

IN THE SUPREME COURT OF THE STATE OF NEVADA

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HONORABLE CATHERINE RAMSEY
NORTH LAS VEGAS MUNICIPAL
JUDGE,

Electronically Filed
Aug 20 2015 10:51 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appellant,

vs.

No. 68450

THE CITY OF NORTH LAS VEGAS;
BARBARA A. ANDOLINA, CITY CLERK
OF NORTH LAS VEGAS; BETTY
HAMILTON; MICHAEL WILLIAM
MORENO; AND BOB BORGENSEN,
INDIVIDUALLY AND AS MEMBERS
OF "REMOVE RAMSEY NOW",

Respondents.

_____ /

REPLY IN SUPPORT OF MOTION FOR LEAVE
TO FILE AMICUS CURIAE BRIEF

The Nevada Judges of Limited Jurisdiction (NJLJ) hereby replies to respondents' opposition regarding the NJLJ's motion for leave to file an amicus curiae brief.

As noted in the NJLJ's motion, the NJLJ is a voluntary association of judges from throughout Nevada. The NJLJ believes this court's decision in the present case could have a serious impact on judges throughout Nevada, at every level of the judiciary. This appeal involves an issue of enormous importance to all judges,

dealing with interpretation and application of Constitutional provisions governing judges, and potentially impacting the very core of judicial independence.

This court has an established history of allowing judicial associations to provide amicus input in appellate cases that might have an impact on judges or on the administration of justice in Nevada. *E.g.*, *City of Sparks v. Sparks Mun. Court*, 129 Nev. ___, 302 P.3d 1118 (2013) (joint amicus brief filed by NJLJ and Nevada District Judges' Association; issue involved the nature and scope of judicial power); *Landreth v. Malik*, 127 Nev. ___, 251 P.3d 163 (2011) (amicus brief filed by Nevada District Judges' Association; issue had importance to judges); *In re Mosley*, 120 Nev. 908, 102 P.3d 555 (2004) (amicus brief filed by Nevada District Judges' Association, for its viewpoint on judicial discipline issue).

The respondents' opposition seeks to prevent this court from obtaining and considering the perspective of an association of judges whose very existence could be directly and significantly impacted by the court's decision. The opposition also seeks to prevent this court from considering the NJLJ's perspective on the critical public policy consideration that permeates this case, i.e., the extent to which judicial independence might be impacted by the court's interpretation of the Nevada Constitution. Of course, this court's ultimate goal must be to decide the issues correctly in this writ case. The NJLJ respectfully contends that its brief will assist the court in reaching this goal.

The opposition relies, in large part, on a negative view of appellate amicus participation—a view that is outmoded and discredited. The opposition relies primarily on *Ryan v. Commodity Futures Trading Com'n*, 125 F.3d 1062 (7th Cir. 1997), for the proposition that appellate amicus briefs generally should not be allowed. *Ryan* was not the opinion of the Seventh Circuit. It was an opinion “in

chambers” by one judge. No other judge of the Seventh Circuit signed it or endorsed its view.¹

Although parts of *Ryan* might be somewhat applicable in certain cases, *Ryan*’s underlying attitude against amicus participation has been criticized and rejected by other appellate judges. *E.g. Neonatology Associates v. CIR*, 293 F.3d 128 (3rd Cir. 2002), authored by now United States Supreme Court Justice Alito. Amicus participation is appropriate where the brief is “desirable.” NRAP 29(c)(2). *Neonatology* is the leading case on whether an amicus brief is “desirable.” Justice Alito first rejected the argument that an amicus must be impartial. This role of amicus “became outdated long ago.” *Id.* at 131. The modern view is that “an amicus who makes a strong but responsible presentation in support of a party can truly serve as the court’s friend.” *Id.* “There is no rule . . . that amici must be totally disinterested.” *Hoptowit v. Ray*, 682 F.2d 1237, 1261 (9th Cir. 1982). It is “a perfectly permissible role for an amicus” to take a position and present legal arguments in support of the amicus entity’s interest in the outcome of the appeal. *Funbus v. California PUC*, 801 F.2d 1120, 1126 (9th Cir. 1986).

The opposition argues that the NJLJ’s amicus participation is not appropriate because Judge Ramsey is adequately represented. Justice Alito addressed this argument, observing: “Even when a party is very well represented, an amicus may provide important assistance to the court.” *Neonatology*, 293 F.3d at 132. An amicus can “explain the impact a potential holding might have on an

¹ The opposition states that *Ryan* was cited by this court in a denial of amicus participation. Opp. fn. 1. The opposition relies on an unpublished order, in violation of SCR 123. The unpublished order was in *Lobato v. State*, No. 58913. The order denied amicus participation supporting the appellant’s position, where the issue in the amicus brief was already thoroughly addressed “in the 129-page opening brief,” and where the amicus was “serving as a mere conduit for the views of one of the parties.” These factors do not exist in the present case.

industry or other group.” *Id.* Denying amicus motions whenever a party is adequately represented “would in some instances deprive the court of valuable assistance.” *Id.*

The opposition’s argument about adequate representation has received little weight in this court. See *In re Montierth*, 131 Nev. __, __ P.3d __ (Adv. Op. No. 55, July 30, 2015) (amicus in support of huge financial institution represented by two law firms); *Branch Banking v. Windhaven & Tollway*, 131 Nev. __, 347 P.3d 1038 (2015) (amicus in support of financial institution represented by counsel); *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. __, 335 P.3d 125 (2014) (amicus supporting government entity represented by two Nevada firms).

Respondents’ opposition argues that the NJLJ has not demonstrated an interest in another “pending case” that would be affected by the decision in this case. The argument is rather absurd. As the NJLJ’s motion and proposed brief demonstrate, this court’s decision could impact every judge in Nevada, at every level. The fact that there may not be another “pending case” is irrelevant.

The opposition seems to contend that the NJLJ’s proposed brief is essentially just a duplicate of petitioner’s argument. This is simply not true. Other than a short section agreeing with the petition’s argument regarding statutory interpretation rules, the amicus brief explains the NJLJ’s own perspective on public policy critical to the Nevada judiciary. This perspective will be helpful in the court’s consideration of this momentous case.


Respondents complain about the fact that the amicus brief is 14 pages in length, and the brief would unfairly prejudice respondents by expanding arguments in Judge Ramsey’s favor. Of course, this would be the effect of virtually every amicus brief. This court’s public access web site shows that in *Montierth*, the amicus brief was allowed to supplement Deutsche Bank’s 35-page brief. In *Bank Branch*, the amicus brief supplemented the bank’s 70 pages of briefs. And in

Hyatt, amicus briefs supplemented the FTB's 300 pages of briefs. The NJLJ's proposed brief complies with Rule 29, and consideration of the NJLJ's 14-page brief will not cause any undue prejudice in this case, which has the potential for enormous impact on the judiciary.

Justice Alito's analysis of motions seeking leave to file amicus briefs concludes with a practical observation regarding rulings on such motions. At a relatively early stage of the appeal, it is often difficult to know if a proposed amicus brief will be helpful. *Neonatology*, 293 F.3d at 132. Thus, "it is preferable to err on the side of granting leave." *Id.* at 133. If an amicus brief turns out to be unhelpful, the court can simply disregard it. *Id.* "On the other hand, if a good brief is rejected, the [court] will be deprived of a resource that might have been of assistance." *Id.* And a restrictive policy might also "convey an unfortunate message about the openness of the court." *Id.*

In conclusion, the interests of justice and the promotion of sound judicial administration will be served by this court receiving input from the NJLJ, as amicus curiae, to assist the court in its decision regarding potential recall of judges. We respectfully request the court to grant the motion and to file the brief that was provisionally lodged with the court.

DATED: Aug. 7th, 2015


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*ATTORNEYS FOR NEVADA JUDGES OF
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CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date the foregoing Reply was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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I further certify that on this date I served copies of this motion, postage prepaid, by U.S. mail to:

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DATED: August 20, 2015

Margie Nouri