



This motion is based upon the following Memorandum of Points and Authorities and all papers and pleadings on file herein.

DATED this 28<sup>th</sup> day of October, 2021.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Deborah L. Westbrook  
DEBORAH L. WESTBROOK\*  
Chief Deputy Public Defender  
Nevada Bar No. 9285  
\*Counsel for Amici

**MEMORANDUM OF POINTS AND AUTHORITIES**

The Clark County Public Defender's Office (CCPD), Clark County Special Public Defender's Office (SPD), and Nevada Attorneys for Criminal Justice (NACJ) respectfully seek leave to file a brief as amici curiae in support of Appellant's Petition for En Banc Reconsideration of the panel's published decision in Bolden v. State, 137 Nev., Adv. Op. 28 (Sept. 23, 2021).

CCPD is the largest provider of indigent defense services in Nevada with an interest in criminal sentencing issues. The office endeavors to provide high-quality, zealous representation to accused persons in Las Vegas, Henderson, and surrounding areas.

SPD is appointed to represent indigent clients in criminal cases, which have a potential sentence of life in prison or the death penalty, for which the CCPD cannot represent the client because of a conflict. SPD employs approximately 20 highly-trained and experienced attorneys.

NACJ is a state-wide, non-profit organization of criminal defense attorneys in Nevada. NACJ's mission is to ensure that accused persons receive effective, zealous representation through shared resources, legislative lobbying, and intra-organizational support. This includes the filing of amicus curiae briefs pertaining to (1) state and federal constitutional issues; (2) other legal matters with broad applicability to accused persons; and (3) controversies with potential to impact our members' ability to advocate effectively for accused persons.

The "classic role of amicus curiae" is to assist in a case of "general public interest, supplementing the effort of counsel, and drawing attention to law that escaped consideration." Miller-Wohl Co. v. Com'n of Labor and Industry, 694 F.2d 203, 204 (9th Cir. 1992). An amicus brief should be allowed "when the amicus has an interest in some other case that may be affected by the decision in the present case . . . or when the amicus has unique information or perspective that can help the court beyond the role that the lawyers for the parties are able to provide. Ryan v. Commodity

Futures Trading Com'n, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers) (citations omitted).

CCPD, SPD, and NACJ are extremely concerned about the panel's published decision in Bolden and the impact that it will have on preliminary hearings throughout the State of Nevada. Members of amici organizations routinely defend clients at preliminary hearings in justice courts statewide. The question of whether justice courts can dismiss charges after weighing evidence and evaluating witness credibility directly impacts every criminal practitioner in the State, including all Deputy Public Defenders in Clark County, and all NACJ members who handle preliminary hearings. Where members of amici organizations have an interest in countless other cases that are impacted by the panel's decision, this Court should permit amici to address the panel's decision and to support Appellant's request for en banc reconsideration of that decision. See Ryan, 125 F.3d at 1063.

Amici organizations also have "unique information or perspective" to offer this Court on the question of justice courts' inherent and statutory authority to weigh evidence and consider witness credibility. See Id. The majority of Appellant's petition addressed why the panel's decision was "contrary to prior published opinions" of this Court warranting reconsideration under NRAP 40A(c). Appellant's petition only briefly

touched upon the “substantial precedential, constitutional or public policy issue” involved in the proceeding—e.g., the decision’s impact on justice courts, undermining their inherent authority to dismiss criminal complaints after evaluating credibility and weighing evidence. Amici’s brief expands upon on this latter basis for reconsideration, offering a detailed analysis of justice courts’ inherent *and* statutory authority to dismiss charges based on witness credibility, and the absurd results that will follow if the panel’s decision is permitted to stand. In addition, Amici have provided a detailed factual and procedural history to assist the Court in resolving the issues presented by Appellant’s petition. Amici have also included a section discussing the historical importance of preliminary hearings and how the panel’s ruling undermines the purpose of such hearings.

Amici therefore respectfully seek leave to file an amicus brief to assist the Court in resolving Appellant’s petition for en banc reconsideration. A proposed amicus brief is being filed along with this motion.

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## CONCLUSION

For all the foregoing reasons, the Court should grant CCPD, SPD, and NACJ leave to file their proposed brief of amici curiae.

DATED this 28<sup>th</sup> day of October, 2021.

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DEBORAH L. WESTBROOK\*  
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## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28<sup>th</sup> day of October, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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