

**Consolidated Case Nos. 85756 and 86128**

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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Elizabeth A. Brown  
Clerk of Supreme Court

STATE OF NEVADA ex rel. BOARD OF PHARMACY  
a public entity of the State of Nevada,

Appellant,

v.

CANNIBIS EQUITY AND INCLUSION  
COMMUNITY (CEIC), a domestic nonprofit corporation;  
ANTOINE POOLE, an individual,

Respondents.

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**APPELLANT'S OPPOSITION TO MOTION FOR EXTENSION**

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Appellant State of Nevada ex rel. Board of Pharmacy (“Board”) hereby opposes Respondents’ Motion for Extension of Time to File an Answering Brief (“Motion for Extension”). Respondents filed their Motion for Extension on August 14, 2023, after having been granted a 30-day extension pursuant to a stipulation. Under these circumstances, an extension is not favored and must be based upon a clear showing of good cause. NRAP 31(b)(3)(B). Respondents have not made a clear showing of good cause.

First, Respondents argue that this appeal implicates “three distinct areas of law: constitutional law, administrative law, and the procedures surrounding mandamus petitions.” (Mot. at i). Respondents suggest that the issues are complicated, attempting to divert this Court’s attention from the fundamental flaw in their petition below – lack of standing. More specifically, they neglect to mention that this appeal presents a threshold question of justiciability, specifically whether Respondents have identified a constitutional injury traceable to an action by the Board. As the Board argued in its Opening Brief, there are no allegations or evidence of record from which one could identify an injury with a causal nexus to the Board. (Br. at 29–32).

If decided adversely to Respondents, the question of standing is dispositive. Indeed, it must be decided adversely to Respondents because the Board has no

control over the things about which Respondents complain—law enforcement activity, arrests, criminal convictions, and other criminal justice matters.

Second, Respondents argue that they should be afforded additional time to respond to the arguments that they anticipate will be presented by the Nevada District Attorneys Association in their capacity as amicus curiae. (Mot. at ii). This argument merely underscores the lack of adversity between the parties. If the Respondents had sued a proper defendant at the outset of this litigation—specifically a law enforcement agency—they would not require extra time to respond to amicus curiae. Further, they cannot cure the lack of adversity by consenting to an appearance by amicus curiae. The question of justiciability remains the threshold issue in this appeal despite the appearance by amicus curiae.

Respondents’ petition below suffers from a problem that frequently arises when activist plaintiffs attempt to draw the courts into abstract policy disputes. That problem is a lack of adversity between the plaintiff and the named governmental defendants. *See, e.g., Whole Woman’s Health v. Jackson*, 595 U.S. \_\_\_, 142 S. Ct. 522, 533–536 (2021) (action for declaratory and injunctive relief lacked adversity where defendant judges and court clerks had no enforcement functions). Here, Respondents trace their alleged injuries to *statutes* that criminalize the use, possession, and sale of contraband marijuana. But the Board does not enforce those statutes. The Board has adopted a regulatory definition of “controlled substance,”

and while that definition may be used by law enforcement agencies as a point of reference in making law enforcement decisions, the Board's statutory mission is a public health mission, not a law enforcement mission. The Board has no control over how its definition is used outside the public health context, and Respondents do not explain how the Board's enforcement responsibilities relate to their alleged injuries. Without such an explanation, Respondent's petition below amounts to nothing more than a request for an advisory opinion. *See id.* at 539 (Thomas J., concurring in part and dissenting in part). Nevada's courts do not entertain requests for advisory opinions. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). There must be adversity between the parties. *See Nevada Policy Research Institute, Inc. v. Cannizzaro*, 138 Nev. \_\_\_, 507 P.3d 1203, 1207 (2022) (holding that plaintiff lacks standing where there is no adverse party).

Third, Respondents argue that their attorneys are busy briefing other legal matters. (Mot. at ii–iii). This suggests that they have prioritized other matters over this appeal. Ironically, when the Board requested a stay of the decision below, Respondents opposed that request on the ground that Respondents were likely to suffer irreparable harm in the absence of a stay. In other words, Respondents represented to the Court that this appeal is urgent. Now they represent that it is low on their list of priorities. Respondents cannot have it both ways. Either this appeal requires the Court's immediate attention, or it does not require the Court's

immediate attention. Nothing has changed since Respondents first opposed the Board's request for a stay of the District Court's decision. Therefore, the Board requests that this appeal be decided according to the current timeline. In the absence of a clear showing of good cause for an extension, the August 23 deadline for Respondents' answering brief should remain in place.

Respectfully submitted this 17<sup>th</sup> day of August 2023.

By: /s/ Gregory L. Zunino  
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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on August 17, 2023.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

/s/ Peter Keegan  
An Employee of the Nevada Board of  
Pharmacy