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IN THE SUPREME COURT OF
THE STATE OF NEVADA

2009 JAN 15 AM 9:25

STATE OF NEVADA, DEPARTMENT
OF MOTOR VEHICLES,

CASE NO. 49350
(8th JD No. A529007)

FILED

Appellant.

vs.

WILLIAM JUNGE,

Respondent.

JAN 20 2009

THOMAS K. LINDEMAN
CLERK OF SUPREME COURT
BY L. J. Miller
DEPUTY CLERK

APPELLANT'S OPPOSITION TO ACLU'S MOTION TO FILE REPLY

Comes now, the State of Nevada, Department of Motor Vehicles ("DMV"), by and through its legal counsel, Attorney General CATHERINE CORTEZ MASTO, by Senior Deputy Attorney General CAROLYN L. WATERS, and hereby opposes the ACLU's Motion to file more briefing since 1) NRAP 29 clearly states, "No reply brief of an amicus curiae may be filed"; 2) the ACLU is not a party to this action and should not make the representation that somehow it should assume the role of Respondent.

This Court only invited one amicus brief from the ACLU in this case. When the DMV filed its Response to the ACLU's amicus curiae (permitted by orders dated June 13, 2008, and August 19, 2008 by the Supreme Court), the DMV also suggested caution to the Court in addressing constitutional issues not raised by the parties. Petitioner Junge did not raise such constitutional issues to the district court and he has abandoned this appeal to this Court from the outset. Stated the Court in its August 19, 2008, order, "As Junge has failed to comply with deadlines set in our June 13 order, we conclude Junge has elected not to file briefs in this appeal."

It appears that the ACLU would like to now jump in and either improperly take his place as a party or improperly take his place as his attorney. The ACLU wants the Court to believe there is "good cause" to suspend NRAP 29 because the Respondent is "unable to brief the Court." Nothing could be further from the truth. Respondent Junge had every opportunity to participate in the appeal. In fact, by Nevada Supreme Court Orders dated October 16, 2007,

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1 and June 13, 2008, and the Nevada Rules of Appellate Procedure, he certainly could have
2 filed a brief in the past year and a half to support his desire to display the word "HOE" on his
3 license plate. Just because Respondent Junge elected not to participate in an appeal does
4 not in any way change the parties from the DMV and Junge to the DMV and the ACLU.

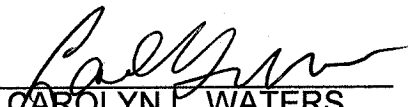
5 Next, the ACLU makes the outlandish claim that it is somehow both the de facto party
6 and attorney when it states that "the ACLUN, in essence, standing in as counsel for
7 Respondent and is the only party able to challenge Appellant's legal arguments" The
8 ACLU is neither party nor counsel in this appeal. It had the opportunity to file an amicus brief
9 and that is all it is allowed - - - both by court order and by NRAP 29. The Court has before it
10 one brief from the ACLU and one from the DMV. Again, just because Junge has chosen not
11 to participate, it does not warrant a second bite at the apple by the ACLU. In fact, counsel for
12 DMV sent the ACLU a letter declining to agree to more involvement from the ACLU. See
13 Exh. "1". When issues are not raised by the actual parties to an appeal and one of the parties
14 abandons the appeal, the Court should exercise its restraint in creating law. See In re Sealed
15 Documents, 772 A.2d 518 523 (Vt. 2001)(stating that our tradition of addressing issues of
16 constitutional significance only when they are "squarely and necessarily presented counsels
17 restraint and forbearance" as to broader First Amendment questions); *Herald Ass'n, Inc. v.*
18 *Ellison*, 419 A.2d 323, 326 (Vt. 1980)(stating that although the First Amendment appears to
19 be implicated, decisions of the United States Supreme Court do not clearly determine whether
20 First Amendment violation exists; in face of such uncertainty, "the wisdom of our traditional
21 rule of self-restraint - that we do not needlessly decide constitutional issues - - is all the more
22 apparent" (internal citations omitted)).

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25 It is poignant to remember the old law school adage: "You take the plaintiff as you find
26 him." Here, "You take the parties as you find them." The DMV has appealed and has
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1 diligently pursued its appeal; Junge, the other party, has done nothing. Junge has not even
2 pursued any constitutional claims. To now allow third parties to not only pick up the ball but to
3 monopolize the entire game is certainly overreaching in an area where restraint is the more
4 prudent course. For the reasons stated herein, and for the reasons explained in the DMV's
5 Response to the Amicus Curiae, the DMV would respectfully request that the Court deny the
6 ACLU's motion as it is not a party to the present appeal.

7
8 DATED this 14th day of January, 2009.

9 CATHERINE CORTEZ MASTO
10 Attorney General


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CERTIFICATE OF SERVICE

I certify that on the 15th day of January, 2009, I served a copy of **APPELLANT'S OPPOSITION TO ACLU'S MOTION TO FILE REPLY** by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

WILLIAM JUNG
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An employee of Office of the Attorney General