

Case No. 80615

IN THE SUPREME COURT OF NEVADA

PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, Electronically Filed
Apr 08 2022 03:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Appellant,

vs.

LAURENT HALLIER; PANORMA TOWERS I, LLC; PANORAMA TOWERS I
MESS, LCC; and M.J. DEAN CONSTRUCTION, INC.,

Respondents.

**MOTION BY THE NEVADA JUSTICE ASSOCIATION FOR LEAVE TO
FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT'S
RESPONSE TO RESPONDENTS' PETITION FOR REHEARING**

Eighth Judicial District Court
The Honorable Susan H. Johnson, District Judge
District Court Case A-16-744146-D

EVA G. SEGERBLOM (#10749)
ARDEA G. CANEPA-ROTOLO (#12345)
MADDOX, SEGERBLOM AND CANEPA, LLP
10403 DOUBLE R BLVD
RENO, NV 89521
Attorneys for Amicus Curiae Nevada Justice Association

The Nevada Justice Association (“NJA”) hereby moves this Court, pursuant to NRAP 29, to enter an order granting the NJA leave to file an *amicus curiae* brief in support of Appellant’s Response to Respondents’ Petition to Rehearing in this matter.

The NJA is an organization of attorneys in the State of Nevada whose purposes, objectives, and interests include participation in matters that directly affect and concern the rights of claimants seeking relief from injuries caused by tortious conduct and whose resources are available to provide assistance to courts in considering issues with a material impact on the rights of such persons beyond the interests of the particular litigants in specific cases.

Such is the situation here, for this Court’s decision in the present case will have a substantial impact on the interests of Nevada homeowners and construction defect litigation as a whole. Specifically, the application of Respondents’ position, if accepted, will have profoundly adverse repercussions for homeowners’ rights, including their ability to decipher the time in which they have to pursue a claim against a contractor and could create a slippery slope that would thwart NRS Chapter 40 construction defect law, such that, builders and sub-contractors alike could escape liability under a statute of repose defense by knowingly and intentionally violating the law.

Given the potentially sweeping effect of the decision herein, the NJA believes that the interests of justice will be served by the Court receiving input from this organization on behalf of its members who are in a position to be materially affected by the ultimate decision in this case, and whose interests and perspectives transcend the immediate concerns of the parties to this case.

Pursuant to NRAP 26(c), a copy of the proposed amicus curiae brief is attached hereto as **Exhibit A**.

The NJA's brief is conditionally filed herewith in accordance with NRAP 29.

Dated: April 8, 2022.

Respectfully submitted,

MADDOX, SEGERBLOM AND CANEPA, LLP

/s/ Eva G. Segerblom

Eva G. Segerblom, Esq. NSB 10749

Ardea G. Canepa-Rotoli, Esq. NSB 12345

10403 Double R Boulevard

Reno, Nevada 89521

Attorneys for Amicus Curiae Nevada

Justice Association

CERTIFICATE OF SERVICE

I certify that on the 8th day of April, 2022, I caused to be served via the District Court's e-filing system and pursuant to NRAP 25(b) and NEFCR 9, and electronically filed the foregoing "MOTION BY THE NEVADA JUSTICE ASSOCIATION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT'S RESPONSE TO RESPONDENTS' PETITION FOR REHEARING" with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-filing system (Eflex). Participants in the case who are registered Eflex users will be served by the Eflex system as follows:

Peter C. Brown
Jeffrey W. Saab
Devin R. Gifford
BREMER WHYTE BROWN & O'MERA LLP
1160 N. Town Center Drive
Las Vegas, Nevada 89144

Daniel F. Polsenberg
Joel D. Henriod
Abraham G. Smith
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway #600
Las Vegas, Nevada 89169

Counsel for Respondents

Michael J. Gayan
Joshua D. Carlson
KEMP JONES, LLP
3800 Howard Hughes Pwky, 17th Fl.
Las Vegas, NV 89169

Francis I. Lynch
LYNCH & ASSOCIATES LAW GROUP
1445 American Pacific Drive
Suite 110 #293
Henderson, NV 89074

Scott Williams (pro hac vice)
WILLIAMS & GUMBINER, LLP
1010 B Street, Ste 200
San Rafael, CA 94901

Counsel for Appellant

/s/ Eva G. Segerblom
An employee of Maddox, Segerblom and
Canepa, LLP

EXHIBIT A

Case No. 80615

IN THE SUPREME COURT OF NEVADA

PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION,

Appellant,

vs.

LAURENT HALLIER; PANORMA TOWERS I, LLC; PANORAMA TOWERS I
MESS, LCC; and M.J. DEAN CONSTRUCTION, INC.,

Respondents.

**RESPONSE OF AMICUS CURIAE NEVADA JUSTICE
ASSOCIATION TO RESPONDENTS' PETITION FOR REHEARING AND
AMICUS BRIEF IN SUPPORT OF APPELLANT'S ANSWER TO
PETITION FOR REHEARING**

Eighth Judicial District Court
The Honorable Susan H. Johnson, District Judge
District Court Case A-16-744146-D

EVA G. SEGERBLOM (#10749)
ARDEA G. CANEPA-ROTOLO (#12345)
MADDOX, SEGERBLOM AND CANEPA, LLP
10403 DOUBLE R BLVD
RENO, NV 89521

Attorneys for Amicus Curiae Nevada Justice Association

NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in NRAP 26.1(a) that must be disclosed. The law firm of Maddox, Segerblom and Canepa, LLP represents the *Amicus Curiae*: the Nevada Justice Association.

DATED: APRIL 8, 2022

MADDOX, SEGERBLOM AND
CANEPA, LLP

/s/ Eva G. Segerblom

EVA G. SEGERBLOM (#10749)

*Attorneys for Amicus Curiae Nevada
Justice Association*

TABLE OF CONTENTS

NRAP 26.1 Disclosure	i
Table of Contents	ii
Table of Authorities	iii
I. Introduction.....	1
II. Interest of the <i>Amicus Curiae</i>	2
III. Relevant Legislative Background.....	3
A. Nevada’s History of Modifying the Statute of Repose	3
B. Nevada’s Mandatory Chapter 40 Prelitigation Process	3
C. Legislative History of AB 421	4
IV. Argument	5
A. The Language and Intent of AB 421 are Unambiguous.	5
B. This Court’s Opinion Is Correct, Well-Reasoned and In Line with Other Jurisdictions.....	8
C. Public Policy Would Be Abrogated by Rehearing of this Matter.....	11
V. Conclusion	14
Certificate of Compliance	16
CERTIFICATE OF SERVICE	18

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>Cromer v. Wilson</i> , 126 Nev. 106, 225 P.3d 788 (2010)	5, 6
<i>Doe v. Hartford Roman Catholic Diocesan Corp.</i> , 119 A. 3d 462 (Conn. 2015)	10
<i>Duluth Firemen's Relief Ass'n v. City of Duluth</i> , 361 N.W.2d 381 (Minn. 1985)	8
<i>G and H Assoc. v. Ernest V. Hahn, Inc.</i> , 113 Nev. 265, 934 P.2d 229 (1997)	3
<i>Gonski v. Dist. Ct.</i> , 126 Nev. 551, 245 P.3d 1164 (2010)	3
<i>Harris Assoc. v. Clark County School Dist.</i> , 119 Nev. 638, 81 P.3d 532 (2003)	7
<i>In re Individual 35W Bridge Litig.</i> , 787 N.W. 2d 643, 651 (Minn. App. 2010)	9
<i>Nelson v. Heer</i> , 123 Nev. 217, 163 P.3d 420 (2007)	5
<i>Nortley v. Hurst</i> , 321 Mich. App. 566, 908 N.W.2d 919 (2017)	8
<i>Oxbow Constr. v. Dist. Ct.</i> , 130 Nev. 867, 335 P.3d 1234 (2014)	4
<i>Petersen v. Bruen</i> , 106 Nev. 271, 792 P.2d 18 (1990)	11

<i>Shadburne-Vinton v. Dalkon Shield Claimants Trust</i> , 60 F.3d 1071 (4th Cir. 1995)	9
<i>State Div. of Ins. v. State Farm Mutual Auto Ins. Co.</i> , 116 Nev. 290, 995 P.2d 482 (2000)	5
<i>Unruh v. Cacchiotti</i> , 257 P.3d 631 (Wash. 2011)	8
<i>U.S. Home Corp. v. Zimmerman Stucco & Plaster, Inc.</i> , 749 N.W.2d 98 (Minn. App. 2006)	9
<i>U.S. Home Corp. v. Zimmerman Stucco & Plaster, Inc.</i> , 806 N.W. 2d 820 (Minn. 2011)	9
<i>Wesley Theological Seminary of United Methodist Church v. U.S. Gypsum Co.</i> , 876 F.2d 119 (D.C. Cir. 1989)	10
<i>Westpark Owners' Ass'n v. Dist. Ct.</i> , 123 Nev. 349, 167 P.3d 421 (2007)	3, 4

Statutes and Rules

A.B. 125, 2015 Nev. Stat.,	3
AB 421, 2019 Nev. Stat.	passim
Alaska Statute 09.10.055	12
CA. Civ. Proc. Code § 337.15	12
DC Code § 12–310 (2021)	12
Fla. Stat. § 95.11(3)(c)	12
Haw. Rev. Stat. § 657-8	12
735 I.L.C.S. § 5/13-214	12
Ind. Code Ann. § 32-30-1-5	12
Iowa Code § 614.1(11)(2)	12

Kan. Stat. Ann. § 60-513(b)	12
Md. Code Ann., Cts. & Jud. Proc. § 5-108(b)	12
Me. Rev. Stat. tit. 14, § 752-A	12
Mich. Comp. Laws Serv. § 600.5839(1)(b)	12
Minn. Stat. Ann. § 541.051(1)(a)	12
Mo. Rev. Stat. § 516.097(1)	12
Mont. Code Ann. § 27-2-208(1)	12
N.D. Cent. Code § 28-01-44(1)	12
Neb. Rev. Stat. Ann § 25-223(1)	12
NRS 11.202	passim
NRS 11.203–.205	3
NRS 40.645(1)(a)	4
NRS 40.647(1)	4
N.J. Stat. § 2A:14-1.1(a)	12
N.M. Stat. Ann. § 37-1-27	12
N.Y. C.P.L.R. § 214-d(1)	12
Ohio Rev. Code Ann. § 2305.131(A)(1)	13
Okla. Stat. tit. 12, § 10	13
Or. Rev. Stat. Ann. § 12.135(1)	13
42 Pa. Cons. Stat. Ann. § 5536(a)	13
R.I. Gen. Laws Section 9-1-29.....	13
S.D. Codified Laws § 15-2A-3	13
Tex. Civ. Prac. & Rem. Code § 16.009(a)	13

W. Va. Code § 55-2-6a13

Wis. Stat. Ann. § 893.89(3)13

Wyo. Stat. Ann. § 1-3-111(a)13

Other Authorities

51 Am.Jur.2d *Limitation of Actions* § 18 (1970)11

Hearing on SB 395 Before the Senate Judiciary Comm.,
68th Leg. 15 (Nev., May 10, 1995).....4

Hearing on AB 421 Before the Assembly Judiciary Comm.,
80th Leg. (Nev., April 9, 2019) 4, 5, 7

Hearing on AB 421 Before the Senate Judiciary Comm.,
80th Leg. (Nev., May 15, 2019)5

I. Introduction

Amicus curiae, the Nevada Justice Association (“NJA”), joins in opposing rehearing of the Court’s opinion because the analysis and outcome are required by the legislative purpose, spirit, and intent of the Chapter 40 prelitigation scheme—protecting Nevada homeowners. The NJA strongly disagrees with Respondents’ request for rehearing because Respondents’ argument is contrary to the text of the statute and overall intent of a statute of repose. More importantly, the application of Respondents’ position, if accepted, will have profoundly adverse repercussions for homeowners and will create a slippery slope that would thwart NRS Chapter 40 construction defect law, such that builders and sub-contractors could escape liability under a statute of repose defense.

In its capacity as *amicus curiae*, the NJA wishes to bring to this Court’s attention three main concerns that militate against granting the underlying Petition. First, the intent and language of Assembly Bill 421 is unambiguous and should be applied as clearly stated and intended by the legislature; second, Respondents are asking this Court to reverse its own well-reasoned and *en banc* Opinion contrary to other jurisdictions that have upheld the retroactivity of enlarging statutes of repose; and, third, public policy supports denial of the Petition because accepting Respondents’ position will have an extreme adverse impact on every present and future construction defect case in the State of Nevada because the consumers and

builders alike will not be able to have a clear understanding of when statute of repose periods begin or end.

II. Interest of the *Amicus Curiae*

The NJA, formerly known as the Nevada Trial Lawyers Association, is a non-profit organization of independent lawyers who represent consumers and share the common goal of improving the civil justice system. The NJA strives to ensure that Nevadans' access to the courts is not diminished. The Chapter 40 process and NRS 11.202 impact all Nevada homeowners.

The NJA has been actively involved in the enactments and amendments relating to Nevada construction defect law since NRS Chapter 40's initial passage back in 1995. As such, the NJA stays abreast of cases in front of this Court that would have a direct impact on homeowners' rights and construction defect litigation in Nevada. The NJA does not present this brief to address the facts of the underlying case at issue but, rather, is submitting this brief to inform the Court of the overreaching effects that a decision in this case could have. Specifically, Respondents have presented an argument to this Court that, if accepted, would have dangerous consequences for construction defect litigation, would thwart the purpose of NRS Chapter 40 for both consumers and contractors alike and would be directly in the face of the legislative intent and plain language of the statute.

//

III. Relevant Legislative Background

A. Nevada’s History of Modifying the Statute of Repose

In 1965, Nevada adopted a statute of repose for construction projects. Since then, Nevada has a long history of lengthening and retroactively shortening the statute of repose. This Court has an almost equally long history of considering the constitutionality of the Legislature’s retroactive shortening of the statute of repose. *See G and H Assoc. v. Ernest V. Hahn, Inc.*, 113 Nev. 265, 268–70, 934 P.2d 229, 231–32 (1997) (reciting history).

In 2015, Nevada adopted Assembly Bill 125 (“AB 125”) that modified the Chapter 40 prelitigation process and NRS 116 and replaced NRS 11.203–.205 with a single, retroactive six-year statute of repose. AB 125 provided one year for claimants to sue for claims that accrued before its passage under the then-existing “statutes of repose” (*i.e.*, NRS 11.203–.205). AB 125, 2015 Nev. Stat., ch. 2, Legislative Counsel’s Digest at 3. The 2019 Legislature retroactively extended the statute of repose to 10 years in Assembly Bill 421 (“AB 421”).

B. Nevada’s Mandatory Chapter 40 Prelitigation Process

In 1995, Nevada adopted a comprehensive mandatory prelitigation process for residential construction-defect claims “to protect the rights of homeowners”¹ that

¹ *Gonski v. Dist. Ct.*, 126 Nev. 551, 562, 245 P.3d 1164, 1171–72 (2010); *Westpark Owners’ Ass’n v. Dist. Ct.*, 123 Nev. 349, 359, 167 P.3d 421, 428 (2007) (*citing* SB 395 at 23 (statement of Valerie Cooney)).

was simple enough that an “*average homeowner* who is not able to hire a lawyer, *can ‘walk themselves through the system and not be harmed by it[.]’*” Hearing on SB 395 before the Senate Judiciary Comm., 68th Leg. 15 (Nev., May 10, 1995) (emphasis added). This process requires homeowners to complete numerous steps before commencing a lawsuit. *See, e.g.*, NRS 40.645(1)(a) (requiring notice), 40.647(1) (requiring inspection), 40.680 (requiring mediation).

Chapter 40 must be interpreted “in light of the policy and spirit of the law” to avoid results contradicting this intent. *Westpark*, 123 Nev. at 357, 167 P.3d at 427; *see Oxbow Constr. v. Dist. Ct.*, 130 Nev. 867, 874–75, 335 P.3d 1234, 1240 (2014).²

C. Legislative History of AB 421

The Eightieth Session of the Nevada Legislature in 2019 introduced and passed AB 421 specifically to give Nevada homeowners more time to bring a claim for constructional defects. From its first introduction, AB 421’s intent was to reinstate the right to bring claims in certain cases for certain defects that had been stripped from homeowners in 2015. *See* Minutes of Hearing on AB 421 Before the Assembly Judiciary Comm., 80th Leg. (Nev., April 9, 2019), at 7. The policy behind AB 421 and purpose of enlarging the statute of repose for construction defects was also discussed because many defects take time to

² The *Oxbow* Court declined to interpret a statute in a manner that involved “policy questions better left to the Legislature.” 130 Nev. at 875, 335 P.3d at 1240.

manifest. *See id.* at 11. Ultimately, at the time AB 421 was presented to the Senate Judiciary Committee, the bill was presented as a joint bill by both homeowners' and subcontractor representatives. *See Minutes of Hearing on AB 421 Before the Senate Judiciary Comm., 80th Leg. (Nev., May 15, 2019), at 15 (Statement of Josh Griffin).*

IV. Argument

There is no basis for rehearing of this matter because this Court's opinion correctly interpreted and applied the plain language of AB 421 and properly applied the Legislature's intent. Moreover, rehearing is not warranted because this Court's opinion is in line with other States that have upheld the retroactive enlargement of statutes of repose. Finally, Respondents' arguments for rehearing must be rejected because such arguments would have absolute and dangerous consequences for Nevada homeowners and public policy does not support rehearing of this matter.

A. The Language and Intent of AB 421 are Unambiguous.

"It is well established that when 'the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.'" *Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007) (quoting *State Div. of Ins. v. State Farm Mutual Auto Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000)). "The ultimate goal of statutory construction is to effect

the Legislature’s intent.” *Cromer v. Wilson*, 126 Nev. 106, 109, 225 P.3d 788, 790 (2010).

1. The Language of AB 421 and NRS 11.202 Are Unambiguous

First, the language of NRS 11.202(1) post passage of AB 421 is clear (emphasis added):

1. No action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than **10 years after the substantial completion of such an improvement**, for the recovery of damages for:
 - (a) Except as otherwise provided in subsection 2, any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;
 - (b) Injury to real or personal property caused by any such deficiency; or
 - (c) Injury to or the wrongful death of a person caused by any such deficiency.

NRS 11.202(1) is unambiguous because it is not capable of more than one reasonable interpretation. The plain language of NRS 11.202(1) provides a clear, outside time limit of “10 years after the substantial completion of . . . an improvement” to bring a claim for a construction defect. That is, if an owner or builder simply reads NRS 11.202(1), they will clearly understand that a claim must be brought within 10 years from the date of substantial completion.

The purpose of having clear and definite triggering events is to allow the general consumer to know exactly when the statute of repose period begins for their claims. For instance, a certificate of occupancy for a newly built home is of public record and is something that a homeowner can look up on their own and can easily and definitively calculate their time under which to pursue a claim against a builder.

2. *The Legislative Intent of AB 421 is Unambiguous.*

Second, the legislative intent of AB 421 is unambiguous. Because the ultimate goal of statutory interpretation is to achieve the legislative intent, what legislators said about a statute is important. *Harris Assoc. v. Clark County School Dist.*, 119 Nev. 638, 642; 81 P.3d 532, 534 (2003).

As stated in the bill’s first introduction, “What it is seeking to do is to restore Nevada’s construction defect law to a position where homeowners with legitimate construction defect claims can bring a claim within a reasonable amount of time to be made whole.” Minutes of Hearing on AB 421 Before the Assembly Judiciary Comm., 80th Leg. (Nev., April 9, 2019), at 4 (Statement of Ardea G. Canepa-Rotoli).

Section 11, Subsection 4 of AB 421, as enrolled, unequivocally provides (emphasis added):

The period of limitations on actions set forth in NRS 11.202, as amended by section 7 of this act, apply retroactively to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2019.

The intent of the 80th Nevada Legislature here is clear – the enlarged ten-year statute of repose for claims under NRS 11.202 apply to all improvements substantially completed ten or less years on the date on which an action is commenced.³ The fundamental purpose of a statute of repose is to create a fixed, bright-line point from which a temporal limitation to file suit begins. As such, AB 421 is both clear in its intent and its application.

B. This Court’s Opinion Is Correct, Well-Reasoned and In Line with Other Jurisdictions

Aside from asking this Court to reverse its own well-reasoned opinion and to provide an opinion contrary to the legislature’s clear directive, Respondents are also asking this Court to veer from other jurisdictions that have upheld retroactive enlargement of statutes of repose.

That is, many other jurisdictions have addressed similar issues regarding the retroactive enlargement of a statutes of limitation and repose and have found the same to be lawful and constitutional. In recognition of and deference to this Court’s case load, we will cite just a few exemplar opinions that may be persuasive to this Court.

³ In analyzing whether a statute of repose should be applied prospectively or retroactively, other courts have based their decision on whether retroactive application was the clear legislative intention. *Unruh v. Cacchiotti*, 257 P.3d 631, 640 (Wash. 2011); *Nortley v. Hurst*, 321 Mich. App. 566, 571, 908 N.W.2d 919, 922 (2017); *Duluth Firemen's Relief Ass'n v. City of Duluth*, 361 N.W.2d 381, 385 (Minn. 1985).

In the Fourth Circuit Court of Appeals, in analyzing Oregon’s clear retroactive enlargement of the statutes of repose for product defect actions, the Court held that the retroactive enlargement was constitutional because the statute served a legitimate legislative purpose that was furthered by rational means. *Shadburne-Vinton v. Dalkon Shield Claimants Trust*, 60 F.3d 1071, 1077 (4th Cir. 1995). Such is the case here where the Nevada legislature clearly wanted to provide homeowners with a fair opportunity to litigate their claims, some of which do not manifest for many years. *See supra* § III-C.

The Court of Appeals of Minnesota upheld the retroactive enlargement of statutes of repose for indemnity and contribution claims against a subcontractor specifically to revive claims that may have already been barred because there is no “vested right to repose.” *In re Individual 35W Bridge Litig.*, 787 N.W. 2d 643, 651 (Minn. App. 2010), *citing U.S. Home Corp. v. Zimmerman Stucco & Plaster, Inc.*, 749 N.W.2d 98, 101 (Minn. App. 2006), affirmed by Supreme Court of Minnesota at 806 N.W. 2d 820 (Minn. 2011). The Court of Appeals of Minnesota thus reasoned that “[a] right is not vested unless it is something more than a mere expectation . . . [i]t must be some right or interest in property that has become fixed . . . [and] **there is no vested right in an existing law nor in an action until final judgment has been entered.** *Id.* (emphasis added).

The Supreme of Connecticut also upheld the retroactive application of the State's enlargement of limitations to revive otherwise time-barred claims because it found there is no vested right in the lapsing of a period of limitations such that retroactive enlargement of the time to bring a claim would alter a substantive right. *Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A. 3d 462, 504 (Conn. 2015).

Finally, the United States Court of Appeals for the District of Columbia Circuit upheld the modification of a limitations period that would have previously barred claims for materials used in construction, and found retroactive application of a repose rational and constitutional to allow a claim to go forward. *Wesley Theological Seminary of United Methodist Church v. United States Gypsum Co.*, 876 F.2d 119, 122-123 (D.C. Cir. 1989).

While it is true that most appellate decision deciding whether a retroactive statutes of repose should be upheld involve the reduction of the limitations period to bring a claim, it is also inevitable that that Courts have repeatedly upheld retroactive enlargement of limitations periods because there is no vested right to not be sued until or unless final judgment is rendered. That is, the expectation of existing law is not a vested right and there is no vested right to repose. In the instant matter, there is also the very clear legislative intent to make the enlarged repose period retroactive, and for the legitimate purpose of giving homeowners a longer period to bring a claim.

C. Public Policy Would Be Abrogated by Rehearing of this Matter

The public policy behind statutes of limitation and repose, generally, is two-fold.⁴ First, to give injured parties a bright-line outside limit to bring a claim, and to easily assess and ascertain that outside limit. Two, to give potential defendants a time certain by which they know no further claims may be brought against them.

In Nevada, enlarging the statutes of repose for construction defect actions served and continues to serve these dual public policies. Moreover, Nevada's now ten-year statute of repose for construction defects is on par with most other states in the nation, which have also decided that ten years as an outside limit for bringing a construction defect action is reasonable and necessary to protect homeowners and contractors alike. Specifically, Nevada, the District of Columbia and 30 other states currently have a statute of repose of ten years or more for construction defect actions:

⁴ See *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 19-20 (1990), *citing* 51 Am.Jur.2d *Limitation of Actions* § 18 (1970) (footnotes and citations omitted) (emphasis added):

[S]tatutes of limitation embody important public policy considerations in that they **stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs**. Thus, statutes of limitation rest upon reasons of sound public policy in that they tend to promote the peace and welfare of society, safeguard against fraud and oppression, and compel the settlement of claims within a reasonable period after their origin and while the evidence remains fresh in the memory of the witnesses.

Alaska,⁵ California,⁶ District of Columbia,⁷ Florida,⁸ Hawaii,⁹ Illinois,¹⁰ Indiana,¹¹
Iowa,¹² Kansas,¹³ Maine,¹⁴ Maryland,¹⁵ Michigan,¹⁶ Minnesota,¹⁷ Missouri,¹⁸
Montana,¹⁹ Nebraska,²⁰ New Jersey,²¹ New Mexico,²² New York,²³ North Dakota,²⁴

⁵ Alaska Statute 09.10.055.

⁶ CA. Civ. Proc. Code § 337.15.

⁷ DC Code § 12–310 (2021).

⁸ Fla. Stat. § 95.11(3)(c).

⁹ Haw. Rev. Stat. § 657-8.

¹⁰ 735 I.L.C.S. § 5/13-214.

¹¹ Ind. Code Ann. § 32-30-1-5.

¹² Iowa Code § 614.1(11)(2).

¹³ Kan. Stat. Ann. § 60-513(b).

¹⁴ Me. Rev. Stat. tit. 14, § 752-A.

¹⁵ Md. Code Ann., Cts. & Jud. Proc. § 5-108(b).

¹⁶ Mich. Comp. Laws Serv. § 600.5839(1)(b).

¹⁷ Minn. Stat. Ann. § 541.051(1)(a).

¹⁸ Mo. Rev. Stat. § 516.097(1).

¹⁹ Mont. Code Ann. § 27-2-208(1).

²⁰ Neb. Rev. Stat. Ann § 25-223(1).

²¹ N.J. Stat. § 2A:14-1.1(a).

²² N.M. Stat. Ann. § 37-1-27.

²³ N.Y. C.P.L.R. § 214-d(1).

²⁴ N.D. Cent. Code § 28-01-44(1).

Ohio,²⁵ Oklahoma,²⁶ Oregon,²⁷ Pennsylvania,²⁸ Rhode Island,²⁹ South Dakota,³⁰ Texas,³¹ Vermont,³² West Virginia,³³ Wisconsin,³⁴ and Wyoming.³⁵

Acceptance of Respondents' argument to allow for arbitrary, unverifiable statutes of repose and will create a number of loopholes and will promote contractors to intentionally avoid liability for construction defects. By weakening AB 421, as well as its intent and its purpose, we could reach a situation where no homeowner, attorney or court would be able to decipher when the statute of repose period ends. That is, accepting Respondents' argument would actually force a number of unnecessary and wasteful lawsuits to be filed in order to conduct litigation discovery merely to discover that a statute of repose period has passed. This would be waste of time and money for plaintiffs, defendants and the courts. All of this can be avoided by affirming the purpose of a statute of repose period, which is to create fixed bright-line repose period, all of which are easily ascertained if the repose is ten

²⁵ Ohio Rev. Code Ann. § 2305.131(A)(1).

²⁶ Okla. Stat. tit. 12, § 10.

²⁷ Or. Rev. Stat. Ann. § 12.135(1).

²⁸ 42 Pa. Cons. Stat. Ann. § 5536(a).

²⁹ R.I. Gen. Laws Section 9-1-29.

³⁰ S.D. Codified Laws § 15-2A-3.

³¹ Tex. Civ. Prac. & Rem. Code § 16.009(a).

³² Vermont does not have a statute of repose specific to construction.

³³ W. Va. Code § 55-2-6a.

³⁴ Wis. Stat. Ann. § 893.89(3).

³⁵ Wyo. Stat. Ann. § 1-3-111(a).

years from the date of substantial completion, a date which is also easily verifiable by homeowners and contractors alike.

The public policy behind the Legislature's enactment of AB 421 and the attendant enlargement of the statutes of repose for construction defects is worthy and promotes the fair dispensation of justice and access to the Courts in the State of Nevada. This Court should not reverse itself to impede this public policy.

V. Conclusion

This Court's opinion should not be reheard because it 1) the language of AB 421 is clear as is the legislative intent that the statute of repose should be enlarged retroactively; 2) Respondents have failed to meet the high burden that this Court's underlying well-reasoned decision should be reversed; 3) this Court's underlying opinion is in line with other Courts that have analyzed the questions of constitutionality of enlarging statutes of repose retroactively because there is no vested right in repose; and 4) public policy supports denying the Petition for Rehearing.

While the NJA does not have a direct interest in the underlying case before this Court, the NJA, as an organization that seeks to protect consumer rights, absolutely has an interest in the way that this Court rules on the underlying Petitions. The NJA respectfully cautions this Court that granting the instant Petition will have overt effects on homeowners' rights and will make it nearly impossible for a

homeowner Plaintiff to be able to know when their time to pursue a claim triggers and ends, thus ultimately stripping the homeowner of his/her rights to pursue a claim altogether. The NJA asks this Court to look to the true intent of the legislature in creating the bright line statute of repose period - to create a clear-cut and unambiguous time frame for which a homeowner has to pursue a claim against a contractor. On this basis, this Court should deny the underlying Petition.

DATED: April 8, 2022

MADDOX, SEGERBLOM AND
CANEPA, LLP

/s/ Eva G. Segerblom

EVA G. SEGERBLOM (#10749)
ARDEA G. CANEPA-ROTOLI 12345)
MADDOX, SEGERBLOM AND
CANEPA, LLP
10403 Double R Blvd.
Reno, NV 89521
*Attorneys for Amicus Curiae Nevada
Justice Association*

CERTIFICATE OF COMPLIANCE

1. 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 of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in size 14 font in Time New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 28.1(e)(2)(B)(i) and NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3,330 words.

3. 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 an 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 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: April 8, 2022

MADDOX, SEGERBLOM AND
CANEPA, LLP

/s/ Eva G. Segerblom

EVA G. SEGERBLOM (#10749)
ARDEA G. CANEPA-ROTOLO 12345)
MADDOX, SEGERBLOM AND
CANEPA, LLP

10403 Double R Blvd.

Reno, NV 89521

Attorneys for Amicus Curiae

Nevada Justice Association

CERTIFICATE OF SERVICE

I certify that on the 8th day of April, 2022, I caused to be served via the District Court's e-filing system and pursuant to NRAP 25(b) and NEFCR 9, and electronically filed the foregoing "RESPONSE OF AMICUS CURIAE NEVADA JUSTICE ASSOCIATION TO RESPONDENTS' PETITION FOR REHEARING AND AMICUS BRIEF IN SUPPORT OF APPELLANT'S ANSWER TO PETITION FOR REHEARING" with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-filing system (Eflex). Participants in the case who are registered Eflex users will be served by the Eflex system as follows:

Peter C. Brown
Jeffrey W. Saab
Devin R. Gifford
BREMER WHYTE BROWN & O'MERA LLP
1160 N. Town Center Drive
Las Vegas, Nevada 89144

Daniel F. Polsenberg
Joel D. Henriod
Abraham G. Smith
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway #600
Las Vegas, Nevada 89169

Counsel for Respondents

Michael J. Gayan
Joshua D. Carlson
KEMP JONES, LLP
3800 Howard Hughes Pwky, 17th Fl.
Las Vegas, NV 89169

Francis I. Lynch
LYNCH & ASSOCIATES LAW GROUP
1445 American Pacific Drive
Suite 110 #293
Henderson, NV 89074

Scott Williams (pro hac vice)
WILLIAMS & GUMBINER, LLP
1010 B Street, Ste 200
San Rafael, CA 94901

Counsel for Appellant

/s/ Eva G. Segerblom _____
An employee of Maddox, Segerblom and
Canepa, LLP