IN THE SUPREME COURT OF THE STATE OF NEVADA

PAOLA M. ARMENI, JONAH J. HORWITZ, and DEBORAH A. CZUBA

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT of the STATE of NEVADA, in and for the COUNTY OF CLARK; and THE HONORABLE MICHAEL P. VILLANI,

Respondents,

TIMOTHY FILSON, Warden, ADAM PAUL LAXALT, Attorney General for the State of Nevada, and THE STATE OF NEVADA

Real Parties in Interest.

Supreme Court Case No. 73462

Underlying Case: Clark County Dist. Ct. No. 81C053867

OPPOSITION TO MOTION TO STRIKE

The State's motion to strike, filed February 16, 2018 ("Motion" or "MTS"), is based on the erroneous assertion that NRAP 31(e) "does not authorize a response to a notice of supplemental authorities." MTS at 5. A cursory glance at the rule proves otherwise. NRAP 31(e) provides: "The notice may not raise any new points or issues. *Any response must be made promptly and must be similarly*

limited." Thus, the rule expressly allows for responses to notices of supplemental authority. The State cannot erase the language of the rule by ignoring it.

Consistent with the plain text of NRAP 31(e), litigants in this Court routinely file responses to notices of supplemental authority. *See, e.g.*, *In re Dish Network Litig.*, No. 69012, Resp., filed March 1, 2017; *Ford Motor Co. v. Trejo*, No. 67843, Resp., filed July 13, 2016; *Watson v. State*, No. 56721, Resp., filed Jan. 31, 2014; *Garmony v. Silverman*, No. 59275, Resp., filed Aug. 7, 2013; *City of N. Las Vegas v. 5th & Centennial, LLC*, Nos. 58530, 59162, Resp., filed Aug. 2, 2013; *Franchise Tax Bd. v. Hyatt*, No. 53264, Supp. Auths. & Resp. to Suppl. Auths., at 7–10, filed April 26, 2012; *Rippo v. Baker*, No. 53626, Resp., filed Sept. 23, 2011. The Court accepted all of those responses. There is no reason for it to reject the petitioners'.

Although the State is demonstrably mistaken about the language of NRAP 31(e) and about the Court's practice, it is correct about one thing. Specifically, it is true that the dispute over the petitioners' response "is a perfect illustration of why Judge Villani imposed a $250.00 sanction." MTS at 4. With respect to both issues, the petitioners filed their pleading after researching the law and the local practice and acting in accordance with them. And with respect to both issues, a single overzealous prosecutor—Jonathan VanBoskerck—invented an imaginary procedural rule that had never before been applied to anyone else in an attempt to

obstruct access to the courts for a death-row inmate and his attorneys. *See* Reply in Supp. of Pet., filed Jan. 18, 2018, at 23–32. In that sense, the State's motion to strike is a telling repeat of the troubling dynamic in the proceedings below, and a further reason for the sanctions to be vacated.

Mr. VanBoskerck suggests that the petitioners' response exceeds the scope of NRAP 31(e) because they "do not limit themselves to citation to a responsive case or statute." MTS at 5. It appears that this suggestion flows from Mr. VanBoskerck's confusion over the nature of the rule. Since NRAP 31(e) explicitly does permit responses, those responses by definition do not just recite an authority. Instead, they *respond* to the authority proffered by the opposing party. The petitioners' response was therefore fully compliant with the rule, and quite similar to several of the responses referred to above in length, content, and style. *See supra* at 2.

Mr. VanBoskerck's complaint that he is now "at a disadvantage" because he was unable to engage with the petitioners' two-and-a-half-page response, MTS at 8, is unpersuasive. NRAP 31(e) contemplates a notice and a response. That is what occurred. Briefing that was done in complete harmony with the rule can hardly be considered unfair. In any event, if Mr. VanBoskerck had more to say on the matter, he could easily have filed a motion for leave to file a reply. *See Ford Motor Co. v. Trejo*, Nev. S. Ct., No. 67843, Order, filed Aug. 14, 2015 (granting

such a request). That is precisely what the petitioners did with their reply in support of the mandamus petition. *See* Mot., filed Jan. 3, 2018. Had Mr. VanBoskerck done so, the petitioners would not have opposed the motion. For they, unlike him, have no interest in preventing this case from receiving the thorough briefing it deserves. Simply put, Mr. VanBoskerck cannot protest at being silenced when he never tried to speak.

The instant Motion is part of an unfortunate campaign by Mr. VanBoskerck to keep the Court from even considering any perspective that might be at odds with his own. *See* Oppos., filed Oct. 16 and 20, 2017 (resisting the participation of amici); Oppo., filed Jan. 5, 2018 (contesting the petitioners' request to file a reply in support of their mandamus petition). Recognizing the serious issues presented by the case, the Court has rejected that campaign before. *See* Orders, filed Dec. 6, 2017 & Jan. 18, 2018. It should do so again here.

In summary, the Motion is completely contrary to the controlling rule and to the uniform practice of the Court, as well as the uniform practice of every previous litigant except the lone overaggressive prosecutor representing the State here. As such, the Motion should be denied.

DATED this 22nd day of February 2018.

/s/ Paola M. Armeni
PAOLA M. ARMENI, ESQ.
Nevada Bar No. 8357
410 South Rampart Blvd., Ste. 420
Las Vegas, Nevada 89145

/s/ Jonah Horwitz
JONAH J. HORWITZ, ESQ.
Idaho Bar No. 10494
720 West Idaho Street, Suite 900
Boise, Idaho 83702

/s/ Deborah A. Czuba
DEBORAH A. CZUBA, ESQ.
Idaho Bar No. 9648
720 West Idaho Street, Suite 900
Boise, Idaho 83702

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on February 22, 2018. Electronic service of the document shall be made in accordance with the Master Service List to:

Jonathan E. VanBoskerck
Chief Deputy District Attorney
200 East Lewis Avenue
Las Vegas, Nevada 89101
Jonathan.VanBoskerck@clarkcountyda.com

/s/ Joy L. Fish
Joy L. Fish