

**IN THE SUPREME COURT OF**

*Appellants,*

PATRICIA FOLEY,

*Respondent,*.

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) District Court No.:  
) R-11-162425-R  
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## MOTION TO EXTEND TIME TO FILE AMICUS BRIEF

Motion of Proposed Amici American Civil Liberties Union of Nevada and  
National Coalition for a Civil Right to Counsel in Support of Appellant

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## **MOTION TO EXTEND TIME TO FILE AMICUS BRIEF**

The American Civil Liberties Union of Nevada (ACLUNV) and the National Coalition for a Civil Right to Counsel (NCCRC) submit this motion to extend time to file an *amicus curiae* brief pursuant to NRAP 29 (f) and NRAP 26(b)(1).

ACLUNV and NCCRC wish to appear as *amici curiae* in this appeal in support of Appellant Michael Foley.<sup>1</sup> However, in light of the complex and important constitutional issues raised in this appeal, proposed *amici* respectfully request an extension of the deadline for filing *amicus* briefs be extended 30 days, through August 2, 2017.<sup>2</sup> In their brief, *amici* plan to address for this Court the constitutional rights implicated in incarcerating an individual for nonpayment without first properly assessing that individuals' actual ability to pay, and the constitutional right to an appointment of counsel when an individual faces a potential deprivation of liberty.

Founded over fifty years ago in 1966, the ACLUNV is a non-profit, non-partisan organization, working to defend and advance the civil liberties and civil

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<sup>1</sup> *Amici* have not yet submitted a motion for leave to file under NRAP 29(c), yet plan to do so as appropriate.

<sup>2</sup> Appellant previously submitted a motion to this court requesting an identical extension of time for *amicus* briefs on June 28th, 2017, which was prior to the expiration of the time period proscribed in NRAP(f). However, that motion was denied and this Court ordered proposed *amici* submit motions for extension on their own behalf. *Amici* do so through this motion.

rights of all Nevadans. It is the only organization in Nevada dedicated solely to protecting the Constitutional rights and liberties of every individual in the state. Grounded in the principles of liberty, justice, democracy and equality, the ACLU of Nevada works in three areas: public education, advocacy, and litigation, including the submission of amicus briefs relevant to our work.

The ACLUNV is an affiliate of the American Civil Liberties Union, a nationwide organization that advocates for civil liberties and civil rights of all people across the United States. Since 2009, the ACLU and ACLU affiliates across the country have been exposing and challenging practices that lead to modern-day debtors' prisons, such as the failure of courts to meaningfully assess an individual's ability to pay prior to ordering incarceration for an outstanding fine, fee, court cost, or other debt. The ACLU and ACLU affiliates have uncovered how debtors' prisons across the country threaten civil rights and civil liberties. The ACLU and ACLU affiliates are also working in state legislatures and courts, and with judicial officials to end these practices. The ACLU of Nevada recently testified to the Nevada Advisory Committee to the U.S. Commission on Civil Rights<sup>3</sup> on the civil rights implications of debtors' prison practices in Nevada, highlighting in their public

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<sup>3</sup> Press Release, *ACLU Of Nevada Legal Director To Testify At United States Commission On Civil Rights Panel* (March, 14, 2017), available at <https://www.aclunv.org/en/news/aclu-nevada-legal-director-testify-united-states-commission-civil-rights-panel>.

testimony the need to conduct ability to pay hearings and the constitutional right to counsel when an individual faces incarceration for an inability to pay a fine, fee, court cost or other debt.

Formed in January 2004, the National Coalition for a Civil Right to Counsel (NCCRC) is an unincorporated association that advocates for the recognition of a right to counsel for indigent litigants in civil cases involving basic human needs, such as shelter, safety, sustenance, health, and child custody. The NCCRC worked closely with the American Bar Association's Presidential Task Force on Access to Justice on its unanimous 2006 Resolution that urges federal, state and territorial governments to recognize a such right to counsel.<sup>4</sup> By promoting such a right, NCCRC works tirelessly to try to close the "justice gap" in the United States that has grown to the point where less than 20 percent of the legal needs of poor people are addressed.<sup>5</sup> NCCRC has nearly 300 participants from 38 states, including civil legal services attorneys, public defenders, nonprofit staff, and members of the private bar, academy, state/local bar associations, and access to justice commissions. NCCRC supports litigation, legislation, and other advocacy strategies seeking a civil

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<sup>4</sup> American Bar Association Resolution 112A (Aug. 2006), *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lsc\\_laid\\_06A112A.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lsc_laid_06A112A.authcheckdam.pdf).

<sup>5</sup> Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* (June 2017), *available at* <http://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

right to counsel, including amicus briefing where appropriate.

The requested extension is essential to allow for a meaningful opportunity to participate in the analysis and consideration of the significant issue in this case. Given the insight and experience that the ACLUNV and NCCRC will bring, the ACLUNV and NCCRC respectfully request for their extension to be granted.

Dated this 13th day of July, 2017

/s/ Amy M. Rose  
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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this **MOTION TO EXTEND TIME TO FILE AMICUS BRIEF** was filed electronically with the Nevada Supreme Court on July 13, 2017, and electronically served on the following parties:

Daniel F. Polsenberg  
Abraham G. Smith  
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I further certify and affirm that I caused this document to be deposited via USPS first class mail, posted pre-paid, to the following parties:

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