IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID HARRISON DEGRAW,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE LINDA MARQUIS, DISTRICT JUDGE,

Respondents, and

MISTY JO DEGRAW,

Real Party in Interest.

Electronically Filed
Sep 15 2017 03:37 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 72528

Original Action for Writ to Eighth Judicial District Court, Clark County, Nevada, Case No. D-16-543167-D

AMICUS CURIAE BRIEF OF NEVADA LEGISLATURE IN RESPONSE TO ORDER TO SHOW CAUSE

BRENDA J. ERDOES, Legislative Counsel
Nevada Bar No. 3644
KEVIN C. POWERS, Chief Litigation Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
E-mail: kpowers@lcb.state.nv.us
Attorneys for Amicus Curiae Nevada Legislature

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 3

I. This Court has the authority and discretion to exercise its original jurisdiction to issue extraordinary writ relief even in the absence of a formal written order entered by the district court. 3

II. The writ petition should not be dismissed for mootness because it raises legal issues that fall within the following exceptions to the mootness doctrine: (1) the public-interest exception for issues of substantial public importance; and (2) the exception for cases involving issues that are capable of repetition, yet evading review. 8

A. The writ petition raises legal issues that fall within the public-interest exception for issues of substantial public importance. 10

B. The writ petition raises legal issues that fall within the exception for cases involving issues that are capable of repetition, yet evading review. 17

CONCLUSION 20

CERTIFICATE OF COMPLIANCE 21

CERTIFICATE OF SERVICE 23

TABLE OF AUTHORITIES

CASES

Aspen Fin. Servs. v. Dist. Ct., 129 Nev.Adv.Op. 93, 313 P.3d 875 (2013).............5

Bergenfield v. BAC Home Loans Serv., 131 Nev.Adv.Op. 68, 354 P.3d 1282 (2015)..4

Bd. of County Comm'rs v. White, 102 Nev. 587 (1986) 10-11

Bus. Computer Rentals v. State Treasurer, 114 Nev. 63 (1998) 5-6

Deja Vu Showgirls v. State Dep't of Tax'n, 130 Nev.Adv.Op. 73, 334 P.3d 392 (2014)...2

Div. of Child & Family Servs. v. Dist. Ct., 120 Nev. 445 (2004).........................4, 6

Doe v. Doe, 172 P.3d 1067 (Haw. 2007)... 11-12

Fergason v. LVMPD, 131 Nev.Adv.Op. 94, 364 P.3d 592 (2015) 5

Foster v. Dingwall, 126 Nev. 49 (2010) 5

Galloway v. Truesdell, 83 Nev. 13 (1967) 13

Ham v. Dist. Ct., 93 Nev. 409 (1977)...6

Heller v. Legislature, 120 Nev. 456 (2004) 13

In re Bledsoe, 41 S.W.3d 807 (Tex. App. 2001) 6-7

In re Duong, 118 Nev. 920 (2002)..4

In re Guardianship of L.S. & H.S., 120 Nev. 157 (2004)............................. 9, 17-18

Jenkins v. Bishop, 589 P.2d 770 (Utah 1978) 14

Mineral Cnty. v. State, Dep't of Conserv. & Nat. Res., 117 Nev. 235 (2001)..........5

Nat'l Collegiate Athletic Ass'n (NCAA) v. Univ. of Nev., 97 Nev. 56 (1981).... 8-9

Paley v. Dist. Ct., 129 Nev.Adv.Op. 74, 310 P.3d 590 (2013)................................9

People v. Super. Ct. (Brent), 3 Cal.Rptr.2d 375 (Cal. Ct. App. 1992)................. 6-7

Personhood Nev. v. Bristol, 126 Nev. 599 (2010)..9

Rust v. Clark Cnty. Sch. Dist., 103 Nev. 686 (1987) 4, 5

Sarkes Tarzian, Inc. v. Legislature, 104 Nev. 672 (1988)................................ 10-11

Simmons Self-Storage Partners v. Rib Roof, Inc., 127 Nev. 86 (2011)....................4

Slupecki v. Admin. Dir. of Courts, 133 P.3d 1199 (Haw. 2006) 9-11

Solid v. Dist. Ct., 133 Nev.Adv.Op. 17, 393 P.3d 666 (2017).................................8

State v. Glusman, 98 Nev. 412 (1982)... 9-10

State ex rel. Stratton v. Roswell Ind. Sch., 806 P.2d 1085 (N.M. Ct. App. 1991)..14

Stephens Media, LLC v. Dist. Ct., 125 Nev. 849 (2009) 18

Storer v. Brown, 415 U.S. 724 (1974)... 18-19

NEVADA CONSTITUTION

Nev. Const. art.4, §2 ....15, 19

Nev. Const. art.4, §2A...19

Nev. Const. art.4, §29 15

Nev. Const. art.5, §9 19

Nev. Const. art.6, §4 4

NEVADA REVISED STATUTES

NRS 1.310 ....passim

NRS 218F.720 1-2

NEVADA RULES OF APPELLATE PROCEDURE

NRAP 4(a) 4

NRAP 21(a)(4) 3, 7

NRAP 29 2

TEXAS RULES OF APPELLATE PROCEDURE

Rule 52.3(k)(1)(A) 7

OTHER AUTHORITIES

Patricia D. Cafferata, Uniquely Qualified Legislators: Lawyers in the 2017 Legislature, Nevada Lawyer, Vol. 25-2, at 22-29 (Feb. 2017) 17

Avis K. Poai, Recent Developments: Hawaii's Justiciability Doctrine, 26 U. Haw. L. Rev. 537, 548-52 (Summer 2004) 9-10

INTRODUCTION

The Nevada Legislature (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby files an amicus brief in response to the Order to Show Cause issued by this Court on August 28, 2017. The show-cause order relates to the Petitioner's Emergency Petition for Writ of Mandamus and/or Prohibition which challenges the district court's decision finding the legislative continuance statute in NRS 1.310 to be unconstitutional. The show-cause order directs the parties to show cause as to why this Court should entertain the writ petition in light of two potential defects in the writ petition.[1]

First, because the district court's decision is contained in a "minute order" instead of a formal written order, the parties must show cause as to why the writ petition should be entertained in the absence of a formal written order. Second, because the 2017 legislative session has concluded and this Court has lifted the

[1] The Legislature's prior amicus brief on the merits—filed on March 30, 2017—was limited solely to the legal issues surrounding the proper constitutional and statutory interpretation of the legislative continuance statute in NRS 1.310. Similarly, this amicus brief is limited solely to the legal issues surrounding the potential defects raised by the show-cause order. It does not address any other issues arising from the particular facts of this case, and it does not support either party concerning such other issues.

stay of proceedings in the district court, the parties must show cause as to why the writ petition should be entertained in the face of potential mootness.

Under NRAP 29(a), as an agency of the State of Nevada, the Legislature "may file an amicus curiae brief without the consent of the parties or leave of court." Additionally, under NRS 218F.720(1), the Legislature may appear through its counsel in any action to protect its official interests. In this case, the district court determined that the legislative continuance statute is "unconstitutional as written as it violates the separation of powers doctrine of the Nevada Constitution by allowing the [L]egislature to commandeer the inherent power of the judiciary to govern its own procedures, removing all discretion from the Court." (*Pet'r App. to Reply: Order at 6.*) The Legislature has an interest in having this Court reach the merits of the district court's decision because the district court, by finding NRS 1.310 "unconstitutional as written," seems to have determined that the statute is unconstitutional on its face, which would mean that "there is no set of circumstances under which the statute would be valid." Deja Vu Showgirls v. State Dep't of Tax'n, 130 Nev.Adv.Op. 73, 334 P.3d 392, 398 (2014).

Thus, if the district court's decision goes unreviewed, it will be unclear whether a legislator-lawyer would ever be entitled to a mandatory continuance during a legislative session under any set of circumstances, even though under most circumstances a mandatory continuance would not cause any irreparable

harm or unreasonable delays. Accordingly, the Legislature respectfully asks this Court to exercise its original jurisdiction to entertain the writ petition and review the legal issues on the merits.

ARGUMENT

I. This Court has the authority and discretion to exercise its original jurisdiction to issue extraordinary writ relief even in the absence of a formal written order entered by the district court.

In response to the show-cause order, the petitioner filed an appendix that includes a formal written order entered by the district court on September 11, 2017. (*Pet'r App. to Reply: Order at 1-7.*) Consequently, the appendix submitted to this Court now includes "a copy of any order or opinion, parts of the record before the respondent judge, . . . or any other original document that may be essential to understand the matters set forth in the petition." NRAP 21(a)(4). Therefore, the petitioner's submission of the district court's formal written order should resolve the potential defect noted in this Court's show-cause order.

Furthermore, this Court's exercise of its original jurisdiction would be proper in this case even if the district court's decision was contained only in a "minute order" instead of a formal written order. Unlike the jurisdictional requirements imposed on this Court's exercise of its limited appellate jurisdiction, there are no comparable jurisdictional requirements imposed on this Court's exercise of its original jurisdiction to issue extraordinary writ relief. Therefore, this Court has the

authority and discretion to exercise its original jurisdiction to issue extraordinary writ relief even in the absence of a formal written order.

Under the Nevada Constitution, this Court does not have unlimited appellate jurisdiction. Nev. Const. art.6, §4. Instead, this Court's appellate jurisdiction "is limited to appeals authorized by statute or court rule." Bergenfield v. BAC Home Loans Serv., 131 Nev.Adv.Op. 68, 354 P.3d 1282, 1283 (2015). Additionally, with limited exceptions, this Court's appellate jurisdiction "depends on whether the district court has entered a final judgment in the action below . . . that resolves all of the parties' claims and rights in the action, leaving nothing for the [district] court's future consideration except for post-judgment issues." Simmons Self-Storage Partners v. Rib Roof, Inc., 127 Nev. 86, 87 (2011).

Because an appeal ordinarily requires the district court to enter a final judgment, that final judgment ordinarily must be in the form of a written and signed order filed with the court clerk, so that the contents of the district court's decision are finalized, concrete and clearly ascertainable and the parties are served with notice of the decision to begin the running of the 30-day jurisdictional period for filing a notice of appeal. NRAP 4(a); Div. of Child & Family Servs. v. Dist. Ct., 120 Nev. 445, 451-55 (2004); In re Duong, 118 Nev. 920, 922 (2002); Rust v. Clark Cnty. Sch. Dist., 103 Nev. 686, 688-90 (1987). Without a written, signed and filed order, this Court is unable to determine whether an aggrieved party has

properly invoked its appellate jurisdiction and has divested the district court of its jurisdiction to act except with regard to matters collateral to or independent from the appealed order. Rust, 103 Nev. at 688-90; Foster v. Dingwall, 126 Nev. 49, 52-53 (2010). Consequently, unless there is a written, signed and filed order, this Court cannot exercise its appellate jurisdiction.

In comparison to the restrictions imposed on this Court's exercise of its limited appellate jurisdiction, this Court's exercise of its original jurisdiction to issue extraordinary writ relief lies entirely within this Court's sole discretion. Mineral Cnty. v. State, Dep't of Conserv. & Nat. Res., 117 Nev. 235, 243-44 (2001); Aspen Fin. Servs. v. Dist. Ct., 129 Nev.Adv.Op. 93, 313 P.3d 875, 877-78 (2013). Therefore, any restrictions imposed by this Court on the exercise of its original jurisdiction to issue extraordinary writ relief are not jurisdictional restrictions. Rather, they are self-imposed rules of judicial restraint. Cf. Fergason v. LVMPD, 131 Nev.Adv.Op. 94, 364 P.3d 592, 600 (2015) (explaining that in Nevada, the doctrine of standing to sue is a self-imposed rule of judicial restraint under certain circumstances).

In extraordinary writ proceedings, this Court may relax self-imposed rules of judicial restraint in order to promote other important interests—including judicial economy and efficiency—and thereby reach the merits of legal issues "where the circumstances reveal urgency or a strong necessity" or "where an important issue

of law needs clarification and public policy is served by this [C]ourt's invocation of its original jurisdiction." Bus. Computer Rentals v. State Treasurer, 114 Nev. 63, 67 (1998).

Accordingly, unlike appeals which have a jurisdictional requirement mandating written, signed and filed orders, there is no comparable jurisdictional requirement for extraordinary writ petitions. Rather, as a self-imposed rule of judicial restraint, this Court generally will not entertain extraordinary writ petitions challenging decisions of the district court unless the district court has made those decisions in written, signed and filed orders. Div. of Child & Family Servs., 120 Nev. at 451-55. Nevertheless, this Court has relaxed its self-imposed rule of judicial restraint and has entertained such petitions in the absence of written, signed and filed orders under appropriate circumstances, such as when the district court makes oral orders pertaining to case management issues, scheduling or administrative matters that do not implicate "the merits of the underlying controversy." Id. at 453-54 (discussing Ham v. Dist. Ct., 93 Nev. 409, 410-11 (1977)).

This approach is consistent with appellate courts from other jurisdictions. See, e.g., In re Bledsoe, 41 S.W.3d 807, 811 (Tex. App. 2001); People v. Super. Ct. (Brent), 3 Cal.Rptr.2d 375, 380 (Cal. Ct. App. 1992). For example, the Texas appellate courts have stated that "[w]hile we do not encourage parties to file

mandamus actions based upon a court's oral pronouncements, we conclude that rule 52.3[(k)](1)(A) allows consideration of an oral order if the court's ruling is a clear, specific, and enforceable order that is adequately shown by the record."[2] Bledsoe, 41 S.W.3d at 811. The California appellate courts have entertained petitions for extraordinary writs where the district court entered a "minute order" instead of a formal written order, stating that:

> Where a court orders a clerk to enter a minute order, no formal writing signed by the court is necessary. Unless the trial court orders the preparation of a formal written order, it is well settled that the minute order is final and that all legal consequences ensue therefrom.

Brent, 3 Cal.Rptr.2d at 380 (citations omitted).

In this case, the district court's minute order is a clear, specific and enforceable order that is adequately shown by the record. (*PA:57-61.*)[3] In addition, because the order involves only a stay of proceedings under the legislative continuance statute, the order is directed at case management issues, scheduling and administrative matters that do not implicate the merits of the underlying controversy. Finally, because the legal issues surrounding the proper

---

[2] Similar to NRAP 21(a)(4), Texas Rule of Appellate Procedure 52.3(k)(1)(A) requires the appendix to an extraordinary writ petition to contain "a certified or sworn copy of any order complained of, or any other document showing the matter complained of."

[3] Citations to "*PA*" are to page numbers of Petitioner's Appendix filed on March 7, 2017.

constitutional and statutory interpretation of the legislative continuance statute present important issues of law that need clarification, the public policy of this State would be best served by this Court's exercise of its original jurisdiction to resolve any uncertainty surrounding the statute and provide an authoritative determination of the statute for the guidance of legislator-lawyers and litigants as well as for the lower courts that are charged with the statute's administration. Therefore, this Court's exercise of its original jurisdiction would be proper in this case even if the district court's decision was contained only in a "minute order" instead of a formal written order.

II. The writ petition should not be dismissed for mootness because it raises legal issues that fall within the following exceptions to the mootness doctrine: (1) the public-interest exception for issues of substantial public importance; and (2) the exception for cases involving issues that are capable of repetition, yet evading review.

The mootness doctrine applies to this Court's exercise of its original jurisdiction to issue extraordinary writ relief. Solid v. Dist. Ct., 133 Nev.Adv.Op. 17, 393 P.3d 666, 670 (2017). Under the mootness doctrine, "[a] moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights." Nat'l Collegiate Athletic Ass'n (NCAA) v. Univ. of Nev., 97 Nev. 56, 57 (1981). The purpose of the mootness doctrine is to ensure that a court decides a case only when it presents an actual or live controversy that continues to affect the rights of the parties and the court does not "give opinions

upon moot questions or abstract propositions" or "declare principles of law which cannot affect the matter in issue before it." Id.

As a general rule, a case must present a live controversy continuously throughout all stages of the litigation, and "even though a case may present a live controversy at its beginning, subsequent events may render the case moot." Personhood Nev. v. Bristol, 126 Nev. 599, 602 (2010). Therefore, under the mootness doctrine, before a court reaches the merits of a case, it must first determine whether the case still presents a live controversy or whether it has been rendered moot by subsequent events occurring after the commencement of the litigation. Paley v. Dist. Ct., 129 Nev.Adv.Op. 74, 310 P.3d 590, 592 (2013).

However, this Court recognizes certain exceptions to the mootness doctrine. Those exceptions include the public-interest exception for issues of substantial public importance, State v. Glusman, 98 Nev. 412, 418 (1982), and the exception for cases "where an issue is capable of repetition, yet will evade review because of the nature of its timing." In re Guardianship of L.S. & H.S., 120 Nev. 157, 161 (2004). Although "the public interest and capable of repetition, yet evading review exceptions are often merged, [they] should not be as they are two distinct exceptions that require different considerations." Slupecki v. Admin. Dir. of Courts, 133 P.3d 1199, 1201 n.4 (Haw. 2006) (quoting Avis K. Poai, Recent

Developments: Hawaii's Justiciability Doctrine, 26 U. Haw. L. Rev. 537, 548-52 (Summer 2004)).

A. The writ petition raises legal issues that fall within the public-interest exception for issues of substantial public importance.

Under the public-interest exception to the mootness doctrine, it is "within the inherent discretion of this Court to consider issues of substantial public importance which are likely to recur, in spite of any intervening event during the pendency of an appeal which has rendered the matter moot." Glusman, 98 Nev. at 418. Thus, there are cases where "the mootness doctrine must yield in the public interest to the more pressing expedient of statutory interpretation." Bd. of County Comm'rs v. White, 102 Nev. 587, 589 (1986).

For example, in Sarkes Tarzian, Inc. v. Legislature, 104 Nev. 672, 673-74 (1988), this Court applied the public-interest exception to the mootness doctrine to decide a constitutional issue of substantial public importance regarding the Legislature's power to hold committee meetings that are closed to the public, even though this Court did not decide the constitutional issue until after the conclusion of the legislative session at which the closed committee meetings were held. In determining that the public-interest exception to the mootness doctrine was applicable, this Court explained:

> [W]e would note, as did the trial court, that the legislature had adjourned before this issue was brought to hearing and that the houses of the next legislature may or may not have the occasion to involve themselves in

> matters such as this. Notwithstanding the apparent mootness, the trial court, citing Bd. of County Comm'rs v. White, 102 Nev. 587, 589 (1986), further noted that the "mootness doctrine must yield in the public interest to the more pressing expedient of statutory interpretation." The trial court properly concluded that the question as to whether a legislative committee may hold closed meetings under certain circumstances is just such an issue.

Id. at 674.

In applying the public-interest exception, this Court has found that application of the exception is particularly appropriate when uncertainty surrounding the interpretation or validity of a statute "presents substantial and vexing problems to agencies charged with the responsibility of [enforcing the statute]." White, 102 Nev. at 589. Likewise, courts in other jurisdictions have found that application of the exception is particularly appropriate when a district court declares a statute unconstitutional on its face because such a declaration creates an issue of great public concern and produces "a significant degree of uncertainty for any public officer." Doe v. Doe, 172 P.3d 1067, 1071 (Haw. 2007). In this regard, the Hawaii Supreme Court has stated that "when the question involved affects the public interest and an authoritative determination is desirable for the guidance of public officials, a case will not be considered moot." Slupecki, 133 P.3d at 1201 n.4.

For example, in Doe v. Doe, the family court held that Hawaii's grandparent visitation statute was unconstitutional on its face. 172 P.3d at 1069-70. When the

case was on appeal before the Hawaii Supreme Court, subsequent events had mooted the underlying visitation dispute between the mother and the grandparents of the minor child. Id. at 1070-71. Nevertheless, the Hawaii Supreme Court applied the public-interest exception in order to review the constitutionality of the statute, explaining:

> Here, there can be no question that it is in the public's interest for this court to review the family court's ruling that Hawaii's grandparent visitation statute is unconstitutional on its face. As to the first factor for consideration, the underlying proceedings are, at bottom, a private battle between Mother and Grandparents over whether Grandparents' access to Child is in Child's best interest. Nevertheless, the family court's wholesale invalidation of [the statute] injects the requisite degree of public concern. As Mother asserts, the family court's ruling stands to affect the fundamental rights of many Hawaii families. With respect to the second factor, the present matter begs for an authoritative determination inasmuch as the shadow cast over this jurisdiction's grandparent visitation statute creates a significant degree of uncertainty for any public officer involved in the child custody and visitation processes. As to the third factor, there is a strong likelihood that the issue presented will recur. To wit, the family court found the statute unconstitutional *on its face*. Thus, the issue may arise where any custodial parent is confronted with a petition for visitation under [the statute].

Id. at 1071.

In this case, by finding the legislative continuance statute is "unconstitutional as written," the district court seems to have determined that the statute is unconstitutional on its face, which would mean that a legislator-lawyer would never be entitled to a mandatory continuance during a legislative session under any set of circumstances, even though under most circumstances a mandatory

continuance would not cause any irreparable harm or unreasonable delays. Because the Legislature enacted the statute to balance the needs of the legislative branch and the needs of the judicial branch in a manner that is consistent with the State and Federal Constitutions, the district court's decision implicates several issues of substantial public importance.

First, the district court determined that the legislative continuance statute is "unconstitutional as written as it violates the separation of powers doctrine of the Nevada Constitution by allowing the [L]egislature to commandeer the inherent power of the judiciary to govern its own procedures, removing all discretion from the Court." (*Pet'r App. to Reply: Order at 6*.) Thus, the district court's decision implicates the proper balance of power between the legislative and judicial branches under the separation-of-powers doctrine. On many occasions, this Court has explained how the separation-of-powers doctrine is fundamental to our system of government because it serves to protect the people from the dangers of concentrated power. Galloway v. Truesdell, 83 Nev. 13, 19-22 (1967); Heller v. Legislature, 120 Nev. 456, 466 (2004). Indeed, this Court has stated that "separation of powers is probably the most important single principle of government declaring and guaranteeing the liberties of the people. It works by preventing the accumulation of power in any one branch of government." Heller, 120 Nev. at 466 (internal quotations and footnotes omitted). Consequently, given

that the proper balance of power among the branches of state government affects all Nevadans, it is in the public's interest for this Court to review the merits of the district court's decision that the legislative continuance statute is unconstitutional on its face in violation of the separation of powers.

Second, the district court's decision implicates the concept of the "citizen-legislator" which is the cornerstone of an effective, responsive and qualified part-time legislative body. In many western states like Nevada, the state constitution was framed on the concept of a part-time legislative body that is "to be made up from the general public representing a wide spectrum of the citizenry." Jenkins v. Bishop, 589 P.2d 770, 771 (Utah 1978) (Crockett, J., concurring). For example, the New Mexico Court of Appeals has stated that its state constitution was framed on "the constituency concept of our legislature in this state, which can accurately be described as a citizens' legislature. In a sparsely populated state like New Mexico, it would prove difficult, if not impossible, to have a conflict-free legislature." State ex rel. Stratton v. Roswell Ind. Sch., 806 P.2d 1085, 1093 (N.M. Ct. App. 1991). Thus, in states with part-time legislative bodies like Nevada, the constitutional framers fully expected that most state legislators would continue to

be employed in other occupations on a full-time or part-time basis during their terms of legislative service.[4]

To further the public policy of the citizen-legislator built by the Framers into the structure of the Nevada Constitution, the Legislature enacted the legislative continuance statute to encourage and assist lawyers who are knowledgeable and experienced in the law to serve as citizen-legislators in the lawmaking body. By requiring mandatory continuances *in most cases*, the statute makes it less burdensome and more manageable for legislator-lawyers to step away temporarily from their law practices during legislative sessions, so they can better focus their attention and efforts on performing their legislative functions.

Thus, the legislative continuance statute protects the people's right to have their elected representatives present and available in Carson City and performing their legislative functions without interruption or distraction from litigation during the extremely limited timeframe of the 120-day regular session or any special session. However, under the district court's decision, a legislator-lawyer would

---

[4] It is clear that the Framers of the Nevada Constitution intended the Legislature to be a part-time legislative body given that they provided for biennial legislative sessions in Article 4, Section 2, and they originally limited those biennial sessions to 60 days in Article 4, Section 29. Although Article 4, Section 29 was repealed in 1958, the fact that the citizens of Nevada voted in 1998 to limit biennial sessions to 120 days is a clear indication that the citizens of Nevada, like the Framers, want the Legislature to be a part-time legislative body.

never be entitled to a mandatory continuance during a legislative session under any set of circumstances. Therefore, if the district court's decision goes unreviewed, it will be unclear whether a legislator-lawyer would ever be entitled to a mandatory continuance during a legislative session under any set of circumstances, even though under most circumstances a mandatory continuance would not cause any irreparable harm or unreasonable delays.

As a result, the district court's decision creates a significant degree of uncertainty for legislator-lawyers and litigants during future legislative sessions because it is inevitable that they will need to make requests to continue judicial proceedings due to the demands of their legislative service. Because the purpose of the legislative continuance statute is to promote the public policy of the citizen-legislator built by the Framers into the structure of the Nevada Constitution, the statute requires mandatory continuances *in most cases*, excluding only those exceptional cases where it would produce unconstitutional results. However, given that the district court's decision facially invalidates the legislative continuance statute *in all cases*, the district court's decision will create a significant degree of uncertainty whenever legislator-lawyers or litigants make requests to continue judicial proceedings during future legislative sessions. Therefore, this Court should review the district court's decision to resolve any uncertainty surrounding the statute and provide an authoritative determination of the statute for the

guidance of legislator-lawyers and litigants as well as for the lower courts that are charged with the statute's administration.

Finally, there is a strong likelihood that the legal issues surrounding the proper constitutional and statutory interpretation of the legislative continuance statute will recur in future judicial proceedings. During the 2013, 2015 and 2017 regular sessions, there were a significant number of lawyers serving as members of the Legislature, including 14 of the 63 members during the 2017 regular session or 22 percent of all members. Patricia D. Cafferata, Uniquely Qualified Legislators: Lawyers in the 2017 Legislature, Nevada Lawyer, Vol. 25-2, at 22-29 (Feb. 2017). Therefore, it is highly likely that the legal issues surrounding the proper constitutional and statutory interpretation of the legislative continuance statute will arise again because it is inevitable that legislator-lawyers and litigants will need to make requests to continue judicial proceedings during future legislative sessions.

Accordingly, because the writ petition raises legal issues that fall within the public-interest exception to the mootness doctrine for issues of substantial public importance, the writ petition should not be dismissed for mootness, and this Court should review the legal issues raised by the writ petition on the merits.

B. The writ petition raises legal issues that fall within the exception for cases involving issues that are capable of repetition, yet evading review.

In addition to the public-interest exception, this Court recognizes an exception to the mootness doctrine for cases "where an issue is capable of repetition, yet will

evade review because of the nature of its timing." Guardianship of L.S. & H.S., 120 Nev. at 161. Under the capable-of-repetition exception, the mootness doctrine does not apply "when (1) the contested issue is likely to arise again, and (2) the challenged action is 'too short in its duration to be fully litigated prior to its natural expiration.'" Stephens Media, LLC v. Dist. Ct., 125 Nev. 849, 858 (2009) (quoting Guardianship of L.S. & H.S., 120 Nev. at 161). In cases involving facial challenges to the constitutionality of a statute, the U.S. Supreme Court has found that application of the capable-of-repetition exception is particularly appropriate when "[t]he construction of the statute, an understanding of its operation, and possible constitutional limits on its application, will have the effect of simplifying future challenges." Storer v. Brown, 415 U.S. 724, 737 n.8 (1974).

As discussed previously, given the significant number of lawyers serving as members of the Legislature, it is highly likely that the legal issues surrounding the proper constitutional and statutory interpretation of the legislative continuance statute will arise again during future legislative sessions because it is inevitable that legislator-lawyers and litigants will seek to continue judicial proceedings as a result of their legislative service. Therefore, the legal issues raised by the writ petition are capable of repetition during all future legislative sessions.

Furthermore, it is highly likely that the legal issues surrounding the proper constitutional and statutory interpretation of the legislative continuance statute will

evade appellate review because of the constitutional limitations imposed on the length of legislative sessions. Under the Nevada Constitution, regular sessions are limited to 120 days, and most special sessions are limited to 20 days. Nev. Const. art.4, §2, art.4, §2A & art.5, §9. Given these extremely limited timeframes, it is highly likely that any legislative session would end before this Court would be able to review the merits of any challenges to the interpretation or validity of the legislative continuance statute, which is exactly the situation that occurred with this writ petition. Therefore, if the legal issues surrounding the proper constitutional and statutory interpretation of the legislative continuance statute are not addressed in this writ petition, they are likely to evade review.

Finally, it would be extremely helpful to the legislative branch and the legal community for this Court to address the legal issues surrounding the proper constitutional and statutory interpretation of the legislative continuance statute because "[t]he construction of the statute, an understanding of its operation, and possible constitutional limits on its application, will have the effect of simplifying future challenges." Storer, 415 U.S. at 737 n.8. If this Court does not address these legal issues, they will evade review and cause substantial and vexing problems for legislator-lawyers and litigants as well as for the lower courts that are charged with the statute's administration.

Accordingly, because the writ petition raises legal issues that fall within the exception to the mootness doctrine for issues that are capable of repetition, yet evading review, the writ petition should not be dismissed for mootness, and this Court should review the legal issues raised by the writ petition on the merits.

CONCLUSION

Based on the foregoing, the Legislature respectfully asks this Court to exercise its original jurisdiction to entertain the writ petition and review the legal issues on the merits.

DATED: This **12th** day of September, 2017.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
KEVIN C. POWERS
Chief Litigation Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
E-mail: kpowers@lcb.state.nv.us
Attorneys for Amicus Curiae Nevada Legislature

CERTIFICATE OF COMPLIANCE

1. We certify that the foregoing Amicus Brief complies with the formatting requirements of NRAP 29(d) and NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14 point font and Times New Roman type.

2. We certify that the foregoing Amicus Brief complies with the type-volume limitations of NRAP 29(e) and NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), the brief is proportionately spaced, has a typeface of 14 points or more, and contains **4,677** words, which is less than the type-volume limit of 7,000 words.

3. We certify that we have read the foregoing Amicus Brief, and to the best of our knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose. We further certify that the 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 appendix where the matter relied on is to be found. We understand that we may be subject to sanctions in the event that the brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: This **12th** day of September, 2017.

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
KEVIN C. POWERS
Chief Litigation Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
E-mail: kpowers@lcb.state.nv.us
Attorneys for Amicus Curiae Nevada Legislature

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **12th** day of September, 2017, pursuant to NRAP 25 and NEFCR 8 and 9, I filed and served a true and correct copy of the foregoing Amicus Brief of the Nevada Legislature in Response to Order to Show Cause, in the manner noted below, directed to the following:

By means of the Nevada Supreme Court's electronic filing system and electronic mail directed to:
KEITH F. PICKARD, ESQ.
E-mail: keithp@nevadafamilylaw.com
NEVADA FAMILY LAW GROUP
10120 S. Eastern Ave., Ste. 140
Henderson, NV 89052
Attorneys for Petitioner

By means of the Nevada Supreme Court's electronic filing system and electronic mail directed to:
NEDDA GHANDI, ESQ.
E-mail: nedda@ghandilaw.com
GHANDI DEETER BLACKHAM
725 S. 8th St., Ste. 100
Las Vegas, NV 89101
Attorneys for Real Party in Interest

By United States Mail, postage prepaid, directed to:
HONORABLE LINDA MARQUIS
EIGHTH JUD. DIST. CT., DEPT. B
FAMILY COURTS & SERVICE CENTER
601 N. Pecos Rd.
Las Vegas, NV 89101
Respondent District Judge

/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau