

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE VALDEZ-JIMENEZ
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE MARK B. BAILUS
DISTRICT JUDGE
Respondents,

and

THE STATE OF NEVADA,
Real Party In Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 76417

AARON WILLARD FRYE,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE JERRY A. WIESE
DISTRICT JUDGE
Respondents,

and

THE STATE OF NEVADA
NATHAN GRACE,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE MICHAEL VILLANI
DISTRICT JUDGE
Respondents,

and

THE STATE OF NEVADA,
Real Party In Interest.

CASE NO: 76845

CASE NO: 76947

**OPPOSITION TO MOTION FOR LEAVE
TO FILE AMICI CURIAE BRIEF**

The instant proceeding is a mandamus petition filed one year ago on July 18, 2018, seeking an order vacating the bail setting below in a criminal case and releasing the defendant from custody, or at a minimum ordering a new bail hearing as constitutionally required. The State answered the petition on October 3, 2018, and briefing was completed with the Petitioner's reply filed on November 1, 2018.

Thereafter, motions to consolidate with two other cases (Frye and Grace) and to expedite were granted. Because Petitioners Frye and Grace have since pleaded guilty, a motion to dismiss was filed and remains pending. Currently, the case as to Valdez-Jimenez is set for oral argument on September 4, 2019. On July 15, 2019, a motion to file an amici curiae brief was filed. The State now files its opposition.

POINTS AND AUTHORITIES

Pursuant to NRAP 29(f), an amicus curiae must file its brief, accompanied by a motion for filing, no later than 7 days after the brief of the party being supported is filed. Briefing is already completed in this case. In an unpublished order, this Court upheld this rule, denying a motion for leave to file an amicus curiae brief that was not filed in a timely manner. Stone Hollow Ave. Tr. v. Bank of Am., Nat'l Ass'n, 391 P.3d 760 (Nev. 2016) (unpublished). Furthermore, this Court has returned an amicus curiae brief because of untimely filing. Ferguson v. State, 124 Nev. 795, 807 fn2, 192 P.3d 712 (2008). The U.S. Supreme Court has also denied motions for

leave to file an amicus brief that were filed out of time. Mills v. Rogers, 454 U.S. 1136, 102 S.Ct. 990 (1982); Youngberg v. Romero, 454 U.S. 1137, 102 S.Ct. 991 (1982).

The proposed amicus brief purports to support Petitioner in this case, so it needed to be filed within 7 days of the mandamus petition which is about one year ago. Allowing amicus to enter the case at this late juncture would undermine the fair administration of justice. Briefing would have to be re-opened to allow for a response, the oral argument date would have to be vacated and re-set for a second time, and Petitioner's motion to expedite a ruling in this case would be frustrated. To further compound the matter, Amicus fails to even address the untimeliness of its motion and offers no explanation to justify the one year delay.

In order for the motion for leave to file an amici curiae brief to be granted, the amicus brief must assist the Court in reviewing the issue at bar. Powers v. United Servs. Auto. Ass'n, 115 Nev. 38, 45 (1999). If the issues raised in an amicus brief substantially mirror those raised on appeal and rehearing, then such briefs will not assist the court and should be denied. Dow Chem. Co. v. Mahlum, 115 Nev. 13, 17 fn2, 979 P.2d 1286 (1999). Issues raised by the amici which were not raised in district court should not be considered on appeal. Nev. Yellow Cab Corp v. Eighth Judicial District Court, 132 Nev. ___, 383 P.3d 246, 253 fn 2 (2016). With only few exceptions not applicable here, "an amicus curiae must accept the case before the

reviewing court as it stands on appeal, with the issues as framed by the parties.” 4
Am Jur 2d Amicus Curiae § 7 (2nd 2015).

The proposed amicus brief in this case makes a political argument in favor of
bail reform more appropriately addressed to the legislature:

Amici offer this brief to outline scholarship and empirical evidence
proving that pretrial detention should only be used in the most
exceptional circumstances. The commonly used money-based bail
system negatively impacts appearance rates and public safety. Thus,
the amici seek to demonstrate the practical utility of unsecured bonds
and other effective non-money alternatives, which limit or altogether
curb the use of pretrial detention.

Motion for Leave to File Amici Curiae Brief, p. 4. Such political issues are beyond
the scope of this mandamus proceeding which only concerns the constitutionality of
the pretrial bail procedures used in this particular case. Amicus is not permitted to
raise new issues ancillary to the subject of the instant mandamus proceeding and
which are not appropriate for mandamus relief anyway. Such will not aid the Court.

WHEREFORE, the State respectfully requests that the Motion for Leave to
File Amici Curiae Brief be denied.

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Dated this 16th day of July, 2019.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Steven S. Owens
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 16, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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