

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

NATHAN OHM,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, COUNTY OF CLARK;  
AND THE HONORABLE KATHLEEN  
DELANEY, DISTRICT COURT  
JUDGE,

Respondents,

and

CITY OF HENDERSON,

Real Party in Interest.

CASE NO: 81950 Electronically Filed  
Nov 25 2020 12:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**MOTION TO CONSOLIDATE**  
**NEVADA SUPREME COURT**  
**CASES 81714**  
**& 81960**

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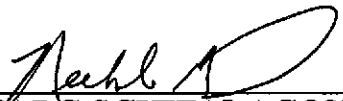
**MOTION TO CONSOLIDATE NEVADA SUPREME COURT CASES**

**81714 AND 81960**

COMES NOW, Real Party in Interest THE CITY OF HENDERSON, NEVADA, by and through counsel undersigned, and submits this Motion to Consolidate Nevada Supreme Court Cases 81714 & 81960. This Motion is made and based upon the papers, pleadings, and memoranda on file herein.

DATED this 25<sup>th</sup> day of November, 2020.

NICHOLAS VASKOV, ESQ.  
CITY ATTORNEY

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*CITY OF HENDERSON*

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. STATEMENT OF RELEVANT FACTS**

There are currently two separate Petitions for Writ of Certiorari pending before this Court regarding the constitutionality and validity of Henderson Municipal Code (“HMC”) § 8.02.055, which is the City of Henderson’s domestic battery ordinance. In the instant case, Petitioner Nathan Ohm (hereinafter “Ohm”) asked this Court to review District Court Judge Kathleen Delaney’s ruling that HMC § 8.02.055 is valid and constitutional. (Appendix pp. 001-077). Judge Delaney ruled on August 26, 2020 that charging Ohm under HMC § 8.02.055 did not constitute an *ex post facto* violation. (Appendix pp. 081-082). Judge Delaney further held that a conviction under HMC § 8.02.055 does not trigger the firearm prohibition in NRS 202.360. (Appendix pp. 082). Further, HMC § 8.02.055 does not conflict with NRS 202.360. (Appendix pp. 083). Judge Delaney also ruled that charging Ohm under HMC § 8.02.055 did not constitute an equal protection violation. (Appendix pp. 082-083). Finally, Judge Delaney determined that Henderson Municipal Court has the authority to conduct jury trials for misdemeanor domestic violence offenses. (Appendix pp. 083).

In a separate Petition filed August 31, 2020, the City of Henderson (hereinafter the “City”) requested this Court review District Court Judge Trevor Atkin’s ruling on the constitutionality of HMC § 8.02.055. (Appendix pp. 096-

141). On June 19, 2020 Judge Trevor Atkin ruled that HMC § 8.02.055 constituted an *ex post facto* law as applied to Real Party in Interest Steven Cullen (hereinafter "Cullen"). (Appendix pp. 146). Judge Atkin further held that HMC § 8.02.055 directly conflicted with NRS 202.360. (Appendix pp. 146). Judge Atkin also determined that Henderson Municipal Court has the authority to conduct jury trials for misdemeanor domestic battery offenses. (Appendix pp. 146).

As discussed further below, because the Petition in the instant case and the City's Petition involve overlapping issues of first impression regarding the same city ordinance, it is in the interest of judicial economy to consolidate. Consolidation is also appropriate because the district court judgments created a split in authority. Accordingly, the City now files this Motion to Consolidate.

## II. ARGUMENT

### A. The Writ Petitions Should be Consolidated as They Involve Overlapping Issues of First Impression Regarding the Constitutionality of HMC § 8.02.055.

Nevada Rule of Appellate Procedure ("NRAP") 3(b) governs the consolidation of appeals. NRAP 3(b) provides:

#### **(b) Joint or Consolidated Appeals.**

(1) When two or more parties are entitled to appeal from a district court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its own motion or upon motion of a party.

Thus, parties who have the standing to appeal a district court order and have filed separate and timely notices of appeal may move to consolidate the appeals if their interests make consolidation practicable.

The City and Ohm each filed separate and timely writ petitions challenging District Court judgments regarding the constitutionality and validity of HMC § 8.02.055. These petitions ask this Court to review the same and/or substantially similar issues of first impression pertaining to HMC § 8.02.055. In the case at bar, Ohm argues that charging him under HMC § 8.02.055 constitutes an unlawful *ex post facto* violation. (Appendix pp. 015-025). Ohm also contends that a conviction under HMC § 8.02.055 triggers the firearm prohibition in NRS 202.360, and therefore requires a trial by jury. (Appendix pp. 026-045). Ohm claims that being charged under HMC § 8.02.055 constitutes an equal protection violation that cannot pass strict scrutiny analysis. (Appendix pp. 045-060). Finally, Ohm asks this Court to determine whether Henderson Municipal Court has the authority to conduct jury trials for domestic violence cases. (Appendix pp. 060-072).

In the City's Petition, the City asks this Court to review issues that are identical and/or overlap considerably with the issues present in the instant petition. There, the City asks that this Court determine whether charging Cullen under HMC § 8.02.055 was an *ex post facto* violation. (Appendix pp. 116-123). The City also asks this Court to consider whether HMC § 8.02.055 conflicts with NRS

202.360. (Appendix pp. 123-133). Finally, the City asks this Court to affirm that Henderson Municipal Court has the legal authority to conduct jury trials. (Appendix pp. 133-137).

The instant petition and the City's petition both ultimately ask this Court to determine the constitutionality of HMC § 8.02.055. Further, the specific issues raised in both petitions are identical and/or overlap considerably with each other and involve the same legal arguments. Accordingly, consolidation is practicable and serves the interest of judicial economy.

**B. Consolidating the Writ Petitions is Appropriate to Resolve the Split in Authority in District Court.**

This Court has elected to consolidate writ petitions when there was a split of authority in the lower courts involving an issue of statewide importance. In State of Nevada v. Eighth Judicial District Court, a split in authority existed in the lower courts regarding whether it was redundant to convict defendants of driving under the influence and traffic infractions. 116 Nev. 127, 134, 994 P.2d 692, 697 (2000). There, the State of Nevada filed writ petitions for each case. This Court recognized the necessity of entertaining the writ petitions in order to resolve the split in authority and consolidated the petitions so they could all be considered together. Id. at 130 n.1, 694 n.1.

Similarly here, there is a split in authority regarding the constitutionality and validity of HMC § 8.02.055. In the instant matter, District Court Judge

Kathleen Delaney determined that charging Ohm under HMC § 8.02.055 did not constitute an *ex post facto* violation. (Appendix pp. 081). Judge Delaney further held that a conviction under HMC § 8.02.055 does not trigger the firearm prohibition in NRS 202.360. (Appendix pp. 082). Judge Delaney also ruled that HMC § 8.02.055 does not conflict with NRS 202.360. (Appendix pp. 083). However, District Court Judge Trevor Atkin held that charging Cullen under HMC § 8.02.055 constituted an *ex post facto* violation, and that the ordinance conflicted with NRS 202.360. (Appendix pp. 146).

There is therefore a split in authority in the Eighth Judicial District Court regarding whether charging a defendant under HMC § 8.02.055 constitutes an *ex post facto* violation, and whether the ordinance conflicts with NRS 202.360. These issues are of statewide importance, as the consequences of a ruling on the constitutionality of the City's domestic violence ordinance will reverberate to municipalities statewide. This Court should consolidate the writ petitions in order to resolve the split in authority.


### III. CONCLUSION

For the reasons set forth above, City asks this Court to grant the Motion to Consolidate Nevada Supreme Court Cases 81714 and 81960. Both petitions involve issues of first impression regarding the constitutionality of HMC § 8.02.055. Further, the issues presented in both Petitions overlap considerably and

involve the same arguments, so it is in the interest of judicial economy to consolidate. Finally, the petitions should be consolidated because the district court rulings in each case created a split of authority regarding matters of statewide importance.

DATED this 25<sup>th</sup> day of November, 2020.

NICHOLAS VASKOV, ESQ.  
CITY ATTORNEY

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25 day of November 2020, a true and correct copy of the foregoing MOTION TO CONSOLIDATE NEVADA SUPREME COURT CASES 81714 AND 81960 was served via electronic service through the Court's electronic filing system per NEFCR 9 to the following:

Kelsey Bernstein, Esq.  
Damian Sheets, Esq.

and that the same was served via US mail, certified postage prepaid, and addressed as follows:

N/A



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City of Henderson Employee