

Case No. 78572
IN THE SUPREME COURT OF
THE STATE OF NEVADA

REPUBLIC SILVER STATE DISPOSAL,
INC., A NEVADA CORPORATION,

Appellant,

vs.

ANDREW M. CASH, M.D.; ANDREW M.
CASH, M.D., P.C., A/K/A ANDREW
MILLER CASH, M.D., P.C.; AND
DESERT INSTITUTE OF SPINE CARE,
LLC, A NEVADA LIMITED LIABILITY
COMPANY,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

**REPUBLIC SILVER STATE DISPOSAL, INC.'S OPPOSITION TO
FURTHER MOTION TO STAY ISSUANCE OF REMITTITUR AND
COUNTERMOTION TO VACATE STAY**

and

MOTION FOR RETROSACTIVE EXTENSION OF RESPONSE DEADLINE

Respondents' motion for a further stay exposes its own lack of merit. No further stay should be granted, and with the transparent absence of any basis to seek

U.S. Supreme Court review, this Court should vacate the current stay and immediately issue remittitur.¹

On March 8, 2021, respondents moved for a stay of remittitur for 120 days so that they could prepare a petition for a writ of certiorari to the U.S. Supreme Court. The *pro forma* motion made no mention of the basis for such a petition. Three days later, without awaiting an opposition from appellant Republic Silver State Disposal, Inc., this Court granted the motion as a matter of course.

But if there had been any doubt, respondents' latest motion makes clear that there is *no* good-faith basis for seeking a writ of certiorari from the U.S. Supreme Court. This Court's published opinion of December 10, 2020 addresses solely a question of state law. Respondents point to no issue of federal law that was raised in the district court, on appeal, in this Court's decision, or in their supposedly forthcoming petition for a writ of certiorari. The U.S. Supreme Court assuredly will not intervene on the interpretation of Nevada's Uniform Contribution Against Tortfeasors Act, the pure question of state law addressed in the opinion. The transparent purpose of respondents' motion, then, is to delay remittitur to the district court and a trial of appellant Republic Silver State Disposal, Inc.'s claims.

¹ Due to an administrative error, this opposition was not filed within the seven days prescribed by NRAP 27(a)(3)(A). As detailed below, appellant asks this Court to extend the response deadline under NRAP 26(b)(1)(A) through today, June 7, 2021.

This Court should deny a further stay and vacate the current stay.

A. A Cert Petition Must Raise an Issue of Federal Law

Under U.S. Supreme Ct. Rule 10 (“Considerations Governing Review on Certiorari”) “[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion [that] will be granted only for compelling reasons.” While “not fully measuring the Court’s discretion,” the rule states that “the character of the reasons the Court considers” in determining a writ of certiorari include whether:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court,

or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

B. The Appellate Record, Briefing, and Opinion in This Case Raise No Question of Federal Law

On December 31, 2020, this Court issued its opinion in *Republic Silver State Disposal v. Cash*, 136 Nev. ___, 478 P.3d 362 (2020). The issue to be decided in *Cash* was succinctly stated in the opinion’s opening sentence:

When a tortfeasor settles with the plaintiff, may the tortfeasor then assert a claim for contribution against a doctor who allegedly caused new injuries in treating the original injury?

Id., 478 P.3d at 363.

Answering that question in the affirmative, this Court reversed an order granting summary judgment in which the district court held that Republic Silver State Disposal had no right of contribution under Nevada’s codification of the Uniform Contribution Among Tortfeasors Act, see NRS 17.225 et seq., for alleged

medical negligence in Dr. Cash’s treatment an “original” injury to a third person caused by a Republic employee.

U.S. Supreme Ct. Rule 10 subsections (b) and (c) speak to certiorari when the decision under consideration was made by a state court. In subsection (b), the predicate for certiorari is that the state court “decided an important federal question” conflicting with a decision of a U.S. court of appeals or of “another state court of last resort.” Likewise, subsection (c) also requires a state court decision on an “important question of federal law” that should either be “settled” by the U.S. Supreme Court, or which “conflicts with relevant decisions of” the U. S. Supreme Court.

Simply stated, this Court’s decision in *Cash* determined neither an “important federal question,” nor an “important question of federal law.” *Id.* Instead, *Cash* was decided entirely on state law—a point the Court may abundantly clear in reaffirming that “[c]ontribution is a creature of statute under Nevada law.” *Id.*, 478 at 364 (quoting *The Doctor’s Company v. Vincent*, 120 Nev. 644, 650, 98 P.3d 681, 686 (2004) (internal quotation marks omitted)). Nor did Dr. Cash ever contend issues decided by this Court on appeal—or decided by the district court—implicated an “important federal question” or “important question of federal law.” This makes sense, considering no question outside the interpretation of the Uniform Contribution Against Tortfeasors Act (NRS 17.225 *et seq.*) and the availability of a

claim for contribution under state law was ever raised in the district court or on appeal.

C. Despite Recognizing the Standard for Certiorari, Respondents Identify No “Important Federal Questions”

Respondents’ latest motion admits that they must identify “important federal questions” within the meaning of U.S. Sup. Ct. R. 10 to even seek a writ of certiorari. Yet while insisting that that “[a]s the Court is aware, its December 10, 2020 opinion is based, in part, upon important federal questions that have been decided by the United States Supreme Court” (Mot. 4), respondents do not articulate even one such question. Indeed, respondents misrepresent that “[t]he importance of these issues is demonstrated by the Court’s published opinion.” (Mot. 4.)

In fact neither the opinion nor respondents’ petition for reconsideration mentions a single U.S. Supreme Court case—or *any* federal authorities, for that matter. Respondents’ own motion gestures only to a Wisconsin Supreme Court decision (Mot. 5), which, again, discussed only the state-law question of contribution among tortfeasors, no issues of federal law. If any genuine issue of federal law existed, surely respondents would have articulated it—albeit belatedly—in their petition for reconsideration or this latest motion for stay.

That they cannot exposes the pretext of this motion. Certiorari is never guaranteed, and the chances of a successful cert petition are especially slim when the petition cannot point to a split among the circuits in interpreting an issue of federal law. But respondents' quixotic bid here is less than even that: there is no precedent for the U.S. Supreme Court intervening to correct a state court's interpretation of its own Uniform Contribution Against Tortfeasors Act.² The likelihood that the U.S. Supreme Court would, for the first time, exceed its jurisdiction in order to grant respondents' petition is infinitesimal.

But therein lies the pretext: By securing a further stay to extend the time for filing their petition into the late summer, respondents can delay the inevitable, virtually assuring that the U.S. Supreme Court will not issue the order denying certiorari until the first Monday in October, when the U.S. Supreme Court reconvenes after their summer recess. *See* U.S. Sup. Ct. R. 3.

D. Delay Is Prejudicial

Respondents' delay tactic prejudices Republic. Republic has been waiting for five years to pursue its contribution claim. This Court confirmed Republic's right to

² Any purported federal question that respondents might raise for the first time in the reply to their motion for stay would not be preserved for U.S. Supreme Court review.

do so in a published decision and correctly rejected respondents' request for rehearing.

E. This Court Should Not Countenance this Abuse of NRAP 41(b)(3)

This Court has sole discretion to determine if a stay of remittitur is warranted during the certiorari process. For the reasons discussed above, if a petition for a writ of certiorari were even filed, the record here would not satisfy the U.S. Supreme Court's "important federal question/important question of federal law" threshold. Respondents' request for a stay despite the absence of any good-faith basis for seeking certiorari is an abuse of NRAP 41(b)(3) and should not be countenanced. Under the circumstances, a stay under NRAP 41(b)(3) is unwarranted, and prejudicially interposes further unreasonable delay in resolving this case on its merits.

MOTION FOR RETROACTIVE EXTENSION OF RESPONSE DEADLINE

For good cause, this Court may "may permit an act to be done after that time expires." NRAP 26(b)(1)(A). In this circumstance, good cause warrants such an extension. Although the response deadline was calendared for June 3, both counsel representing appellant believed that the other firm was filing the response. One of appellant's attorneys fell ill on June 2 and has still not recovered. Appellant's other counsel had hearings in the morning and a closing argument in a bench trial that

lasted the entire afternoon. Counsel did not notice until today that neither firm had filed the response as originally planned.

As this opposition brief is straightforward and focuses on one principal issue—the absence of a good-faith basis to seek a writ of certiorari from the U.S. Supreme Court—appellant respectfully asks this Court to retroactively extend the deadline through June 7, 2021 to consider this opposition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of June, 2021, I served a copy of the foregoing **REPUBLIC SILVER STATE DISPOSAL, INC.'S OPPOSITION TO FURTHER MOTION TO STAY ISSUANCE OF REMITTITUR AND COUNTERMOTION TO VACATE STAY and MOTION FOR RETROSACTIVE EXTENSION OF RESPONSE DEADLINE** upon all counsel of record:

☐ US MAIL: by mailing it by first class mail with sufficient postage prepaid to the following address(es):

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