

No. 74876

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF NEVADA, INC.,

Appellant,

vs.

WEST TAYLOR STREET, LLC,

Respondent.

Appeal from the Second Judicial District Court, The Honorable
Connie J. Steinheimer (Case No. CV12-02995)

REPUBLIC SILVER STATE DISPOSAL, INC.'S REPLY IN
SUPPORT OF MOTION FOR LEAVE TO FILE AN
AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT
AND REVERSAL

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Respondent West Taylor Street, LLC ("Respondent") offers no valid reason for the Court to deny Republic¹ leave to file its *Amicus Curiae* brief in support of Waste Management. Respondent does not deny that, as the largest waste management company in Southern Nevada, Republic possesses a unique interest in the consequences of Waste Management's position in this appeal. Nor does Respondent deny that a decision by the Court affirming the District Court's Order will substantially increase the number of foreclosures Republic must commence on real property in Southern Nevada. Respondent's admissions through silence establish that Republic has an interest in this appeal. *See* NRAP 29(c)(1).

The gravamen of Respondent's Opposition is that Republic's *Amicus Curiae* brief is not "desirable" (*see* NRAP 29(c)(2)) for three reasons: (1) Respondent has "no knowledge of the Franchise agreement between Republic and Clark County" (*see* Opp. at 1); (2) the Nevada Legislature "vested municipalities/counties with authority to 'preserve a

¹ Unless defined herein, capitalized terms in this Reply shall have the same definitions as described in "Republic Silver State Disposal, Inc.'s Reply in Support of Motion for Leave to File an *Amicus Curiae* Brief in Support of Appellant and Reversal" Document 2018-29474 ("Republic's Motion").

plan to provide for solid waste management system" and Clark County enacted ordinances consistent with this delegation of authority (*id.* at 1-2); and (3) "there are no Washoe County ordinances that were ever addressed by the district court or that are at issue in this court" (*id.* at 2). Each argument is addressed in turn.

To begin, Republic mentioned in its Motion that it entered into franchise agreements with various municipalities to provide waste management services for those areas. (*See* Mot. at 1-2.) Republic's Motion also noted that its franchise agreement, and all amendments thereto, with Clark County are matters of public record. (*Id.*) Republic did not, however, delve into the details of the franchise agreement for purposes of this appeal for one key reason: the relevant provisions of that agreement expressly require Republic's compliance with Chap. 9.04 of the Clark County Code of Ordinances.² Hence, the crux of Republic's Motion is Chap. 9.04 of the Clark County Ordinances, which governs Republic's collection of fees and costs for the services it provides. Respondent's attempt to hinge the outcome of Republic's

² *See e.g.*, Franchise Agreement for Collection and Disposal of Solid Waste dated Feb. 6, 1996, at p. 15 ("CONTRACTOR shall make all collections of rates, fees and charges subject to provisions in Chapter 9.04 of the Clark County Code and amendments thereto....").

Motion on publicly available franchise agreements should be disregarded.

Respondent's next argument is puzzling. Respondent does not deny that the Nevada Legislature gave authority to municipalities to "develop a plan to provide for a solid waste management system" and that such plan may include "ordinances adopted pursuant to NRS 444.520 and 444.530." NRS 444.510(1)-(2). And, Respondent concedes that Clark County enacted various ordinances that "address garbage disposal and fees." (*See Opp. at 3.*) Respondent then exclaims that "[t]here is no corresponding law in Washoe County!" (*Id. at 2.*) In a further attempt to distinguish Republic from Waste Management, Respondent states "[o]bviously, we are talking about two different jurisdictions with two different Franchise agreements and a set of ordinances that control Republic." (*Id. at 3.*) Respondent is arguing that Republic would not be bound by the Court's ruling on the District Court's Order because Republic is governed by ordinances that do not exist in Washoe County. Respondent's Opposition disregards the fact that the Court's decisions necessarily reverberate throughout the Nevada justice system.

To the extent it agrees with Respondent, the Court should unequivocally state in its ultimate decision in this appeal that its ruling does not affect any municipality, like Clark County, that has adopted its own ordinances "pursuant to NRS 444.520 and 444.530." Without such limiting language, any decision by the Court affirming the District Court's Order would have broad ramifications. It would allow the District Court to wrongly usurp a municipality's right and obligation to adopt ordinances that impact the its waste management system.

For its last argument, Respondent tries to sweep the District Court's errors under the rug by claiming that "there are no Washoe County ordinances that were ever addressed by the district court or that are at issue in this court." (*See Opp. at 2.*) Respondent misses the point. As touched on in Republic's Motion and detailed in the *Amicus Curiae* brief attached thereto, the Court *should* consider the effect of municipality ordinances, such as the ones adopted by Clark County, before it decides to affirm or reverse the District Court's Order. The lack of any discussion concerning ordinances in the District Court's Order only underscores the desirability of Republic's *Amicus Curiae*

brief.³

In sum, Respondent's tactical request to limit the Court's consideration of Republic's arguments provides no basis to deny Republic's Motion. In deciding this appeal, the Court should consider not just the specific findings of the District Court's Order, but the broad implications of its decision. It should do so here, with whatever assistance Republic's *Amicus Curiae* brief may provide. For the reasons set forth above and in its Motion, Republic respectfully requests that the Court grant the Motion pursuant to NRAP 29(a).

DATED this 13th day of August, 2018.

³ See *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 365 n.9, 989 P.2d 870, 877 (1999) (finding that, although an argument concerning statutory interpretation was presented for the first time in an *amicus curiae* brief, the Court would, in the interests of judicial economy, "address the matter at this time" rather than require the party to raise the issue in district court).

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **REPUBLIC SILVER STATE DISPOSAL, INC.'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT AND REVERSAL** with the Clerk of the Court of the Supreme Court of Nevada by using the Court's Electronic Filing System on July 31, 2018.

I certify that the participants in the case are listed below and are registered electronic filing users and the service will be accomplished by the Court's Electronic Filing system.

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