EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL FOLEY, Appellant, vs. PATRICIAL FOLEY, Respondent.	Supreme Court Case No.: 69997 District Court No.: R-11-162425-R

BRIEF OF AMICUS CURIAE ELIZABETH PATTERSON

TAMI D. COWDEN, ESQ.
Nevada Bar No. 8994
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 N
Las Vegas, Nevada 89169
Attorneys for Amicus Elizabeth Patterson

CORPORATE DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, Amicus Elizabeth Patterson is an individual, and therefore, no corporate disclosure is required.

The following law firms have represented Prof. Patterson in in this litigation:

Greenberg Traurig, LLP

Dated this 2nd day of August 2017.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden
TAMI D. COWDEN, ESQ.
Nevada Bar No. 8994
KARA HENDRICKS, Esq.
Nevada Bar No. 7743
3773 Howard Hughes Pkwy., Suite 400N
Las Vegas, Nevada 89169
Attorneys for Amicus Elizabeth Patterson.

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Amicus Elizabeth Patterson submits her Amicus Brief in support of the Appellant.

INTRODUCTION

A contempt of court proceeding is one of few contexts in which an individual can be sentenced to jail in a civil proceeding without the benefit of a jury trial, the reasonable doubt standard, the state's burden of proof, or any of the other constitutional protections accorded to criminal defendants. This result is said to be justified by the fact that incarceration or civil contempt is ameliorative, not punitive: the civil contemnor can purchase his freedom at any time by complying with a purge condition set by the court. This argument loses its force, however, if the contemnor does not have the ability to comply with that purge condition because the Supreme Court has long held that ability to comply is a necessary precondition to imposition of a jail sentence in a civil contempt proceeding.

This principle is widely ignored in those states that make heavy use of civil contempt as a method of child support enforcement. Because there are a variety of other tools available to collect child support from parents with the income or assets to make the consistent payments required by the typical child support order, the bulk of enforcement through civil contempt is directed at low-income persons who work sporadically in low-wage or involuntary part-time jobs. Many

of them are unemployed at the time of the contempt hearing. Yet despite their dire financial circumstances, many of these obligors are held in contempt and given jail sentences that can be avoided only by payment of hefty purge amounts.

Not only does this practice violate the due process rights of these obligors, who are being given the equivalent of a criminal sentence in a civil proceeding, it also is irrational and counter-productive in regard to the objectives of the child support enforcement program and the ameliorative purposes of civil contempt proceedings. Civil incarceration cannot and will not achieve its purpose of coercing payment if the contemnor lacks the ability to pay the purge set by the court. To the contrary, a jail sentence diminishes the contemnor's ability to pay both during and after the period of incarceration by causing loss of existing or prospective employment or of unemployment compensation benefits, and impeding the search for employment post-incarceration. In addition, it impedes any constructive personal interactions between the incarcerated parent and the child.

In 2011, the United States Supreme Court held in *Turner v. Rogers,* that a state has an obligation to "assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the support order." In *Turner,* where the contending parties were the custodial and non-custodial parents – both poor and unrepresented – the U.S.

Supreme Court held that the constitution did not require that counsel be provided to the low-income obligor. The Court expressed the view that in such a case the obligor's due process right to accurate decision-making on the "ability to pay" issue could be adequately protected through "alternative procedural safeguards." But the Court left open the question of whether such "alternative procedures" would be sufficient in cases where the opposing party, as here, represented in the proceeding by government counsel.

In the six years since *Turner* was decided, large numbers of low-income, unrepresented obligors have been given jail sentences despite their apparent inability to pay the purge set by the court. In many of the cases, the unrepresented obligor was opposed by a government attorney. It has become clear that in this class of cases not covered by the Supreme Court's ruling in *Turner*, legal representation of the obligor is needed to assure accurate decisions on the "ability to pay" issue.

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY PURSUANT TO NRAP 29(D)(3).

Amicus curiae Elizabeth G. Patterson was State Director of the South Carolina Department of Social Services, the agency that administers the child support enforcement program in South Carolina, from 1999-2003. Except for those four years, she has been a member of the faculty at the University of South

Carolina School of Law since 1980, currently holding the rank of Professor of Law. Professor Patterson specializes in law relating to families, children, and poverty.

While at the Department of Social Services, she became aware of the large number of child support obligors who were being incarcerated for nonpayment in civil contempt proceedings. After returning to the University in 2003, she conducted extensive empirical and scholarly research on the use of civil incarceration in child support enforcement, and its impact on low-income non-custodial parents. Her work in this area has been cited by both the United States Supreme Court and the federal Office of Child Support Enforcement.

Prof. Patterson has no stake in the merits of the underlying dispute. However, given her real-world experience and scholarship, Professor Patterson has a unique and informed perspective on child support enforcement systems, their use of the civil contempt process, and the civil incarceration of low-income child support obligors, which she believes may be of assistance to the Court in the resolution of issues presented in this proceeding.

Prof. Patterson has sought leave of the Court to file an amicus brief by Motion pursuant to NRAP 29, filed simultaneously with this Brief.

LEGAL ARGUMENT

I. THE DUE PROCESS CLAUSE IS VIOLATED WHEN A CIVIL CONTEMNOR'S RELEASE FROM JAIL IS CONDITIONED ON AN ACTION THAT THE CONTEMNOR IS INCAPABLE OF PERFORMING, AS WHEN A CHILD SUPPORT CONTEMNOR IS LACKS THE ABILITY TO PAY THE PURGE NECESSARY TO AVOID OR END HIS INCARCERATION. VIOLATION OF THIS CONSTITUTIONAL MANDATE IS COMMON IN THE CHILD SUPPORT ENFORCEMENT CONTEXT.

In contempt proceedings such as those involving Mr. Foley here, indigents end by being incarcerated due to an inability to pay whatever sum is set by the court as the price to purge the contempt. Moreover, the nonpayment of child support that led to the contempt proceedings is, itself, often a product of inadequate methods of determining reasonable child support amounts in light of the economic circumstances of the parent. Imputation of unrealistic income leads to a cycle of nonpayment, incarceration, and ever-deepening debt with ever-decreasing opportunities for employment and payment.

This failing system is perpetuated by the lack of legal representation for the indigent parent during the contempt process. An indigent parent generally lacks the knowledge or skills to marshal or present evidence of an inability to pay either the child support orders ordered, or, once a contempt is determined, an inability to purge any sentence. The result is systematic deprival o basic due process, and the *de facto* imposition of criminal sentences that serve no purpose other than to punish indigence.

A. The Use of Unlawful Contempt Proceedings to "Enforce" Unrealistic Child Support Orders Is Widespread.

Federal law mandates that states implement a broad array of mechanisms for collecting child support. *See generally* Paul K. Legler, *The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act*, 30 FAM. L.Q. 519, 531-535 (1996). Wage withholding is mandatory in all cases. 42 U.S.C. §666(a)(1)(B). Other assets such as bank accounts and tax refunds are also subject to seizure, aided by a vast network of automated systems capable of identifying and seizing such assets. *Id.* §664. If these sources yield insufficient funds, a variety of mechanisms are available to coerce payment, including revocation of occupational, drivers' and hunting and fishing licenses, *id.* §666(2)(16), and reports to consumer credit reporting agencies. *Id*. §652(k)(2). Civil contempt proceedings are generally used only as a last resort, when this vast array of collection mechanisms has failed to bring about payment of court-ordered child support. Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 *Fed. Reg*. 93492, 93533 (Dec. 20, 2016) (hereafter cited as OCSE Regulations).

In cases where the obligor has the ability to pay the court-ordered support, these tools are usually sufficient to bring about payment. Should it become necessary to institute contempt proceedings against such an obligor, the threat of jail will generally produce payment before or at the contempt hearing. It is

reasonable to infer, therefore, that when large numbers of child support obligors are incarcerated, almost all are indigent. *See* Patterson, *Civil Contempt*, *supra*, at 118.

This inference is supported by data showing that, overwhelmingly, obligors who owe large amounts of past-due support, and who are thus most likely to be held to account in contempt proceedings, are poor. *See, e.g.*, Office of Child Support Enforcement, *The Story Behind The Numbers – Understanding And Managing Child Support Debt 1 (2008)*, *avail. at* https://www.acf.hhs.gov/sites/default/files/ocse/im_08_05a.pdf. A 2013 study of child support contemnors in South Carolina found that 73% of those held in contempt had been unemployed at the time of nonpayment, and 52% of the contemnors who received a jail sentence were unemployed at the time of sentencing. Elizabeth Patterson, *Turner in the Trenches: A Study of How Turner v. Rogers Affected Child Support Contempt Proceedings*, 25 GEORGETOWN J. POV. L. & POL'Y, _ (2017) (forthcoming), pp 20-28, avail. at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3005671, (hereafter cited as Patterson, *Turner in the Trenches*). Purge amounts for these unemployed contemnors generally exceeded $500. *Id.* at 25-27.

There are various practices within the child support enforcement system that result in child support awards in excess of what the non-custodial parent can

reasonably be expected to pay. Courts often set child support awards without having adequate information concerning the parent's earning potential, as when the non-custodial parent's evidence is incomplete or confusing, or the non-custodial parent fails to appear at the hearing. In these instances, the court will impute an income to the obligor, often over-estimating the amount that he is capable of earning. *See* Patterson, *Civil Contempt*, *supra*, at 108-109. The federal Office of Child Support Enforcement (OCSE) notes that "[o]veruse of imputed income frequently results in IV-D [child support] orders that are not based on a realistic or fair determination of ability to pay, leading to unpaid support, uncollectible debt, reduced work effort, and underground employment." OCSE Regulations, *supra*, at 93520.

Other sources of excessive awards include 1) state statutes setting a minimum child support award that the non-custodial parent must be ordered to pay regardless of his economic circumstances, and 2) state statutes allowing for retroactive awards that treat the accrual of child support as commencing at some time prior to entry of the order, such as the date when the child was born. *See* Patterson, *Civil Contempt*, *supra* at 107-111.

When payments are missed or not paid in full, the arrearage is typically added to the amount of future support payments, thus putting them further out of reach of the low-income obligor. *Id*. at 111.

Whether or not the order is excessive *ab initio*, the nature of the job market for low-skill workers is not conducive to consistent payment of a pre-set amount. Unlike the typical middle-income employment trajectory, in which employment is stable with a constant or upward wage trajectory, employment in the low-income labor market tends to be sporadic, with wages fluctuating from one job to the next, and separated by sometimes lengthy periods of unemployment. Maureen Waller & Robert Plotnick, *Child Support and Low-Income Families: Perceptions, Practices and Policy* 37-38 (Public Policy Institute of California, 1999).

In this context, the obligor's ability to pay changes frequently and cannot be adequately captured in a child support award based on projected weekly or monthly earnings over an extended period of time. In comments explaining the 2017 amendments to the regulations governing the child support enforcement program, the federal Office of Child Support Enforcement took note of the difficulties that some agency and court personnel have "acknowledging the reality of chronic unemployment and adults with no or very low income." OCSE Regulations, *supra*, at 93525. This skepticism is reflected both in unreasonable child support awards and in the judicial response to obligors' claims of inability to make the support or purge payments ordered by the court.

B. In a Civil Contempt Proceeding for Nonpayment of Child Support, a Contemnor May Not be Jailed Unless He Has the Present Ability to Pay the Amount Necessary to Obtain His Release.

The child support enforcement systems of some states, including Nevada, make extensive use of contempt of court proceedings to enforce child support orders. In such states, a parent who has failed to make one or more payments or to pay the full amount ordered can be charged with contempt on account of his or her noncompliance with the court order.

Contempt of court can be pursued as either a criminal or civil matter. A criminal contempt action, which seeks to punish the noncompliant child support obligor, is subject to the usual procedural protections for the defendant, including the right to counsel, and a guilty verdict can result in the usual punishments, including incarceration. *Lewis v. Lewis*, 132 Nev., Adv. Op. 46, 373 P.3d 878 (2016) ; *Gompers v. Buck's Stove & Range Co*., 221 U.S. 418, 422 (1911). A civil contempt action, on the other hand, is intended to be ameliorative, its purpose being to secure compliance with the court order. Hence, any jail sentence imposed in such a proceeding must be for the purpose of eliciting compliance, and the contemnor must be released if he complies in the manner directed by the court (the purge condition). *Turner v. Rogers*, 564 U.S. 431, 442 (2011); Elizabeth Patterson, *Civil Contempt and the Indigent Child Support Obligor: The Silent Return of*

Debtor's Prison, 18 CORNELL J. L. & PUB. POL'Y 95, 104 (2008) (hereafter cited as Patterson, *Civil Contempt*).

It is because of the ameliorative, conditional nature of any jail sentence resulting from civil contempt proceedings that the alleged contemnor's potential loss of liberty does not automatically entitle him to the broad range of procedural protections guaranteed to criminal defendants by the constitution. *E.g.*, *Hicks v. Feiock*, 485 U.S. 624, 637-641 (1988); *U.S. v. Dixon*, 509 U.S. 688, 696 (1993). However, if the contemnor has no way to avoid serving the entire sentence because of his inability to comply with the purge condition, the imposed sentence is no different from a criminal sentence. [1]*Id*. Accordingly, it is lawful only if imposed in a criminal proceeding compliant with the various constitutional mandates.

Because the contemnor's ability to pay the purge constitutes a dividing line between civil and criminal contempt, the U.S. Supreme Court held in *Turner v.*

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[1] Indeed, numerous jurisdictions hold such an order void. *See*, e.g, *In re Richardson,* No. 08-16-00310-CV, 2017 WL 2302607, at *9 (Tex. App. May 26, 2017) ("An order of contempt imposing a coercive restraint is void if the condition for purging the contempt is impossible of performance."); *Ortmann v. Ortmann*, 2002-Ohio-3665, 2002 WL 445049 (2002) ("[T]rial court abuses its discretion in ordering purge conditions which are unreasonable or where compliance is impossible."); *Lewis v. Lewis*, 875 S.W.2d 862, 864 (Ky. 1993) ("The power of contempt cannot be used to compel the doing of an impossible act."); *Mays v. Mays,* 193 Conn. 261, 266–67, 476 A.2d 562, 566 (1984) ("An order of confinement upon an adjudication of civil contempt must provide the contemnor with the key to his release in terms which are not impossible for him to satisfy.").

Rogers that accurate decision-making on this issue is critical to assuring that civil contempt proceedings comport with due process. 564 U.S. at 445.

The issue of "ability to pay the purge" should not be confused with a separate "ability to pay" issue that may arise in a child support contempt case. The question of "ability to pay the purge" relates to the sentencing of an obligor who has already been held in contempt. However, "ability to pay" is also involved in determining whether the obligor is in contempt at all. Failure to comply with a court order is in contempt of the court only if the noncompliance is *willful*, i.e., a refusal to make a payment he is capable of making. If a child support obligor was unable to make the court-ordered support payment, then his failure to do so was not willful, and he should not be held in contempt. These two "ability to pay" issues are often confused; however, they relate to different points in time and are subject to different analytical parameters. The focus of this brief is "ability to pay the purge."

C. If The Contemnor is Unable to Pay the Purge Necessary to Secure His Release, The Reason for His Financial Distress (e.g., Under-Employment) is Irrelevant.

The district court in this case indicated that "willful unemployment or underemployment" can be considered in determining the issue of "ability to pay." **1 App. 244:3–4.** This may be true when the "ability to pay" issue is whether the obligor's failure to make the periodic child support payments was willful, and

hence in contempt of the court's child support order. *See* Patterson, *Civil Contempt*, *supra*, at 120 n.172.

However, the "ability to pay" issue that thereafter arises when incarceration of the contemnor is at issue is quite different. Here, the question does not relate to the obligor's willfulness or effort; the question is whether the sentence can be legitimately be characterized as conditional. The "ability to pay" issue in this context goes solely to the contemnor's actual ability to open the prison door by paying the purge. If the contemnor does not possess sufficient funds to open that door, the reason why he lacks the ability to pay the purge is irrelevant. *Id.* at 104. The inability itself, regardless of the reason, prevents the sentence from being ameliorative, as is required for a jail sentence handed down in a civil contempt proceeding. *Id.*

D. Incarceration Decreases The Non-Custodial Parent's Ability To Make Child Support Payments Both During And After The Period Of Incarceration.

In the low-wage job market, employment is often sporadic, part-time, and insecure. *E.g.*, Frances Fox Piven, *Welfare Reform and the Economic and Cultural Reconstruction of Low Wage Labor Markets*, in *The New Poverty Studies* 135, 136-137 (Judith G. Goode & Jeff Maskovsky eds., 2001). Many persons who work in this environment make child support payments that, like their income, are sporadic and partial. When these persons are jailed for contempt because of their

failure to fully comply with the child support order, they lose the ability to generate even the irregular and inadequate earnings from which they were making sporadic or partial payments. At the same time, it is unlikely that the jail sentence will serve its purpose of coercing payment. Incarceration is thus a lose-lose proposition in regard to its purported purpose of generating support for the child. Indeed, courts have been known to incarcerate child support obligors with stable employment (but whose earnings were insufficient to pay inflated child support awards or arrearages that accrued during earlier periods of unemployment), thus terminating an existing source of current and future support for the child. *See* Patterson, *Turner in the Trenches*, *supra*, at 42-45.

Although work release programs may enable some incarcerated obligors to make some or all of their child support payments during the period of incarceration, most will not be able to do so. For these, unpaid support will continue to accrue during the period of incarceration, and they will emerge from jail owing more in arrearages than when their sentences commenced. *See* Ann Cammett, *Expanding Collateral Sanctions: The Hidden Costs of Aggressive Child Support Enforcement Against Incarcerated Parents*, 13 GEORGETOWN J. POV. L. & POL'Y 313, 326-327 (2006).

Few child support contemnors will have jobs waiting for them when they are released from jail, and unpaid support will continue to accrue while they look for

work and await their first paychecks. Increased competition for low-wage jobs in America's restructured economy, together with the low skill sets, partial disabilities, and poor work histories of many low-income contemnors, makes it likely that this will be a period of at least several months. Kelleen Kaye & Demetra Smith Nightingale, *Introduction and Overview*, in *The Low-Wage Labor Market, Challenges and Opportunities for Economic Self-Sufficiency 1*, 7-10 (Kaye & Nightingale eds. 2000).

As a means for generating child support from low-income non-custodial parents, incarceration is thus singularly ineffective. It cuts off existing sources of income, places obligors in an earnings vacuum, and makes it more difficult for them to generate income when they return to the labor market. At the same time, when the obligor is low-income, civil incarceration is unlikely to achieve the desired result of inducing the obligor to part with available funds that he was willfully withholding. *See* OCSE Regulations, *supra,* at 93533.

When a low-income contemnor does pay the purge, it is often the case that the funds have been borrowed, in which case repayment will impair his ability to make future support payments. *See id*. at 93534. Further negative repercussions may occur if the loan was obtained from a loan shark or a predatory lender.

E. Incarceration Of Non-Custodial Parents Impedes The Maintenance Or Development Of Parent-Child Relationships To The Detriment Of The Children, Who Need Psycho-Social As Well As Financial Support.

The imprisoned non-custodial parent is not only disabled from generating the income necessary for the payment of child support; he or she is also disabled from providing other, non-financial forms of support, assistance, and companionship to the child. *See* OCSE Regulations, *supra*, at 93533. Studies have shown the importance of parental involvement to the social, psychological and behavioral development of children and the long-term negative effects experienced by children of incarcerated parents. *E.g.*, J. Poehlmann et al, *Children's Contact with Their Incarcerated Parents: Research Findings and Recommendations*, 65 AMERICAN PSYCHOLOGIST 575 (2010).

Further, the prospect of imprisonment causes many non-custodial parents to "go underground," leaving their home states and subsisting through sources of income that will not reveal their whereabouts to the child support authorities. *See, e.g.*, Ann Cammett, *supra*, at 326-327. Thus the threat of incarceration, as well as incarceration itself, deprives children of economic and social support from the non-custodial parent.

II. LEGAL REPRESENTATION OF LOW-INCOME NON-CUSTODIAL PARENTS IN CIVIL CONTEMPT ACTIONS WOULD ENSURE THAT THE DUE PROCESS ISSUES INHERENT IN THE "ABILITY TO PAY" DETERMINATION ARE FULLY AND ACCURATELY CONSIDERED, AND WOULD CONSERVE JUDICIAL RESOURCES BY ASSURING THAT QUESTIONS REGARDING ABILITY TO PAY ARE COHERENTLY PRESENTED AND ACCURATELY DOCUMENTED.

The Supreme Court in *Turner v. Rogers* recognized the constitutional importance of assuring accurate decision-making in respect to the key "ability to pay" question. 564 U.S. at 446. The *Turner* court recognized that "the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, *wherein the prosecution is presented by experienced and learned counsel."* *Id.* at 449 (emphasis original). The latter circumstance was one of the exceptions that the Court had in mind in limiting its right to counsel ruling to the situation presented by that case, stating, "[T]he Due Process Clause does not *automatically* require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration (of up to a year)." *Id.* at 448 (emphasis in original).

In a courtroom filled with skeptical representatives of the State's executive and judicial branches, including able government counsel charged with presenting the case against the obligor, accuracy of the "ability to pay" determination cannot be assured unless the obligor also has access to an attorney to assure that evidence

favorable to his case is coherently and credibly presented. Even the simplest "inability to pay" argument requires articulating the defense, gathering and presenting documentary and other evidence, and responding to legally significant questions from the bench – tasks which are "probably awesome and perhaps insuperable undertakings to the uninitiated layman." *Pasqua v. Council*, 892 A.2d 663, 673 (N.J. 2006). This is particularly true where the layperson is indigent and poorly educated.

The absence of an attorney for the obligor also allows important legal issues affecting the obligor's support obligation or the court's jurisdiction to be overlooked. Such issues might include, e.g., questions regarding the obligor's paternity, the child's minority, or the sufficiency of notice. *See generally*, *Turner v. Rogers*, 564 U.S. 431 (2011) (brief of Elizabeth G. Patterson and South Carolina Appleseed Legal Justice Center as Amici Curiae in Support of Petitioner, pp. 15-16).

When an unrepresented obligor fails to produce the necessary documentation to support his claims, such as a letter from a doctor, documentation of a disability or unemployment insurance claim, or court filings in another related action, a conscientious judge, seeking to assure the accuracy of his rulings, will often grant the obligor a continuance to obtain and produce the documentation. *See, e.g.*, Patterson, *Turner in the Trenches*, *supra*, at 16. Thus, the court will have to hold a

second hearing that could have been avoided if the obligor had access to legal advice when preparing for the initial hearing. An attorney can also serve the goal of judicial economy by reducing the amount of time that the judge must spend questioning the obligor in order to understand the nature and validity of his claim of inability to pay.

CONCLUSION

Indigent parents who face contempt proceedings for nonpayment of child support should be appointed counsel for such proceedings. Such appointment is necessary to insure that the indigent parent is able to present an appropriate defense regarding both an ability to pay the underlying child support payments, as well as an ability to pay any purge amount. In the absence of such protections, the civil proceedings can too easily be transformed into de facto criminal proceedings, as a person who has no ability to pay the amount required to purge a contempt sentence has, in practical terms, been given a sentence from which purging is impossible.

Respectfully submitted this 2nd day of August, 2017.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden

TAMI D. COWDEN, ESQ.
Nevada Bar No. 8994
3773 Howard Hughes Pkwy., Suite 400N
Las Vegas, Nevada 89169
Attorney for Amicus Curiae Professor Elizabeth Patterson.

CERTIFICATE OF COMPLIANCE WITH NRAP 28 AND 32

I hereby certify that this 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 brief has been prepared in a proportionally spaced typeface using MS Word 2003 in Times New Roman 14.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4146 words.

Finally, I hereby certify that I have read this appellate 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.

Respectfully submitted this 2nd day of August, 2017.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden

TAMI D. COWDEN, ESQ.
Nevada Bar No. 8994
KARA HENDRICKS, Esq.
Nevada Bar No. 7743
3773 Howard Hughes Pkwy., Suite 400N
Las Vegas, Nevada 89169
Attorney for Amicus Curiae Professor Elizabeth Patterson.

CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of August, 2017, a true and correct copy of the foregoing BRIEF OF AMICUS CURIAE ELIZABETH PATTERSON was served via this Court's e-filing system, on counsel of record for all parties to the action.

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL FOLEY, Appellant, vs. PATRICIAL FOLEY, Respondent.	Supreme Court Case No.: 69997 District Court No.: R-11-162425-R

MOTION PURSUANT TO NRAP 29 FOR LEAVE TO FILE AMICUS BRIEF, AND TO FILE SUCH AMICUS BRIEF OUT OF TIME

Professor Elizabeth G. Patterson requests leave to file an amicus brief, and to file such brief out of time.

Pursuant to NRAP 29(c), Prof. Patterson wishes to appear as an amicus in this appeal in support of Appellant Michael Foley. Her proposed Amicus Brief is attached hereto as Exhibit A.

Proposed *amicus curiae* Elizabeth G. Patterson was State Director of the South Carolina Department of Social Services, the agency that administers the child support enforcement program in South Carolina, from 1999-2003. Except for those four years, she has been a member of the faculty at the University of South Carolina School of Law, currently holding the rank of Professor of Law. Professor Patterson specializes in law relating to families, children, and poverty.

While at the Department of Social Services, she became aware of the large number of child support obligors who were being incarcerated for nonpayment in civil contempt proceedings. After returning to the University in 2003, she conducted extensive empirical and scholarly research on the use of civil incarceration in child support enforcement, and its impact on low-income non-custodial parents.

Her work in this area has been cited by both the United States Supreme Court and the federal Office of Child Support Enforcement. Given her real-world experience and scholarship, Professor Patterson has a unique and informed perspective on the child support enforcement system, its use of the civil contempt process, and the civil incarceration of low-income child support obligors, which she believes may be of assistance to the Court in the resolution of issues presented in this proceeding. Accordingly, she requests the opportunity to submit her attached *amicus curiae brief.*

Prof. Patterson is aware that the original deadline for the filing of amicus briefs in support of the Appellant has passed. However, on July 25, 2017, this Court granted the Motion of prospective amici American Civil Liberties Union of Nevada (ACLUNV) and the National Coalition for a Civil Right to Counsel to file such a brief on or before August 2, 2017. At the time that motion was filed, Prof. Patterson had not yet secured *pro bono* counsel, and therefore, did not join in that

motion. However, as shown by Exhibit A, Prof. Patterson's brief was completed within the same deadline granted to the American Civil Liberties Union of Nevada (ACLUNV) and the National Coalition for a Civil Right to Counsel. Accordingly, there is no prejudice to any party by permitting Prof. Patterson's amicus brief to be filed at the same time.

Accordingly, Prof. Patterson respectfully requests this Court to grant leave to file her amicus brief, and to permit the filing of such brief out of time.

Respectfully submitted this 2nd day of August, 2017.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden

Tami D. Cowden, Esq., NBN 8994
3773 Howard Hughes Pkwy., Suite 400N
Las Vegas, Nevada 89169
Attorney for Amicus Curiae Prof. Elizabeth Patterson.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of GREENBERG TRAURIG, LLP, that in accordance therewith, on 2nd day of August 2017, I caused a copy of the foregoing **Motion Pursuant to NRAP 29 for Leave to File Amicus Brief, and to File Such Amicus Brief Out Of Time** to be served via electronic means through the Court's eFlex filing system.

/s/ Andrea Lee Rosehill
An Employee of Greenberg Traurig LLP