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Subject: Activity in Case 3:08-cv-00118-BES-VPC Nevada Restaurant Association et al v. Miller et al Minute Order

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United States District Court

District of Nevada

Notice of Electronic Filing

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Case Name: Nevada Restaurant Association et al v. Miller et al
Case Number: 3:08-cv-118
Filer:
Document Number: 38

Docket Text:

MINUTE ORDER IN CHAMBERS of the Honorable Judge Brian E. Sandoval, on 5/28/2008. IT IS ORDERED, the Court will not sua sponte remand the instant action. Instead, the parties are ordered to brief the issue pursuant to the following schedule: Defendants PEST Committee, Badillo, Lipsman, Maurice (collectively "Committee Defendants"), as the removing parties, are ordered to file a brief in support of the Court's jurisdiction over the federal constitutional claim w/in ten days of entry of this order; Association Plaintiff's and Defendant/Cross-Defendant Secretary are ordered to file their brief in opposition w/in ten days after the filing of Committee Defendants' brief; no reply shall be filed. (Copies have been distributed pursuant to the NEF - KO)

3:08-cv-118 Notice has been electronically mailed to:

Jason D Woodbury jwoodbury@kkbrf.com, jpoley@kkbrf.com
Kermitt L Waters kermittwaters@yahoo.com, evelyn@kermittwaters.com
Richard G. McCracken rmccracken@dcbsf.com
Samuel P McMullen spm@swlaw.com
Nhu Q. Nguyen nnguyen@ag.nv.gov, vbeavers@ag.nv.gov

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADANEVADA RESTAURANT
ASSOCIATION, et al.,

Plaintiffs,

v.

PEST COMMITTEE, et al.,

Defendants.

3:08-CV-00118-BES-VPC

MINUTES OF THE COURT

May 28, 2008

PRESENT: HONORABLE BRIAN E. SANDOVAL, U.S. DISTRICT JUDGEDeputy Clerk: LUCAS FOLETTA Reporter: NONE APPEARINGCounsel for Plaintiff(s): NONE APPEARINGCounsel for Defendant(s): NONE APPEARING**MINUTE ORDER IN CHAMBERS:**

Presently before the Court is Defendant/Cross-Defendant Ross Miller's, Secretary of State for Nevada ("Secretary"), Motion to Remand (#19). Also before the Court is Plaintiffs' Nevada Restaurant Association, Wynn Las Vegas, LLC, Nevada Motor Transport Association, Inc., Nevada Manufacturers Association, Inc., and Nevada Tavern Owner's Association's ("Association Plaintiffs") Motion to Remand (#22).

In reviewing the motions to remand, it appears that the sole federal question asserted in the pending action is Association Plaintiffs' claim that, if enacted, the initiative at issue would violate the Equal Protection Clause of the United States Constitution. (Compl. (#1) ¶¶ 56-66.) However, there is significant authority suggesting that the Court may not exercise subject matter jurisdiction over a preelection challenge to a proposed initiative. Herbst Gaming, Inc. v. Heller, 122 Nev. 877, 141 P.3d 1224, 1231 (2006) (holding that in Nevada preelection review of an initiative's substantive provisions is unavailable); Ranjel v. City of Lansing, 417 F.2d 321, 325 (6th Cir. 1969); City of Rocky Ford v. Brown, 133 Colo. 262, 265-66, 293 P.2d 974 (1956) (en banc). If that were the

case, any attempt to remove the pending action on the basis of the federal constitutional question asserted would be insufficient. That said, without briefing on the issue, the Court will not sua sponte remand the instant action. Instead, the parties are ordered to brief the issue pursuant to the following schedule: Defendants PEST Committee, Badillo, Lipsman, Maurice (collectively "Committee Defendants"), as the removing parties, are ordered to file a brief in support of the Court's jurisdiction over the federal constitutional claim within ten days of entry of this order; Association Plaintiffs and Defendant/Cross-Defendant Secretary are ordered to file their brief in opposition within ten days after the filing of Committee Defendants' brief; no reply shall be filed.

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

By: _____/S/_____
Deputy Clerk