

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH L. HALVERSON, an individual¹
Petitioner,

Case No.:

v.

**ROSS MILLER, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF STATE, IN
AND FOR THE STATE OF NEVADA,
HARVEY L. LOMAX, IN HIS OFFICIAL
CAPACITY AS REGISTRAR OF VOTERS, IN
AND FOR THE COUNTY OF CLARK AND
ROES I - XX.,**

Respondents

WRIT OF MANDAMUS, PROHIBITION AND DECLARATORY RELIEF

(Immediate Hearing Requested)

COMES NOW, Petitioner, Elizabeth Halverson, in propria persona, and petitions this Honorable Court for a Writ of Mandamus pursuant to N.R.S. 34.150 through N.R.S. 34.350 or in the alternative a Writ of Prohibition pursuant to N.R.S. 34.320 through N.R.S. 34.350. Petitioner seeks an Order commanding Ross Miller, Secretary of State of the State of Nevada and Harvey L. Lomax, Registrar of Voters, in and for the County of Clark, State of Nevada to refrain from conducting an election or from publishing any voter/election material that seeks to conduct an election in the following seats within the Eight Judicial District, County of Clark, Nevada: Departments 22(XXII); 23 (XXIII) or 24 (XXIV) in the Civil/Criminal division and Department M of the Family division. Further, Petitioner

¹ Although a declaration that SB 195(3) is unconstitutional will affect many others and the taxpayers of the State of Nevada, in this case, it would appear that such parties would not need to be joined pursuant to N.R.S. 30.130 and N.R.S. 30.140

1 seeks a declaratory judgment pursuant to N.R.S. 30.010 through N.R.S. 30.160 that SB 195 (3) [2005
2 Statutes of Nevada, Page 1970, Chapter 436] is unconstitutional.

3 In 1975, the citizens of the State of Nevada voted to amend the Nevada Constitution, Article 6. §
4 5 at the term of office for District Court Judges from four (4) § years to six (6) years. Despite this
5 change to the Constitution, not all judicial offices have been accorded the proper term of office. During
6 the 2005 legislative session, the Legislature considered and passed SB 195 which the Legislative history
7 states was an exempt act that the Legislature considered on behalf of the Supreme Court². The
8 Legislation shows no other author or sponsor of SB 195. SB 195 increases the number of judges in the
9 Eighth Judicial District and then funds those judgeships. SB 195 (3) purports to set the term of the
10 additional judgeships created by SB 195 at two (2) years rather than six years. Said change was made in
11 defiance of the Nevada Constitution Article 6. § 5 and of Article 6. § 15 which prohibits the increase of
12 salaries to judges and justices during their term of office. The additional cost to the taxpayers from this
13 change in the term of office, for these four offices alone is \$480,000.

14 Respondent Secretary of State Ross, both on his website and in his printed booklet "*State of*
15 *Nevada Election Information Guide, 2007-2008*" states that among the offices open during the 2007-
16 2008 election season are Departments 22(XXII); 23 (XXIII) or 24 (XXIV) and Department M of the
17 Eighth Judicial District Court. See Exhibit B. Further, Respondent Lomax, is authorized by the
18 Secretary of State's office to receive applications for the aforementioned Departments and to conduct
19 the election for those offices. It would appear that Respondents are relying on the passage of SB
20 195(3). However, said statute violates several Constitutional provisions and ought not to be enforced.

21 It is difficult for taxpayers to be aware of these unwarranted expenses and the judicial system
22 makes it difficult for taxpayers to assert their rights to prohibit such violations of the Constitution.
23 Those who would violate the Constitution seek to limit those who can raise claims of unconstitutionality
24 to those who are "directly affected" by such legislation. Clearly it is in the best interests of judges to
25 receive the pay raises associated with this type of legislation. But is it in the public interest? If only a
26 District Judge has standing to bring this issue before the court, then a Judge would be remiss not to do

27
28 ² See Attachment A- Copies of the Legislative history showing that the SB 195 had no known sponsor other than the Supreme Court.

1 so. Petitioner is a District Judge in Department 23 (XXIII) which is one of the seats affected by SB
 2 195. and therefore has standing to bring this action. Petitioner is directly affected by the shortening of
 3 the term of office, and has been required to expend money for an election that would not be required
 4 under the Constitutional term. Petitioner would also be in a position to violate Article 6, § 15 by having
 5 a salary increase during the constitutional term of office. . SB 195 is not the last of this kind of
 6 legislation. During the 2007 legislative session, again at the behest of the Supreme Court legislation
 7 was passed to again alter the terms of District Judges without the consent of the citizens of Nevada.
 8 See Exhibit ???) The 2007 legislation seeks to dissolve the six original family court seats in Eighth
 9 Judicial District [Departments A through F] and replace them with new seats for four (4) years terms in
 10 order to increase the monies paid to these district court judges. In order to resolve this matter, the
 11 constitutionality of SB 195(3) [2005 Statutes of Nevada, Page 1970, Chapter 436] must be determined.
 12 Further, Petitioner has no plain, speedy or adequate remedy at law

13 WHEREFORE it is respectfully requested that this Honorable Court issue a Writ of Mandamus
 14 or in the alternative a Writ of Prohibition enjoining Respondents from declaring Departments 23, 23, 24
 15 and M as eligible for election in November 2008 or conducting any such election for those seats.
 16 Further, Respondents should be enjoined from conducting any other such elections outside of the full
 17 term of Judges in the future. Lastly, no judges should receive any salary over and above that which is
 18 due them for the constitutional term of office.

19 Dated this 26th day of April, 2008

20 Respectfully Submitted,

21
 22 
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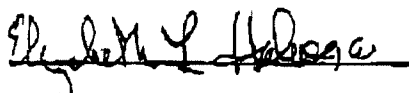
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election for offices which are not vacant are avoided and that the proper salaries are paid to the judges elected in 2006 in Departments Twenty-two, (XXII); Twenty-three, (XXIII), Twenty-four, (XXIV) and Family Division, Department M in the Eighth Judicial District.

7. I have reviewed the factual information in this Writ and know them to be true or if asserted on information and belief, I believe them to be true.

Further, your Affiant sayeth naught.

Dated: April 30, 2008

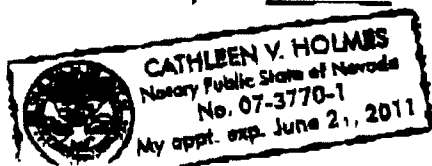

ELIZABETH L. HALVERSON

Subscribed and Sworn to before me
this 15th day of April, 2008.



Notary Public

My Commission Expires: _____



STATEMENT OF ISSUES

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1. Is SB 195(3) [2005 Statutes of Nevada, Page 1970, Chapter 436, § 3] constitutional?
2. May a State Legislature Permissively Amend a Constitution by Statue?
3. Absent a constitutional amendment, can the term of office in Article 6, §5 of the Nevada Constitution be changed?
4. Absent a constitutional amendment, can the prohibition on the increase in judicial salary contained in Article 6, §15 of the Nevada Constitution be circumvented?
5. Has there been an appropriate amendment of the aforementioned statues such as would allow the declaration of a minimal term of office?
6. May the Secretary of State of Nevada and/or the Registrar of Voters of the County of Clark, State of Nevada, conduct an election where to do so would violate the Constitution of Nevada or the Constitution of the United States?

SB 195(3) WHICH SHORTENS THE TERM OF A DISTRICT JUDGE FROM SIX YEARS TO TWO YEARS IS UNCONSTITUTIONAL?

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3 During the 2005 Legislative Session, the Legislature passed and the Governor signed into
4 law, SB 195 [2005 Statutes of Nevada, Page 1970, Chapter 436 Attachment E], a Statute sought
5 by the Supreme Court to add additional judges to the Eighth Judicial District Court. See
6 Attachment A] The following judgeships were created: Departments Twenty-two, (XXII);
7 Twenty-three, (XXIII), Twenty-four, (XXIV) and Family Division, Department M in the Eighth
8 Judicial District As part of this Legislation SB 195(3)¹ sought to limit the constitutionally
9 proscribed terms of the four newly created judgeships to two years rather than the
10 constitutionally mandated six years pursuant to Article 6, § 5. The legislation was passed with
11 virtually no discussion as to the provision altering the term of office. Most of the legislative
12 history concerns itself with the number of judges, the cost for funding and the ongoing
13 negotiations with Clark County over the number of new judges that it would allow. [Attachment
14 F] Neither the Legislative Portion of the Nevada Constitution, [Article 4, §§ 1- 38] nor any
15 portion of the Judicial Article, grants the Legislature the right to change the term of office .
16 Absent a basis for changing the term of office of a District Judge, SB 195 (3) is unconstitutional
17 and void. The Supreme Court of Nevada has long held that:

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21 "An act of the legislature which is not authorized by the state
22 constitution at the time of its passage is absolutely null and void. It
23 is a misnomer to call such an act a law. It has no binding authority,
24 no vitality, no existence. It is as if it had never been enacted, and it
25 is to be regarded as never having been possessed of any legal force
26 or effect. (Meagher v. County of Storey, 5 Nev. 251; State v.
27 Rogers, 10 Nev. 260; Cooley, Const. Lim. 227)."

28
¹ Sec. 3. The additional district judges required for the Eighth Judicial District pursuant to section 1 of this act must be selected at the general election held on November 7, 2006, and take office on January 1, 2007. The terms of these judges expire on January 2, 2009.

1 State ex rel. Stevenson v. Tuffy, 20 Nev. 427, 428 (1890)

2 Similarly, the United States Supreme Court has also held that "An unconstitutional law
3 is void, not from the time it is so declared, but from its enactment. Great Southern Fire Proof
4 Hotel Company v. Jones, 24 S. Ct. 576, 193 U.S. 532 (1904) citing Flindlay v. Pendleton, 62
5 Ohio St. 80, 88. See also Norton v. Shelby County, 118 U.S. 442, "...an unconstitutional act is,
6 in legal contemplation, as inoperative as though it had never been passed."

7
8 As discussed further below, the Nevada Constitution, Article 6 § 5, clearly states that the
9 term of a District Judge shall be six years. On this basis alone, SB 195(3)[2005 Statutes of
10 Nevada, Page 1970, Chapter 436, § 3] is facially void and unconstitutional. Despite the facial
11 unconstitutionality of SB 195(3) the Respondents Ross and Lomax, declared that the judicial
12 departments created by SB 195 (1) [2005 Statutes of Nevada, Page 1970, Chapter 436§ 1] in
13 were for two years and accepted Declarations or Acceptances of Candidacy for Departments 22,
14 23, 24 and M. Pursuant to the Constitution as the term of office of six years has not elapsed in
15 any of those departments and will not elapse until January 1, 2012
16

17
18 **STANDING**

19 Petitioner is a currently the District Judge in Department XXIII of the Eighth Judicial
20 District. Department XXIII is one of the judicial departments created under SB 195 in 1995.
21 SB 195 purports to amend N.R.S. 3..018 however, not all provisions of SB 195 appear with in
22 the statute There are currently three versions of N.R.S. 3.018 [Exhibit C and N.R.S. 3.0185]
23 but no version gives notice that the terms of the District Judges to be elected to the seats in
24 question has been altered from the constitutionally proscribed term to two years. The public was
25 not made aware of the limitation until voting began and the candidates were not notified until the
26 beginning of filing which began on May 1, 2006. Petitioner, as all other office holders, has an
27 interest in her office. Mosley v. Nevada Commission, 117 Nev. 371, 22 P.3d 655 (2001)
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