IN THE SUPREME COURT OF THE STATE OF NEVADA

UBER SEXUAL ASSAULT SURVIVORS FOR LEGAL ACCOUNTABILITY AND NEVADA JUSTICE ASSOCIATION,
Appellants,
vs.
UBER TECHNOLOGIES, INC, A DELAWARE CORPORATION; MATT GRIFFIN, JOHN GRIFFIN, SCOTT GILLES AND TIA WHITE, INDIVIDUALS; NEVADANS FOR FAIR RECOVERY, A REGISTERED NEVADA POLITICAL ACTION COMMITTEE; AND FRANCISCO V. AGUILAR, IN HIS OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE,
Respondents.

No. 88813

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying declaratory or injunctive relief in an election matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

Respondents Uber Technologies, Inc.; Matt Griffin; John Griffin; Scott Gilles; Tia White; and Nevadans for Fair Recovery (collectively Uber) circulated an initiative that would create a statutory 20% cap on contingent attorney fees in civil actions. The description of effect on the Initiative's signature pages provides:

> If enacted, this initiative will limit the fees an attorney can charge and receive as a contingency fee in a civil case in Nevada to 20% of any amount or amounts recovered, beginning in 2027. In Nevada currently, most civil cases do not limit an attorney's contingent fee percentages, except that such fees must be reasonable. Current law does, however, limit attorney fees in medical malpractice

> cases to 35% of any recovery, and caps contingency fees for a private attorney contracted to represent the State of Nevada to 25% of the total amount recovered.

Appellants Uber Sexual Assault Survivors for Legal Accountability and the Nevada Justice Association (collectively, USAS) challenged the Initiative in the district court on multiple grounds. The district court denied USAS's request for an injunction. USAS appeals.[1]

USAS first argues that the district court erred in rejecting its challenge to the description of effect. Reviewing the district court's decision de novo, we conclude the description of effect is legally insufficient. *See Helton v. Nev. Voters First PAC*, 138 Nev. 483, 486, 512 P.3d 309, 313 (2022) (providing that this court reviews a challenge to an initiative de novo when the district court resolved the challenge in the absence of any factual dispute). Because this issue is dispositive, we need not reach USAS's remaining arguments.

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." The description of effect must be "straightforward, succinct, and nonargumentative." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013) (quoting *Las Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas (LVTAC)*, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009) (internal quotations omitted)). It must also not be "deceptive or misleading." *Id.*

We conclude that the description of effect is misleading and confusing. The description of effect references existing statutory caps on

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[1]The Secretary of State, listed as a respondent on appeal, filed a limited response below and before this court indicating that he takes no position in this matter.

contingent attorney fees in medical malpractice cases and cases where a private attorney represents the State of Nevada, both of which are higher than the 20% cap proposed by the Initiative. This creates an ambiguity in the extent to which the Initiative affects the existing higher caps mentioned in the description of effect. As currently drafted, the description leaves several material questions unanswered, such as whether the Initiative applies to civil medical malpractice cases and those where private attorneys represent the State of Nevada; and if so, whether the cap proposed by the Initiative replaces the existing higher caps. The description of effect thus leaves potential signatories with more questions about the Initiative's effect than it answers.

The description of effect is also not straightforward and is deceptive and misleading regarding how the proposed cap is calculated. By referencing the existing cap on contingent attorney fees in medical malpractice cases, the description implies that the proposed cap will be calculated in the same way as the existing statutory cap in medical malpractice cases. But the Initiative uses a different definition of the term "recovered." Specifically, the medical malpractice cap provides the following definition for recovery:

> For the purposes of this section, "recovered" means the net sum recovered by the plaintiff after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and general and administrative expenses incurred by the office of the attorney are not deductible disbursements or costs.

NRS 7.095(3). Conversely, the Initiative defines "recovered," as "the net sum recovered by the plaintiff or plaintiffs after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim." The first part of the Initiative's definition is

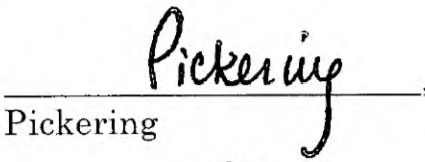
substantively identical to NRS 7.095's, but deceptively omits the second part of NRS 7.095's definition, which provides that medical costs and administrative expenses are not deductible disbursements or costs.

This omission also renders the description of effect misleading. The description of effect states that "[i]f enacted, this initiative will limit the fees an attorney can charge and receive as a contingency fee in a civil case in Nevada to 20% of any amount or amounts recovered." Therefore, a voter could understandably interpret this as meaning that an attorney is entitled to 20% of the overall award. But as set forth above, the difference in the definitions of "recovered" under the medical malpractice cap and that proposed under the Initiative potentially results in a far lower contingent attorney fee cap under the Initiative than under the existing medical malpractice cap. Reading the description together with the Initiative does not clarify the issue because neither the description nor the Initiative explains the types of deductions, disbursements, or costs that apply in calculating the cap. *See Educ. Initiative PAC*, 129 Nev. at 48, 293 P.3d at 883 (holding that courts "must take a holistic approach" in determining whether the description is straightforward, succinct, and nonargumentative "and whether the information contained in the description is correct and does not misrepresent what the initiative will accomplish and how it intends to achieve those goals" (internal quotation marks omitted)). This omission impacts the voters' ability to make an "informed decision[ ]" whether to sign the petition. *Id.* at 43, 293 P.3d at 879. Despite having over one hundred more words to explain the calculations for an attorney's recovery of fees under the proposed cap and to clarify the description's reference to other caps, Uber failed to do so. *See* NRS 295.009(1)(b) (permitting a description of effect to be 200 words in length).

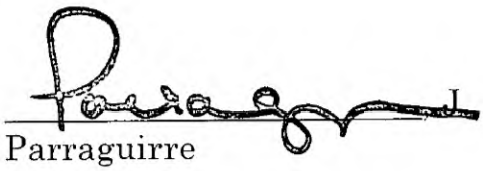
In sum, we conclude the district court erred in denying USAS's request for injunctive relief on the ground that the description of effect for the Initiative is legally insufficient. We therefore

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Herndon

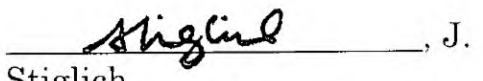


_____, J.
Pickering



_____, J.
Parraguirre

_____, J.
Bell



_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Lee

cc: Department 1, First Judicial District Court
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