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DISTRICT COURT

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CLARK COUNTY, NEVADA

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8 THE CITY OF BOULDER CITY, NEVADA,)

CASE NO. A621582

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Plaintiff,

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vs.

DEPT. XIX

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12 DANIEL D. JENSEN, ET AL.,

13

Defendants.

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BEFORE THE HONORABLE ALLAN R. EARL, DISTRICT COURT JUDGE

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THURSDAY, OCTOBER 21, 2010

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TRANSCRIPT OF PROCEEDINGS

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DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO
NRS 41.660 (ANTI-SLAPP) AND REQUEST FOR ATTORNEY'S FEES AND COSTS

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APPEARANCES:

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For the Plaintiff:

JENNIFER J. DiMARZIO, ESQ.

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PAUL E. LARSEN, ESQ.

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DAVID R. OLSEN, ESQ.

For the Defendants:

LINDA G. STRICKLAND, ESQ.

TRACY STRICKLAND, ESQ.

RECORDED BY: Francesca Haak, Court Recorder

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CLERK OF THE COURT

1 Las Vegas, Nevada - Thursday, October 21, 2010, 10:45 a.m.

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3 THE COURT: Case number A621582, Nevada, Boulder City -- sorry -- Boulder
4 City, Nevada versus Daniel Jensen, et al.

5 MR. LARSEN: Good morning, Your Honor. Paul Larsen, Lionel Sawyer & Collins,
6 representing the city of Boulder City. With me is City Attorney Dave Olsen and Jennifer
7 DiMarzio from our law firm.

8 MR. STRICKLAND: Yes, good morning, Your Honor. Tracy Strickland for the
9 defendants, and Linda Strickland.

10 THE COURT: This is the defendants' special motion to dismiss pursuant to the
11 Nevada anti-SLAPP statute. I begin by saying that I've had two prior occasions to deal with
12 the anti-SLAPP statute in some detail, but they did not deal with the initiative process; they
13 dealt with lawsuits against a defendant who dealt with a contractors' board and got sued by
14 somebody he reported, and somebody who dealt with, oh, municipal ordinances that another
15 tenant in a building was violating, and he got sued by that tenant. That's much different than
16 the case we have here.

17 That being said, I just wanted to let you know this is not the first time I've
18 dealt with the SLAPP statute, but this is the first time I've dealt with it in this context and it's
19 quite interesting.

20 MR. STRICKLAND: Yes, Your Honor, I -- may I proceed then?

21 THE COURT: You may.

22 MR. STRICKLAND: Obviously, from the Court's discussion of the other cases that
23 we sat through this morning, the Court's read all the motions, the opposition, and the reply
24 brief. But just to make sure our record's complete, obviously, this case arises from my
25 clients initiating a petition which they first gave to the city attorney for his review back in I

1 believe it was March, and the dates are put in the declarations of Mr. Jensen, who is the
2 person that did that.

3 Subsequent to that, the city attorney took no action and did not make any
4 advice or make any recommendations about any concerns about the language of that
5 initiative. It was submitted to the city clerk.

6 What's important from my perspective on this case, obviously, we're in a
7 Nevada court, involving Nevada law, and Nevada doesn't have much law on the SLAPP
8 issues or anti-SLAPP.

9 THE COURT: Sure doesn't.

10 MR. STRICKLAND: It has one case. But I think if you look at the Assembly Bill
11 485, it clearly tells the Court the purpose behind the anti-SLAPP in Nevada, and it's
12 substantially distinct from the anti-SLAPP rules in California.

13 THE COURT: Well, there's one huge difference. You don't have to show that you
14 had a chance of succeeding.

15 MR. STRICKLAND: Oh, I think there's yet a bigger distinction than that one, Your
16 Honor. In 41.650, the Court -- or excuse me -- the Legislature put in an immunity provision.
17 That is not found in the California anti-SLAPP laws. And I believe the immunity was put in
18 there because if you look at Assembly Bill 485, the language with the whereas, they're
19 saying that in Nevada we not only have a Constitutional right that basically California in the
20 U.S. Constitution has about petitioning the government, they also indicate that we don't care,
21 even if the people who submitted initiatives are wrong. We encourage -- we want to
22 encourage the people to participate in our state. As every state in this Union has, especially
23 during this election cycle that's coming up, there's apathy throughout the country in a lot of
24 elections, especially these off-term elections.

25 But Nevada separates itself from California. And I practiced in California for a