sustain and preserve the people’s constitutional right to amend
4 their constitution through the initiative process.”³ The party seeking to stop an
5 initiative bears the burden of demonstrating that the measure is clearly invalid.⁴

6 It is not the function of the court to judge the wisdom of the initiative.⁵
7

8 SINGLE-SUBJECT REQUIREMENT

9 NRS 295.009(1)(a) requires an initiative “embrace but one subject and
10 matters necessarily connected therewith and pertaining thereto.” NRS
11 295.009(2) states an initiative “embraces but one subject and matters
12 necessarily connected therewith and pertaining thereto if the parts of the
13 proposed initiative ... are functionally related and germane to each other in a
14 way that provides sufficient notice of the general subject of, and of the interests
15 likely to be affected by, the proposed initiative....”

16 Petitioners allege the initiative violates the single-subject requirement⁶
17 because the initiative embraces a number of subjects that are neither
18 functionally related nor germane to each other or to any single purpose.
19 Specifically, the petitioners allege the proposed amendment would ban every
20 intentional act that results in death of a fertilized human egg, or zygote.
21 Petitioners argue such a broad and far reaching proposal does not give notice of
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23 ²*Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 898, 141
24 P.3d 1235 (2006).

25 ³*Id.* 912.

26 ⁴*Las Vegas Taxpayer Accountability v. City Council of Las Vegas*, 125 Nev.
27 A.O. 17, 208 P.3d 429, 436 (2009).

28 ⁵*Nevada Judges Assn. v. Lau*, 112 Nev. 51, 57, 910 P.2d 898 (1996).

⁶NRS 295.009(1)(a) and (2) .

1 the subjects and interests likely to be affected, and therefore violates the single-
2 subject requirement.

3 Prolife alleges the initiative protects prenatal life in Nevada. Prolife argues
4 the text of the initiative addresses that single subject and purpose.

5 To resolve the single-subject issue the court must determine the initiative's
6 overall subject⁷ or primary purpose.⁸ To determine the initiative's subject or
7 primary purpose courts look to the initiative's text and the proponent's
8 arguments.⁹

9 The title of the proposed amendment is "Unalienable right to life of every
10 prenatal person is protected." The text of the initiative prohibits the intentional
11 taking of a prenatal person's life and defines "prenatal person." Neither the
12 Description of Effect nor Prolife's arguments contradicts the initiative's text.
13 The subject or primary purpose of the initiative is to amend the Nevada
14 Constitution to prohibit the intentional taking of prenatal life.

15 Prohibiting the taking of prenatal life and defining "prenatal life," are
16 functionally related and germane to each other in a way that provides sufficient
17 notice of the general subject of, and of the interests likely to be affected.

18 Petitioners argue the initiative would make multiple changes to Nevada law
19 that are not functionally related nor germane to each other. Petitioners give
20 examples of how the initiative could affect use of some common birth control
21 methods, the treatment of ectopic pregnancy, in vitro fertilization treatment,
22 and stem cell research. The Affidavit of Anna Themis Contomitros, M.D.
23 provides factual support for the petitioners' argument. Prolife did not submit
24 any evidence to contradict Dr. Contomitros's affidavit. Prolife asked the court to
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26 ⁷*Nevadans for the Prot. of Prop. Rights*, 122 Nev. at 907.

27 ⁸*Las Vegas Taxpayer*, 208 P.3d at 439.

28 ⁹*Id.*

1 take judicial notice of facts that are contrary to Dr. Contomitros's affidavit. The
2 facts Prolife requests the court take judicial notice of do not meet the
3 requirements for judicial notice.¹⁰ Therefore the court cannot take judicial
4 notice of the facts. The facts set forth in Dr. Contomitros's affidavit are
5 uncontroverted. The court finds the initiative could affect use of some common
6 birth control methods including the "pill," the treatment of ectopic pregnancy,
7 in vitro fertilization treatment, and stem cell research; and that stem cell
8 research offers potential for treating diseases such as diabetes, Parkinson's
9 disease, heart disease, and others.

10 NRS 295.009(1)(a) and (2) require a single subject, not a single effect. In
11 *Nevadans for the Protection of Property*¹¹ the court considered an eminent
12 domain initiative petition. That initiative contained 14 different sections. The
13 court severed five of the sections out of the initiative and concluded the other
14 nine sections complied with the single-subject requirement. Each of the
15 remaining nine sections had different effects. For example, section two
16 prohibits using eminent domain to transfer property interests from one private
17 party to another private party. Section four requires the government provide a
18 property owner with a copy of all appraisals and entitles the property owner to a
19 jury trial as to whether the taking is for a public use. Section five establishes
20 how taken or damaged property will be valued. Although that initiative had
21 many different effects all of those effects fit within a single subject, eminent
22 domain.

23 Section 8 in the initiative in *Nevadans for the Protection of Property*¹²
24 addressed government actions that cause substantial economic loss to property
25

26 ¹⁰NRS 47.130.

27 ¹¹122 Nev. 894.

28 ¹²122 Nev. 894.

1 rights. Section 8 included examples of substantial economic loss: the down
2 zoning of private property, the elimination of any access to private property,
3 and limiting the use of private air space. The court concluded the provision
4 violated the single-subject requirement because it applied to myriad other
5 governmental actions that do not fit within the most broad definition of
6 eminent domain.

7 The test is whether the initiative provisions fit within a single subject.
8 Prolife’s initiative if passed will have many different effects. But all of those
9 effects will fit within a single subject, prohibiting the intentional taking of
10 prenatal life.

11 There is a limit to how general a single subject can be. An excessively
12 general single subject can violate the single-subject requirement. In *Las Vegas*
13 *Taxpayer*¹³ the provisions of an initiative sought to require voter approval for
14 certain lease-purchase arrangements and to designate the voter of Las Vegas as
15 the City’s legislative body. The initiative proponents argued the two provisions
16 embraced the single subject of “voter approval.” The *Las Vegas Taxpayer* court
17 concluded the single subject “voter approval” was excessively general.

18 The *Las Vegas Taxpayer*¹⁴ court identified some other excessively general
19 “single subjects:” “government;” “public welfare;” “fiscal affairs;” “statutory
20 adjustments;” and “public disclosure, i.e., truth in advertising.” The *Las Vegas*
21 *Taxpayer* court took these examples from three cases. The first, *Harbor v.*
22 *Deukmejian*,¹⁵ cited *Evans v. Superior Court*¹⁶ as the leading authority on the
23 construction of California’s single-subject requirement. In *Evans* the
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25 ¹³208 P.3d 429 (2009).

26 ¹⁴*Id.*

27 ¹⁵43 Cal. 3d 1078, 1082-1103, 240 Cal. Rptr. 569, 742 P.2d 1290 (Cal. 1987).

28 ¹⁶215 Cal. 58, 8 P.2d 467 (Cal. 1932).

1 Legislature adopted the entire Probate Code in one enactment. The *Evans* court
2 held that the act contained only one subject as described by the initiative’s title,
3 an “act to revise and consolidate the law relating to probate . . . to repeal certain
4 provisions of law therein revised and consolidated and therein specified; and to
5 establish a Probate Code.”

6 A probate code includes many diverse provisions including wills, succession,
7 appointment of representatives, special administrators, powers and duties of
8 personal representatives, inventory and appraisal, different types of
9 administration, administration of trusts, escheats, and more. But all of those
10 provisions fit within the single subject, probate code.

11 The *Harbor* court also cited *Brosnahan v. Brown*.¹⁷ In *Brosnahan* a
12 proposition that dealt with “victims’ rights” had multiple facets such as
13 restitution, safe schools, bail, and prior convictions. The *Brosnahan* court held
14 the proposition did not violate the single-subject requirement.

15 The court turns now to the three cases cited in *Las Vegas Taxpayer* as
16 examples of excessively general single subjects. The legislative bill at issue in
17 *Harbor*, Bill 1379, contained provisions with no apparent relationship. The
18 asserted single-subject of Bill 1379 was “fiscal affairs.” The court cited a few
19 examples of the bill’s provisions: one section amended a provision of the
20 Business and Professions Code to require agencies within the Department of
21 Consumer Affairs submit a fiscal impact report to the director of the
22 department before transmitting it to the Legislature. Another section amended
23 the same code to provide that the Contractors’ State License Board may disclose
24 to the public general information regarding complaints filed against licensees.
25 Another section amended the Military and Veterans Code to provide that a
26 veterans’ home may be appointed guardian of the estate of a veteran. Another
27 section permitted concession contracts for state parks to exceed 20 years. The

28 ¹⁷32 Cal.3d 236, 186 Cal. Rptr. 30, 651 P.2d 274 (Cal. 1982).

1 *Harbor* court found Bill 1379 attempted to join disparate provisions “which
2 appear germane only to topics of excessive generality.”¹⁸ The court held Bill
3 1379 violated the single-subject requirement because of excessive generality of
4 “fiscal affairs” as a single subject.

5 The second case cited by the *Las Vegas Taxpayer* court was *Chemical*
6 *Specialties Mfrs. v. Deukmejian*.¹⁹ In *Chemical Specialties* Proposition 105
7 sought to reduce toxic pollution, protect seniors from fraud and deceit in the
8 issuance of insurance policies, raise the health and safety standards in nursing
9 homes, preserve the integrity of the election process, and fight apartheid. The
10 court held the provisions of Proposition 105 were neither functionally related to
11 one another nor reasonably germane to one another. The asserted single
12 subject, “public’s right to know” or “truth in advertising,” was excessively
13 general. The court concluded Proposition 105 violated the single-subject
14 requirement.

15 The third case cited by *Las Vegas Taxpayer* was *Senate of the State of*
16 *California v. Jones*.²⁰ The *Senate* initiative involved provisions that would
17 transfer the power to reapportion state legislative, congressional, and Board of
18 Equalization districts from the Legislature to the California Supreme Court, and
19 revise provisions relating to the compensation of state legislators and other
20 state officers. The *Senate* court concluded these “separate subjects” and
21 “diverse objectives” violated the single-subject requirement and could not be
22 saved by the overbroad single subject “voter approval.”

23 Prolife’s initiative may have effects in various areas including common birth
24 control methods, the treatment of ectopic pregnancy, in vitro fertilization
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26 ¹⁸*Harbor* at 1099.

27 ¹⁹227 Cal. App. 3d 663, 278 Cal. Rptr. 123 (Ct. App. 1991).

28 ²⁰21 Cal. 4th 1142, 90 Cal. Rptr. 2d 810, 988 P.2d 1089 (CA 1999).

1 treatment, and stem cell research. But those effects flow from a single subject
2 and purpose, prohibiting the taking of prenatal life. Prolife’s initiative does not
3 contain separate subjects or seek diverse objectives as do the cases cited above
4 which resulted in a conclusion that the initiative violated the single-subject
5 requirement.

6 The court concludes Prolife’s initiative contains a single subject.

8 DESCRIPTION OF EFFECT

9 Petitioners challenge Prolife’s Description of Effect. The court has found the
10 petitioners have established that if the initiative passes it will affect various
11 areas including common birth control methods, the treatment of ectopic
12 pregnancy, in vitro fertilization treatment, and stem cell research. Prolife’s
13 description does not include any information regarding these effects.

14 The State of Nevada has an important interest in “preventing the public
15 from being confronted with confusing or misleading initiatives”²¹ and
16 “promoting informed decisions and in preventing the enactment of unpopular
17 provisions by attaching them to more attractive proposals or concealing them in
18 lengthy, complex initiatives (i.e., logrolling).”²²

19 NRS 295.009 requires an initiative “set forth, in not more than 200 words, a
20 description of the effect of the initiative ... if the initiative ... is approved by the
21 voters.” The description of effect is a significant tool to help “prevent voter
22 confusion and promote informed decisions.”²³ An initiative’s summary “need
23 not be the best possible statement of a proposed measure’s intent,” but it must
24 be “straightforward, succinct, and nonargumentative.”

26 ²¹*Nevadans for the Prot. of Prop. Rights* at 906.

27 ²²*Las Vegas Taxpayer* at 437.

28 ²³*Nevadans for Nevada v. Beers*, 122 Nev. 930, 939, 142. P.3d 339 (2006).

1 Prolife's Description of Effect is inadequate. It is ordered the following
2 description be substituted into the initiative:

3 All persons are endowed by their creator with certain unalienable
4 rights including the right to life. This initiative proposes to add a
5 new section to the Nevada Constitution to protect a prenatal
6 person's right to life. The new section would make it unlawful to
7 intentionally kill a prenatal person by any means. The term
8 "prenatal person" includes every human being from the moment
9 an egg is fertilized by a sperm and at all stages of development
10 from that time until birth. The initiative would protect a prenatal
11 person regardless of whether or not the prenatal person would
12 live, grow, or develop in the womb or survive birth; prevent all
13 abortions even in the case of rape, incest, or serious threats to the
14 woman's health or life, or when a woman is suffering from a
15 miscarriage, or as an emergency treatment for an ectopic
16 pregnancy. The initiative will impact some rights Nevada women
17 currently have to utilize some forms of birth control, including the
18 "pill;" and to access certain fertility treatments such as in vitro
19 fertilization. The initiative will affect embryonic stem cell
20 research, which offers potential for treating diseases such as
21 diabetes, Parkinson's disease, heart disease, and others.

22 **STANDING**

23 Prolife withdrew their standing objection during oral argument.

24 **CORRECTION TO CONFORM INITIATIVE LANGUAGE**

25 Prolife requests the court order the Secretary of State to make page two of
26 the initiative's Description of Effect identical to the page one Description of
27 Effect. The court's order to substitute a description of effect moots this issue.

28 **CONCLUSION**

The petitioners' request to declare the initiative invalid because it violates
the single-subject requirement is denied. The request to declare the Description
of Effect inadequate is granted and substitute language is ordered. Prolife's

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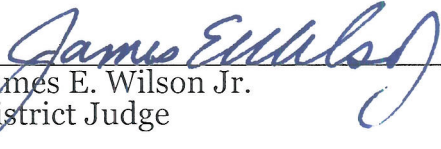
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1 request to have the Secretary of State correct an error in the initiative's second
2 page Description of Effect is moot.

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December 19, 2011


James E. Wilson Jr.
District Judge

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Honorable James E. Wilson, and I certify that on this 19 day of December, 2011, I deposited for mailing at Carson City, Nevada, or caused to be delivered by messenger service, a true and correct copy of the foregoing order and addressed to the following:

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