

EXHIBIT A

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1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 Robert Eliason, an individual and in his
4 official capacity as Constable of North Las
Vegas Township,

5 Plaintiff

6 v.

7 Clark County, a political subdivision of the
State of Nevada; the State of Nevada ex rel.
8 Nevada Commission on Peace Officer
Standards and Training,

9 Defendants
10

Case No.: 2:17-cv-03017-JAD-CWH

**Order Certifying Question
to the Supreme Court of Nevada
under NRAP 5**

11 In July 2017, the Clark County Board of Commissioners sought to remove North Las
12 Vegas Constable Robert L. Eliason from office by declaring that he had forfeited the office
13 because he failed to obtain a statutorily required certification. The Board relied on Nevada
14 Revised Statute 258.007, which requires constables to get certified by the Nevada Commission
15 on Peace Officer Standards and Training (POST) as a category II peace officer within a year of
16 appointment and provides that a constable who fails to do so “forfeits his . . . office and a
17 vacancy is created . . .” Nevada Revised Statute 258.030 then authorizes the Board “to appoint
18 a person to fill” that vacancy.

19 Eliason sued the County and POST in state court, and then-Eighth Judicial District Court
20 Judge Elissa F. Cadish found that “a quo warranto action is the exclusive remedy to obtain a
21 declaration that a forfeiture of public office has occurred,” and she preliminarily enjoined the
22 board from voting to declare Eliason’s forfeiture or replacement. The County removed this case
23 to federal court and asks to vacate the preliminary injunction, while Eliason seeks a declaratory

judgment in his favor. Because this case turns on a question of Nevada law, and it appears that there is no controlling precedent in the decisions of the Supreme Court or the Court of Appeals of this state, I certify the following question to the Honorable Supreme Court of Nevada under Rule 5 of the Nevada Rules of Appellate Procedure:

Does NRS 258.007 give the Clark County Board of County Commissioners the power to remove a constable from office, or can a constable be removed only with a quo warranto action?

I. Statement of relevant facts and the nature of this controversy

NRS 258.007¹ states that constables in townships with populations of 100,000 or more who fail to complete certification to become a category II peace officer “forfeit” their office and create a vacancy that must be filled in accordance with NRS 258.030,² which allows the board of county commissioners to appoint someone to fill the vacancy. Robert F. Eliason was elected to the office of North Las Vegas Constable in November 2014 and took office in January 2015.³

¹ NRS § 258.007 states:

1. Each constable in a township whose population is 100,000 or more which is located in a county whose population is 700,000 or more, and each constable of a township whose population is 250,000 or more and which is located in a county whose population is less than 700,000 shall become certified by the Peace Officers’ Standards and Training Commission as a category II peace officer within one year after the date on which the constable commences his or her term of office or appointment unless the Commission, for good cause shown, grants an extension of time, which must not exceed 6 months.

2. If a constable does not comply with the provisions of subsection 1, the constable forfeits his or her office and a vacancy is created which must be filled in accordance with NRS 258.030.

² NRS § 258.030 states that “if any vacancy exists or occurs in the office of constable in any township, the board of county commissioners shall appoint a person to fill the vacancy pursuant to NRS 245.170.”

³ ECF No. 1 at 13.

1 Because his office is subject to NRS 258.007, he was required to become certified by POST as a
2 category II peace officer within a year of taking office.⁴ As of July 4, 2016, he had not done so,
3 and POST notified the Clark County Board of Commissioners of this failure.⁵ A year later, the
4 Assistant County Manager placed item 67 on the agenda for the Board's July 18, 2017, meeting.
5 This agenda item proposed declaring Eliason to have forfeited his office and proceeding to fill
6 the vacancy created by that forfeiture under NRS 258.007 and 258.030.⁶

7 Before the vote could occur, Eliason sued the County and POST in the Eighth Judicial
8 District Court, asserting four causes of action: (1) declaratory relief stating that Clark County has
9 no authority to declare a forfeiture of the office, that a *quo warranto* action under NRS 35.010 et
10 seq. is the exclusive means of declaring a forfeiture of office, and that the Attorney General, at
11 the Governor's direction, is the only party who can bring such an action; (2) injunctive relief or a
12 writ of prohibition enjoining Clark County from adjudicating whether he had forfeited his office;
13 (3) violation of Article IV, Section 20 of the Nevada State Constitution; and (4) violation of
14 Article IV, Section 25 of the Nevada Constitution.⁷ Eliason successfully moved for a
15 preliminary injunction to restrain the County from removing him from office.⁸ In granting the
16 motion, the district court found that the Board lacks the power to remove Eliason and that the
17 exclusive mechanism to do so is a *quo warranto* action by the Nevada Attorney General:

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19 2. The issue before the Court . . . is whether Clark
20 County has the authority to declare forfeiture of Constable
Eliason's position pursuant to NRS 258.007.

21 ⁴ *Id.* at 12.

22 ⁵ ECF No. 42 at 4.

23 ⁶ *Id.* at 4.

⁷ ECF No. 1 at 16–20.

⁸ ECF No. 41 at 8–11.

...

11. Clark County does not have the authority to maintain a Quo Warranto action.

12. Pursuant to *Heller v. Legislature*, 120 Nev. 456, 463–64, 93 P.3d 746, 751 (2004), a Quo Warrant action is the exclusive remedy to obtain a declaration that a forfeiture of public office has occurred by provisions of law, including that in NRS 258.007.

...

17. This Court finds that in terms of public policy, the Quo Warrant action is the established method to ensure due process is afforded and all rights are protected before an elected official is removed from office; therefore, public policy favors the grant of the preliminary injunction on that basis.⁹

Eliason later amended his complaint to add a claim for a violation of the Americans with Disabilities Act, and the County removed the action to federal court based on federal question and supplemental jurisdiction.¹⁰ After removal, Eliason moved for a declaratory judgment, arguing that I should adopt the preliminary-injunction ruling and grant the declaratory relief he seeks in his first cause of action.¹¹ The County opposes that motion and countermoves for reconsideration of the state-court preliminary-injunction order.¹² POST filed a response to Eliason's motion in which it requests that I either abstain from deciding the state-law issues under the United States Supreme Court's decision in *Railroad Commission of Texas v. Pullman*

⁹ ECF No. 41.

¹⁰ ECF No. 1.

¹¹ ECF No. 41.

¹² ECF Nos. 42, 43.

1 Co.¹³ or certify the question of Clark County’s authority under NRS 258.007 and 258.030 to the
2 Supreme Court of Nevada.¹⁴ Eliason did not respond to POST’s request.

3 *Pullman* abstention is unavailable because this case does not present a federal
4 constitutional question—the federal question it presents is entirely statutory, and the
5 constitutional questions it presents are state-based—and the *Pullman* doctrine is designed to
6 avoid “the premature determination of constitutional questions” when “a *federal* constitutional
7 issue might be mooted or presented in a different posture by a state court determination of
8 pertinent state law.”¹⁵ But Eliason’s state-law questions should nevertheless be resolved by
9 Nevada’s courts. Neither the Supreme Court nor the Court of Appeals of Nevada has interpreted
10 NRS 258.007 or determined its application or constitutionality. The County maintains that the
11 language of the statute is self-executing and that no judicial determination of forfeiture is
12 required if a constable fails to become certified. Eliason counters that declaring a forfeiture of
13 office is necessarily a judicial function, and a quo warranto action under NRS 35.010 et seq. is
14 the exclusive remedy to remove a constable.¹⁶ He further argues that NRS 258.007 violates
15 Article IV Sections 20 and 25 of the Nevada Constitution.

16 No case answers the question of whether NRS 258.007 gives the Clark County Board of
17 Commissioners the power to remove a constable from office or the constitutionality of such a
18 procedure under the Nevada constitution. Clarification from the Supreme Court of Nevada about

19 _____
20 ¹³ *R.R. Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941).

¹⁴ ECF No. 44; *see also* ECF No. 54.

21 ¹⁵ *See* order denying motions and granting request to certify questions to the Supreme Court of
22 Nevada, ECF No. 71 (citing *C-Y Dev. Co. v. City of Redlands*, 703 F.2d 357, 377 (9th Cir. 1983
23 (quoting *Martin v. Creasy*, 360 U.S. 219, 224 (1959); *County of Allegheny v. Frank Mashuda*
Co., 360 U.S. 185, 189 (1959) (internal quotation marks and alterations omitted))(emphasis
added).

¹⁶ He also relies on *Heller v. Legislature*, 93 P.3d 746, 751 (Nev. 2004).

the applicability and constitutionality of NRS 258.007 will be outcome determinative of the central issue in this case.

II. Parties' names and designation of appellant and appellee

Plaintiff/Appellee	Robert Eliason
Defendant/Appellant	Clark County, a political subdivision of the State of Nevada
Defendant/Appellant	State of Nevada ex rel. the Nevada Commission on Peace Officer Standards and Training (POST)

Because the most recent adverse order was the preliminary injunction entered against the defendant in state court, the defendants should be the appellants.

III. Names and addresses of counsel for the parties

Counsel for Plaintiff/Appellee Robert Eliason	Kelly A. Evans Chad R. Fears Evans Fears & Schuttert LLP 2300 W. Sahara Avenue Suite 950 Las Vegas, NV 89102 Jeffrey E. Barr Ashcraft & Barr LLP 2300 W. Sahara Avenue Suite 900 Las Vegas, NV 89102
Counsel for Defendant/Appellant Clark County	Thomas D. Dillard Olson, Cannon, Gormley, Angulo & Stoberski 9950 W. Cheyenne Avenue Las Vegas, NV 89129
Counsel for Defendant/Appellant POST	Michael D. Jenson Senior Deputy Attorney General 555 Wright Way Carson City, NV 89711

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2 **IV. Any other matters the certifying court deems relevant to a determination of the**
3 **questions certified**

4 The Court defers to the Supreme Court of Nevada to decide whether it requires any other
5 information to answer the certified question. The Court does not intend its framing of the
6 questions to limit the Supreme Court of Nevada's consideration of the issue. Nevertheless, for
7 the Court's convenience, the crossbriefing by the parties is attached.

8 **V. Conclusion**

9 Having complied with the provisions of the Nevada Rule of Appellate Procedure 5(c), I
10 hereby direct the Clerk of Court for the U.S. District Court for the District of Nevada to

11 **FORWARD this order and its attachments under official seal to the Supreme Court of the**
12 **State of Nevada, 201 South Carson Street, Suite 201, Carson City, Nevada, 89701-4702.**

13 Dated: March 22, 2019

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15 U.S. District Judge Jennifer A. Dorsey
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IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT ELIASON, AN
INDIVIDUAL AND IN HIS
OFFICIAL CAPACITY AS
CONSTABLE OF NORTH LAS
VEGAS TOWNSHIP,
Appellant,

vs.

CLARK COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA; STATE OF NEVADA EX
REL NEVADA COMMISSION ON
PEACE OFFICER STANDARDS
AND TRAINING,
Respondents.

Case No. 78434

Electronically Filed
May 31 2019 01:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOINT MOTION TO CLARIFY PARTIES IN CERTIFIED QUESTION

Robert Eliason, Clark County, State of Nevada ex rel Nevada Commission on Peace Officer Standards and Training file this JOINT MOTION TO CLARIFY PARTIES IN CERTIFIED QUESTION.

The parties' counsel jointly file this Motion to request that the Court clarify the designation of the parties pursuant to its May 24, 2019 Order Accepting Certified Question and Directing Briefing.

For the reasons detailed below, the parties request the following relief:

- (1) That the Court clarify the designation of the parties as Appellant and Respondent; and
- (2) That the Court re-set the briefing schedule after issuing its order clarifying the designation of the parties.

NRAP 5(c)(6) provides that in a certified question of law from the United States District Court, the District Court judge designates “the party or parties who will be the appellant(s) and the party or parties who will be the respondent(s) in the Supreme Court.”

In this case the Honorable Jennifer Dorsey designated that Clark County and the State of Nevada ex rel. the Nevada Commission on Peace Officer Standards and Training were to be “Appellants.” [Order Certifying Question, 6:5-7 attached as Exhibit A without attendant exhibits.] Judge Dorsey designated Robert Eliason as “Appellee.” [Ex. A, 6:4.]

In its May 24, 2019 Order, however, the Court appears to have reversed these designations, naming Robert Eliason as “Appellant” and Clark County and the State of Nevada ex rel. the Nevada Commission on Peace Officer Standards and Training as “Respondent.” The parties’ counsel met and conferred on May 30, 2019, and this joint Motion followed.

The parties, therefore, request the following relief:

- (1) That the Court clarify the designation of the parties as Appellant and Respondent; and
- (2) That the Court re-set the briefing schedule after issuing its order clarifying the designation of the parties.

DATED this 31st day of May, 2019.

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