

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

2  
3       MAURICE MANUEL SIMS,

4                                   Petitioner,

5  
6       vs.

7       THE HONORABLE JUDGE DOUGLAS  
8       W. HERNDON, EIGHTH JUDICIAL  
9       DISTRICT COURT OF THE STATE OF  
10       NEVADA

11                                   Respondent.

Supreme Court Electronically Filed  
District Court Case No. 13-08414  
Nov 07 2013 08:33 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**PETITION FOR WRIT OF**  
**MANDAMUS OR WRIT OF**  
**PROHIBITION**

12       ANTHONY P. SGRO, ESQ.  
13       Nevada Bar No. 3811  
14       PATTI, SGRO, LEWIS & ROGER  
15       720 S. 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
16       Las Vegas, NV 89101  
17       TEL: (702) 385-9595  
18       FAX: (702) 386-2737

19       IVETTE A. MANINGO, ESQ.  
20       Nevada Bar No.: 7076  
21       LAW OFFICES OF IVETTE A.  
22       MANINGO  
23       720 S. 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
24       Las Vegas, NV 89101  
25       TEL: (702) 385-9595  
26       FAX: (702) 386-2737

27       ATTORNEYS FOR THE  
28       PETITIONER

THE HONORABLE JUDGE  
DOUGLAS W. HERNDON  
REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 16<sup>TH</sup> FLR  
LAS VEGAS, NEVADA 89155  
TEL: (702) 671-0591  
FAX: (702) 671-0598

STEVEN B. WOLFSON  
Clark County District Attorney  
Attn: Appellate Division  
200 Lewis Avenue 3<sup>rd</sup> Floor  
Las Vegas, NV 89101

CATHERINE CORTEZ-MASTO  
Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

ATTORNEYS FOR THE STATE

## TABLE OF CONTENTS

I.	RELIEF SOUGHT .....	1
II.	ISSUES PRESENTED FOR REVIEW .....	1
III.	STATEMENT OF THE CASE.....	2
IV.	STATEMENT OF THE FACTS.....	4
V.	JURISDICTIONAL STATEMENT .....	9
VI.	ARGUMENT.....	10
A.	The legislative history, in conjunction with the passage of Assembly Bill 444, has created an effective moratorium on the death penalty.....	10
1.	Legal Standard.....	10
2.	There is a Jurisdictional Trend Towards Abolishment of the Death Penalty .....	11
a.	New York.....	12
b.	New Jersey.....	13
c.	New Mexico.....	14
d.	Illinois .....	16
e.	Connecticut.....	18
f.	Maryland.....	18
3.	Nevada – Can We Afford to Keep Capital Punishment on the Books?.....	20
4.	Nevada cannot continue to channel financial resources for the empty “success” of the Death Penalty.....	23

1	5.	Where the Money Could be Better Spent.....	24
2		a) An Intermediate Appellate Court.....	24
3		b) Victims of Crime.....	25
4		c) Education.....	26
5		d) Mental Health.....	27
6	6.	The Effect of Assembly Bill 444.....	27
7	7.	Effective Moratorium on Executions.....	28
8	8.	The Legislature Intended a Moratorium. ....	29
9	B.	The District Court has the Jurisdiction to Grant the Requested Relief.....	30
10	VII.	CONCLUSION.....	32
11		CERTIFICATE OF COMPLIANCE.....	34
12		NRAP 27(e) CERTIFICATE.....	35

## **TABLE OF AUTHORITIES**

13	<b><u>CASES</u></b>	<b><u>PAGE NO.</u></b>
14	<i>Bigpond v. State</i> , 270 P.3d 1244 (2012). ....	10
15	<i>Cheung v. Eighth Judicial Dist. Court</i> , 121 Nev. 867, 124 P.3d 550 (2005).....	9
16	<i>Clark County v. Southern Nevada Health District</i> , 289 P.3d 212 (2012).....	11, 29
17	<i>Clay v. Eight Jud. Dist. Ct.</i> , 305 P.3d 898 (Nev. 2013).....	10
18	<i>Diaz v. Eighth Judicial Dist. Court ex rel. County of Clark</i> , 116 Nev. 88 (2000).....	9
19	<i>Furman v. Georgia</i> , 408 U.S. 238 (1972).....	5, 6

1	<i>Gardner v. Florida</i> , 430 U.S. 349 (1977).....	4, 5
2	<i>Gregg v. Georgia</i> , 428 U.S. 153 (1976).....	6
3	<i>In re Eric L.</i> , 123 Nev. 26, 153 P.3d 32 (2007). ....	10
4	<i>In re George J.</i> , 279 P.3d 187 (2012).....	10
5	<i>In re William S.</i> , 122 Nev. 432, 132 P.3d 1015 (2006).....	30
6	<i>International Game Tech. v. Dist. Ct.</i> , 124 Nev. 193, 179 P.3d 556 (2008).....	9
7	<i>Jones v. State</i> , 124 Nev. 1483, 238 P.3d 827 (2008).....	6
8	<i>Langon v. Matamoros</i> , 121 Nev. 142, 111 P.3d 1077 (2005).....	31
9	<i>Leven v. Frey</i> , 123 Nev. 399, 168 P.3d 712 (2007). ....	10
10	<i>Morrow v. Dist. Ct.</i> , 294 P.3d 411 (Nev. 2013).....	9
11	<i>People v. LaValle</i> , 3 N.Y. 3d 88 (2004). ....	12
12	<i>People v. Taylor</i> , 9 N.Y.3d 129, 137, 878 N.E.2d 969, 971 (2007).....	12
13	<i>RadLAX Gateway Hotel, L.L.C. v. Amalgamated Bank</i> , 566 U.S. —, —, 132 S.Ct. 2065, 2071, 182 L.Ed.2d 967 (2012).....	10,11
14	<i>Reid v. Covert</i> , 354 U.S. 1, 77 (1957) .....	5
15	<i>State v. Catanio</i> , 120 Nev. 1030, 102 P.3d 588 (2004). ....	31
16	<i>State v. Eighth Jud. Dist. Ct. (Logan D.)</i> , 306 P.3d 369 (Nev. 2013).....	9, 10
17	<i>Williams v. Clark Cnty. Dist. Attorney</i> , 118 Nev. 473, 50 P.3d 536 (2002).....	10
18	<i>Williams v. Georgia</i> , 349 U.S. 375 (1955) .....	5
19	<i>Woodson v. North Carolina</i> , 428 U.S. 280 (1976).....	5

## **STATUTES**

## **PAGE NO.**

Nev. Rev. Stat 175.554.....	6
Nev. Rev. Stat. 175.552 .....	6
Nevada Assembly Bill 444 .....	1, 2, 3, 4, 7, 8, 9, 10, 11, 27, 29, 30, 31, 32
Nevada Rule of Appellate Procedure 27(e).....	35
Nevada Rule of Appellate Procedure 28(e).....	34
Nevada Supreme Court Rule 250.....	6

## **LAW REVIEW ARTICLES**

## **PAGE NO.**

Leigh B. Bienen, <i>Capital Punishment in Illinois in the Aftermath of the Ryan Commutations: Reforms, Economic Realities, and A New Saliency for Issues of Cost</i> , 100 J. Crim. L. & Criminology 1301, 1389-90 (2010).....	17
Leigh B. Bienen, <i>The Quality of Justice in Capital Cases; Illinois as a Case Study</i> , 61 Law and Contemp. Probs. 193 at 213 (1993). ....	16

1  
2 **I.**

3 **RELIEF SOUGHT**

4  
5 The Petitioner respectfully requests this Court to direct the District Court to  
6 strike the Notice of Intent to Seek the Death Penalty in the instant case. Alternatively,  
7 the Petitioner requests that this Court direct the District Court to stay capital  
8 proceedings against the Petitioner until the conclusion of the legislative session in  
9 2015, which is the anticipated time for the resolution of the fiscal audit of the death  
10 penalty legislated in the recently passed Assembly Bill 444.  
11

12  
13 **II.**

14 **ISSUES PRESENTED FOR REVIEW**

- 15  
16 1. Whether Assembly Bill 444 calls for an effective moratorium on the death  
17 penalty that requires either  
18 a) dismissal of the instant Notice of Intent to Seek the Death Penalty  
19 b) a stay of capital proceedings pending the outcome of the fiscal audit of  
20 the death penalty in Nevada, or  
21 c) the continuation of the instant proceedings on a non-capital basis.  
22  
23 2. Whether the District Court has the authority to grant the relief sought in the  
24 Petitioner's *Motion to Strike the State's Notice of Intent to Seek the Death*  
25 *Penalty Based on the Cost of Capital Punishment and Attendant Policy*  
26 *Considerations, or in the Alternative, Motion to Stay Capital Proceedings*  
27 *Pending the Outcome of the Audit Related to Assembly Bill 444.*  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

III.

STATEMENT OF THE CASE

The Petitioner, Maurice Manuel Sims (“Sims”), was charged via Indictment, dated February 12, 2013, with Count 1: CONSPIRACY TO COMMIT ROBBERY, Count 2: BATTERY WITH A DEADLY WEAPON, Count 3: CONSPIRACY TO COMMIT BURGLARY, Count 4: BURGLARY WHILE IN POSSESSION OF A FIREARM, Count 5: CONSPIRACY TO COMMIT ROBBERY, Count 6: ROBBERY WITH USE OF A DEADLY WEAPON, Count 7: ROBBERY WITH USE OF A DEADLY WEAPON, Count 8: ROBBERY WITH USE OF A DEADLY WEAPON, Count 9: CONSPIRACY TO COMMIT MURDER, Count 10: MURDER WITH USE OF A DEADLY WEAPON, Count 11: MURDER WITH USE OF A DEADLY WEAPON, Count 12: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON, Count 13: POSSESSION OF FIREARM BY EX-FELON, and Count 14: POSSESSION OF FIREARM BY EX-FELON. (PA 1-9). Subsequently, on March 8, 2013, the State filed a Notice of Intent to Seek Death Penalty against the Petitioner. (PA 10-18). On May 22, 2013, the legislature passed Assembly Bill 444. (PA 509-518).

On July 19, 2013, the Petitioner filed his *Motion to Strike the State’s Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations, or in the Alternative, Motion to Stay Capital Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444.* (PA

1 518). In that Motion the Petitioner requested the stated relief based upon the recently  
2 passed Assembly Bill 444 (AB 444), which calls for a fiscal audit of capital  
3 punishment in the State of Nevada. (PA 509-518).

4  
5 The State filed its objection to the Motion on July 25, 2013, stating that the  
6 recently passed AB 444 was not a recognized ground to strike a Notice of Intent to  
7 Seek the Death Penalty, and that there was neither good cause nor relevant authority  
8 to authorize a stay of proceedings. (PA 519-526). The Petitioner replied to the State  
9 on September 3, 2013. (PA 527-530) Further, on September 9, 2013, the Petitioner  
10 filed supplemental exhibits in support of his motion. (PA 531-626).

11  
12  
13 The matter was heard on September 10, 2013 before the Honorable Douglas W.  
14 Herndon. (PA 627-824). During the proceedings, counsel for the Petitioner gave a  
15 PowerPoint presentation to the Court in support of the Motion. (PA 825-873)

16  
17 At the close of proceedings, the Court agreed that the fiscal audit of the death  
18 penalty “is going to show - - even if it’s done dispassionately and logically - - that  
19 capital litigation is disproportionate economically to non-capital.” (PA 773, ll. 6-9).  
20 This conclusion did not prevent the Court from agreeing with much of what the  
21 defense had presented. (PA 746, ll.16-17). The District Court further stated:

22  
23 I’m thinking, you know what, I agree with Mr. Sgro completely that  
24 there is great concern about the cost of this and the imputes of the bill  
25 to go in and study all of this. They wouldn’t do that if they didn’t have  
26 a mind that once we get the result of that, we’re going to take a long  
27 hard look at revamping the statutory scheme and eventually abolish  
28 the death penalty. I don’t think that’s wild conjecture or speculation. I  
think that’s an absolute reality. (PA749, l. 18-750, l. 2).



1 However, the Court expressed that it was unable to grant the relief requested by the  
2 Petitioner, stating:

3 [I]f this goes up on appeal, I mean, part of what I'm doing is that I  
4 don't think I have the ability to impose what you're asking me to  
5 impose. If somebody tells me I do have the ability, you can come  
6 back here and we'll have another discussion and I'll tell you  
7 specifically what the ruling would be, if I have the ability to do it. I  
just don't think it exists. (PA 775, 1.23-776, 1.4).

8 Ultimately, the Court denied the Motion.

#### 9 IV.

#### 10 STATEMENT OF FACTS

11  
12 The Nevada legislature passed Assembly Bill 444, which calls for an audit of  
13 the fiscal costs of the death penalty. (PA 509-518). This Act calls for the Legislative  
14 Auditor to conduct an audit of the costs of legal counsel involved in the prosecution  
15 and defense for all capital pre-trial, trial, and post-conviction proceedings. (PA 509-  
16 518). Further, the audit must include the disparate costs for investigators, experts,  
17 mitigation specialists, court costs, jury costs, as well as the costs of incarceration and  
18 the actual execution. (PA 509-518). The final report of the legislative auditor is due  
19 no later than January 31, 2015. (PA 509-518). Assembly Bill 444 was prompted by  
20 the legislature's concern over the cost of the death penalty in Nevada and its fiscal  
21 viability in the future.

#### 22 A. **Can Nevada Afford the Cost of the Death Penalty?**

23 It is a well-founded principle that "death is a different kind of punishment from  
24 any other which may be imposed in this country." *Gardner v. Florida*, 430 U.S. 349,

1 357 (1977). While the moral and sociological debates over the death penalty have not  
2 resulted in a comprehensive ban of capital punishment, the American discourse on the  
3 subject has dramatically shaped the means and methods by which the death penalty is  
4 carried out. Due to concerns regarding not only the finality of capital punishment, but  
5 the real possibility of innocent people being sentenced to die, the United States  
6 Supreme Court has reinforced the need for more rigorous procedural requirements  
7 relative to imposition of the death penalty. See, *Woodson v. North Carolina*, 428 U.S.  
8 280, 305 (1976) (plurality opinion). The Supreme Court has gone so far as to suggest  
9 that the process due to an offender faced with prison does not necessarily satisfy the  
10 process due to capital offenders. *Reid v. Covert*, 354 U.S. 1, 77 (1957) (Harlan, J.  
11 concurring). See also, *Williams v. Georgia*, 349 U.S. 375, 391 (1955) (distinguishing  
12 capital and non-capital offenses).

13  
14  
15  
16  
17 The debate over the process due to capital offenders came to a head in 1972  
18 with the United States Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238  
19 (1972). In *Furman*, the High Court granted certiorari to determine whether imposition  
20 of the death penalty under Georgia's capital sentencing scheme constituted cruel and  
21 unusual punishment in violation of the Eighth and Fourteenth Amendments to the  
22 U.S. Constitution. *Id.* at 239. In a per curium opinion consisting of one paragraph,  
23 the Court held that it did. *Id.* at 240. The plurality decision rendered in *Furman* has  
24 since been construed as requiring that, at a minimum, "where discretion is afforded a  
25 sentencing body on a matter so grave as the determination of whether a human life  
26  
27  
28

1 should be taken or spared, that discretion must be suitably directed and limited so as  
2 to minimize the risk of wholly arbitrary and capricious action." *Gregg v. Georgia*,  
3 428 U.S. 153, 189 (1976) (plurality op.).

4  
5 Following the decision in *Furman*, states that still impose the death penalty  
6 have been required to enact procedural safeguards for capital proceedings in order to  
7 comport with the Supreme Court's rigorous standards.

8  
9 In Nevada, the special rules governing a capital proceeding can be found in  
10 Nevada Supreme Court Rule 250, as well as NRS 175.552 and 175.554. Rule 250  
11 requires the appointment of two attorneys to try each capital case, as well as  
12 mandatory appointment of counsel for direct appeal and post conviction habeas  
13 corpus proceedings. NRS 175.552 mandates a penalty phase in which mitigating and  
14 aggravating factors are presented to the jury. Further, case law has required additional  
15 safeguards for the imposition of the death penalty, such as the requirement of trial  
16 counsel to prepare for mitigation. See *Jones v. State*, 124 Nev. 1483, 238 P.3d 827  
17 (2008).

18  
19  
20  
21 Each of these factors has contributed to the overall cost of the pursuit of, and  
22 the defense against, the imposition of the death penalty. As such, many jurisdictions,  
23 including Nevada, have questioned the benefit that they are receiving from the costs  
24 expended. Of the eighteen (18) States that do not have capital punishment, six (6) of  
25 those States have abolished the death penalty within the last decade, the most recent  
26 being Maryland.  
27  
28

1     **B.     The Passage of Assembly Bill 444 and the Effective Moratorium on the**  
2     **Death Penalty Reveals the Legislative Intent of the Bill.**

3           On May 2, 2013, Assembly Bill 444 was introduced before the Assembly. The  
4 bill called for a comprehensive fiscal audit of the costs of the death penalty in the  
5 State of Nevada. (PA 45-67). At the introduction of the Bill, James Ohrenschall,  
6 Assembly District No. 12, stated that “[T]he study outlined in Assembly Bill 444 is  
7 meant to be dispassionate, rational, and logical.” (PA 56).  
8

9           Senator Tick Segerblom, Senatorial District No. 3, testified before the  
10 Assembly that the death penalty does not “work.” (PA 46). Senator Segerblom stated  
11 that:  
12

13           We prosecute too many people, and a study of the current system, to  
14 determine why there are so many death penalty charges, is needed. Did  
15 you know the cost to prosecute a death penalty case is double that of a  
16 case involving life without the possibility of parole? If there is a way to  
17 reduce the number of people that are charged and reduce that cost, it  
18 would be a great savings for our state. That is why I think we have to  
19 do this audit. It will be done by staff so there is no additional cost to the  
20 state. *Id.*

21           Nancy E. Hart, from the Nevada Coalition Against the Death Penalty, who introduced  
22 the Bill, testified that while there have been few executions in Nevada, there are  
23 eighty (80) people currently on death row that are creating a “backlog.” (PA 47). If  
24 the death penalty remains in Nevada, there will eventually come a time when all of the  
25 people comprising this “backlog” will have to be executed, resulting in accrued costs.  
26 (PA 47).  
27  
28

1 Michael Pescetta, of the Federal Public Defender's Office, testified that in the  
2 thirty-six (36) years since the death penalty was reinstated in Nevada, 151 death  
3 sentences were imposed in Nevada. (PA 49). Of those 151 death row inmates, only  
4 twelve (12) have been executed. (PA 49). Of those twelve, eleven (11) were  
5 voluntary executions. (PA 49). As such, only one (1) person has been involuntarily  
6 executed in the State of Nevada since the death penalty was reinstated, out of 151  
7 costly convictions, and attendant appeals.  
8

9  
10 On May 17, 2013, following the above-referenced testimony on this matter, the  
11 Assembly passed Bill 444 with vote of thirty-eight (38) to one (1). The Senate passed  
12 the Bill on May 30, 2013 by a vote of eleven (11) to ten (10). Finally, on June 10,  
13 2013, the Bill was approved by Governor Sandoval and codified as Chapter 469 of the  
14 Laws of the State of Nevada, 2013.  
15

16  
17 Subsequently, during a May 22, 2013 joint legislative subcommittee on  
18 Finance, the legislature voted not to fund the building of a new execution chamber to  
19 replace the sole, non-functioning chamber at the now-closed Nevada State Prison. (PA  
20 881). In doing so, the committee noted that the recently enacted Assembly Bill 444,  
21 "required that a legislative audit be conducted on the death penalty in the state, which  
22 would include a review of facilities to carry out a death sentence." (PA 881)<sup>1</sup>. In  
23  
24

25  
26  
27  
28 

---

<sup>1</sup> This portion of the legislative history is provided in the Appendix for the Court's  
convenience.

1 doing so, the legislature effectively assured that no executions can be conducted  
2 during the pendency of the AB 444 audit.

3  
4 v.

5 **JURISDICTION**

6 A writ of mandamus is available to compel the performance of an act that the  
7 law requires as a duty resulting from an office, trust, or station or to control an  
8 arbitrary or capricious exercise of discretion.” *Morrow v. Dist. Ct.*, 294 P.3d 411, 413  
9 (Nev. 2013); citing *International Game Tech. v. Dist. Ct.*, 124 Nev. 193, 197, 179  
10 P.3d 556, 558 (2008).  
11

12  
13 Extraordinary relief is available where the petitioner has no plain, speedy, and  
14 adequate remedy in the ordinary course of the law or there are either urgent  
15 circumstances or important legal issues that need clarification in order to promote  
16 judicial economy and administration.” *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 306  
17 P.3d 369, 373 (Nev. 2013); citing *Cheung v. Eighth Judicial Dist. Court*, 121 Nev.  
18 867, 869, 124 P.3d 550, 552 (2005). Further, consideration of a petition for  
19 extraordinary relief may be justified where an important issue of law needs  
20 clarification and public policy is served by the Supreme Court's invocation of its  
21 original jurisdiction. *Diaz v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116  
22 Nev. 88 (2000).  
23  
24  
25

26 ///

27  
28 ///

1 VI.

2 ARGUMENT

3 A. The legislative history, in conjunction with the passage of Assembly Bill  
4 444, has created an effective moratorium on the death penalty.

5 1. Legal Standard

6 This Court reviews questions of statutory interpretation de novo.” *Clay v. Eighth*  
7 *Jud. Dist. Ct.*, 305 P.3d 898, 902 (Nev. 2013); citing *Bigpond v. State*, 270 P.3d 1244,  
8 1248 (2012). When interpreting a statutory provision, this Court first looks first to the  
9 plain language of the statute. *Id.* The Court shall avoid statutory interpretation that  
10 renders language meaningless or superfluous and if the statute's language is clear and  
11 unambiguous, this Court will enforce the statute as written. *Id.* Citing *In re George J.*,  
12 279 P.3d 187, 190 (2012). Likewise, this Court will interpret a rule or statute in  
13 harmony with other rules and statutes.” *Id.*

14 When two statutory provisions conflict, this Court employs the rules of  
15 statutory construction, *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 306 P.3d 369, 380-81  
16 (Nev. 2013); citing *Williams v. Clark Cnty. Dist. Attorney*, 118 Nev. 473, 484, 50 P.3d  
17 536, 543 (2002), and attempts to harmonize conflicting provisions so that the act as a  
18 whole is given effect. *Id.* Citing *In re Eric L.*, 123 Nev. 26, 31, 153 P.3d 32, 35  
19 (2007). Statutes are interpreted so that each part has meaning. *Id.*; citing *Leven v.*  
20 *Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007). Therefore, when a scheme  
21 contains a general prohibition contradicted by a specific permission, “the specific  
22 provision is construed as an exception to the general one.” *Id.* citing *RadLAX Gateway*  
23  
24  
25  
26  
27  
28

1 *Hotel, L.L.C. v. Amalgamated Bank*, 566 U.S. —, —, 132 S.Ct. 2065, 2071, 182  
2 L.Ed.2d 967 (2012).

3 Finally, this Court has long recognized that when interpreting a statute, this  
4 Court must examine the statute as a whole. *Clark County v. Southern Nevada Health*  
5 *District*, 289 P.3d 212, 216 (2012).  
6

7 In this case, the jurisdictional trends toward abolishment of the death penalty  
8 on fiscal grounds, the current economic climate, the exorbitant cost of the death  
9 penalty, the passage of Assembly Bill 444, and the effective moratorium on  
10 executions in Nevada demonstrate that the legislature intended to make a dramatic  
11 change to the scope of the death penalty in Nevada.  
12  
13

## 14 **2. There is a Jurisdictional Trend Towards Abolishment of the Death** 15 **Penalty**

16 Since 2007, six (6) states, namely Maryland, Connecticut, Illinois, New  
17 Mexico, New York, and New Jersey, have joined an already increasing number of  
18 states which have repealed or abolished capital punishment. Almost all six states  
19 referenced above have cited the increasing cost of litigating capital cases as  
20 motivation for the abolishment of the death penalty.  
21  
22

23 Studies performed in Nevada have echoed the concerns of these jurisdictions,  
24 noting the increasing cost of both prosecuting and defending capital cases, as well as  
25 the costs presented by a lengthy appellate process. (PA 345-356). These factors  
26 indicate that the cost of the death penalty in Nevada has become too great a burden on  
27 the State, for little reward. As such, Nevada should follow the trend of American  
28



1 states that have abolished the antiquated, unworkable, and costly relic of old world  
2 punishment embodied by the death penalty.

3 **a. New York**

4  
5 After reinstating the death penalty in 1995, New York's high court, the Court of  
6 Appeals, entertained a constitutional challenge to the death penalty scheme in *People*  
7 *v. LaValle*, 3 N.Y. 3d 88 (2004). In *La Valle*, the Court of Appeals found that New  
8 York's death penalty scheme was unconstitutional based upon a provision that  
9 mandated the judge to impose a sentence of life with the possibility of parole when  
10 the jury was deadlocked on the issue of whether to impose death or life without the  
11 possibility of parole. *Id.* In essence, a defendant in a capital case would be given a  
12 lesser sentence than either of the sentences being adjudicated by the deadlocked jury.  
13 *Id.* The Court of Appeals found that such a system was coercive and tainted jurors  
14 who feared that if they did not vote for capital punishment the defendant would  
15 receive the possibility of parole. *Id.* As such, the Court effectively abolished the death  
16 penalty in New York, pending any legislative change to the death penalty scheme.  
17  
18  
19  
20

21 After the high court's ruling, death sentences which had previously been  
22 imposed were overturned. See *People v. Taylor*, 9 N.Y.3d 129, 137, 878 N.E.2d 969,  
23 971 (2007). In 2005, the New York Assembly considered the issue of reinstating the  
24 death penalty and held five public hearings on capital punishment between December  
25 15, 2004 and February 11, 2005, resulting in a report based upon these hearings. (PA  
26  
27  
28

1 68-152). Among the factors considered by the Assembly were the costs of reinstating  
2 capital punishment. (PA 98-102).

3 At those hearings James Liebman, a Columbia University Law Professor,  
4 predicted that reinstatement of the death penalty, over a period of twenty (20) years,  
5 would cost the State approximately \$500 million dollars. (PA 100). Jonathan Gradess  
6 of the New York State Defenders Association testified that conservative estimates  
7 were that \$170 million dollars were spent since 1995 on capital prosecutions and  
8 defense. (PA 101). Gradess further stated that with seven death sentences imposed,  
9 taxpayers paid approximately \$24 million dollars per execution. (PA 100).

10 No action to reinstate the death penalty was ever taken by the New York  
11 legislature.

### 12 **b. New Jersey**

13 On January 10, 2006, the Senate introduced Bills S171 and S2471, calling for  
14 the elimination of the death penalty. (PA 153-155). On January 12, 2006, the  
15 legislature approved an Act, codified as P.L.2005, c.321 imposing a moratorium on  
16 the death penalty and creating a study commission to evaluate the fiscal and social  
17 impact of the death penalty. (PA 156-158).

18 In 2007, the newly created Death Penalty Study Commission generated its  
19 report on the social and fiscal impact of the death penalty in the New Jersey. (PA  
20 159-292). In this report, the Committee acknowledged that it was unable to precisely  
21 pinpoint the costs of the death penalty. It was, however, able to gather data from  
22

1 government entities with a projection of the estimated savings. (PA 196). The office  
2 of the Public Defender noted that elimination of capital cases would result in an  
3 annual savings of \$1.46 million per year. (PA 196). The Department of Corrections  
4 noted that it would save \$974,430 to \$1,229,240 per death row inmate over each  
5 inmate's lifetime. (PA 197). While the Administrative Office of the Courts (AOC)  
6 stated that elimination of the death penalty cannot be absolutely fiscally quantified,  
7 the AOC did state that the repeal of capital punishment would generate savings in trial  
8 court costs and proportionality review costs. (PA 197).

11 In November 21, 2007, the New Jersey Senate published its legislative fiscal  
12 estimate for Senate Bill 171, citing, in part, the report of the Death Penalty  
13 Commission. (PA 293-312). In that report, the Senate Subcommittee found that the  
14 State of New Jersey would save the following per death penalty trial: \$79, 926 in  
15 Public Defender costs, \$148,185 in judicial trial costs, and \$93,018 in proportionality  
16 review costs. (PA 297-299). On December 13, 2007, the Assembly passed Senate  
17 Bill 171 and it was signed by the governor on December 17, 2007, eliminating the  
18 Death Penalty in New Jersey. (PA 313-319); (PA 320-322).

### 22 **c. New Mexico**

23 In 2009, the New Mexico legislature passed House Bill 285, which removed the  
24 penalty of death from the sentencing authority for capital felonies and effectively  
25 abolished the death penalty in the state of New Mexico. (PA 323-332). In a statement  
26 after passage of the law, Governor Richardson cited the 130 inmates freed from New  
27  
28

1 Mexico's death row since 1973 and added, "The sad truth is the wrong person can still  
2 be convicted in this day and age, and in cases where that conviction carries with it the  
3 ultimate sanction, we must have ultimate confidence, I would say certitude, that the  
4 system is without flaw or prejudice. Unfortunately, this is demonstrably not the case."  
5 (PA 333-336). The repeal brought with it great support. "As beautiful as our justice  
6 system is ... it is still a justice system of human beings, and human beings make  
7 mistakes," Sen. Cisco McSorley, an Albuquerque Democrat, said during nearly three  
8 hours of debate. (PA 337-339).

11 Before a vote was taken on the Bill, the Legislative Finance Committee  
12 prepared its Fiscal Impact Report. (PA 340-344). Although the author of the report  
13 acknowledges that New Mexico has never performed a study of costs of the death  
14 penalty to the State, the report outlines the additional costs required in the litigation of  
15 capital cases:  
16  
17

18 The State Bar Task Force on the Administration of the Death Penalty,  
19 completed in 2004, outlines exactly why death penalty cases are so  
20 costly: These cases require heightened standards for defense counsel  
21 and at least two highly qualified defense attorneys at each stage of the  
22 proceedings. They require extensive trial level litigation as well as  
23 constitutionally and statutorily mandated appeal. Unlike any other  
24 criminal trial, these cases demand that a certified court reporter  
25 transcribe all proceedings. The survivors of the victim should be  
26 accorded particular respect. Jury selection is a long and arduous process  
27 that potentially touches on the constitutional and religious rights of New  
28 Mexicans and costs at least four times as much as a non-death first-  
degree murder case. Due to changes in federal habeas corpus law, these  
cases must be long and thoroughly litigated in state court habeas  
proceedings as well. The Task Force ultimately recognized and  
recommended substantial changes to the way death penalty cases are

1 prosecuted and defended in New Mexico, which may increase further  
2 costs. (PA 342).

3 Many, if not all, of the factors that the Fiscal Impact Report cites, echo the  
4 requirements of capital prosecutions in the State of Nevada. See *Nev. Sup. Ct. R. 250*.  
5 Like New Mexico, Nevada requires at least two (2) specially qualified and  
6 experienced defense counsel on capital cases. (PA 340-344). Further, Nevada and  
7 New Mexico both mandate the appeal of any capital conviction, mandatory  
8 transcription of all proceedings, as well as a bifurcated penalty phase. (PA 340-344).  
9 Moreover, like New Mexico, capital prosecutions in Nevada can cost in excess of  
10 twice the amount for defense counsel at trial alone. (PA 345-356).

#### 14 **d. Illinois**

15 Since 1977, Illinois has exonerated 13 death row inmates, which is one more  
16 than the State has successfully executed. Innocent defendant Anthony Porter came  
17 within 48 hours of being executed. (PA 357-362). See also Leigh B. Bienen, *The*  
18 *Quality of Justice in Capital Cases; Illinois as a Case Study*, 61 Law and Contemp.  
19 Probs. 193 at 213 (1993). In light of Porter's case, Illinois Governor Ryan was noted  
20 as saying: "I have grave concerns about our state's shameful record of convicting  
21 innocent people and putting them on death row." He remarked that he could not  
22 support a system that has come "so close to the ultimate nightmare, the state's taking  
23 of innocent life." (PA 363-364).

1 Not least among the concerns about the Illinois death penalty, was the cost of  
2 these botched capital convictions. Leigh B. Bienen, a senior lecturer at Northwestern  
3 University School of Law, noted that the State of Illinois wasted millions of dollars  
4 prosecuting a capital murder case against an alleged murder named Brian Dugan.  
5

6 Bienen stated:

7  
8 ...the state of Illinois wasted millions imposing a death sentence on  
9 Brian Dugan, who was already serving life in prison without possibility  
10 of parole for another murder. This is not a wise or sober use of public  
11 monies. It is no solace to the public, to the thousands of other murder  
12 victims' families, or to the professionals committed to a principled  
13 criminal justice system. To make matters worse, this prosecution came  
14 only after two other people were wrongfully convicted, retried, and  
15 convicted again for the crime Dugan admitted to having committed. The  
16 state spent millions of dollars prosecuting these capital cases, and then  
17 paid out millions more to the men it had wrongfully sentenced to death.  
18 Leigh B. Bienen, *Capital Punishment in Illinois in the Aftermath of the*  
19 *Ryan Commutations: Reforms, Economic Realities, and A New Saliency*  
20 *for Issues of Cost*, 100 J. Crim. L. & Criminology 1301, 1389-90 (2010).

21 Bienen's reflection on the Dugan case reflects the prevailing notion that the costs of  
22 the death penalty simply do not produce sufficient benefit to make the system  
23 workable. Not only is there a real and present possibility of a wrongful conviction  
24 that could result in the execution of an innocent person, but even rectifying a wrongful  
25 conviction can cost millions of dollars to the State.

26 In response to knowledge of potential wrongful convictions such as Porter's,  
27 Governor Ryan declared a moratorium on the death penalty which continued until  
28 Illinois Governor Pat Quinn signed a bill abolishing the practice. Senate Bill 3539  
abolished the death penalty in Illinois, and barred executions after the effective date of

1 the Act. (PA 365-367). In addition, anyone who received a sentence of death was to  
2 have such sentence commuted to life imprisonment. (PA 365-367).

3  
4 On March 9, 2011, Illinois Governor Pat Quinn signed into law Senate Bill  
5 3539, which effectively abolished the death penalty in Illinois.

6  
7 **e. Connecticut.**

8 In 2012, Connecticut Gov. Dannel Malloy signed Senate Bill 280 into law  
9 which abolished the death penalty, replacing the practice with life in prison without  
10 the possibility of parole as the state's highest form of punishment. (PA 368-383). The  
11 governor noted that the "unworkability" of Connecticut's prior death penalty law was  
12 a contributing factor in his decision to repeal. (PA 383-388). Proposed amendments  
13 from supporters of the death penalty were defeated during debates to pass the bill,  
14 mainly because lawmakers were swayed by other national cases in which states had  
15 exonerated people sentenced to death and by arguments that the practice was carried  
16 out in an arbitrary manner and served only to drain states of financial resources. (PA  
17 383-388).  
18  
19  
20

21 **f. Maryland**

22  
23 In the past decade Maryland joined a growing trend of states leaning toward the  
24 abolishment of the death penalty because of the potential likelihood of sentencing the  
25 innocent. For years, Maryland protesters called on lawmakers to repeal the death  
26 penalty. Calls for the practice's repeal grew louder following a 2002 study that found  
27  
28

1 racial disparity in the implementation of the death penalty, in conjunction with  
2 wrongful convictions. (PA 389-392).

3 In May 2013, Maryland became the eighteenth and most recent U.S. state to  
4 abolish the death penalty when Governor Martin O'Malley signed Senate Bill 276  
5 outlawing the practice. (PA 393-419). Among dozens present for SB 276's signing,  
6 was Kirk Bloodsworth, who spent years campaigning for its repeal. He was released  
7 from Maryland's death row in 1993, after DNA evidence proved he was wrongfully  
8 convicted. (PA 391).

11 While a myriad of reasons were cited by Maryland, including reliability of  
12 verdict, actual innocence, and racial disparity, Maryland also cited the cost of the  
13 death penalty as a factor in repealing capital punishment.

15 In March 2008, the Urban Institute Justice Policy Center published a report on  
16 the cost of the death penalty in Maryland. (PA 420-489). The report found that in the  
17 162 cases where a "death notice" was filed by the State, taxpayers paid an additional  
18 186 million dollars, or over one million dollars per notice. (PA 453). Such concerns  
19 about the fiscal cost of the death penalty in conjunction with moral and social factors  
20 were reflected in the final Act. The Act repealing the death penalty in Maryland  
21 specifically cited that the savings from the repeal of the death penalty would result in  
22 a savings to the general fund. The Act further noted that this increase to the general  
23 fund would benefit the Victims of Crime Fund, which was funded by the same  
24 source. (PA 396, ll. 25-31). As such, the repeal of the death penalty in Maryland not  
25  
26  
27  
28



only saved lives, but it also redirected funds to help the victims of crime rebuild their lives.

### 3. Nevada – Can We Afford to Keep Capital Punishment on the Books?

A recent study in Nevada has shown that there is great interest in the cost of capital cases versus non-capital cases, and that Nevada is leaning towards the preclusion of the practice based on its economic effects. Dr. Terrance Miethe of the Department of Criminal Justice at the University of Nevada, Las Vegas, analyzed the time and costs incurred by defense attorneys working on capital and non-capital cases. (PA 345-356). The study concluded that defense attorneys in Clark County spend an average of 2,298 hours on capital cases, whereas they spend an average of 1,087 hours on non-capital cases. (PA 349).

**Table 4: Average Court Processing Outcomes in 127 Murder Cases Resulting in Conviction by Type of Sentence (Clark County, 2009-2011)**

<i>Case Outcome</i>	<i>Years*</i>	<i>Life With</i>	<i>Life W/O</i>	<i>Death</i>	<i>All Cases</i>
% Convicted by Trial versus Guilty Plea:	5.9 %	22.7 %	47.6 %	100 %	21.0 %
# of Days between Initial Filing and Sentencing:	387 days	732 days	887 days	1,107 days	599 days
# of Separate Court Appearances/Meetings:	9.3	20.9	27.9	35.2	16.8
# of Separate Orders Filed to the Court:	3.6	10.1	12.6	20.0	7.6
# of Separate Motion Filed to the Court:	5.4	16.6	24.4	30.0	12.8
Total # of Cases with this Sentence:	68	44	21	5	138

**Note: \* Years include any sentence in which a specific maximum number of years of imprisonment was pronounced (excluding life and death sentences).**

(PA 355).

1 This disparate workload is reflected in the costs incurred by the State in funding  
2 capital defense attorneys. The difference in attorneys' fees between a non-capital  
3 murder case and a capital case is \$169,700 for the public defender's office, and  
4 \$212,125 for private assigned counsel. (PA 353). This figure only encompasses  
5 attorneys' fees and does not include the additional costs of a mitigation expert,  
6 additional investigator fees, or hard costs associated with the increased scrutiny of a  
7 death penalty case.  
8

9  
10 Not only do capital cases in Nevada result in significant increases in costs for  
11 the state, but the time spent defending capital cases is increased tremendously when  
12 compared to cases in which the disposition is life without the possibility of parole.  
13 (PA 353). Of the cases in Clark County between 2009 and 2011 that resulted in a  
14 death sentence penalty, the time spent trying these cases was approximately 1,107  
15 days from the time of the initial filing through sentencing, whereas cases which  
16 resulted in life sentences took an average of 887 days. (PA 349).  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Table 1: Median Time Estimates (in hours) as Lead Attorney and Second Chair Attorney by Type of Murder Case			
A. Lead Attorney Estimates:			
Stage	Capital Cases	Non-Capital Cases	Difference
Pretrial	1,075	461	+ 614
Trial	168	110	+ 58
Penalty	56	12	+ 44
Post-Conviction	48	18	+ 30
<b>TOTAL:</b>	<b>1,347 hours</b>	<b>601 hours</b>	<b>+ 746 hours</b>
B. Second Chair Attorney Estimates:			
Stage	Capital Cases	Non-Capital Cases	Difference
Pretrial	885	351	+ 334
Trial	180	110	+ 70
Penalty	58	12	+ 46
Post-Conviction	28	13	+ 15
<b>TOTAL:</b>	<b>951 hours</b>	<b>486 hours</b>	<b>+ 465 hours</b>
C. Both Lead Attorney and Second Chair Attorney Estimates Combined:			
Stage	Capital Cases	Non-Capital Cases	Difference
Pretrial	1,760	812	+ 948
Trial	348	220	+ 128
Penalty	114	24	+ 90
Post-Conviction	76	31	+ 45
<b>TOTAL:</b>	<b>2,298 hours</b>	<b>1,087 hours</b>	<b>+ 1,211 hours</b>

(PA 349).

However, there is little gain justified by these results. Of the thirty-five (35) capital cases in Clark County brought between 2009 and 2011, only five (5) resulted in the death penalty. (PA 356). This results in a 14.3% death penalty imposition rate, with nearly 85% of the defendants being given a life sentence or less. *Id.* However, the 85% of death penalty cases that did not result in death still cost the tax payers more than double the amount of a non-capital trial.

**Table 5: Final Disposition of Murder Cases in which a "Notice of Intent to Seek the Death Penalty" was Filed (Clark County, 2009-2011)**

<i>Case Outcome</i>	<i>Number of Cases</i>	<i>Percent Distribution</i>
Charges Dismissed	1	2.8 %
Specific Number of Years Given*	5	14.3 %
Life <u>With</u> Possibility of Parole	7	20.0 %
Life <u>Without</u> Possibility of Parole	17	48.6 %
Death Sentence	5	14.3 %
Total	35	100.0 %

*Note: \* Years include any sentence in which a specific number or range of years of imprisonment was pronounced (excluding life and death sentences).*

(PA 356).

#### **4. Nevada cannot continue to channel financial resources for the empty “success” of the Death Penalty.**

The fiscal impact of the death penalty can not be analyzed in a vacuum. These costs must be considered in tandem with the current economic climate in both the nation, as well as Nevada. For example, the median home value in Nevada is \$152,000, compared with \$356,000 in California. (PA 493-495). One in sixteen (1 in 16) Nevada homes are in foreclosure, compared to one in sixty-nine (1 in 69) nationally. (PA 494-498). Further, the percentage of homes that are financially “underwater” is a staggering 52.4% compared to 21.5% nationwide. (PA 499-500); (PA 501-503). The United States Bureau of Labor Statistics reports that Nevada has the highest unemployment rate in the nation at 9.6%. (PA 504-508). Further, Nevada’s unemployment rate is significantly higher than the 7.6% unemployment rate nationally. Currently, the median income for Nevadans is \$44,581, compared to

1 \$45,790 nationally. (PA 496-498). Nearly 7.5% of two parent households, and  
2 20.5% of single family households live under the poverty line. (PA 496-498).

3 Nevada has been entrenched in an economic crisis, even more so than the  
4 overall crisis that swept the country. Nevada has suffered more economic harm than  
5 the jurisdictions that have already abolished the death penalty for fiscal reasons.  
6

7 **5. Where the Money Could be Better Spent.**

8 **a) An Intermediate Appellate Court.**

9  
10 Nevada's economic crisis is not just reflected in the community as a whole, but  
11 is equally evident in the administration of justice. While, the State spends  
12 approximately \$260,000 per capital case just on defense counsel for trial, numerous  
13 services are suffering due to a lack of funds (PA 353).  
14

15 For instance, the Justices of this Court have long advocated for an intermediate  
16 appellate court, which has been rejected on several ballot initiatives. This is despite  
17 that the Nevada Supreme Court has one of the heaviest caseloads in the Nation and  
18 has the highest number of incoming cases of all states that lack an intermediate  
19 appellate court (PA 905-906).<sup>2</sup> An intermediate appellate court, which would aid this  
20 State in effectively and efficiently adjudicating appellate claims would cost a mere  
21  
22  
23  
24

---

25 <sup>2</sup> The article referenced was not submitted to the District Court at the time for hearing  
26 on the matter. However, this article was cited by defense counsel in identical  
27 motions submitted in two additional death penalty cases and is provided in the  
28 Petitioner's Appendix for the convenience of the Court.

1 \$1,746,583 a year in operating costs. (PA 896))<sup>3</sup>. Given the figures applied to the  
2 increased cost of capital cases, including, but not limited to: attorneys' fees for trial  
3 and post-conviction proceedings, mitigation, investigators, experts, prosecution costs,  
4 court costs, execution costs, and the like, the cost of the intermediate appellate court  
5 likely represents the cost of just one capital prosecution for the State of Nevada.  
6

#### 7 **b) Victims of Crime**

8  
9 The State of Nevada recognizes that victims of crime often need extensive  
10 social services as a result of the crime perpetrated against them. As such, the Nevada  
11 Victims of Crime Compensation Program (NVCCP) was created to financially assist  
12 such persons. However, despite the evident impact that violent crime can have on a  
13 victim, the NVCCP caps each victim at a maximum of \$35,000 in benefits, despite the  
14 economic and physical damage that may have been caused to them by a defendant.<sup>4</sup>  
15  
16 Further, NVCCP only allows \$5,500 in counseling to victims, regardless of the  
17 substantial trauma or mental distress that a crime may have caused them.  
18

19 In Maryland the reallocation of monies used for the death penalty to victims of  
20 crime proved extremely persuasive, as noted above. In Connecticut, the family  
21 members of victims noted that the death penalty "wastes millions of dollars that could  
22  
23

---

24  
25  
26 <sup>3</sup> This portion of the legislative history is provided in the Appendix for the Court's  
27 convenience.

28 <sup>4</sup> See, current as of November 5, 2013:

<http://voc.nv.gov/uploadedFiles/vocnvgov/content/Advocates/VOCP%20Policies.pdf>

1 go toward much needed victims' services." (PA 874-880)<sup>5</sup>. As such, other  
2 jurisdictions have realized the potential benefit in redirecting funds spent on the death  
3 penalty towards services that can aid the victims of crime. The system is in place in  
4 Clark County, all that is needed is the funds to expand the services.  
5

### 6 **c) Education**

7 Nevada School Districts are in a crisis. Most notably, Clark County has faced  
8 severe budget deficits that have resulted in program cuts and class sizes that are 25%  
9 percent larger than the national average. (PA 573-575). Further, the Clark County  
10 School District reflected a 64 million dollar deficit in the 2012-2013 school year. (PA  
11 577). In the collegiate system, educational funding has also caused difficulties. For  
12 example, in April of 2003, the President of Western Nevada College resigned, citing  
13 budget cuts. (PA 562-563).  
14  
15  
16

17 As it stands, the State of Nevada desperately needs funding for the education of  
18 its youth. However, budget cuts to both primary and higher education have resulted  
19 in both the revocation of programs, as well as a decrease in the quality of education  
20 provided. Any amount of money that could be redirected to education would have a  
21 dramatic impact on the lives of Nevada students.  
22  
23  
24

---

25 <sup>5</sup> The letter referenced was not submitted to the District Court at the time for hearing  
26 on the matter. However, this letter was cited by defense counsel in identical motions  
27 submitted in two additional death penalty cases and is provided in the Petitioner's  
28 Appendix for the convenience of the Court.

#### d) Mental Health

Services for mentally ill individuals are also facing a lack of funding, according to Jon Norheim, a Clark County judicial hearing master. In an April 14, 2013 article written in the *Las Vegas Review Journal*, Mr. Norheim noted that due to a lack of funding, housing, case managers, treatment facilities, and intense supervision programs, he has seen the same mentally ill individuals appear in front of him “dozens of times.” (PA 564-569).

As such, it appears that though these mentally ill individuals often encounter the criminal justice system as a result of their disorders, the money is not being spent to rehabilitate and assist these people. Instead, a significant amount of money is spent to prosecute a small minority of capital offenders. Money that is better spent to prevent violent crime from occurring in the first place.

Though a potential intermediate appellate court, NVCCP, education, and mental healthcare are just four (4) of many areas in which the money spent on capital punishment would be better directed, such reallocation of resources in these areas alone weigh strongly in favor of the abolition of the death penalty.

#### 6. The Effect of Assembly Bill 444

The passage of Assembly Bill 444 demonstrates the growing awareness of the financial impracticability of capital punishment in the State of Nevada. The taxpayers are fronting increasing costs in order to prosecute capital cases, and seeing little if no return on their investment. However, the State continues to prosecute death penalty



1 cases despite these diminishing returns. The undersigned has personally addressed  
2 these very issues with the District Attorney's Death Penalty Review committee on  
3 similar cases to argue the efficacy and fiscal cost of the death penalty, to no avail.  
4

5 Despite that these crucial issues have fallen on deaf ears to those that spend the  
6 money to prosecute these actions, it appears that these issues have gained traction with  
7 the Nevada legislature when evaluating the benefit of capital punishment in this State.  
8 Much like New Jersey and the other States that have recently abolished the death  
9 penalty following a substantive evaluation of the costs versus benefit, Nevada has  
10 begun the process of modernizing its legal system. The death penalty cannot be had  
11 without significant safeguards to prevent its abuse or misapplication. Such financial  
12 safeguards come at a price that is simply not viable in the modern economic climate.  
13  
14

## 15 **7. Effective Moratorium on Executions**

16

17 Nevada currently does not have the capacity to humanely execute those  
18 prisoners that are currently on death row. A May 22, 2013 article in the *Las Vegas*  
19 *Review Journal* quotes Corrections Department Director Greg Cox as stating that the  
20 current gas chamber at the now closed Nevada State Prison is not compliant with the  
21 Americans with Disabilities Act and the viewing area provides little room for official  
22 and unofficial witnesses. (PA 490 – 492). Director Cox goes on to state that he would  
23 “expect litigation to be filed challenging the use of the chamber [at Nevada State  
24 Prison] if an execution was to go forward.” (PA 491).  
25  
26  
27  
28

1 Further, attempts to build another facility have been stymied by the Nevada  
2 legislature. The joint Assembly Ways and Senate Finance subcommittee unanimously  
3 voted not to fund construction of a new \$700,000.00 facility at Ely State Prison. (PA  
4 881). In doing so, the committee noted that the recently enacted Assembly Bill 444,  
5 “required that a legislative audit be conducted on the death penalty in the state, which  
6 would include a review of facilities to carry out a death sentence.” (PA 881). As it  
7 stands, there is no acceptable facility in Nevada to carry out an execution which has  
8 created an effective moratorium on executions pending the audit.  
9

#### 11 **8. The Legislature Intended a Moratorium.**

12 Pursuant to *Clark County v. Southern Nevada Health District*, supra, this Court  
13 must examine the statute as a whole. *Clark County v. Southern Nevada Health*  
14 *District*, 289 P.3d 212, 216 (2012). In this case, the legislature nearly unanimously  
15 voted to assess the fiscal impact of the death penalty in Nevada. During the hearings  
16 on the matter, several Senators and Assemblymen noted the exorbitant cost of the  
17 death penalty to this State. These same concerns can be found in the legislative  
18 history of the six (6) most recent states to abolish the death penalty. And most  
19 telling, the legislature declined to build a new death chamber pending the AB 444  
20 audit, creating an effective moratorium on the death penalty.  
21

22 It is apparent from the record that the legislature did not intend for the capital  
23 sentencing scheme in Nevada to operate at status quo. The legislature’s effective  
24  
25  
26  
27  
28

1 moratorium on executions, by declining to fund the death chamber, is incongruous  
2 with continuing to try and sentence capital defendants.

3 As such, Petitioner Sims requests that this Court strike the Notice of Intent to  
4 Seek the Death Penalty against him. In the alternative, Mr. Sims requests that the  
5 capital proceedings against him be stayed until the completion of the legislative audit  
6 mandated by Assembly Bill 444. Studies in both this State and nearly every  
7 American jurisdiction have demonstrated the exorbitant cost of capital prosecutions.  
8 The outcome of this audit will reflect that the costs of death penalty can not be  
9 justified by the meager results.  
10  
11  
12

13 **B. The District Court has the Jurisdiction to Grant the Requested Relief.**

14 The District Court held that it did not have the authority to grant the  
15 relief requested in the Petitioner's motion. (PA 775, 1.23-776, 1.4).  
16 However, it is the province of the courts to interpret statutes. See generally  
17 *In re William S.*, 122 Nev. 432, 132 P.3d 1015 (2006). Generally, the plain  
18 meaning of the words in a statute should be respected unless doing so  
19 violates the spirit of the act. *Id.* at 1018-1019. If more than one reasonable  
20 meaning can be understood from the statute's language, it is ambiguous, and  
21 the plain meaning rule does not apply. *Id.* at 1019. When such meaning is  
22 unclear, the District Court must then ascertain the Legislature's intent by  
23 reviewing the statute's terms and context, along with reason and public  
24 policy. *Id.* at 1019.  
25  
26  
27  
28

1       The legislature passed Assembly Bill 444 calling for an audit of the death  
2 penalty, with an eye toward whether the fiscal impact of capital punishment is worth  
3 the benefit received by the State. (PA 45-46). The results of the audit were not  
4 ordered for the pure edification of the legislature, but clearly represent that a  
5 reevaluation of the death penalty is imminently on the horizon. Whether such  
6 reevaluation results in the abolishment of the death penalty, or a reorganization of the  
7 capital sentencing structure, remains unclear at the moment. Yet, the legislature  
8 remained silent on whether the current capital sentencing structure would remain in  
9 place while the audit was being conducted.

13       The District Court held that the legislature's silence on the issue of a  
14 moratorium precludes the existence of such a moratorium. However, the context in  
15 which Assembly Bill 444 was passed, in tandem with the effective moratorium on  
16 executions pending the audit, demonstrate that the legislature's silence on the  
17 moratorium does not automatically legislate the absence of said moratorium.

20       The Nevada Supreme Court has repeatedly held that courts shall look to reason  
21 and public policy to discern legislative intent. *Langon v. Matamoros*, 121 Nev. 142,  
22 144, 111 P.3d 1077, 1078 (2005); See also *State v. Catanio*, 120 Nev. 1030, 1033, 102  
23 P.3d 588, 590 (2004). In this case, the District Court was provided with a  
24 comprehensive view of both the context and the public policy considerations  
25 surrounding the passage of Assembly Bill 444. Armed with that information, the  
26 District Court has the ability to reconcile the incongruity and ambiguity of bills that

1 call for an audit of the death penalty and the suspension of executions on one hand,  
2 and the continued existence of capital sentencing structure in Nevada on the other  
3 hand.

4  
5 The District Court determined that it did not have the ability to rule in the  
6 Petitioner's favor. However, the Petitioner was not calling for the District Court to  
7 legislate the institution of a moratorium, but to interpret Assembly Bill 444 consistent  
8 with the jurisdiction of the courts. As such, the District Court is vested with the  
9 authority to either strike or stay the Notice of Intent to Seek the Death Penalty, should  
10 it so find that the ambiguity of Assembly Bill 444 is resolved by the overwhelming  
11 evidence of legislative intent calling for such relief.  
12

13  
14 //

15  
16 ///

17  
18 ///

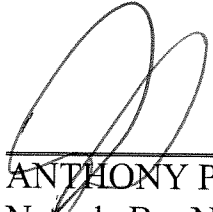
19  
20 ///

21  
22  
23 **VII.**  
**CONCLUSION**

24 Based upon the foregoing, the Petitioner respectfully requests this Court to  
25 direct the District Court to strike the Notice of Intent to Seek the Death Penalty in the  
26 instant case or direct the District Court to stay capital proceedings against the  
27 Petitioner until the resolution of the fiscal audit of the death penalty legislated in the  
28

1 recently passed Assembly Bill 444. Alternatively, Petitioner requests that this Court  
2 remand this decision to the District Court with the mandate that it has the authority to  
3 grant the instant relief.  
4

5 Dated this 5 day of November, 2013.

6  
7  
8   
9 ANTHONY P. SGRO, ESQ.  
10 Nevada Bar No. 3811  
11 PATTI, SGRO, LEWIS & ROGER  
12 720 S. 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
13 Las Vegas, NV 89101  
14 TEL: (702) 385-9595  
15 FAX: (702) 386-2737  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2 **CERTIFICATE OF COMPLIANCE**  
3

4 I hereby certify that I have read this appellate brief, and to the best of my  
5 knowledge, information, and belief, it is not frivolous or interposed for any improper  
6 purpose. I further certify that this brief complies with all applicable Nevada Rules of  
7 Appellate Procedure, in particular N.R.A.P. 28(e), which requires every assertion in  
8 the brief regarding matters in the record to be supported by a reference to the page of  
9 the transcript or appendix where the matter relied on is to be found. I understand that  
10 I may be subject to sanctions in the event that the accompanying brief is not in  
11 conformity with the requirements of the Nevada Rules of Appellate Procedure.  
12  
13  
14

15 Dated this 5 day of November, 2013.  
16

17  
18   
19 ANTHONY P. SGRO, ESQ.  
20 Nevada Bar No. 3811  
21 PATTI, SGRO, LEWIS & ROGER  
22 720 S. 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
23 Las Vegas, NV 89101  
24 TEL: (702) 385-9595  
25 FAX: (702) 386-2737  
26  
27  
28

**NRAP 27(e) CERTIFICATE**

I HEREBY CERTIFY that service of the foregoing PETITION FOR WRIT OF MANDAUMUS OR WRIT OF PROHIBITION was made this 6<sup>th</sup> day of November, 2013, by hand delivering a true and correct copy of the same to the offices of:

THE HONORABLE JUDGE DOUGLAS W. HERNDON  
REGIONAL JUSTICE CENTER, 16<sup>TH</sup> FLR  
200 LEWIS AVENUE  
LAS VEGAS, NEVADA 89155  
TEL: (702) 671-0591  
FAX: (702) 671-0598

STEVEN B. WOLFSON  
Clark County District Attorney  
Attn: Appellate Division  
200 Lewis Avenue 3<sup>rd</sup> Floor  
Las Vegas, NV 89101

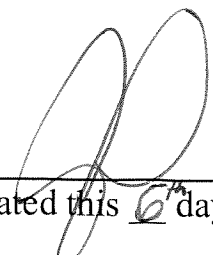
And by mailing a correct copy to:

CATHERINE CORTEZ-MASTO  
Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

CARL ARNOLD, ESQ.  
1148 Maryland Pkwy.  
Las Vegas, NV 89104  
[Lvcegal@yahoo.com](mailto:Lvcegal@yahoo.com)

LANCE HENDRON, ESQ.  
625 S. 8th Street  
Las Vegas, NV 89101  
[lance@hendronlaw.com](mailto:lance@hendronlaw.com)

ALZORA JACKSON, ESQ.  
OFFICE OF THE SPECIAL PD  
330 S. Third Street, 8th Floor  
Las Vegas, NV 89155  
[ajackson@co.clark.nv.us](mailto:ajackson@co.clark.nv.us)

  
Dated this 6<sup>th</sup> day of November, 2013.