

process used to qualify the Recall Petition. This argument, however, is belied entirely by the record. (RAM, pp. 169-172). NRS 293.1277 provides that a public officer who is the subject of a recall petition must be allowed to witness the verification of the signatures on the petition. NRS 293.1277(8). Judge Ramsey alleged the Election Department failed to comply with this requirement by failing to give her adequate notice and by refusing her representative access to observe the verification process. After hearing testimony from several witness on this point, including Judge Ramsey's representatives, Jackson and Burdish, and Registrar of Voters Gloria, Judge Johnson determined first that NRS 293.1277 does not include a specific notice provision. (RA, Vol. IV, p. 871). Judge Johnson concluded nevertheless that Judge Ramsey's representatives were, in fact, given a meaningful opportunity to view the verification process on Monday, June 1, 2015, and that any prejudice that may have occurred was the result of Judge Ramsey's own lack of diligence and the speed with which the process takes place was eliminated when the process was repeated with Judge Ramsey's representatives present as an audit to ensure accuracy. (RA, Vol. IV, pp. 871-872).

## **2. The District Court Case Consolidation and Evidentiary Hearing.**

Judge Ramsey further seeks to have this Court reverse the District Court on its denial of her claims based on alleged procedural improprieties by Judge Johnson in the handling of her consolidated case. Specifically, Judge Ramsey

asserts that Judge Johnson, in consolidating the cases and setting an evidentiary hearing, did so without sufficient notice or opportunity to prepare. Judge Ramsey further asserts that, in conducting the evidentiary hearing itself, Judge Johnson erred in allowing North Las Vegas City Attorney Morgan to be present during the telephonic examination of North Las Vegas City Clerk Andolina. Both assertions stated above are belied entirely by the record on appeal and do not in any way support a reversal of Judge Johnson's Decision & Order.

Judge Ramsey argues Judge Johnson erred by, following his consolidation of her cases, not giving her adequate notice or opportunity to prepare for the evidentiary hearing. Specifically, Judge Ramsey asserts she had only two (2) business days within which to subpoena witnesses, and Judge Johnson further limited the number and type of witnesses permitted to testify. Notably, Judge Ramsey does not challenge the basis for the consolidation of the cases in the appeal. As to the arguments Judge Ramsey does assert however, the record is clear that she had ample time to subpoena witnesses and that Judge Johnson did not abuse his discretion by limiting the scope of testimony to issues relevant to the sufficiency of the petition.

Prior to Judge Johnson's Order Granting Consolidation of Actions Pursuant to Nevada Rule of Civil Procedure 42(a) (the "Consolidation Order"), which consolidated District Court Case No. A-15-719651-C with District Court Case No.

A-15-719406-P, the evidentiary hearing on Judge Ramsey's Complaint was scheduled before Judge Kenneth Cory on June 30, 2015. Judge Johnson's Consolidation Order merely advanced the hearing a single day. Had Judge Ramsey exercised due diligence in preparing for the June 30, 2015 hearing on her Complaint, her subpoenas would already have been served, or at least have been in the process of being served, necessitating only notification to each witness of the date change from June 30, 2015 to June 29, 2015. Significantly, she does not claim service of any subpoenas prior to the issuance of the Consolidation Order.

In addition, rather than move expeditiously upon receipt of the Consolidation Order, Judge Ramsey waited until 4:43 p.m., the Friday before the Monday hearing, to seek a continuance of the matter that by statute, must be conducted within strict time requirements. Judge Ramsey's attempt now to blame Judge Johnson for her own lack of diligence is disingenuous.

With respect to Judge Johnson's limitations as to the scope of the hearing, the record shows Judge Ramsey submitted a witness list which consisted of forty-six (46) names, among them notaries, petition circulators, and City of North Las Vegas employees. (RAM pp. 101-105). Upon review of the list, and discussion with Judge Ramsey's counsel regarding the need for the witnesses generally, Judge Johnson exercised his discretion by virtue of his inherent power to provide for the efficient administration of justice, and determined that relevant witnesses should

provide evidence of “either fraud or some sort of specific failure of procedure that occurred in handling the petitions and processing them and reaching the determination that they were sufficient.” (AA, Vol. 1, p. 68); *see also Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1218-19, 14 P.3d 1275, 1279 (2000) (holding that the judiciary has inherent powers to perform its duties).

During the evidentiary hearing, Judge Ramsey called three (3) witnesses in support of her Complaint. (AA Vol. 1, pp. 63-118 and Vol. 2, pp. 17-49). Contrary to Judge Ramsey’s assertions however, she cites to nothing in the record, nor does anything exist in the record, to evidence a ruling by Judge Johnson prohibiting the testimony of signatories, notaries and circulators. (AA, Vol. 1, pp. 43-250 and Vol. II, pp. 253-454).

Finally, Judge Ramsey argues Judge Johnson erred in permitting Morgan, again the North Las Vegas City Attorney, to be present during the telephonic examination of Andolina, over counsel’s objections. The testimony obtained from Andolina concerned a May 28, 2015 letter from Andolina to Judge Ramsey advising her of the receipt of the recall petition, its delivery to the Election Department, and the commencement of the raw count process. Judge Ramsey sought to prove by way of this examination that the letter was not timely provided to Judge Ramsey or properly disclosed by the City of North Las Vegas. The allegation in support of her appeal, therefore, is that Andolina’s testimony could



have been tampered with by Morgan, as she was allowed by Judge Johnson to be present during Andolina's telephonic examination while Morgan was included on Judge Ramsey's witness list, and the exclusionary rule was invoked. These specific assertions by Judge Ramsey are, again, belied by the record.

The letter Judge Ramsey claims was not disclosed by the City of North Las Vegas, along with its delivery confirmation, can be found in the exhibits to The City of North Las Vegas and Barbara A. Andolina City Clerk's List of Witnesses and Exhibits. (RA, Vol. I, pp. 31, 38, 41-43). Further, Judge Ramsey mischaracterizes Morgan's presence during Andolina's telephonic testimony. With regard to the exclusionary rule, Andolina was the last witness scheduled to be heard during the two-day evidentiary hearing, and at no time did Judge Ramsey's counsel express an intent to subsequently call Morgan. In response to Judge Ramsey's objection to Morgan's presence, Morgan offered to leave the room. (AA, Vol. II, p. 413). However, after confirming her role as the North Las Vegas City Attorney, Judge Johnson called on Morgan as an officer of the court to exercise her ethical duties. (AA, Vol. II, p. 414). Morgan indicated she would, and there is no evidence, and Judge Ramsey cites to none, that she failed to do so. Judge Ramsey's assertions of procedural impropriety on the part of Judge Johnson concerning Morgan are clearly insufficient to support a request that this Court reverse Judge Johnson's determinations.

## VII.

### CONCLUSION

Based on the foregoing, Recall Respondents respectfully request this Honorable Court deny Judge Ramsey's appeal in its entirety.

Dated this 26<sup>th</sup> day of August, 2015.

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this opening brief 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:

This answering brief has been prepared in a proportionally spaced typeface using Microsoft Word, Times New Roman style, and a 14 font size.

I further certify that this answering brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because it is either:

Proportionally spaced, has a typeface of 14 points or more, and contains 6248 words, and does not exceed the 30 page limit.

Finally, I hereby certify that I have read this answering brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 26<sup>th</sup> day of August, 2015.

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### 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 August 26<sup>th</sup>, 2015, I caused to be served a true and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF**, by the method indicated:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **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.
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**BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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and ordinary sense of the term “public officer,” as used in the relevant recall provisions of Nevada Constitution and statutes, has always included municipal court judges and no constitutional provision regarding judicial discipline ever changed that fact. Recall Respondents agree with Judge Ramsey that the Nevada Commission on Judicial Discipline has exclusive jurisdiction over the formal discipline of judges and said discipline may include removal from office. But in making her argument that judges are not subject to recall, Judge Ramsey conflates the concepts of disciplinary removal, which requires cause, and recall removal, which extends to virtually any reason a sufficient number of voters believe justify such an outcome. The constitutional provisions in question in this appeal are not inconsistent in this regard, and there is nothing in the instant appeal record to support the contention that Article 6, Section 21 of the Nevada Constitution was ever intended to supersede or repeal, either expressly or by implication, the recall provisions of Article 2, Section 9.

Recall Respondents also respectfully assert herein that any argument that public policy considerations justify the end of removal of judges by recall must also fail, as it ignores the very public it purports to consider. Nevada voters have rejected on multiple occasions the option of having judges appointed, even to their initial term. Nevada voters clearly want the right to elect their judges, and history clearly shows Nevada voters want the right to recall their judges as well.

In addition to their constitutional arguments, Recall Respondents respectfully assert herein that Judge Johnson's denial of Judge Ramsey's claims concerning the recall process itself can and should be affirmed. Judge Johnson afforded Judge Ramsey the opportunity to be heard and present evidence on all claims regarding any alleged flaws with the Recall Petition and any alleged procedural violations in the verification process. The Decision & Order in excess of thirty (30) pages, which Judge Johnson issued after two days of receiving evidence and hearing argument of counsel, as well as consideration of all of the pleadings and papers on file in the consolidated case, sets forth the clear and concise basis for each determination and the law that supports it. Judge Johnson's Decision & Order, from which this appeal is taken, is supported by substantial evidence and therefore, subject to this Court's deference and affirmance.

## VI.

### ARGUMENT

#### **A. Municipal Court Judges Are Subject To Recall.**

Judge Ramsey's primary argument to enjoin Recall Respondent's qualifying recall effort is that Article 2, Section 9 of the Nevada Constitution, which sets forth the recall process for public officers, does not apply to judges because it was superseded and/or negated by the subsequent passage of Article 6, Section 21, establishing the Commission on Judicial Discipline ("Commission"). Not only



does Judge Ramsey misapprehend the scope of the Commission’s authority, as set forth in Article 6, Section 21 and NRS 1.440, this misstatement of law is also belied by the opinions of this Court, the Nevada Standing Committee on Judicial Ethics, and over 100 years of Nevada history.

**1. Recall of Judges Is Permitted Under Article 2, Section 9 of the Nevada Constitution.**

The leading treatise on judicial conduct recognizes Nevada as one of only six states to have adopted a judicial recall process. In its section titled “Judicial Recall,” the treatise *Judicial Conduct and Ethics* identifies Wisconsin and the five western states of Oregon, California, Colorado, Arizona and Nevada as having joined the movement for judicial recall in the progressive era of the early twentieth century. James J. Alfini, Steven Lubet, Jeffrey M. Shaman, Charles Gardner Geyh, *Judicial Conduct and Ethics* §14.06 (5th ed. 2013) (Fn. 71, citing Article 2, Section 9 of the Nevada Constitution). Judicial recall is said to have emerged during the progressive era to give progressive reformers the opportunity to oust judges who attempted to thwart the progressive legislative agenda, which espoused the philosophy that voters should have the power to bypass or countermand elected officials. *Id.* And, the authors recognize its use in the modern era to “chasten the judge” even where the recall attempt fails, referencing specifically a recall attempt against then-Nevada Supreme Court Chief Justice Deborah Agosti, following her ruling that the legislature could ignore the requirement that tax increases be passed

by a two-thirds majority, and Agosti later declining to run for re-election. *Id.* (citing Martha Bellisle, *Group Plans Effort to Recall 6 Justices*, Reno Gazette-Journal, July 19, 2003, at 4A).

An even more detailed explanation of the origins of Nevada's judicial recall history is included in Attorney General Opinion 87-7. In response to an opinion request from the Douglas County District Attorney, then-Nevada Attorney General Brian McKay, reached the definitive conclusion that a district court judge is a "public officer" within the context of Article 2, Section 9 of the Nevada Constitution and subject to recall by the registered voters of the district in which elected. AGO 87-7 (3-27-1987). In so finding, the Attorney General covers a lengthy history of the progressive movement and its anti-judiciary sentiment before pointing to the adoption of the constitutional amendment allowing for recall of "all public officers" despite heavy opposition from both the American and Nevada Bar Associations. *Id.* (citing Secretary of State (William D. Swackhamer), *Political History of Nevada*, (Carson City; State Printing Office, 1986) at 262). The Attorney General then contrasts Nevada's unrestricted constitutional language to the constitutions of Idaho and Washington, which expressly except judges from recall. *Id.* The Attorney General even notes the existence of Article 6, Section 21 of the Nevada Constitution, which provides for judicial discipline, before concluding it is not applicable to the analysis of whether a district court judge is a

public officer subject to recall because the constitutional provisions are “not inconsistent” (citation omitted), wherein disciplinary action requires cause but the recall of a public officer requires neither a cause, nor even a good reason.

The final paragraph of the then Attorney General’s Analysis section is the most compelling, however, where he sums up that:

“Given the plain language of the constitution, the political climate of Nevada during the time period [Article 2, Section 9 of the Nevada Constitution] was approved by the legislature and ratified by the people, and the long acceptance of its meaning by a great many authorities, we are unwilling to construe it to avoid subjecting judges to recall by the people. To do so, we think, would be to exclude the main object and intention of its framers.”

(citation omitted) (emphasis added). And, yet it is exactly this exclusion of the main object and intention of the recall process that Judge Ramsey suggests is appropriate in her case. Any such conclusion by this Court would fly in the face of not only the historical precedent set forth above, but also current Nevada Supreme Court opinion.

While this Court has not had the opportunity to consider whether a judge is a public officer subject to recall, it has recognized that “[u]nder the Nevada Constitution, a judge can be removed from office only by the voters (recall), by the Legislature, or, as of 1976, by the Nevada Commission on Judicial Discipline.” *Halverson v. Hardcastle*, 123 Nev. 245, 266, 163 P.3d 428, 443 (2007). Likewise, in its most recent decision concerning recall petitions, this Court opened its opinion

with the unequivocal statement that Article 2, Section 9 of the Nevada Constitution subjects every public officer in Nevada to recall by special election upon the filing of a qualifying recall petition. *See Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235 P.3d 605, 607 (2010) (emphasis added).

Similarly, the Standing Committee on Judicial Ethics, the body empowered by the Nevada Supreme Court to provide judges with advisory opinions regarding ethical matters, recognizes judicial recall. In Advisory Opinion JE15-011, requested by Judge Ramsey shortly before she commenced the instant litigation in the district court, the Committee states that, “[s]itting judges are subject to recall petition and election just as they are subject to regular elections.” JE15-011 (5-14-2015). The thrust of the Advisory Opinion does not address whether judicial officers are subject to recall, but instead, treats the issue as accepted law under Article 2, Section 9 of the Nevada Constitution, in its examination of whether a judge may campaign against a recall petition and accept campaign contributions in an attempt to defeat the recall attempt.

**2. Recall Pursuant to Article 2, Section 9 of the Nevada Constitution Is Neither Inconsistent With Nor Was It Repealed By the Judicial Discipline Provisions of Article 6, Section 21.**

Far from being conflicting provisions of the Nevada Constitution, Article 2, Section 9 and Article 6, Section 21, offer two distinct mechanisms for the removal of judicial officers. Indeed, Article 2, Section 9, affords the longstanding right

“inherent in the people” to remove any public officer for any reason, “whenever the public good may require it.” *See Batchelor v. Eighth Judicial Dist. Court*, 81 Nev. 629, 633, 408 P.2d 239, 241 (1965). By contrast, Article 6, Section 21 provides for the discipline of judges under very limited circumstances, and only for very specific conduct. *See, e.g.*, NRS 1.4653.

Judge Ramsey disregards the lack of inconsistency, however, and instead attempts to argue that both the Nevada Legislature and Nevada voters intended for Article 6, Section 21 to supersede Article 2, Section 9, and thereby eliminate the right to recall. This assertion, however, must be disregarded by the Court where there is absolutely no support for it in the record. Specifically, Judge Ramsey cites to sections of the limited legislative record concerning Article 6, Section 21, which in no way affirm or even suggest that lawmakers or members of the judiciary participating in the legislative process, intended the establishment of the Commission on Judicial Discipline to nullify the right to recall judicial officials. Further, the actual ballot language for Question 8, which proposed, and ultimately served to amend Article 6, in no way advised voters, or even mentioned, that a “yes” vote constituted consent to the repeal of Article 2, Section 9 with respect to the judiciary. (RA, Vol. IV., pp. 882-886). Absent this express language, Question 8 must be read as the voters read it, adding a new Section 21 to Article 6 of the Constitution, which provided for “the establishment of a Commission on Judicial

Discipline which would be empowered to censure, retire, or remove justices or judges...,” and not as a multi-purpose measure to also repeal the right of the electorate to recall judicial officers. *Id.*; *see, generally*, Article 19, Section 3 of the Nevada Constitution (“each ... initiative petition shall include the full text of the measure proposed”).

Judge Ramsey also seeks to rely on the language of NRS 1.440(1) for the argument that disciplinary removal pursuant to Article 6, Section 21 replaces removal by recall of the voters. The statutory definition of removal in this context, however, is set forth in NRS 1.4292, which states:

“Removal” means a decision issued by the Commission to require a judge to permanently leave his or her judicial office for conduct described in NRS 1.4653.”

Thus, “removal” pursuant to NRS 1.440(1) is limited to decisions by the Commission to discipline judges for specific conduct within its constitutional and statutory framework. It in no way addresses removal by the people, via recall, for any reason.

Also unpersuasive in its proposed support for Judge Ramsey’s argument that Article 6, Section 21 superseded Article 2, Section 9, is the assertion that the express language of Article 6, Section 21, specifically carves out impeachment as the “solve alternative mechanism” for the removal of judges. On the contrary, prior to the passage of the judicial discipline provisions of Article 6, Section 21,

the Nevada Constitution provided for three (3) options for the removal of judges: (i) recall, pursuant to Article 2, Section 9; (ii) impeachment, pursuant to Article 7, Section 2; and (iii) legislative resolution, pursuant to Article 7, Section 3. According to Judge Ramsey's argument, then, the failure to mention legislative resolution in addition to impeachment in Article 6, Section 21 necessarily means the legislature also superseded its own removal authority short of impeachment. This logic does not stand, and Nevada law as of today still provides four (4) methods for the removal of judges from office. *See, also*, The American Judicature Society, [www.judicialselection.us](http://www.judicialselection.us) whose comprehensive coverage of judicial selection nationwide confirms four methods of judicial removal are currently available in Nevada.

Finally, Judge Ramsey makes a last and equally untenable public policy argument in support of her request that this Court find Article 6, Section 21 has superseded Article 2, Section 9, or more accurately her hope that this Court will simply agree that Article 2, Section 9 has been superseded regardless. Recall Respondents, like any other reasonable citizens, want an independent judiciary serving their needs. But that concern cannot and does not override the express will of the voters made known for over a century that they want the ability to elect, and when necessary, recall their judges. As this Court stated specifically in its *Batchelor* decision:

“All political power is inherent in the people....In theory, a public officer need not fear recall if the reason given therefore is frivolous....Our governmental scheme dignifies the people; a treasured heritage indeed. The provision for recall is but one example.”

*Batchelor v. Eighth Judicial Dist. Court*, 81 Nev. at 633, 408 P.2d at 241 (1965).

**B. The District Court Did Not Abuse Its Discretion In Denying Judge Ramsey’s Challenge To the Recall Respondents’ Qualifying Petition.**

It is well settled law that “A district court’s factual determinations will not be set aside unless they are clearly erroneous and not supported by substantial evidence.” *Dewey v. Redevelopment Agency*, 119 Nev. 87, 93, 64 P.3d 1070, 1075 (2003). “Substantial evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion.” *J.D. Constr., Inc., v. IBEX Int’l Grp., LLC*, 126 Nev. 366, 380, 240 P.3d 1033, 1043 (2010) (internal quotations omitted). When reviewing a district court’s decision, this Court will not make credibility determinations or reweigh the evidence. *See, e.g., Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to make credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

**1. The Recall Petition and Verification Process.**

Judge Ramsey seeks to have this Court reverse the District Court on its denial of her claims regarding what she argues were fatal flaws in the Recall Petition and procedural deficiencies in the verification process. Specifically, with



regard to the Recall Petition, Judge Ramsey asserts the pages were not identical in form and sequentially numbered, and, for those voters who signed, there were insufficient addresses, missing dates, and/or the signatures were duplicates or covered multiple parties. As regards the verification process, Judge Ramsey asserts she was not properly noticed or given an opportunity to witness the signature verification process. Notably, Judge Ramsey does not question the signature verification process itself in this appeal. As to each of the arguments Judge Ramsey does assert in support of her appeal, however, the record is clear that Judge Johnson considered both testimonial and documentary evidence, and his determinations based on this substantial evidence should be accorded deference and affirmed.

In denying Judge Ramsey relief based on her claims concerning the Recall Petition itself, Judge Johnson employed a substantial compliance standard, citing long-standing Supreme Court precedent beginning with *Cleland v. Eighth Judicial District Court*, 92 Nev. 454, 552 P.2d 488 (1976). (RAM, pp. 161-162). Applying that standard to the alleged failure to provide pages of the Recall Petition in identical form and sequentially numbered, Judge Johnson determined that Judge Ramsey presented no explanation or evidence for what she meant by the pages not being in identical form; that the pages were, in fact, in identical form other than the signatures and addresses of the signers; and that the sequential numbering

requirements were met where pages within each petition copy were consecutively numbered. (RAM, pp. 175-176).

Judge Johnson also found substantial compliance with the recall petition statutes in denying Judge Ramsey relief based on her claims regarding the addresses, dates, and signatures for the individual signers themselves. (RAM pp. 160-163). Judge Johnson found first that Judge Ramsey failed to provide any listing or tabulation of specific signatures she challenged for these alleged inadequacies. (RAM, p. 160). Upon his own review, however, Judge Johnson found only rare exceptions when the addresses were missing or incomplete. (*Id.*). Next, Judge Johnson considered the alleged failure of individual signers in certain instances to include dates for their signatures and found credible the testimony of Eisenman, who supervised the signature verification process, that dates were verified by reviewing the dates of surrounding signatures. (RAM, pp. 161-162). Lastly, Judge Johnson heard testimony over both evidentiary hearing days from Preusch, a private investigator hired by Judge Ramsey to review the Recall Petition, concerning the allegations of duplicate signatures and multiple party signatures and ultimately found his testimony to be of questionable candor and his calculations unsupported by credible evidence. (RAM, p. 166).

Finally, Judge Ramsey argues the District Court erred in denying relief based on her claim that she was not permitted to witness the signature verification

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO: 68450

HONORABLE JUDGE CATHERINE RAMSEY, NORTH LAS VEGAS  
MUNICIPAL JUDGE,

Appellant,

vs.

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Clerk of Supreme Court

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

Respondent,

THE 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.

---

**RESPONDENTS BETTY HAMILTON, MICHAEL WILLIAM MORENO,  
AND BOB BORGERSEN'S ANSWERING BRIEF**

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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)

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## I.

### **JURISDICTIONAL STATEMENT**

This appeal arises from a final order of the Eighth Judicial District Court, the Honorable Eric Johnson, presiding. The Court entered its Decision & Order in consolidated cases A-15-719406-P and A-15-719651-C on July 6, 2015. (RAM pp. 147-180). The Clerk of the Court entered the Notice of Entry of Order submitted by Respondents, Betty Hamilton, Michael William Moreno, and Bob Borgersen (“Recall Respondents”) on July 7, 2015. (RA, Vol. IV, 841-878). Appellant, Judge Catherine Ramsey (“Judge Ramsey”), filed her Notice of Appeal on July 16, 2015. (RA, Vol. IV, 879-881). Jurisdiction of this Court is based upon NRAP 3A(b)(1) and NRAP 3A(b)(3) as an appeal from a final order and denial of injunctive relief.

## II.

### **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Are municipal court judges public officers subject to recall? This Court reviews the interpretation and application of Nevada constitutional and statutory provisions without deference to the district court’s decision. (*See Sparks Nugget, Inc. v. State Department of Taxation*, 124 Nev. 159, 163, 179 P.3d 570, 573 (2008) (when interpreting a constitutional or statutory provision of plain and unambiguous language, the court generally may not go beyond that express

language in strictly construing its meaning)).

2. Did the District Court err or abuse its discretion in denying Judge Ramsey's factual challenges to Recall Respondents' qualifying petition? This Court reviews a district court's factual findings for an abuse of discretion and will uphold them if they are supported by substantial evidence. (*See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009); *Dewey v. Redevelopment Agency*, 119 Nev. 87, 93, 64 P.3d 1070, 1075 (2003) (holding a district court's factual determinations will not be set aside unless they are clearly erroneous and not supported by substantial evidence)).

### III.

#### **STATEMENT OF THE CASE**

On June 4, 2015, Judge Ramsey filed an Emergency Petition for Injunction in District Court Case No. A-15-719406-P (the "Emergency Petition"). (RAM pp. 1-30). In her Emergency Petition, Judge Ramsey cited NRS 295.105(4) as the basis for a request to enjoin the recall effort against her on constitutional grounds. Shortly thereafter, on June 9, 2015, Judge Ramsey filed a Complaint Pursuant to NRS 306.040 Challenging the Legal Sufficiency of the Petition to Recall Judge Catherine Ramsey in District Court Case No. A-15-719651-C (the "Complaint"). (RAM pp. 42-54). In her separately filed Complaint, Judge Ramsey made the same constitutional arguments set forth in her Emergency Petition and included

additional causes of action challenging the sufficiency of the Notice of Intent to recall previously submitted by the Recall Respondents to the North Las Vegas City Clerk on March 11, 2015 (the “Recall Petition”).

Following a hearing on June 18, 2015, Judge Johnson ordered the consolidation of District Court Case Nos. A-15-719406-P and A-15-719651-C in a written order issued June 23, 2015, and set the matter for evidentiary hearing on June 29, 2015. (RAM pp. 97-100). Prior to consolidation, the evidentiary hearing on the Complaint was scheduled for June 30, 2015, before Judge Kenneth Cory. On the eve of the evidentiary hearing, on June 26, 2015 at 4:43 p.m., Judge Ramsey moved for a continuance. (RAM pp. 135-183). The evidentiary hearing took place over a two-day period, beginning on June 29, 2015 and continuing to, and concluding on, July 2, 2015. At the conclusion of the evidentiary hearing on July 2, 2015, Judge Johnson issued oral findings denying the Emergency Petition and dismissing the causes of action set forth in the Complaint. (AA, Vol. II, pp. 439-454).

Thereafter, on July 6, 2015, Judge Johnson issued a thirty-three (33) page Decision & Order in which he: (1) denied Judge Ramsey’s Complaint for declaratory relief that judges may not be recalled under Article 2, Section 9 of the Nevada Constitution, (2) denied Judge Ramsey’s Emergency Petition, and (3) denied the remaining causes of action in Judge Ramsey’s Complaint challenging

the sufficiency of the Recall Petition. (RAM pp. 147-180). Judge Johnson's Decision & Order further denied Judge Ramsey's oral motion to stay the special election pending appeal and ordered the North Las Vegas City Clerk to issue a call for a special election not sooner than ten (10) days, nor more than twenty (20) days after the date of the order, as required by NRS 306.040.

On July 10, 2015, Judge Ramsey filed with this Court a Petition for a Writ of Mandamus, Certiorari or Prohibition (the "Supreme Court Writ"). In her Supreme Court Writ, Judge Ramsey asked the Court to halt the recall election and declare, with respect to the judiciary, that Article 6, Section 21 of the Nevada Constitution, which established the Commission on Judicial Discipline, superseded Article 2, Section 9, which provides for the recall of all public officers. Thereafter, on July 21, 2015, Judge Ramsey filed a Notice of Appeal from Judge Johnson's Decision & Order. On July 27, 2015, this Court determined the instant matter should proceed as an appeal, denied the Supreme Court writ, stayed the District Court's Decision & Order, and set an expedited briefing schedule.

In its July 27, 2015 Order, this Court further directed Judge Ramsey to supplement the record by August 11, 2015, which was extended to August 25, 2015, by the Court's Order Granting Telephonic Extension entered on August 7, 2014. The Court's July 27, 2015 Order also directed Recall Respondents to file an Answering Brief by August 26, 2015. Recall Respondents did not request an

extension of time and their substantive brief follows.

#### IV.

#### **STATEMENT OF FACTS**

The facts in this case are clear and mostly uncontested. Recall Respondents filed their Recall Petition seeking to recall Judge Ramsey with the North Las Vegas City Clerk on March 11, 2015. (RA, Vol. I, p. 11). Pursuant to statute, Recall Respondents had ninety (90) days, or until June 9, 2015, to return the required number of signatures, one thousand nine hundred eighty-four (1,984) signatures, from registered voters in Clark County and North Las Vegas who cast ballots in the last election. Recall Respondents submitted more than two thousand seven hundred (2,700) signatures for verification on May 28, 2015, ten (10) days short of the deadline. (RA, Vol. I, p. 32). Pursuant to statute, also on May 28, 2015, North Las Vegas City Clerk Barbara Andolina (“Andolina”) noticed Judge Ramsey by both letter and email, of her receipt of the Recall Petition and her intent to deliver it to the Clark County Election Department the same day to commence the raw count process. (RA, Vol. I, pp. 31, 38, 41-43).

Despite his attendance at a media event on May 28, 2015, wherein Andolina advised of her intent to deliver the recall petition to the Clark County Election Department that afternoon to initiate the signature verification process, Judge Ramsey’s representative, Johnny Jackson (“Jackson”) waited until the afternoon of

the following day to request the opportunity to observe the raw count and signature verification process. (AA, Vol. II, p. 286). An email memorializing his request to Clark County Registrar of Voters Joe Gloria (“Gloria”) was sent at 3:13 p.m. (*Id.*). Thereafter, between 3:30 p.m. and 4:30 p.m., a second representative of Judge Ramsey, Dan Burdish (“Burdish”), contacted Gloria and requested to witness the verification process. (AA, Vol. II, p. 304). Gloria advised Burdish that the signature verification process had concluded for the day, but invited him to observe the process on Monday, June 1, 2015, which was scheduled to begin at 9:30 a.m. (AA, Vol. II, p. 405). Jackson and Burdish did in fact observe the signature verification process on June 1, 2015, which was essentially a repeat of the verification process on Friday as an audit to insure the accuracy of the process. (AA, Vol. II, pp. 305-307).

Thereafter, on June 1, 2015, Gloria prepared and signed a Certificate of Results of Signature Examination. (RA, Vol. I, p. 65). Pursuant to Nevada Revised Statute 293.1277(2), Gloria conducted a random sample of five hundred (500) signatures and determined that four hundred twenty (420) signatures were valid. (*Id.*) From the random sampling, he further verified the total number of valid signatures at two thousand two hundred eighty two (2,282) signatures, in excess of the one thousand nine hundred eighty four (1,984) signatures required to qualify. (*Id.*) On June 2, 2015, the Office of the Nevada Secretary of State issued

a Notice of Qualified Petition, deemed the Recall Petition qualified, and noticed all interested parties. (RA, Vol. I, p. 67).

On June 29, 2015, the first day of the two-day evidentiary hearing commenced. (AA, Vol. 1, pp. 47-250, Vol. II, pp. 253-267). The District Court heard from Mark Preusch (“Preusch”), a private investigator hired by Judge Ramsey, who testified concerning her allegations of duplicate signatures and multiple party signatures. (AA, Vol. 1, pp. 97-118). Preusch however testified he failed to prepare a report, identify, or otherwise tabulate specific examples of signature deficiencies. (AA, Vol. I, p. 152 and pp. 158-161). The District Court also heard from Jackson, Andolina, and Monica Eisenman (“Eisenman”), an employee of the Clark County Election Department. (AA, Vol. 1, pp. 47-250, Vol. II, pp. 253-267). Eisenman testified regarding the signature verification process, in which she participated, and addressed various alleged deficiencies. (AA., Vol. I, pp. 145-191).

On July 2, 2015, the evidentiary hearing resumed, during which time, Judge Ramsey’s counsel produced four sets of tabulations relied upon by Preusch for his testimony, in contravention of his assertions on the witness stand that he had no reports, documents or tabulations. (AA, Vol. II, pp. 275-280). The District Court also heard testimony from Jackson, Burdish, Gloria, Lauren Paglini, a law clerk from the law firm of Gentile Cristalli Miller Armeni and Savarese, and Andolina.



(AA, Vol. II, pp. 273-454). Andolina testified telephonically, regarding notification to Judge Ramsey of the petition verification process, with City Attorney Sandra Douglas-Morgan (“Morgan”) present in the room. (AA, Vol. II, pp. 412-413). Judge Ramsey’s counsel objected to Morgan’s presence and requested that she step outside of the office. (AA, Vol. II, pp. 413). Judge Johnson however permitted her to stay, following confirmation of her role as the North Las Vegas City Attorney and her assurance that she would abide by her ethical duties as an officer of the court. (*Id.*).

At the conclusion of the evidentiary hearing on July 2, 2015, Judge Johnson issued oral findings denying the Emergency Petition and dismissing the causes of action set forth in the Complaint. He further denied Judge Ramsey’s request to stay the proceedings pending appeal. (AA, Vol. II, pp. 439-454).

## V.

### **SUMMARY OF THE ARGUMENT**

The question presented by this appeal is a simple one: Is a municipal court judge a public officer within the context of Article 2, Section 9 of the Nevada Constitution and NRS 306.020, and, therefore, subject to recall by the registered voters of the municipality in which she was elected? And, the answer to this question is equally simple: Yes.

Recall Respondents respectfully assert in this Answering Brief that the plain