

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

MAIDE, L.L.C. d/b/a GENTLE  
SPRING CARE HOME; SOKHENA  
K. HUCH; MIKI N. TON,

Appellants,

vs.

CORINNE R. DILEO, AS SPECIAL  
ADMINISTRATOR FOR THE  
ESTATE OF THOMAS DILEO;  
THOMAS DILEO, JR., AS  
STATUTORY HEIR TO THOMAS  
DILEO; AND CINDY DILEO, AS  
STATUTORY HEIR TO THOMAS  
DILEO,

Respondents,

Case No. 81804

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Elizabeth A. Brown  
Clerk of Supreme Court

**REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE**  
**AMICUS CURIAE BRIEF OF THE NEVADA JUSTICE ASSOCIATION**  
**(In Support of Respondents)**

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The Nevada Justice Association (“NJA”), a proposed *amicus curiae*, is a non-profit organization of independent lawyers in the State of Nevada. NJA is represented in this matter by Micah S. Echols, Esq. of Claggett & Sykes Law Firm; and A.J. Sharp, Esq. of Sharp Law Center, and hereby files this reply in support of its motion for leave to file amicus curiae brief of NJA accompanied by the proposed brief.

## **I. LEGAL ARGUMENT**

Appellants’ Opposition to NJA’s Motion proceeds — as does Appellants’ Opening Brief in this matter — only by mischaracterizing the issues and the arguments of the opposing side. Appellants criticize NJA’s proposed amicus brief for purportedly “only regurgitat[ing] and drill[ing] further down into the points that Respondents have already addressed.” *Appellants’ Response*, 2.<sup>1</sup>

To the contrary, while there is inevitable overlap (as Respondents and NJA are advocating the same *side* of the issues), NJA’s proposed amicus brief does not focus on the merits of this particular case, but instead — as its Motion states “seeks

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<sup>1</sup> NRAP 27 requires, regarding “[a]ll papers relating to motions[,]” that “[t]he pages shall be consecutively numbered at the bottom.” *See* Nev. R. App. P. 29(d)(1)(D).

Despite this requirement, although the first (non-substantive) page of Appellants’ Response is numbered “1,” the substantive pages are unnumbered. *Appellants’ Response, passim*. Therefore, the page numbers cited herein have been manually derived.

to ensure that access to the courts by Nevadans is not diminished.” *NJA’s Motion*, 2 (emphasis added).

To that end, while the parties argue case-specific points, NJA invokes systemic considerations that will affect parties across Nevada once this Appeal is resolved.

**A. NJA’S PROPOSED AMICUS BRIEF EXPLICATES THE CONSTITUTIONAL CONSIDERATIONS AT STAKE, WHICH HAVE IMPLICATIONS FOR ALL NEVADANS RATHER THAN ONLY FOR THE PARTIES HERE.**

NJA’s proposed amicus brief spends five pages explicating the Constitutional foundations of the right to a jury trial, as well as the interplay between the Nevada Constitution and the statute at issue. *NJA’s Proposed Amicus Brief*, 3-7.

By contrast, Respondents’ Answering Brief cites the Constitution only at the beginning and end of the argument in reference to the original source of the right at issue — exactly as one would expect from the brief of a party in contrast to that of an amicus curiae. *Respondents’ Answering Brief*, 2, 29. Moreover, Appellants’ Opening Brief does not mention the Constitution at all — again, exactly as one would expect from a party attempting to downplay or dismiss the importance of the Constitutional right at issue in this Appeal. *Appellants’ Opening Brief*, *passim*.

Appellants’ attempt to deflect attention from this obvious benefit of NJA’s proposed amicus brief by dismissing this five-page Constitutional argument as a “hollow nod toward the Nevada [C]onstitution.” *Appellants’ Response*, 4.

As Appellants see it, NJA’s Constitutional argument — unaddressed in the parties’ briefing — “adds nothing of substance” to that briefing. *Id.* at 2.

However, as NJA’s brief explains, the Constitutional roots of the right to a jury trial — *i.e.*, its prominent place in Nevada’s supreme law, as well as the link between the Constitutional provision and the statute at issue — form the basis for the statute’s use of absolute language and for the necessity of uniform state-wide application of that language. *NJA’s Proposed Amicus Brief*, 4-7.

These issues were not addressed in any of the parties’ briefing, undoubtedly because they are systemic considerations regarding how this statute and Constitutional provision are interpreted and applied for Nevadans generally, not simply for the parties to the matter at hand.

Thus, as NJA argued in its Motion, “the amicus has unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide.” *NJA’s Motion*, 2-3 (quoting *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997)).

**B. NJA’S PROPOSED AMICUS BRIEF EXPLAINS SYSTEMIC PROBLEMS THAT WOULD ARISE FROM ENFORCEMENT OF APPELLANTS’ FACIALLY DEFICIENT ADDENDUM — WHICH WOULD ESSENTIALLY VOID THE STATUTE AT ISSUE.**

The parties’ briefing presents both side of the issue as to whether NRS 597.995 may be satisfied by “substantial compliance” or requires “strict

compliance.” *Appellants’ Opening Brief*, 14-18; *Respondents’ Answering Brief*, 20-29. However, (again, as is appropriate from the parties) neither side addresses the systemic effects the enforcement of Appellants’ facially deficient Addendum on grounds of “substantial compliance” would have — namely, that the statute would effectively be mooted, because all arbitration provisions would be enforceable, irrespective of whether they include the “specific authorization” required by the statute. *NJA’s Proposed Amicus Brief*, 22-26.

Again, NJA, in seeking to appear as amicus curiae, goes beyond the case-specific arguments presented by the parties to address the ways in which the outcome of the Appeal would affect all Nevadans. *Cf. NJA’s Motion*, 2 (NJA pursues “the common goal of improving the civil justice system[,]” “seeks to ensure that access to the courts by Nevadans is not diminished[,]” and “works to . . . promote the administration of justice for the public good[.]”).

While the mandatory language of NRS 597.995 clearly prohibits consideration of “substantial compliance” under standard canons of statutory application, NJA nonetheless seeks to bring to this Court’s attention the effects that such eschewing of the statutory language would wreak on the right to a jury trial and access to the courts. Such explication of “the broader context” in which this Appeal occurs and the “vital Constitutional issues at stake here” is the very purpose for

which an amicus brief “is desirable.” *See* Nev. R. App. P. 29(c)(2); *cf. NJA’s Motion*, 2.

## **II. CONCLUSION**

As the foregoing establishes, NJA’s proposed amicus brief does not merely “regurgitate[ ] and drill[ ] further down into the points that Respondents have already addressed.” *Appellants’ Response*, 2. To the contrary, NJA — as is proper for an amicus curiae — emphasizes systemic issues at stake in this Appeal.

The parties — properly focused only on prevailing in this Appeal itself — do not note or consider such systemic effects that this Court’s decision here could have. Thus, NJA seeks to provide a “broader context” to these case-specific disputes, in order to safeguard the Constitutional rights of all Nevadans. That is precisely the proper function of an amicus curiae.

Therefore, the Court should grant NJA’s motion for leave and accept its amicus brief for filing.

DATED this 17th day of May 2021.

**CLAGGETT & SYKES LAW FIRM**

*/s/ Micah S. Echols*

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE NEVADA JUSTICE ASSOCIATION (In Support of Respondents)** was filed electronically with the Supreme Court of Nevada on the 17th day of May 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jamie S. Cogburn  
Hunter S. Davidson  
John Orr  
S. Brent Vogel

I further certify that the foregoing document was emailed to the following:

The Honorable Adriana Escobar, District Judge  
Eighth Judicial District Court, Department 14  
[dept14lc@clarkcountycourts.us](mailto:dept14lc@clarkcountycourts.us)

*/s/ Anna Gresl*

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Anna Gresl, an employee of  
Claggett & Sykes Law Firm