

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

NEVADA GAMING COMMISSION and
NEVADA GAMING CONTROL BOARD,
Appellants,

vs.

STEPHEN A. WYNN,
Respondent.

No. 82263

Electronically Filed
Jan 14 2021 11:25 a.m.

DOCKETING Elizabeth N. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XIV
County Clark Judge Hon. Adriana Escobar
District Ct. Case No. A-20-809249-J

2. Attorney filing this docketing statement:

Attorney Kiel B. Ireland Telephone 702-486-3795
Firm Office of the Nevada Attorney General
Address 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Client(s) Nevada Gaming Commission

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Donald J. Campbell Telephone 702-382-5222
Firm Campbell & Williams
Address 700 S. Seventh St.
Las Vegas, NV 89101

Client(s) Stephen A. Wynn

Attorney J. Colby Williams Telephone 702-382-5222
Firm Campbell & Williams
Address 700 S. Seventh St.
Las Vegas, NV 89101

Client(s) Stephen A. Wynn

(List additional counsel on separate sheet if necessary)

1. Judicial District _____ Department _____
County _____ Judge _____
District Ct. Case No. _____

2. Attorney filing this docketing statement:

Attorney Steve Shevorski Telephone 702-486-3420

Firm Office of the Nevada Attorney General

Address 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Client(s) Nevada Gaming Control Board

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

The Nevada Gaming Control Board (the "Board") filed a complaint with the Nevada Gaming Commission (the "Commission") alleging that Stephen A. Wynn violated the Nevada Gaming Control Act (the "Act"). Wynn moved to dismiss, contending that the Board and Commission lack subject-matter jurisdiction because he had exited the gaming industry after the alleged violations became public. The Commission denied the motion to dismiss.

Wynn petitioned for judicial review or, alternatively, a writ of mandamus and/or prohibition in the district court. The Board and Commission opposed the petition and countermoved to dismiss it. The district court granted the petition and denied the Board and Commission's countermotions.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- 1) Did the district court err in considering Wynn's petition for judicial review of an order denying a motion to dismiss, given that NRS 463.315 permits judicial review only of a "final decision or order"?
- 2) Did the district court err in concluding that the Commission lacks authority to revoke Wynn's finding of suitability and fine him for alleged violations of the Nevada Gaming Control Act?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This appeal raises questions of first impression on provisions of the Nevada Gaming Control Act granting the Commission authority to enforce the Act. The import of the district court's order is that a person regulated by the Commission can cut off Commission jurisdiction at any time simply by divesting from the gaming industry - with no restriction on reentering the industry later. That rule could eviscerate the Commission's ability to enforce the Act and deter wrongdoing.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively retained by the Nevada Supreme Court under NRAP 17(a)(12). Whether persons who violate the Nevada Gaming Control Act can escape any form of discipline by temporarily divesting from the gaming industry is a question of statewide public importance. It goes to the heart of the Commission's duty to maintain public confidence in the State's largest industry.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from November 19, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served November 25, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed see below

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
Nevada Gaming Commission: December 23, 2020
Nevada Gaming Control Board: December 23, 2020

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
An order granting a petition for judicial review and/or writ of prohibition is an appealable final judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Stephen A. Wynn, petitioner

Nevada Gaming Commission, respondent

Nevada Gaming Control Board, respondent

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Wynn petitioned for judicial review or a writ of mandamus and/or prohibition; disposed on November 19, 2020.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nevada Gaming Commission
Name of appellant

Kiel B. Ireland
Name of counsel of record

January 14, 2021
Date

/s/ Kiel B. Ireland
Signature of counsel of record

Nevada, County of Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 14th day of January, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Donald J. Campbell
J. Colby Williams
Campbell & Williams
700 S. Seventh ST.
Las Vegas, NV 89101

Dated this 14th day of January, 2021

/s/ Eddie Rueda
Signature

THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA GAMING COMMISSION
and NEVADA GAMING
CONTROL BOARD,

Appellants,

vs.

STEPHEN A. WYNN,

Respondent.

Case No. 82263

District Court No. A-20-809249-
J

CERTIFICATION OF COUNSEL

1. I am Chief Litigation Counsel for the Nevada Attorney General's Office, counsel of record for the Nevada Gaming Control Board in this matter.

2. I certify that the Nevada Gaming Control Board concurs in the filing of the Nevada Gaming Commission's docketing statement.

DATED this 14th day of January, 2021.

AARON D. FORD

Attorney General

By: /s/ Steve Shevorski

Steve Shevorski (Bar No. 8256)

Chief Litigation Counsel

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sshevorski@ag.nv.gov

Attorneys for Appellant

Nevada Gaming Control Board

CERTIFICATE OF SERVICE

Pursuant to NEV. R. APP. P. 25(5)(c), I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 14th day of January, 2021. I certify that some of the participants in this case are registered electronic filing systems users and will be served electronically.

/s/ *Eddie Rueda*

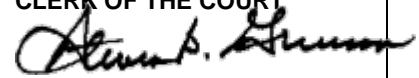
Eddie Rueda, an employee of the
Office of the Attorney General

Petition for Judicial
Review, Alternatively, for
Writs of Mandamus and/or
Prohibition filed 1/27/20

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Electronically Filed
1/27/2020 3:16 PM
Steven D. Grierson
CLERK OF THE COURT



CASE NO: A-20-809249-J
Department 14

DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,
Petitioner,

vs.

NEVADA GAMING COMMISSION, a
political subdivision of the State of Nevada;
and NEVADA GAMING CONTROL
BOARD, a political subdivision of the State
of Nevada,

Respondents.

CASE NO.:
DEPT. NO.:

**PETITION FOR JUDICIAL REVIEW,
ALTERNATIVELY, FOR WRITS OF
MANDAMUS AND/OR PROHIBITION**

**[Exempt from Arbitration Under NAR
3(A) – Action Seeking Judicial Review of
Administrative Decision]**

Petitioner Stephen A. Wynn, by and through his undersigned counsel, hereby petitions for judicial review of the Order Denying Motion to Dismiss entered by Respondent Nevada Gaming Commission on January 9, 2020, a copy of which is attached hereto as Exhibit 1. NRS 463.315 authorizes judicial review of such orders. Petitioner alternatively seeks Writs of Mandamus and/or Prohibition under NRS Chapter 34 on grounds Respondents are without jurisdiction in the underlying disciplinary action, and Petitioner lacks an adequate remedy at law.

NATURE OF THE ACTION

1. In an overreach unprecedented in the storied annals of Nevada gaming, Respondent Nevada Gaming Control Board (“NGCB”) instituted disciplinary proceedings against Petitioner

Stephen A. Wynn (“Mr. Wynn” or “Steve Wynn”) despite the incontrovertible fact that Mr. Wynn voluntarily separated himself from the only Nevada licensees with which he was affiliated—Wynn Resorts, Limited (“Wynn Resorts” or the “Company”) and its affiliates—nearly two years ago. Because Mr. Wynn no longer has any involvement with licensed gaming operations in Nevada or anywhere in the world, and because the statutes and regulations governing Nevada gaming limit the NGCB’s and Commission’s regulatory and disciplinary powers only to applicants seeking to enter the gaming industry or those persons/entities presently involved therein, Mr. Wynn moved to dismiss the NGCB’s Complaint based upon a lack of subject matter jurisdiction. At a hearing on December 19, 2019, Respondent Nevada Gaming Commission (the “Commission”) denied Mr. Wynn’s Motion. The Commission entered its written Order on January 9, 2020, noting that the Order addressed a “preliminary matter” and that “[a]n evidentiary hearing on the merits of this case is forthcoming.” *See* Ex. 1 ¶ 24. This Petition now follows.

IDENTIFICATION OF PARTIES

2. Petitioner Steve Wynn is a citizen of Clark County, Nevada. He is the founder of Wynn Resorts, the former Chief Executive Officer of the Company, and the former Chairman of its Board of Directors.

3. Respondent Commission is a political subdivision of the State of Nevada organized and existing under Chapter 463 of the Nevada Revised Statutes. The Commission’s responsibilities include acting on recommendations from the NGCB in licensing matters and adopting regulations to implement and enforce laws governing gaming in Nevada.

4. Respondent NGCB is an administrative agency of the State of Nevada organized and existing under Chapter 463 of the Nevada Revised Statutes. The NGCB is charged with the administration and enforcement of gaming laws as set forth in Title 41 of the Nevada Revised Statutes and the Regulations of the Commission.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter and the parties thereto pursuant to NRS 14.065. Mr. Wynn is a Nevada citizen. The Commission and the NGCB are political subdivisions of the State of Nevada. NRS 463.315(1) authorizes this Court to review orders of the Commission, and NRS Chapter 34 authorizes this Court to hear petitions for extraordinary writs.

6. Venue is proper in this district pursuant to NRS 13.010 *et seq.* and NRS 463.315(1) as Mr. Wynn resides in Clark County, Nevada.

ALLEGATIONS COMMON TO ALL CLAIMS

A. Background.

7. Mr. Wynn has been the leading innovator in the gaming industry since his first Commission approvals at the Golden Nugget in the early 1970's. In Mr. Wynn's 45+ year tenure as a gaming licensee, the NGCB has never brought any disciplinary action against him, and he and his companies have received numerous approvals from the Commission over the decades.

8. Mr. Wynn is widely credited with reinventing modern Las Vegas with the opening of The Mirage Casino and Resort in or about 1989. Mr. Wynn thereafter opened The Treasure Island Casino & Resort and The Bellagio under the umbrella of Mirage Resorts, Inc. After achieving unprecedented success with the foregoing Las Vegas properties, Mr. Wynn sold Mirage Resorts and founded Wynn Resorts in 2002. Once Mirage Resorts was sold, Mr. Wynn's gaming licenses and approvals ended, and he was required to undergo investigations and obtain findings of suitability as a new applicant when he sought to return to the industry in 2005.

9. Wynn Resorts, through its wholly owned subsidiary, Wynn Las Vegas, LLC ("Wynn Las Vegas"), opened Wynn Las Vegas in 2005. The NGCB recommended, and the Commission approved, Wynn Las Vegas for a non-restricted gaming license, and likewise found Mr. Wynn suitable in his capacity as the Chairman and CEO of Wynn Resorts as well as in his capacity as the controlling shareholder of the Company.

10. On or about February 19, 2012, Wynn Resorts commenced an action styled *Wynn Resorts, Limited v. Kazuo Okada, et al.*, Case No. A-12-656710-B (the “Okada Litigation”), which was pending in the Eighth Judicial District Court from or about February 2012 through Spring 2018, when the matter was resolved. The case arose from the Company’s redemption of stock held by Aruze USA, Inc. (“Aruze”). Aruze and its affiliates thereafter asserted counterclaims against Wynn Resorts, Mr. Wynn, the Company’s other directors, and the Company’s then-General Counsel. Elaine Wynn, Mr. Wynn’s ex-wife, who was sued by Aruze as a member of the Board at the time of the redemption, subsequently filed crossclaims against Mr. Wynn, the Company, and others.

11. On January 26, 2018, during the final pre-trial stages of the Okada Litigation, *The Wall Street Journal* published an article alleging that “dozens” of former Wynn Resorts employees had accused Mr. Wynn of engaging in sexual misconduct while he was Chairman and CEO of the Company. *The Wall Street Journal* and other media outlets thereafter published additional articles and stories on the same subject, many of which contained demonstrably false statements of fact for which Mr. Wynn continues to pursue legal relief.

B. Mr. Wynn Completely Separates Himself from all Involvement with Wynn Resorts.

12. Confronted with the above allegations, Mr. Wynn made the decision to resign as Chairman and CEO of Wynn Resorts so that the Company he created could continue its successes and avoid or minimize possible damage to Wynn Resorts’ employees, suppliers, creditors and shareholders from the distraction that allegations of this nature might cause. Mr. Wynn’s resignation was effective February 6, 2018. Mr. Wynn and Wynn Resorts (and Wynn Resorts Holdings, LLC) thereafter entered into a written agreement on February 15, 2018, outlining the terms of his separation from the Company and all of its affiliates, which included Mr. Wynn’s agreement to forego pursuit of a severance package worth approximately \$330 million.

13. At the time of his resignation, Mr. Wynn owned approximately twelve percent of Wynn Resorts' stock through a family partnership. Mr. Wynn acted promptly to divest his stock ownership in an orderly manner. On March 21, 2018, Mr. Wynn's family partnership sold 4,104,999 shares of Wynn Resorts stock. On March 22, 2018, Mr. Wynn's family partnership entered into agreements to sell its remaining ownership stake in the Company (approximately eight million shares).

14. Although the parties' Separation Agreement permitted Mr. Wynn to remain in his residence at Wynn Las Vegas until June 1, 2018, Mr. Wynn moved out of his residence in or about April 2018. Similarly, although Wynn Resorts' bylaws permitted Mr. Wynn to vote at the Company's annual shareholders meeting on May 16, 2018 based on his stock ownership as of March 2018, Mr. Wynn did not vote or otherwise participate at said meeting.

15. In short, Mr. Wynn ceased all direct or indirect ownership and material involvement with Wynn Resorts and its affiliates by March 2018.

16. Upon information and belief, Wynn Resorts notified the NGCB and/or Commission in early 2018 of Mr. Wynn's resignation from his positions and sale of his stock, and the NGCB removed Mr. Wynn as an officer and director from its Location Report on the Wynn Las Vegas license as of February 23, 2018 and as a shareholder as of March 28, 2018. The NGCB did not contact Mr. Wynn to verify this, nor did the NGCB advise Mr. Wynn of its actions in removing Mr. Wynn as an officer, director and shareholder from the Wynn Las Vegas license.

C. Massachusetts Gaming Regulators ("Mass Gaming") Determine that Mr. Wynn Is No Longer a "Qualifier."

17. At the time the aforementioned *Wall Street Journal* article was published, Wynn Resorts and its affiliates were constructing a new casino resort in Everett, Massachusetts that was subject to investigation, approval and regulation by Mass Gaming. On or about February 27, 2018, Mr. Wynn's counsel notified Mass Gaming of the changed circumstances described above, which

1 raised the question of whether Mr. Wynn remained an individual “qualifier” requiring approvals
2 under the Massachusetts regulatory scheme. Mass Gaming conducted a hearing on April 27, 2018
3 to consider the issue, and it issued a written Decision and Order on May 7, 2018, finding that Mr.
4 Wynn would no longer be a qualifier after the Wynn Resorts Annual Shareholders Meeting on
5 May 16, 2018, and that Wynn Resorts no longer needed to obtain Mass Gaming approval for Mr.
6 Wynn.

7
8 18. Mass Gaming made extensive findings regarding Mr. Wynn’s non-qualifier status,
9 which include in pertinent part:

10 *Mr. Wynn is no longer an officer or director of Wynn Resorts, Ltd., and*
11 *accordingly, he can no longer exercise control or provide direction to Wynn*
12 *MA, LLC or Wynn Resorts, Ltd. in either of those capacities as a matter of law.*
13 Further, it is clear that Mr. Wynn no longer owns any stock in Wynn Resorts,
14 Ltd., and, at the conclusion of the next annual stockholders meeting, *he can no*
15 *longer exercise control or provide direction in that capacity either.* Mr. Wynn’s
16 resignation as an officer and director and divestiture of stock holdings further
17 demonstrates that *he no longer holds a financial interest in the gaming*
18 *establishment* under construction in Everett, Massachusetts or in Wynn MA,
19 LLC, the gaming licensee which holds the license issued by the Commission.
20 These latter factors eliminate Mr. Wynn as a qualifier under categories 2 and 3.¹

21 Mass Gaming likewise determined that Mr. Wynn was (or would be) eliminated as a qualifier
22 under the remaining five factors set forth in its licensing scheme upon the completion of Wynn
23 Resorts’ next annual shareholders meeting in May 2018 and upon the discharge of Mr. Wynn’s
24 city ledger account.

25
26 19. Given his status as a non-qualifier, Mr. Wynn was under no obligation to cooperate
27 with Mass Gaming’s ongoing investigation into Wynn Resorts. Despite this fact, Mr. Wynn’s
28 counsel continued to field and respond to various inquiries from Mass Gaming investigators.

¹ See Mass Gaming Decision and Order dated May 7, 2018 at 5-8 (emphases added).

D. NGCB's Interaction with Mr. Wynn's Counsel.

20. On or about June 29, 2018, a NGCB agent sent a letter to Mr. Wynn, in care of his counsel, notifying him that the NGCB intended to schedule an investigative hearing in late August 2018 at which he would be required to appear and present testimony. This was the first official NGCB communication to Mr. Wynn that it sought to interview him as part of an investigation into the allegations contained in the aforementioned media reports.

21. Even though Mr. Wynn had not been affiliated with any Nevada gaming licensee for months by that time, Mr. Wynn's counsel agreed to meet with NGCB agents in the spirit of cooperation just as they had continued to respond to occasional inquiries from Mass Gaming. Mr. Wynn's counsel flew to northern Nevada and met with NGCB agents on August 30, 2018 in Carson City.

22. During the meeting, Mr. Wynn's counsel reaffirmed the undisputed fact that Mr. Wynn had completely separated himself from Wynn Resorts and, thus, was no longer directly or indirectly involved with any Nevada licensee such that he would remain subject to the jurisdiction of the NGCB and/or the Commission. Mr. Wynn's counsel further advised that Mr. Wynn had no intention of returning to any role involved with gaming in Nevada. Finally, Mr. Wynn's counsel advised that while Mr. Wynn was willing to cooperate with the NGCB's investigation despite his departure from the gaming industry, such cooperation would necessarily have to be limited to answering written inquiries as Mr. Wynn was a party to a number of ongoing lawsuits seeking to vindicate his good name and had to be vigilant about protecting any applicable privileges and work product.

23. Despite the positions articulated by Mr. Wynn's counsel, the NGCB agents advised they intended to formally interview Mr. Wynn on September 7, 2018. Mr. Wynn's counsel provided written correspondence to the NGCB on September 5, 2018 wherein he reiterated the above points made at the August 30 meeting.

24. The NGCB greeted the letter from Mr. Wynn's counsel with silence. It never responded to the letter. Nor did it ever contest that Mr. Wynn was no longer directly or indirectly involved with any Nevada licensee.

E. The Commission Fines Wynn Resorts \$20 Million.

25. On January 25, 2019, the NGCB filed a complaint against Wynn Resorts and Wynn Las Vegas, LLC based on the alleged failure to investigate allegations of wrongdoing made against Mr. Wynn. The complaint is notable given NGCB's admission that Mr. Wynn had resigned from all positions he held with Wynn Resorts and its affiliates in February 2018 and that he held no ownership interest therein by March 2018.

26. Simultaneously with the filing of the complaint, the NGCB and the respondents executed a Stipulation for Settlement and Order that remained subject to Commission approval. The Commission approved the Stipulation for Settlement at a hearing held on February 26, 2019. The Commission further imposed a fine on Wynn Resorts in the amount of \$20 million, as the Stipulation and Order allowed, which was memorialized in an Addendum to the Stipulation for Settlement and Order.

F. Mass Gaming Fines Wynn Resorts \$35 Million.

27. Just over a month after the Commission imposed its fine on Wynn Resorts, Mass Gaming conducted an adjudicatory hearing regarding the Company's suitability for a Massachusetts gaming license on April 2-4, 2019.

28. On or about April 30, 2019, Mass Gaming issued a written decision finding that Wynn Resorts, Wynn MA, LLC and their qualifiers were suitable to maintain a gaming license in the Commonwealth, subject to the fines and conditions set forth in the decision.

29. Mass Gaming imposed a fine on Wynn Resorts in the amount of \$35 million, nearly double that imposed by the Commission.

G. The NGCB Files a Complaint Against Mr. Wynn Nearly Two Years After He Voluntarily Ceased all Involvement with Wynn Resorts.

30. In or about Summer 2019, Mr. Wynn's attorneys learned that the NGCB was considering the filing of a disciplinary action against Mr. Wynn. In an effort to spare taxpayers and Mr. Wynn the expense and fatigue associated with protracted administrative and/or judicial proceedings resurrecting the subject matter addressed in the Wynn Resorts disciplinary actions, Mr. Wynn's counsel contacted NGCB agents about a possible negotiated resolution. Even though it is Mr. Wynn's position that the NGCB and the Commission have no jurisdiction over him given his lack of any involvement with a Nevada licensee, Mr. Wynn was nonetheless willing to consider entering a stipulation whereby he would agree not to seek any involvement in the Nevada gaming industry in the future. The parties were unable to reach a resolution.

31. On October 14, 2019, well over a year after Mr. Wynn's counsel had advised NGCB agents of their lack of jurisdiction over Mr. Wynn, the Chairwoman for the NGCB sent Mr. Wynn's counsel a letter advising that "the Nevada Gaming Control Board will seek to have the Nevada Gaming Commission revoke the Findings of Suitability for Mr. Stephen A. Wynn."

32. The NGCB filed its Complaint against Mr. Wynn the same day, which expressly acknowledges that he is no longer an officer, director or stockholder of Wynn Resorts or its affiliates. The Complaint instead alleges that the NGCB retains jurisdiction over Mr. Wynn because it placed an "administrative hold" on his Findings of Suitability.

33. The statutes and regulations governing gaming in Nevada are devoid of any concept known as an "administrative hold." The NGCB never provided Mr. Wynn with any written notice that it was placing a so-called "administrative hold" on any of his prior gaming approvals.

34. The Complaint, in large measure, mirrors the complaint NGCB filed against Wynn Resorts. Put differently, the Complaint against Mr. Wynn is not premised on any "new"

developments or presently-occurring conditions, other than the allegation that he failed to appear at the September 7, 2018 interview in violation of the gaming statutes and regulations.

35. The relief sought in the Complaint is two-fold. First, the NGCB requests the Commission “to fine Mr. Wynn a monetary sum pursuant to the parameters defined in NRS 463.310(4) for each separate violation of the provisions of the Nevada Gaming Control Act or the Regulations of the Gaming Commission.” Second, the NGCB requests that the Commission “revoke Mr. Wynn’s Findings of Suitability pursuant to the parameters defined in NRS 463.310(4).”

H. Post-Complaint Events and Proceedings Before the Commission.

36. On October 15, 2019, Mr. Wynn served the Commission and NGCB with a public records request pursuant to NRS Chapter 239. The request seeks a variety of public records from the Commission’s and NGCB’s files, including the policies and procedures—if any—regarding NGCB’s use of so-called “administrative holds” in Mr. Wynn’s case or any other matter.

37. The Executive Secretary for the Commission and the NGCB acknowledged receipt of Mr. Wynn’s public records request on October 22, 2019, but advised the agencies would be unable to provide a response thereto until nearly three months later on January 13, 2020.

38. On November 7, 2019, the Commission Chair approved a stipulation setting forth a briefing schedule and procedural framework to address the threshold question of jurisdiction prior to conducting any substantive hearing on the merits of the NGCB Complaint. The stipulation provides, in part, that all proceedings in the underlying disciplinary action would be stayed during the pendency of Mr. Wynn’s Motion to Dismiss.

39. On December 19, 2019, the Commission conducted a hearing on Mr. Wynn’s Motion to Dismiss. After considering brief argument from the parties’ respective counsel, the members of the Commission voted unanimously to deny Mr. Wynn’s Motion.

40. On January 3, 2020, the Executive Secretary for the Commission and the NGCB sent another letter regarding Mr. Wynn's public records request. The agencies advised that they would be unable to meet the January 13, 2020 response date identified in their October 22 letter, and that they would need yet another month to respond to Mr. Wynn's request. The only explanation offered for the new February 12, 2020 response date was "constraints on administrative resources."

41. On January 9, 2020, the Commission issued its written Order denying Mr. Wynn's Motion. Notably, the Order states that it only addresses a "preliminary matter," and that "[a]n evidentiary hearing on the merits of this case is forthcoming." See Ex. 1 ¶ 34.

42. On January 23, 2020, the Commission Chair approved a stipulation continuing the aforementioned stay of proceedings during the pendency of this Petition. A true and correct copy of the Stipulation and Order is attached hereto as Exhibit 2.

FIRST CAUSE OF ACTION

(Petition for Judicial Review – NRS 463.315, *et seq.*)

43. Mr. Wynn incorporates all previous paragraphs as though fully set forth herein.

44. The jurisdiction of an administrative agency is limited to the express powers delegated from the legislature and embodied in applicable statutes. While an agency may likewise possess an implied power, such implied powers are necessarily limited and must be essential to carrying out the agency's express statutory duties.

45. Nothing in Nevada's statutory scheme expressly or impliedly authorizes the NGCB to pursue and the Commission to impose discipline on persons who no longer have any material involvement with a gaming licensee. Nevada's statutes instead limit the NGCB's and the Commission's powers to those persons or entities seeking to enter the gaming industry or those that have a present, material involvement with a licensee or the operations of a licensee. Mr. Wynn, undisputedly, has had no such involvement with a gaming licensee for nearly two years.

1 46. The Commission's denial of Mr. Wynn's Motion to Dismiss, and its intent to
2 proceed with the disciplinary action, violates the provisions of the Nevada and United States
3 Constitutions including, but not limited to, the separation of powers and due process clauses
4 contained therein.

5 47. The Commission's denial of Mr. Wynn's Motion to Dismiss, which has the effect
6 of permitting the NGCB to pursue and the Commission to impose discipline and fines on Mr.
7 Wynn despite his lack of involvement with the Nevada gaming industry, is in excess of the
8 statutory authority and/or jurisdiction of the Commission and the NGCB.

9 48. The Commission's denial of Mr. Wynn's Motion to Dismiss is arbitrary, capricious
10 and/or not in accordance with Nevada law.

11 49. The Commission's denial of Mr. Wynn's Motion to Dismiss constitutes an "order"
12 that is subject to a petition for judicial review under NRS 463.315, *et seq.*

13 50. The Commission's denial of Mr. Wynn's Motion to Dismiss prejudices Mr. Wynn's
14 substantial rights, and must be reversed for the reasons stated herein.

15 51. Mr. Wynn has been forced to hire an attorney to prosecute this action and therefore
16 seeks recovery of his attorney's fees and court costs.

17
18
19 **SECOND CAUSE OF ACTION**

20 **(In the Alternative, Petition for Writ of Mandamus)**

21 52. Mr. Wynn incorporates all previous paragraphs as though fully set forth herein.

22 53. To the extent the NGCB and Commission contend the latter's denial of Mr. Wynn's
23 Motion to Dismiss is not subject to judicial review under NRS 463.315, *et seq.*, Petitioner
24 alternatively seeks relief by way of extraordinary writ.

25 54. A writ of mandamus will lie to compel the performance of an act the law requires as
26 a duty resulting from an office, trust or station where, as here, the Petitioner lacks an adequate
27 remedy at law. *See* NRS 34.150, *et seq.*
28

1 55. Permitting the NGCB to pursue disciplinary proceedings against Mr. Wynn, and
2 permitting the Commission to consider and impose discipline on Mr. Wynn—including the taking
3 of his property through the imposition of fines—when neither administrative body has continuing
4 jurisdiction over him has caused and will continue to cause Mr. Wynn irreparable harm for which
5 there is no plain, speedy, and adequate remedy at law.

6 56. Nevada law required the Commission to grant Mr. Wynn’s Motion to Dismiss, but
7 it failed to do so for reasons that were clearly erroneous, arbitrary, capricious and/or otherwise not
8 in accordance with law.

9 57. Mr. Wynn, thus, requests this Court to issue a writ of mandamus compelling the
10 Commission to grant his Motion to Dismiss.

11 58. Mr. Wynn has been forced to hire an attorney to prosecute this action and therefore
12 seeks recovery of his attorney’s fees and court costs pursuant to NRS 34.270.

13 **THIRD CAUSE OF ACTION**

14 **(In the Alternative, Petition for Writ of Prohibition)**

15 59. Mr. Wynn incorporates all previous paragraphs as though fully set forth herein.

16 60. To the extent the NGCB and Commission contend the latter’s denial of Mr. Wynn’s
17 Motion to Dismiss is not subject to judicial review under NRS 463.315, *et seq.*, Petitioner
18 alternatively seeks relief by way of extraordinary writ.

19 61. A writ of prohibition will lie to arrest the proceedings of any tribunal, corporation,
20 board or person exercising judicial functions, when such proceedings are without or in excess of
21 the jurisdiction of such tribunal, corporation, board or person. *See* NRS 34.320, *et seq.*

22 62. Permitting the NGCB to pursue disciplinary proceedings against Mr. Wynn, and
23 permitting the Commission to consider and impose discipline on Mr. Wynn—including the taking
24 of his property through the imposition of fines—when neither administrative body has continuing
25
26
27
28

jurisdiction over him has caused and will continue to cause Mr. Wynn irreparable harm for which there is no plain, speedy, and adequate remedy at law.

63. Nevada law neither expressly nor impliedly authorizes the NGCB and Commission to pursue the disciplinary action below given that Mr. Wynn has no involvement with any Nevada gaming licensee.

64. Mr. Wynn, thus, requests this Court to issue a writ of prohibition arresting the underlying disciplinary proceedings.

65. Mr. Wynn has been forced to hire an attorney to prosecute this action and therefore seeks recovery of his attorney's fees and court costs.

PRAYER FOR RELIEF

WHEREFORE, Mr. Wynn prays for judgment as follows:

1. That Respondents be ordered to prepare the record in Case No. NGC19-03, and file the same with the Court;

2. That the NGCB's and Commission's actions be reviewed pursuant to NRS 463.315, *et seq.* and/or NRS Chapter 34, and that the Court reverse the Commission's denial of Mr. Wynn's Motion to Dismiss or, alternatively, compel the Commission to grant Mr. Wynn's Motion and arrest the proceedings in the underlying disciplinary action as they are in excess of the NGCB's and Commission's jurisdiction.

3. For an award of attorney's fees and costs; and

4. For such other and further relief as the Court deems just and proper.

DATED this 27th day of January, 2020.

CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell

DONALD J. CAMPBELL, ESQ. (1216)

J. COLBY WILLIAMS, ESQ. (5549)

700 South Seventh Street

Las Vegas, Nevada 89101

Attorneys for Petitioner

Stephen A. Wynn

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

DATED this 27 day of January, 2020.



STEPHEN A. WYNN

- EXHIBIT 1 -



1 NGC Case No. 19-03

3 STATE OF NEVADA

4 BEFORE THE NEVADA GAMING COMMISSION

5 NEVADA GAMING CONTROL BOARD,

6 Complainant,

7 vs.

8 STEPHEN ALAN WYNN,

9 Respondent.

ORDER DENYING RESPONDENT'S

MOTION TO DISMISS

10 On December 19, 2019 at the regularly scheduled Nevada Gaming Commission
11 (Commission) meeting, Chairman Tony Alamo, M.D. presided over a hearing on
12 Respondent's Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction
13 (Motion) filed on November 14, 2019. Donald J. Campbell, Esq. and J. Colby Williams, Esq.
14 were present for Respondent, and Nevada Attorney General Chief Litigation Counsel Steve
15 Shevorski appeared on behalf of the Nevada Gaming Control Board (Board).

16 Based on the above-mentioned Motion, the Opposition and Reply briefs filed in this
17 matter, as well as arguments from the parties' counsel and the record made at the hearing,
18 the Motion is denied for the reasons set forth in this Order and those stated on the record
19 at the time of the hearing.

20 **BACKGROUND**

21 1. The facts set forth here are drawn from the Complaint filed by the Board and
22 Respondent's uncontested evidentiary submissions included with the Motion. Nothing in
23 this Order relieves any party of its burden, if any, to prove any issue at a hearing held
24 pursuant to NRS 463.310 to 463.318.

25 2. On or around March 24, 2005, Respondent was found suitable by the
26 Commission as Chief Executive Officer (CEO), Chairman, shareholder and controlling
27 shareholder of Wynn Resorts, Ltd. (Wynn Resorts), which is registered as a publicly traded
28 company with the Commission. Wynn Resorts, through wholly owned subsidiaries and

1 holding companies, owns Wynn Las Vegas, LLC (Wynn LV), which holds a nonrestricted
2 gaming license.

3 3. In early 2018, the Board initiated an investigation into allegations of
4 misconduct by Respondent in violation of the Nevada Gaming Control Act.

5 4. On February 6, 2018, Respondent resigned from his position as CEO and
6 Chairman of Wynn Resorts.

7 5. Soon thereafter, Respondent, by and through his family partnership, sold or
8 entered into agreements to sell all of its shares of Wynn Resorts stock.

9 6. By mid-2018, Respondent had extinguished any ownership interest in Wynn
10 Resorts and relinquished any management responsibilities therewith.

11 7. Thereafter, at the request of Wynn Resorts, Respondent was removed as an
12 officer and director from the Wynn LV nonrestricted gaming license.

13 8. During its investigation, the Board issued a written Order to Appear requiring
14 Respondent to appear at the Board's offices on September 7, 2018 at 11:00 AM. The Order
15 to Appear was hand delivered to Respondent's counsel during a meeting with Board staff
16 on August 30, 2018. The Order to Appear stated that failure to comply would be grounds
17 for revocation or suspension of Respondent's findings of suitability.

18 9. In violation of the Order to Appear, Respondent failed to appear and testify
19 on September 7, 2018.

20 10. On October 14, 2019, the Board filed a Complaint alleging, among other
21 things, that Respondent "had repeatedly violated Nevada's gaming statutes and
22 regulations, bringing discredit upon the State of Nevada and its gaming industry." The
23 Complaint seeks revocation of Respondent's findings of suitability and the imposition of a
24 fine pursuant to NRS 463.310(4) for each alleged violation of the Nevada Gaming Control
25 Act and/or the Commission's regulations.

26 11. On November 14, 2019, Respondent moved to dismiss the Complaint. The
27 Board filed an opposition to which Respondent filed a reply brief.

28 ...

DISPOSITION

12. The sole issue raised by the Motion and decided by this Order is whether the Commission has subject-matter jurisdiction to consider the allegations in the Complaint.

13. The Board has the burden of establishing that the Commission has jurisdiction.

14. In determining whether the Board has met its burden, the Commission may rely on the allegations in the Complaint and relevant evidentiary submissions. *See Morrison v. Beach City LLC*, 116 Nev. 34, 37 (2000); *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).

15. NRS 463.143 provides that “[t]he Commission may exercise any proper power and authority necessary to perform the duties assigned to it by the Legislature, and is not limited by an enumeration of powers in this chapter.”

16. NRS 463.1405(4) provides that “[t]he Commission has full and absolute power to . . . revoke . . . any finding of suitability.” Because the Board is seeking to revoke Respondent’s findings of suitability, this matter is within the Commission’s jurisdiction under NRS 463.1405(4).

17. NRS 463.310(3) obligates the Commission to review a complaint filed by the Board and conduct further proceedings in accordance with NRS 463.3125 to 463.3145. Thereafter, NRS 463.310(4)(b) authorizes the Commission to “[l]imit, condition, suspend or revoke any . . . finding of suitability.” Because the Board filed a complaint with the Commission in this matter, and is seeking to revoke Respondent’s findings of suitability, NRS 463.310(3) and 463.310(4)(b) establish an independent basis for the Commission’s jurisdiction over this matter.

18. NRS 463.310(4)(d) authorizes the Commission, in accordance with the proper procedures, to “[f]ine each person or entity, or both, which is . . . found suitable” for violations of Nevada law and regulations. Because Respondent was found suitable and the Board filed a complaint with the Commission by which it seeks to fine Respondent for alleged violations of Nevada law and regulations, NRS 463.310(4)(d) establishes an

1 independent basis for the Commission's jurisdiction over this matter.

2 19. NRS 463.140(5) vests in the Board and the Commission, and their respective
3 members, the authority to "compel the attendance of witnesses at any place within this
4 state, to administer oaths and to require testimony under oath." In accordance with that
5 power, the Board issued an Order to Appear to compel Wynn's attendance at an
6 investigatory meeting and to give testimony under oath. Relying on the authority granted
7 to the Commission by the Legislature in NRS 463.143, it is necessary for the Commission
8 to possess and exercise the power to sanction witnesses that do not comply with orders to
9 appear. Because the Board issued an Order to Appear to Respondent and Respondent
10 failed to comply with the Order to Appear, NRS 463.140(5) is an independent basis for the
11 Commission's jurisdiction over this matter.

12 20. The Legislature has found that "strict regulation of all persons . . . related to
13 the operation of licensed gaming establishments" is necessary to maintain public
14 confidence and trust in the gaming industry in this State. NRS 463.0129(1)(c). To that
15 end, it has charged the Board and Commission with observing the conduct of persons
16 associated with gaming, investigating potential violations of the gaming laws and
17 sanctioning persons found to have violated the laws. *See, e.g.*, NRS 463.140, 463.1405,
18 463.310, 463.3145. In turn, the Commission has been granted the express authority to
19 carry out these duties without limitation. *See* NRS 463.143. The Commission would not
20 be able to carry out its legislatively prescribed duties if persons under investigation could
21 unilaterally strip the Commission of its jurisdiction by disassociating with and/or divesting
22 any interest held in licensed gaming establishments. Accordingly, exercising jurisdiction
23 in this case is a "proper power and authority necessary to perform the duties assigned to
24 [the Commission] by the Legislature" and is an independent basis for jurisdiction under
25 NRS 463.143.

26 21. Even if the Commission's authority were limited to sanctioning conduct that
27 occurred when a person was materially involved with a licensed gaming operation, all of
28 the violations of law alleged here, except for Respondent's failure to comply with the

1 Board's Order to Appear, occurred while Respondent was materially involved with a
2 licensed gaming operation.

3 22. The basis for Commission jurisdiction set out above are independent from one
4 another. Each basis would, standing alone, be sufficient for the Commission to have
5 jurisdiction over this matter.

6 23. The Commission has considered the arguments put forward by Respondent in
7 support of dismissal and finds them to be without merit.


8 24. This Order's determination of the Motion is a preliminary matter. An
9 evidentiary hearing on the merits of this case is forthcoming. Accordingly,
10 NRS 463.3145(1), which requires the Commission to "render a written decision on the
11 merits" after hearing, does not apply. Nevertheless, for the convenience of the parties and
12 to produce a clear record throughout this case, the Commission is hereby issuing this
13 written Order.

14 Accordingly, the Commission finds and concludes that the Board has carried its
15 burden of showing that the Commission has jurisdiction over this matter. Based on the
16 foregoing, and good cause appearing:

17 IT IS HEREBY ORDERED that Respondent's Motion to Dismiss Complaint Based
18 on Lack of Subject Matter Jurisdiction is **DENIED**.

19 Dated this 9th day of January 2020.

20 NEVADA GAMING COMMISSION

21 
22 TONY ALAMO, M.D., Chairman

23 Submitted by:

24 AARON D. FORD
25 Attorney General

26 By: 

27 Darlene Caruso (Bar No. 5866)
28 Chief Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101

- EXHIBIT 2 -

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Attorneys for Respondent
Stephen A. Wynn



STATE OF NEVADA
BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD,

CASE NO.: NGC 19-03

Complainant,

vs.

STEPHEN ALAN WYNN,

**STIPULATION AND ORDER RE:
CONTINUED STAY OF
PROCEEDINGS PENDING
RESPONDENT'S FORTHCOMING
PETITION FOR JUDICIAL REVIEW**

In his capacity as having been found
suitable as Chief Executive Officer,
Chairman of the Board, and shareholder and
controlling shareholder of Wynn Resorts,
Ltd.;

Respondent.

WHEREAS, the Nevada Gaming Control Board (the "Board") filed the above-captioned disciplinary action on October 14, 2019;

WHEREAS, on November 8, 2019, the Chairman of the Nevada Gaming Commission (the "Commission") approved a stipulation between the Board and Respondent Stephen A. Wynn ("Mr. Wynn") setting forth a briefing schedule and procedural framework to address the threshold question of the Commission's and the Board's jurisdiction prior to conducting any substantive hearing on the merits of the underlying Complaint. The stipulation provided, in part, that all proceedings in this disciplinary action would be stayed during the pendency of Mr. Wynn's Motion

1 to Dismiss, and that each party would have the right to seek a further stay of proceedings if any of
2 them filed a petition for judicial review after the Commission's ruling on the Motion;

3 WHEREAS, the Commission conducted a hearing on Mr. Wynn's Motion to Dismiss on
4 December 19, 2019. After considering argument from the parties' respective counsel, the
5 members of the Commission orally denied the Motion.

6 WHEREAS, the Commission issued its written order denying the Motion on January 9,
7 2020.

8 WHEREAS, Mr. Wynn's counsel advised respective counsel for the Board and the
9 Commission of their intent to file a petition for judicial review of the Commission's written order;

10 WHEREAS, the Board and Mr. Wynn continue to believe it will promote economy and
11 efficiency to address the jurisdictional question before proceeding to a substantive hearing in this
12 matter, and that such economy and efficiency can best be achieved through a further stay of
13 proceedings during the pendency of Mr. Wynn's petition for judicial review.

14 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties, through
15 their respective counsel of record as follows:

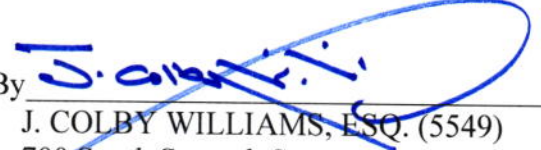
16 1. Mr. Wynn will file his forthcoming petition for judicial review on or before January
17 29, 2020;

18 2. During the pendency of Mr. Wynn's petition for judicial review, all other
19 proceedings in this action shall be stayed. Each party shall have the right as provided in NRS
20 Chapter 463 to seek a further stay from the Commission, the District Court and/or the Nevada
21 Supreme Court should any party seek further review after the District Court's ruling on Mr.
22 Wynn's forthcoming petition for judicial review. If the District Court denies the petition, and Mr.
23 Wynn opts not to seek further judicial review, then his Answer shall be due 20 days after entry of
24 the District Court's order.
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26
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3. All parties reserve their right to file a motion, upon proper notice, seeking to lift the stay of proceedings memorialized by this Stipulation.

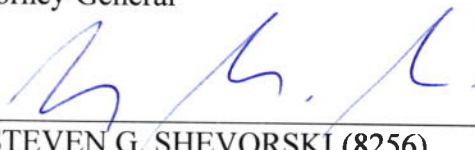
DATED this 23rd day of January, 2020.

CAMPBELL & WILLIAMS

By 
J. COLBY WILLIAMS, ESQ. (5549)
700 South Seventh Street
Las Vegas, Nevada 89101

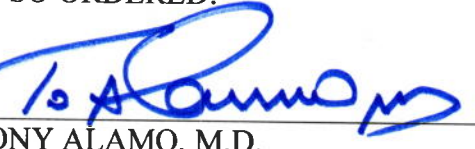
Attorneys for Respondent
Stephen A. Wynn

AARON D. FORD
Attorney General

By  #8256
STEVEN G. SHEVORSKI (8256)
Chief Litigation Counsel
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

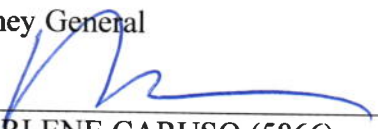
Attorneys for Complainant
Nevada Gaming Control Board

IT IS SO ORDERED:

By 
TONY ALAMO, M.D.
Chairman, Nevada Gaming Commission

Approved as to form and content:

AARON D. FORD
Attorney General

By 
DARLENE CARUSO (5866)
Chief Deputy Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Attorneys for Nevada Gaming Commission

Order Granting Petitioner's
Petition for Judicial Review
filed on 11/19/2020

1 **ORDG**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 STEVEN A. WYNN, an individual,
5
6 Petitioner,

Case No. : A-20-809249-J
Dept. No.: XIV (14)

7 vs.

8 NEVADA GAMING COMMISSION, a
9 political subdivision of the State of Nevada;
10 and NEVADA GAMING CONTROL
11 BOARD, a political subdivision of the State
12 of Nevada,

**ORDER GRANTING PETITIONER'S
PETITION FOR JUDICIAL REVIEW**

13 Respondents.

14
15 Petitioner Steven A. Wynn's Petition for Judicial Review, Alternatively, for Writs of
16 Mandamus and/or Prohibition (Petition), Respondent Nevada Gaming Commission's
17 Opposition to Wynn's Petition and Countermotion to Dismiss, and Respondent Nevada
18 Gaming Control Board's Answering Brief and Countermotion to Dismiss under NRCP
19 12(b)(5) came on for hearing before Department XIV of the Eighth Judicial District Court, the
20 Honorable Adriana Escobar presiding, on September 17, 2020, and November 17, 2020,
21 respectively.¹ Attorneys Donald J. Campbell and J. Colby Williams appeared via Blue Jeans
22 on behalf of Petitioner. Attorneys Kiel B. Ireland and Darlene S. Caruso appeared via Blue
23 Jeans on behalf of Respondent Nevada Gaming Commission (Commission). Attorney Steven
24 Shevorski appeared via Blue Jeans on behalf of Respondent Nevada Gaming Control Board
25 (Board). Having considered arguments of counsel, the moving papers, and the Record on
26 Review (ROR) before it, this Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

27 **FACTUAL AND PROCEDURAL HISTORY**

Petitioner is the former Chairman, Chief Executive Officer, and controlling
shareholder of Wynn Resorts, Limited (Wynn Resorts). Wynn Resorts, through its

¹The Commission and Board's Motions were heard together on September 17, 2020.

1 subsidiary, Wynn Las Vegas, LLC (Wynn Las Vegas), owns and operates the Wynn Las
2 Vegas and Encore casino-resort properties. In or about March 2005, the Board
3 recommended, and the Commission approved, Wynn Las Vegas for an unrestricted gaming
4 license. As part of the process, Petitioner was found suitable in his various capacities with
5 Wynn Resorts.

6 On January 26, 2018, the Wall Street Journal published an article regarding
7 Petitioner's alleged sexual indiscretions while he was Chairman and CEO of Wynn Resorts.
8 Soon thereafter, the Board began investigating the allegations.

9 On February 6, 2018, Petitioner effectively resigned as Chairman and CEO of Wynn
10 Resorts. ROR 87-88. On February 15, 2018, Petitioner entered into a Separation Agreement
11 with Wynn Resorts and Wynn Resorts Holdings, LLC (Wynn Holding Company) setting
12 forth the terms of his separation. ROR 90. Petitioner sold all his stock in Wynn Resorts by
13 March 22, 2018. Petitioner also moved from his residence on the property by April 2018.

14 The Board's "Location Report" on the Wynn Resorts license reflects the dates it removed
15 Petitioner from his positions as Chairman and CEO of Wynn Resorts and controlling
16 shareholder. ROR 79. Wynn Resorts provided notice to the Board and/or Commission that
17 there had been a change in the relationship between itself and Petitioner. Upon notice, the
18 Board effectuated that change on the "Location Report." The Board removed Petitioner as an
19 officer and director on February 23, 2018 and as a shareholder on March 28, 2018. ROR 79.

20 Approximately three months later, on or about June 29, 2018, the Board sent Petitioner a
21 letter stating its intent to conduct an investigative hearing in late August 2018 and that
22 Petitioner was required to appear and testify pursuant to NRS 463.140(5). ROR 110. The
23 letter further stated that Petitioner's failure to appear and testify could result in revocation of
24 Petitioner's finding of suitability pursuant to Nevada Gaming Commission Regulations
25 (Commission Regulations) 5.070. ROR 110.

26 ///

27 ///

1 Petitioner failed to appear and testify at a Board-conducted investigative hearing that
2 was ultimately scheduled for September 7, 2018—approximately six months after Petitioner
3 divested himself from, and sold all ownership in, Wynn Resorts.

4 On or about January 25, 2019, the Board filed a complaint against Wynn Resorts
5 arising from the Board’s investigation. ROR 116-137. However, on February 26, 2019, the
6 Commission accepted a Stipulation for Settlement and Order entered into between the Board
7 and Wynn Resorts that resolved the complaint for a fine of \$20,000,000. ROR 139-146.

8 Approximately a year and a half after the Board began its investigation, on October
9 14, 2019, the Board filed a complaint (Complaint) against Petitioner seeking the
10 Commission’s revocation of Petitioner’s findings of suitability on the ground that Petitioner
11 “has repeatedly violated Nevada’s gaming statutes and regulations, bringing discredit upon
12 the State of Nevada and its gaming industry” and “is unsuitable to be associated with a
13 gaming enterprise or the gaming industry as whole.” ROR 4. The Complaint further alleged
14 that the negative reporting from the publicity of Petitioner’s conduct “harmed Nevada’s
15 reputation and its gaming industry” and “damaged the public’s confidence and trust in an
16 industry that is vitally important to the economy of the State of Nevada and the general
17 welfare of its inhabitants.” *Id.*

18 Five counts comprised the complaint. The first four counts primarily allege that
19 Petitioner engaged in sexual conduct with employees in violation of NRS 463.170, in
20 addition to Gaming Commission Regulations. *See generally* ROR 16-22. The fifth count
21 alleged that Petitioner’s failure to appear and testify at the investigative hearing was a
22 violation of Commission Regulation 5.070, which provides that such failure constitutes
23 grounds for the revocation or suspension of any license held by the person summoned. *See*
24 ROR 23-25.

25 Petitioner moved to dismiss the Board’s complaint for lack of subject matter
26 jurisdiction, which the Commission denied. The Commission entered its written Order
27 Denying Respondent’s Motion to Dismiss on January 9, 2020.

1 On January 27, 2020, Petitioner filed the underlying Petition on the premise that the
2 Board and Commission lack statutory authority or jurisdiction to pursue any action against
3 Petitioner, including the imposition of discipline or fines. Specifically, “the statutes and
4 regulations governing Nevada gaming limit the [Board’s] and Commission’s regulatory and
5 disciplinary powers only to applicants seeking to enter the gaming industry or those
6 person/entities presently involved therein.”

7 STANDARD OF REVIEW

8 The Board and Commission are exempt from the requirements of the Administrative
9 Procedure Act. NRS 233B.039(1)(e)-(f). Rather, NRS Chapter 463, which codifies the
10 Nevada Gaming Control Act (Act), governs judicial review of the Commission’s decisions
11 and orders.²

12 Specifically, NRS 463.315(1) provides:

13 Any person aggrieved by a **final decision or order** of the Commission made
14 after hearing or rehearing by the Commission pursuant to NRS 463.312 to
15 463.3145, inclusive, and whether or not a petition for rehearing was filed, may
obtain a judicial review thereof in the district court of the county in which the
petitioner resides or has his, her or its principal place of business.

16 (emphasis added).

17 FINDINGS OF FACT AND CONCLUSIONS OF LAW

18 *The Commission’s order is subject to judicial review by this Court.*

19 In *Resnick v. Nevada Gaming Comm’n*, 104 Nev. 60, 752 P.2d 229 (1988), the
20 Commission determined that Resnick, an employee of the Dunes Hotel and Casino,
21 exercised significant influence over the operation of the hotel and ordered him to apply for a
22 license. Prior to his hearing, Resnick filed a petition with the Commission asking it to
23 compel the Board to provide him with a copy of the investigative report the Board had
24 prepared, or at least provide him with a hearing on the issue of whether he should be granted
25

26 ²*Compare* NRS 233B.135, which sets forth the standard of review for administrative agency decisions
27 under the Nevada Administrative Procedure Act, *with* NRS 463.317(3), which sets forth the standard of review
for a Commission decision or order.

1 discovery of the report. *Id.* at 61-62, 752 P.2d at 230. After the Commission issued an order
2 denying Resnick’s requests for discovery, Resnick filed a petition for judicial review with
3 the district court. *Id.* at 62, 752 P.2d at 230. In holding that the Commission’s order denying
4 discovery was not a decision or order which could be appropriately reviewed under NRS
5 463.315, the court stated:

6 The Commission's order to deny discovery was not, under NRS 463.315, a
7 “final decision or order.” By using the words “final decision or order,” the
8 legislature has indicated that **dispositions** such as disciplinary orders, decisions
9 to suspend or revoke licenses, and resolutions **on the merits** of certain
10 controversies may be reviewed by the courts. The legislature did not intend, by
11 using the words “final decision or order,” that an interlocutory Commission
12 determination about the discoverability of certain materials would be
13 immediately subject to judicial scrutiny.

14 *Id.* at 62-63, 752 P.2d at 231 (emphasis added).

15 Here, Petitioner seeks review of the Commission’s order denying his motion to
16 dismiss the Board’s complaint. This order is not a disposition such as a disciplinary order,
17 decision to suspend or revoke a license, or a resolution on the merits. Thus, based on
18 *Resnick*, the underlying order is not final under NRS 463.315(1).

19 However, a district court may issue a writ of prohibition where there is not a plain,
20 speedy and adequate remedy in the ordinary course of law. NRS 34.330; Nev. Const. art. 6,
21 §6(1). A writ of prohibition is available to “arrest the proceedings of any tribunal,
22 corporation, board or person exercising judicial functions when such proceedings are
23 without or in excess of the jurisdiction of that tribunal, corporation, board, or person.” NRS
24 34.320.

25 Because the Commission’s order is not final, Petitioner is without a plain, speedy,
26 and adequate remedy in the ordinary course of law—judicial review under NRS 463.315(1).
27 Accordingly, a writ of prohibition is proper since the basis of this Petition is that
28 Respondents’ seek to improperly exercise jurisdiction.

29 And if a writ of prohibition is not applicable in the context of matters before the
30 Board and Commission, this Court has jurisdiction to review Petitioner’s Petition.

1 A party may proceed directly to judicial review where the underlying proceedings are
2 “vain and futile or when the agency clearly lacks jurisdiction.” *Benson v. State Eng’r*, 131
3 Nev. 772, 777, 358 P.3d 221, 224 (2015) (quoting *Engelmann v. Westergard*, 98 Nev. 348,
4 353, 647 P.2d 385, 389 (1982)) (quotations omitted).

5 Ordinarily, under what is known as the Doctrine of Exhaustion, a party must exhaust
6 their administrative remedies before seeking judicial review of an administrative agency
7 decision. *See Benson*, 131 Nev. at 777, 647 P.3d at 224 (explaining that “before availing
8 oneself of district court relief from an agency decision, one must first exhaust available
9 administrative remedies.”). However, the Nevada Supreme Court has made clear “that
10 exhaustion is not required when administrative proceedings are vain and futile or when the
11 agency clearly lacks jurisdiction.” *Id.* (quotations omitted); *Englemann*, 98 Nev. 348, 353,
12 647 P.3d 385, 389 (“where resort to administrative procedures would be futile, exhaustion of
13 administrative remedies is not required.”).

14 Because the basis of the Petition is that Board and Commission lack jurisdiction, this
15 Court may exercise its discretion to issue a Writ of Prohibition. Additionally, Petitioner
16 “may [also] proceed directly to judicial review” since the underlying “proceedings would be
17 futile.” *Benson*, 131 Nev. at 777, 647 P.3d at 224.³

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24
25 ³Under the Administrative Procedure Act, NRS 233B.130 (1) provides that “any party who
26 is...**Aggrieved by a final decision** in a contested case, is entitled to judicial review of the decision.” (emphasis
27 added). Similarly, NRS 463.315(1) also provides for judicial review of a person “**aggrieved by a final decision**.” (emphasis added) Based on the similarity in these statutes, case law interpreting the reviewability of agency decisions where jurisdiction is contested is instructive in the context of proceedings by the Board and Commission.

1 *The Board and Commission lack jurisdiction over Petitioner because Petitioner has no*
2 *material involvement, directly or indirectly, with a licensed gaming operation or registered*
3 *holding company.*

4
5 NRS 463.1405(1) provides:

6 The Board shall investigate the qualifications of each applicant under this
7 chapter before any license is issued or any registration, finding of suitability or
8 approval of acts or transactions for which Commission approval is required or
9 permission is granted, and shall continue to observe the conduct of **all**
10 **licensees and other persons having a material involvement directly or**
11 **indirectly with a licensed gaming operation or registered holding company**
12 to ensure that licenses are not issued or held by, nor is **there any material**
13 **involvement directly or indirectly with a licensed gaming operation or**
14 **registered holding company by unqualified, disqualified or unsuitable**
15 **persons**, or persons whose operations are conducted in an unsuitable manner
16 or in unsuitable or prohibited places or location.

17 (emphasis added). Further, under NRS 463.1405(3),

18 The Board has full and absolute power and authority to recommend the denial
19 of any application, the limitation, conditioning or restriction of any license,
20 registration, finding of suitability or approval, the suspension or revocation of
21 any license, registration, finding of suitability or approval or the imposition of
22 a fine upon any person licensed, registered, found suitable or approved for any
23 cause deemed reasonable by the Board.

24 Moreover, “[t]he Commission has full and absolute power and authority to deny any
25 application or limit, condition, restrict, revoke or suspend any license, registration, finding of
26 suitability or approval, or fine any person licensed, registered, found suitable or approved,
27 for any cause deemed reasonable by the Commission.” NRS 463.1405(4).

Based on the foregoing, and a close reading of the Act, it is apparent that the
Legislature intended the Board and Commission to have unfettered authority to regulate
Nevada’s Gaming Industry. And the Nevada Supreme Court, on various occasions, has
“reiterated that Nevada law requires the Court to play a limited role in gaming license
Decisions by the Commission and Board. *Resnick*, 104 Nev. 60, 62, 752 P.2d 229, 230. But
whether the Commission has broad authority to revoke a finding of suitability is an issue

1 separate and distinct from whether the Commission has jurisdiction over a person that has no
2 involvement in the gaming industry. The latter controls this Court’s ruling.

3 This Court acknowledges that the Board has “full and absolute authority to
4 recommend the...revocation of any...finding of suitability” under NRS 463.1405(3). This
5 Court further acknowledges that the “Commission has full and absolute power and authority
6 to...revoke or suspend any...finding of suitability.” NRS 463.1405(4). However, the breadth
7 of Respondents’ jurisdiction to do so is severely limited (or restrained) by the plain language
8 of other statutes within the Act and the Commission Regulations.

9 In interpreting the Act on judicial review to determine whether the Board and
10 Commission have jurisdiction over Petitioner, this Court must look to the plain language of
11 the statutes and must enforce the statute as written if the statute’s language is clear and the
12 meaning is plain. *Coleman v. State*, 130 Nev. 190, 194, 321 P.3d 863, 865 (2014).

13 The plain language of NRS 463.1405(1) gives the Board power to investigate the
14 qualifications, and continue to observe the conduct, of “all licensees and other persons
15 having a **material involvement directly or indirectly** with a licensed gaming operation or
16 registered holding company.” *Pub. Employees’ Ret. Sys. of Nevada v. Gitter*, 133 Nev. 126,
17 131, 393 P.3d 673, 679 (2017) (when a statute’s language is plain and its meaning clear,
18 courts must apply that plain language). The purpose is “to ensure that licenses are not issued
19 or held by, nor is there any **material involvement directly or indirectly** with a licensed
20 gaming operation or registered holding company by **unqualified, disqualified or**
21 **unsuitable persons.**” NRS 463.1405(1).

22 NRS 463.1405 makes clear that the person over whom the Board seeks to investigate
23 and observe *must have some kind of involvement or association* with a licensed gaming
24 operation or registered holding company. Even if the Court looks further, this Court cannot
25 add in language that the Board or Commission has jurisdiction over those that have no
26 involvement with a licensed gaming operation or registered holding company. *See Antonin*

27

1 Scalia & Bryan A. Garner. *Reading Law: The Interpretation of Legal Texts* 93 (2012)
2 (discussing the omitted-case cannon).

3 Moreover, Commission Regulation 4.030(10), titled “Findings of suitability”
4 provides:

5 The Nevada Gaming Control Act and regulations thereunder require or permit
6 the Commission to **require that certain persons, directly or indirectly**
7 **involved with licensees, be found suitable to hold a gaming license so long**
8 **as that involvement continues.** A finding of suitability relates only to the
9 specified involvement for which it was made. **If the nature of the**
10 **involvement changes from that for which the applicant is found suitable,**
11 **the applicant may be required to submit to a determination by the**
12 **Commission of his or her suitability in the new capacity.**

10 (emphasis added). The plain language of the Commission’s own regulation establishes that
11 persons having involvement with a gaming license in some capacity are subject to the
12 Commission’s jurisdiction. What’s more, this is true “so long as that involvement
13 continues.” *Id.* If the person found suitable changes the nature of his or her involvement with
14 the gaming license such that they remove themselves from any involvement, it is unclear
15 where Respondents find statutory or regulatory authority for jurisdiction.

16 This conclusion is further supported by public policy. Moreover, in declaring the
17 public policy of the state concerning gaming, NRS 463.0129(1)(c) provides:

18 Public confidence and trust can only be maintained by strict regulation of all
19 persons, locations, practices, associations and activities **related to the**
20 **operation of licensed gaming establishments,** the manufacture, sale or
distribution of gaming devices and associated equipment and the operation of
inter-casino linked systems

21 (emphasis added). Again, the plain language of the Act disposes of Respondents’ asserted
22 jurisdiction. Specifically, only persons *related* to the operation of a licensed gaming
23 establishment must be strictly regulated to maintain public confidence and trust in the gaming
24 industry.

25 Petitioner is no longer *related* to the operation of a licensed gaming establishment.
26 Petitioner no longer has any material involvement, directly or indirectly, with a licensed
27 gaming operation or registered holding company. There is no evidence before this Court, and

1 no party disputes, that Petitioner is involved with any licensed gaming operation in any
2 capacity, whether directly or indirectly. Petitioner stepped down from his Chairman and CEO
3 positions in February of 2018, divested himself of all ownership in Wynn Resorts in March of
4 2018, and moved entirely off the property in April of 2018.

5 Because Petitioner has no material involvement, directly or indirectly, with a licensed
6 gaming operation, this Court finds that Respondents have no jurisdiction to impose discipline
7 or fines against Petitioner.

8 *Respondents' interpretation of the Act was not reasonable or entitled to deference.*

9 The Commission argues that as long as its interpretations of the Act that underpin its
10 decision to deny Petitioner's Motion to Dismiss the Complaint were reasonable, this Court
11 must defer to and uphold that decision. This Court disagrees.

12 "Deference is given to an administrative agency's interpretations of its governing
13 statutes or regulations only if the interpretation **is within the language of the statute.**" *Vill.*
14 *League to Save Incline Assets, Inc. v. State*, 133 Nev. 1, 11, 388 P.3d 218, 226 (2017)
15 (citations omitted) (emphasis added). But this Court does not defer to an agency's
16 interpretation if the statutes concerning the scope of the agency's jurisdiction lack statutory
17 ambiguity. *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 307 (2013) ("Where [the
18 Legislature] has established a clear line, the agency cannot go beyond it; and where Congress
19 has established an ambiguous line, the agency can go no further than the ambiguity will fairly
20 allow.").

21 The plain language of the Commission Regulations and statutes within the Act makes
22 clear that the Board and Commission have the power to regulate persons related to, or
23 involved with, a gaming license or registered holding company. The statutory and regulatory
24 authority is not ambiguous. Thus, the Commission's interpretation of jurisdiction over
25 Petitioner is not reasonable, and thus, not entitled to deference.

26 *Respondents' "administrative hold" on Petitioner's findings of suitability is no basis for*
27 *jurisdiction.*

1 In addition to the Act and Commission Regulations, the Board’s underlying complaint
2 against Petitioner sets forth a second ground for jurisdiction:

3 [Petitioner] was previously found suitable by the Gaming Commission as, and
4 was at all times relevant to this Complaint, CEO, Chairman, shareholder, and
5 controlling shareholder of Wynn Resorts, which is registered as a publicly
6 traded company by the Gaming Commission and, through wholly owned
7 intermediaries and holding companies, is the owner of [Wynn Resorts], which
8 holds a nonrestricted gaming license. **Although [Petitioner] *resigned* as CEO
and Chairman of Wynn Resorts and *redeemed* his shares in Wynn Resorts,
the Gaming Control Board placed an *administrative hold* on [Petitioner’s]
Findings of Suitability and *retains* jurisdiction over him for purposes that
include disciplinary proceedings.**

9 ROR 6.

10 Essentially, the Board asserts that due to an administrative hold, it “retains”
11 jurisdiction over Petitioner despite his removal of himself in all capacities from a gaming
12 license and the gaming industry. First, the Board’s use of the term “retains,” after noting
13 Petitioner’s actions to disassociate from Wynn Resorts, is indicative of the Board’s
14 knowledge that it no longer has jurisdiction over Petitioner. Regardless, there is no support
15 for an administrative hold in the Act or Commission Regulations as a basis for jurisdiction—
16 especially one that “retains” jurisdiction over a person no longer associated with gaming.
17 The Commission concedes as much.⁴

18 *The Board and Commission’s disciplinary history does not support a finding that either has*
19 *jurisdiction over Petitioner.*

20 Respondents fail to provide any authority supporting their jurisdiction over a person
21 no longer involved in Nevada’s Gaming Industry in *any* capacity. Importantly, Respondents
22 fail to support their position that they have jurisdiction over a person with no intent to be
23 involved in Nevada’s gaming industry in the future. Why? There is none. In fact, the
24

25 ⁴At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board
26 drafted the complaint, stated the administrative hold is not the basis for Respondents’ asserted jurisdiction over
27 Petitioner. For this reason, the Commission asserted that there was no need to prove the administrative hold is
permissible. However, the Commission ignores the clear language of complaint, which as stated above, provides
that it retains jurisdiction over Petitioner due the administrative hold.

1 Commission conceded that Respondents have never sought to investigate, discipline, or fine
2 a person that has completely divested themselves of the gaming industry with no intent of
3 returning prior to the Board's filing of the underlying complaint.

4 **THE COURT FINDS THAT** Respondents lack jurisdiction over Petitioner under the
5 Act and relevant Commission Regulations because Petitioner has no material involvement,
6 directly or indirectly, with a licensed gaming operation or registered holding company.

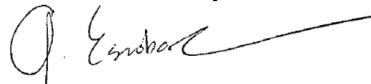
7 **ORDER**

8 **THE COURT ORDERS THAT** Petitioner's Petition for Judicial Review is
9 **GRANTED.**

10 **THE COURT FURTHER ORDERS THAT** Respondent Commission's
11 Opposition to Wynn's Petition and Countermotion to Dismiss is **DENIED.**

12 **THE COURT FURTHER ORDERS THAT** Respondent Board's Answering Brief
13 and Countermotion to Dismiss under NRCP 12(b)(5) is **DENIED.**⁵

14
15 Dated this 19th day of November, 2020

16 

17 THE HONORABLE ADRIANA ESCOBAR
18 DISTRICT COURT JUDGE

19 12A 4FC 820C FF36
20 Adriana Escobar
21 District Court Judge

22
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26
27 ⁵The Court notes that in reaching this decision, it did not consider the merits of the underlying proceeding, including Petitioner's alleged acts.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Stephen Wynn, Petitioner(s)

CASE NO: A-20-809249-J

7 vs.

DEPT. NO. Department 14

8 Nevada Gaming Commission,
9 Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/19/2020

15 Donald Campbell	djc@cwlawlv.com
16 Jon Williams	jcw@cwlawlv.com
17 Samuel Mirkovich	srm@cwlawlv.com
18 Matthew Wagner	maw@cwlawlv.com
19 John Chong	jyc@cwlawlv.com
20 Garrett Logan	gbl@cwlawlv.com
21 Traci Plotnick	tplotnick@ag.nv.gov
22 Steven Shevorski	sshevorski@ag.nv.gov
23 Mary Pizzariello	mpizzariello@ag.nv.gov
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Kiel Ireland

kieland@ag.nv.gov

Notice of Entry of Order
Granting Petitioner's
Petition for Judicial Review
filed on 11/25/2020

CAMPBELL & WILLIAMS
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J. COLBY WILLIAMS, ESQ. (5549)
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700 South Seventh Street
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Facsimile: (702) 382-0540

Attorneys for Petitioner
Stephen A. Wynn

DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

vs.

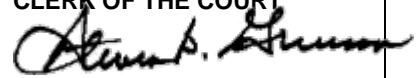
NEVADA GAMING COMMISSION, a
political subdivision of the State of Nevada;
and NEVADA GAMING CONTROL
BOARD, a political subdivision of the State
of Nevada,

Respondents.

CASE NO.: A-20-809249-J
DEPT. NO.: 14

NOTICE OF ENTRY OF ORDER
GRANTING PETITIONER'S
PETITION FOR JUDICIAL REVIEW

Electronically Filed
11/25/2020 10:27 AM
Steven D. Grierson
CLERK OF THE COURT



Please take notice that on the 19th day of November, 2020, an Order Granting Petitioner's Petition for Judicial Review was duly entered in the above-entitled matter, a copy of which is attached hereto and by this reference made part hereof.

DATED this 25th day of November, 2020.

CAMPBELL & WILLIAMS

By: /s/ J. Colby Williams

DONALD J. CAMPBELL, ESQ. (1216)

djc@cwlawlv.com

J. COLBY WILLIAMS, ESQ. (5549)

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700 South Seventh Street

Las Vegas, Nevada 89101

Telephone: (702) 382-5222

Facsimile: (702) 382-0540

Attorneys for Petitioner

Stephen A. Wynn

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 25th day of November, 2020, I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW** to be served upon those persons designated by the parties in the E-Service Master List for the above-reference matter in the Eight Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

By: /s/ Crystal B. Balaoro
An Employee of Campbell & Williams

1 **ORDG**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 STEVEN A. WYNN, an individual,
5
6 Petitioner,

Case No. : A-20-809249-J
Dept. No.: XIV (14)

7 vs.

8 NEVADA GAMING COMMISSION, a
9 political subdivision of the State of Nevada;
10 and NEVADA GAMING CONTROL
11 BOARD, a political subdivision of the State
12 of Nevada,

**ORDER GRANTING PETITIONER'S
PETITION FOR JUDICIAL REVIEW**

13 Respondents.

14
15 Petitioner Steven A. Wynn's Petition for Judicial Review, Alternatively, for Writs of
16 Mandamus and/or Prohibition (Petition), Respondent Nevada Gaming Commission's
17 Opposition to Wynn's Petition and Countermotion to Dismiss, and Respondent Nevada
18 Gaming Control Board's Answering Brief and Countermotion to Dismiss under NRCP
19 12(b)(5) came on for hearing before Department XIV of the Eighth Judicial District Court, the
20 Honorable Adriana Escobar presiding, on September 17, 2020, and November 17, 2020,
21 respectively.¹ Attorneys Donald J. Campbell and J. Colby Williams appeared via Blue Jeans
22 on behalf of Petitioner. Attorneys Kiel B. Ireland and Darlene S. Caruso appeared via Blue
23 Jeans on behalf of Respondent Nevada Gaming Commission (Commission). Attorney Steven
24 Shevorski appeared via Blue Jeans on behalf of Respondent Nevada Gaming Control Board
25 (Board). Having considered arguments of counsel, the moving papers, and the Record on
26 Review (ROR) before it, this Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

27 **FACTUAL AND PROCEDURAL HISTORY**

Petitioner is the former Chairman, Chief Executive Officer, and controlling
shareholder of Wynn Resorts, Limited (Wynn Resorts). Wynn Resorts, through its

¹The Commission and Board's Motions were heard together on September 17, 2020.

1 subsidiary, Wynn Las Vegas, LLC (Wynn Las Vegas), owns and operates the Wynn Las
2 Vegas and Encore casino-resort properties. In or about March 2005, the Board
3 recommended, and the Commission approved, Wynn Las Vegas for an unrestricted gaming
4 license. As part of the process, Petitioner was found suitable in his various capacities with
5 Wynn Resorts.

6 On January 26, 2018, the Wall Street Journal published an article regarding
7 Petitioner's alleged sexual indiscretions while he was Chairman and CEO of Wynn Resorts.
8 Soon thereafter, the Board began investigating the allegations.

9 On February 6, 2018, Petitioner effectively resigned as Chairman and CEO of Wynn
10 Resorts. ROR 87-88. On February 15, 2018, Petitioner entered into a Separation Agreement
11 with Wynn Resorts and Wynn Resorts Holdings, LLC (Wynn Holding Company) setting
12 forth the terms of his separation. ROR 90. Petitioner sold all his stock in Wynn Resorts by
13 March 22, 2018. Petitioner also moved from his residence on the property by April 2018.

14 The Board's "Location Report" on the Wynn Resorts license reflects the dates it removed
15 Petitioner from his positions as Chairman and CEO of Wynn Resorts and controlling
16 shareholder. ROR 79. Wynn Resorts provided notice to the Board and/or Commission that
17 there had been a change in the relationship between itself and Petitioner. Upon notice, the
18 Board effectuated that change on the "Location Report." The Board removed Petitioner as an
19 officer and director on February 23, 2018 and as a shareholder on March 28, 2018. ROR 79.

20 Approximately three months later, on or about June 29, 2018, the Board sent Petitioner a
21 letter stating its intent to conduct an investigative hearing in late August 2018 and that
22 Petitioner was required to appear and testify pursuant to NRS 463.140(5). ROR 110. The
23 letter further stated that Petitioner's failure to appear and testify could result in revocation of
24 Petitioner's finding of suitability pursuant to Nevada Gaming Commission Regulations
25 (Commission Regulations) 5.070. ROR 110.

26 ///

27 ///

1 Petitioner failed to appear and testify at a Board-conducted investigative hearing that
2 was ultimately scheduled for September 7, 2018—approximately six months after Petitioner
3 divested himself from, and sold all ownership in, Wynn Resorts.

4 On or about January 25, 2019, the Board filed a complaint against Wynn Resorts
5 arising from the Board’s investigation. ROR 116-137. However, on February 26, 2019, the
6 Commission accepted a Stipulation for Settlement and Order entered into between the Board
7 and Wynn Resorts that resolved the complaint for a fine of \$20,000,000. ROR 139-146.

8 Approximately a year and a half after the Board began its investigation, on October
9 14, 2019, the Board filed a complaint (Complaint) against Petitioner seeking the
10 Commission’s revocation of Petitioner’s findings of suitability on the ground that Petitioner
11 “has repeatedly violated Nevada’s gaming statutes and regulations, bringing discredit upon
12 the State of Nevada and its gaming industry” and “is unsuitable to be associated with a
13 gaming enterprise or the gaming industry as whole.” ROR 4. The Complaint further alleged
14 that the negative reporting from the publicity of Petitioner’s conduct “harmed Nevada’s
15 reputation and its gaming industry” and “damaged the public’s confidence and trust in an
16 industry that is vitally important to the economy of the State of Nevada and the general
17 welfare of its inhabitants.” *Id.*

18 Five counts comprised the complaint. The first four counts primarily allege that
19 Petitioner engaged in sexual conduct with employees in violation of NRS 463.170, in
20 addition to Gaming Commission Regulations. *See generally* ROR 16-22. The fifth count
21 alleged that Petitioner’s failure to appear and testify at the investigative hearing was a
22 violation of Commission Regulation 5.070, which provides that such failure constitutes
23 grounds for the revocation or suspension of any license held by the person summoned. *See*
24 ROR 23-25.

25 Petitioner moved to dismiss the Board’s complaint for lack of subject matter
26 jurisdiction, which the Commission denied. The Commission entered its written Order
27 Denying Respondent’s Motion to Dismiss on January 9, 2020.

1 On January 27, 2020, Petitioner filed the underlying Petition on the premise that the
2 Board and Commission lack statutory authority or jurisdiction to pursue any action against
3 Petitioner, including the imposition of discipline or fines. Specifically, “the statutes and
4 regulations governing Nevada gaming limit the [Board’s] and Commission’s regulatory and
5 disciplinary powers only to applicants seeking to enter the gaming industry or those
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15 463.3145, inclusive, and whether or not a petition for rehearing was filed, may
obtain a judicial review thereof in the district court of the county in which the
petitioner resides or has his, her or its principal place of business.

16 (emphasis added).

17 FINDINGS OF FACT AND CONCLUSIONS OF LAW

18 *The Commission’s order is subject to judicial review by this Court.*

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5 463.315, the court stated:

6 The Commission's order to deny discovery was not, under NRS 463.315, a
7 “final decision or order.” By using the words “final decision or order,” the
8 legislature has indicated that **dispositions** such as disciplinary orders, decisions
9 to suspend or revoke licenses, and resolutions **on the merits** of certain
10 controversies may be reviewed by the courts. The legislature did not intend, by
11 using the words “final decision or order,” that an interlocutory Commission
12 determination about the discoverability of certain materials would be
13 immediately subject to judicial scrutiny.

14 *Id.* at 62-63, 752 P.2d at 231 (emphasis added).

15 Here, Petitioner seeks review of the Commission’s order denying his motion to
16 dismiss the Board’s complaint. This order is not a disposition such as a disciplinary order,
17 decision to suspend or revoke a license, or a resolution on the merits. Thus, based on
18 *Resnick*, the underlying order is not final under NRS 463.315(1).

19 However, a district court may issue a writ of prohibition where there is not a plain,
20 speedy and adequate remedy in the ordinary course of law. NRS 34.330; Nev. Const. art. 6,
21 §6(1). A writ of prohibition is available to “arrest the proceedings of any tribunal,
22 corporation, board or person exercising judicial functions when such proceedings are
23 without or in excess of the jurisdiction of that tribunal, corporation, board, or person.” NRS
24 34.320.

25 Because the Commission’s order is not final, Petitioner is without a plain, speedy,
26 and adequate remedy in the ordinary course of law—judicial review under NRS 463.315(1).
27 Accordingly, a writ of prohibition is proper since the basis of this Petition is that
28 Respondents’ seek to improperly exercise jurisdiction.

29 And if a writ of prohibition is not applicable in the context of matters before the
30 Board and Commission, this Court has jurisdiction to review Petitioner’s Petition.

1 A party may proceed directly to judicial review where the underlying proceedings are
2 “vain and futile or when the agency clearly lacks jurisdiction.” *Benson v. State Eng’r*, 131
3 Nev. 772, 777, 358 P.3d 221, 224 (2015) (quoting *Engelmann v. Westergard*, 98 Nev. 348,
4 353, 647 P.2d 385, 389 (1982)) (quotations omitted).

5 Ordinarily, under what is known as the Doctrine of Exhaustion, a party must exhaust
6 their administrative remedies before seeking judicial review of an administrative agency
7 decision. *See Benson*, 131 Nev. at 777, 647 P.3d at 224 (explaining that “before availing
8 oneself of district court relief from an agency decision, one must first exhaust available
9 administrative remedies.”). However, the Nevada Supreme Court has made clear “that
10 exhaustion is not required when administrative proceedings are vain and futile or when the
11 agency clearly lacks jurisdiction.” *Id.* (quotations omitted); *Englemann*, 98 Nev. 348, 353,
12 647 P.3d 385, 389 (“where resort to administrative procedures would be futile, exhaustion of
13 administrative remedies is not required.”).

14 Because the basis of the Petition is that Board and Commission lack jurisdiction, this
15 Court may exercise its discretion to issue a Writ of Prohibition. Additionally, Petitioner
16 “may [also] proceed directly to judicial review” since the underlying “proceedings would be
17 futile.” *Benson*, 131 Nev. at 777, 647 P.3d at 224.³

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25 ³Under the Administrative Procedure Act, NRS 233B.130 (1) provides that “any party who
26 is...**Aggrieved by a final decision** in a contested case, is entitled to judicial review of the decision.” (emphasis
27 added). Similarly, NRS 463.315(1) also provides for judicial review of a person “**aggrieved by a final decision**.” (emphasis added) Based on the similarity in these statutes, case law interpreting the reviewability of agency decisions where jurisdiction is contested is instructive in the context of proceedings by the Board and Commission.

1 *The Board and Commission lack jurisdiction over Petitioner because Petitioner has no*
2 *material involvement, directly or indirectly, with a licensed gaming operation or registered*
3 *holding company.*

4
5 NRS 463.1405(1) provides:

6 The Board shall investigate the qualifications of each applicant under this
7 chapter before any license is issued or any registration, finding of suitability or
8 approval of acts or transactions for which Commission approval is required or
9 permission is granted, and shall continue to observe the conduct of **all**
10 **licensees and other persons having a material involvement directly or**
11 **indirectly with a licensed gaming operation or registered holding company**
12 to ensure that licenses are not issued or held by, nor is **there any material**
13 **involvement directly or indirectly with a licensed gaming operation or**
14 **registered holding company by unqualified, disqualified or unsuitable**
15 **persons**, or persons whose operations are conducted in an unsuitable manner
16 or in unsuitable or prohibited places or location.

17 (emphasis added). Further, under NRS 463.1405(3),

18 The Board has full and absolute power and authority to recommend the denial
19 of any application, the limitation, conditioning or restriction of any license,
20 registration, finding of suitability or approval, the suspension or revocation of
21 any license, registration, finding of suitability or approval or the imposition of
22 a fine upon any person licensed, registered, found suitable or approved for any
23 cause deemed reasonable by the Board.

24 Moreover, “[t]he Commission has full and absolute power and authority to deny any
25 application or limit, condition, restrict, revoke or suspend any license, registration, finding of
26 suitability or approval, or fine any person licensed, registered, found suitable or approved,
27 for any cause deemed reasonable by the Commission.” NRS 463.1405(4).

Based on the foregoing, and a close reading of the Act, it is apparent that the
Legislature intended the Board and Commission to have unfettered authority to regulate
Nevada’s Gaming Industry. And the Nevada Supreme Court, on various occasions, has
“reiterated that Nevada law requires the Court to play a limited role in gaming license
Decisions by the Commission and Board. *Resnick*, 104 Nev. 60, 62, 752 P.2d 229, 230. But
whether the Commission has broad authority to revoke a finding of suitability is an issue

1 separate and distinct from whether the Commission has jurisdiction over a person that has no
2 involvement in the gaming industry. The latter controls this Court’s ruling.

3 This Court acknowledges that the Board has “full and absolute authority to
4 recommend the...revocation of any...finding of suitability” under NRS 463.1405(3). This
5 Court further acknowledges that the “Commission has full and absolute power and authority
6 to...revoke or suspend any...finding of suitability.” NRS 463.1405(4). However, the breadth
7 of Respondents’ jurisdiction to do so is severely limited (or restrained) by the plain language
8 of other statutes within the Act and the Commission Regulations.

9 In interpreting the Act on judicial review to determine whether the Board and
10 Commission have jurisdiction over Petitioner, this Court must look to the plain language of
11 the statutes and must enforce the statute as written if the statute’s language is clear and the
12 meaning is plain. *Coleman v. State*, 130 Nev. 190, 194, 321 P.3d 863, 865 (2014).

13 The plain language of NRS 463.1405(1) gives the Board power to investigate the
14 qualifications, and continue to observe the conduct, of “all licensees and other persons
15 having a **material involvement directly or indirectly** with a licensed gaming operation or
16 registered holding company.” *Pub. Employees’ Ret. Sys. of Nevada v. Gitter*, 133 Nev. 126,
17 131, 393 P.3d 673, 679 (2017) (when a statute’s language is plain and its meaning clear,
18 courts must apply that plain language). The purpose is “to ensure that licenses are not issued
19 or held by, nor is there any **material involvement directly or indirectly** with a licensed
20 gaming operation or registered holding company by **unqualified, disqualified or**
21 **unsuitable persons.**” NRS 463.1405(1).

22 NRS 463.1405 makes clear that the person over whom the Board seeks to investigate
23 and observe *must have some kind of involvement or association* with a licensed gaming
24 operation or registered holding company. Even if the Court looks further, this Court cannot
25 add in language that the Board or Commission has jurisdiction over those that have no
26 involvement with a licensed gaming operation or registered holding company. *See Antonin*

27

1 Scalia & Bryan A. Garner. *Reading Law: The Interpretation of Legal Texts* 93 (2012)
2 (discussing the omitted-case cannon).

3 Moreover, Commission Regulation 4.030(10), titled “Findings of suitability”
4 provides:

5 The Nevada Gaming Control Act and regulations thereunder require or permit
6 the Commission to **require that certain persons, directly or indirectly**
7 **involved with licensees, be found suitable to hold a gaming license so long**
8 **as that involvement continues.** A finding of suitability relates only to the
9 specified involvement for which it was made. **If the nature of the**
10 **involvement changes from that for which the applicant is found suitable,**
11 **the applicant may be required to submit to a determination by the**
12 **Commission of his or her suitability in the new capacity.**

10 (emphasis added). The plain language of the Commission’s own regulation establishes that
11 persons having involvement with a gaming license in some capacity are subject to the
12 Commission’s jurisdiction. What’s more, this is true “so long as that involvement
13 continues.” *Id.* If the person found suitable changes the nature of his or her involvement with
14 the gaming license such that they remove themselves from any involvement, it is unclear
15 where Respondents find statutory or regulatory authority for jurisdiction.

16 This conclusion is further supported by public policy. Moreover, in declaring the
17 public policy of the state concerning gaming, NRS 463.0129(1)(c) provides:

18 Public confidence and trust can only be maintained by strict regulation of all
19 persons, locations, practices, associations and activities **related to the**
20 **operation of licensed gaming establishments,** the manufacture, sale or
distribution of gaming devices and associated equipment and the operation of
inter-casino linked systems

21 (emphasis added). Again, the plain language of the Act disposes of Respondents’ asserted
22 jurisdiction. Specifically, only persons *related* to the operation of a licensed gaming
23 establishment must be strictly regulated to maintain public confidence and trust in the gaming
24 industry.

25 Petitioner is no longer *related* to the operation of a licensed gaming establishment.
26 Petitioner no longer has any material involvement, directly or indirectly, with a licensed
27 gaming operation or registered holding company. There is no evidence before this Court, and

1 no party disputes, that Petitioner is involved with any licensed gaming operation in any
2 capacity, whether directly or indirectly. Petitioner stepped down from his Chairman and CEO
3 positions in February of 2018, divested himself of all ownership in Wynn Resorts in March of
4 2018, and moved entirely off the property in April of 2018.

5 Because Petitioner has no material involvement, directly or indirectly, with a licensed
6 gaming operation, this Court finds that Respondents have no jurisdiction to impose discipline
7 or fines against Petitioner.

8 *Respondents' interpretation of the Act was not reasonable or entitled to deference.*

9 The Commission argues that as long as its interpretations of the Act that underpin its
10 decision to deny Petitioner's Motion to Dismiss the Complaint were reasonable, this Court
11 must defer to and uphold that decision. This Court disagrees.

12 "Deference is given to an administrative agency's interpretations of its governing
13 statutes or regulations only if the interpretation **is within the language of the statute.**" *Vill.*
14 *League to Save Incline Assets, Inc. v. State*, 133 Nev. 1, 11, 388 P.3d 218, 226 (2017)
15 (citations omitted) (emphasis added). But this Court does not defer to an agency's
16 interpretation if the statutes concerning the scope of the agency's jurisdiction lack statutory
17 ambiguity. *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 307 (2013) ("Where [the
18 Legislature] has established a clear line, the agency cannot go beyond it; and where Congress
19 has established an ambiguous line, the agency can go no further than the ambiguity will fairly
20 allow.").

21 The plain language of the Commission Regulations and statutes within the Act makes
22 clear that the Board and Commission have the power to regulate persons related to, or
23 involved with, a gaming license or registered holding company. The statutory and regulatory
24 authority is not ambiguous. Thus, the Commission's interpretation of jurisdiction over
25 Petitioner is not reasonable, and thus, not entitled to deference.

26 *Respondents' "administrative hold" on Petitioner's findings of suitability is no basis for*
27 *jurisdiction.*

1 In addition to the Act and Commission Regulations, the Board’s underlying complaint
2 against Petitioner sets forth a second ground for jurisdiction:

3 [Petitioner] was previously found suitable by the Gaming Commission as, and
4 was at all times relevant to this Complaint, CEO, Chairman, shareholder, and
5 controlling shareholder of Wynn Resorts, which is registered as a publicly
6 traded company by the Gaming Commission and, through wholly owned
7 intermediaries and holding companies, is the owner of [Wynn Resorts], which
8 holds a nonrestricted gaming license. **Although [Petitioner] *resigned* as CEO
and Chairman of Wynn Resorts and *redeemed* his shares in Wynn Resorts,
the Gaming Control Board placed an *administrative hold* on [Petitioner’s]
Findings of Suitability and *retains* jurisdiction over him for purposes that
include disciplinary proceedings.**

9 ROR 6.

10 Essentially, the Board asserts that due to an administrative hold, it “retains”
11 jurisdiction over Petitioner despite his removal of himself in all capacities from a gaming
12 license and the gaming industry. First, the Board’s use of the term “retains,” after noting
13 Petitioner’s actions to disassociate from Wynn Resorts, is indicative of the Board’s
14 knowledge that it no longer has jurisdiction over Petitioner. Regardless, there is no support
15 for an administrative hold in the Act or Commission Regulations as a basis for jurisdiction—
16 especially one that “retains” jurisdiction over a person no longer associated with gaming.
17 The Commission concedes as much.⁴

18 *The Board and Commission’s disciplinary history does not support a finding that either has*
19 *jurisdiction over Petitioner.*

20 Respondents fail to provide any authority supporting their jurisdiction over a person
21 no longer involved in Nevada’s Gaming Industry in *any* capacity. Importantly, Respondents
22 fail to support their position that they have jurisdiction over a person with no intent to be
23 involved in Nevada’s gaming industry in the future. Why? There is none. In fact, the
24

25 ⁴At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board
26 drafted the complaint, stated the administrative hold is not the basis for Respondents’ asserted jurisdiction over
27 Petitioner. For this reason, the Commission asserted that there was no need to prove the administrative hold is
permissible. However, the Commission ignores the clear language of complaint, which as stated above, provides
that it retains jurisdiction over Petitioner due the administrative hold.

1 Commission conceded that Respondents have never sought to investigate, discipline, or fine
2 a person that has completely divested themselves of the gaming industry with no intent of
3 returning prior to the Board's filing of the underlying complaint.

4 **THE COURT FINDS THAT** Respondents lack jurisdiction over Petitioner under the
5 Act and relevant Commission Regulations because Petitioner has no material involvement,
6 directly or indirectly, with a licensed gaming operation or registered holding company.

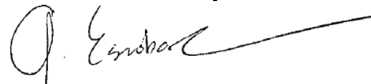
7 **ORDER**

8 **THE COURT ORDERS THAT** Petitioner's Petition for Judicial Review is
9 **GRANTED.**

10 **THE COURT FURTHER ORDERS THAT** Respondent Commission's
11 Opposition to Wynn's Petition and Countermotion to Dismiss is **DENIED.**

12 **THE COURT FURTHER ORDERS THAT** Respondent Board's Answering Brief
13 and Countermotion to Dismiss under NRCP 12(b)(5) is **DENIED.**⁵

14
15 Dated this 19th day of November, 2020

16 

17 THE HONORABLE ADRIANA ESCOBAR
18 DISTRICT COURT JUDGE

19 12A 4FC 820C FF36
20 Adriana Escobar
21 District Court Judge

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27 ⁵The Court notes that in reaching this decision, it did not consider the merits of the underlying proceeding, including Petitioner's alleged acts.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Stephen Wynn, Petitioner(s)

CASE NO: A-20-809249-J

7 vs.

DEPT. NO. Department 14

8 Nevada Gaming Commission,
9 Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/19/2020

15 Donald Campbell	djc@cwlawlv.com
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Kiel Ireland

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