

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,)
Petitioner,)
vs.)
THE EIGHTH JUDICIAL DISTRICT)
COURT OF THE STATE OF NEVADA,)
in and for THE COUNTY OF CLARK;)
and THE HONORABLE RICHARD)
SCOTTI, District Judge,)
Respondents,)
and)
JENNIFER LYNN PLUMLEE,)
Real Party in Interest.)

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Case No: 82236

THE STATE OF NEVADA,)
Petitioner,)
vs.)
THE EIGHTH JUDICIAL DISTRICT)
COURT OF THE STATE OF NEVADA,)
in and for THE COUNTY OF CLARK;)
and THE HONORABLE RICHARD)
SCOTTI, District Judge,)
Respondents,)
and)
MATTHEW HANEY MOLEN,)
Real Party in Interest.)

Case No. 82249

**MOTION FOR AMICI CLARK COUNTY PUBLIC DEFENDER,
CLARK COUNTY SPECIAL PUBLIC DEFENDER, AND NEVADA
ATTORNEYS FOR CRIMINAL JUSTICE TO PARTICIPATE IN
ORAL ARGUMENT**

COME NOW the Clark County Public Defender (CCPD), Clark
County Special Public Defender (SPD), and Nevada Attorneys for Criminal

Justice (NACJ), by and through undersigned counsel of record for Amici, DEBORAH L. WESTBROOK, and hereby file this motion for leave to participate in oral argument.

This Motion is based upon the following Memorandum of Points and Authorities and all papers and pleadings on file herein.

DATED this 5th day of August, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK, #9285
Chief Deputy Public Defender
*Counsel of Record for Amici

MEMORANDUM OF POINTS AND AUTHORITIES

CCPD, SPD and NACJ hereby request leave to participate in the 60-minute oral argument scheduled on September 9, 2021. Pursuant to Nevada Rule of Appellate Procedure 29(h), “[a]n amicus may file a motion to participate in oral argument, but the court will grant such motions only for extraordinary reasons.” Extraordinary reasons exist in this case.

The central issue in these consolidated Petitions—whether a sitting member of the legislative branch of state government can prosecute criminal defendants for violations of state law under Nevada’s separation-of-powers

clause—is highly consequential. Resolution of this issue will affect the rights of criminal defendants throughout Clark County who have been prosecuted by State Senators Melanie Scheible and Nicole Cannizzaro, both prosecutors in the Clark County District Attorney’s Office. As criminal defense organizations representing a number of these clients, CCPD, SPD and NACJ all have an interest in the resolution of this important issue.

The “classic role of amicus curiae” is to assist in a case of “general public interest, supplementing the effort of counsel, and drawing attention to law that escaped consideration.” Miller-Wohl Co. v. Com’n of Labor and Industry, 694 F.2d 203, 204 (9th Cir. 1992). As stated in prior pleadings, Amici offer a unique perspective on the separation-of-powers issue that was not addressed by Real Parties in Interest Plumlee or Molen.

To support Petitioner’s position on the separation-of-powers issue, the Legislative Counsel Bureau (LCB) submitted a 13,836-word amicus brief which addressed “historical evidence, legal treatises and other authorities on constitutional law, case law from other jurisdictions interpreting similar state constitutional provisions, common-law rules governing public officers and employees, and evidence of the intent of the Framers of the Nevada Constitution.” LCB Motion (Doc. No 21-04591) at p. 2. Because Real Parties in Interest Plumlee and Molen did not directly respond to the detailed

and extensive arguments raised in LCB’s amicus brief, Amici prepared their own amicus brief responding to each of LCB’s arguments.

In their brief, Amici explained how LCB improperly framed the issue before this Court by straying from the plain language of Article III, Section 1 of Nevada’s Constitution. Then, after analyzing the plain language of Article III, Section 1, Amici addressed each of LCB’s arguments, point-by-point, and explained why they were inapplicable to the separation-of-powers issue pending before this Court.

A 60-minute oral argument has been scheduled, which will allow the Petitioner and Real Parties in Interest ample time to address their own positions. To the extent this Court may have questions about the unique arguments articulated by CCPD, SPD, NACJ and LCB (or about the legal and practical implications of those arguments), Amici submit that their participation in the upcoming oral argument is essential.

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For all the foregoing reasons, Amici respectfully request that the Court grant their motion for leave to participate in oral argument through their counsel of record, DEBORAH L. WESTBROOK.

DATED this 5th day of August, 2021.

DARIN IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK, #9285
Chief Deputy Public Defender
*Counsel of Record for Amici
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 5th day of August, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
ALEXANDER CHEN
CRAIG MUELLER

DEBORAH L. WESTBROOK

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

RICHARD SCOTTI, ESQ.
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KEVIN C. POWERS
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BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office