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 *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT AND REVERSAL

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NRAP 26.1 Disclosure

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Republic Silver State Disposal, Inc.'s ("Republic") parent company is Republic Services, Inc., which is publicly traded on the NYSE under the trading symbol RSG.

Peterson Baker, PLLC is the only law firm whose partners or associates have or are expected to appear for Republic in this matter.

DATED this 31st day of July, 2018.

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By: /s/ Tamara Beatty Peterson

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES — continued

Page(s)

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

TABLE OF AUTHORITIES — continued

Page(s)

MISCELLANEOUS

I. STATEMENT OF INTEREST

Republic Silver State Disposal, Inc. ("Republic") is a waste collection and disposal company based in Las Vegas, Nevada. Republic's parent company, Republic Services, Inc. ("Republic Services"), is an industry leader in United States non-hazardous solid waste and recycling services for commercial, industrial, municipal and residential customers.

Republic Services, via its subsidiaries, serves over 2,700 municipalities and communities across the United States.[1] Several of these municipalities are located in Southern Nevada. Republic entered into franchise agreements with various municipalities within Clark County, including the City of Las Vegas, the City of North Las Vegas, the City of Henderson, and Clark County, to provide waste management services for those areas.[2] Because Republic has exclusive franchise rights for the collection of solid waste, it is obligated to

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[1] *See* https://www.republicservices.com/about-us (last visited July 27, 2018).

[2] The franchise agreement, and all amendments thereto, with Clark County is a matter of public record. *See e.g.,* http://www.clarkcountynv.gov/business-license/franchise-services/Pages/ListofFranchiseesLicensees.aspx (last visited July 28, 2018).

provide, and does provide, solid waste collection services for entities and individuals located within the geographical boundaries of these municipalities. Depending on the franchise agreement, the owner of each property either pays Republic directly for waste management services or pays the municipality.

If a property owner fails to pay for certain utility services, such as gas and electric, the gas or electric provider can shut off their services. If a property owner fails to pay a contractor for work performed on the property, the contractor can cease doing any additional work on the property until the contractor is paid. The examples are endless. But what happens if a property owner fails to make their quarterly payments for Republic's recycling and waste disposal services? They still get their trash and recycling picked up each week by Republic.

Due to public health reasons, the law does not permit Republic to refuse to pick up the property owner's waste at their residential property, if they fail to pay Republic. Nor may Republic return the trash it previously picked up to the property owner's curbside. Republic's remedy is to lien the property served for the amount owed to Republic for the services it provides.

The Nevada Legislature enacted NRS 444.520 to provide waste management companies, like Republic and Appellant Waste Management Nevada, Inc. ("Waste Management"), perpetual lien rights to ensure that they are compensated for providing their vital public services. The Legislature then delegated the responsibility for planning and implementing effective solid waste management systems to municipalities. *See e.g.*, NRS 444.510. Consistent with these enabling statutes, Clark County has enacted various ordinances, which "regulate the collection and disposal of solid waste in a manner that is consistent with Nevada Revised Statutes" and the Nevada Legislature's declared policy in NRS 444.440. *See* Clark County Ordinance 9.04.005.

However, the District Court's Order entered on July 28, 2014 (the "Order") seeks to impose restrictions on waste management companies that are not found anywhere in NRS 444.520 or in the Clark County Ordinances. If the District Court's Order is upheld by the Court, it would inevitably cause harm to Republic's customers and to Republic's ability to recover for the vital waste management services it provides. For the reasons set forth herein and in Republic's "Motion for Leave to File an *Amicus Curiae* Brief in Support of Appellant and Reversal,"

which is incorporated by reference herein, Republic respectfully submits this *Amicus Curiae* brief. Republic respectfully urges the Court to reject the District Court's Order.

II. ARGUMENT

This appeal concerns a district court's wrongful attempt to rewrite a statute. The key statutory provision at issue in this appeal is NRS 444.520(3), which provides, in pertinent part, that a "perpetual lien" "may be foreclosed in the same manner as provided for the foreclosure of mechanics' liens." The District Court found "there is an ambiguity as to which portions of the mechanic's lien statutes may be applied since the specific sections are not listed in the language of the statute." (*See* 2 JA_0409.) After finding the statute ambiguous, the District Court held that "the constitutionally sound reading of NRS 444.520 [ ] permits the incorporation of NRS Chapter 108 mechanic's liens statutes to the extent that they govern lien foreclosure procedures not addressed by the language of NRS 444.520." (*See* 2 JA_0416.) The District Court then determined that "the 90 day notice of lien statute of limitations found in NRS 108.226 does apply to garbage liens." (*Id.*) The District Court compounded its error by also finding that a waste management

company must foreclose on its "perpetual lien" within two years pursuant to NRS 11.190(4)(b). (*See* 2 JA_0416-17.)

The problems with the District Court's Order are many; however, given the length limitations placed on this *Amicus Curiae* brief by NRAP 29(e), this brief will address only a few of the District Court's missteps. For any or all of the reasons set forth herein and in Waste Management's Opening Brief, the Court should reverse the District Court's Order.

A. The Statutes at Issue Must be Interpreted According to the Well-Settled Rules of Statutory Interpretation in Nevada.

Any discussion concerning the interpretation of NRS 444.520 or any other pertinent statute necessarily begins with the well-settled rule regarding statutory interpretation in Nevada: "When presented with a question of statutory interpretation, the intent of the legislature is the controlling factor and, if the statute under consideration is clear on its face, a court cannot go beyond the statute in determining legislative intent." *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). Put another way, "[w]hen the language in a provision is clear and unambiguous, this court gives 'effect to that meaning and will not

consider outside sources beyond that statute.'" *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 272, 236 P.3d 10, 16 (2010) (citation omitted). Only when a statute is ambiguous and "contains language that might reasonably be interpreted in more than one sense or that otherwise does not speak to the issue before the court" may the Court examine the statute "through reason and considerations of public policy to determine the legislature's intent." *International Game Tech., Inc. v. Second Jud. Dist. Ct.*, 122 Nev. 132, 152, 127 P.3d 1088, 1102 (2006) (citation omitted).

At least four rules guide the Court in interpreting statutory language for its plain meaning or otherwise. *First*, a court "must" construe statutes "to give meaning to all of their parts and language" and "should read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." *Bd. of County Com'rs v. CMC of Nevada, Inc.*, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983). *Second*, a court must examine a statute "as a whole without rendering words or phrases superfluous or rendering a provision nugatory." *Haney v. State*, 124 Nev. 408, 411, 185 P.3d 350, 353 (2008). *Third*, "whenever possible, a court will interpret a rule or statute in

harmony with other rules or statutes," *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999), because the legislature presumably enacts statutes "with full knowledge of existing statutes relating to the same subject." *City of Boulder v. Gen. Sales Drivers*, 101 Nev. 117, 118-19, 694 P.2d 498, 500 (1985). *Fourth*, a court's "interpretation should avoid absurd or unreasonable results." *Nevada Power*, 115 Nev. at 364, 989 P.2d at 877.

Viewing the District Court's Order through these guiding principles, it is clear that the Order is erroneous. The Court should reverse the District Court's Order.

B. NRS 444.520(3) Does Not Require Waste Management Companies to Comply with All of the Mechanics' Lien Statutes.

The "principal issue" "of statewide public importance" raised in Waste Management's Opening Brief is "[w]hether the District Court erred holding NRS 444.520(3) requires the incorporation of the 'entire mechanic's lien statutory scheme' and not just the single 'foreclosure' statute specifically referenced in NRS 444.520(3)." (*See* Opening Br. at 1:1-7.) As Waste Management demonstrates in its Opening Brief, the Court should answer this question in the affirmative.

Under the principles set forth in Section II(A), *supra*, the Court should look to the plain language of NRS 444.520. In 2005, NRS 444.520 was revised to provide, among other things, that "any such unpaid fee or charge [for the management of solid waste] constitutes a lien against the property served...." *See* S.B. 354 (2005).[3] Specifically, NRS 444.520(3) was amended to add the following:

> Until paid, any fee or charge levied pursuant to subsection 1 constitutes a **perpetual lien** against the property served, superior to all liens, claims and titles other than liens for general taxes and special assessments. The lien is not extinguished by the sale of any property on account of nonpayment of any other lien, claim or title, except liens for general taxes and special assessments. **The lien may be foreclosed in the same manner as provided for the foreclosure of mechanics' liens.**

(Emphasis added.) As Waste Management aptly explains in its Opening Brief, the intent behind the amendment to NRS 444.520 was to allow waste management companies, like Republic and Waste Management, to collect on unpaid bills because waste management companies are not permitted to refuse to pick-up garbage for non-payment due to health issues.[4]

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[3] *See* http://www.leg.state.nv.us/Session/73rd2005/bills/SB/SB354_EN.pdf (last visited July 27, 2018).

[4] *See* http://www.leg.state.nv.us/Session/73rd2005/Minutes/Senate/GA/Final/

Nothing in the plain language of NRS 444.520(3) incorporates the mechanic's lien statutes under NRS Chap. 108, to the extent not set forth in NRS 444.520. Importantly, the Court should note that other statutes reveal with conspicuous clarity that the Nevada Legislature knows how to incorporate the consistent provisions of other NRS Chapters when it deems such incorporation appropriate. The examples Republic can provide are numerous; however, the following are two citations to Nevada Revised Statutes wherein the Nevada Legislature has expressly incorporated provisions of other NRS Chapters to the extent those provisions are not inconsistent: NRS 695B.050 ("Persons desiring to form a nonprofit hospital, medical or dental service corporation shall incorporate pursuant to the provisions of this chapter, and the provisions of the nonprofit corporation laws of the State of Nevada, including NRS 81.410 to 81.540, inclusive, or chapter 82 of NRS, as applicable, so far as the provisions of such laws are applicable and not inconsistent with this chapter."); NRS 81.140(2) ("Except as otherwise provided in subsection 3, the provisions of chapter 82 of NRS govern a nonprofit cooperative corporation organized pursuant to NRS

4090.pdf (last visited July 27, 2018).

81.410 to 81.540, inclusive, except to the extent that the provisions of chapter 82 of NRS are inconsistent with NRS 81.410 to 81.540, inclusive.").

The Nevada Legislature could easily have written into NRS 444.520 a provision that states something akin to "the provisions of chapter 108 of NRS govern the foreclosure of the perpetual lien, except to the extent that the provisions of chapter 108 of NRS are inconsistent with this chapter", but it did not. The absence of such language in NRS 444.520 or anywhere else in NRS Chap. 444, coupled with the presence of the express incorporation of provisions in NRS Chapters in other statutes, creates a strong presumption that the Nevada Legislature did not intend to incorporate the mechanic's lien statutes under NRS Chap. 108, to the extent not set forth in NRS 444.520. *See e.g., State v. Javier C.*, 128 Nev. Adv. Op. 50, 289 P.3d 1194, 1197 (2012) (stating that "Nevada follows the maxim *'expressio unius est exclusio alterius,'* the expression of one thing is the exclusion of another."); A. SCALIA & B. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 93 (2012) ("Nothing is to be added to what the text states or reasonably implies (*casus omissus pro omisso habendus est*). That is, a matter not covered

is treated as not covered.") [hereinafter SCALIA & GARNER, READING LAW]. The District Court's interpretation to the contrary was, as a matter of law, in error. *See City of Reno*, 236 P.3d at 16 ("Statutory construction is a question of law, which this court reviews de novo".).

Additionally, the District Court seemingly found that the only statute in NRS Chap. 108 directly "relat[ed] to mechanic's lien foreclosures" was NRS 108.239. (*See* 2 JA_0409.) Yet, the District Court found that the Legislature's failure to specifically identify NRS 108.239 in NRS 444.520(3) rendered NRS 444.520(3) ambiguous. (*Id.*) The District Court's findings are incongruous. If NRS 108.239 sets forth the "manner of mechanic's lien foreclosures" and NRS 444.520(3) expressly states that liens may be foreclosed "in the same manner as provided for the foreclosure of mechanics' liens", then NRS 444.520(3) is not, and cannot be, ambiguous. The District Court erred when it found NRS 444.520(3) is ambiguous.

If the Court were to hold otherwise, it would subject numerous other statutes to attack. Waste Management cited a "multitude of other statutory schemes identifying that these other statutory liens 'may be foreclosed in the same manner as provided for the foreclosure' of other

liens." (*See* Opening Br. at xii:1-4.) To find NRS 444.520 ambiguous, the Court would likewise be implicitly holding that the Nevada Legislature was unclear in its directives in numerous other statutes. Such a result is neither warranted nor reasonable.

In sum, to affirm the District Court's Order, the Court would have to insert what has been omitted from, omit what has been included in, and rewrite NRS 444.520. The Court should decline to expand and rewrite the law. *See State Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000) ("Where the language of a statute is plain and unambiguous, and its meaning is clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.").

C. The Nevada Legislature Enabled Municipalities to Implement Ordinances that Govern Solid Waste Management.

As set forth above, the Court can and should reverse the District Court's Order based on what is omitted from and what is included in NRS 444.520. But, there is yet another reason why the Court should decline to adopt the District Court's attempt to dictate the timing, notice, and enforcement of waste management company liens; the

Nevada Legislature delegated those issues to municipalities.

To put this point in a workable perspective, Republic must go back over forty-five years ago to when the Nevada Legislature "declared to be the policy of this State to regulate the collection and disposal of solid waste in a manner that will: (1) Protect public health and welfare; (2) Prevent water or air pollution; (3) Prevent the spread of disease and the creation of nuisances; (4) Conserve natural resources; and (5) Enhance the beauty and quality of the environment." NRS 444.440. To effectuate this policy, the Nevada Legislature has enacted various statutes over the years that govern the collection and disposal of solid waste.

As discussed in Waste Management's Opening Brief and mentioned in Section I, *supra*, the Nevada Legislature enacted NRS 444.520 to provide waste management companies, like Republic and Waste Management, lien rights because it was, and still is, "unfair to require garbage collectors to continue picking up garbage when they are not getting paid." (*See* Opening Br. at 30:10-12.) The Legislature then delegated the responsibility for planning and implementing effective

solid waste management systems to municipalities.[5]

In order to carry out these responsibilities, the Nevada Legislature gave municipalities the authority to enter into agreements to provide a solid waste management system or any part thereof. NRS 444.510(3). The Nevada Legislature also gave municipalities the authority to "develop a plan to provide for a solid waste management system" and stated that such a plan may include "**ordinances adopted pursuant to NRS 444.520 and 444.530.**" NRS 444.510(1)-(2) (emphasis added).[6]

Pursuant to NRS 444.520(1), the "governing body of any municipality which has an approved plan for the management of solid waste may, by ordinance, provide for the levy and collection of other or additional fees and charges..." NRS 444.520(3) then begins by providing that "[u]ntil paid, any fee or charge levied pursuant to subsection 1 constitutes a perpetual lien against the property served...."

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[5] A "municipality" is defined as "any county and any city or town, whether incorporated or unincorporated, and Carson City." NRS 444.470.

[6] NRS 444.520 is addressed at length in Waste Management's Opening Brief and this brief. NRS 444.530, provides, in pertinent part, that "[t]he governing body of a municipality having a solid waste management system within its boundaries shall, by ordinance, establish regulations for the operation of such system."

Reading these two provisions in harmony, it is clear that the Nevada Legislature delegated to municipalities, like Clark County, Reno, Sparks, and Carson City, the right and ability to implement ordinances that govern the perpetual liens granted to waste management companies. For further proof of where the authority lies, the Nevada Division of Environmental Protection confirms "[t]he responsibility of planning and implementing effective solid waste management systems lies with local government."[7]

Consistent with these enabling statutes, Clark County enacted various ordinances, which "regulate the collection and disposal of solid waste in a manner that is consistent with Nevada Revised Statutes" and the Nevada Legislature declared policy in NRS 444.440. *See* Clark County Ordinance 9.04.005. Clark County Ordinance 9.04.250 ("Ordinance 9.04.250") is one such ordinance.

Ordinance 9.04.250 provides remedies for waste management companies, like Republic, when "any person fails to pay the charges" required by law for waste management, including monetary penalties,

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[7] State of Nevada Solid Waste Management Plan 2017 at p. 1, prepared by the Nevada Division of Environmental Protection and found at https://ndep.nv.gov/uploads/land-waste-solid-swmp-docs/swmp2017-final-8-17.pdf (last visited July 27, 2018).

interest on unpaid amounts, liens against property, and administrative fees for the filing and release of such liens. More specifically, Ordinance 9.04.250(b) states:

> Until paid, any fee or charge levied pursuant to this chapter of the Code constitutes a perpetual lien against the property served, pursuant to the provisions of NRS 444.520. The franchisee may pass through to the owner of the property for which a lien has been filed any fees charged by the county recorder's office for the filing and the release of the lien. In addition to the fees charged by the county recorder's office the franchise may include in the total amount to be assessed to the property owner an administrative fee to recover costs incurred by the franchisee for filing and maintaining the lien and an administrative fee for the release of the lien. The administrative charge shall, as of July 1, 2011, not exceed sixty dollars per lien for the filing and maintenance of the lien or sixty dollars for the release of the lien, adjusted each year thereafter effective on July 1 for any increase in the annual average CPI-U for the twelve-month period ending December 31, immediately preceding the effective date of the maximum lien administration fee adjustment.

Nowhere in Ordinance 9.04.250 is any requirement that Republic comply with all of the provisions in NRS Chapter 108. Likewise, Ordinance 9.04.250 does not require Republic to record a perpetual lien within 90 days pursuant to NRS 108.226. And, Ordinance 9.04.250 does not state that Republic will lose the right to foreclose on its

perpetual lien if it fails to commence a foreclosure action within any amount of time, much less two (2) years. If Clark County had intended to impose such requirements on Republic's perpetual lien rights, it could and would have said so.

If the Court adopts the logic and findings of the District Court, it will allow the District Court to usurp a municipality's right and obligation to adopt ordinances that impact the municipality's waste management system. And, if the Court affirms the District Court's ruling, it will subject waste management companies, like Republic and Waste Management, to two different sets of rules: rules implemented by judicial fiat, and rules implemented by the municipalities the Nevada Legislature chose to regulate the waste management systems in their jurisdictions. The Court should reverse the District Court's Order and allow the municipalities to perform the functions delegated to them.

D. The Plain Language of NRS 444.520 Does Not Require Perpetual Liens to be Recorded Within Ninety Days Or Foreclosed Upon Within Two Years.

If the Court is not yet convinced that the District Court overstepped its bounds, there are still other reasons to reverse the

District Court's Order. Specifically, the District Court found that (1) the "90 day notice of lien statute of limitations found in NRS 108.226 does apply to garbage liens", and (2) a waste management company must commence foreclosure proceedings within two (2) years under NRS 11.190 or lose its right to foreclose. (*See* 2 JA_0416.) The District Court was wrong on both counts.

1. NRS Chap. 444 does not impose a 90-day timeframe to record a perpetual lien, and NRS 108.226 cannot be distorted to apply to a waste management company's perpetual lien.

As noted time and again, NRS 444.520(3) states that, "until paid", "any fee or charge" levied under NRS 444.520(1) is a "perpetual lien". While "any fee or charge" constitutes a perpetual lien, pursuant to NRS 444.520(4), the lien does not become *effective* until a notice of lien is prepared, mailed, delivered to and recorded with the county recorder's office, and indexed in the real estate index:

> **A lien against the property served is not effective until** a notice of the lien, separately prepared for each lot affected, is:
>
> (a) Mailed to the last known owner at the owner's last known address according to the records of the county in which the property is located;
>
> (b) Delivered to the office of the county recorder of the county in which the property is located;

(c) Recorded by the county recorder in a book kept for the purpose of recording instruments encumbering land; and

(d) Indexed in the real estate index as deeds and other conveyances are required by law to be indexed.

NRS 444.520(4) (emphasis added.) After carefully reviewing NRS 444.520, the Court should ask the following question: is there anything in NRS 444.520 that expressly requires a waste management company to record the lien within 90 days under NRS 108.226? The Court's answer should be a resounding "no".

NRS 444.520(4) sets forth the procedure a waste management company must follow in order to effectuate its perpetual lien. Yet, nowhere in the Ordinance is there any mention of NRS 108.226 or any requirement that a lien must be recorded within 90 days of any event. If the Nevada Legislature had intended that the liens be recorded within 90 days, it could and would have said so.[8]

In fact, just one provision earlier in NRS 444.510(4), the Legislature requires that the State Department of Conservation and Natural Resources "determine the adequacy of the plan within 90 days

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[8] As previously noted, Ordinance 9.04.250 does not impose a 90-day statute of limitations on recording a perpetual lien. (*See* Section II(C), *supra.*)

after receiving the plan" and, if it fails to do so, "the plan shall be deemed approved and becomes effective immediately." Yet, to uphold the District Court's Order, the Court would have to find that the Nevada Legislature simply forgot or impliedly intended to impose a 90-day time limit on recording the lien in NRS 444.520. The law does not permit the Court to reach such an untenable conclusion. *See State,* 289 P.3d at 1197 (stating that "Nevada follows the maxim *'expressio unius est exclusio alterius,'* the expression of one thing is the exclusion of another.").

Moreover, the plain language of NRS 108.226 establishes that it cannot, and does not, apply to the waste management services at issue in this appeal. NRS 108.226(1)(a) sets forth three possible events that start the 90-day clock running:

> Within 90 days after the date on which the latest of the following occurs: (1) The completion of the work of improvement; (2) The last delivery of material or furnishings of equipment by the lien claimant for the work of improvement; or (3) The last performance of work by the lien claimant for the work of improvement.

Each of the events listed in NRS 108.226(1)(a) is tied to a "work of improvement." NRS 108.22188 defines "work of improvement" as "the entire structure or scheme of improvement as a whole, including,

without limitation, **all work, materials and equipment to be used in or for the construction, alteration or repair of the property or any improvement thereon**, whether under multiple prime contracts or a single prime contract," except under conditions that do not apply here. (Emphasis added.)

However, when waste management companies, like Republic and Waste Management, are providing their weekly trash services, they are not supplying "work, materials and equipment to be used in or for the construction, alteration or repair of the property or an improvement thereon." Under its plain language, NRS 108.226 does not, and cannot, control the perpetual liens at issue in this appeal.

Furthermore, any requirement imposed on waste management companies to record its perpetual lien within 90 days under NRS 108.226 would create an evermoving target. Implied in NRS 108.226(1)(a) is the fact that, if one of those events occurred, the lien claimant is no longer providing work or materials to the work of improvement. Here, regardless of whether a property owner promptly pays the fees and charges owed to Republic, Republic will continue to pick up the property owner's trash and recyclables on schedule. If,

under the District Court's Order, Republic must record a lien based on the last date it picked up trash from a residential property owner, who had unpaid fees and charges owing to Republic, that date would be reset weekly. The District Court erred when it found that NRS 108.226 applied to perpetual liens for waste management services.

Equally important, mandating that a waste management record its perpetual liens within 90 days of some undefined event will unnecessarily increase the burdens imposed on, and the costs and charges incurred by, waste management companies. Those costs and charges will then be passed along to property owners. *See e.g.*, Ordinance 9.04.250(b) (allowing waste management companies to recover "fees charged by the county recorder's office for the filing and the release of the lien" as well as two administrative fees). The District Court's effort to be "fair" to property owners by imposing a 90-day timeframe will have the opposite effect; it will cause property owners to incur more fees and charges to have the perpetual lien released from their property.

To close the loop on this issue, waste management companies' perpetual liens are only effective if they comply with the notice and

recording requirements expressly spelled out in NRS 444.520(4). This provides ample incentive for waste management companies to record their perpetual liens in a timely fashion. If either the Nevada Legislature or municipalities want to impose any additional timing requirements, they can do so. Until then, the Court should reject the District Court's attempt to impose NRS 108.226 on Waste Management.

2. *Waste management companies are not required to commence foreclosure proceedings on perpetual liens within any period of time.*

For its last assignment of error, Waste Management argues that the District Court erred when it imposed a two-year statute of limitations to commence a foreclosure proceeding on a perpetual lien. (*See* Opening Br. at 46-54.) The Court should adopt Waste Management's position for several reasons.

To begin, NRS 444.520(3) states that a lien "**may** be foreclosed in the same manner as provided for the foreclosure of mechanics' liens." (Emphasis added.) In other words, Waste Management may, but is not obligated to, foreclose on its perpetual liens in the same manner as the foreclosure of mechanics' liens. See *Tarango v. State Industrial Ins. System*, 25 P.3d 175, 180 n.20 (Nev. 2001) ("[I]n statutes, 'may' is

permissive and `shall' is mandatory unless the statute demands a different construction to carry out the clear intent of the legislature.") (citation omitted). If the Nevada Legislature had intended to impose a time restriction on a waste management's ability to foreclose on a perpetual lien, it could, and would, have done so.[9]

Next, if a waste management company lost the ability to foreclose on its perpetual lien for any unpaid fees or charges after a certain amount of time, the word "perpetual" would be rendered meaningless. The ordinary, everyday meaning of the word "perpetual" is "continuing forever, everlasting; valid for all time."[10] Thus, under the plain meaning of the word "perpetual", the liens provided for under NRS 444.520, and the attendant right to foreclose on the liens, do not expire; rather, they are valid for all time. *See e.g., Kaplan v. Chap. 7 Trustee,* 132 Nev. Adv. Op. 80, 384 P.3d 491, 493 (2016) ("When examining a

[9] NRS 108.233(1)(a) provides that a mechanic's lien cannot bind a property for a period of longer than 6 months after the date on which the notice of lien was recorded, unless foreclosure proceedings to enforce the lien are commenced within that time. That the Nevada Legislature spoke on the timing for commencing foreclosure proceedings in NRS 108.233(1), but was silent on the timing for commencing foreclosure proceeding in NRS 444.520 speaks louder than anything Republic can argue now.

[10] *See* https://www.merriam-webster.com/dictionary/perpetual (last visited July 29, 2018).

statute, a purely legal inquiry, this court should ascribe to its words their plain meaning, unless this meaning was not clearly intended.); SCALIA & GARNER, READING LAW 69 ("Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense."). The Court should decline to render the word "perpetual" meaningless and then reject the District Court's Order. *See Haney*, 124 Nev. at 411, 185 P.3d at 353 (acknowledging a court must examine a statute "as a whole without rendering words or phrases superfluous or rendering a provision nugatory.").

Furthermore, if the Court were to impose any statute of limitations on commencing a foreclosure proceeding on a perpetual lien for unpaid fees and costs associated with waste management services, it would substantially increase the number of foreclosures that occur in Nevada. The Court is undoubtedly aware of the foreclosure woes the State of Nevada has faced since the 2008 recession. Even today, the by-products of the recession still linger. According to one source, the State of Nevada has seen "an uptick in foreclosures, even as most U.S. states are seeing a decline."[11] The same source states that Las Vegas

[11] *See* https://www.experian.com/blogs/ask-experian/do-you-live-in-

"recorded roughly 500 home foreclosures per month in the fourth quarter of 2017, up from an average of only 32 foreclosures per month in the third quarter of 2017, according to Attom."[12]

Yet, if the Court were to adopt the District Court's Order, the Court would force a waste management company to commence foreclosure proceedings in a short amount of time, rather than lose its perpetual lien rights. The inevitable result would be a dramatic increase in the number of foreclosures in the State of Nevada each year. Neither waste management companies nor the public would benefit from that outcome.

But there is more. If the Court feels constrained to impose a statute of limitations on commencing a foreclosure proceeding, no statute of limitations that exist squarely apply to a perpetual lien. As pointed out by Waste Management, NRS 11.190(4)(b) does not apply because a "foreclosure" is not the same thing as a "penalty or forfeiture." (*See* Opening Br. at 51:20-52:9.)

Republic parts ways somewhat with Waste Management on the

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one-of-the-10-states-with-the-highest-foreclosure-rates-in-the-us/ (last visited July 27, 2018).

[12] *Id.*

applicability of the 3-year limitation set forth in NRS 11.190(3)(a). (*Id.* at 51-52.) NRS 11.190(3)(a) states that "[a]n action upon a liability created by statute, other than a penalty or forfeiture" shall be filed within three (3) years. While NRS 444.520(3) creates a perpetual lien and enables waste management companies to foreclose on the perpetual lien, it does not impose the *liability* of real property owners to pay for waste management services. Instead, the Nevada Legislature delegated to municipalities the right and ability to require real property owners to pay for waste management services. *See e.g.,* NRS 444.520(1).

For example, Clark County adopted Ordinance 9.04.240(a), which requires property owners to pay for waste management services:

> To ensure that the handling and disposing of solid waste is performed in a uniform, safe and sanitary manner, it shall be mandatory for any person owning, occupying or managing any premises in the county which are connected to an electric utility service to subscribe to solid waste collection service provided by the county or its authorized franchisee and to pay the charges established by the board; provided, however, that residents of single-family residences may dispose of their own solid waste at a lawful disposal facility operated by the county or franchisee in lieu of participation in the franchised collection service, in which case the resident must provide a receipt from such an authorized disposal facility on a quarterly basis to the solid waste service area franchisee as proof of payment for

solid waste disposal.

Clark County Ordinance 9.04.240(a). Clark County did not, however, provide a time limitation on Republic's ability to commence foreclosure proceedings on any unpaid fees and charges, which "until paid" "constitutes a perpetual lien against the property served." Ordinance 9.04.250(b). Therefore, unless the Court finds that the time limitation set forth in NRS 11.190(3)(a) also applies to liabilities created under waste management ordinances, the 3-year statute of limitations does not apply[13].

The pitfalls that result from trying to apply any statute of limitations to bringing foreclosure proceedings on perpetual liens lead to but one conclusion: the Court should decline to impose any statute of limitations on a waste management company's right and ability to bring a foreclosure proceeding to enforce a perpetual lien for unpaid fees and charges. The Court should, instead, defer to the Nevada Legislature

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[13] *Cf. Int'l Paper Co. v. Inhabitants of the Town of Jay,* 887 F.2d 338, 342 (1st Cir.1989) ("[T]he relevant authority as well as the statutory language indicate that a local ordinance is not a statute within section 2403(b), and we are not aware of any substantial support for [a] broader interpretation."); *McWilliams v. City of Long Beach*, 56 Cal. 4th 613, 616–17, 300 P.3d 886, 887 (2013) ("We find that a local ordinance is not a 'statute' within the meaning of the Government Claims Act and therefore affirm the Court of Appeal.").

and/or the municipalities to impose any such restrictions. The Court should reverse the District Court's Order.

III. CONCLUSION

For the reasons set forth herein and in Waste Management's Opening Brief, Republic respectfully requests the Court reverse the District Court's Order.

DATED this 31st day of July, 2018.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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 Word 2016 in 14-point Century Schoolbook.

I further certify that this brief complies with the type-volume limitations of NRAP 29(e) and 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 5,744 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.

DATED this 31st day of July, 2018.

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