IN THE SUPREME COURT OF THE STATE OF NEVADA

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MICHAEL P. ANSELMO,

Appellant,

vs.

CONNIE BISBEE, CHAIRMAN; SUSAN JACKSON; TONY CORDA; ADAM ENDEL, COMMISSIONERS; AND THE STATE OF NEVADA BOARD OF PAROLE,

Respondents.

Supreme Court No.: 67619

ANSWER TO PETITION FOR PANEL REHEARING

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ANSWER TO PETITION FOR PANEL REHEARING

I. INTRODUCTION

This Court's Opinion is a vindication of due process rights for eligible inmates, such as Mr. Anselmo, to be properly considered for parole by the Board—and hardly a "Pyrrhic victory," as Respondents' Petition labels it. Still, the Opinion was *very* limited in scope and expressly held that, while "Nevada inmates have no protectable liberty interest in release on parole," "eligible Nevada inmates do have a statutory right to be considered for parole by the Board." (*See* Opinion at 2.) The Court further narrowed its Opinion by holding that "under the *limited* circumstances presented *in this case*," a new parole hearing is warranted. (*Id.*) (emphasis added). Despite Respondents' contention and attempt to muddy the water, the Opinion is clear and there is absolutely no "confusion" as to what the Court held.

It appears that the only parties unclear as to what this Court ordered are Respondents – in the face of this Court's mandate to hold a *re*-hearing of Mr. Anselmo's November 17, 2014, parole hearing, the Board sat on its hands for nearly four months without scheduling the *re*-hearing or taking any action at all, besides filing a meritless Petition for Panel Rehearing ("Petition").[1]

[1] Respondents' intention to disregard this Court's mandate is obvious. Respondents tout that Mr. Anselmo will receive another parole hearing

Despite Respondents' attempt to paint it as such, this Court's Opinion is nothing close to an "advisory opinion"; rather, it is a well-reasoned, narrow ruling supported by case law, the statutory scheme governing parole hearings, and public policy, that directed the Board to simply follow its "own internal guidelines." (*Id.*) In fact, the Opinion could result in Mr. Anselmo being granted parole *and* being given credit for his time served since his November 2014 denial. An Opinion that could yield such an outcome can hardly be deemed advisory.

Further, Respondents' Petition baldly insinuates that the Opinion will stir up a hornet's nest, forecasting an onslaught of prisoner petitions challenging parole denials, which is not only unsupported and irrelevant to the Court's Opinion in the instant case, but makes light of a deeply concerning issue identified by the Court: the Board's improper consideration of factors that "infringed upon Anselmo's statutory right to receive proper consideration for parole." (*See* Opinion, p. 10.)

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regardless of this Court's Opinion, *see* Petition at 1, and, without seeking a stay of the Court's mandate, they waited for just that. The only parole hearing that is currently scheduled (which was only recently put on calendar to occur November 16, 2017) is the statutorily required parole hearing Mr. Anselmo was set to receive three years following his 2014 parole denial. To be clear, a *re*-hearing of Mr. Anselmo's November 2014 parole hearing has not been scheduled.

In that same vein, Respondents' aspirational vision of the Board appears to be one free to ***abandon*** its own internal guidelines when considering the release of Nevada's incarcerated. Setting aside Respondents' fatal failure to adhere to the Nevada Rule of Appellate Procedure governing petitions for rehearing, Respondents' Petition makes conclusory arguments that the Court failed to reconcile statutory and regulatory authority, when in fact the Court noted its step-by-step analysis to illustrate how the Board's "clear error" resulted in an impermissible infringement of Mr. Anselmo's statutory right to be properly considered for parole. Nevada statutory law, codified by the Nevada Administrative Code, simply does not mandate the unfettered discretion for which Respondents advocate. As such, the Petition should be summarily denied.

II. ARGUMENT

A. <u>The Petition Fails To Comply With NRAP 40, Warranting Its Denial.</u>

Not surprisingly, Respondents pay mere lip service to the Rule governing petitions of this nature. Under this Court's long established practice, rehearings are not granted to review matters that are of no practical consequence. *In re Estate of Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984). Importantly, a petition for rehearing will be entertained only when the court has overlooked or misapprehended some material matter, or when

otherwise necessary to promote substantial justice. *Herrmann*, 100 Nev. at 151; *see also* NRAP 40(c)(2). A petition for rehearing may not be utilized as "a vehicle to reargue matters" considered and decided in the court's initial opinion – nor may a litigant raise new legal points for the first time on rehearing. NRAP 40(c)(1); *see also Gershenhorn v. Stutz*, 72 Nev. 312, 306 P.2d 121 (1957); *Cannon v. Taylor*, 88 Nev. 89, 92, 493 P.2d 1313, 1314 (1972); *In re Lorring*, 75 Nev. 330, 334, 349 P.2d 156 (1960). As discussed below, the Petition does just that – raises immaterial and/or new arguments and attempts to get a second bite at the apple by rearguing matters already fully briefed, considered, and decided by this Court.

As is particularly relevant here, Rule 40(a)(2) provides that "any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied or failed to consider controlling authority *shall be supported by a reference to the page of the brief where petitioner has raised the issue*." (Emphasis added). Notably absent from the Petition is any such reference. (*See generally,* Petition.) Respondents' failure to comply with Rule 40(a)(2) is grounds to deny the Petition.

It is apparent that Respondents' Petition was not filed for any of the legitimate purposes outlined by our rules. Rather, the Petition appears to have been filed for purposes of delay, and with "the improper result, if not the

intent," of persuading the Board to ignore its own internal guidelines in direct defiance of this Court's Opinion and subjecting Mr. Anselmo to further deprivation of due process. *See Herrmann*, 100 Nev. at 151 (denying the petition and imposing sanctions because the petition was not "filed for any of the legitimate purposes countenanced by our rules. Instead,…it appears that said petition has been filed for purposes of delay, and with the improper result, if not the intent, of subjecting appellants to further public odium.") The Petition should, therefore, be denied.

B. The Petition Also Fails To Demonstrate That The Opinion Overlooked Or Misapplied Nevada Law.

1. Respondents' arguments addressing Morrow *and* Stockmeier *fail.*

a. Respondents improperly raise new arguments in the Petition.

Despite NRAP 40's distinct requirements that new legal arguments cannot be raised initially in a petition for rehearing, Respondents cite to the *Stockmeier* case for the first time in its Petition. (*See* Petition, p. 4; *see generally* Answering Brief ("AB").) The Court, therefore, should disregard Respondents' argument regarding *Stockmeier* in its entirety. *See* NRAP 40(c)(1).

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b. The issue of *Morrow* has already been argued and extensively briefed by both parties, making it an improper argument to raise in the Petition.

Not only did Respondents raise *Stockmeier* for the first time in their Petition, in violation of NRAP 40(c)(1), but they also reargue the *Morrow* case, which both parties fully addressed in their respective briefs. That is, Mr. Anselmo did not hide from *Morrow* in his Opening Brief, and, in fact, acknowledged this case and specifically addressed its application here. (*See* Opening Brief ("OB"), p. 40.) Respondents then relied heavily on this case in their Answering Brief and argued that *Morrow* is the Nevada standard for the position that "there is no due process liberty interest in parole release." (*See* AB, p. 3, 6-9, 11-12, 18.) In turn, Mr. Anselmo's Reply Brief again addressed *Morrow* due to Respondents' reliance. (*See* Reply Brief ("RB"), p. 20, 24-25.) Thus, Respondents' *Morrow* argument has already been "presented in the briefs" and may not be reargued in this Petition. *See* NRAP 40(c)(1). The Petition should be denied in this respect.

c. The Opinion not only reaffirms *Morrow*, but carefully explains the Court's ruling and reconciles it with *Morrow*.

Assuming *arguendo,* that this Court considers Respondents' contention that the Opinion is incongruent with *Morrow,* this argument fails because Respondents' black-and-white position ignores the contours of the Court's

Opinion.[2] To start, the Opinion not only cited to *Morrow* on numerous occasions, but it specifically reiterated – and does not disturb – the "firmly settled law" established by *Morrow* that "Nevada's statutory scheme does not provide any due process right in the grant of parole." (*See* Opinion, p. 5-6, 8.) The Court then carefully explained how our statutory scheme distinguishes Nevada from California, thereby making the holding in *In re Lawrence,* 190 P.3d 535 (Cal. 2008), inapplicable. (*See id.* at 6.)

The Court's explanation did not end there. That is, after discussing the "plain language of [the Board's] internal guidelines" and the statutes providing for consideration of certain factors, the Court expressly reiterated that under *Morrow* "[t]his court will not review the ultimate decision of the Board to grant or deny parole, as Anselmo has no liberty interest in release on parole." (*See id.* at 8.) This Court continued by finding that, "[n]onetheless, NRS 213.140(1) clearly provides that 'the Board shall consider' eligible inmates for parole," resulting in Anselmo having the right to be "consider[ed]" for parole, while still having "no due process right in the grant of parole itself." (*See id.*)

The Court then analyzed Nevada's plain statutory language providing that eligible inmates are entitled to parole consideration. The Court compared the

[2] Yet again, Respondents fail to provide the Court with a single "reference to the page of the brief" where they have raised this issue, in violation of NRAP 40(a)(2). (*See* Petition, p. 4.)

similarities of our scheme to that of South Carolina in the case of *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 496-99, 661 S.E.2d 106, 112 (2008). (*See id.* at 8-9.) In doing so, the Court, once again, reiterated the law under *Morrow* and held that, nonetheless, the "Board is still obligated to act within established parameters." (*See id.* at 9.)

Thus, contrary to Respondents' argument, the Court expressly acknowledged and reaffirmed *Morrow*, explaining point by point how it reconciled this with its ultimate finding that the Board infringed upon Mr. Anselmo's statutory right to receive proper consideration for parole. Respondents have failed to demonstrate that the Opinion "overlooked" or "misapplied" Nevada law. The Petition, therefore, should be denied.

2. Respondents' arguments regarding NRS 213.10705 fail.

a. <u>The parties fully briefed NRS 213.10705 before the Court issued its Opinion, and arguments relating thereto are improperly raised in this Petition.</u>

As with Respondents' arguments regarding *Morrow*, the issue of NRS 213.10705 has been exhaustively argued by both Mr. Anselmo and Respondents – Mr. Anselmo's Opening Brief acknowledged the statute's language, cited it in full text, and specifically addressed how it does not foreclose the relief he seeks, as evidenced by the Court's decision. (*See* OB,

p. 5, 30, 33, 39-40.) Just as with *Morrow*, Respondents regurgitated its position on NRS 213.10705's purpose and function in their Answering Brief. (*See* AB, p. 6, 12, 21.) The Reply Brief also fully addressed the impact, or lack thereof, of NRS 213.10705. (*See* RB, p. 8.) Therefore, arguments regarding NRS 213.10705 have already been presented in the briefs and may not be reargued here. *See* NRAP 40(c)(1).

b. NRS 213.10705 was properly considered by the Court.

If the Court is inclined to set aside Respondents' procedural failures, Respondents' arguments fail nonetheless, because the Court fully considered the perceived confines of NRS 213.10705.[3] To begin, the Court expressly acknowledged that "there is no applicable statutory vehicle through which Anselmo may challenge the Board's actions," *i.e.*, no cause of action provided by statute – exactly what NRS 213.10705 states. (*See* Petition, p. 4.) The Court then considered whether the Board's actions were contrary to law, "warranting the issuance of a writ of mandamus," which it ultimately found. (*See id.* at 4-10.) In reaching this conclusion, the Court expressly relied upon and considered NRS 213.10705. (*See id.* at 4.)

[3] Once again, Respondents fail to provide the Court with a single "reference to the page of the brief" where they have raised this issue, in violation of NRAP 40(a)(2). (*See* Petition, p. 4.)

As discussed above, the Court then clarified that despite the statutory scheme governing parole, the Board "shall consider" eligible inmates for parole under NRS 213.140(1), thus conferring a "right to be 'consider[ed]' for parole." (*See id.* at 8.)[4] As demonstrated in Mr. Anselmo's Reply Brief, and ignored in the Petition, a finding to the contrary would "defeat" Chapter 213's purpose and be "substantially inequitable" – a statutory mandate providing an expectation of parole eligibility that can be violated without judicial review. (*See* RB, p. 19) (citing *Egan v. Chambers*, 299 P.3d 364-65, 367 (Nev. 2013) (holding that the Court can "reexamine" previously decided issues and overrule its prior rulings when adhering to the precedent would be "substantially inequitable."); *see also Adam v. State*, 127 Nev. 601, 605, 261 P.3d 1063, 1065 (2011) (holding that precedent should be respected until it is shown that the purpose of a statute would "be defeated" if the precedent is not overturned.)

Thus, if the Court finds that such are necessary, "compelling reasons" exist for this Court to "clarify" an inmate's right to parole eligibility, and that the

[4] Notably, although Nevada's Legislature was "under no constitutional obligation to create a parole system," it chose to do so and enacted these provisions which are "phrased in such a way that [they] create a real expectation of and not just a unilateral hope for" parole eligibility. *Severance v. Armstrong*, 96 Nev. 836, 839, 620 P.2d 369, 370 (1980) (citation omitted.)

Board's denial thereof implicates a liberty interest, subjecting its decision to judicial review. *See Adam*, 127 Nev. at 605. Moreover, it is "substantially inequitable" for the Board to create guidelines, such as the Nevada Parole Guidelines, which contain explicit directives not to consider certain factors in particular situations, and to be completely free to follow its directives therein in some instances and to disregard them in other instances – without any form of judicial review. *See Egan*, 299 P.3d at 367. There can be no doubt that this Court appreciates the inequitable nature of Respondents' narrow view of NRS 213.10705. (*See* Opinion, p. 7-10.)

Beyond this, the Petition completely ignores *Cohen v. State*, 113 Nev. 180, 183, 930 P.2d 125, 127 (1997), which provides for judicial review when a party is collaterally attacking the manner in which an application to an administrative board was treated – even when no statutory right exists and where the statute *expressly* states that no judicial review is available. (*See generally*, Petition.) The Petition also turns a blind eye to *Cooper*, which held that although "[p]arole is a privilege, not a right," an inmate does "have a right to require the Board to adhere to statutory requirements in rendering a decision." *Cooper*, 377 S.C. at 496-99. The Opinion, however, dedicated nearly an entire page to *Cooper* and explaining how it is instructive with respect to the finding that, although the "decision to grant or deny parole is not

generally reviewable, the Board is still obligated to act within established parameters." (*See* Opinion, p. 9.)

As such, this Court has provided substantial explanation as to its authority to grant equitable relief despite NRS 213.10705, and Respondents have failed to meet their burden that the Opinion "overlooked" or "misapplied" the applicable authority. The Petition should be denied.

3. Respondents fail to establish that NRS 213.10885(7)(a) and/or NAC 213.560(2) were "overlooked".

a. Both the statute and code were addressed by Respondents and Mr. Anselmo on appeal.

Once again, Respondents have violated Rule 40(c)(1) by using this Petition as an improper vehicle to reargue points already raised and addressed in the appellate briefs. Mr. Anselmo addressed NRS 213.10885 numerous times throughout his Opening Brief, and recognized the discretion provided in NAC 213.560. (*See* OB, p. 9-10, 14, 65.) Respondents also addressed NRS 213.10885 in their Answering Brief, relying upon NAC 213.560 to argue that application of the Board's standards is "permissive" and that deviation therefrom is allowed. (*See* AB, p. 12, 20-21.) Mr. Anselmo's Reply Brief then countered Respondents' contentions. (*See* RB, p. 14-15.) Thus, these arguments have been clearly presented to the Court, and the Petition should be denied for failure to comply with NRAP 40(c)(1).

b. The Opinion is in harmony with NRS 213.10885(7)(a) and NAC 213.560(2).

A cursory review of the Opinion reveals that this Court expressly found that it "will not disturb a decision to deny parole for any reason authorized by statute." (*See* Opinion, pp. 2 & 10.) The Court did not, however, find that the Board simply "deviat[ed] from" its standards as permitted in NAC 213.560(2)[5] and as argued by Respondents[6]; rather, the Court specifically held that (i) "the Board clearly ***misapplie[d]*** its own internal guidelines in assessing whether to grant parole," (ii) [b]ased upon the plain language of the internal guidelines, this aggravating factor [under NAC 213.518(2)(k)] ***should not have been applied*** to Anselmo," (iii) the "error in this case was not related to the weight or sufficiency of the evidence underlying any of the criteria relevant to the decision to deny parole," "[r]ather, the Board's internal guidelines clearly indicated that the aggravator set forth in NAC 213.518(2)(k) ***should not be used*** in those cases where the inmate is serving a life sentence for murder," like Mr. Anselmo, (iv) that the "Board's consideration of the ***inapplicable***

[5] NAC 213.560(2) provides that "[t]he Board may deviate from the standards contained in NAC 213.512 to 213.518, inclusive, and 213.550 based upon any factor, or combination of factors, set forth in NAC 213.518 or any other factor which the Board deems relevant to the determination of whether to grant, deny, continue or revoke parole."

[6] Not surprisingly, yet again Respondents do not provide the Court with a single "reference to the page of the brief" where they have raised this issue, in violation of NRAP 40(a)(2). (*See* Petition, p. 6.)

aggravator in NAC 213.518(2)(k) infringed upon Anselmo's statutory right to receive proper consideration for parole," and that (v) "[t]his Court cannot say that an inmate received proper consideration when the Board's decision is based in part on an ***inapplicable aggravating factor***." (*See id.* at 2, 8-10) (emphasis added). As such, Respondents' contention that this Court's Opinion is "internally inconsistent" conveniently and completely ignores the express finding of this Court.

Moreover, while NAC 213.518 provides which factors the Board *may* consider, the Nevada Parole Guidelines created by the Board *mandate* that the Board is *forbidden* from considering the aggravating factor in circumstances such as Mr. Anselmo's. *See Tarango v. SIIS*, 117 Nev. 444, 451 n.20, 25 P.3d 175, 186 n.20 (2001) ("'In statutes, "may" is permissive and "shall" is mandatory...'") (citation omitted). Thus, while the Board "may deviate" from NAC standards, *see* NAC 213.560(2), this language does not translate into unfettered Board power to violate its own directives and consider banned factors.[7]

[7] In light of the outcome determinative nature of the Nevada Parole Guidelines, to permit the Board to disregard the mandates therein would result in inconsistent parole determinations, disparate treatment of similarly situated inmates, and utter inequity. This could not have been the Legislature's intention when it directed the Board to create guidelines and standards governing parole. Such an outcome is "unworkable" and "unsound in

Similarly, although NRS 213.10885(7) provides that "[t]he Board shall report to each regular session of the Legislature: (a) The number and percentage of the Board's decisions that conflicted with the standards," this is referring to those decisions that *deviate* from the standards as permitted in NAC 213.560(2), not those that *disregard* a mandate – such as is found here.

Consequently, this Court's Opinion is perfectly "squared" with both of these statutes and internally consistent with all relevant authority. Respondents have failed to demonstrate that the Court "overlooked" or "misapplied" these statutes. The Petition, therefore, should be denied.

C. <u>This Court Properly Utilized Mandamus Relief And Respondents Misrepresent That Mandamus Relief Was Not Addressed In Their Answering Brief.</u>

Respondents' final argument in their Petition begs the question as to whether they read their own Answering Brief and/or the text of the Opinion. That is, not only do Respondents fail to provide the Court with a single "reference to the page of the brief" where they have raised the issue of mandamus, in violation of NRAP 40(a)(2), but they also misrepresent to the Court that they "are left to address the availability of mandamus relief here in

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principle" – *i.e.,* provides "compelling reasons," if the Court finds the same necessary. *See ASAP Storage, Inc*., 123 Nev. at 653; *see also Cty. of Clark v. Sun City Summerlin Cmty. Ass'n,* No. 60776, 2014 Nev. Unpub. LEXIS 486, at *9 (Mar. 25, 2014) (precedents are respected until they are shown to be "'unworkable or . . . badly reasoned'").

the first instance…" (*See* Petition, p. 7.) In fact, Respondents expressly argued in their Answering Brief that "[t]o the extent that Nevada law permits the review of a denial of parole, Anselmo should have sought such review by way of a petition for a writ of mandamus."[8] (*See* AB, p. 3.) Notably, Respondents further argued that mandamus is an "adequate remedy" on page 12 of the brief:

> This Court's most recent opinion addressing claims similar to Anselmo's addressed (and denied) them in the context of a mandamus petition and a civil lawsuit. *See Morrow*, 127 Nev. at 268-29, 255 P.3d at 225-26. To the extent that Nevada law creates a duty on the part of the Parole Board to consider certain factors when rendering a parole decision, *see, e.g.*, NRS 213.1099(2), a petition for a writ of mandamus filed in a district court is an adequate remedy to compel consideration of those factors. *See* NRS 34.160.

(*See id.* at 12.) Respondents then specifically argued that "[b]ecause the ultimate decision to grant or deny parole is discretionary, *see* NRS 213.1099(1), mandamus will not lie to challenge the Parole Board's decision to grant or deny parole. It will only serve as a state-law remedy to *compel*

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[8] As explained in Mr. Anselmo's Reply Brief, (i) Mr. Anselmo was *pro se* in District Court and filed this appeal *pro se*, resulting in his pleadings being held to a "less stringent standard," *See Haines v. Kerner*, 404 U.S. 519, 520, 92 S. Ct. 594, 596 (1972) (holding that a pro se pleading is held to a "less stringent standard"), and (ii) the remedy articulated in Mr. Anselmo's Opening Brief is precisely the remedy permitted in a mandamus petition: to "reverse the District Court's dismissal of Michael's Petition, with instructions for the District Court to remand to the Board to reconsider Michael's parole and follow: (i) its own guidelines and (ii) the California Court's directives outlined by *In re Lawrence*." (OB 6, 37; *see also* AB 13.)

consideration of the factors mandated by Nevada law."[9] (*See id.* at p. 13) (emphasis added). As such, the Petition should be denied because, despite Respondents' representation, the mandamus argument was actually raised in the Answering Brief and addressed in the Reply Brief. *See* NRAP 40(c)(1).

Seemingly dissatisfied with their previous arguments in the Answering Brief, Respondents decided to take a new position on mandamus relief for the first time in their Petition. (*See* Petition, p. 7; *see also generally*, AB) This new argument is not permitted under NRAP 40(c)(1). *See Cannon*, 88 Nev. at 92.

Assuming *arguendo* that the Court considers these new arguments (which it should not), they fail nonetheless. Mandamus relief is proper and this Court explained the same, in detail, in its Opinion. The Court clearly identified circumstances under which mandamus relief is proper and specifically cited to NRS 34.160. (*See* Opinion, p. 4.) In fact, the very first line of the Court's discussion provides that "[a] writ of mandamus is available to compel the performance of an act that the law requires … or to control an arbitrary or capricious abuse of discretion" – one which is either "founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law." (*See id.*) (citing *Int'l Game Tech, Inc. v. Second Judicial Dist.*

[9] This is precisely what the Court has done here. (*See* Opinion, p. 10.)

Court, 124 Nev. 193, 179 P.3d 556, 558 (2008); NRS 34.160; *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011)).

The Opinion also expressly recognized that mandamus relief is an "extraordinary" remedy available when "there is [no] plain, speedy and adequate remedy in the ordinary course of law," such as here. (*See* Petition, p. 4) (citations omitted.) The Opinion then reasoned that because Mr. Anselmo has no "applicable statutory vehicle" to challenge the Board's decision, the Court considers "whether the actions of the Board were contrary to the established rules of law, warranting the issuance of a writ of mandamus." (*See id.*)

The Court then addressed the Board's actions, and expressly determined that the Board committed "clear error" and its actions were contrary to established rules of law because they "infringed upon Anselmo's statutory right to receive proper consideration for parole." (*See id.* at 10.) Contrary to Respondents' position, the Court specifically identified why the Board's disregard of its own internal guidelines amounted to an arbitrary and capricious exercise of discretion, thus warranting mandamus relief. (*See generally*, Opinion.)

Respondents' rebuttal is based upon its misguided contention that the Board "does not have a duty to follow all of its guidelines in every case" and that it has "express authority to depart from its guidelines." (*See* Petition, p. 8.) As discussed in detail herein, the Board does not have such unfettered discretion to disregard its own mandate prohibiting it from consideration of an aggravating factor. (*See* Section II(B)(3)(b), *supra.*)

Further, Respondents' assertion that "an act of discretion cannot be the subject of a writ of mandamus" is quite shocking, as this Court has specifically held that "[a] writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious *exercise of discretion*." *Int'l Game Tech., Inc.*, 124 Nev. at 197, 179 P.3d at 558 (emphasis added) (citations omitted).

Respondents have once again failed to establish that this Court's Opinion somehow overlooked relevant law regarding mandamus relief. The Petition should be denied.

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III. CONCLUSION

Based on the foregoing, Mr. Anselmo respectfully submits that this Court should deny the Petition for Rehearing in its entirety for Respondents' failure to comply with NRAP 40 and failure to demonstrate that the Opinion overlooked, misapprehended, misapplied or failed to consider controlling authority.

Dated this 26th day of October, 2017.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Answer to Petition for Panel Rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word, Version 2010, in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40 because it is proportionately spaced, has a typeface of 14 points or more, and contains 4,426 words.

Dated this 26th day of October, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **ANSWER TO PETITION FOR PANEL REHEARING** with the Clerk of the Court of the Supreme Court of Nevada by using the Court's Electronic Filing System on October 26, 2017.

I hereby certify that I served a copy of this document by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to the following:

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