

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 GREG ELLIOT PELKOLA,

S.C. Docket No. 80763

D-13-488682-D

3 Appellant

4 v.

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Elizabeth A. Brown
Clerk of Supreme Court

5 HEIDI MARIE PELKOLA.

6 Respondent

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9 **RESPONDENT’S PETITION FOR EN BANC RECONSIDERATION**

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11 Respondent, HEIDI MARIE PELKOLA (“Heidi”) moves this court for En Banc
12 Reconsideration of the decision of the panel of the Supreme Court filed May 27, 2021, and
13 reverse its decision in the manner identified in the Points and Authorities below. Respondent
14 further request that the court reconsider its panel decision *en banc* pursuant to NRAP 40A.
15 This Petition is based upon the Points and Authorities below, on all pleadings on file herein,
16 and is made in good faith and not to delay justice.
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19 Dated this 2 August 2021.

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21 RADFORD J. SMITH, CHARTERED

22 /s/ Radford J. Smith

23 RADFORD J. SMITH, ESQ.

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I.

STATEMENT OF FACTS

In June 2014, Respondent, Heidi Pelkola was granted the right to move from Nevada to Arizona with the parties' three minor children. 1RA00030. In June 2018, Appellant filed an action for change of custody, and the matter was set for an evidentiary hearing that was continued multiple times. 1RA 13-27. The hearing was finally set for November 20, 2019. Pending the hearing, Heidi became engaged to a man who lived in Ohio. n October 1, 2019, Heidi filed a motion seeking to address her desire to move to the Ohio from Arizona, and she was prepared to address those issues as part of her presentation of evidence at the November 20, 2019, hearing. 4AA00389-463.

At the Evidentiary Hearing on November 20, 2019, Appellant's lawyer arrived late and blithely advised the district court that Appellant was vacating the motion to modify custody (filed in 2018). Though Appellant, by vacating his motion, was agreeing that it was in the best interest that the children should remain in Heidi's primary care, he argued that she should not be able to move to from Arizona to Ohio with the children.

Appellant's Opposition to Heidi's motion to relocate was based upon his argument that NRS 125C.006(1) required Heidi to meet the requirements of NRS 125C.006(1) because she was intending to move from Arizona to Ohio. NRS 125C.006(1) reads:

If primary physical custody has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State the is at such a distance that would substantially impair the ability of the other

1 parent to maintain a meaningful relationship with the child, and the custodial
2 parent desires to take the child with him or her, the custodial parent.

3 Upon reviewing the language of NRS 125C.006(1), the district court granted Heidi's motion
4 to relocate. The district court found that the language of NRS 125C.006(1) addressed
5 relocation to a place outside of Nevada, and relocation inside Nevada, but did not address
6 relocation from a place outside of Nevada to another place outside of Nevada.
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9 Appellant appealed the decision to grant Heidi's motion to relocate Ohio. He
10 contended upon appeal that NRS 125C.006 applied, but Appellant agreed to waive an
11 evidentiary hearing. 4AA00714. In its May 27, 2021, decision ("Decision"), this Court
12 reversed the district court's order. It did so by finding that the language "intends to relocate
13 his or her residence to a place outside of this State," addresses a relocation from a place
14 outside the State to another place outside the State. Specifically, the Decision reads: "In this
15 appeal, we consider whether that provision applies only to relocation from Nevada to a place
16 outside of Nevada, or also from a place outside of Nevada to another place outside of
17 Nevada. We conclude that it applies to both." Even though the litigants' views of the effect
18 of the same language differed, the Court found that it would not address any ambiguity in
19 the language of the statute. Instead, it found that the plain language of the statute applied to
20 relocations to a place outside of Nevada from another place outside of Nevada. On June 28,
21 2021, Respondent petitioned for the Supreme Court panel to rehear the appeal. On July 19,
22 2021, the panel denied her request. This Petition for En Banc review follows.
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II.

RESPONDENT’S PETITION IS TIMELY

NRAP 40A(b) states in relevant part:

(b) Time for Filing; Effect of Filing on Finality of Judgment. Any party may petition for en banc reconsideration of a Supreme Court panel’s decision within 14 days after written entry of the panel’s decision to deny rehearing...

On July 19, 2021, the Supreme Court denied Respondent’s Petition for Rehearing pursuant to NRAP 40. Respondent must file her Petition for En Banc Reconsideration by August 2, 2021. Thus, Respondent’s Request is timely.

III.

THE COURT SHOULD REVIEW THE OPINION OF THE PANEL TO SECURE OR MAINTAIN UNIFORMITY OF DECISIONS INTERPRETING NEVADA’S “RELOCATION” STATUTE, AND BECAUSE THE DECISION OF THE PANEL WILL HAVE SUBSTANTIAL PRECEDENTIAL EFFECT ON A PUBLIC POLICY ISSUE

NRAP 40A(a) states:

(a) Grounds for En Banc Reconsideration. En banc reconsideration of a decision of a panel of the Supreme Court is not favored and ordinarily will not be ordered *except* when (1) reconsideration by the full court is necessary to *secure or maintain uniformity of decisions* of the Supreme Court or Court of Appeals, or (2) the proceeding involves *a substantial precedential, constitutional or public policy issue*....

[Emphasis supplied].

The case before us addresses the scope of Nevada’s “anti-removal” statute, codified in NRS 125C.006(1). The panel’s interpretation of that statute changes the way this Court interpreted that language for decades. *See* Section III below. The panel cited no evidence

1 in the legislative history in NRS 125C.006(1) supporting its decision because the legislative
2 history focuses on moves from Nevada to a different state. Recent legislation brought by
3 the author of NRS 125C.006(1), Keith Pickard, in the last session of the legislature,
4 demonstrates that the statutory language did not address moves *after* a parent already
5 relocated from Nevada. Mr. Pickard’s recent bill, discussed below, offered a standard for
6 review of requests for relocation for parents living out of Nevada, which would be
7 unnecessary if the original language of the statute was meant to address moves out of state.
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11 The panel ignored the ambiguity in the language its decision creates. If the Court
12 adopts a view of the language “intends to relocate his or her residence to a place outside of
13 this State” to “a relocation from a place outside the State to another place outside the State”
14 it will have imposed a new standard on parents living in other States that is not applicable
15 to parents living in Nevada. For example, under the panel’s interpretation, moving within
16 a state outside of Nevada, say from Phoenix to Scottsdale, Arizona, would have a higher
17 standard than a move within Nevada. The statute only addresses intrastate moves where
18 “the new location would substantially impair the ability of the other parent to maintain a
19 meaningful relationship with the children.” Under the panel decision, any intrastate move
20 in another state would not have that limitation. In other words, parents living in other states
21 who move intrastate to another city would be required to meet the requirements of
22 Nevada’s anti-removal statute even if it did not affect, as was the case with the Pelkolas,
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1 any ability for the Nevada parent to maintain the same relationship with the other parent as
2 in the existing order which allowed the parent to relocate in the first place.
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4 The panel offered no insight to the practical effect of its new interpretation. Under
5 its interpretation, *any* move by a parent who had been granted the right to relocate with the
6 children requires an evidentiary hearing and findings by the Court, even if the Court found
7 that there was no detriment to the ability of a party to maintain contact with the children,
8 and the other party waived an evidentiary hearing. Under that rule, a parent moving from
9 a city to a suburb in the same location is required to seek permission to relocate with the
10 child.
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14 The example the panel gave regarding a move to Japan without permission of the
15 other party once granted the right to move out of State is simply not consistent with existing
16 Nevada law. Such a move would render the contact Mr. Pelkola had with the children under
17 the existing order impossible. In that event, he would have the right to a hearing on the
18 issue of the proposed move, his visitation, and custody of the children because the move to
19 Japan would materially affect his right to visitation with the children. *See, Gordon v.*
20 *Geiger*, 133 Nev. 542, 402 P.3d 671 (2017)(holding that a *sua sponte* modification of a
21 non-custodial parent's visitation and custodial rights is a violation of due process). The
22 panel's interpretation would not grant any greater protection to a party whose rights of
23 visitation or custody were materially affected by any action of a party, whether a move or
24 any other act. Instead, what the panel's interpretation would do is require that a parent
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1 living outside of Nevada go through the long and expensive process of a relocation trial
2 even where the move did not impact the relationship of the Nevada parent with the children.
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4 The parent wielding such power would be the parent who was unsuccessful in preventing
5 the initial move, giving them the proverbial “second bite at the apple,” which would be a
6 dangerous enticement. The panel’s interpretation leads to the “absurd results” a *de novo*
7 review of statutory provisions is designed to avoid.
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9 10 III.

11 **RECONSIDERATION OF THE FULL COURT IS NECESSARY TO SECURE** 12 **AND MAINTAIN UNIFORMITY OF DECISIONS**

13 The court interpreted the NRS 125.006(1) inconsistent from its plain language,
14 different from the court’s prior interpretation of the same language, and contrary to the
15 legislative history of the statute. That interpretation is contrary to fundamental law relating
16 to the interpretation of statutes.
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19 Statutory interpretation is a question of law subject to *de novo* review. When
20 the language of a statute is clear and unambiguous, its apparent intent must be
21 given effect. However, “when a statute is ambiguous, the legislature’s intent
22 is the controlling factor in statutory interpretation.” In such instances, this
court may look to the legislative history to ascertain the Legislature's intent.

23 *Potter v. Potter*, 121 Nev. 613, 19 P.3d 1246 (2005).

24 The operative language of this Court’s Decision is its interpretation of the meaning
25 of “to a place outside of this state” in NRS 125C.006(1). The language “outside of this state”
26 is contained in every version of Nevada’s “anti-removal” statute, including the first version
27 added to the Nevada Revised Statutes in 1987. As addressed below, the Supreme Court
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1 repeatedly interpreted that phrase as referring to a move from *within* Nevada to *outside* of
2 Nevada. The Court’s interpretation in its Decision in this case is the first time any court
3 found that the language “to a place outside of this state” encompasses moves from outside
4 Nevada to another place outside of Nevada. The differences in the litigants’ and this Court’s
5 own interpretations of the statute should have led to find that the language was ambiguous
6 or should be interpreted in consideration of the statute’s legislative history.
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9 ***A. The History of Nevada’s the Anti-Removal Statute is contrary to the May 27,***
10 ***2021, Decision, and as a result, does not secure or maintain uniformity.***
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12 The first statute requiring a parent to seek written permission to relocate with a child
13 from Nevada to another state was NRS 125A.350 added in 1987. That statute read:

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15 If custody has been established and the custodial parent or a parent having
16 joint custody intends to move his residence ***to a place outside of this state*** and
17 to take the child with him, he must, as soon as possible and before the planned
18 move, attempt to obtain the written consent of the other parent to move the
19 child from the state. If the noncustodial parent or other parent having joint
20 custody refuses to give that consent, the parent planning the move shall, before
21 he leaves the state with the child, petition the court for permission to move the
22 child. The failure of a parent to comply with the provisions of this section may
23 be considered as a factor if a change of custody is requested by the
24 noncustodial parent or other parent having joint custody.

25 [Emphasis supplied]

26
27 NRS 125A.350 was first addressed in a decision of the Supreme Court in *Schwartz*
28 *v. Schwartz*, 107 Nev. 378, 812 P.2d 1268 (1991). In *Schwartz*, the Court specifically stated
its understanding that the language “to a place outside of this state” meant a move from
Nevada to another state. The *Schwartz* court referred to NRS 125A.350 as Nevada’s “anti-

1 removal” statute. *Schwartz v. Schwartz*, 107 Nev. 378, 812 P.2d 1268, 1270 (1991). The
2 Court revealed its interpretation of the anti-removal statute when it framed the issue on
3 appeal: “Removal of minor children *from Nevada* by the custodial parent is a separate and
4 distinct issue from the custody of the children.” *Id.* [emphasis added]. That analysis allowed
5 the *Schwartz* Court to judicially add a layer of factors that a party must meet beyond the
6 “sole consideration” of the best interest of the child where the request was a “removal of
7 minor children from Nevada.”
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11 In a series of decisions following *Schwartz*, the Court repeatedly held that the
12 language of NRS 125A.350 addressed moves from Nevada to another state. *See, Trent v.*
13 *Trent*, 111 Nev. 309, 890 P.2d 1309 (1995)(holding that in considering a motion for
14 permission to move a minor child *from Nevada*, the district court must first determine
15 "whether the custodial parent has demonstrated that an actual advantage will be realized by
16 both the children and the custodial parent)(emphasis added); *Jones v. Jones*, 110 Nev. 1253,
17 885 P.2d 563 (1994)(holding that the Court first interpreted Nevada “anti-removal” statute
18 in *Schwartz*); *Gandee v. Gandee*, 111 Nev. 754, 895 P.2d 1285 (1995)(citing to *Trent*, *Jones*,
19 and *Schwartz*, as the cases which construed that a custodial parent wishing to remove the
20 child from the state must make a threshold showing of “a sensible, good faith reason for the
21 move.”); *Cook v. Cook*, 111 Nev. 822, 898 P.2d 702 (1995); *McGuinness v. McGuinness*,
22 114 Nev. 1431, 970 P.2d 1074 (1998); *Halbrook v. Halbrook*, 114 Nev. 1437, 971 P.2d
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1 1262 (1998); *Mason v. Mason*, 115 Nev. 12, 975 P.2d 340 (1999); *Hayes v. Gallacher*, 115
2 Nev. 1, 972 P.2d 1138 (1999).
3

4 In *Trent v. Trent*, 111 Nev. 309, 890 P.2d 1309 (1995) this Court emphasized that
5 NRS 125A.350 intended to address moves outside of Nevada.
6

7 We find it disturbing that despite our decision in *Schwartz*, many
8 district courts are using NRS 125A.350 as a means to chain custodial parents,
9 most often women, to the state of Nevada. NRS 125A.350 is primarily a
10 notice statute intended to prevent one parent from in effect “stealing” the
11 children away from the other parent by moving them away to another state
12 and attempting to sever contact. Given the legislative purpose behind NRS
13 125A.350, it should not be used to prevent the custodial parent from freely
14 pursuing a life outside of Nevada when reasonable alternative visitation is
15 possible.
16

17 *Id.* at 315, 890 P.2d at 1313. Nowhere in any of the decisions entered by the Court was any
18 focus on moves once the parent left Nevada.
19

20 The language “outside of this state” was never deleted from Nevada’s “anti-removal”
21 statute. In 1999, the Nevada Legislature amended the statute and recodified it as NRS
22 125C.200. The amended language did not change the language of the statute addressed in
23 *Schwartz* and in issue in this case. NRS 125C.200 read:
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25 If custody has been established and the custodial parent intends to move his
26 or her residence ***to a place outside of this State*** and to take the child with him
27 or her, the custodial parent must, as soon as possible and before the planned
28 move, attempt to obtain the written consent of the noncustodial parent to move
the child from this State. If the noncustodial parent refuses to give that
consent, the custodial parent shall, before leaving this State with the child,
petition the court for permission to move the child. The failure of a parent to
comply with the provisions of this section may be considered as a factor if a
change of custody is requested by the noncustodial parent.

1 The cases interpreting the language of NRS 125C.200 that followed found that the statute
2 addressed moves from within Nevada to outside of Nevada. *See Gepford v. Gepford*, 116
3 Nev. 1033, 13 P.3d 47 (2000); *Reel v. Harrison*, 118 Nev. 881, 60 P.3d 480 (2002); *Flynn*
4 *v. Flynn*, 120 Nev. 436, 441, 92 P.3d 1224, 1227 (2004).

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6 In *Potter v. Potter*, 121 Nev. 613, 19 P.3d 1246 (2005), the Court reviewed the
7 language of NRS 125C.200 and found, correctly, that the change in the language of the anti-
8 removal statute that removed “a parent having joint custody” reference in NRS 125A.350
9 rendered NRS 125C.200 not applicable to joint custodians, and that the standard for
10 determining relocation moves brought by joint physical custodians was whether it was in
11 the best interest of the child to relocate to the location outside of Nevada, or to remain in
12 Nevada with the custodial parent. *Id.* at 618, 119 P.3d at 1249.

13
14 In 2014, the Court addressed the application of NRS 125C.200 to non-married
15 couples in *Druckman v. Ruscitti*, 130 Nev. 468, 327 P.3d 511 (2014). In that decision, the
16 Court held that the *Schwartz* factors applied in cases between unmarried parents where a
17 parent moved from Nevada to another state. *Id.* While the *Druckman* decision did not
18 change the long-standing interpretation of the “removal statute,” its language applying the
19 *Schwartz* factors to unmarried parents and a joint custodians led to the third iteration of the
20 statute.

1 NRS 125C.006(1) arose from legislation passed in the 2015 Nevada Legislature. The
2 primary author and proponent of that was Attorney Keith Pickard.¹ The Parental Rights
3 Protection Act of 2015, “AB 263,” began as a response to the decision of this Court in
4 *Druckman*. The legislation evolved into a bill that incorporated judicial decisions that
5 reinterpreted (some would argue judicially modified) the language of various family law
6 statutes addressing the custody of minor children in Nevada. During the legislative sessions
7 for AB 263, Mr. Pickard testified as to the intent of that portion of the bill addressing and
8 modifying NRS 125C.200, and the *Druckman* decision interpreting it.
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12 There are inequities, but as we look at the decision in *Druckman v. Ruscitti*,
13 130 Nev., Advance Opinion 50 (Exhibit J), we have created an atmosphere in
14 which a parent who is not married and wants to relocate simply relocates
15 without permission of the other parent or the court. In NRS 125C.200, it is not
16 appropriate for couples that are married to go without permission of the court.
17 One of the other things that this legislation tries to resolve is the fact that you
18 can go from Reno to Truckee, California, which would not be a monumental
19 impediment for maintaining your relationship with your child. If you are
20 married, you need court permission to do that, and if you are not married, you
21 do not. However, say you are a resident of Las Vegas, and you want to relocate
22 to Winnemucca, you do not need permission from anybody. You just get up
23 and move.
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26 One of the other things that we tried to do in section 13 is to limit that by
27 distance. There is some discussion as to whether 100 miles is appropriate. It
28 is not an entirely arbitrary number. . . . I am not going to say that I advocate
what this is trying to do like with the *Druckman* loophole. I am not. We, as
officers of the court, should be doing justice and should be stepping up in
trying to do what is in the best interest of the child. Certainly, there are
inconsistencies that foster inequities.

¹ Mr. Pickard was a private attorney but now holds a seat in the Nevada Assembly as a State Senator.

1 See Minutes of the Meeting of the Assembly Committee on Judiciary, dated March 26,
2 2015, page 20-21.
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4 During the testimony, there was no reference to any change in the interpretation of
5 “relocate to a place outside of this State.” The amendment focused on a modification of the
6 statute to require the application of NRS 125C.200 and the *Schwartz* factors, codified in
7 AB263 to unmarried parents, and to intrastate-moves. In the final product, NRS 125C.200
8 reformed, at least for married individuals, to NRS 125C.006(1). This version of the anti-
9 removal statute contained the same operative language as the other prior versions relating
10 to moves from Nevada to outside of Nevada (“parent intends to relocate his or her residence
11 to a place outside of this State”) but added language to distinguish between removing a child
12 from Nevada to moving a child from one location to another location within Nevada that
13 would substantially impair the ability of the other parent to maintain a meaningful
14 relationship with the child.”
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19 The present statutory language distinguishes between moves to a location outside of
20 Nevada and moves to a location within Nevada. Nothing in the legislative history suggests
21 that the author of the language ever contemplated an application of the “anti-removal”
22 statute to anything but moves from Nevada to outside its boundaries. To interpret the
23 language differently would be to impose a meaning to the words “to relocate outside of the
24 state” that is contrary to the legislative history of the “removal statute” in any of its three
25 versions, is contrary to this court’s interpretation of the language “to relocate outside of this
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1 state” in the statute and ignores the context of that language in relation to the other language
2 in the statute.
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4 ***B. The Plain Language of the Statute Supports the Interpretation that it only***
5 ***Applies to Relocations or Removal of Children from Nevada***

6 Even if the Court were to ignore the decisional and legislative history of the current
7 statute, the plain language of the statute supports the district court’s decision that NRS
8 125C.006 does not apply to moves that start outside the state of Nevada. The statement that
9 is interpreted in this case is: “the custodial parent intends to relocate his or her residence to
10 a place outside of this State.” The operative word that is refashioned in this Court’s present
11 Decision in its interpretation of NRS 125C.006 is the word “outside.” The Court does not
12 redefine “relocate” (defined as “move to a new place and establish one’s home or business
13 there”²) or “this state” as meaning Nevada. Instead, the Court interprets the word “outside”
14 to mean any place not in Nevada, rather than relocate outside of Nevada. Here, “outside” is
15 a preposition, defined as, “A word governing, and usually preceding, a noun or pronoun and
16 expressing a relation to another word or element in the clause.”³ The word “outside” is
17 defined as “[s]ituated or moving beyond the boundaries or confines of.”⁴ Here, “outside”
18 governs to the words it precedes “this State” and relates to “relocate” in the phrase. Thus,
19 the act that invokes the statutory requirements of approval is the act of relocating “beyond
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28 ² *Oxford English Dictionary*, s.v. “relocate,” <https://www.lexico.com/en/definition/relocate>.

³ *Oxford English Dictionary*, s.v. “preposition,” <https://www.lexico.com/en/definition/preposition>.

⁴ *Oxford English Dictionary*, s.v. “outside,” <https://www.lexico.com/en/definition/outside>.

1 the boundaries or confines” of Nevada, not a move outside the boundaries or confines of
2 any other state.

3
4 Mr. Pickard’s current legislative efforts suggest he never interpreted the language of
5 NRS 125C.006 as addressing moves that commence anywhere but Nevada. In the 2021
6 legislative session, Mr. Pickard proposed a bill specifically addressing moves by a parent
7 who previously moved in compliance with NRS 125C.006. The proposed bill was Senate
8 Bill 119. The language of the bill that Mr. Pickard sponsored would have modified the
9 “removal statute” to state:
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12 4. Except as otherwise provided in this subsection, a parent who has relocated
13 with a child in compliance with the provisions of this section may
14 subsequently relocate with the child without 18 obtaining additional written
15 consent from the non-relocating parent or permission from the court after
16 providing written notice to the non-relocating parent at least 30 days before
17 relocating with the child. Additional written consent from the non-relocating
18 parent or permission from the court in the manner set forth in this section is
19 required to be obtained by the relocating parent before any subsequent
20 relocation with the child if the non-relocating parent establishes that the
21 subsequent relocation would deprive the non-relocating parent from
continuing to: (a) Maintain regular contact with the child; or (b) Participate in
major decisions relating to the child, including, without limitation, decisions
related to the health, education and religious training of the child.

22 See, SB 119 and Minutes of the Assembly dated February 14, 2021. In SB 119, Sections 22
23 and 23 discuss *subsequent* relocation and whether the relocation prevents the noncustodial
24 parent from continuing or maintaining contact with the child.
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26 Even though the bill was not brought to vote in the 2021 session, its language
27 demonstrates that the author of the 2015 bill, Pickard, did not intend that the language in
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1 NRS 125C.006 address relocation after a party received an order granting relocation with
2 the child to another State. If that was the intent of the 2015 bill that included NRS 125C.006,
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4 he would have found no reason to address the issue of subsequent relocations thereafter.

5 ***C. The Decision involves a substantial precedential, constitutional, and public***
6 ***policy issue which requires en banc review and reconsideration***

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8 As discussed above, the Decision is problematic for litigants. The failure to recognize
9 jurisdictional boundaries (moves from Nevada to outside Nevada) as the metric for the
10 application of relocation factors would lead to absurd results. Such an order would require
11 review of custody each time a party “relocates” even to a different residence within a short
12 distance of the current residence if the party were in a State other than Nevada, or to any
13 location in another State even if such a move did not affect the Nevada parent’s visitation
14 or contact with the child.
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17 In other words, the current court’s interpretation of the statute would result in even
18 intrastate moves of a party that did not affect either visitation, the contact with the child, or
19 the cost of travel to require a party to seek an evidentiary hearing so that requisite findings
20 could be made regarding the move. *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139,
21 1143 (2015)(The district court must issue specific findings for each of the NRS 125C.007(1)
22 factors.)
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26 In reality, the statute does not support that interpretation, nor was it ever envisioned
27 by the author of the statute that it would be interpreted in that manner. Had the legislature
28 wanted to address moves from a location out of Nevada to another, it could have done so

1 specifically, but it did not. Any moves that affect the ability of the Nevada parent to remain
2 in contact with the children could be addressed by the court using the best interest factors
3 under NRS 125C.0035, including those moves that would constitute a material change in
4 the circumstances affecting the welfare of the child by relocation to a place that would
5 prevent the contact or visitation granted by the prior order. *See Ellis v. Carucci*, 123 Nev.
6 145, 161 P.3d 239 (2007). Placing yet another layer of litigation upon a custodial parent
7 that has already shown that placing the child in his or her primary care outside of Nevada is
8 in the child's best interest ignores the economic reality of that litigation, particularly for
9 those parties who may be moving a second time to meet economic needs. The *Schwartz*
10 factors were developed in cases that addressed only moves outside of the residential state
11 of the parents. They were not designed to address the factors more relevant to the non-
12 custodial parent's continued contact and visitation with the child.
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18 In our increasingly mobile society, the decision in this case may affect a multitude of
19 cases each year and place burdens on custodial parents that were never addressed or
20 contemplated by the authors of the statutes. If the legislature wants to take up the issue of
21 moves that happen when one is already granted the right to live outside of Nevada and host
22 and participate in the debate, analysis, and testimony of attorneys in the field, experts, or
23 any other interested constituents, or others, it should do so. This Court should not usurp that
24 process by applying an interpretation of statutory language that was never intended. The
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1 reasonable solution to resolve this issue associated with relocation should be addressed by
2 the legislature.
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4 For these reasons, Heidi submits that the Supreme Court should rehear the appeal *en*
5 *banc*.
6

7 RADFORD J. SMITH, CHARTERED

8 /s/ Radford J. Smith

9 RADFORD J. SMITH, ESQ.

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13 Attorney for Respondent

14 Dated this 2 August 2021.
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/s/ Kimberly A. Stutzman

KIMBERLY STUTZMAN, ESQ.

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Dated this 2 August 2021.

/s/ Kimberly A. Stutzman
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