

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.

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.

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Case No. 82236

Original Action for Writ to
Eighth Judicial District Court,
Clark County, Nevada,
Case No. C-20-346852-A

Case No. 82249

Original Action for Writ to
Eighth Judicial District Court,
Clark County, Nevada,
Case No. C-20-348754-A

**NEVADA LEGISLATURE'S MOTION TO PARTICIPATE IN
ORAL ARGUMENT AS AMICUS CURIAE**

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MOTION

The Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau (LCB Legal) under NRS 218F.720, hereby files this motion to participate in oral argument as amicus curiae under NRAP 29(h).

BACKGROUND

In this original action for extraordinary writ relief, the district court decided that a deputy district attorney who prosecutes criminal cases and who also serves in the Legislature violates a criminal defendant's rights to "procedural due process" on the basis that such dual service violates the separation-of-powers provision in Article 3, Section 1 of the Nevada Constitution. (*Plumlee App. VI:249-52; Molen App. VI:233-36.*) The Legislature filed an amicus brief supporting reversal of the district court's interpretation and application of the separation-of-powers provision.¹ The Legislature filed an amicus brief in this case because it has substantial interests in ensuring that the broadest spectrum of the citizenry is represented in the Legislature's membership in order to protect the concept of citizen-legislators who are the cornerstone of an effective, responsive and qualified part-time legislative body.

¹ On March 15, 2021, this Court entered an order permitting the Legislature to file an amicus brief exceeding the type-volume limit in NRAP 29(e).

In opposition to the Legislature’s amicus brief, Clark County Public Defender (CCPD), Clark County Special Public Defender (SPD) and Nevada Attorneys for Criminal Justice (NACJ) collectively filed an amicus brief supporting affirmance of the district court’s interpretation and application of the separation-of-powers provision.² In particular, CCPD, SPD and NACJ stated that their amicus brief “directly responds to each of the points raised in [the Legislature’s] lengthy amicus brief.” (*Apr. 22, 2021 Mot. at 5.*)

On August 3, 2021, this Court entered an order scheduling a 60-minute oral argument in this case for September 9, 2021, in Las Vegas. On August 5, 2021, CCPD, SPD and NACJ filed a motion to participate in oral argument as amici under NRAP 29(h). In their motion, CCPD, SPD and NACJ state that “[b]ecause Real Parties in Interest Plumlee and Molen did not directly respond to the detailed and extensive arguments raised in [the Legislature’s] amicus brief, Amici prepared their own amicus brief responding to each of [the Legislature’s] arguments.” (*Aug. 5, 2021 Mot. at 3-4.*) They also argue that their participation in oral argument is essential to the extent that this Court may have questions regarding the opposing constitutional arguments presented in the respective amicus briefs. (*Aug. 5, 2021 Mot. at 4.*)

² On May 6, 2021, this Court entered an order permitting CCPD, SPD and NACJ to file an amicus brief exceeding the type-volume limit in NRAP 29(e).

ARGUMENT

Under NRAP 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.” In this case, there are extraordinary reasons for the Legislature to participate in oral argument as an amicus because this Court’s interpretation and application of the separation-of-powers provision could have significant and long-term effects which will extend beyond the immediate parties and directly impact the institutional operation of the Legislature during future legislative sessions.

In particular, the district court’s decision adversely affects the Legislature’s substantial interests in ensuring that the broadest spectrum of the citizenry is represented in the Legislature’s membership in order to protect the concept of citizen-legislators who are the cornerstone of an effective, responsive and qualified part-time legislative body. For example, in NRS 281A.020(2)(c), the Legislature has declared as the public policy of this State that:

State Legislators serve as “**citizen Legislators**” who have other occupations and business interests, who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted.

NRS 281A.020(2)(c) (emphasis added).

In many western states like Nevada, the state constitution was framed on the concept of a part-time legislative body that is “to be made up from the general public representing a wide spectrum of the citizenry.” Jenkins v. Bishop, 589 P.2d 770, 771 (Utah 1978) (Crockett, J., concurring). For example, the New Mexico Court of Appeals has stated that its state constitution was framed on “the constituency concept of our legislature in this state, which can accurately be described as a citizens’ legislature. In a sparsely populated state like New Mexico, it would prove difficult, if not impossible, to have a conflict-free legislature.” State ex rel. Stratton v. Roswell Ind. Sch., 806 P.2d 1085, 1093 (N.M. Ct. App. 1991). Thus, in states with part-time legislative bodies like Nevada, the constitutional framers fully expected that most state legislators would continue to be employed in other occupations on a full-time or part-time basis during their terms of legislative service.³

Consequently, given that this case implicates the Legislature’s public policy of safeguarding and promoting the concept of citizen-legislators built by the

³ It is clear that the Framers of the Nevada Constitution intended the Legislature to be a part-time legislative body given that they provided for biennial legislative sessions in Article 4, Section 2, and they originally limited those biennial sessions to 60 days in Article 4, Section 29. Although Article 4, Section 29 was repealed in 1958, the fact that the citizens of Nevada voted in 1998 to limit biennial sessions to 120 days is a clear indication that the citizens of Nevada, like the Framers, want the Legislature to be a part-time legislative body.

Framers into the structure of the Nevada Constitution, this Court should permit the Legislature to participate in oral argument as an amicus so that it may vigorously and thoroughly represent, defend and protect its institutional interests in that public policy favoring an effective, responsive and qualified part-time legislative body. Additionally, if this Court determines that it is appropriate for CCPD, SPD and NACJ to participate in oral argument as amici, this Court should also permit the Legislature to participate in oral argument as an amicus so that the Legislature is given an equal opportunity to answer this Court's questions.

CONCLUSION

Based on the foregoing, the Legislature respectfully asks the Court to grant its motion to participate in the oral argument as amicus curiae.

DATED: This 6th day of August, 2021.

By: /s/ Kevin C. Powers
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 6th day of August, 2021, pursuant to NRAP 25 and NEFCR 9, I filed and served a true and correct copy of the Legislature’s Motion to Participate in Oral Argument as Amicus Curiae, by means of the Nevada Supreme Court’s electronic filing system, directed to:

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