

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

HONORABLE CATHERINE RAMSEY,  
NORTH LAS VEGAS MUNICIPAL  
JUDGE,

Appellant,

vs.

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 THE CITY OF NORTH  
LAS VEGAS, BETTY HAMILTON,  
MICHAEL WILLIAM MORENO and  
BOB BORGENSEN, individually and as  
Members of "REMOVE RAMSEY  
NOW,"

Real Parties in Interest.

Case No.: 68450

District Court Case No. A-15-719651-C  
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**THE CITY OF NORTH LAS VEGAS AND BARBARA A. ANDOLINA,  
CITY CLERK'S ANSWERING BRIEF**

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## **DISCLOSURE STATEMENT**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the justices of this Court may evaluate possible disqualification or recusal.

The following have an interest in the outcome of this case or are related to entities interested in the case:

- The City of North Las Vegas
- Barbara Andolina, City Clerk of the City of North Las Vegas

There are no other known interested parties.

Snell & Wilmer L.L.P. has represented The City of North Las Vegas and Ms. Andolina in this matter since its inception.

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## **INTRODUCTION**

The pending appeal presents several straightforward issues for Supreme Court review. This Brief will focus exclusively on the issues that involve the City's conduct. First—and despite her allegations to the contrary—Judge Ramsey's due process rights were not violated by the recall petition and signature verification process. Not only was Ramsey notified that the recall petition was submitted to the County, she also knew that the verification process had to be expedited and she had representatives present for the second day of signature verification (which was a virtual re-enactment of the first). Any claim of harm by Judge Ramsey simply strains credulity.

In addition, Appellant's Opening Brief improperly attempts to disparage the City of North Las Vegas and impugn its municipal representatives. Not only did the City produce all relevant documents pertinent to the recall petition in advance of the hearing and in accordance with the district court's June 23rd Scheduling Order (unlike Appellant herself), but Judge Johnson properly ruled that the North Las Vegas City Attorney—as an officer of the Court—could be present during the telephonic testimony of North Las Vegas City Clerk Barbara Andolina on the second day of the evidentiary hearing. For these reasons, and the reasons cited in the Answering Brief of the Recall Committee pertaining to the constitutionality of judicial recall, the order of the district court should be affirmed in its entirety.

## **STATEMENT OF THE ISSUES**

1. Whether Judge Ramsey's due process rights were violated by the recall petition and signature verification process, even though she was notified that the recall petition was submitted to the County for signature verification, she knew that the signature verification process required an expedited timeline, she failed to act diligently to make arrangements to observe the signature verification, and her representatives were present at the second stage of signature verification, which was a step-by-step recreation and audit of the first step of verification.

2. Whether the District Court erred in relying on the North Las Vegas City Attorney's status as an officer of the court in allowing her to remain in the room during the North Las Vegas City Clerk's telephonic testimony, despite her volunteering to leave the room.

## **STANDARDS OF REVIEW**

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).

With regard to factual findings, this Court reviews a district court's findings for an abuse of discretion and will uphold those findings 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).

## **STATEMENT OF THE CASE**

### **I. Nature of the Action**

This matter stems from an attempt to recall Judge Ramsey from her position as Municipal Judge for the City of North Las Vegas. After the recall petition had been completed and certified by the various governmental agencies as required by statute, Judge Ramsey filed a Complaint in Clark County District Court challenging the sufficiency of the petition.

### **II. Proceedings Below**

Judge Ramsey originally filed an Emergency Petition for Injunction/Emergency Motion Under NRS 295.105(4)<sup>1</sup> on June 4, 2015 in the Eighth Judicial District Court in an effort to prevent the City of North Las Vegas and City Clerk Barbara Andolina from scheduling a recall election after the recall

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<sup>1</sup> Judge Ramsey's Emergency Petition was filed without first filing a complaint. Although it was styled as a "petition," the document itself was essentially a motion for injunctive relief.



petition had been reviewed and approved pursuant to statute. Judge Ramsey also filed a Complaint challenging the legal sufficiency of the recall petition on June 9, 2015 in the Eighth Judicial District Court. Real Parties in Interest Betty Hamilton, Michael William Moreno and Bob Borgensen (the “Recall Committee”) filed a motion to consolidate the two cases, which was granted by Judge Eric Johnson on June 24, 2015.

The parties conducted a hearing on Judge Ramsey’s Complaint over two separate days on June 29, 2015 and July 2, 2015. On July 6, 2015, Judge Eric Johnson entered a Decision & Order denying Judge Ramsey’s Emergency Petition as well her Complaint challenging the sufficiency of the recall petition.

### **III. Routing Statement**

Pursuant to NRAP 17, all appeals concerning issues involving elections and judicial discipline shall be heard and decided by the Supreme Court. NRAP 17(a)(3)-(4). As this case concerns the recall of a sitting judge, the Supreme Court should hear and decide these issues.

### **STATEMENT OF THE FACTS**

On or about March 11, 2015, the Recall Committee filed a Notice of Intent to recall Appellant with City Clerk Barbara Andolina (“Andolina”). RA 11. Pursuant to statute, the Recall Committee had ninety (90) days, or until June 9, 2015, to obtain 1,984 signatures from registered voters in North Las Vegas who

voted in the 2011 election in which Judge Ramsey was elected. *See* NRS 306.015(3). On May 28, 2015, the Recall Committee submitted a petition containing 2,717 signatures to Andolina, who is the filing officer pursuant to statute. RA 32; AA 333.

In conjunction with submitting the petition, the Recall Committee held a press conference outside of the North Las Vegas City Hall. AA 119. Among those in the crowd was John Jackson (“Jackson”), a political consultant who was working with Judge Ramsey and who attended the press conference at her direction. AA 118-19. After the press conference, but before the petition had been submitted to Andolina, Jackson went to the City Clerk’s office and spoke with Andolina about obtaining a copy of the petition.<sup>2</sup> AA 173. He did not, however, ask Andolina any questions regarding when signature verification would begin. AA 174.

Upon receiving the petition, Andolina issued a receipt to the Recall Committee and personally delivered the petition to the office of the Clark County Registrar of Voters. AA 179-80. She delivered the recall petition to the County Registrar, Joe Gloria (“Gloria”), on the afternoon of May 28, 2015. AA 179-80.

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<sup>2</sup> Neither Jackson nor Judge Ramsey ever informed Andolina that Jackson was acting on behalf of Judge Ramsey and Andolina was not aware of that fact when she met Jackson on May 28, 2015. AA 178.

Jackson knew that the petition was being delivered to the County that day and that signature verification would commence shortly thereafter. AA 119-20.

Prior to delivering the petition to the County, Andolina notified Judge Ramsey on May 28, 2015, pursuant to NAC 306.023, that the petition would be immediately submitted to the Clark County Registrar. AA 415; RA 31. Andolina sent this information to Judge Ramsey via email at 2:39 p.m. on May 28, 2015, as well as via a letter which was overnighted and delivered on Friday, May 29, 2015. AA 415; RA 31; RA 38-43.

The County commenced the signature verification process the following morning, Friday, May 29, 2015, which was completed by mid-morning or early afternoon. AA 327. The process moved quickly that morning due to the relatively small number of signatures in the petition and the fact that only a random sample of 500 signatures was required to be verified. AA 328. There were no representatives present on behalf of Judge Ramsey on Friday. AA 231. According to County election officials, it is not uncommon for the subject of a recall petition to forego observing the signature verification process; in fact, that is the case more often than not. AA 232.

Despite having notice that the petition was submitted on Thursday May 28, 2015 and despite understanding that the recall process would proceed on an expedited basis, no one from Judge Ramsey's camp made any effort to make

arrangements to observe the signature verification until the following afternoon on Friday, May 29, 2015. At approximately 1:15 p.m., Jackson went to the office of the Clark County Registrar of Voters at the Clark County Government Center<sup>3</sup> in order to request a copy of the petition and to see what time signature verification would begin. AA 291-92; AA 116. By that time, the first step in the signature verification process had already been completed. AA 327-28.

While at the Government Center, Jackson was put in touch via telephone with Gloria, the Registrar of Voters. AA 116; AA 120. Gloria informed Jackson that the verification process had already concluded for the day. AA 327. Gloria told Jackson that the verification would continue on Monday, June 1, 2015 and that Jackson was free to attend and observe on behalf of Judge Ramsey. AA 327-28. Gloria asked Jackson to put his request in writing. AA 120.

After his phone call with Gloria, Jackson returned to his home and sent an email to Gloria at approximately 3:13 p.m. on Friday afternoon, May 29, 2015, requesting a copy of the petition and access to the signature verification. RA 800-01; AA 285-86. Jackson also prepared an email to Judge Ramsey which was sent at 3:58 p.m. on Friday, in which he recounted his actions and conversations from that day. AA 287; RA 802-03.

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<sup>3</sup> The signature verification process was not conducted at the Registrar's Government Center office, but was instead conducted at the Clark County Election Department's main office located at 965 Trade Dr., Suite A, North Las Vegas, NV 89030, near the intersection of Cheyenne Avenue and H Street. AA 121.

Later that same day, Dan Burdish (“Burdish”), another representative of Judge Ramsey, also contacted Gloria regarding access to the signature verification process. AA 328; AA 301; AA 304. Gloria confirmed what he had previously told Jackson—that the first step in the process had already been completed. AA 328, AA 304-05.

After Gloria received Jackson’s email on Friday, he forwarded it to Andolina on Sunday, May 31, 2015. RAM 144. The following morning at 5:55 a.m. on Monday, June 1, 2015, Andolina forwarded Jackson’s email request to Judge Ramsey, requesting that the Judge confirm that Jackson was indeed her representative. RAM 142. She never received a response from Judge Ramsey. AA 240.

Despite receiving no response, Andolina nevertheless contacted Jackson at 8:31 a.m. on Monday, June 1, 2015, informing him that signature verification that morning would commence at 9:30 a.m. AA 297-98; RAM 143. She also requested that Jackson bring verification that he was an authorized representative of Judge Ramsey. AA 298; RAM 143. Although Jackson testified that the email from Andolina went to his spam folder, he confirmed that Judge Ramsey personally informed him that signature verification would continue at 9:30 a.m. on Monday, June 1st—confirming the fact that Judge Ramsey received Andolina’s earlier email. AA 298.

The second step of the signature verification process began on Monday, June 1, 2015 at 9:30 a.m. at the Clark County Registrar's office near Cheyenne Ave. AA 213. That process consisted of an audit of the procedure conducted the previous Friday, including a re-verification of every signature that was deemed valid the prior day. AA 214-15. Step two is "substantially similar" to the first step in the verification process and provides that the Registrar's staff "double-check the exact same requirements" that had been verified on Friday. AA 215. In other words, "the same process that occurred on Friday, in fact happen[ed] on Monday as well". AA 377.

Both Jackson and Burdish attended the signature verification on behalf of Judge Ramsey on Monday, June 1, 2015. AA 214; AA 107; AA 116; AA 80-81. Both Jackson and Burdish arrived late, but were present to witness the majority of the process. AA 215; AA 306; AA 312-13. Neither Jackson nor Burdish asked any questions at the verification. AA 377.

On June 2, 2015, the Secretary of State's office issued a Notice of Qualified Petition, finding that the 2,282 signatures deemed valid by the Registrar's office exceeded the 1,984 signatures required. The petition was therefore deemed qualified. RA 67.

## **SUMMARY OF THE ARGUMENT**

Judge Ramsey's due process rights were not violated in connection with the recall petition and the signature verification process. First, there is no requirement in any recall statute that Judge Ramsey be given notice of when the signature verification process would begin. The statute only requires that she be "allowed" to attend and observe—which her representatives did. Second, Judge Ramsey was fully aware that the petition had been submitted by the City Clerk to the County to begin the next step in the process. Her representative was present at a press conference when the petition was submitted and Judge Ramsey was notified via email and FedEx overnight mail. Once the petition left the City Clerk's hands, it was Judge Ramsey's responsibility to ensure that she made arrangements to observe the signature verification if she so desired. Third, despite knowing that the petition had been submitted to the County, Judge Ramsey failed to act diligently to arrange for a representative to be present at the signature verification. Finally, Judge Ramsey suffered no harm or prejudice in the process because *her representatives were present* to witness the second day of the signature verification which was substantially the same and a "double-check" of the first day's results.

## **ARGUMENT**

### **I. JUDGE RAMSEY’S DUE PROCESS RIGHTS WERE NOT VIOLATED**

Judge Ramsey was afforded all due process required by Nevada law and the statutes applicable to recall elections. Importantly, the recall statute does not require that Judge Ramsey be given specific notice of when the signature verification process would begin. Any argument to the contrary is unsupported by the record below.

This appeal involves the sufficiency of a petition to recall Judge Ramsey from her position as Municipal Court Judge for the City of North Las Vegas. Judge Ramsey contends that her due process rights were violated because she “was not allowed access to witness the verification process, which is a mandatory ‘must’ under NRS 293.1277(8).” Appellant’s Opening Brief (“AOB”), 34:27-28. For the reasons set forth below, Judge Ramsey is mistaken.

First, there is no requirement under Nevada law that Judge Ramsey be given notice of the date and time at which the signature verification process would commence. Second, neither Judge Ramsey nor her representatives were ever prevented from attending or observing the signature verification process. The record demonstrates that Judge Ramsey and her representatives were fully aware that the petition had been submitted to the City Clerk of North Las Vegas and then immediately delivered to the County Registrar of Voters in order to commence the



signature verification process. The obligation rests on her to contact the County to arrange access. Third, despite her knowledge of the recall process, Judge Ramsey did not act diligently to ensure that she or her representatives were present to observe the process. Finally, Judge Ramsey had a full opportunity to witness the verification process because her representatives were present on the second day of signature verification, which includes a reproduction of the original verification.

**A. There Is No Notice Requirement Under the Statute.**

Judge Ramsey's due process rights were not violated because the recall statute does not require that any specific notice be given prior to commencing the signature verification process.

The procedure for initiating a recall election in Nevada is governed by a detailed statutory scheme. Pursuant to those statutes, once a party circulating a recall petition has secured the requisite number of signatures, the petition must be submitted to the filing officer. NRS 306.015(3). The filing officer must then immediately submit the petition to the County Clerk for signature verification. NRS 306.015(3); NRS 293.1277 *et seq.* If the petition involves an attempt to recall a public officer, the statute states that the public officer "must also be *allowed* to witness the verification of the signatures on the petition." NRS 293.1277(8) (emphasis added). Notably, the statute does not state that the public officer *must* be present. Nor does the statute require that the public officer be given notice

when the signature verification would take place. *See* NRS 293.1277 *et seq.* Instead, the statute simply mandates that the public officer be *permitted* to view the verification if the officer so desires.

Judge Johnson recognized and affirmed this position during the hearing on the sufficiency of the recall petition (AA 445) and again in his Decision and Order dated July 6, 2015. RAM 172; RAM 176. Specifically, Judge Johnson held the following:

The Court will not read into NRS 293.1277 a specific notice provision. The statute only provides that the public official subject to recall be allowed to view the verification process and makes no provision for notice or working with the public official to arrange a date and time for the official or his or her representative to be present.

RAM 176.

Despite her assertions that she was entitled to notice of the commencement of signature verification, Judge Ramsey ignores the actual language of the recall statutes. The plain language is clear and unambiguous. It does not require that notice of the date and time of the signature verification process be given.

This Court should affirm Judge Johnson's ruling that Judge Ramsey's due process rights were not violated because there is no notice requirement contained in Nevada's recall statutes.

**B. Judge Ramsey Indisputably Knew that Signature Verification Would Begin Immediately.**

*1. Judge Ramsey and Her Representatives Knew that the Recall Petition Had Been Submitted to the County.*

Even assuming that the statutes required notice (and they do not), Judge Ramsey received actual notice. The record unequivocally demonstrates that Judge Ramsey and her representatives had full knowledge that the petition had been submitted to Clark County and that the signature verification phase would begin immediately. Judge Ramsey was personally aware and also received this information through numerous sources.

Pursuant to Nevada law, once a recall petition has been submitted to the filing officer, the filing officer is required to notify the public official that is the subject of the recall petition in writing within two days after the petition was submitted for signature verification. NAC 306.018. Additionally, Nevada law requires the filing officer to “immediately submit the petition to the county clerk for verification” upon receipt. NRS 306.015(3).

It is undisputed that Andolina, the filing officer responsible for receiving the recall petition, notified Judge Ramsey in writing on May 28, 2015 that the petition had been submitted to the Clark County Registrar’s Office that same day for signature verification. AA 415. Specifically, Andolina emailed a letter to Judge Ramsey on May 28, 2015, informing the Judge that the recall petition had been

received by the City Clerk's Office and that it would be delivered to the Clark County Registrar that same day to begin the signature verification process. AA 415-16. Andolina also sent a copy of the letter directly to Judge Ramsey via FedEx, which was delivered the following day, Friday, May 29, 2015. AA 415. Judge Ramsey did not testify at the hearing, and there was no evidence otherwise disputing that she received these notices.

In addition to the letters from Andolina, Judge Ramsey received notice that the petition was submitted and that signature verification would begin immediately from other sources. Judge Ramsey's representative (John Jackson) was present during a press conference held at North Las Vegas City Hall at the time the petition was submitted. AA 119. Jackson confirmed that he knew the recall petition had been submitted and that it was being delivered to the County for signature verification the next day. AA 119-20. Jackson also testified that he was a veteran of the recall process and knew that it would proceed on "a very expedited basis". AA 120.

Thus, the evidence and testimony presented at the hearing establish that Judge Ramsey knew, both personally and via her representatives, that the petition had been submitted and forwarded to the County for signature verification on Thursday, May 28, 2015. The undisputed evidence also demonstrates that Judge Ramsey knew that the verification process would proceed on an expedited basis.

2. *Judge Ramsey Was Not Misled About the Commencement of Signature Verification.*

In her Opening Brief, Judge Ramsey contends, without any citation to the record, that her representatives were led to believe that signature verification would not begin for a “couple of days.” AOB, 34:1-2. This unsupported claim was refuted by the evidence presented at the hearing.

This claim likely originated from testimony given by Jackson, who initially testified as follows:

A. Because Mr. Gloria said we were going to start [signature verification] in one or two days, quote/unquote, and that’s in an e-mail --

Q. Okay.

A. -- one or two days. And all the sudden [sic] they started already.

AA 124-25; *see also* AA 135. Despite Jackson’s testimony that this statement was “in an e-mail,” none of the emails produced by the parties contain any reference to starting the signature verification process in “one or two days.”

Additionally, Jackson testified that after speaking with Gloria on May 29th, he prepared an email to Judge Ramsey detailing his actions and conversations related to the recall process. AA 287. He testified that he prepared the email shortly after speaking with Gloria in order to record his recollection of the events while it was fresh in his mind. AA 287-88; AA 802-03. However, nowhere in this email did Jackson state that Gloria told him that the signature verification process

would be delayed for “one to two days.” AA 802-03. Instead, the email plainly states that signature verification had *already* begun Friday morning and that it would resume on the following Monday. AA 802-03.

Gloria’s testimony regarding that same conversation is likewise devoid of any mention of waiting “one to two days” to start verification. Instead, Gloria testified that he informed Jackson that the Registrar’s office had already completed their verification work on Friday and that they would be starting again the following Monday. AA 327-28. Gloria also conveyed this same information to Burdish shortly after Gloria finished speaking with Jackson on Friday afternoon. AA 328. During his own testimony, Burdish confirmed Gloria’s testimony that the signature verification would resume on Monday. AA 305-06.

Thus, the evidence presented during the hearing established that Judge Ramsey had full knowledge that the recall petition was submitted on Thursday, May 28th, triggering the signature verification process. Judge Ramsey and her representatives were very familiar with the recall process, understood that it requires an expedited timeframe, and knew that signature verification was the next immediate step in the process. AA 108; AA 120; RA 38. There is no evidence that Judge Ramsey or her representatives were misled as to when the process would begin. AA 176.

**C. Judge Ramsey Failed to Request Access to the Signature Verification Process in a Timely Manner.**

Judge Ramsey bears the burden to ensure that she or a representative is present to witness the signature verification process if she so desires. Despite having full knowledge that the recall petition had been submitted to the City Clerk and had been forwarded to the County Clerk for signature verification, Judge Ramsey failed to act diligently in requesting access to witness the signature verification procedure.

As established above, Judge Ramsey and her representatives were fully aware that the recall petition had been forwarded to the County on the afternoon of Thursday, May 28, 2015. However, instead of immediately reaching out<sup>4</sup> to the Clark County Registrar of Voters to request access to view the signature verification, Judge Ramsey did not make any effort to contact the County until approximately 1:15 p.m. in the afternoon on Friday, May 29, 2015 when Jackson went to the “Office of Elections” at the Clark County Government Center building. AA 289-91. Jackson was put through to Gloria via telephone and Jackson explained his desire to witness the signature verification process on behalf of Judge Ramsey. AA 290. By that time in the afternoon, however, the first step in the

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<sup>4</sup> Not only did Judge Ramsey fail to diligently reach out to Clark County to secure access to witness the signature verification, she likewise did not respond to Andolina’s May 28, 2015 email informing her that the recall petition had been submitted to the County. This further underscores Judge Ramsey’s lack of diligence in this matter.

signature verification process had already been completed. AA 327. Despite the late request, Gloria invited Jackson to return on Monday to view the continuing signature verification process. AA 327-28.

Later that same day, Burdish also contacted Gloria regarding access to witness the signature verification process. AA 303-04; AA 328. Gloria confirmed what he previously told Jackson—that the first step in the process had already been completed. AA 304; AA 328.

The evidence and testimony presented at the hearing established, and Judge Johnson properly ruled, that Judge Ramsey “and her representatives took no step to reach out and determine how the Registrar would specifically move forward on the process until 1:15 in the afternoon of Friday, May 29, 2015” when Jackson contacted the Clark County Registrar of Voters. RAM 176. Despite having full knowledge that the recall petition had been delivered to the County and that the signature verification would begin promptly, Judge Ramsey nevertheless diligently failed to request access to witness the verification. This Court should affirm Judge Johnson’s ruling that the burden to arrange access to the signature verification rests squarely with Judge Ramsey who failed to exercise diligence in carrying out that burden.



**D. Judge Ramsey Enjoyed a Full Opportunity to Witness the Signature Verification Process.**

Despite missing the first day, Judge Ramsey nevertheless had the opportunity to witness the complete signature verification process. The second day of the verification process was a duplication of the process used the first day. Judge Ramsey's representatives were present to observe the second day of the verification proceedings. As a result, even if the statutes required actual participation (and they do not), she did witness a virtual identical process on Monday as that which occurred the previous Friday.

The signature verification process consists of two steps. AA 327. The first step includes a number of activities, including, but not limited to, entering the raw data from the recall petition into the County's computer system, generating a random sample, verifying that the voters in the sample voted in the previous election in which Judge Ramsey was elected, verifying that the voters still reside in North Las Vegas and are still registered to vote, and finally comparing signatures from the petition to the voter records to verify that the signatures match. AA 195-99; AA 327. The second step consists of an audit of the first step, in which the County conducts a second, virtually identical signature verification. AA 366; 214-15. In other words, the process completed on Monday was essentially a repeat of what had occurred the previous Friday, including a step-by-step recreation of the verification process in order to "double-check" the prior day's work. AA 214-15.

In this case, the first step of the signature verification occurred on Friday, May 29, 2015 and was completed prior to Judge Ramsey's representatives reaching out to request access. AA 327. However, Judge Ramsey's representatives were present for the second step of the verification process, which occurred on the following Monday, June 1, 2015. Indeed, both Jackson and Burdish were present for the majority of the second day which began on Monday at 9:30 a.m. AA 233; AA 306; AA 405. Burdish testified that he was present and afforded a fair opportunity to witness the process. AA 311-15. He further testified as follows:

Q. But is it fair to say that they didn't – the registrar's office didn't in any way limit your ability to witness that process?

A. No, none whatsoever.

Q. And did they gave [sic] you a fair opportunity to ask any questions you thought relevant about –

A. Yes, they were very fair.

AA 312-13. Jackson was likewise given a full opportunity to observe the process and ask any questions he might have, although he had none. AA 215-16.

It is notable that while Judge Ramsey contends vociferously that her due process rights were violated, she makes no attempt to articulate any specific prejudice that resulted from her failure to witness the first step of the verification on Friday. Her Opening Brief does not even contend that she suffered any

prejudice by not having a witness present on Friday.<sup>5</sup> Judge Johnson recognized Judge Ramsey's lack of claimed prejudice in his Order. RAM 175. Judge Johnson further found that even if Judge Ramsey did suffer any prejudice "by her lack of due diligence" in inquiring about the timing of Friday's signature verification, "this prejudice was largely eliminated by the Election Department's essentially repeating the process from May 29, 2015 on June 1, 2015 as an audit to ensure accuracy." RAM 175-76.

As this Court is well aware, the applicable standard of review in the recall and election context is substantial compliance. *Cleveland v. Eighth Judicial District Court*, 92 Nev. 454, 456, 552 P.2d 488, 489-90 (1976) ("We have previously held that recall statutes should be liberally construed with a view toward promoting the purpose for which they are enacted....We find the rule of substantial compliance best furthers this purpose..."). In this case, the fact that Judge Ramsey's representatives were present and able to observe the verification process on Monday, June 1, 2015, which was virtually identical to the verification phase completed the previous Friday, demonstrates substantial compliance with the

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<sup>5</sup> Judge Ramsey's Opening Brief makes several references to prejudice she allegedly suffered in this case, but none of those references is related to the signature verification process. Instead, her only claim of prejudice is related to Judge Johnson's decision to move the hearing on Judge Ramsey's Complaint by one day. AOB, 35:14—35:15.

requirements of the recall statutes at issue. As such, the Court should affirm Judge Johnson's decision and find that Judge Ramsey suffered no due process violation.

## **II. THE CITY DISCLOSED AND PRODUCED THE MAY 28, 2015 LETTER IN ITS ORIGINAL EXHIBIT LIST FOUR DAYS PRIOR TO THE HEARING**

In her Opening Brief, Judge Ramsey improperly attempts to disparage the City by misrepresenting that the City intentionally withheld relevant evidence (i.e., a May 28, 2015 letter from Andolina to Judge Ramsey) until the second day of hearing on July 2, 2015. *See* AOB at 38. Judge Ramsey also alleges that this “newly discovered” letter was not produced and was not accompanied by a “fed-ex number” or confirmation that it had been delivered on May 29, 2015. *Id.* at 39. As discussed below, these allegations are not only demonstrably false—they call into question Judge Ramsey's candor to this tribunal. To make matters worse, Judge Ramsey misleads the Court not only by the factual misstatements contained in the Opening Brief itself, but by selectively including in its original Appendix only the City's two page witness and exhibit list *while intentionally omitting the actual documents that were attached to and produced with the list.* RAM 106-108.

In reality, the City's witness and exhibit list was timely served on Petitioner's counsel on June 25, 2015—four days prior to the commencement of the June 29, 2015 hearing on the sufficiency of the recall petition.<sup>6</sup> The City's

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<sup>6</sup> In the district court's June 23 Consolidation Order, the parties were required to

exhibits contained 69 pages of documents, Bates labeled CNLV00001 through CNLV00069. RA 1-72. The May 28, 2015 letter Petitioner claims was “newly discovered” and “not previously produced” was, in fact, disclosed along with the rest of the City’s documents and is Bates labeled CNLV00035-36. RA 38-39. FedEx tracking receipts demonstrating that the letter was delivered to Judge Ramsey’s personal residence at 11:41 a.m. on May 29, 2015 were also included in the City’s exhibits as CNLV00037-40, as was Andolina’s e-mail to Judge Ramsey on May 28, 2015 at 2:39 p.m. (RA 31; RA 40-43), all of which advised Judge Ramsey that the Recall Petition had been received and was being delivered on May 28th to the Clark County Election Department to begin the raw count and signature verification process. Judge Ramsey was in possession of these documents for almost *one full week* before Andolina’s July 2nd testimony about the May 28th letter and her other May 28th communications with Petitioner.

While the City and undersigned counsel strive for civility, there is no way to sugar coat Judge Ramsey’s actions. By intentionally omitting the City’s actual exhibits from the record submitted in support of its Opening Brief—*exhibits that include the very letter Petitioner asserts was undisclosed*—Judge Ramsey has blatantly attempted to deceive the Court as to the underlying factual record so as to

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exchange witness and exhibit lists by 5:00 p.m. on June 25, 2015. It is worth noting that the only party who produced no documents in advance of the actual hearing was Judge Ramsey herself.

characterize the City in a false and negative light. This cannot be countenanced. Such allegations should be excluded from the Court’s consideration in evaluating the merits of these proceedings.

### **III. THE CITY ATTORNEY’S PRESENCE DURING ANDOLINA’S TELEPHONIC TESTIMONY WAS NOT IMPROPER**

Judge Ramsey also mischaracterizes City Attorney Sandra Douglass Morgan’s (“Morgan”) presence in the room with Andolina during the latter’s telephonic testimony on July 2, 2015, calling it “witness tampering at its finest [sic].” *See* AOB at 41. In her Opening Brief, Judge Ramsey argues that Morgan “was there simply to intimidate and coerce City Clerk Andolini [sic] into saying something favorable for the City of North Las Vegas.” *Id.* at 39. Not surprisingly, Judge Ramsey provides no support or evidence for her outrageous allegations—because there is none. The record of the hearing, however, reflects a very different story.

When Andolina was called to testify telephonically on June 2, 2015, counsel for Judge Ramsey objected to Morgan’s presence in the room with the witness. AA 413-14. Upon hearing the objection (based on the witness exclusion rule<sup>7</sup>),

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<sup>7</sup> Petitioner conveniently ignores the fact that the Court had already narrowed Plaintiff’s witness list and determined that only certain witnesses would be permitted to testify on July 2 (which did not include Morgan). As such, Petitioner’s citation to the witness exclusion rule (for an individual who was already precluded from testifying) is improper and, without more, justifies the Court’s denial of the objection.

Morgan herself *volunteered* to leave the room. AA 413. Judge Johnson however, before ruling on Judge Ramsey’s objection, confirmed Morgan’s official position as City Attorney for North Las Vegas (a party to the action) and called on Morgan as an officer of the Court to exercise her ethical duties of candor to the tribunal. AA 414. There is nothing in the record—and Petitioner cites to nothing—to support her allegation that Morgan passed notes or provided documents to Andolina. *See* AOB at 39. Nor is there any evidence (beyond self-serving assertion) that Morgan was present “simply to intimidate and coerce” Andolina into committing perjury. *Id.* at 39. Indeed, Andolina’s testimony on July 2nd was limited to authenticating Andolina’s May 28, 2015 letter to Judge Ramsey and discussing her May 28 e-mail to Judge Ramsey about the commencement of the raw count and signature verification process. AA 415-16.

Judge Ramsey’s allegations that the City Attorney’s presence with Andolina constituted “witness tampering” and was designed to intimidate and coerce Andolina are not only false—they are a shameless and unsubstantiated attempt to impugn an officer of the court and an irrelevant (albeit intentional) diversion from the merits of Judge Ramseys’ case —using *ad hominem* attacks as a substitute for a substantive discussion on the sufficiency of the recall petition. Judge Johnson properly relied on Morgan’s duty as an officer of the court in overruling Judge Ramsey’s objection. Any allegations that Morgan acted contrary to her ethical

obligations are unsupported by the record and should be stricken from the Court's analysis and evaluation of the appeal.

#### **IV. CONCLUSION**

The City of North Las Vegas and Barbara A. Andolina, City Clerk of the City of North Las Vegas, respectfully request that the Court affirm Judge Johnson's order and find that Judge Ramsey's Due Process rights were not violated and that City and Andolina fully complied with all statutory requirements.

DATED: August 26, 2015.

Snell & Wilmer L.L.P.

/s/ Richard C. Gordon

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that **THE CITY OF NORTH LAS VEGAS AND BARBARA A. ANDOLINA, CITY CLERK'S ANSWERING BRIEF** complies with the typeface and type style requirements of NRAP 32(a)(4)-(6), because this brief has been prepared in a proportionally spaced typeface using a Microsoft Word 2010 processing program in 14-point Times New Roman type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because it contains approximately 5,729 words.

Finally, I hereby certify that I have read **THE CITY OF NORTH LAS VEGAS AND BARBARA A. ANDOLINA, CITY CLERK'S 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: August 26, 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, 2015, I caused to be served a true and correct copy of the foregoing **THE CITY OF NORTH LAS VEGAS AND BARBARA A. ANDOLINA, CITY CLERK'S ANSWERING BRIEF** upon the following by the method indicated:

- ☐ **BY E-MAIL:** 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.
- ☒ **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.
- ☐ **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

/s/ Ruby Lengsavath

An Employee of Snell & Wilmer L.L.P.