

IN THE SUPREME COURT OF THE STATE OF NEVADA

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| Nathan Ohm, Petitioner, |) | Supreme Court Case No.: |
| |) | |
| |) | Electronically Filed |
| vs. |) | Oct 19 2020 03:26 p.m. |
| |) | Elizabeth A. Brown |
| |) | Clerk of Supreme Court |
| Eighth Judicial District Court, and the |) | |
| Honorable Kathleen Delaney, District |) | District Court Case: A-20-810452-W |
| Court Judge, |) | |
| Respondents, |) | Municipal Court Case: 19CR002297; |
| |) | 19CR002298 |
| and |) | |
| |) | MOTION FOR LEAVE TO FILE |
| City of Henderson, |) | PETITION FOR WRIT OF |
| Real Party in Interest. |) | CERTIORARI IN EXCESS OF TYPE |
| |) | VOLUME LIMITATIONS |

COMES NOW, Petitioner NATHAN OHM, by and through his attorney of record, KELSEY BERNSTEIN, ESQ. of Nevada Defense Group, pursuant to NRAP 32(a)(7)(C) and the attached Declaration of Counsel, and respectfully moves for leave to file a Petition for Writ of Certiorari pursuant to NRAP 32(a)(7)(D).

RESPECTFULLY SUBMITTED this ____ day of October, 2020.

By: _____

Kelsey Bernstein, Esq.
Nevada Bar No. 13825
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Las Vegas, Nevada 89101
(702) 988-2600
kbernstein@defendingnevada.com
Attorney for Petitioner

DECLARATION

I, KELSEY BERNSTEIN, ESQ., am a duly-licensed attorney in the State of Nevada. As amended, Nevada Rule of Appellate Procedure 21(d) states:

Form of Papers; Length; Number of Copies: All papers must conform to Rule 32(c)(2). An original and 2 copies shall be filed unless the court requires the filing of a different number by order in a particular case. A petition shall not exceed 15 pages unless it contains no more than 7,000 words (or 650) lines of text in a monospaced typeface) or the court grants leave to file a longer petition.

Nathan Ohm (hereinafter “Petitioner”) respectfully requests leave to file its Petition for Writ of Certiorari in excess of the page and word limitation listed in NRAP 21(d). *See also* NRAP 32(a)(7)(D).

In this case, the Eighth Judicial District Court, Dept. 25, ruled upon the constitutionality of Henderson Municipal Code (hereinafter “HMC”) § 8.02.055, which prohibits domestic battery in the City of Henderson. The lower court upheld the ordinance and came to this conclusion after extensive briefing, oral arguments and ultimately based its decision on several constitutional and statutory grounds. Thus, Petitioner respectfully requests additional pages/words to properly address the lower court’s decision. *See* NRAP 32(a)(7)(D).

Moreover, this petition contains an issue of first impression – primarily whether the Petitioner properly enacted its domestic battery ordinance – HMC

§ 8.02.055. Additionally, this petition will address whether the municipal courts have the authority to conduct jury trials for the offense of misdemeanor domestic battery, pursuant to *Andersen v. Eighth Judicial District Court et al.*, 135 Nev. Adv. Op. 42, 448 P.3d 1120 (2019). This particular issue has never been directly decided by this Court. Unlike repetitious petitions for writ of certiorari, issues of first impression have traditionally been heard; “[w]e conclude this is properly before this court pursuant to NRS 34.020(3), because the constitutionality of NRS 171.123(3) presents an issue of **first impression**. Accordingly, we will address the merits of Hiibel’s constitutional challenge . . .” *Hiibel v. Sixth Judicial Dist. Court ex rel. Cty. of Humboldt*, 118 Nev. 868, 871, 59 P.3d 1201, 1204 (2002) (emphasis added).

Finally, and perhaps the most compelling reason to grant leave to file excess pages/words is there remains a split amongst separate judicial departments on this issue in the Eighth Judicial District Court. All parties involved will need the ability to address the reasoning behind those conflicting decisions to properly guide this Court to its ultimate decision. *See City of Las Vegas v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 118 Nev. 859, 861, 59 P.3d 477, 479 (2002) (abrogated on other grounds) (where this Court granted a writ of certiorari to address a District Court split on the constitutionality of a city ordinance). In that case, and as here, two separate courts “reached contrary

conclusions” regarding the constitutionality of a criminal law. *Id.* The *City of Las Vegas* Court held that it would “entertain a petition for extraordinary relief in order to **resolve a split of the authority among lower courts.**” *Id.* (emphasis added).

Here, the constitutionality of HMC § 8.02.055 was ruled upon, twice, by separate Eighth Judicial District Court departments, resulting in opposing decisions. *See, Steven Cullen v. City of Henderson*, Case No. A-20-809107-W (Nev. Sup. Ct. Dkt. No. 81714).

Thus, additional briefing is necessary to render guidance and direct consistency on this issue. Petitioner ultimately requests that this Court recognize the necessity of its writ for certiorari, rule on this issue of first impression, and resolve the split in the District Court, under the authority granted by NRS 34.020(3). As such, Petitioner respectfully requests that this Court accept its Petition for Writ of Certiorari, which contains 15,874 words in the Petition in its entirety. *See* NRAP 32(a)(7)(C).

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Petitioner would stipulate to an equal length for the Real Party in Interest's answering brief.

RESPECTFULLY SUBMITTED this ____ day of October, 2020.

By: _____

Kelsey Bernstein, Esq.
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this motion complies with the formatting requirements of NRAP 32(a)(5), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Word 365 in 14-point Times New Roman.

2. I further certify that this motion complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the motion excepted by NRAP 32(a)(7)(C) it is proportionately spaced, has a typeface of 14 points or more, and contains 1,201 words.

3. Finally, I hereby certify that I have read this motion and, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this motion complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the motion regarding matters in the record to be supported by a 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

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event that the accompanying motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

RESPECTFULLY SUBMITTED this ____ day of October, 2020.

By:_____

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of August, 2020, a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI IN EXCESS OF TYPE-VOLUME LIMITATIONS** was served via electronic service through the Court's electronic filing system per NEFCR 9 and/or that the same was served via US mail, certified postage prepaid, and addressed as follows:

Hon. Kathleen Delaney
Eighth Judicial District Court, Dept. 25
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

Marc Schifalacqua, Esq.
243 S. Water Street, MSC 711
Henderson, Nevada 89015
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Employee of Nevada Defense Group