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Ross Miller  
Secretary of State  
Nevada State Capitol Building  
101 North Carson Street, Suite 3  
Carson City, Nevada 89701

Dear Secretary of State Miller:

You asked our opinion as to who may properly sign a petition to recall a public officer.

**QUESTION**

May any registered voter sign a petition to recall a public officer, or may only a registered voter who cast a ballot at the election in which the public officer was elected sign a recall petition recalling that public officer?

**ANALYSIS**

Nev. Const. art. 2, § 9 sets forth the requirements for recall petitions and provides in pertinent part:

Every public officer in the State of Nevada is subject, as herein provided, to recall from office by the registered voters of the state, or of the county, district, or municipality which he represents. For this purpose, not less than twenty-five percent (25%) of the number who actually voted in the state or in the county, district, or municipality which he represents, at the election in which he was elected, shall file their petition, in the manner herein provided, demanding his recall by the people.

The remaining text of Art. 2, § 9 provides that the recall petition may not exceed 200 words and that a special election shall be held within 30 days after the filing of the petition. The language of Art. 2, § 9 is unambiguous and imposes a qualification on the signers of recall petitions; which is that only the voters who actually voted in the election in which the public officer was elected may sign a recall petition. However, because there is disagreement over the interpretation of the language, this opinion presumes an ambiguity exists and is written as such. See *Cal Commer. Enters. v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003) (when a statute is not ambiguous, it is not to be construed beyond its plain meaning, unless such construction would yield an absurd result).

I. Principles of Statutory Construction are Appropriate to Determine Legislative Intent in an Ambiguous Constitutional Provision

There is disagreement over the interpretation of Art. 2, § 9. One interpretation is that only a registered voter who cast a ballot in the election in which the public officer was elected may sign a petition recalling that public officer. The other interpretation is that any registered voter may sign a recall petition. Where a statute is susceptible of two interpretations, resort to principles of statutory construction is appropriate. *Advanced Sports Information v. Novotnak*, 114 Nev. 336, 956 P.2d 806 (1998). The general rules of statutory construction apply when construing constitutional provisions. *Guinn v. Legislature of State of Nevada*, 119 Nev. 277, 285, 71 P.3d 1269, 1274-1275 (2003). Statutes must be construed in light of their purpose as a whole. *Hampton v. Brewer*, 103 Nev. 73, 74, 733 P.2d 852 (1987), cert. denied, 482 U.S. 915, 107 S.Ct. 3187 (1987).

A recall election is a process that allows registered voters to remove elected officers from office. The right to recall a public officer is bestowed on all registered voters. This is plainly stated in the first sentence of Art. 2, § 9, “[e]very public officer . . . is subject, as herein provided, to recall from office by the registered voters.” Thus, any registered voter can vote at a special recall election.

It is logical to conclude that only those registered voters who actually cast ballots in the election in which the public officer was elected may sign the petition demanding a special recall election of that public officer. This is indicated in the second sentence of Art. 2, § 9, which states that, “[f]or this purpose, not less than . . . 25% of the number who actually voted . . . at the election in which [the public officer] was elected, shall file their petition . . . demanding his recall by the people.” The change in terminology from “registered voters” in the first sentence to “25% of the number who actually voted” in the second sentence indicates a limitation on who can sign the petition demanding a recall election, *i.e.*, registered voters who actually cast ballots in the specific election. This limitation appears reasonable because the right to sign a petition is not identical to the right to vote.

Moreover, the insertion of the word "actually" in the second sentence is significant and must be given meaning. "Actually" has the meaning of "in act or in fact." *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003). Accordingly, the second sentence limits the signers to a recall petition to those registered voters who in fact or in act voted at the election in which the public officer was elected. To construe the second sentence as allowing any registered voter to sign a recall petition would render the word "actually" nugatory. See *Eggleston v. Costello*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000) (no provision of a statute should be rendered nugatory, nor should any language be made mere surplusage, if such a result can be avoided).

This construction is consistent with AGO 80-17, which clarified the requirement of who may sign the notice of intent to recall a public officer. NRS 306.015(2) provides:

The notice of intent:

- (a) Must be signed by three registered voters who actually voted in this State or in the county, district or municipality electing the officer at the last preceding general election.

AGO 80-17 opined that NRS 306.015(2) unequivocally requires that the signers of the notice of intent must actually have voted in an immediately preceding general election in order to sign the notice of intent to recall a public officer. NRS 306.015(2) contains language that is nearly identical to the second sentence of Art. 2, § 9 and the analysis should similarly apply to Art. 2, § 9.

We note that AGO 80-4 might be construed as rendering a contrary opinion. AGO 80-4 interpreted NRS 306.020, which at the time stated, "For the purpose of recalling any public officer, there may be filed . . . a petition signed by a number of registered voters not less than 25 percent of the number who actually voted in the election by which the officer sought to be recalled was elected to his office." That AGO concluded that pursuant to NRS 306.020, "any voter who is presently registered in Nevada may sign petitions for political party and independent candidate qualification, initiative and referendum measures and recall elections."

It is significant that NRS 306.020 has since been amended and the above language was removed from the statute.<sup>1</sup> The statute's legislative history reveals the

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<sup>1</sup> NRS 306.020 was amended to read:

1. Every public officer in the State of Nevada is subject to recall from office by the registered voters of the state or of the county, district or municipality from which he was elected, as provided in section 9 of article 2 of the constitution of the State of Nevada and this chapter.
2. The petition must, in addition to setting forth the reason why the recall is demanded:
  - (a) Contain the residence addresses of the signers and the date that the petition was signed;
  - (b) Contain a statement of the minimum number of signatures necessary to the validity of the petition;
  - (c) Include the date that a notice of intent was filed; and

reason that language was removed was to avoid redundancy and contradiction between the statute and the constitutional provision. *Hearing on S.B. 94 Before the Senate Committee on Government Affairs*, 1981 Leg., 61st Sess. (January 30, 1981); *Hearing on S.B. 94 Before the Assembly Committee on Elections*, 1981 Leg., 61st Sess. (February 23, 1981); see also, AGO-17. Accordingly, AGO 80-4 is inapplicable because it interpreted language that has since been removed and the only place to look for guidance on the signatures requirement for a recall petition is Art. 2, § 9.

Finally, it appears the Nevada Supreme Court supports this interpretation. In *Foley v. Sparks*, 110 Nev. 1295, 885 P.2d 583 (1994), the Supreme Court, in holding that the election immediately preceding the filing of the recall petition is the election to use in determining how many signatures are required, explained that pursuant to Art. 2, § 9, "twenty-five percent of the persons who actually voted in the relevant political division in the preceding general election shall file their petition for recall. Thus, twenty-five percent of the persons who voted in the general election preceding *the filing of the petition* must sign the recall petition." *Id.* at 1301 (emphasis in original). This explanation appears to support the interpretation that only registered voters who actually voted may sign a recall petition.

II. Limitation on Signers is Supported in Light of Legislative Amendment History and Comparison to Language Contained in Other Constitutional Provisions

The Legislature intended to limit who can sign recall petitions. Art. 2, § 9 is unique in that its text contains the words *actually voted*. Art. 2, § 9 was amended in 1970 to add the words "actually voted." Prior to 1970, Art. 2, § 9 read:

Every public officer is subject to recall from office by the qualified electors of the municipality, from which he was elected. For this purpose not less than twenty-five percent (25%) of the qualified electors who vote in the municipality electing said officer, at the preceding election, for justice of the supreme court, shall file their petition.

In 1970, Art. 2, § 9 was amended to read:

Every public officer in the State of Nevada is subject, as herein provided, to recall from office by the registered voters of the state, or of the county, district, or municipality, from which he was elected. For this purpose, a number of registered voters not less than twenty-five per cent (25%) of

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(d) Have the designation: "Signatures of registered voters seeking the recall of \_\_\_\_\_ (name of public officer for whom recall is sought)" on each page if the petition contains more than one page.

the number who *actually voted* in the state or in the county, district or municipality electing said officer, at the preceding general election shall file their petition, in the manner herein provided, demanding his recall by the people. (Emphasis added.)

The voters ratified this amendment at the 1970 general election. The amendment was posed to the voters as "Shall – Senate Joint Resolution proposing to amend section 9 of article 2 of the Constitution of the State of Nevada, relating to the recall of public officers, by clarifying the qualifications of petitioners required to recall officers." The explanation for the amendment was:

A majority vote of "Yes would amend the Constitution of the State of Nevada by *changing the number and qualifications of petitioners* required to recall public officers from not less than 25 percent of the qualified electors who vote in the preceding election in the state, county, district or municipality electing the officer in question to not less than *25 percent of the registered voters who actually voted at the last general election*. (Emphasis added.)

The question posed to the voters and the explanation support the interpretation that Art. 2, § 9 imposes a limitation, which is that not every registered voter is qualified to sign a recall petition.

In 1993, Art. 2, § 9 was again amended to its current language. The word "actually" was not removed when Art. 2, § 9 was amended in 1993, and the amendment was ratified by the voters in the 1996 general election. The legislative history also reveals the intent was to allow only certain registered voters to sign a recall petition. In clarifying the twenty-five percent requirement, it was explained that the "25 percent had to have voted in that election" in order to sign a petition recalling that public officer. *Hearing on A.J.R. 6 Before the Senate Committee on Government Affairs, 1995 Leg., 68th Sess. (March 8, 1995).*

There are several other constitutional provisions that allow for the qualification of a petition for the ballot if a certain percentage of signatures are gathered. However, the word "actually" is significantly omitted from these other constitutional provisions. For example, Art. 19, § 1 requires "a number of registered voters of this state equal to 10 percent or more of the number of voters who voted at the last preceding general election" for a referendum for approval or disapproval of a statute or resolution enacted by the Legislature. Similarly, Art. 19, § 2 requires "a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election" for an initiative petition for enactment or amendment of statute or amendment of the Constitution. Finally, for counties or municipalities, Art. 19, § 4 requires "a number of registered voters equal to 15 percent or more of the voters who voted at the

last preceding general election or municipal election” for initiative petitions; and “10 percent or more of such voters” for referendum petitions.

Thus, the interpretation that only registered voters who *actually voted*, i.e. in fact or in act voted, may sign a recall petition is compatible with the other constitutional provisions. This construction gives effect to the terms *actually voted*, which are not included in any other constitutional provisions. It further evidences that the intent was to make recall petitions different from the rest of the petitions allowed under the Constitution.<sup>2</sup>

### III. Important State Interest in Limiting Certain Registered Voters to Sign Petition

As stated earlier, recall is a process that allows citizens to directly express their disappointment in the election result or in the elected officer’s performance of his job. Unlike impeachment, recall does not require any specific grounds. Thus recall is a potentially powerful tool that could be misused by any group that is disappointed in the election result. This is especially true where low voter turnout results in an upset, which then provides the defeated candidate or a special interest group the opportunity to misuse the recall process to gain a second election. Accordingly, the secretary has a legitimate concern in maintaining political stability, protecting the integrity of the elective processes and maximizing the likelihood that the elected officer has sufficient support to perform the functions of his office. Thus, the limitation on who can sign a recall petition furthers an important state interest by minimizing misuse of the recall process and the likelihood of the expense and burden of a recall election for improper reasons.

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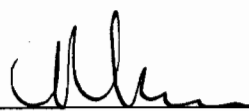
<sup>2</sup> The summary of the testimony before the Legislature reflects the limitation specifically applies to petitions for recall and does not pertain to any other petitions where a signatures requirement is necessary to make the petition viable. *Hearing on A.B. 552 and A.J.R. 6 Before the Assembly Committee on Elections and Procedure, 1993 Leg., 67th Sess. (June 30, 1993).*

**CONCLUSION**

Art. 2, § 9 imposes a limitation on the signers of recall petitions. Only registered voters who actually voted in the election in which the public officer was elected may sign a recall petition recalling that public officer.

Sincerely,

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