

JUL 27 2015

IN THE SUPREME COURT OF THE STATE OF NEVADA  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

No. ~~68394~~

Electronically Filed  
Jul 22 2015 08:58 a.m.

HONORABLE CATHERINE RAMSEY,  
NORTH LAS VEGAS MUNICIPAL JUDGE,  
Petitioner,

vs.

THE HONORABLE ERIC JOHNSON, DEPARTMENT 20, DISTRICT  
COURT JUDGE, EIGHTH JUDICIAL DISTRICT COURT  
Respondent,

CITY OF NORTH LAS VEGAS AND BARBARA A. ANDOLINA  
City Clerk of NORTH LAS VEGAS, BETTY HAMILTON,  
MICHAEL WILLIAM MORENO, and BOB BORGERSEN, individually  
and as Members of "REMOVE RAMSEY NOW"  
Real Parties in Interest.

Eighth Judicial District Court, Clark County  
The Honorable Eric Johnson, District Court Judge  
District Court Case A-15-719406-P  
Consolidated with District Court Case A-15-719651-C

**PETITIONER'S RESPONSE TO SUPREME COURT  
ORDER TO SHOW CAUSE**

Craig A. Mueller, Esq.  
Nevada Bar #4703  
MUELLER, HINDS AND ASSOCIATES  
600 S. Eighth Street  
Las Vegas, Nevada 89101  
(702) 382-1200  
Attorneys for Petitioner

Transferred from docket no. 68394  
per order filed 7-27-15.

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15-22700

**PETITIONER'S RESPONSE TO SUPREME COURT  
ORDER TO SHOW CAUSE**

The reasons for filing a writ petition with this court were very simple. On July 6, 2015, Respondent Judge Johnson issued his order denying relief to Petitioner on all claims and issues. That meant that the City of North Las Vegas could proceed to conduct a recall election in the near future, and could be set as soon as 40 days<sup>1</sup> on August 16, 2015, long before an appeal would be heard by this court.

The practical implication of taking an appeal meant that the entire case might be determined on whether this court would issue a stay order in the appeal. Counsel for Petitioner had already made oral motions requesting a stay of the order to file an appeal. Respondent Judge Johnson had refused them all. Additional support for the filing of a writ petition with this court is the fact that the hearing transcripts are not even yet available for counsel. The court reporter was hospitalized shortly after the hearing. The court reporter informed counsel the transcripts would not be available until after July 20, 2015. On July 20, 2015, the court reporter informed counsel they still were not available, and gave no expected

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<sup>1</sup>Minimum 10 days for the call for election pursuant to Judge Johnson's decision & order dated 7-6-15 and the 30 days notice for publication as required under NRS 293C.187 places the earliest date for election at 40 days.

delivery date. This factored into the necessity of an immediate filing of the writ petition.

Various statutes in NRS Chapter 34 use the language that a writ may be considered when “there is no plain, speedy or adequate remedy” at law by way of appeal. The focus here is on “speedy.” Since a recall election could be scheduled as early as August 16, 2015, time was of the essence. Speed of the slower appeal process was a concern.

A writ petition is the fastest means by which a dispute can be brought to this court from lower court actions. A good writ petition will include those portions of the record that are critical to the issues. A response to the writ petition can be ordered by this court and the matter can be presented to this court much more efficiently than by the normal course of an appeal. The desire of this court to hear matters by appeal in the ordinary course of litigation is understandable but sometimes exigent circumstances do not permit the luxury of a slower process<sup>2</sup>.

Petitioner was aware, as was counsel, that this court prefers appeals but is also aware that in the past, this court has entertained important issues in writ

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<sup>2</sup>Real Parties in Interest the City of North Las Vegas and City Clerk Barbara Andolina also echo this theory of wanting an expedited decision as indicated on Page 2 of their Joinder to Opposition to Emergency Motion for Stay and Request for Expedited Decision filed July 16, 2015.

proceedings for various reasons. Some of the reasons writ petitions have been granted are that (1) there was no plain, speedy or adequate remedy at law to protect her interest; (2) appellate remedies do not have to be exhausted to grant a writ petition; (3) if there is a constitutional issue to consider; (4) the issue is one of first impression; (5) there exists a significant issue of statewide concern; (6) the appeal process being time consuming, and (7) it is in the furtherance of justice due to the due process concerns, just to name a few.

Although Petitioner believes her writ petition should be heard on the merits as there is no plain, speedy or adequate remedy at law to protect her interests, she filed a notice of appeal on July 16, 2015. It is a prudent practice in circumstances like this to do both<sup>3</sup>. Better to be safe than sorry.

Petitioner is still waiting to receive the hearing transcripts. Respondent Judge Johnson repeatedly denied any stays of the proceedings to file such an appeal. He further said the Supreme Court can stay his order if they want to. As a practical matter, Petitioner was essentially precluded from filing an appeal as the transcripts are not available, the 10 days for the call for election was fast approaching, and repeated motions for stays were denied, so Petitioner had no alternative but to file a writ petition in this emergency situation. Because Petition

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<sup>3</sup>Once the transcripts are received and the appeal is filed, Petitioner will request for this court to consolidate the matters for efficiency and judicial economy.

has no plain, speedy or adequate remedy at law and to protect her rights, Petitioner also filed a notice of appeal. The parties are not prejudiced by a stay of the proceedings pending a writ petition or appeal as the call for election has not yet been made.

Petitioner asserts a genuine constitutional issue that she is not subject to recall under Article 2 of the Nevada Constitution as a public officer and is excluded as a judicial officer from such an attempt. This court has now ordered Petitioner to show cause why this matter should not be dismissed summarily. In doing so, this court granted Petitioner's motion to stay the lower court orders concerning the underlying matter, including a call for a recall election.

## **LAW AND ARGUMENT**

### **I. The Nevada Supreme Court favors hearing extraordinary writs when there is no plain, speed or adequate remedy at law.**

This honorable court may issue a writ of mandamus to enforce the performance of an act which the law enjoins as a duty especially resulting from an office or to compel the admission of a party to the use and enjoyment of a right to which he is entitled and from which he is unlawfully precluded by such inferior tribunal. NRS 34.160.

Mandamus will not lie to control discretionary action unless it is manifestly abused or is exercised arbitrarily or capriciously. Office of the Washoe County DA v. Second Judicial Dist. Court, 5 P.3d 562, 566 (2000). Thus, a writ of mandamus

will issue to control a court's arbitrary or capricious exercise of its discretion. *Id.* citing Marshall v. District Court, 118 Nev. 459, 466, 836 P.2d 47, 52 (1992); City of Sparks v. Second Judicial Dist. Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015 (1996); Round Hill Gen. Lim. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

A writ of mandamus will issue when the petitioner has no plain, speedy and adequate remedy at law. Scrimmer v. Eighth Judicial Dist. Court, 998 P.2d 1190, 1193 (2000).

**II. The Court can grant writ petition even if appellate remedies are not exhausted.**

Nevada also has a history of granting writs mandamus and prohibition even if appellate remedies are not exhausted. In State v. Second Jud. District Court, 118 Nev. 609, 614, 55 P. 3d 420 (2002) the court stated:

[E]ven when an arguable adequate remedy exists, this court may exercise its discretion to entertain a petition for mandamus under circumstances of urgency or strong necessity, or when an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition.

*Id.* at 7. See also, Cote v. Eighth Judicial District Court, 124 Nev. 36 175 P. 3d 906 (2008)

The decision to consider whether to grant a writ of mandamus must be on a case by case basis.

The mere fact that other relief may be available does not necessarily supersede the remedy of mandamus. Mulford v. Davey, 64 Nev. 506, 186 P.

2d 360, 175 A.L.R. 1255; State ex rel. Sears v. Wright, 10 Nev. 167. The core of the problem in each case must be ascertained.

Armstrong v. State Board of Examiners, et al., 78 Nev. 495, 497-498; 376 P. 2d 492 (1962). (Granting writ of mandate commanding the Controller to draw his warrant upon the treasury in favor of the employee for the salary claimed by an unclassified Legislative Counsel Bureau employee.)

As Petitioner needed to avoid the slower process of an appeal, coupled with the inability to obtain a transcript based on an issue which is no fault of either party (the medical condition of the court reporter), and the fact that opposing counsel also agreed with that sense of urgency in the joinder filed 7-16-15. It appears both sides recognize this is a matter of urgency and an important issue of law that needs clarification. The decision to consider whether to grant a writ petition is on a case by case basis. This is one of those such cases.

### **III. Court can consider writ petition as it involves an important Constitutional Issue of first impression with statewide significance**

Moreover, the court is apt to consider constitutional issues if expedient to do so. State v. Brown, 88 Nev. 339, 497 P. 2d 1364 (1972). (The writ was appropriate since a prompt and final determination was significant to prospective candidates, the public, the taxpayers and electors of Washoe County.)

The court is inclined to consider extraordinary writs when there are significant constitutional issues. The court opined in the seminal case of State v.

Stoddard, 25 Nev. 452, 62 P. 237 (1900), the general rule was that the court would never pass upon a constitutional question unless it was clearly involved, and a decision thereon is necessary to a determination of the case, and that this court, in the exercise of its discretion in proceedings in mandamus, will grant the peremptory writ only when the right sought to be protected is clear and undoubted. *Id.* at 24.

This case raises significant Constitutional issues and has the potential for statewide implications for the judiciary far bigger than just Petitioner's case. Petitioner argues that her writ is strongly rooted in the language and history of Article 6, sec. 21 and that it provides for the exclusive mechanism to punish or remove judges other than by impeachment of the legislature. It is clear from the record in the 1976 legislature that the only ways to police judges was from the Nevada Judicial Commission and under Article 7 Impeachment proceedings. It makes no mention of Article 2 as a mechanism for the removal of a judge. Surely, the drafters of the Article 6 amendments and the legislators of that era would have specifically named Article 2 in the amendment if they intended for recall elections remain as a -viable alternative for removal from judicial office. That provision was not retained in Article 6, Section 21.

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**V. Court can consider writ petition as it concerns a significant issue of statewide concern**

Recently, the court has ruled that it is inclined to consider writs when significant issues of statewide concern would otherwise escape review. Amezcu v. Eighth Judicial District Court, 130 Nev. Adv. Rep. 7, 319 P. 3d 602 (2014).

Petitioner points out to this court her writ petition is meritorious, concerns an issue that has statewide concern to Nevada rural, urban and suburban judges alike. It is not, and cannot, be deemed as frivolous merely because it addresses an issue of which no one previously had standing and/or raised. Further, the writ petition was prepared with a sense of utmost urgency as opposed to an appeal due to the fact that Petitioner's livelihood as a municipal judge in the City of North Las Vegas is at stake. There are judges in all areas of Nevada which have taken a strong interest in this matter and given an opportunity or extended an invitation, would likely file an amicus brief on behalf of those interested parties.

**VI. The Normal Appeal Process is Unduly Time Consuming**

This court still has a large caseload. The creation of the court of appeals has helped considerably but the cases still keep on coming from the lower courts.

An appeal could take months to work its way through the system and the election pursuant to NRS chapter 306 would have already taken place.

If the writ petition was summarily dismissed and an appeal was her only option, an actual irreparable harm to Petitioner would be realized. See Mikohn Gaming Corp, v. McCrea, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004).

The election can be held within 30 days after the call for election is made. An appeal could take much longer than that to run its course and without a stay of the district court's decision, the election would go forward while the appeal is pending. If Petitioner loses the election and then later wins her appeal, there is no mechanism for her to regain her job, benefits, compensation or status. Petitioner would have to be forced to run for election against an incumbent judge who was the victor in an illegal recall election. Petitioner would be the victim of an unfair, arbitrary and capricious decision. Even if Petitioner wins the recall election, she will have spent countless hours and substantial funds in the campaign to defeat the recall. This time and money cannot be recaptured, thereby causing additional irreparable harm if writ relief is denied and if a much slower appeal process is applied.

**VII. Court can consider writ petition in furtherance of justice as Petitioner's due process rights were disregarded.**

That is not the only substantial legal issue. Petitioner's due process rights were seriously disregarded. There was no notice, opportunity to observe the verification, and the 500 sample was less than adequate, and many of the signators were invalid, just to name a few. A writ of prohibition will issue when it is in

furtherance of justice. Ex Rel. Hatch v. Ninth Judicial District Court, 50 Nev. 282, 257 P. 831, 833 (1927).

A petition to recall Petitioner was circulated by organizers in the City of North Las Vegas. The petition to recall was not consecutively numbered as required under NRS 306.030(1) but formally submitted the same to Barbara Andolina, the North Las Vegas City Clerk on or about May 28, 2015 at 2:30 p.m., who accepted it in violation of NRS 293.12758. The City Clerk then submitted the petitions and signatures to the Secretary of State and the Clark County Election Department for the "raw count". The Election Department proceeded to the verification process on that same day of Friday, May 29, 2015. Petitioner was not allowed access to witness the verification process, which is a mandatory "must" under NRS 293.1277(8). On Friday, May 29, 2015, the Election Department led her representative to believe it would occur in a "couple of days", however, the verification process was already well underway and almost completed. The Election Department refused him access to observe as requested. The following Monday, City Clerk Andolina gave notice to Petitioner on June 1, 2015 at 5:47 a.m. that the verification would begin that same Monday at 9:30 a.m. The Election Department had already completed most of the verification when Petitioner's representative arrived at 9:15 a.m. the Registrar of Voters later testified that the

Monday event was merely a re-enactment of the verification that occurred on Friday when Petitioner's representative was not allowed to witness.

The Registrar of Voters used names in the 500 sample which were not submitted by the circulators on the petitions. They added, changed and altered names in order to accept them in violation of the statutes. Many signatories did not meet the statutory rules and were duplicates, multiples and were invalid. They selection their own criteria for inclusion and also failed to abide by the statutory requirements. The Registrar of Voters used the defective sample and through extrapolation, verified the signators as valid and deemed the recall petition qualified. They tried to make an otherwise invalid petition valid by adding consecutive numbers to the petition, but not to the pages. The recall petition itself contained many fatal flaws and was not examined its entirety. These fatalities include, but not limited to, invalid petition, form, and numbering, insufficient addresses; petitions lacking dates, signatures, verifications, included duplicates and those who signed impermissibly for others, names were added that were nor submitted, and names were changed. Due to the relatively low number of signatures, Petitioner requested verification of all the signatures which request was also denied.

Petitioner was denied adequate notice of her right to verify the signatures. She was never informed timely that the verification process was proceeding

forward on Friday, May 29, 2015. She was only officially informed of that the "raw count" was to be held within four days of May 28, 2015 and that City Clerk Andolina would keep you (Petitioner) apprised as the petition process moves forward. Yet, she did not. This event never happened timely. That was arbitrary and capricious.

Equally arbitrary and capricious as the multiple examples above, Petitioner has not been able to have any appropriate access to a fair hearing on the sufficiency issues. Respondent Judge Johnson blocked her access to a fair hearing on the merits of the recall petition. Respondent Judge Johnson set an evidentiary hearing on the complaint for sufficiency with two business days of notice given to the parties (apparently unaware that the City of North Las Vegas was closed for business on Fridays). Petitioner's due process rights were substantially impinged upon when the district judge arbitrarily and capriciously set this hearing.

When Petitioner realized that getting her witnesses served with subpoenas would be next to impossible to accomplish given the time constraints, Petitioner moved to continue the proceedings to allow adequate time to subpoena the necessary persons for her matter. Petitioner's request for even a week continuance was denied.

Respondent Judge Johnson also limited the amount of witnesses that could testify. Further, Respondent Judge Johnson ruled that notaries and circulators of

the recall petition would not be permitted to testify, and he did not want to parade the signers either. He limited who could testify and what issues he wanted testimony on. Petitioner was, in essence, not allowed to examine any witnesses who could testify to the fraud in the signature gathering process. On June 29, 2015 the first day of the evidentiary hearing was held and then it was concluded on July 2, 2015 with court ordered limited testimony from Dan Burdish, Johnny Jackson, and Joe Gloria, county registrar. Despite the court's order, City Clerk Andolina was allowed to be re-examined via the phone. Also present at the re-examination of the city clerk was city attorney Sandra Morgan. Her presence was objected to by the Petitioner, however, the court overruled this objection. On July 2, 2015, an oral decision was made denying Petitioner all relief sought in her two consolidated cases. Petitioner moved the court for a stay of these proceedings pending an appeal. The court summarily denied said request. On July 6, 2015 Respondent Judge Johnson issued a written decision and order.

Petitioner was deprived of adequate notice to witness the verification of signatures. Petitioner was deprived of her ability to bring forth her case upon the hurried evidentiary hearing regarding sufficiency. She was limited in the scope of who she could call as witnesses. Respondent Johnson's actions were arbitrary and capricious and deplorable.

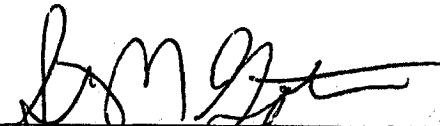
Petitioner respectfully requests this court (1) exercise its discretion to consider or grant the writ petition; (2) order the stay to remain in effect.

If the court is inclined to dismiss the writ petition, Petitioner alternatively requests this court (1) order the stay to remain in effect; (2) expedite the appeal after the three hearing transcripts are received and reviewed and (3) treat the writ petition as the opening brief in the appeal docket in order to save time for the briefing process.

DATED this 21 day of July, 2015.

MUELLER, HINDS & ASSOCIATES,  
CHTD.

By

  
CRAIG A. MUELLER, ESQ.  
Nevada Bar No. 4703  
STEVEN M. GOLDSTEIN, ESQ.  
Nevada Bar No 6318  
MUELLER, HINDS &  
ASSOCIATES  
600 S. Eighth Street  
Las Vegas, NV 89101  
(702) 940-1234  
Attorney for Petitioner

### CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On July 21, 2015, I caused to be served a true and correct copy of the foregoing PETITIONER'S RESPONSE TO SUPREME COURT ORDER TO SHOW CAUSE upon the following method indicated:

\_\_\_ BY EMAIL: by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

X BE ELECTRONIC SUBMISSION: submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

\_\_\_ BY U.S. MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

\_\_\_ BY FACSIMILE: by transmitting via facsimile the document(s) listed above to the facsimile number set forth below and/or included on the Court's Service List for the above referenced case.

  
An employee of  
MUELLER, HINDS & ASSOCIATES



## SERVICE LIST

Dominic Gentile, Esq.  
GENTILE, CRISTALLI, MILLER,  
ARMENI & SAVARESE  
410 South Rampart Boulevard, Suite 420  
Las Vegas, Nevada 89145  
[dgentile@gentilecristalli.com](mailto:dgentile@gentilecristalli.com)

Attorney for Respondents:  
Bob Borgerson, Betty Hamilton and  
Michael William Moreno

Richard C. Gordon, Esq.  
SNELL & WILLMER  
3883 Howard Hughes Pkwy, #600  
Las Vegas, Nevada 89169  
702-784-5252  
Email: [rgordon@swlaw.com](mailto:rgordon@swlaw.com)

Attorney for Respondents:  
City Clerk of North Las Vegas and  
Barbara A. Andolina, City Clerk