

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

PAOLA M. ARMENI, JONAH J.)
HORWITZ, and DEBORAH A. CZUBA,)
Petitioners,)
)
THE EIGHTH JUDICIAL DISTRICT)
COURT of the STATE of NEVADA, IN)
AND FOR the COUNTY of CLARK; and)
THE HONORABLE MICHAEL P.)
VILLANI,)
Respondents, and)

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No. 73462
Elizabeth A. Brown
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District Court No.:
81C053867

TIMOTHY FILSON, Warden, ADAM
PAUL LAXALT, Attorney General for the
State of Nevada, and THE STATE OF
NEVADA,
Real Parties in Interest.

**REPLY TO CLARK COUNTY DISTRICT ATTORNEY’S OPPOSITION
TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

“The lady doth protest too much . . .” Hamlet Act 3, scene 2, 222–230

The District Attorney has filed a 12-page opposition to the filing of *amici*’s proposed 21-page brief. The opposition includes a broad defense of the sanctions challenged in this mandamus petition. It accuses the attorney petitioners here of “skullduggery[,]” “gamesmanship,” and then extensively quotes (without attribution) from its own pleading in the district court which similarly alleged a “pattern” among federal defender offices of waiting until the last minute to seek relief under *Hurst v. Florida*, __ U.S. __, 136 S. Ct. (2016). Opp’n, at 8-10

(quoting 2 AA 460-62 (District Attorney’s pleading below)). The implication is that nefarious litigation is afoot.

But nothing nefarious is going on. On the contrary, the District Attorney only highlights the importance of petitioners pursuing *Hurst* for their death-sentenced client, Samuel Howard (which they did well before the one-year deadline at issue, in October of 2016). As *amici* can attest, from the participation of the American Civil Liberties Union’s Capital Punishment Project, this is not unusual. Lawyers across the Nation are considering *Hurst* and filing appropriate claims when they are available. Some file early, some later. More importantly, some *Hurst* arguments have been extraordinarily successful, halting a large number of executions. The District Attorney’s casual allegations of impropriety and heavy reliance on recycled and inapt pleadings below show how little he has to say about the appropriateness of *amici*’s proposed brief.

As to timeliness, the District Attorney acknowledges, Opp’n at 4, the seven-day deadline for filing an *amicus* brief is triggered by the filing of “the brief of the party being supported[.]” Nev. R. App. P. 29 (f). This is a writ proceeding, initiated by a writ, and not by a brief. Future briefs may be ordered. The applicability of the seven-day timeline therefore is open to question. In any case, the “court may grant leave for later filing,” *id.*, and should do so here given the genuine question about how the rule applies with respect to this procedural posture

and, most important, the lack of prejudice to the State, which will have an opportunity to respond to the arguments in the *amicus* brief if the Court rules to allow it. Indeed, the District Attorney has already, in this opposition, taken on the arguments in the *amicus* brief, and claimed it is duplicative of the petitioner's writ. Opp'n at 6-7. Given the District Attorney's view of the brief, no extra work will be involved for the State, and it will suffer no prejudice if the brief is allowed.

Three additional notes: First, the District Attorney repeatedly claims that *amici* are seeking to "intervene" in the case. Opp'n at 5 (once), 7 (twice). By selecting language that incorrectly implies a greater burden on *amici* than set forth under the applicable rule of appellate procedure,¹ the District Attorney further reveals the weakness of his position. Second, the District Attorney believes that *amici* should not be permitted to file a brief supporting a *party*, rather they should only offer neutral advice to the Court. Opp'n at 6 (quoting *Long v. Coast Resorts, Inc.*, 49 Supp. 2d 1177, 1178 (D. Nev. 1999)). But the rules of appellate procedure contemplate otherwise. Nev. R. App. P 29 (f) (contemplating briefs in "support[]" of one of the parties). Finally, to achieve the purpose of suppressing this *amicus* brief, the District Attorney ignores an important element of the brief: unlike petitioners, who take issue with the factual basis for the sanctions, *amici*'s brief assumes that "petitioners somehow failed to follow the court rules[.]" Br. at 17, but

¹ See generally Nev. R. Civ. P. 24.

goes on to show that, whatever mistakes they made, the imposition of sanctions raises serious constitutional concerns.

For these reasons, and those set forth in proposed *amici*'s initial motion and proposed brief, the Court should grant the motion for leave to file.

Respectfully submitted,

/s/ Amy M. Rose

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **REPLY TO CLARK COUNTY DISTRICT ATTORNEY'S OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF** on October 23, 2017. I have also mailed this document by USPS, postage prepaid, for delivery within three calendar days to the following people:

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