
IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA GAMING COMMISSION AND NEVADA
CONTROL BOARD,

Electronically Filed
May 27, 2021 05:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellants,
v.

STEPHEN A. WYNN,

Respondent.

On Appeal from the Eighth Judicial District Court, CASE No.
A-20-809249-J

JOINT APPENDIX – VOLUME III OF III

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INDEX

<u>VOL.</u>	<u>DOCUMENT</u>	<u>Page(s)</u>
II	Acceptance of Service for Nevada Gaming Commission, filed 1/30/20.....	292-293
II	Acceptance of Service for Nevada Gaming Control Board, filed 1/30/20.....	294-295
I	Complaint (NGC 19-03), filed 10/14/19	1-23
II	Initial Appearance Fee Disclosure, filed 1/27/20	291
I	Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, filed 11/14/19	27-173
III	Nevada Gaming Commission's Notice of Appeal, filed 12/23/20.....	643-664
II	Nevada Gaming Commission's Opposition to Wynn's Petition and Countermotion to Dismiss, filed 4/10/20.....	342-373
II-III	Nevada Gaming Commission's Reply Brief in Support of Its Countermotion to Dismiss Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, filed 5/22/20.....	481-503
I	Nevada Gaming Control Board's Opposition to Stephen Alan Wynn's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction, filed 11/27/19	175-187
III	Notice of Appeal, filed 12/23/20	665-685
II	Notice of Entry of Order, filed 5/20/20	473-480
III	Notice of Entry of Order, filed 8/12/20	523-532

III	Notice of Entry of Order Granting Petitioner’s Petition For Judicial Review, filed 11/25/20.....	625-642
II	Notice of Entry of Stipulation and Order, filed 4/10/20	405-410
II	Notice of Entry of Stipulation and Order, filed 4/28/20	415-422
II	Notice of Entry of Stipulation and Order Regarding Briefing Schedule on Petition for Judicial Review and Related Matters, filed 2/19/20	300-307
I	Notice of Meeting, dated 12/12/19	208-209
III	Notice of Supplemental Authorities, filed 10/13/20.....	577-595
II	Order Denying Respondent’s Motion to Dismiss, filed 1/9/20.....	257-261
III	Order Granting Petitioner’s Petition for Judicial Review, filed 11/19/20.....	611-624
II	Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, (A-20-809249-J), filed 1/27/20.....	264-290
II	Petitioner Stephen A. Wynn’s Consolidated Opposition to Respondents’ Countermotions to Dismiss and Reply Brief in Support of Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, filed 5/1/20.....	423-457
II	Petitioner Stephen A. Wynn’s Opening Brief in Support of Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, filed 3/13/20	308-341

II	Petitioner’s Ex Parte Application to Exceed 7,000 Words for His Consolidated Opposition to Respondents’ Countermotions To Dismiss and Reply Brief in Support of Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, filed 5/1/20.....	458-467
I	Receipt of Copy of Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, dated 11/14/19.....	174
I	Receipt of Copy of Reply in Support of Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, dated 12/9/19.....	188
I	Reply in Support of Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, filed 12/9/19.....	189-207
III	Reply Supporting Respondent Nevada Gaming Control Board’s Countermotion to Dismiss Under NRCP 12(b)(5), filed 5/22/20.....	504-511
II	Respondent Nevada Gaming Control Board’s Answering Brief and Countermotion to Dismiss Under NRCP 12(b)(5), filed 4/10/20.....	374-401
II	Stipulation and Order, filed 4/10/20.....	402-404
II	Stipulation and Order, filed 4/28/20.....	411-414
II	Stipulation and Order, filed 5/19/20.....	468-472
I	Stipulation and Order Re: Briefing Schedule and Hearing Date on Respondent’s Forthcoming Motion to Dismiss, filed 11/8/19.....	24-26
II	Stipulation and Order Re: Briefing Schedule on Petition for Judicial Review and Related Matters, filed 2/19/20	296-299

II	Stipulation and Order Re: Continued Stay of Proceedings Pending Respondent’s Forthcoming Petition for Judicial Review, filed 1/23/20.....	262-264
I-II	Transcript of Hearing before the Nevada Gaming Commission on the Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, dated 12/19/19	210-256
III	Transcript of Hearing: Nevada Gaming Commission's Opposition to Wynn’s Petition and Countermotion to Dismiss on 9/17/20, filed 1/14/2021.....	533-576
III	Transcript of Proceedings on Petitioner’s Motion to Strike Section II of the Nevada Gaming Commission’s “Reply” in Support of Countermotion to Dismiss on 7/23/20, filed 1/14/21.....	512-522
III	Transcript of Proceedings on Petition for Judicial Review on 11/17/20, filed 12/9/20.....	596-610

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 27th day of May, 2021, and e-served the same on all parties listed on the Court's Master Service List.

/s/ Traci Plotnick

Traci Plotnick, an employee of the
Office of the Nevada Attorney General

1 not seeking to assess any kind of “exit tax”; if disciplinary measures are imposed they will be based on
2 the Board’s proving that Wynn violated the Act, not on Wynn’s having exited the industry.

3 If the Board proves its case, revoking Wynn’s findings of suitability and fining him would protect
4 the public from potential future transgressions by Wynn, would deter other possible lawbreakers in
5 gaming and would advance some measure of justice for Wynn’s alleged violations. Doing so, if the
6 allegations are proved, is necessary to accomplish the Commission’s legislatively mandated duties to
7 enforce the Act, maintain public confidence and protect the public interest.

8 CONCLUSION

9 In his opposition brief, Wynn argues that the benefits he reaped from purposefully availing
10 himself of the Commission’s authority are irrelevant because gaming generates a lot of revenue for the
11 State. Wynn Opp’n 4. But the Legislature has recognized that gaming’s importance to the State makes
12 comprehensive regulation of it *more* important, not less. NRS 463.0129. The threat to the industry is
13 not that successful gaming figures will be held to account; it is that the perceived impunity of gaming
14 figures will cause the public to lose confidence in the industry. *See id.*

15 Wynn attempts to exploit and further the potential perception of impunity by claiming that he can
16 participate in gaming for decades and then escape enforcement at will. To maintain public confidence
17 and to protect the public interest, it is necessary that the Commission be able to combat that perception
18 by considering discipline against Wynn and others in his situation. For the reasons stated above and in
19 the Commission’s countermotion, this Court should dismiss Wynn’s petition.

20 Respectfully submitted May 22, 2020.

21 AARON D. FORD
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24 Darlene Caruso (Bar No. 5866)
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2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 5,980 words.

DATED this 22nd day of May, 2020.

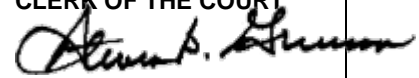
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 22nd day of May, 2020, I caused the foregoing document 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.

/s/ Traci Plotnick
Traci Plotnick, an employee of the
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DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

Case No. A-20-809249-J
Dept. No. XIV

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.

**REPLY SUPPORTING RESPONDENT NEVADA GAMING CONTROL BOARD'S
COUNTERMOTION TO DISMISS UNDER NRCP 12(b)(5)**

The State of Nevada ex rel. the Nevada Gaming Control Board files this reply supporting its counter motion to dismiss Stephen A. Wynn's petition.

I. Introduction

This Court should dismiss Mr. Wynn's petition. It is no accident that Mr. Wynn elided over the jurisdictional question in his opening brief. No precedent supports Mr. Wynn's view that he can seek judicial review of *any* order, even an interlocutory one, such as a denial of a motion to dismiss, which is decidedly not on the merits. Mr. Wynn invites constant judicial supervision over the Nevada Gaming Commission's administrative hearing process that Nevada's Supreme Court has never countenanced.

1 Mr. Wynn's brief is replete with cites where Nevada's Supreme Court has
2 entertained writs of prohibition on subject matter jurisdiction issues. Those cases say
3 nothing about whether the logic of those opinions applies to gaming. This Court should not
4 entertain Mr. Wynn's writ, which seeks to avoid the Nevada Gaming Control Board's power
5 to recommend discipline against him for his activities while associated with Wynn Resorts
6 and the Nevada Gaming Commission's power to hear that matter on the merits.

7 **II. Legal argument**

8 Mr. Wynn's attempt to put a sheet over his lack of compliance with EDCR 2.15(e)
9 and NRAP 28(4) is not persuasive. Opp. at 2 n. 1. NRAP 28 requires, under "appropriate
10 headings" and "in the order indicated," a jurisdictional statement. Mr. Wynn makes no
11 serious attempt to demonstrate his compliance.

12 Mr. Wynn jettisoned NRAP 28's requirements and buried his one sentence analysis
13 of NRS 463.315(1) on page 26 of his opening brief for a reason. No precedent supports his
14 attempts to seek judicial review of an interlocutory order. No precedent supports using a
15 discretionary writ to invade an ongoing administrative process entrusted to the Nevada
16 Gaming Commission, a body with unique expertise in Nevada's most vital industry.

17 **A. No jurisdiction exists in this Court to review an interlocutory order**

18 The law barring Mr. Wynn's petition for judicial review is not a close issue. Only
19 "final decisions or orders" are subject to judicial review. NRS 463.315(1). All decisions or
20 orders become final after the decision and order "on the merits." NRS 463.3145(1). Mr.
21 Wynn never disputes that a decision or order denying a motion to dismiss is interlocutory.
22 Thus, granting Mr. Wynn's point that the Legislature used the conjunction "or" in NRS
23 463.315(1) says nothing about *when* judicial review occurs under the Legislature's
24 statutory scheme. The word "final" clarifies both words. The Legislature's use of the word
25 "final" defines when this Court can exercise judicial review over the Nevada Gaming
26 Commission's decisions and orders produced in the administrative process.

27 The Legislature's use of the word "final" in NRS 463.315(1), when compared with the
28 phrase "one the merits" in NRS 463.3145(1) is entirely consistent with how our Supreme

1 Court has viewed the appellate process. A court, when sitting as an appellate body, can
2 review all orders and decisions after the case becomes final. *Consolidated Generator v.*
3 *Cummins Engine*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998). How can it be
4 otherwise when all orders are subject to modification under NRCP 54 prior to a final
5 judgment on the merits? NRCP 54(b).

6 Mr. Wynn's attempt to distinguish *Resnick v. Nev. Gaming Comm'n.*, 104 Nev. 60,
7 752 P.2d 229 (1988) is not persuasive. Mr. Wynn argues that "*Resnick* contains no
8 statutory interpretation of the phrase "final decision or order, and hence, does not support
9 the proposition that only a "final [] order" is subject to judicial review." Opp. 8:6:9. Mr.
10 Wynn ignores the following discussion in *Resnick*:

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

16 *Resnick*, 104 Nev. at 62-63, 752 P.2d at 231. Contrary to Mr. Wynn's argument, the Nevada
17 Supreme Court gave a fulsome analysis of "final decision or order" and determined that
18 interlocutory orders do not fit within those terms.

19 Mr. Wynn then argues that a denial of a motion to dismiss is analogous to discipline.
20 Opp. 8:3-4. It isn't. The Legislature described discipline under Chapter 463, which consists
21 of, *inter alia*, fines and orders that limit, condition, suspend or revoke licenses and findings
22 of suitability. NRS 463.310(4). Discipline, i.e. one potential outcome after the tribunal
23 hears the matter on the merits, is distinct from the power to hear an issue. "The
24 jurisdiction of a [tribunal] depends upon its right to decide a [an issue], and never upon the
25 merits of its decision." *State v. Second Jud. Dist. Ct. of Nev., in and for Washoe Cty.*, 48
26 Nev. 198, 228 P. 617, 618 (1924) (citing *Holbrook v. James H. Prichard Motor Co.*, 27 Ga.
27 App. 480, 109 S.E. 164 (1921)).

28 . . .

1 Mr. Wynn’s argument that the disjunctive “or” separates the word decision from the
2 word order gets him nowhere. The word “final” applies to both words that it follows. “[I]t
3 is the duty of this court, when possible, to interpret provisions within a common statutory
4 scheme harmoniously with one another in accordance with the general purpose of those
5 statutes and to avoid unreasonable or absurd results, thereby giving effect to the
6 Legislature’s intent.” *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008).
7 Mr. Wynn never explains why the word final would clarify the word decision but not also
8 the word order. If Mr. Wynn were correct that the word “final” only clarified the word
9 “decision,” than any “order” would be immediately subject to judicial review. There would
10 have been no need for the Legislature to use the words “final” or “decision” since all orders
11 would immediately be subject to judicial review.

12 A court “must interpret a statute in a reasonable manner, that is, ‘[t]he words of the
13 statute should be construed in light of the policy and spirit of the law, and the
14 interpretation made should avoid absurd results.” *Flamingo Paradise Gaming, LLC v.*
15 *Chanos*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009) (quoting *Desert Valley Water Co. v.*
16 *State, Eng’r*, 104 Nev. 718, 720, 766 P.2d 886, 886-87 (1988)). Nevada’s Supreme Court has
17 never permitted interruption in the administrative workings of the Nevada Gaming
18 Commission that Mr. Wynn advocates through his interpretation of NRS 463.315(1). To
19 the contrary, Nevada’s Supreme Court has cautioned against judicial interference in
20 gaming. See e.g. *State of Nev. v. Dist. Ct.*, 111 Nev. 1023, 1025, 899 P.2d 1121, 1122 (1995).
21 Mr. Wynn, without any precedent and solely on his interpretation of the word “or”
22 transforms this Court into one with automatic appellate review of any order Nevada
23 Gaming Commission. Mr. Wynn’s interpretation is inconsistent with Nevada policy.

24 Finally, Mr. Wynn’s analysis of the phrase “on the merits” is a non-starter. To
25 understand the Legislature’s intent in using the phrase “on the merits” the Court should
26 look to the entire judicial review statutory scheme. *Barney v. Mt. Rose Heating & Air*
27 *Conditioning*, 124 Nev. 821, 826-27, 192 P.3d 730, 734 (2008) (“Statutes are to be read in
28 the context of the act and the subject matter as a whole.... Whenever possible, [a court]

1 will interpret a statute in harmony with other rules and statutes.”). Mr. Wynn focuses on
2 the conjunction “and” in NRS 463.3145(1) to contrast with the conjunction “or” in NRS
3 463.315(1). Conceding Mr. Wynn his grammatical point earns him nothing. The phrase
4 “on the merits” in 463.3145(1) like the word “final” in 463.315(1) serves the same purpose
5 in a unified statutory scheme. Each word clarifies when judicial review can occur. Mr.
6 Wynn is missing the forest for the trees.

7 **B. This Court should dismiss Mr. Wynn’s discretionary writ petition**

8 “[T]he issuance of a writ of mandamus or prohibition is purely discretionary.” *Smith*
9 *v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). This Court should
10 dismiss Mr. Wynn’s writ for several reasons.

11 Mr. Wynn writes that he “is challenging the Agencies’ subject matter jurisdiction,
12 which the Nevada Supreme Court has consistently held is appropriate to consider via
13 petitions for writ relief.” Opp. at 9:16-17. There are three main flaws with Mr. Wynn’s
14 argument. First, he conflates mandamus relief with prohibition writs. Second, none of the
15 cases he cites indicates that a district court must grant a writ challenging the Gaming
16 Control Board or the Gaming Commission’s subject matter jurisdiction. Third, Mr. Wynn
17 barely pays lip service to the consistent mantra from our Supreme Court for over 50 years
18 – courts should not interfere in the Nevada Gaming Control Board and Nevada Gaming
19 Commission’s administration, licensing, control, supervision, and discipline of gaming.

20 Mr. Wynn ignores the meaningful distinction between prohibition and mandamus
21 writs. Mandamus simply is inapplicable here. A writ of mandamus is available to compel
22 the performance of an act that the law requires as a duty resulting from an office, trust, or
23 station, or to control an arbitrary or capricious exercise of discretion. *See* NRS 34.160. Mr.
24 Wynn never identifies any duty to him that the Nevada Gaming Control Board or the
25 Nevada Gaming Commission had, but failed to perform.

26 This Court should exercise its discretion to refuse to hear Mr. Wynn’s petition for
27 writ of prohibition. Mr. Wynn cites to a number of cases where Nevada’s Supreme Court
28 has granted writ of prohibition relief to arrest acts of inferior tribunals that were in excess

1 of their subject matter jurisdiction. Opp. at 9 n.4. Fine. But, Mr. Wynn never cites any
2 authority indicating that this Court must grant his writ of prohibition because he raises a
3 question of subject matter jurisdiction. Mr. Wynn does not advance his argument by citing
4 to the costs of discovery, time, and effort that may be expended during the merits phase.
5 Such arguments are true in all cases where a party raises subject matter jurisdiction issues.
6 In fact, it is easy to find unpublished decisions where the Nevada Supreme Court declines
7 to hear such writs in cursory fashion. *See e.g. Frey v. State of Nev. ex rel. Second Jud. Dist.*
8 *Ct.*, No. 77253, 2018 WL 661800 (Nev. Dec. 13, 2018).

9 Mr. Wynn appears to be counting cases to show, by accretion, that this Court should
10 hear his extraordinary writ of prohibition. None of Mr. Wynn’s cases arises from the field
11 of gaming. Nevada’s Supreme Court has never wavered from the principle that judicial
12 oversight over gaming is different: “we have consistently held that Article 6, Section 6 of
13 the Nevada Constitution, which sets forth the jurisdiction of the district courts, does not
14 authorize court intrusion into the administration, licensing, control, supervision, and
15 discipline of gaming.” *State of Nev. v. Dist. Ct.*, 111 Nev. 1023, 1025, 899 P.2d 1121, 1122
16 (1995) (citing *Harrah’s Club v. State Gaming Control Bd.*, 104 Nev. 762, 766 P.2d 900
17 (1988); *Gaming Control Bd. v. Dist. Ct.*, 82 Nev. 38, 409 P.2d 974 (1966)). This principle
18 still holds true. Even conceding that this Court has discretion to entertain Mr. Wynn’s
19 petition for writ of prohibition, it should not do so.

20 **III. Conclusion**

21 Dismissing Mr. Wynn’s petition is not unjust to him. Administrative scrutiny is
22 what he bargained for by subjecting himself to the Nevada Gaming Control Board and the
23 Nevada Gaming Commission’s jurisdiction by working, as countless others have, in
24 Nevada’s gaming industry. And he will have every right to challenge the Board and
25 Commission’s authority, and any other issues he wants to, on appeal after the Commission

26 . . .

27 . . .

28 . . .

1 issues its final decision on the merits. That he resigned from Wynn Resorts makes no
2 difference. For these reasons, this Court should dismiss Mr. Wynn's petition.

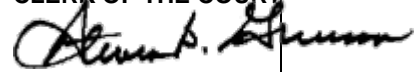
3 Respectfully submitted May 22, 2020.

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/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN WYNN,

Petitioner,

vs.

NEVADA GAMING
COMMISSION,

Respondent.

CASE NO. A-20-809249

DEPT. XIV

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE
THURSDAY, JULY 23, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
PETITIONER'S MOTION TO STRIKE SECTION II OF THE NEVADA
GAMING COMMISSION'S "REPLY" IN SUPPORT OF
COUNTERMOTION TO DISMISS**

APPEARANCES:

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[Appearance via video]

For the Respondent

Nevada Gaming Commission:

KIEL B. IRELAND, ESQ.
DARLENE S. CARUSO, ESQ.
[Appearance via video]

RECORDED BY: SANDRA ANDERSON, COURT RECORDER

1 THURSDAY, JULY 23, 2020 AT 9:39 A.M.

2 * * * * *

3 THE COURT: Okay, this is Stephen Wynn versus the Nevada
4 Gaming Commission, your appearances for the record please.

5 MR. WILLIAMS: Good morning, Your Honor. This is Colby
6 Williams representing the Petitioner Stephen Wynn.

7 THE COURT: Good morning, Mr. Williams. And is there
8 someone here on behalf of the Nevada Gaming Control Board or
9 Commission?

10 MR. IRELAND: Good morning, Your Honor. Kiel Ireland on
11 behalf of the Nevada Gaming Commission. And Steve Shevorski who is
12 representing the Nevada Gaming Control Board asked me to convey his
13 apologies. He's in trial in another department and is obligated to be in
14 court today. So he will not be here for this motion, but the Board is not a
15 party to this motion.

16 THE COURT: Okay, very good. I'd like -- let see. I have the
17 petitioner's motion to strike -- excuse me, you need to mute your
18 microphones please until you speak. I know you're used to this but
19 before you speak, then please identify yourselves as well. Okay, this is
20 the petitioner's motion to strike Section II of the Nevada Gaming
21 Commission's reply in support of the countermotion to dismiss, go on
22 please.

23 MR. WILLIAMS: Okay. Good morning again, Your Honor.
24 Colby Williams again on behalf of Mr. Wynn. I think this is a pretty
25 straightforward matter. I know Her Honor has read the papers. But just
to syncly [sic] summarize where we're at, Mr. Wynn is the petitioner in

1 this action. He filed a Petition for Judicial Review. He also filed a
2 Petition for a Writ of Mandamus and/or Prohibition. We filed that
3 Petition. The Commission and the Board both opposed that petition,
4 and they also filed a Countermotion to Dismiss.

5 The countermotion to dismiss is limited to a single
6 issue; that issue is whether the underlying motion to dismiss that was
7 issued by the Commission is a final order that allows Mr. Wynn to seek a
8 petition for judicial review. The motion to -- the countermotion to
9 dismiss, that we're here on, is limited strictly to the petition for judicial
10 review.

11 Now, the Commission filed their Countermotion; Mr.
12 Wynn opposed it. He disagrees. He thinks that the underlying order is a
13 final order. We'll talk about that when we have our hearing ultimately
14 down the road. And the Commission filed a Reply in Support of the
15 Countermotion; we have no problem with that that is the way that it
16 works under the rules.

17 However, what the Commission also did is in their
18 countermotion reply, they also included 12 pages of argument related to
19 Mr. Wynn's reply in support of his petition. Now, Your Honor, that is
20 nothing more than a surreply. It is unauthorized by the rules; leave was
21 not sought to do that, and it is not permitted. Now what the Commission
22 is going to tell you, and they told you in their opposition brief is that, we
23 move to dismiss the whole petition.

24 Your Honor, most respectfully, they did not. And that is
25 not me saying it, it is them saying it. Five times in their underlying

1 opposition and countermotion, they acknowledge their motion to dismiss
2 is limited to the petition for judicial review. So, Your Honor, where that
3 leaves us is, no matter what your ultimate ruling is on that, Mr. Wynn is
4 in court on his petition for a writ of mandamus and/or prohibition, no
5 matter what happens with the petition -- or, excuse me, the
6 countermotion to dismiss the petition for judicial review.

7 And, Your Honor, I don't need to tell the Court, Mr.
8 Wynn is entitled to the final word on his petition; the local rules say that.
9 A petition is analogous to appellate proceedings; the Appellate Rules
10 say that. So we respectfully submit that the portion of the Commission's
11 reply, Section II, that has 12 pages of arguments responding to Mr.
12 Wynn's reply brief should be stricken. And I'll submit it on that, unless
13 Your Honor has any further questions.

14 THE COURT: I don't at this time, thank you. Mr. Ireland.

15 MR. IRELAND: Good morning, Your Honor. And I believe my
16 co-counsel Darlene Caruso is on the line and didn't get a chance to
17 make her appearance, so --

18 MS. CARUSO: That's correct. Good morning, Your Honor.
19 Darlene Caruso on behalf of the Nevada Gaming Commission.

20 THE COURT: Very good. Good morning. Just a quick
21 question, are you -- do you work for the Attorney's General Office?

22 MR. IRELAND: Yes, we do.

23 MS. CARUSO: Yes, I do.

24 THE COURT: So I need to -- I need to let you know that I'm a
25 former Chief Deputy Attorney General with Consumers Advocate for the

1 state of Nevada. I've also worked as a Deputy Attorney General
2 litigating securities and/or trusts and large fraud schemes, that's what I
3 was doing just before I was appointed in 2012. And then also I'd like to
4 disclose -- I saw that this was -- I believe Mr. Campbell is a part of this
5 law firm. I attended school with -- I think with his sister-in-law when we
6 were younger. And I want you -- I can be fair and impartial to both
7 sides, but I wanted to put that on the record.

8 MR. WILLIAMS: Thank you, Your Honor.

9 MR. IRELAND: Thank you.

10 THE COURT: Mr. Ireland or Ms. Caruso, do you have any
11 issues? If you do, you know, I understand. But if not, we'll go forward.
12 And by the way, we weren't in the same grade, she was at least one or
13 two grades ahead of me. Okay.

14 MS. CARUSO: Thank you, Your Honor.

15 THE COURT: All right.

16 MR. IRELAND: Thank you.

17 THE COURT: Let's proceed. Go on, either Mr. Ireland or Ms.
18 Caruso.

19 MR. IRELAND: Okay. Thank you, Your Honor. I will be
20 taking the argument. My friend from the other side began saying this is
21 a straightforward matter, and I completely agree. And I think that it can
22 be -- the question could be answered pretty easily. On page 1, lines 1
23 through 4, of the Commission's Opposition and Countermotion to
24 Dismiss. And those lines read, quote, "Respondent Nevada Gaming
25 Commission, I am through Counsel, opposes Petitioner's Stephen A.

1 Wynn's Petition for Judicial Review, alternatively, the writs of mandamus
2 and/or prohibition and counter moves to dismiss the petition under
3 Nevada Rules Civil Procedure 12(b)(5)."

4 So my friend on the other side says that the countermotion to
5 dismiss was strictly limited to the petition for judicial review. But from
6 the very beginning of the countermotion, it's clear that's not the case.
7 That there was a single petition, a petition for judicial review,
8 alternatively, a writ for mandamus or prohibition, and the countermotion
9 was to dismiss that petition.

10 The introduction to our countermotion brief confirms this,
11 where the commission asks this court to quote, "Deny and dismiss his
12 petition." And the conclusion confirms it as well, where on page 23 the
13 Commission wrote, quote, "This court should deny Wynn's petition and
14 grant the Commission's countermotion to dismiss." The Commission
15 was never trying to dismiss one part of Wynn's petition and oppose
16 another. And the brief is consistent that the entire petition should be
17 denied and dismissed.

18 And so the Commission was entitled to file a reply brief
19 supporting it's countermotion to dismiss the entire petition. In Mr.
20 Wynn's reply brief supporting the motion to strike, he does correctly note
21 that, at one point, the Commission's countermotion refers to quote, "A
22 petition for judicial review," and quote, "A petition for writ of mandamus
23 or prohibition." And that was in the commission's jurisdictional
24 statement.

25 That was a mistake, it should've said, request for judicial

1 review and/or request for writ of mandamus or prohibition because there
2 was only one petition at issue in this case, and that is a petition for both
3 those types of relief. But even a jurisdictional statement does not really
4 support Mr. Wynn's argument here because there's no distinction in the
5 jurisdictional statement between denying one part of the petition and
6 dismissing the other. Throughout the brief, the Commission is asking to
7 deny and dismiss the entire petition.

8 Finally, I'd like to talk about the potential prejudice to Mr.
9 Wynn of not striking the Commission's reply brief. Mr. Wynn does not
10 allege that the Commission's reply brief raised some new issue that he
11 has not had a chance to respond to. And, presumably, if Mr. Wynn
12 thought that, he would've asked for leave to file a surreply. He also
13 does not argue that the Commission was barred from counter moving to
14 dismiss the entire petition.

15 And so, I fail to see the harm of Mr. Wynn from the fact that at,
16 one point, the Commission's countermotion referred to a petition for a
17 writ of mandamus or prohibition; or the harm from the fact that at one
18 point, the Commission wrote that Mr. Wynn's petition should be denied
19 instead of always writing denied and dismissed.

20 The first portion of the brief, the introduction and conclusion
21 are all consistent that the whole petition should be dismissed under our
22 countermotion. And the stipulation signed by all parties contemplated
23 four rounds of briefing in this case. The parties have completed four
24 rounds of briefing. And for that reason, the commission respectfully
25 submits that the court should consider all that briefing and decide this

1 case on the merits and deny Mr. Wynn's motion to strike. Thank you.

2 THE COURT: Thank you, Mr. Ireland. Ms. Caruso.

3 MS. CARUSO: Thank you, Your Honor. I have nothing to
4 add.

5 THE COURT: Okay, very good. Mr. Williams.

6 MR. WILLIAMS: Thank you, Your Honor. I'll be very brief.
7 And I -- you know, I don't want the court to have read the Commission's
8 entire opposition and countermotion. But I think I can read you one
9 portion that makes it abundantly clear that they were only seeking to
10 dismiss the petition for judicial review; that appears on page 8, Your
11 Honor, at lines 24 to 25. And I quote, "The act does not authorize
12 petitions for judicial review targeting interlocutory orders and that portion
13 of this case must be dismissed."

14 That's it, Your Honor. The countermotion to dismiss is
15 limited only to the petition for judicial review, and we'll debate that at the
16 appropriate time. But the rest of their arguments, Your Honor, were
17 substantive opposition arguments to Mr. Wynn's reply -- or, excuse me,
18 to Mr. Wynn's petition. We then get to reply to those. They don't get to
19 come in and present 12 pages of reply argument responding to Mr.
20 Wynn's reply, that's not how the rules work. It's as simple as that; I'll
21 submit it on that, Your Honor.

22 THE COURT: Okay, very good. What I'm going to do is -- I
23 actually read your pleadings, a couple of times, because I think this was
24 on before. But I'm going to review the seven points again while they're
25 very well briefed. I wanted to hear oral argument. And I will issue a

1 minute order with respect to the decision, okay.

2 MR. WILLIAMS: Thank you, Your Honor. Can I ask a
3 question with respect to future scheduling, just so we're all on the same
4 page?

5 THE COURT: Yes.

6 MR. WILLIAMS: So per agreement, myself and counsel for
7 the Commission, and the Gaming Control Board had proposed -- and I
8 think we actually submitted an order to you noticing the actual hearing
9 on the underlying petition for August the 6th. I didn't know if we needed
10 to do anything to further confirm that with Your Honor. I just wanted to
11 make sure that that date was good for the court. As I said, the parties
12 have agreed to it. But I figured while we're all here, we might as well
13 just confirm that that still works for everyone, or if you want to hear it a
14 different time?

15 [The Court and the Clerk confer]

16 THE COURT: What does Tuesday the 4th look like?

17 THE CLERK: Seven.

18 THE COURT: Seven.

19 MR. WILLIAMS: Your Honor, I'm actually out of town on the
20 4th, I apologize.

21 THE COURT: All right. Let's hear this on August 6th. I may
22 move it to the afternoon so that I can spend sufficient time with the
23 parties.

24 MR. WILLIAMS: Sure.

25 THE COURT: And we may open up a special session for

1 that. Madam Clerk, in the afternoon so that would be at two o'clock.

2 THE CLERK: Yes, Your Honor.

3 THE COURT: Mr. Ireland, Ms. Caruso, and Mr. Williams does
4 that work for you?

5 MS. CARUSO: Yes, Your Honor.

6 MR. WILLIAMS: This is Mr. Williams, Your Honor, yes.

7 [The Clerk and The Court confer]

8 THE COURT: So let's continue -- let's confirm that the
9 hearing shouldn't move forward; would be on August 6th at two p.m. Mr.
10 Williams, is that a good time for you?

11 MR. WILLIAMS: Yes, Your Honor. Colby Williams, again, on
12 behalf of Mr. Wynn, and just to clarify for your court staff. I apologize,
13 because this is a little bit unusual, the petition for judicial review. And
14 the alternative petition for writs of mandamus and prohibition that gets
15 done pursuant to Local Rule 2.15. At the end of the briefing, the parties
16 are responsible for submitting, quote-unquote, submitting it to the court
17 and that's what we did. And the parties proposed August 6th so that's
18 why it may not be reflecting on your calendar yet; that's why I wanted to
19 raise it and make sure it worked for you.

20 THE COURT: Okay. I'm glad you raised it now, actually, it's
21 much more efficient. Mr. Ireland, does that work for you, August 6th at
22 two p.m.?

23 MR. IRELAND: Yes, Your Honor. Kiel Ireland on behalf of
24 the Commission and that does work for me.

25 THE COURT: And, Ms. Caruso, does that work for you as

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well?

MS. CARUSO: Yes, Your Honor, it does. Thank you.

THE COURT: Okay, very good. Be safe out there and have a great day, everyone.

MR. WILLIAMS: Thank you, everyone.


MR. IRELAND: Thank you, Your Honor.

THE COURT: You're very welcome.

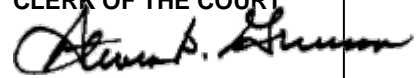
[Proceedings concluded at 9:55 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Angie Calvillo
Court Recorder/Transcriber



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Chief Deputy Attorney General
Kiel B. Ireland (Bar No. 15368C)
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Attorneys for Respondent
Nevada Gaming Commission

DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

Case No. A-20-809249-J
Dept. No. XIV

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.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order on Petitioner's Motion to Strike Section II of the Nevada Gaming Commission's Reply in Support of Countermotion to Dismiss was entered in the above-entitled matter on the 18th day of August, 2020, a copy of which is attached hereto as Exhibit A.

DATED this 18th day of August, 2020.

AARON D. FORD
Attorney General

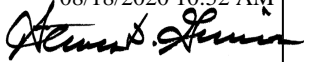
By: /s/ Kiel B. Ireland
Kiel B. Ireland (Bar No. 15368C)
Deputy Attorney General
Attorneys for Respondent Nevada
Gaming Commission

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

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

AARON D. FORD
Attorney General
Darlene Caruso (Bar No. 5866)
Chief Deputy Attorney General
Kiel B. Ireland (Bar No. 15368C)
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*Attorneys for Respondent Nevada
Gaming Commission*

DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

vs.

Case No. A-20-809249-J
Dept. No. XIV

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.

**ORDER ON PETITIONER'S MOTION TO STRIKE SECTION II OF THE NEVADA
GAMING COMMISSION'S REPLY IN SUPPORT OF COUNTERMOTION TO
DISMISS**

This matter came before the Court on July 23, 2020. J. Colby Williams, Esq. appeared on behalf of Petitioner Stephen A. Wynn. Chief Deputy Attorney General Darlene Caruso, Esq. and Deputy Attorney General Kiel B. Ireland, Esq. appeared on behalf of Respondent Nevada Gaming Commission (the "Commission"). There was no appearance on behalf of Respondent Nevada Gaming Control Board (the "Board"), which is not a party to the instant motion.

The Court, having heard argument of counsel and reviewed the pleadings on file, finds and concludes as follows:

*Order on Petitioner's Motion to Strike Section II of the Nevada Commission's Reply in Support of Countermotion to Dismiss
Stephen A. Wynn v. Nevada Gaming Commission, et al., Case No. A-20-809249-J*

1 **I. Motion to strike**

2 Wynn filed a petition for judicial review, alternatively, for writ of mandamus and/or
3 prohibition (the “Petition”). Both Respondents opposed the Petition and filed
4 counter motions to dismiss the Petition. Respondents eventually filed reply briefs in
5 support of their counter motions to dismiss, which were the last briefs filed on the substance
6 of the Petition.

7 Wynn moved to strike Part II of the Commission’s reply brief in support of its
8 counter motion to dismiss the Petition. Wynn argued that Part II was outside the scope of
9 the Commission’s counter motion to dismiss, so it amounted to an impermissible sur-reply.

10 Wynn’s motion to strike is due to be denied. Under ordinary briefing principles, a
11 party is entitled to file a reply supporting its counter motion. Just as a movant receives the
12 last word on his motion, a counter movant receives the last word on his counter motion. In
13 addition, no rule or statute prohibits the filing of a reply brief supporting a counter motion.

14 **II. Hearing schedule**

15 The Court sets the Commission and the Board’s counter motions to dismiss on for
16 hearing on August 27, 2020 at 9:30 AM. If the Court prepares a decision on the
17 counter motions before the hearing date, it will issue a minute order and vacate the hearing.

18 The Court tentatively sets the Petition on for hearing on September 17, 2020 at 9:30
19 AM. The hearing is contingent on the Court’s decision on the counter motions to dismiss.

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1 **III. Conclusion**

2 For the reasons stated above, the motion to strike is DENIED.

3 **IT IS SO ORDERED.**

4 DATED this 18th of August, 2020.

5 Dated this 18th day of August, 2020

6 

7 DISTRICT COURT JUDGE

8 Submitted by:

9 AARON D. FORD
10 Attorney General

058 B5E E19A 417A
Adriana Escobar
District Court Judge

11 By: /s/ Kiel B. Ireland

12 DARLENE CARUSO (Bar No. 5866)
13 Chief Deputy Attorney General
14 KIEL B. IRELAND (Bar No. 15368C)
15 Deputy Attorney General
16 *Attorneys for Respondent*
17 *Nevada Gaming Commission*

18 Approved as to form:

19 CAMPBELL & WILLIAMS

20 By: /s/ J. Colby Williams

21 DONALD J. CAMPBELL, ESQ. (Bar No. 1216)
22 J. COLBY WILLIAMS, ESQ. (Bar No. 5549)
23 PHILIP R. ERWIN, ESQ. (Bar No. 11563)
24 *Attorneys for Petitioner*
25 *Stephen A. Wynn*

26 AARON D. FORD
27 Attorney General

28 By: /s/ Steve Shevorski

STEVE SHEVORSKI (Bar No. 8256)
Chief Litigation Counsel
Attorneys for Respondent
Nevada Gaming Control Board

Traci A. Plotnick

From: Colby Williams <jcw@cwlawlv.com>
Sent: Friday, August 14, 2020 9:25 AM
To: Kiel B. Ireland; Steven G. Shevorsi
Cc: Darlene B. Caruso
Subject: Re: Wynn - Revised Proposed Order

Thanks all. You are authorized to apply my e-signature and submit for filing. Have a good weekend.

J. Colby Williams, Esq.
Campbell & Williams
Tel. 702.382.5222

This message is intended for the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this information in error, please notify us immediately by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank You.

On 8/14/20, 9:20 AM, "Kiel B. Ireland" <KIreland@ag.nv.gov> wrote:

All -

Attached please find a revised version of the proposed order reflecting Colby's requested change. No other changes have been made. Please let us know if we have your authorization to add your conformed signature.

Thank you,

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

Traci A. Plotnick

From: Steven G. Shevorski
Sent: Friday, August 14, 2020 9:15 AM
To: Kiel B. Ireland; 'Colby Williams'
Cc: Darlene B. Caruso
Subject: RE: Wynn - Revised Proposed Order

Fine with me

Steve Shevorski
Chief Litigation Counsel
Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
702-486-3783

-----Original Message-----

From: Kiel B. Ireland <Klreland@ag.nv.gov>
Sent: Friday, August 14, 2020 9:15 AM
To: 'Colby Williams' <jcw@cwlawlv.com>; Steven G. Shevorski <SShevorski@ag.nv.gov>
Cc: Darlene B. Caruso <DCaruso@ag.nv.gov>
Subject: Wynn - Revised Proposed Order

All -

Attached please find a revised version of the proposed order reflecting Colby's requested change. No other changes have been made. Please let us know if we have your authorization to add your conformed signature.

Thank you,

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

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
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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 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: 8/18/2020

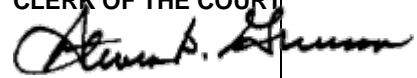
15 Donald Campbell	djc@cwlawlv.com
16 Jon Williams	jcw@cwlawlv.com
17 Samuel Mirkovich	srm@cwlawlv.com
18 Matthew Wagner	maw@cwlawlv.com
19 John Chong	jyc@cwlawlv.com
20 Garrett Logan	gbl@cwlawlv.com
21 Traci Plotnick	tplotnick@ag.nv.gov
22 Steven Shevorski	sshevorski@ag.nv.gov
23 Mary Pizzariello	mpizzariello@ag.nv.gov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

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Kiel Ireland

kieland@ag.nv.gov



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN WYNN,

Petitioner,

vs.

NEVADA GAMING
COMMISSION,

Respondent.

CASE NO. A-20-809249-J

DEPT. XIV

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE

THURSDAY, SEPTEMBER 17, 2020

TRANSCRIPT OF HEARING
**NEVADA GAMING COMMISSION'S OPPOSITION TO WYNN'S
PETITION AND COUNTERMOTION TO DISMISS**

APPEARANCES:

For the Petitioner:

DONALD J. CAMPBELL, ESQ.

JON C. WILLIAMS, ESQ.

For the Respondent

Nevada Gaming Commission:

KIEL B. IRELAND, ESQ.

Nevada Gaming Control Board:

STEVEN G. SHEVORSKI, ESQ.

RECORDED BY: NO RECORDER PRESENT

TRANSCRIBED BY: MANGELSON TRANSCRIBING

1 Las Vegas, Nevada, Thursday, September 17, 2020

2
3 [Case called at 11:37 a.m.]

4 THE COURT: Okay. This is Stephen Wynn versus Nevada
5 Gaming Commission. And today we have Nevada Gaming's
6 Countermotion to this Petition and Nevada Gaming Board -- Control
7 Board's Countermotion to Dismiss under NRCP 12(b)(5).

8 I'd like your appearances for the record, please.

9 MR. WILLIAMS: Good morning, Your Honor. This is
10 Colby Williams in Las Vegas, Nevada, Campbell and Williams on
11 behalf of Mr. Wynn. Bar Number is 5549.

12 THE COURT: Good morning, Mr. Williams.

13 MR. SHEVORSKI: Don, I believe you're muted.

14 MR. CAMPBELL: Here we go.

15 THE COURT: Can you hear me, I'm not on mute.

16 MR. CAMPBELL: Yes, I can now hear you, Your Honor.

17 THE COURT: Okay. Very good.

18 MR. CAMPBELL: Okay. Donald Jude Campbell, Campbell
19 and Williams, appearing on behalf of Mr. Wynn. Bar Number is
20 1216.

21 THE COURT: Okay. Good morning, Mr. Campbell.

22 MR. CAMPBELL: Good morning, Your Honor. How are
23 you?

24 THE COURT: I'm fine, thank you.

25 And on behalf of the state?

1 MR. SHEVORSKI: Good morning, Your Honor. Steven
2 Shevorski of the Attorney General's Office on behalf of the Nevada
3 Gaming Board.

4 THE COURT: Will you please repeat your last name again,
5 Counsel.

6 MR. SHEVORSKI: Certainly. Shevorski, spelled S-H-E-V,
7 as in Victor, O-R-S-K-I. Bar Number 8256.

8 THE COURT: Okay. Good morning, Mr. Shevorski. And I
9 see you have Counsel with you.

10 MR. IRELAND: Good morning, Your Honor. Kiel Ireland
11 on behalf of the Nevada Gaming Commission. Bar Number
12 15368C, as in cat.

13 THE COURT: Okay. Very good. And are you at the
14 Attorney General's Office now?

15 MR. IRELAND: We are. We're looking at a graveyard,
16 Your Honor.

17 THE COURT: Oh, I know because my office used to
18 overlook the same graveyard when I was chief deputy there, so I
19 know -- and I've been in that conference room many, many times.

20 This is -- today we're here on the -- on what I've already
21 enunciated.

22 So Mr. Ireland, do you represent both the Gaming -- no,
23 Mr. Shevorski -- I just want to make sure I have everything straight.

24 Mr. Shevorski, do you represent the Nevada Gaming
25 Commission?

1 MR. SHEVORSKI: I do not, Your Honor.

2 THE COURT: Okay.

3 MR. SHEVORSKI: Mr. Ireland does.

4 THE COURT: Okay. And what about the Nevada Gaming
5 Control Board?

6 MR. SHEVORSKI: I do represent the Gaming Control
7 Board, Your Honor.

8 THE COURT: Okay. Very good. Thank you.

9 All right. And why don't you get started, Mr. Ireland?

10 MR. IRELAND: Actually, Your Honor, I believe Mr.
11 Shevorski is going to go first. We're both -- we're bringing the
12 same motion separately and we'll take different aspects of the
13 motion.

14 THE COURT: Okay. Understood. Very good. That's --

15 MR. SHEVORSKI: Yes, Your Honor. Steve Shevorski for
16 the record on behalf of the Nevada Gaming Control Board. The
17 way we have it split up, Your Honor is I'll be talking about perhaps
18 the procedural aspects of the motion and why procedurally judicial
19 review or an extraordinary writ is not appropriate. Separate and
20 independent from whether or not a merit, that was -- that Mr.
21 Ireland will touch upon warrant granting the motion; if that's
22 agreeable to Your Honor?

23 THE COURT: That's absolutely fine. So please, go ahead.

24 MR. SHEVORSKI: Thank you, Your Honor. We'd ask Your
25 Honor to grant the Motion to Dismiss. We believe there are three

1 procedural grounds why that would be appropriate.

2 First ground would be that judicial review is no
3 appropriate for an interlocutory -- review of an interlocutory order
4 which is what happened here. Mr. Wynn brought a Motion to
5 Dismiss before the Commission. That motion was denied, and he
6 has sought judicial review of that under NRS 463.315(1). We
7 believe that is not appropriate.

8 The second ground -- you can think of -- I mentioned three
9 reasons but you really can think of the -- think of them as two,
10 maybe a 2(a) and a 2(b), because they both concern Chapter 34,
11 which is our extraordinary writ statute.

12 And we do not believe on the -- so let's talk about 2(a).
13 2(a) concerns the mandamus power of the Court. And the
14 mandamus power of the court, Your Honor, is really to compel a
15 mandatory duty, a performance. We think that there's no such
16 mandatory duty here to compel and so we think the mandamus is
17 not appropriate under how that extraordinary remedy is interpreted
18 and granted by various Boards to compel a duty on behalf of a
19 lower tribunal.

20 Finally, 2(b) or the third part would be Writ of Prohibition.
21 Now candidly, Writ of Prohibition is oftentimes -- use an
22 extraordinary writ to restrain the excess of jurisdiction a tribunal
23 in -- acting in excess of its tribunal. But we believe, for the reasons
24 we'll get into, that that is not appropriate here and we'd ask Your
25 Honor to dismiss this Complaint brought by Mr. Wynn.

1 I'd like to go into the first ground which is Plaintiff's, Mr.
2 Wynn's -- or Petitioner, excuse me, Mr. Wynn's first claim for relief
3 which is judicial review. Your Honor, we believe and assert that
4 there is no such judicial review available under the plain terms of
5 463.315(1).

6 That statute provides: Any person aggrieved by a final
7 decision or order of the Commission made after hearing or
8 rehearing by the Commission pursuant to 463.312 to 463.3145 and
9 seek judicial review.

10 But the important piece or word in that vision is the word
11 final. And that word final, we believe, is controlling here. There --
12 an inner -- the denial of a Motion to Dismiss particularly on subject
13 matter jurisdiction grounds is not a final order. And my friends
14 from the other side can't cite to you any precedent, Nevada or
15 otherwise, that treat denial of such a Motion to Dismiss based on
16 subject matter jurisdiction as a final order.

17 And pursuant to the plain language of 463.315, that's
18 dispositive. If this Court were to interpret 463.315(1) as anything --
19 in any way different from the way that the Gaming Control Board
20 interprets it, this Court would be constantly supervising a specialty
21 commission set up to safeguard Nevada's special, unique industry
22 and that is simply not what Chapter 463 provides for and the
23 legislature envisioned.

24 The plain language limits this Court's judicial review
25 power to final orders. It makes no difference that the disjunctive,

1 or, is in that statute rather than the conjunction, and. The word
2 final applies to both and if this Court were to interpret that section
3 as permitting review of interlocutory orders, it would be in a
4 position that no precedent supports, which is to be taking review of
5 every decision -- every order that the Commission makes
6 throughout an administrative proceeding.

7 I'd like to move on to the second point, so let's call it 2(a),
8 which is whether or not mandamus is appropriate. And, Your
9 Honor, there is no authority for the proposition that mandamus is
10 appropriate to review the jurisdiction of an administrative tribunal.
11 Mandamus is about --

12 THE COURT: I'm sorry, Counsel, I want to stop you there.
13 Will you start again? Were you saying there -- I just want to make
14 sure I hear you because I'm --

15 MR. SHEVORSKI: Yeah.

16 THE COURT: -- listening very carefully. There is no
17 precedent and then go ahead.

18 MR. SHEVORSKI: Certainly, Your Honor.

19 There's no precedent to use the mandamus power of the
20 court to restrain acts in excess of jurisdiction. The mandamus
21 power is about compelling an inferior tribunal or administrative
22 tribunal to take some act that is -- it is specific duty that it has not
23 undertaken or to correct an abuse of discretion or with respect to a
24 duty charged to that tribunal. A mandamus is about compelling an
25 act.

1 Here, what my friends from the other side seek to do is to
2 restrain an act in excess of jurisdiction. They're saying that the
3 Commission does not have power over Mr. Wynn because he
4 severed connection with Wynn Resorts. That's quite a different
5 kettle of fish from how we think about the mandamus power of this
6 Court under Chapter 34 or Article 6, Section 6 of the Nevada
7 Constitution.

8 Moving on to what I'll call 2(b) or the third part, the Writ of
9 Prohibition. Now candidly, as I said before I believe in candor to
10 the Court. Writs of Prohibition aren't commonly applied to restrain
11 acts in excess of jurisdiction. That's -- and I wouldn't argue
12 anything otherwise to this Court. But I will say that gaming is
13 different. Gaming is different, Your Honor.

14 We have a decade of precedence from the Nevada
15 Supreme Court telling this Court, do not interfere in the
16 administrative process of gaming. And if Your Honor was to use
17 your discretion to entertain this extraordinary writ, that would --
18 truly would be unprecedented.

19 Article 6, Section 6 has been amended several times;
20 however, every -- in 1995, after the last amendment, the Nevada
21 Supreme Court was quite clear in the -- the real party interest, Your
22 Honor, is Corbo; the case is *State of Nevada versus District Court*
23 out of 111 Nev. 1023 and --

24 THE COURT: Counsel --

25 MR. SHEVORSKI: -- at page 10 --

1 THE COURT: Counsel, I'd like you to repeat that again,
2 please. The name of the case and the cite.

3 MR. SHEVORSKI: I apologize, Your Honor, it's a little bit
4 awkward. *State of Nevada versus District Court*. The real party
5 interest is, I believe Corbo, spelled C-O-R-B-O. And the cite is 111
6 Nev. 1023 at 1025, the 1995 case.

7 And the Court says: We have consistently held that Article
8 6, Section 6 of the Nevada Constitution, which sets forth the
9 jurisdiction of the district courts, does not authorize court intrusion
10 into the administration, licensing, control, supervision and
11 discipline of gaming.

12 And what you see there, Your Honor, is a -- and that quote
13 that I read to you does not occur in a vacuum; it is built upon
14 decades of precedent where the Nevada Supreme Court has said
15 that gaming is different and that you ought not to use your power
16 to supervise the affairs of the Commission and intrude upon the
17 affairs of the Commission. There is a specific statute set up to
18 review final decisions.

19 And my friends from the other side will tell you that it
20 doesn't matter that he can seek -- that Mr. Wynn can seek judicial
21 review of a final decision because it is too much of a burden to go
22 through the costs and expense of a case where subject matter
23 jurisdiction is in doubt and indeed they -- at Footnote 4 of their
24 Opposition, they cite to you a number of cases where the Nevada
25 Supreme Court has indeed said okay, we'll grant a Writ of

1 Prohibition to restrain acts in excess of jurisdiction. Fair enough.
2 Fair play to them.

3 However, I must say, but none of those cases arise from
4 the gaming sphere. None of those cases are -- the logic of those
5 opinions cannot be applied to gaming. Gaming is different. You
6 have decades of precedence saying so. We would urge Your Honor
7 not to use your discretion and to dismiss this Complaint. Thank
8 you, Your Honor.

9 THE COURT: Thank you, Counsel.

10 MR. IRELAND: Good morning, Your Honor. Kiel Ireland
11 for the record. As Mr. Shevorski said earlier, I will be dealing with
12 the argument that even if the allegations of the Petitioner are true,
13 both of Mr. Wynn's causes of action fail as a matter of law and
14 therefore, this Court should grant the Countermotion to Dismiss.

15 But first, I'd like to briefly touch upon what's not at issue
16 today. What's not at issue today is whether Mr. Wynn committed
17 the acts that have been alleged by the Board. The Board has not
18 presented any evidence to the Commission, Wynn has not
19 presented his defense, and the Commission has not ruled. This is a
20 purely interlocutory appeal.

21 Similarly, the Court is not being asked to make any factual
22 findings. The parties agree that almost all of the alleged violations
23 to the Nevada Gaming Control Act occurred while Mr. Wynn was
24 materially involved with the licensee and they agreed that at least
25 for this moment, Mr. Wynn is not materially involved with the

1 licensee. So the question facing the Court is a pure question of law,
2 ripe to be decided on the Countermotion to Dismiss.

3 That brings me to what is at issue today. The question
4 today is whether the legislature granted the Commission authority
5 to consider discipline of a person who is alleged to have violated
6 the Gaming Control Act if that person is no longer materially
7 involved with them. And I think the best place to start answering
8 that question is the purpose and history of gaming regulation in the
9 state.

10 As we all know, gaming is the most important industry to
11 Nevada. The Nevada gaming industry is the most important one in
12 the country. And the legislature in the Gaming Control Act
13 expressly found that, quote: The continued --

14 THE COURT: Mr. Ireland?

15 MR. IRELAND: -- growth and success of gaming --

16 THE COURT: Mr. Ireland?

17 MR. IRELAND: Yes.

18 THE COURT: I would like you to read or speak slowly -- or
19 a little bit slower, please, because I do take notes.

20 MR. IRELAND: Sure, sure. Sorry, Your Honor.

21 THE COURT: Thank you.

22 MR. IRELAND: So my last point was simply that gaming
23 is the most important industry to Nevada and the legislature in the
24 Gaming Control Act expressly found that, quote: The continued
25 growth and success of gaming is dependent upon public

1 confidence and trust.

2 And that's NRS 463.0129(1)(b).

3 The problem is that gaming is what the Nevada Supreme
4 Court -- the problem is that gaming has what the Nevada Supreme
5 Court has called a peculiar problem of control. That's their quote,
6 peculiar.

7 And I want to talk about, for a second, one group that has
8 presented a peculiar problem of control and that's organized crime.
9 Not because Mr. Wynn is alleged to have been connected to
10 organized crime, he certainly has not been but I think that's an area
11 of registration -- of gaming regulation that's very relevant to this
12 case because organized crime was difficult to regulate because
13 those figures often kept their relationship with the gaming licensee
14 murky.

15 A mafia connected person might be on the gaming floor
16 one day, and then a beverage manager, and then a consultant, and
17 then not involved with a gaming licensee at all, while behind the
18 scenes, this person was actually controlling all gaming operations.
19 And though the Nevada legislature addressed this particular
20 problem by granting the Board and the Commission very broad
21 powers to monitor gaming regulatees, investigate potential
22 violations and enforce the provisions of the Gaming Control Act.

23 So on that note, I'd like to turn to one of those provisions,
24 which is NRS 463.1405(4). I don't think it's necessary to repeat all
25 four bases for a commission authority, that has been extensively

1 briefed, but I do think Section 1405(4) is a good example of the
2 broad authority that the legislature has provided.

3 That provision provides that, quote: The Commission has
4 full and absolute power and authority to ... revoke or suspend any
5 license, registration, finding of suitability or approval, or fine any
6 person licensed, registered, or found suitable.

7 I don't think the legislature could have been any more
8 clear about the Commission's power to consider invoking a finding
9 of suitability and finding a person who has been suitable.

10 And the reason that the legislature spoke with such clarity
11 is because this kind of power is necessary given the importance of
12 maintaining public confidence in the gaming industry and given the
13 peculiar problems of regulating the industry. Similarly in there is a
14 direct line from the legislature's intent to the text of the statute, to
15 the Commission's authority in this case.

16 By contrast, the rule that Mr. Wynn is asking for would
17 strike at the heart of the legislature's intent --

18 THE COURT: Excuse me, I'd like you to speak a little bit
19 slower please, Mr. Ireland.

20 MR. IRELAND: Okay. Sorry.

21 THE COURT: I understand what you're saying, I just -- I
22 take some notes, so if you would, please.

23 MR. IRELAND: I'll try to slow down --

24 MR. WILLIAMS: And Your Honor, this is -- Your Honor,
25 this is Colby Williams. I'm reserving an objection to Mr. Ireland's

1 argument. I'm purposefully not interrupting him now but since
2 Your Honor did, I just want to make that for the record, and I'll
3 address it when it's my turn to speak. Thank you.

4 THE COURT: Understood.

5 MR. IRELAND: Thank you, Colby.

6 THE COURT: Go on, Mr. Ireland.

7 MR. IRELAND: So by contrast, the rule that Mr. Wynn is
8 asking for here would strike at the heart of the legislature's intent.
9 His proposition is that a person can allegedly violate the Gaming
10 Control Act for years, cover it up, and then inoculate himself from
11 any enforcement by divesting from the industry.

12 And so Mr. Wynn's proposal would bless the kind of shell
13 game that organized crime figures tried to use to escape
14 enforcement and it would undermine the Commission's ability to
15 deter future wrongdoers from breaching or from violating the
16 Gaming Control Act.

17 In those ways, it would degrade public confidence in the
18 gaming industry and enforcement would seen correctly by the
19 public as a paper tiger; without real force so the violator could
20 simply exit the industry.

21 Finally, I want to --

22 THE COURT: Wait --

23 MR. IRELAND: -- wrap up --

24 THE COURT: What was the last thing you said before you
25 mentioned the paper tiger?

1 MR. IRELAND: Yeah, because a violator could simply exit
2 the industry if he was ever caught violating the Gaming Control Act.
3 And under Mr. Wynn's theory, that person who violated the act and
4 then exited the industry would be safe from any kind of
5 enforcement.

6 So my final point is just about what it would take for a
7 reversal to be appropriate in this case. First, the Commission is
8 entitled to deference because it's interpreting the statute it's tasked
9 with enforcing. And so that means that as long as the
10 Commission's interpretation is quote, reasonably consistent, end
11 quote, with the statute's text, this Court must defer to the
12 Commission's reading. That's the *International Gaming*
13 *Technology* case.

14 And so this Court can reverse the Commission's order
15 only if it finds that the text of the Gaming Control Act is absolutely
16 unambiguously against the Commission's reading. If it's
17 ambiguous, the Commission still wins.

18 And the second thing that was required -- that would be
19 required for a reversal to be appropriate is that Mr. Wynn would
20 have to succeed on all four of the Commission's bases for jurisdic --
21 for authority. You would have to convince this Court that the
22 Gaming Control Act is unambiguously clear that the Commission
23 does not have any one of those four bases.

24 If even one of those four bases is appropriate for authority
25 here, the Commission's order should be affirmed, and the

1 enforcement proceedings should go forward. The Commission
2 respectfully submits that such a finding would not be consistent
3 with the statute's text or the legislature's intent.

4 And for that reason, we ask that you grant the
5 Countermotion to Dismiss and allow this case to proceed before the
6 Commission. Thank you.

7 THE COURT: Thank you.

8 Okay. Mr. Williams.

9 MR. WILLIAMS: Good morning, Your Honor. Colby
10 Williams, again, on behalf of Mr. Wynn. Bar Number 5549,

11 THE COURT: Good morning.

12 MR. WILLIAMS: Let's pick up with Mr. Ireland's argument
13 first, even though he proceeded second. And, Your Honor, I
14 indicated that I object to Mr. Ireland's argument for the following
15 reason. What you just heard is a preview on the merits with respect
16 to what the Commission and the Board have argued in their
17 50/60/70 pages of briefs as to why the Commission and the Board
18 should ultimately prevail in this case. Your Honor has set that
19 matter for hearing on October, the 1st.

20 Today we are here on their Motion to Dismiss that's based
21 on the following argument, that the petition for judicial review is
22 not ripe because the underlying order that we are seeking review of
23 is interlocutory in nature and not a final order. We are here to
24 address that.

25 The secondary portion of that motion, Your Honor, is that

1 you should not go forward and hear the alternative petition that we
2 filed for either a Writ of Prohibition or a Writ of Mandamus. We are
3 here to address that as well. What we are not here to address are
4 the substantive arguments on the merits, Your Honor. This is a
5 Motion to Dismiss. If Your Honor allows this case to proceed, we
6 will have that debate in two weeks.

7 So unless Your Honor has any questions, I will move
8 forward to the Motion to Dismiss.

9 THE COURT: No, please go ahead.

10 MR. WILLIAMS: Thank you, Your Honor.

11 Your Honor, I think Mr. Shevorski painted a pretty fair
12 picture of what the issues are here and in that regard, I'm happy to
13 take you through them. I may go a little bit longer here because Mr.
14 Shevorski didn't touch on a couple of things that I think may come
15 up in the Reply, so I'll have to take those on in my portion of the
16 presentation.

17 So let's talk about the statute that we're here on.
18 463.315(1), that -- the pertinent portion of that statute, Your Honor,
19 Mr. Shevorski read it, but I'll read it again, because I think it needs
20 to be put into context is as follows: Any person aggrieved by a final
21 decision or order of the Commission made after hearing or
22 rehearing by the Commission pursuant to NRS 463.312 to 463.3145
23 inclusive may obtain a judicial review thereof.

24 That's the statute that we're here on as it relates to
25 Petition for Judicial Review. And as we articulated in our briefing,

1 Your Honor, I think there's really three components to that statute;
2 two of which are not really genuinely at issue. I'll take care of those
3 first.

4 Number 1, I don't think anybody can reasonably dispute
5 that Mr. Wynn is an aggrieved party. What that requirement is
6 designed to prevent is someone that may have indirect interest in
7 the proceeding, you know, taking up a meritless appeal. You
8 actually have to be aggrieved. No one's arguing that Mr. Wynn is
9 not the aggrieved party here. After all, he is the person being
10 targeted with discipline.

11 The second portion of that, Your Honor, is that it has to be
12 a certain type of hearing that was held; a type of hearing between
13 the statutes NRS 463.312 to 463.3145. And Your Honor, we clearly
14 meet that as well because the hearing below was a hearing with all
15 five commissioners. The hearing below was reported and
16 transcribed by a court reporter. That meets the elements of
17 463.3133 describing the types of hearings that are required to be
18 held for non-investigative matters. No one can dispute that, Your
19 Honor.

20 And that is an important point to pause upon because Mr.
21 Shevorski's argument, both in the briefing below and here today is
22 that Your Honor, if you allow judicial review of this order, you're
23 going to become nothing but a super police of the Gaming
24 Commission because every order is going to be appealed to you.
25 Your Honor, that is not accurate. It has to be a certain type of order.

1 This is not your ordinary case, Your Honor.

2 This presents an issue of monumental importance, a case
3 of first impression in Nevada, with its long illustrious history in
4 gaming and so it wasn't something decided by the Commission
5 Chair in a ministerial manner. This was a thoroughly presented
6 hearing in front of the entire Commission. It was recorded and it
7 was transcribed. That distinguishes it from any type of other order
8 that the Board or the Commission may be concerned about being
9 taken up repeatedly to the courts.

10 But let's get to what the crux of the argument is with
11 respect to this statute and whether the underlying order has to be a
12 final decision and order, or it can be a final decision or an order that
13 meets the two elements I just talked to you about. Your Honor, the
14 key word is or. Mr. Shevorski may want to downplay it and say that
15 it doesn't matter but garden variety rules of statutory construction,
16 even when reviewing language or its plain meaning tell you that,
17 or, has to mean something and what it means is it's disjunctive. It
18 represents an alternative, Your Honor.

19 And we've cited you a Nevada Supreme Court case, the
20 name is *Dezzani*, D-E-Z-Z-A-N-I, it's in our briefing, that looked at
21 this word, or, in the context of the phrase, agent or attorney and it
22 said they are distinct. They represent alternatives.

23 Theoretically, an attorney could be a subset of the word
24 agent, no question about that. Theoretically, an order could be a
25 subset of a final decision. But when the word, or, is used, it is

1 meant to be an alternative, Your Honor.

2 And so I would submit to you that an order that meets the
3 other elements of the statute that the person is aggrieved and that it
4 comes following a hearing that meets the requirements of the
5 statute, that being at least three Commission members, and it was
6 transcribed and reported, we meet the definition, Your Honor.

7 Now, Mr. Shevorski didn't touch on this and so I'm going
8 to be very brief on it. In their briefing they point you to another
9 statute. It's NRS 463.3145 and they say that's the type of order that
10 you have to have in order to seek judicial review. And Your Honor,
11 that statute uses the phrase, quote, final decision and order. Not or;
12 and.

13 Your Honor, that contemplates the type of decision and
14 order that is required after a full evidentiary hearing on the
15 substantive disciplinary matter that's before the Commission. It's
16 different than what we had here, and it uses different language and
17 that is significant, Your Honor. The word, and, is conjunctive,
18 unlike the word or being disjunctive, Your Honor.

19 When the legislature uses a phrase in one place and uses
20 a different phrase in a different statute but that's part of the same
21 scheme, that distinction means something. The distinction is
22 meant to be intentional and the language should not be imported to
23 a statute where it's not used. Decision and order is not used in
24 463.315(1), which is what we have cited as one basis to seek your
25 review.

1 But let me move on to our alternative requests for a Writ
2 of Prohibition or a Writ of Mandamus. Mr. Shevorski wants to
3 quickly dismiss the notion that mandamus would be an appropriate
4 vehicle for relief here, claiming that it just doesn't apply to, you
5 know, telling a court what it can or can't do. But Your Honor, we
6 have cited to you the *Humboldt* case. It's in Footnote 5 of our
7 Opposition.

8 And the *Humboldt* case dealt -- very briefly, I'll describe
9 it -- with a situation where a party filed a Complaint that was lacking
10 the required affidavit from a medical professional in order to pursue
11 a malpractice case. The Defendant moved to dismiss, claiming the
12 court lacked jurisdiction without that affidavit and the district court
13 denied it. And so the parties sought a Writ of Mandamus, took it up
14 to the Nevada Supreme Court and the Nevada Supreme Court
15 granted a Petition for Writ of Mandamus and instructed the district
16 court to grant the Motion to Dismiss.

17 Your Honor, it's a very analogous procedural posture to
18 what we have here. We are asking this Court if we proceed to the
19 hearing on October the 1st, at the end of the day to instruct the
20 Commission that it should have granted Mr. Wynn's Motion to
21 Dismiss. So I believe mandamus is certainly an appropriate vehicle
22 to obtain the relief we are seeking here.

23 However, setting aside mandamus and whether it's
24 appropriate or not, there is no debate between anyone at this
25 hearing that prohibition is absolutely an appropriate vehicle by

1 which to seek relief when a lower court or an inferior tribunal lacks
2 either personal jurisdiction or subject matter jurisdiction. And Your
3 Honor, that's not me saying it, that's the Commission saying it.

4 Page 1 of their brief below, Your Honor, of the
5 countermotion and I want to quote it accurately, under the judicial
6 statement says as follows: The Nevada Gaming Commission
7 contends that this Court lacks jurisdiction to consider Wynn's
8 Petition for Judicial Review.

9 That's what we were just talking about.

10 Next, quote: This court has jurisdiction to consider his
11 Petition for a Writ of Mandamus or Prohibition pursuant to NRS
12 463.318(2).

13 That is their brief, Your Honor. There is no argument that
14 prohibition is an appropriate remedy here for us to seek from this
15 Court and if necessary, ultimately at the end of the day, the Nevada
16 Supreme Court.

17 Now, what you've heard Mr. Shevorski tell you is gaming
18 is different. I'll give him that. Gaming is different. There's no
19 question you can cite any number of Nevada Supreme Court cases
20 talking about the discretion that's given to gaming in certain
21 matters and I acknowledge that. But Your Honor, those cases are
22 easily distinguished from what we're dealing with here, both
23 factually and procedurally.

24 Let me tell you what I mean. The cases that you see those
25 types of pronouncements in typically involve licensing decisions.

1 And Your Honor, licensing, no argument, the courts don't have a
2 role in it. They don't get a chance at the end of the day to say
3 whether gaming was right or wrong if it decided to license
4 someone or not to license someone. No argument there; I get it.

5 But that's not true when it comes to disciplinary matters,
6 Your Honor. There the statute specifically contemplate roles for
7 courts in certain ways. And specifically NRS 463.318(2)
8 contemplates either Petitions for Judicial Review or if the Petition
9 for Judicial Review is for summaries and not appropriate, like
10 they're arguing here, then you can seek an extraordinary writ.

11 And Your Honor, time and again the courts have
12 recognized -- the Nevada Supreme Court has recognized that
13 prohibition is an appropriate vehicle when a lower court or an
14 inferior tribunal arguably lacks jurisdiction, either personal or
15 subject matter.

16 But there is even more, Your Honor, because -- so we
17 know that the type of relief is appropriate but when do courts
18 consider extraordinary writs. What are some of the reasons the
19 Court will take them? Your Honor, I would submit we hit every bell
20 here. They take them when there is an important issue of law that
21 needs clarification. Your Honor, you're not going to find an issue
22 that's more important of clar -- in needing of clarification than what
23 we're here on today.

24 Can the Nevada Gaming Control Board and can the
25 Nevada Gaming Commission seek to prosecute, to discipline and to

1 fine someone millions of dollars, potentially, when they no longer
2 have any connection to the gaming industry at all. That's the
3 question for next -- two weeks from today on the 1st.

4 But that is a question that is of utmost importance to
5 everyone here today, Your Honor, Mr. Wynn and the gaming
6 regulators. So there's no question that under the Court's prudential
7 considerations for Writs of Prohibition, we hit that one.

8 Next, Your Honor, there's some interesting teaching from
9 a case in the gaming context, the *Glusman* case, Your Honor.
10 *Glusman* teaches us that there are other reasons that a court will
11 consider gaming issues, particularly disciplinary issues, if certain
12 other criteria are met. What are those? Number 1, again,
13 importance of the issues, but two, was there a fully developed
14 record below?

15 Your Honor, here the briefing is extensive, it's thorough, it
16 was presented to the Commission, we have presented yet more
17 briefing in front of Her Honor. There is no question -- we've had a
18 couple of hearings in front of you already. There's no question that
19 by the time this is coming to you for the ultimate decision that we
20 will have thoroughly developed the issues that are in dispute here.
21 No question there. And that's one of the reasons that the *Glusman*
22 court took the case because the issues were important, and they
23 had been fully developed.

24 And the final reason that the *Glusman* court took the
25 gaming case, Your Honor, is because it dealt primarily, or if not

1 exclusively with statutory interpretation. Those were the
2 arguments you heard Mr. Ireland previewing for you earlier today.
3 And we will be discussing a number of statutes when we have that
4 hearing, Your Honor, but it underscores the point that this Court
5 should be considering this matter now.

6 Now the final point with respect to this that I mentioned
7 was procedurally, how did we get here. And this also distinguishes
8 us from Mr. Shevorski's line of cases. We did not come running to
9 court, Your Honor, and seek to shut down the Commission's
10 disciplinary proceeding against Mr. Wynn. What we instead did,
11 Your Honor, is reached out to opposing counsel very cooperatively
12 on both sides, I might add, and we entered into a stipulation
13 figuring out the most appropriate way to present this matter.

14 And what we did first, Your Honor, is not come to the
15 Court and ask it to rule on this, we went to the Commission itself
16 and gave the Commission the opportunity to weigh in and develop
17 the record that we feel is important for all courts to be able to look
18 at down the road. When the Commission ruled that Mr. Wynn's
19 Motion to Dismiss was going to be denied, did we come here and
20 seek to, you know, unilaterally have some sort of relief granted in
21 our favor to unwind that order? Once -- the answer is no. Once
22 again, we entered into a stipulation with counsel with respect to
23 how to best present this to Her Honor.

24 So we are unlike the litigants that have caused the
25 statements in various cases to talk about the incredible deference

1 owed to gaming and why courts are reluctant to get involved
2 because we haven't sought to circumvent those types of rules and
3 regulations that you may find in the licensing context and as -- and
4 we are different because we're dealing with discipline. And even
5 though we are dealing with the different issue of discipline, we
6 have still worked with counsel procedurally to make sure that the
7 Commission got its opportunity to weigh in and only now are we
8 coming to Her Honor.

9 So with that, unless you have any further questions, I
10 would submit it, Your Honor, and recommend that the motion be
11 denied, and we come back and present the real issues two weeks
12 from today.

13 THE COURT: Thank you, Counsel.

14 Let's see. Mr. Shevorski, would you like to proceed?

15 MR. SHEVORSKI: Thank you, Your Honor. Mr. Ireland
16 asked that he be allowed to address Mr. Williams objection briefly,
17 if that's permissible to Your Honor.

18 THE COURT: That's fine, but he can't speak so quickly.

19 MR. SHEVORSKI: Fair enough. I'll hit him.

20 MR. IRELAND: I'll do my best. My apologies, Your Honor.

21 THE COURT: We all do this. I don't think I've ever been in
22 court as an attorney and I haven't done that as well. I think it's
23 something that happens -- it just happens.

24 MR. IRELAND: My response is very brief. Mr. Williams's
25 objection is the same -- it's based on the same grounds that was the

1 grounds for his Motion to Strike; that the substance of the Petition
2 is outside the scope of the Countermotions to Dismiss and Your
3 Honor has already denied that Motion to Strike. Thank you.

4 MR. SHEVORSKI: Your Honor, Mr. Shevorski for the
5 record. Are you prepared for me to begin my reply?

6 THE COURT: Yes, please.

7 MR. SHEVORSKI: Thank you, Your Honor. Touching
8 upon Point 1, whether or not judicial review is appropriate we
9 believe the answer -- notwithstanding Mr. Williams's argument, the
10 answer is no, it is not. It doesn't matter whether or not the
11 disjunctive, or, is used because the word final modifies both. And
12 you can see that because it's followed by a, quote -- it says:
13 Pursuant to NRS 463.312 to 463.3145.

14 And so it's -- when you're reading the word final, you see
15 that it is applying to the entirety of the proceeding that is quoted
16 immediately below and that's citing to the process described in
17 463.312 to 463.3145 and that's why you see in 3145(1) talking about
18 a final decision on the merits and -- a decision on the merits. And
19 that's when orders become final just like in any meeting where
20 you're going to then seek appellate review. Orders become final
21 when there's been a decision on the merits.

22 And you'll notice nothing in my friend's briefing where
23 you see a district court reviewing an interlocutory order on judicial
24 review and that's precisely what they ask you to do here. And that
25 simply is not appropriate. And you can look no further than the

1 *Resnick* case.

2 The *Resnick* case, Your Honor, at 104 Nev. 60, specifically
3 interprets the phrase final decision or order and says that it is --
4 what it means is that Your Honor ought not to be reviewing
5 interlocutory orders. That is what Mr. Wynn is asking Your Honor
6 to do here. I submit that the plain language of Section 315(1) and
7 the *Resnick* case augur against.

8 Respect to Mandamus just points to a -- there's simply -- I
9 do not agree that the *Humboldt* case is on point dealing with a duty
10 to dismiss where a statutory prerequisite is not met -- this is the
11 medical malpractice -- and it also candidly -- and I'll concede this to
12 Mr. Williams, it doesn't matter because mandamus and prohibition
13 are alternative remedies.

14 And as noted in subdivision -- sub -- excuse me, Note 4 of
15 Mr. Wynn's brief, there are -- you can count any number of cases
16 where the Supreme Court has said that a Writ of Prohibition
17 procedurally is appropriate to restrain an inferior tribunal or an
18 administrative tribunal's acts in excess of jurisdiction. But I would
19 still argue to this Court and I'll repeat it again that gaming is
20 different.

21 Writs are discretionary and it's just as easy to point out
22 instances where our court and others have said you ought not to
23 grant your Writ of Prohibition and use your discretion. I submit to
24 Your Honor that this is one of those times.

25 Now in -- hearing Mr. William's argument, you can hear a

1 fine appellate attorney previewing what he's going to be arguing
2 procedurally to the Nevada Supreme Court which is this is a unique
3 area of law. A case of first impression. I have argued -- made that
4 argument myself when asking the Supreme Court to take
5 extraordinary risks, even though he's probably actually succeeded a
6 few times. But I would argue that this is not such an occasion.

7 What Mr. Wynn is asking this Court to do is to review
8 something that the Gaming Commission does all the time, which is
9 review statutes that it is in charge of interpreting and that it is
10 entitled to deference. That is not something that Writs of
11 Prohibition are designed to restrain. This is not -- no matter how
12 my friend Mr. Williams will describe it, an issue of first impression.
13 What is going on is the Gaming Commission is interpreting its own
14 statute, interpreting its own power which is something it does every
15 day at a hearing. This is no different.

16 Certainly Mr. Wynn, and I'll close on this, is an important
17 figure. No one who has half a brain and can look out the window
18 can argue otherwise. He is entitled to the greatest bit of thanks for
19 everything he has done for this community, how he has built the
20 modern casino industry, but discipline, regulatory power even over
21 persons like Mr. Wynn, is the other side of the coin. I submit that
22 dismissal is warranted, that this Court should not review the
23 Gaming Commission's interpretations of its own statute on a Writ
24 of Prohibition. Thank you, Your Honor.

25 THE COURT: Thank you.

1 I'm going to take a quick ten-minute break and I may have
2 some questions for you, Counsel, okay?

3 MR. SHEVORSKI: Very good. Thank you.

4 [Court recessed at 12:26 p.m., until 12:34 p.m.]

5 THE COURT: Okay. And can the parties hear me? Mr.
6 Shevorski, Mr. Ireland, Mr. Williams, Mr. Campbell?

7 MR. SHEVORSKI: Yes, Your Honor.

8 THE COURT: Okay. Very good.

9 I have a couple of questions that I think are pertinent and
10 frankly I've been thinking about them. I'm very straightforward as
11 far as a judge goes and I'm letting you know, these questions, I
12 think they're important.

13 So one of my questions is, everything that I have read, all
14 of the pleadings, all of the statutes, everything -- and I understand
15 Mr. Ireland and Mr. Shevorski's point concerning the broad powers
16 that the Commission has, and I suppose -- and the Board, okay?
17 But is there -- everything I've read has to do with parties or people
18 that are applying have a license -- it has to do with people that are
19 in presently working in the industry -- working presently applying
20 for a license, presently being reviewed and so forth.

21 And so are there examples of -- okay, Mr. Ireland used the
22 example of organized crime which I understand that in that case,
23 there, you know -- there may be the possibility, and not just
24 organized crime but in other situations, where people would go
25 under -- you know, perhaps try to continue working and moving

1 forward under the guise of someone else or hiding what they're
2 doing.

3 But Mr. Wynn has divested himself of everything as far as
4 I'm aware and so is it something that's normally done that you
5 investigate for a finding of suitability after someone has left the
6 industry completely? Do you have precedence? I mean, I haven't
7 seen anything that would -- that illustrates that.

8 MR. IRELAND: Your Honor, Kiel Ireland for the record.
9 I'm not aware of any cases in the past on this exact situation. I
10 could certainly look through and provide supplemental briefing. I
11 do think it's the case that people have been disciplined after leaving
12 the industry in other ways. So a case I'm thinking of is the *Tony*
13 *Spilotro* case which went to the Nevada Supreme Court. I
14 apologize, I don't have the citation with me but in that case, he was
15 banned from entering casinos by the Commission and that was
16 found within the Commission's authority.

17 THE COURT: Mr. Spilotro was -- if -- I don't want to
18 misspeak but I believe he was involved in organized crime. I don't
19 know that there was a finding, but I believe that that's correct. Isn't
20 that one of the organized crime examples?

21 MR. IRELAND: Yes, Your Honor.

22 THE COURT: We're not talking about a black book or
23 entering a casino. Is that --

24 MR. WILLIAMS: Correct.

25 THE COURT: I think this is a --

1 MR. WILLIAMS: That's right.

2 THE COURT: -- very different situation, right? Let me just
3 ask. I know that this is a very basic analogy, okay? Very basic. And
4 by the way, I have some experience with administrative law, not the
5 Gaming Commission, which I understand is, you know, very -- is
6 very important and, you know, our state depends on gaming and
7 I've lived my entire -- almost my entire life here. We moved here
8 when I was a year and a half old.

9 My father worked in gaming, so I understand very much
10 how important this is but it's a privilege license, nonetheless, right?
11 People have to be investigated, vetted, found -- look at my notes --
12 found to be suitable and so forth, right?

13 Now -- but let me just ask you this. In a situation where a
14 person -- so let me just finish the thought. First of all, you know, I
15 was on the Taxicab Authority for five years as a member and I
16 served -- I don't want to misspeak but four and a half or five years
17 or four-ish on the Public Utilities Commission as a Commissioner in
18 the midst of the energy crisis, which was a very significant and
19 difficult time for our state and -- so, you know, I may have nine or
20 ten years of direct, daily experience as a member of a Commission,
21 okay?

22 So I -- you know, this is not something that I'm -- that's
23 completely -- I've never seen before, all right? Understanding that
24 there is some difference with respect to the Gaming Commission
25 because of our industry. However, in a privilege license -- when

1 you have a privilege license, let's say a person in -- like in this
2 situation, gives up everything. You know, I'm not going to go into
3 the legal terminology, but they divest themselves and they're out of
4 it, right?

5 If they were interested in returning, how would that
6 occur? What would they have to do to ever have a license again?

7 MR. IRELAND: Well I think --

8 THE COURT: Let me just ask you. Wouldn't they have to
9 apply like everyone else and then they would be investigated and
10 vetted for suitability? And I think they'd have to start from
11 Number 1.

12 I'll give you an example, Ms. Reed, my law clerk -- our law
13 clerk who's very -- you know, very intelligent, on the ball, she was
14 working with the one of the justices of the Supreme Court, right?
15 She took a two-week vacation, but before I could hire her, she had
16 to be revetted while she was working for the Supreme Court.

17 And, you know, we're talking about the same court
18 system and I would venture to say that the courts are perhaps, you
19 know, Nevada is an industry and it's such a unique industry but --
20 and Nevada -- and I know I was raised because of the gaming
21 industry. My father worked for 30 years in the gaming industry.

22 So once a person has completely divested themselves, I --
23 and I'm not talking about a Mr. Spilotro type of situation or
24 organized crime. Where is the jurisdiction? I'm -- that's just
25 something that keeps popping into my head over and over again.

1 MR. SHEVORSKI: Certainly. So a couple of things there,
2 Your Honor, and that really goes to Mr. Ireland's argument and --
3 but -- and not what my client is here on today.

4 But from my client's perspective, the jurisdiction and
5 power, one of the bases would be 463.310(1)(a). And there it's
6 talking about power to conduct any investigation of whether a
7 finding of suitability -- looking back in the past, it should be -- and
8 why it mattered. We're not talking about a license; you are talking
9 about a person found suitable. There's a distinction. Wynn is not
10 the license holder. It's the person found suitable.

11 And why it matters is that he wouldn't have to be an
12 employee -- he could divest himself from Wynn Resorts, he could
13 sell his shares, but what the Gaming Control Board certainly has a
14 right to be concerned about for certain is that Number 1, the
15 conduct that occurred while he had that connection but more
16 importantly, he doesn't need be an employee or a shareholder of
17 Wynn Resorts or of the public company to have connections to
18 gaming in Nevada.

19 He could be a consultant or an independent contractor,
20 something more broad, and still -- that is -- and still have an impact
21 on Nevada gaming and not have the connection that Your Honor is
22 talking about. He could be an independent contractor. And that is
23 something that the Nevada Gaming Control Board certainly should
24 be concerned with and something that under its full and absolute
25 power should be able to seek to prevent because the Gaming

1 Control Act certainly allows them to do so and to allow -- to prohibit
2 those types of contracts.

3 And so yes, he could jettison his shares and say April
4 Fools, you can't do anything to me, but we still have the right to be
5 concerned that he could still have an impact on Nevada gaming and
6 gaming licensees like for Wynn Resorts by entering into that third-
7 party contract, which -- where he would not have to be found
8 suitable for.

9 And so to answer your question, one is I think from my
10 client's perspective, it's an argument for another day. But it doesn't
11 matter in terms of jurisdiction whether or not he's jettisoned his
12 shares because we're looking back in the past to discipline a person
13 found suitable for conduct that occurred while he had that
14 connection and one of those would be to prevent that person from
15 entering into a contract; to have a similar influence on a Nevada
16 Gaming licensee.

17 THE COURT: Mr. Ireland, did you have anything else?

18 MR. IRELAND: I would just add one brief point to that. I
19 clearly join everything that -- all he just said but also, the public
20 protection aspect is certainly there, and revocation has real effects
21 on a person who was previously found suitable. That's different
22 than just the finding of suitability disappearing if that could even
23 occur at this case at this point.

24 But public protection is only one side of the coin but
25 another interest that the Commission has is deterrence. And what a

1 rule that said that a person can divest from the industry and never
2 face any consequences for violations of the Gaming Control Act,
3 what that rule would mean is that people have an open door to
4 violate the Gaming Control Act going forward because they know
5 they can escape enforcement. And the Commission has a real
6 interest in not giving that open door to a potential lawbreaker.

7 THE COURT: So you're saying that's an open door for Mr.
8 Wynn to continue to violate what you are alleging he's violating; is
9 that correct? To protect --

10 MR. IRELAND: Your Honor, my point is a little different. I
11 agree that without revocation, Mr. Wynn would have more ability to
12 associate himself with the gaming industry again.

13 But the point I'm making right now is that you open the
14 door to a rule that you can escape enforcement by divesting would
15 remove the Commission's ability to deter other people from
16 violating the Gaming Control Act because the other people going
17 forward would know that if they're ever caught, they can simply
18 divest and that's a very dangerous topic that I think the Commission
19 has a real interest in preventing.

20 THE COURT: Well, let me ask you this question because
21 it -- I mean, I'm -- you can see, I'm very straightforward. What
22 about the 30 years that Mr. Wynn was definitely under the
23 jurisdiction of the Commission, and wasn't disciplined then, while
24 he actually held an interest and was active and there's no question
25 about the jurisdiction at that time? What happened in 30 years that

1 is a -- that we're now looking -- you're now looking back at, you
2 know, suitability? What about then? I don't under -- that's
3 something that I fail to understand.

4 MR. SHEVORSKI: Certainly. And this is -- and again, this
5 is an argument that my client would be making in a couple of weeks
6 but --

7 THE COURT: Well actually no, it involves jurisdiction
8 which is critical --

9 MR. SHEVORSKI: Well --

10 THE COURT: -- right?

11 MR. SHEVORSKI: I understand. But my client was here to
12 talk about procedure but I'm happy to answer Your Honor's quest --
13 I don't mean to -- please, I don't -- I don't mean that to be
14 disrespectful.

15 THE COURT: Right. But I really think that, you know,
16 while we will, you know -- that there are other things to discuss in
17 the next hearing, if there's a next hearing. I want to understand
18 how this Commission can -- okay, I guess, Mr. Ireland's already
19 answered my question but -- okay, go ahead. I'm sorry, I
20 interrupted you, Mr. Shevorski. Go on.

21 MR. SHEVORSKI: Certainly. Well, I think one thing that is
22 not in dispute is that -- and is something that is problematic for
23 circumstances like this is if there is misconduct or alleged
24 misconduct that is going on while a person who has been found
25 suitable has a connection with gaming licensee, you say what was

1 going on those 30 years? Well you have a course of conduct where
2 there were a number of allegations resolved through private
3 settlement agreements that contained NDAs; that contained very
4 powerful nondisclosure clauses.

5 And while that may be something that people can do
6 through private contract -- certainly the state couldn't do that
7 because of the First Amendment. But a person -- but that doesn't
8 mean that the regulatory body should somehow be handcuffed
9 because a person with means has been able to -- well let's say
10 prevent the release of information that might be pertinent to the
11 regulator.

12 And so it -- now in this particular instance, you asked what
13 happened in 30 years, well there was a -- it turns out that there was
14 a Wall Street Journal article that brought it up and so that could not
15 be restrained by the NDA. But the NDAs certainly are problematic
16 in terms of the regulator because they prevent the regulator from
17 knowing information because the parties to the NDAs are bound by
18 very powerful contract remedies from disclosing information.

19 And so to have a rule saying that, you know, that you
20 couldn't have an investigative hearing, well the investigative
21 hearing may never happen because there -- the information that
22 you want to investigate is protected by an NDA and so the regulator
23 wouldn't even know.

24 And so you're asking what happened in 30 years; well for
25 quite a long period of time, there was allegedly problematic

1 conduct that was not disclosed because of NDA.

2 THE COURT: Let me ask you another question. If the
3 legislature and the statute -- if it really provides for jurisdiction,
4 whether it be, you know, the different types of things we've
5 discussed but a finding of suitability after the fact, wouldn't there be
6 some sort of statutory limit -- a statute of limitations? I mean, even
7 criminal law has statutes of limitations. And I understand the
8 distinction between administrative, and criminal law, and civil law,
9 but I don't see anything that I've read that it appears to consider
10 findings or jurisdiction in the future. I just don't see --

11 MR. SHEVORSKI: All right.

12 THE COURT: -- anything -- let me ask --

13 MR. SHEVORSKI: I'm glad you asked that.

14 THE COURT: Go ahead.

15 MR. SHEVORSKI: I'm glad you asked that. That's
16 something that if that was a concern, that's a problem for the
17 legislature to fix, but that is not a question of the Commission's
18 subject matter jurisdiction. How stale a particular issue may be
19 might be an issue relevant to the Commission whether or not it
20 uses its power to discipline a particular person, whether or not it
21 thinks it meets the requirement such as deterrence or any of those
22 things that the Commission may be concerned with when it issues
23 discipline. But that has nothing to do with the power of the
24 Commission in the first place.

25 I'll use an example. I know my friend, Mr. Williams has

1 brought this up before from bankruptcy law. But, you know, in
2 bankruptcy law, actually there is -- if there is an undisclosed asset
3 or part of the bankruptcy estate, bankruptcy court never loses
4 jurisdiction over the estate, ever. And there are cases in -- where
5 they have resolved an estate many, many decades later because
6 there was an asset of the state that the court wasn't aware of and
7 the bankruptcy court still had power.

8 How long something takes has nothing to do -- how stale
9 an issue might particularly be has nothing to do with the power of
10 the tribunal in the first place. And as you know from -- you
11 mentioned criminal law. There is no statute of limitations for
12 murder, for example. It's up to the legislature to say, I'm putting
13 this, what I'll call artificial or legislative timeline down and say this
14 far, no further.

15 But another thing to think about in terms of -- you
16 mentioned the statute of limitations. Statute of limitations never go
17 except to the tribunal's power. They are affirmative defenses that
18 are raised by the Defendant to say that this case has been brought
19 too late, but they don't go to the tribunal's power itself.

20 And so that's -- I understand why the point would be
21 made and I appreciate the point that my friends from the other side
22 make when they argue that discipline should not be imposed
23 because Mr. Wynn has severed his relationship, but that has
24 nothing to do with the Commission's power itself to decide these.
25 They may say it's not worth the trouble because he's jettisoned his

1 relationship, but the Commission still gets to make that decision.

2 THE COURT: Okay. Thank you.

3 Mr. Williams, do you have anything you'd like to --

4 MR. WILLIAMS: I do, Your Honor, and I think I can be
5 brief and hopefully I'll address the points you're interested in and to
6 the extent that I haven't, I know you'll ask me to follow up.

7 So let me just hit the points that I think you asked about
8 and that were made by opposing counsel very quickly. First, as it
9 relates to the reference to a potential *Tony Spilotro* case that went
10 to the Supreme Court, I think it was *Lefty Rosenthal*. I understand
11 maybe it's easy to confuse the two because they were associated
12 but that did go to the Supreme Court. That is a black book case. I
13 don't think that has anything to do with what we're talking about
14 here.

15 I think Her Honor is exactly correct in that Mr. Ireland
16 acknowledged this and I will too, there are no cases that deal with
17 what we are here on today. That is to say there are no Supreme
18 Court opinions telling us that Nevada Gaming Control Board or that
19 the Nevada Gaming Commission has subject matter jurisdiction to
20 prosecute, discipline, and fine someone who is no longer
21 associated with the gaming industry. That is why this case is so
22 important because that has never been found to be a power within
23 the Gaming Control Board or the Commission. That power must
24 come from the legislature.

25 And our entire point, Your Honor, is the legislature neither

1 expressly, nor impliedly, has granted that authority to the gaming
2 regulators. The relevant statutes providing for the power to
3 discipline are all in the present tense, Your Honor. The word
4 having, you may recall is prominently featured --

5 THE COURT: Yes.

6 MR. WILLIAMS: -- in one of the statutes and in one of the
7 gaming regulations. That is a present participle. It means
8 continuing and ongoing, not something from the past. So that is
9 the point of our entire, you know, briefing here.

10 Now, let's talk a little bit about the point that Your Honor
11 made that is spot on, which is because Mr. Wynn is gone, he is no
12 longer a threat to the industry. If he wanted to get back in gaming,
13 okay, he would unquestionably have to come back to the gaming
14 regulators and say I want to come back for some particular position,
15 whatever, you know, that may be.

16 And I don't foresee that happening but let's just say that in
17 theory it could, Your Honor, he's got to come back to the very
18 people that are trying to take away his findings of suitability now,
19 he would have to go back with them and say license me or find me
20 suitable. They'd have the power at that time to say no way, you're
21 not coming back with what you put us through; if that were truly
22 the feeling. So the gaming industry is protected.

23 Now, the public component and deterrence that you heard
24 Mr. Ireland reference, Your Honor, the licensee, the gaming
25 company, always remains subject to gaming's jurisdiction and

1 regulation and discipline and that is what happened here. Your
2 Honor, Wynn Resorts was fined by the regulators here 20 million
3 dollars; a record fine in this state by any measure. To suggest that
4 that is not going to have deterrent effect on other people who may
5 be similarly minded to violate the gaming regulations, in whatever
6 manner, is, to me, just not realistic.

7 So all of the concerns that one would have in the context
8 of a disciplinary setting, we argue, have been satisfied. And I'm
9 happy to expound on that and we can do it more today or we can
10 do it next week -- or excuse me, in two weeks. But that's our
11 position and I think Her Honor recognizes that and I'm happy to
12 answer any other questions you may have on those points.

13 THE COURT: I don't have anything at this moment.

14 MR. WILLIAMS: Thank you, Your Honor.

15 THE COURT: Mr. Campbell, do you have anything to add?

16 MR. CAMPBELL: Your Honor, I don't have anything more
17 to add. The only thing I can say from our perspective, there was
18 never any notice given at any point in time before he resigned and
19 the very public resignation, the very public renunciation of the
20 association by Wynn Resorts, Limited of their association with Mr.
21 Wynn, including a formal notification that was made to the Gaming
22 Control Board, as well as formal notification pursuant to the rules of
23 the Securities and Exchange Commission.

24 THE COURT: Okay. Thank you very much. All right. To
25 the SEC, all right.

1 Well, I've enjoyed having this case before me today and
2 I'm going to take this under advisement so that I can think about it a
3 bit more. And I will issue, you know, the [unintelligible] decision --
4 you know, a written decision.

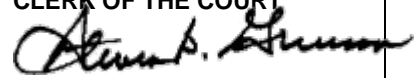
5 [Proceeding concluded at 1:01 p.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audio/video proceedings in the above-entitled case
23 to the best of my ability.

24 
25

Brittany Mangelson
Independent Transcriber



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DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

vs.

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

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.

**NOTICE OF SUPPLEMENTAL
AUTHORITIES**

Petitioner Stephen A. Wynn (“Mr. Wynn”), pursuant to NRAP 31(e), hereby provides notice of two supplemental authorities that were issued after completion of the briefing on Mr. Wynn’s Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition (the “Petition”), which remains pending before the Court and is currently scheduled for further hearing on November 17, 2020.¹

¹ Pursuant to EDCR 2.15(e), the memoranda submitted by the parties in connection with the Petition “must be in the form provided for appellate briefs in Rule 28 of the Nevada Rules of Appellate Procedure.” By analogy, then, Mr. Wynn hereby follows the procedure outlined in NRAP 31(e) for submitting supplemental authorities.

The first authority is *Young v. Nevada Gaming Control Bd.*, 136 Nev. Adv. Op. 66, --- P.3d ---, 2020 WL 5985463 (Oct. 8, 2020) in which the Nevada Supreme Court reversed the Nevada Gaming Control Board’s proffered interpretation of the word “patron” as used in Nevada Gaming Commission Regulation 12.060(2)(c). Reiterating the principle that courts will not defer to an agency’s interpretation of a statute (even one it is charged with enforcing) where the language is clear and unambiguous, the *Young* court found that the the Board’s proffered interpretation of “patron” was not within the statute’s language. *See Young*, 2020 WL 5985463, at *2. Mr. Wynn has similarly argued that the statutes at issue in this action are unambiguous and, thus, the Commission’s and the Boards’ interpretations thereof are not subject to any deference. *See Reply Br. ISO Pet. at 21:21-13:26.*²

The second authority is *Family Trust Foundation of Kentucky, Inc. v. Kentucky Horse Racing Commission*, --- S.W.3d ---, 2020 WL 5806813 (Ky. Sept. 24, 2020) wherein the Supreme Court of Kentucky reversed a trial court ruling that expanded the definition of pari-mutuel wagering in a manner advocated by the Kentucky Horse Racing Commission. In so doing, the court stated as follows:

The legislature created the Commission and expressed that the purpose and intent of KRS Chapter 230 “in the interest of the public health, safety, and welfare, [is] to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. ***Notwithstanding this broad remit, the Commission, like all administrative agencies, may not exceed its statutory authority. Thus, an agency may not assume any power not expressly granted to it by the general assembly. An administrative body’s powers are defined and limited by the agency’s enabling statute.***

Id. at *4 (internal citations omitted) (emphasis added). Mr. Wynn has made analogous points with respect to the powers of the Commission and the Board in this action. *See, e.g.*, Opening Br. ISO

² A true and correct copy of the *Young* opinion is attached hereto as Exhibit 1.

Pet. at 12:2-11 (“the Court has expressly recognized ‘that there are limitations on the police power of the state’ – even when it comes to gaming.”); *see also id.* at 14:21-23:28 (“Neither NRS Chapter 463 nor the Gaming Regulations *expressly* [or *impliedly*] authorize the Commission or the Board to punish persons who no longer have any involvement with gaming licensees.”).³

DATED this 13th day of October, 2020.

CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell
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J. COLBY WILLIAMS, ESQ. (5549)
PHILIP R. ERWIN, ESQ. (11563)

Attorneys for Petitioner
Stephen A. Wynn

³ A true and correct copy of the *Family Trust* opinion is attached hereto as Exhibit 2.

CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, on the 13th day of October, 2020, serve the foregoing **Notice of Supplemental Authorities** by e-mailing and sending via United States Mail, first class postage pre-paid, a copy thereof to the following attorneys of record for Respondents:

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Nevada Gaming Control Board*

By: /s/ John Y. Chong
An employee of Campbell & Williams

EXHIBIT 1

2020 WL 5985463
Supreme Court of Nevada.

Tsun **YOUNG**, Appellant,
v.

NEVADA GAMING CONTROL BOARD; and
Hard Rock Hotel and Casino, Respondents.

No. 78916

FILED OCTOBER 08, 2020

Appeal from a district court order denying a petition for judicial review of an order of the Nevada Gaming Control Board. Eighth Judicial District Court, Clark County; [Adriana Escobar](#), Judge.

Attorneys and Law Firms

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[Aaron D. Ford](#), Attorney General, and [Michael P. Soms](#), Senior Deputy Attorney General, Carson City, for Respondent Nevada Gaming Control Board.

Lewis Roca Rothgerber Christie LLP and [Marla J. Hudgens](#), Phoenix, Arizona, for Respondent Hard Rock Hotel and Casino.

BEFORE PARRAGUIRRE, [HARDESTY](#) and [CADISH](#), JJ.

OPINION

By the Court, [PARRAGUIRRE](#), J.

*1 By the Court, PARRAGUIRRE, J.:

Nevada Gaming Commission Regulation (NGCR) 12.060(2)(c) provides in relevant part that a licensee must “[p]romptly redeem its own chips and tokens from its patrons.” NGCR 12.060(4) complements that general rule by providing in relevant part that “[a] licensee shall not redeem its chips or tokens if presented by a person who

the licensee knows or reasonably should know is not a patron of its gaming establishment.” In this appeal, we consider the meaning of “patron” under those rules. We conclude that “patron” should be interpreted by its plain meaning: essentially, a customer. Because the appellant here was in fact a patron, we reverse the district court’s order denying his petition for judicial review.

FACTS

Appellant Tsun Young tried to redeem six \$5,000 chips from respondent Las Vegas Hard Rock Hotel and Casino, but it refused, explaining that it could not verify that he had won the chips. Young returned with a lawyer, who filed a complaint with respondent Nevada Gaming Control Board and demanded an investigation when Hard Rock again refused to redeem the chips. A Board agent responded to the dispute and issued a decision finding that Young was a patron but concluding that because Hard Rock could not verify that his winnings amounted to \$30,000, it need not have redeemed his chips. The agent noted that refusing to redeem was consistent “with the established industry standards and common practice,” but cited no authority supporting the proposition that a casino may refuse to redeem chips simply because it cannot verify that the person trying to redeem the chips won them.

Young petitioned the Board for reconsideration, arguing that under NGCR 12.060(2)(c), Hard Rock was required to “[p]romptly redeem its own chips and tokens from its patrons” absent an applicable exception to that rule. Although the Board’s agent had found that Young *was* a patron and Hard Rock readily admitted that Young was a regular, rated player who had purchased hundreds of thousands of dollars in chips, the Board justified the agent’s conclusion by citing NGCR 12.060(4), which prohibits a licensee from redeeming chips if it “knows or reasonably should know [that the person trying to redeem them] is not a patron of its gaming establishment.” The Board defined “patron” for purposes of this rule as someone who has *won* the chips he seeks to redeem. The Board concluded that Young was not a “patron” under its new definition because Hard Rock had no record of him *winning* any \$5,000 chips, so it affirmed the agent’s decision despite his finding that Young was a patron.

Young petitioned the district court for judicial review of the Board’s order, but the district court denied the

petition, thereby affirming the Board's order. Now Young appeals, arguing that the Board's decision was not in accordance with law. We agree.

DISCUSSION

We review issues of statutory interpretation de novo but will “defer to an agency’s interpretation of its governing statutes or regulations if the interpretation is within the language of the statute.” *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008). When reviewing de novo, we will interpret a statute or regulation by its plain meaning unless the statute or regulation is ambiguous, *Savage v. Pierson*, 123 Nev. 86, 89, 157 P.3d 697, 699 (2007), the plain meaning “would provide an absurd result,” *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P.3d 850, 854 (2014), or the interpretation “clearly was not intended,” *Sheriff, Clark Cty. v. Burcham*, 124 Nev. 1247, 1253, 198 P.3d 326, 329 (2008).

The Board’s interpretation is not within NGCR 12.060(4)’s language

*2 Young argues that the Board’s interpretation is not entitled to deference because it is not within NGCR 12.060(4)’s language. Neither the Board nor Hard Rock argues that the Board’s interpretation is within the regulation’s language or even addresses the within-the-language rule.

In its recommendation affirming the agent’s decision under NGCR 12.060(4), the Board noted that NGCR 12.060 does not define “patron.” So it used what it described as a definition from an Eighth Judicial District Court order in an unrelated case: “a customer of a gaming establishment that obtained the chips ‘through a game, tournament, contest, drawing, promotion or similar activity,’ ” i.e., winning the chips.¹

The Board’s interpretation of NGCR 12.060(4) is not within the regulation’s language. The “game ... or similar activity” language does not appear in NGCR 12.060,² so the Board’s interpretation is not entitled to deference, and we must review this issue de novo.

“Patron” is unambiguous

The first issue upon de novo review is whether “patron” is ambiguous. A word is ambiguous if it “is subject to more than one reasonable interpretation.” *Savage*, 123 Nev. at 89, 157 P.3d at 699.

Only Young offers any plain-meaning interpretation of “patron.” He argues that “patron” is a common word and should be interpreted by its plain and ordinary meaning: essentially, a customer.

Neither the Board nor Hard Rock argues that “patron” is ambiguous, although by arguing that this court should affirm the Board’s order, both implicitly argue that the Board’s definition (i.e., someone who wins chips) is a reasonable alternative to its ordinary meaning. But Young argues that the Board’s definition is not reasonable because it would allow a licensee to refuse redemption to someone who buys chips, gambles and loses some, and then tries to redeem the remaining chips. Because that person would not have *won* the chips, but merely *purchased* them, he would not be a “patron” under the Board’s definition. He argues that while that seems unlikely, it is essentially what happened here.

We agree that “patron” is unambiguous. It is an ordinary word with a commonly understood meaning that is the only reasonable interpretation in this context: a customer. *See Patron*, *Black’s Law Dictionary* (11th ed. 2019) (defining “patron” as “[a] customer or client of a business, esp. a regular one”). That understanding is also common to this court. *See, e.g., Humphries v. N.Y.-N.Y. Hotel & Casino*, 133 Nev. 607, 607-08, 403 P.3d 358, 359-60 (2017) (referring to casino-goers as “patron[s]” regardless of whether or how they obtained chips); *Zahavi v. State*, 131 Nev. 51, 53, 343 P.3d 595, 596 (2015) (referring to casino-goers interchangeably as “patrons” and “customers”); *Estate of Smith v. Mahoney’s Silver Nugget, Inc.*, 127 Nev. 855, 862, 265 P.3d 688, 693 (2011) (same).

Interpreting “patron” by its plain meaning would not provide an absurd result and was not clearly unintended

*3 The next issue is whether interpreting “patron” by its plain meaning would provide an absurd result or was clearly unintended. We address both respondents’

arguments in turn, beginning with the Board's.

The Board argues that interpreting "patron" by its plain meaning would provide an absurd result by "open[ing] the door for gaming chips to be more freely exchanged." It reasons that not requiring someone to have won the chips in order to redeem them would enable someone to redeem them after obtaining them via some sort of unsanctioned transfer, which would frustrate the purpose of NGCR 12.060(2)(d), which requires a licensee to post signs warning that federal and state law prohibit the use of chips outside the licensee's establishment for any purpose.

But the Board does not explain how that would frustrate the sign regulation's purpose, or why it must interpret NGCR 12.060(4) beyond its plain meaning in order to serve that purpose. And more significantly, the Board does not address the anti-fraud laws that serve that purpose, or NGCR 12.060(2)(a), which requires a licensee to "[c]omply with all applicable statutes, regulations, and policies of Nevada and of the United States pertaining to chips or tokens." Those laws would provide the grounds on which to refuse to redeem Young's chips if in fact they applied, so invoking NGCR 12.060(4) by redefining "patron" would be unnecessary.

Further, NGCR 12.060(4) does not require redemption—NGCR 12.060(2)(c) is the general rule of prompt redemption for a patron, and NGCR 12.060(4) is a contrapositive rule prohibiting redemption for someone the casino knows or reasonably should know is not a patron. Because NGCR 12.060(2)(c), NGCR 12.060(4), and various exceptions to the general redemption rule may be read and enforced harmoniously, the Board's argument does not present any absurd or clearly unintended result of interpreting "patron" by its plain meaning. See *Simmons*, 130 Nev. at 546, 331 P.3d at 854 ("[T]his court interprets 'provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes' to avoid unreasonable or absurd results and give effect to the Legislature's intent." (quoting *S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005))).

Hard Rock offers three arguments, all of which are unpersuasive. First, it argues that interpreting "patron" by its plain meaning "would nullify" NRS 463.362, the statute providing a process for disputing payouts. It reasons that the existence of a dispute process implies exceptions to the general redemption rule and concludes that a licensee could never dispute a payout if it must simply redeem chips for a patron. But it does not explain

further, so why a licensee could not dispute things like whether it knows or should know that someone is not a patron, or whether the chips are counterfeit or from another casino, are unclear. Those exceptions, like NGCR 12.060(4), can be read and enforced in harmony with the general redemption rule.

Second, it argues that interpreting "patron" by its plain meaning "would make it impossible for gaming licensees to comply with ... state and federal laws and policies ... designed to combat financial crime." It essentially reasons that if a patron seeks to redeem chips, and redeeming the chips would be a crime, it would have no choice but to commit a crime. But if redeeming Young's chips would have somehow violated state or federal law, then Hard Rock would not need to redefine "patron" to suit its needs. As we explained above, those laws would have been the proper authority to invoke, and could be read and enforced in harmony with the general redemption rule.

*4 Finally, Hard Rock argues that federal reporting "requirements prevent Hard Rock from simply redeeming \$30,000 to any customer presenting chips where internal records don't substantiate his play." But the federal reporting requirement it cites, 31 C.F.R. § 1021.320(a)(1) (2019), simply requires a casino to file "a report of any suspicious transaction relevant to a possible violation of law or regulation." This regulation does not even implicitly prohibit a casino from redeeming chips, but even if it did prohibit redemption, it could be read and enforced in harmony with the general redemption rule as an exception.

None of Hard Rock's arguments show that interpreting "patron" by its plain meaning would provide an absurd result or was clearly unintended. Further, no absurd results are otherwise foreseeable because NGCR 12.060(4) and the various exceptions to the general redemption rule can be read and enforced in harmony with the general redemption rule. So we conclude that interpreting "patron" by its plain meaning would not provide an absurd result and was not clearly unintended.

Young was a "patron"

Because the plain meaning of "patron" is unambiguous, would not provide an absurd result, and was not clearly unintended, we interpret "patron" by its plain meaning. So the final issue is whether Young was a "patron" under the word's plain meaning.

As the Board agent testified before the hearing officer,

“Mr. Young is obviously a patron of the casino.” The parties do not dispute that Young was a regular, rated player at Hard Rock who wagered hundreds of thousands of dollars, and those facts support the conclusion that Young was a patron. And because Young was a patron, Hard Rock could not have known that he was not a patron, so NGCR 12.060(4) did not apply. Instead, because Hard Rock never alleged any other grounds for refusing to redeem the chips, it should have promptly redeemed Young’s chips under NGCR 12.060(2)(c). Because the Board concluded otherwise on the basis of its erroneous definition of “patron,” its decision was not in accordance with law.

The Board should have instead interpreted “patron” by its plain meaning and concluded that Young, as the agent found and nearly every person who appears in the appellate record has admitted, was a patron. And because no identifiable statute, regulation, or other law entitled Hard Rock to refuse redemption simply because its records could not confirm that Young won any \$5,000 chips, the Board should have reversed the agent’s decision and instructed Hard Rock to redeem Young’s chips.

CONCLUSION

The word “patron” should be interpreted by its plain meaning, under which Young was a patron. Because the Board concluded otherwise, its decision was not in accordance with law. We therefore reverse the district court’s order denying judicial review of the Board’s order and remand to the district court with the instruction that it (1) grant judicial review and reverse the Board’s order affirming the agent’s decision and (2) remand to the Board with the instruction to enter a new order reversing the agent’s decision.

We concur:

[Hardesty, J.](#)

[Cadish, J.](#)

All Citations

--- P.3d ----, 2020 WL 5985463, 136 Nev. Adv. Op. 66

Footnotes

¹ Young’s counsel represented the petitioner in the case from which the Board drew its definition and disputed the Board’s interpretation of that order in the district court. He argued that whether the petitioner was a “patron” was not at issue in that case and that the district court in fact never attempted to define “patron.”

² That language does appear in [NRS 463.362\(1\)\(a\)](#), which provides that in certain instances, a licensee must notify the Board of a dispute or notify a patron of the right to request a Board investigation, but [NRS 463.362\(1\)](#) is not NGCR 12.060. Further, even if we were to disregard the within-the-language rule and look to related law, [NRS 463.362](#) would be inapt because it does not define “patron,” but in fact addresses a subset of patrons who have won chips, which implies that someone need not win chips to be a patron—the opposite of the proposition for which the Board cited it. [NRS 463.362\(1\)\(a\)](#).

EXHIBIT 2

2020 WL 5806813

Only the Westlaw citation is currently available.

THIS OPINION IS NOT FINAL AND SHALL NOT
BE CITED AS AUTHORITY IN ANY COURTS OF
THE COMMONWEALTH OF KENTUCKY.

Supreme Court of Kentucky.

The FAMILY TRUST FOUNDATION OF
KENTUCKY, INC., d/b/a the Family Foundation,
Appellant

v.

The **KENTUCKY HORSE RACING**
COMMISSION; the Kentucky Department of
Revenue; Keeneland Association, Inc.; Turfway
Park, LLC; **Players Bluegrass Downs**; Appalachian
Racing, LLC; Kentucky Downs, LLC; Ellis Park
Race Course, Inc.; Lexington Trots Breeders
Association, LLC and Churchill Downs
Incorporated, Appellees

2018-SC-0630-TG

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SEPTEMBER 24, 2020

Synopsis

Background: Kentucky Horse Racing Commission, Kentucky Department of Revenue, and eight horse racing associations sought judicial approval for wagering on historic horse racing, pursuant to Commission regulations. Non-profit foundation intervened, and challenged both the validity of regulations and the premise that wagering on historical horse races was truly pari-mutuel wagering. The Circuit Court, 48th Circuit, Franklin County, entered judgment in favor of Commission and Department. Foundation appealed. The Court of Appeals vacated and remanded in an unpublished opinion. The Commission and Department sought review which was granted. The Supreme Court, [423 S.W.3d 726](#), affirmed in part, reversed in part, and remanded to permit foundation to conduct discovery and present proof. Following a bench trial on remand, the Circuit Court, [Thomas D. Wingate, J.](#), once again found in favor of Commission and Department. Foundation appealed.

Holdings: On transfer from the Court of Appeals, the Supreme Court, [VanMeter, J.](#), held that:

[1] patrons wagering on randomly-generated historical horse races within wagering system were not establishing odds with other patrons wagering on the same race, as required by pari-mutuel wagering, and

[2] fact that initial seed pool was furnished by horse racing association in system of wagering on historic horse racing, impermissibly involved association in creating the pool, and thus, prevented system from constituting a pari-mutuel system of wagering.

Reversed and remanded.

[Keller, J.](#), concurred by separate opinion.

Procedural Posture(s): On Appeal; Judgment.

West Headnotes (10)

[1] **Appeal and Error** 🔑

A trial court's conclusions of law, i.e., the application of the law the facts found by the court, are reviewed de novo.




[2] **Gaming and Lotteries** 🔑

The essential elements of "pari-mutuel wagering" are patrons wagering on a particular race, creating the pool, and setting the odds, with the winners sharing the pool, less the pool operator's commission.

[3] **Gaming and Lotteries** 🔑

Patrons wagering on randomly-generated historical horse races within wagering system were not establishing odds with other patrons wagering on the same race, as required by pari-mutuel wagering; testimony presented to

the trial court disclosed that odds were established by the “off odds” as set at the time the horses left the starting gate, and without providing simultaneous access to one historical horse race to the same group of patrons, no pari-mutuel pool could be created among the patrons in which they were wagering among themselves, setting the odds and the payout.

 Ky. Rev. Stat. Ann. §§ 230.215,  230.361;
 810 Ky. Admin. Regs. 1:011.

[4] Gaming and Lotteries 

Pari-mutuel wagering requires patrons to wager on the same horse races, and it requires reciprocity among patrons.

[5] Gaming and Lotteries 




“Pari-mutuel wagering” requires that patrons generate the pools based on wagering on the same discrete, finite events; only in that way are patrons wagering among themselves and setting the odds and the payouts, the exceptions being possible minimum payouts and minus pools.

 Ky. Rev. Stat. Ann. § 230.3615.


[6] Gaming and Lotteries 

Fact that initial seed pool was furnished by horse racing association in system of wagering on historic horse racing, impermissibly involved association in creating the pool, and thus, prevented system from constituting a pari-mutuel system of wagering; a possibility existed that one patron could win all of the net pool, which would then require the association to step back in and replenish the seed pool, and at such points, the pools were not created by the

patrons, as required by pari-mutuel wagering.

 Ky. Rev. Stat. Ann. §§ 230.215,  230.361;
 810 Ky. Admin. Regs. 1:011.

[7] Gaming and Lotteries 

Notwithstanding broad statutory grant of control over horse racing, the Kentucky Horse Racing Commission, like all administrative agencies, may not exceed its statutory authority.  Ky. Rev. Stat. Ann. § 230.215(2).

[8] Administrative Law and Procedure 


An agency may not assume any power not expressly granted to it by the general assembly.

[9] Administrative Law and Procedure 

An administrative body’s powers are defined and limited by the agency’s enabling statute.

[10] Gaming and Lotteries 

The Kentucky Horse Racing Commission is charged with regulating pari-mutuel wagering, but without positive legislative action and sanction, it has no authority to create from whole cloth and to approve a wagering pool in which each patron is wagering on a different event or set of events; such a wagering pool by no means can be considered a pari-mutuel wagering pool in which patrons, as among themselves, are setting the betting odds and

payout.  Ky. Rev. Stat. Ann. §§ 230.215(2), 436.480.

ON APPEAL FROM FRANKLIN CIRCUIT COURT,
HONORABLE [THOMAS D. WINGATE](#), JUDGE, NO.
10-CI-1154

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Opinion

OPINION OF THE COURT BY JUSTICE [VANMETER](#)

*1 For the second time, this case is before this Court for
consideration of the Kentucky Horse Racing
Commission's regulations as applied to historical horse

racing, and, on this occasion, the Franklin Circuit Court's
determination that the Encore system constitutes a
"pari-mutuel system of wagering." Because we hold that
the Encore system does not create a wagering pool among
patrons such that they are wagering among themselves as
required for pari-mutuel wagering, the trial court
misapplied the applicable regulation as a matter of law.
We therefore remand this matter to the Franklin Circuit
Court for entry of a judgment consistent with this opinion.

I. Factual and Procedural Background.

The procedural history of this case is found in our
previous opinion, *Appalachian Racing, LLC v. Family
Trust Found. of Kentucky, Inc.*, 423 S.W.3d 726 (Ky.
2014). In summary, the Commission, the Department of
Revenue and eight horse racing associations sought
judicial approval for wagering on historical horse racing,
pursuant to Commission regulations.  810 KAR 
1:001(30),  810 KAR 1:011,  810 KAR 1:120. As
described by Justice Venters, writing for the Court,

One such device, similar in
appearance to a slot-machine, is a
patented product marketed under
the name "Instant Racing." ² The
bettor inserts money or its
equivalent into the Instant Racing
terminal and then chooses a horse
identified by a number. The
terminal then displays a video
recording of the race for the bettor
to watch, or, as the name "Instant
Racing" implies, the bettor may
forego the excitement of the actual
race by opting to see immediately
the results of the race and the
outcome of his wager. Bettors are
not given information from which
they might identify the specific
time and place of the actual running
of the race, or the identity of the
horse, but some statistical data
regarding the horses is provided for
bettors who wish to place their bets
with some degree of deliberation.

423 S.W.3d at 730. The Family Foundation of Kentucky, Inc. (“Foundation”) was permitted to intervene. It challenged both the validity of regulations and the premise that wagering on historical horse races was truly pari-mutuel wagering as mandated by KRS 3 230.215 and 230.361. Significantly, the trial court denied the Foundation any opportunity for discovery at that time. *Id.* at 731–32.

Our prior opinion addressed four issues.⁴ First, justiciability of the proceeding and KRS 418.020. 423 S.W.3d at 732–35. We held that the Foundation’s intervention cured any infirmities on this issue. *Id.* at 735. Second, the Commission’s authority to license and regulate pari-mutuel wagering on historical horse racing. *Id.* at 735–38. Within our discussion of this aspect of the case, we rejected the Foundation’s arguments that the legislature had not authorized the Commission to permit wagering on historical horse racing, and that wagering on a terminal could not qualify generally as “pari-mutuel wagering.” As to the latter argument, we noted that KRS Chapter 230 does not provide a definition of pari-mutuel wagering and looked to the definitions in the federal Interstate Horse Racing Act, 15 U.S.C. § 3002(13) and Kentucky’s common law, specifically as stated in *Commonwealth v. Kentucky Jockey Club*, 238 Ky. 739, 747, 38 S.W.2d 987, 991 (1931). We held that the Commission’s regulations defining pari-mutuel wagering, as set forth in 810 KAR 1:001(48), 811 KAR 1:005(54), and 811 KAR 2:010(68), were “consistent with the references to pari-mutuel wagering in KRS Chapter 230.” 423 S.W.3d at 737–38. Third, the Department of Revenue’s collection of a tax on historical horse racing. *Id.* at 738–41. We held that the Department exceeded its authority in amending its regulation. *Id.* at 741. And fourth, although the regulations allowing for pari-mutuel wagering on historical horse racing may be valid, whether the operation of historical horse racing as contemplated by the respective horse racing associations constituted a pari-mutuel form of wagering. *Id.* at 741–42. As to this final issue, we remanded the case to the trial court to permit the Foundation to conduct discovery and present proof.

*2 After four years of discovery, in January 2018, the trial court conducted a hearing with respect to the Encore system⁵ in use by three associations, Kentucky Downs, LLC, Ellis Park Race Course, Inc., and the Lexington Trots Breeders Association, Inc. (collectively the “Association Appellees”). The trial court then entered an extensive Opinion and Order. It recounted the history of the case and provided a four-part definition of pari-mutuel wagering, based on 810 KAR 1:001(48):

- 1) A system or method of wagering approved by the Commission;
- 2) In which patrons are wagering among themselves and not against the association;
- 3) Amounts wagered are placed in one or more designated wagering pools; and
- 4) The net pool is returned to the winning patrons.

Kentucky Horse Racing Comm’n v. Family Trust Found. of Kentucky, Inc., No. 10-CI-02254, slip op. at 6, Franklin Circ. Ct. (Oct. 24, 2018).

The trial court made the following factual findings. The operation of the Encore or Exacta system was approved by the Commission. It uses a triple race method, by which the system randomly selects three historical horse races. The three races are presented to the patron, who is “given the opportunity to handicap the race or choose a built-in function ... which uses the ‘off odds’ order of the horses.” *Id.* at 14. “The ‘off odds’ are the pari-mutuel odds that represent the amount a patron will win if his or her chosen horse wins, as set at the time the horses left the starting gate.” *Id.* The patron places his or her wager, from which the association’s “takeout” amount is deducted. KRS 230.3615; 810 KAR 1:001 § 1(75). After the patron selects the order of finish, digital replays of the races’ final furlong are displayed, showing the order of finish. The patron’s selections and order of finish are compared to determine the patron’s payout, if any.

The trial court noted that the initial seed pool, also known as the “threshold,” is provided by the association. 810 KAR 1:001 § 1(33).⁶ It found, based on testimony, that “if the balance of the pool is above the threshold, the winning patron will receive either par or all of the net pool” depending on the accuracy of the patron’s selections. If the amount of the pool is below the threshold, the winning patron receives a guaranteed minimum amount according to the games’ rules.” The trial court found, based on testimony, that “[a]ll payouts on winning wagers come from the pool, not any separate account of the [a]ssociation[.]” and that “the net pool is going to be paid out many times over.” Additionally, the daily wagering reports demonstrate that the pools fluctuate based on the outcomes of patrons’ wagers. Finally, the trial court noted the testimony of the Commission’s witness, Richard LaBrocca, that patrons’ wagers into the same pool affected following wagers by either increasing or decreasing the pool.

Included among the trial court’s findings of fact are the

following conclusions of law:

*3 92. Pari-mutuel wagering does not require patrons to wager on the same horse races, nor does it require reciprocity among patrons, or for a pool to remain open for a specified period of time.

93. Similar to the Exacta System design, it is typical in pari-mutuel wagering for pools to be paid out to various patrons over time.

Slip op. at 18.

The trial court concluded that the Encore system constituted a pari-mutuel system of wagering, approved by the Commission and meeting the elements of 810 KAR 1:001 § 1(48).

The Foundation appealed. We accepted transfer from the Court of Appeals, as this matter involves “great and immediate public importance.” CR § 74.02(2).

II. Standard of Review.

^[1]After our first opinion, the Franklin Circuit Court, on remand, permitted discovery and held a bench trial, following which it entered an Opinion and Order which contained its factual findings. Our standard of review for such a proceeding is clear: “[f]indings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” CR 52.01. On the other hand, a trial court’s conclusions of law, *i.e.*, the application of the law to those facts, are reviewed de novo. *Payton v. Commonwealth*, 327 S.W.3d 468, 471-72 (Ky. 2010).

III. Analysis.


Our prior opinion summarized both federal law and Kentucky common law and set out two of the essential elements of pari-mutuel wagering: “patrons are wagering among themselves and not against the association,” and “amounts wagered are placed in one or more designated wagering pools.” As we have reviewed this case, the factual findings and arguments of counsel, two aspects of

the Encore System fail to constitute “pari-mutuel wagering.”




^[2]Both the federal statutory definition of pari-mutuel wagering and the Kentucky common law definition refer to a discrete, individual event on which wagers are made. *See* 15 U.S.C. § 3002(13) (defining “pari-mutuel” as “any system whereby wagers with respect to the outcome of a horserace are placed with, or in, a wagering pool”) (emphasis added); *Commonwealth v. Ky. Jockey Club*, 238 Ky. 739, 747, 38 S.W.2d 987, 991 (1931) (“French pool” or “Paris Mutual” definition includes “the effect of which is that all who buy pools on a given race bet among themselves”) (emphasis added).⁹ The Commission’s regulations incorporate this understanding of a pool generated based on a discrete race. *See, e.g.*, 810 KAR 1:011 § 1(1) (providing “[t]he only wagering permitted on a live or historical horse race shall be under the pari-mutuel system of wagering[]”); 810 KAR 1:011 § 3(1) (providing “[w]agering on an historical horse race is hereby authorized and may be conducted in accordance with KRS Chapter 230 and 810 KAR Chapter 1[]”) (emphasis added). The subsequent subsections of 810 KAR 1:011 similarly emphasize the wagering on “an historical horse race.”


*4 The Association Appellees argue that our previous conclusion, that the Commission’s regulatory definition of pari-mutuel wagering is consistent with definitions established by Kentucky’s common law and federal statute, constitutes law of the case and that we implicitly, if not explicitly, rejected the Foundation’s argument. We disagree. As noted, both definitions we quoted referred to a discrete event, as opposed to multiple, disconnected, randomly-selected, historical horse races. The Commission’s regulations repeatedly refer to a singular historical horse race. If the law of the case precludes an argument, it is that of the Association Appellees.





^[3] ^[4]The trial court erred in its conclusion that “[p]ari-mutuel wagering does not require patrons to wager on the same horse races, nor does it require reciprocity among patrons.” Without providing simultaneous access to one historical horse race to the same group of patrons, no pari-mutuel pool can be created among the patrons in which they are wagering among themselves, setting the odds and the payout. The testimony presented to the trial court disclosed that odds are established by the “off odds” as set at the time the horses left the starting gate. In other words, patrons wagering on randomly-generated historical horse races within the Exacta System are **not** establishing odds with other patrons wagering on the same race(s).¹⁰ Emphatically, such patrons are not wagering among themselves as required by pari-mutuel wagering.

^{15]}To the extent that our prior opinion is read by some to suggest that the random generation of multiple historical horse races with patrons placing wagers on different races qualifies as pari-mutuel wagering, that reading is simply wrong. To be clear, pari-mutuel wagering requires that patrons generate the pools based on wagering on the same discrete, finite events.¹¹ Only in that way are patrons “wagering among themselves” and setting the odds and the payouts, the exceptions being possible minimum payouts and minus pools.  [KRS 230.3615](#).

^{16]}Furthermore, and as the Commission’s regulations appear more in focus in this proceeding, the fact that “initial seed pool” is furnished by the association impermissibly involves an association in creating the pool. The betting pools are required to be established only by the patrons. And, as found by the trial court, based on testimony, a possibility exists that one patron could win all of the net pool, which would then require the association to step back in and replenish the seed pool. At such points, the pools are not created by the patrons as required by pari-mutuel wagering.

^{17]} ^{18]} ^{19]}The foregoing mandates reversal of the Franklin Circuit Court’s Opinion and Order. But we are compelled to note an additional matter. The legislature created the Commission and expressed that the purpose and intent of KRS Chapter 230 “in the interest of the public health, safety, and welfare, [is] to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth[.]”  [KRS 230.215\(2\)](#). Notwithstanding this broad remit, the Commission, like all administrative agencies, may not exceed its statutory authority.  *GTE v. Revenue Cabinet*, 889 S.W.2d 788, 792 (Ky. 1994). Thus, an agency may not assume any power not expressly granted to it by the general assembly.  *Id.* An administrative body’s powers are defined and limited by the agency’s enabling statute. *Public Serv. Comm’n v. Attorney Gen.*, 860 S.W.2d 296, 297–98 (Ky. App. 1993).

*5 The Commission’s powers with respect to pari-mutuel wagering are indeed broad, but the only legal wagering is pari-mutuel as authorized by KRS Chapter 230. [KRS 436.480](#). We note the legislative governance over pari-mutuel wagering. Historically, pari-mutuel wagering in Kentucky was permitted “only upon the licensed premises and on the dates and hours for which racing has been authorized by the commission.” See, e.g.,  [KRS](#)

[230.361\(1\)](#) (1980) (wagering on thoroughbred races);  [KRS 230.385\(1\)](#) (1982) (wagering on harness races);  [KRS 230.447\(1\)](#) (1982) (wagering on quarter horse or Appaloosa races).¹² In 1980, the legislature enacted  [KRS 230.3611](#), prohibiting any thoroughbred pari-mutuel pool “where it is required to select more than two (2) horses.”¹³ Beginning in 1982, however, presumably responding to requests from the horse industry, the legislature began to loosen the requirements for permissible pari-mutuel wagering. In that year, the legislature amended  [KRS 230.361](#) to permit a licensed association to conduct pari-mutuel wagering on thoroughbred racing conducted at another Kentucky licensed association, and on “special event races” in other states or foreign countries as determined to be of national or international significance or interest to permit interstate wagering.¹⁴ Act of March 23, 1982, ch. 100 § 6(2), 1982 Ky. Acts 183, 186. The legislature, thus, set the policy to permit expansion of pari-mutuel wagering: intertrack wagering, simulcasting, and interstate and international wagering. These pari-mutuel wagering innovations, as well as others, continue to be set forth in Kentucky statutes, e.g., Interstate Racing and Wagering Compact, [KRS 230.3761](#); simulcasting and intertrack wagering, [KRS 230.377](#), [230.3771](#), [230.3773](#), [230.380](#); telephone account wagering, [KRS 230.378](#), [230.379](#); use of credit card for wagering, [KRS 230.379](#), and International Racing Hubs, [KRS 230.775–230.780](#).

^{110]}These statutes all refer to pari-mutuel wagering, which we addressed in this and our prior opinion. The legislature has never altered or changed the definition of pari-mutuel wagering, whether it is referred to as combination, French, Paris mutuel or pari-mutuel pools. The Commission is charged with regulating pari-mutuel wagering. But without positive legislative action and sanction, it has no authority to create from whole cloth and to approve a wagering pool in which each patron is wagering on a different event or set of events. Such a wagering pool by no means can be considered a pari-mutuel wagering pool in which patrons, as among themselves, are setting the betting odds and payout.

We acknowledge the importance and significance of this industry to this Commonwealth. We appreciate the numerable economic pressures that impact it. *Appalachian Racing*, 423 S.W.3d at 730; see generally Bennett Liebman, *Pari-Mutuels: What Do They Mean and What Is at Stake in the 21st Century*, 27 Marq. Sports L. Rev. 45, 45–46 (2016) (noting declining popularity of horse racing and dropping attendance and pari-mutuel handle). If a change, however, in the long-accepted definition of pari-mutuel wagering is to be made, that

change must be made by the people of this Commonwealth through their duly-elected legislators, not by an appointed administrative body and not by the judiciary.¹⁵

IV. Conclusion.

*6 The Franklin Circuit Court's Opinion and Order is reversed, and this matter is remanded to that court for entry of a judgment consistent herewith.

All sitting. [Minton](#), C.J.; [Hughes](#), Lambert, Nickell and [Wright](#), JJ., concur. [Keller](#), J., concurs by separate opinion.


[KELLER](#), J., CONCURRING:

In good faith, the Commission initiated this action in circuit court to assure themselves, and the businesses they regulate, that the proposed operations fell under [KRS 436.480](#)'s exemption to KRS Chapter 528. Our holdings in [Appalachian Racing](#) were limited to affirming the Commission's statutory authority to promulgate regulations regarding historical horse racing if such racing was pari-mutuel, but we lacked a sufficiently developed record to determine whether any specific system was pari-mutuel. As to the second question, the trial court undertook a yeoman's task with the limited guidance we provided. Ultimately, however I agree with the majority that the operation of the Exacta System is not pari-mutuel as defined in the common law.

All Citations

--- S.W.3d ----, 2020 WL 5806813

Footnotes

- ¹ Kentucky Administrative Regulations.
- ² This device is not in use by any Kentucky racing association.
- ³ Kentucky Revised Statutes.
- ⁴ The first and third issues in our prior opinion are not germane to this appeal but are included for sake of completeness.
- ⁵ The Encore system is also known as the Exacta system. The Instant Racing terminal that was the ostensible focus of the prior opinion is no longer used, apparently, by any Kentucky racing association.
- ⁶ This definition defines "[i]nitial seed pool" as "a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race."
- ⁷ The Commission, by regulation, defines "net pool" as "the total amount wagered less refundable wagers and takeout."  [810 KAR 1:001](#) § 1(44).
- ⁸ Kentucky Rules of Civil Procedure.
- ⁹ [Ky. Jockey Club's](#) definition of "French pool" was quoted from [City of Louisville v. Wehmoff](#), 116 Ky. 812, 846, 79 S.W. 201, 201 (1904). [Wehmoff](#), in turn, cites an earlier case, [Commonwealth v. Simonds](#), 79 Ky. 618 (1881) which includes the first Kentucky description of "French pool" or "Paris mutual" as a small *machine*, containing the name of each horse to be run in a particular race written or printed on the side,

and printed numbers placed on the inside of the machine, which, could be seen through holes in it. It is used by the owner or person operating it, and by those engaged in betting on horse-racing in this way:

The owner or operator sells the tickets for five dollars each; they bear numbers corresponding with the number given the horse on the machine, and by turning a crank or screw attached to the machine the betters are shown at once the number of tickets sold on each horse as each of said tickets is sold, so as to enable him to bet more intelligently and safely, and lessen the chances of disaster to himself.


After the race is over, the machine is examined to see how many tickets have been sold, and those persons holding tickets on the winning horse get the amount of all the money received by the operator for all the tickets sold by him on all the horses that have run in the particular race, less five per cent, commission on the pool, which the operator of the machine retains for his services.

79 Ky. at 619. This earliest definition contained the essential elements of pari-mutuel wagering, which are unchanged in 140 years: patrons wagering on a **particular** race, creating the pool, and setting the odds, with the winners sharing the pool, less the pool operator's commission.



¹⁰ See *MEC Oregon Racing, Inc. v. Oregon Racing Comm'n*, 233 Or.App. 9, 225 P.3d 61, 67 (2009) (noting lack of mutuel pools for specific races since players bet on any of 20,000 different races).

¹¹ This requirement would thus authorize Pick-4 and Pick-6 type wagers whereby the possibility exists for carryover pools to the following race day.

¹² Prior to 1992, KRS Chapter 230 provided for three separate racing commissions. In that year, the legislature created one body, the Kentucky Racing Commission, to administer all racing, irrespective of breed. Act of Mar. 30, 1992, ch. 109, 1992 Ky. Acts 267–92.

¹³ This statute served to limit much exotic wagering, except daily double (wagering on the first-place finishers in the first two races of an association's daily race card) and an exacta wager (wagering on the first- and second-place finishers, in order, of a given race). The statute essentially codified the Kentucky State Racing Commission's action, in November 1979, of abolishing exotic wagering, except the daily double. Dave Koerner, "No Racing on Sunday, panel rules; Commission kills 'exotic' wagering," *Courier-Journal*, Mon. Nov. 9, 1979, p. 78. Churchill Downs challenged the constitutionality of the statute in Franklin Circuit Court in 1984 since harness racing had no such prohibition. "Churchill to offer Pick-Six wagering; Injunction paves the way for move," *Courier-Journal*, Wed., July 18, 1984, p. 16.  [KRS 230.3611](#) was repealed in 1988. Act of Apr. 10, 1988, ch. 376 § 13, 1988 Ky. Acts 1049, 1055.

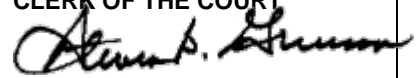
¹⁴ See generally Robert T. Garrett, "Plan brings off-track betting closer to reality: Horsemen reach tentative accord after talks with legislative leaders," *Courier-Journal*, Tue., Jan. 5, 1982, p. 1. The paper had reported in 1979 that Churchill Downs had reached an agreement with the New York Off-Track Betting Corp. to permit New York betting on the Kentucky Derby, Kentucky Oaks, and the Stepping Stone Purse. Dave Koerner, "Downs agrees to allow OTB wagers on Derby, 2 other races," *Courier-Journal*, Wed., Apr. 25, 1979, p. 43. Kentucky statutes at that time had no provisions limiting licensed association's permitting out-of-state wagering on its races.

¹⁵ We recognize that the legislature has taxed "pari-mutuel wagering on historical horse races,"  [KRS 138.510](#); defined "historical horse race," [KRS 138.511\(9\)\(a\)](#), and exempted "[d]evices dispensing or selling combination or French pools on historical races at licensed, regular racetracks as lawfully authorized by the Kentucky Horse Racing Commission" from the definition of a prohibited "gambling device."  [KRS 528.010\(5\)\(d\)2](#). This latter statute was enacted in 2015. Act of Mar. 15, 2015, ch. 5, § 1, 2015 Ky. Acts. The same bill, however, also provided,

No provision of this Act shall be construed as a recognition or finding concerning whether the operation of wagering on historical horse races constitutes a pari-mutuel form of wagering or concerning the legality of wagering on historical horse races, the devices upon which wagering on historical horse races is conducted, or the gaming system.

Id. at § 2 (emphasis added). We believe this significant in that the legislature expressly disclaimed alteration of the

definition of pari-mutuel wagering. We find support in the statutory reference to “combination or French pools” which was explicitly defined in [Kentucky Jockey Club](#) as “[i]n French pool the operator of the machine does not bet at all. He merely conducts a game, which is played by the use of a certain machine, the effect of which is that **all who buy pools on a given race bet as among themselves**; the wagers of all constituting a pool going to the winner or winners.” [238 Ky. at 747, 38 S.W.2d at 991](#) (emphasis added).



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

STEPHEN A. WYNN,)	
)	CASE NO. A-20-809249-J
Petitioner,)	
)	
vs.)	DEPT. NO. XIV
)	
NEVADA GAMING COMMISSION,)	
NEVADA GAMING CONTROL BOARD,)	Transcript of Proceedings
)	
Respondents.)	

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE

PETITION FOR JUDICIAL REVIEW

TUESDAY, NOVEMBER 17, 2020

APPEARANCES (ALL VIA VIDEO CONFERENCE):

For the Petitioner: JON COLBY WILLIAMS, ESQ.
DONALD J. CAMPBELL, ESQ.

For the respondents: STEVEN G. SHEVORSKI, ESQ.
DARLENE S. CARUSO, ESQ.
Chief Deputy Attorney General

RECORDED BY: DISTRICT COURT DEPARTMENT XIV
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

1 TUESDAY, NOVEMBER 17, 2020 AT 9:53 A.M.

2

3 THE MARSHAL: Page 5, Your Honor.

4 THE COURT: Jerry, can you -- Page 5. Okay. Very
5 good. Your appearances for the record, please? Page 5 is
6 *Steve Wynn versus Nevada Gaming Commission*. Can you hear
7 me clearly? I hear, like, an echo, Jerry.

8 THE MARSHAL: The court hears you clearly, Your
9 Honor.

10 THE COURT: Okay. So, can the parties hear me?
11 Or do you detect an echo somewhere?

12 MR. WILLIAMS: Good morning, Your Honor. This is
13 Colby Williams. I did hear the same thing I think you
14 heard. But I'm not sure if that was something unique to
15 the prior case or if that's still going on.

16 THE COURT: Okay. Thank you. And you, sir, --
17 you're very clear, Mr. Williams. You're -- so, appearances
18 for the record. I have Mr. Williams. And --

19 MR. CAMPBELL: Donald J. Campbell, Campbell and
20 Williams, on behalf of Mr. Wynn. Good morning, Your Honor.

21 THE COURT: Good morning. Good morning, Mr.
22 Campbell. Okay. And do I have anybody here on behalf of
23 the Nevada Gaming Commission, the Nevada Gaming Board?

24 MR. IRELAND: Good morning, Your Honor. Kiel
25 Ireland on behalf of the Nevada Gaming Commission.

1 THE COURT: Okay. Good morning, Mr. Ireland.

2 MR. SHEVORSKI: Good morning, Your Honor. Steve
3 Shevorski, the Attorney General's Office, on behalf of the
4 Nevada Gaming Control Board.

5 MS. CARUSO: Good morning, Your Honor. Darlene
6 Caruso, Chief Deputy Attorney General for the Gaming
7 Division, from the Attorney General's Office, on behalf of
8 Gaming Commission.

9 THE COURT: Good morning. Is it Ms. -- your last
10 name?

11 MS. CARUSO: Caruso.

12 THE COURT: Caruso. That's right. Okay. Very
13 good. Thank you. Good morning.

14 Okay. I know I've taken a long time. And I'm
15 going to have an order out by the end of this week. I've
16 hard -- I've had to think about this very long and hard.
17 I'm trying to get it right. And, believe me, I spent quite
18 a few hours on this, which is fine. I have a couple of
19 questions. And I'd like you to answer it if possible.

20 Okay. The first question I have is for the Nevada
21 Gaming Commission and/or the Control Board. So, I have the
22 Complaint here. And, on page 3 of the Complaint, under the
23 heading jurisdiction, the Board states -- or, the
24 Commission states that:

25 Although Mr. Wynn resigned as CEO and Chairman of

1 Wynn Resorts and resigned his shares in Wynn Resorts,
2 the Board placed an administrative hold on Mr. Wynn's
3 filings of suitability and retains jurisdiction over
4 him for the purposes of that -- of discipline.

5 And, my question is, where in the Gaming
6 Commission regulations or the Nevada Gaming Control Act
7 does it provide any concept or support for administrative
8 hold or retaining jurisdiction over someone who no longer
9 directly or indirectly -- is directly or indirectly
10 involved in the gaming industry or in any capacity of the
11 gaming industry? Where does that administrative hold come
12 from?

13 MR. IRELAND: Thank you, Your Honor.

14 THE COURT: We took a look. I haven't seen it.
15 But please go ahead and let me know.

16 MR. IRELAND: This is Kiel Ireland for the Gaming
17 Commission. And thank you for that question.

18 The Gaming Control Board is the one who drafted
19 the Complaint. But I can speak for the Gaming Commission
20 that our position is the administrative hold is not the
21 basis for jurisdiction or the Gaming Commission's authority
22 here. The basis for the Gaming Commission's authority is
23 the Gaming Control Act, which gives full and absolute
24 authority to the Commission to consider discipline against
25 someone who is found suitable and violated the act. So,

1 the administrative hold is not really relevant.

2 If you look closely at that language, it does not
3 say that the Board or the Commission has authority because
4 of the administrative hold. It says that there is an
5 administrative hold and the Board retains authority. So,
6 our position would be that it's not necessary for us to
7 prove that administrative hold is permissible for us to
8 retain jurisdiction over Mr. Wynn.

9 THE COURT: Okay. It is listed under
10 jurisdiction. And, in fact, it clearly -- I mean, it
11 pretty much dominates that area.

12 MR. IRELAND: Yes, Your Honor. I would just
13 repeat that the -- our position is the statutes are clear
14 that there's full and absolute authority with or without an
15 administrative hold. I'm not sure why that language is in
16 the jurisdiction section. But the Gaming Commission's
17 position throughout this litigation has been the
18 administrative hold is not necessary for the jurisdiction.

19 THE COURT: All right. It is one of the reasons
20 the -- where this Complaint derives jurisdiction.

21 All right. Mr. Williams, do you have anything to
22 say? Would you like to say anything, or Mr. Campbell,
23 concerning that?

24 MR. WILLIAMS: Your Honor, this is Colby Williams
25 on behalf of Mr. Wynn. I'd love to say a few things about

1 the administrative hold because, from day one, we have been
2 asking the Board and the Commission to tell us the same
3 thing you just asked: Where is the authority for an
4 administrative hold?

5 Your Honor, let's go back to the concept of
6 administrative agencies. As we've laid out, they are
7 creatures of statute. They have no common law authority at
8 all. The only powers they have are delegated by the
9 Legislature. And the *Andrews* case makes this abundantly
10 clear that that delegation has to be, quote/unquote, clear.
11 So, we have asked in every brief, Your Honor, and at the
12 hearing in front of the Commission itself. And, as Your
13 Honor knows, given how much time you spent on it, there's
14 probably seven or eight briefs on this now. The Commission
15 and the Board --

16 THE COURT: Everything that --

17 MR. WILLIAMS: -- never --

18 THE COURT: Yes.

19 MR. WILLIAMS: They never told us where that
20 authority was because here's why. It doesn't exist, Judge.
21 It is nowhere. It is nowhere in the statutes. It is
22 nowhere in the regulations. So, finally, in the last brief
23 submitted by the Commission on this matter, Your Honor,
24 they finally capitulated and told you what they just said
25 now. It's irrelevant. Well, Your Honor, it sure wasn't

1 irrelevant when they filed the Complaint and put it in the
2 jurisdiction section, as you just noted.

3 I'm happy to address anything else, Your Honor.

4 THE COURT: All right. Thank you very much. All
5 right. I have another question. I wrote this out. Okay.
6 Second question I have, I asked this before. But I'd like
7 to know if the Commission or the Board can provide support
8 for another instance where the Board or the Commission
9 sought disciplinary action against someone who no longer
10 has direct or indirect contacts in gaming.

11 MR. IRELAND: Your Honor, Kiel Ireland on behalf
12 of the Commission.

13 We're aware of one case. I don't know how the
14 hold is to Your Honor because it actually -- the Complaint
15 was filed after the *Wynn* Complaint, in all candor.

16 THE COURT: I'm sorry. Will you repeat the last -
17 - I'm sorry. I didn't hear the last sentence, Mr. Ireland.
18 Will you please repeat that?

19 MR. IRELAND: So, we are aware of one case where
20 that happened. But the Complaint was filed after Mr.
21 *Wynn's* Complaint. But the fact is that this situation is
22 very rare because, in the vast majority of cases, the
23 person who is being investigated or disciplined wants to
24 remain in the industry. So, this is just not a situation
25 that has come up very often.

1 It's also not uncommon for there to be a
2 settlement at the end of an investigation or a disciplinary
3 hearing, where the person voluntarily leaves the industry
4 in exchange for dropping some discipline or something like
5 that. In this case, because of the egregiousness of the
6 misconduct, we have not been able to come to a settlement
7 with Mr. Wynn. So, this is a unique situation. And I
8 would just say that I don't think it's proper to read into
9 the fact that there's not a lot of other examples to say
10 that this is not a power that the Commission has. This is
11 just a situation that does not come up very often. But it
12 is necessary in this case.

13 THE COURT: Okay. And -- thank you. I'd like to
14 hear from Mr. Williams or Mr. Campbell, please?

15 MR. WILLIAMS: Yes, Your Honor. Colby Williams
16 again.

17 THE COURT: Yes, Mr. Williams.

18 MR. WILLIAMS: So, a couple of comments in
19 response to that. First, I would object to the commentary
20 about the egregious nature of Mr. Wynn's behavior and the
21 inability to settle. I think that that's inappropriate and
22 certainly not in the record. It sure has not been proven.

23 Let's talk about why this is so rare and why this
24 entire proceeding, quite frankly, to be most respectful, is
25 a canard. And it's for this reason, Your Honor.

1 Everything that the Commission or the Board wants to
2 accomplish in this case in order to purportedly protect the
3 industry or to protect the public has already been
4 accomplished voluntarily by Mr. Wynn. And we've laid that
5 out in our brief.

6 THE COURT: Yes.

7 MR. WILLIAMS: So, let's quickly tick them off.
8 Mr. Wynn resigned on February 6th, 2018. A week later,
9 February 15th, 2018, he had entered into an agreement with
10 Wynn Resorts to separate formally from the company by which
11 he gave up \$330 million in compensation, Your Honor. He
12 then promptly, but orderly, sold his stock in the company
13 in March. Now, these were not idle events, Your Honor,
14 because the Commission and the Board itself recognized this
15 and removed Mr. Wynn from the Wynn Las Vegas location
16 report. That location report is in the record --

17 THE COURT: Okay.

18 MR. WILLIAMS: -- and identifies people that had
19 been found suitable that are associated with a particular
20 entity. And they removed Mr. Wynn from the Wynn Las Vegas
21 report.

22 THE COURT: Mr. Williams, before you go on, I --

23 MR. WILLIAMS: Yes.

24 THE COURT: I read so much that I want to -- I
25 tried to remember this issue.

1 MR. WILLIAMS: You got it. You got it.

2 THE COURT: So, when you say that the Board or the
3 Commission removed Mr. Wynn from the location report, is
4 that something that is done by the Commission and/or the
5 Board?

6 MR. WILLIAMS: It is, Your Honor.

7 THE COURT: Or is it simply something that the
8 Wynn does?

9 MR. WILLIAMS: No. The Wynn -- I'm sorry for
10 interrupting. The Wynn provides notice that there has been
11 a change in the relationship between it and Mr. Wynn. This
12 touches on the issue of findings of suitability.

13 THE COURT: Okay.

14 MR. WILLIAMS: And once that notice is provided,
15 the -- whether it's the Commission or the Board, I tend to
16 think it's a probably a Board agent, effectuates that
17 change on the location report. And they did that in
18 February when he was no longer an officer or a member of
19 the Board. And, then, they did it again in March when he
20 was no longer a controlling shareholder of the company.
21 So, that was done way back in the spring of 2018. Mr.
22 Wynn, although he was entitled to stay on the property at
23 his residence, promptly left in April. And he has no
24 affiliation with the company whatsoever.

25 Now, Your Honor, that is what typically is the

1 goal or the purpose of certain disciplinary proceedings, is
2 to remove someone that's purportedly a threat to the
3 industry or the public. Mr. Wynn -- I'm not saying that
4 Mr. Wynn was. But he did all of that voluntarily and was
5 gone. There's only one thing that is left that has not
6 been accomplished vis-a-vi the agencies and Mr. Wynn. And
7 that is they want to fine him, Your Honor. Make no
8 mistake, that is what this entire proceeding is about. It
9 wasn't enough to get \$20 million from Wynn Resorts. They
10 want more from Mr. Wynn individually. But, Your Honor,
11 that's why this is so rare is because they don't have the
12 power to do it.

13 THE COURT: Okay. Thank you, Mr. Williams.

14 Anything else from Mr. Ireland on this issue?

15 MR. IRELAND: I would just quickly note that it's
16 -- that there are consequences to a revocation of a finding
17 of suitability that go beyond what Mr. Wynn has originally
18 voluntarily done in this case. So, for example, NRS
19 463.174 provides that the Gaming Control Board must
20 maintain a list of all persons who have had their finding
21 of suitability removed. And, of course, there won't be a
22 purpose of maintaining that list unless there were
23 consequences for that finding of suitability revoked. And
24 one of those consequences, as we discussed in one of our
25 briefs, is NRS 463.166, which prohibits a person who had

1 their finding of suitability removed from entering into a
2 contract with a gaming licensee. So, without a revocation
3 of the finding of suitability, a person could potentially
4 become a consultant, become a vendor, not seek any kind of
5 approval from the Commission. They can then use a
6 nondisclosure agreement to hide their participation in the
7 industry. And, so, these kind of protections ensure that
8 no one is participating -- who has been found unsuitable or
9 who have had their finding of suitability revoked is able
10 to re-enter the industry without a showing to the
11 Commission that that's appropriate.

12 THE COURT: Very good.

13 Mr. Williams, anything else on that?

14 MR. WILLIAMS: Yes, Your Honor. You know, this
15 same concern, quote/unquote, has come up in the briefing
16 and perhaps in the prior hearing. And, Your Honor, again,
17 I want to be respectful here. But I just think it borders
18 on laughable. I mean, Mr. Wynn stated in his first brief
19 in this case that if the whole point was to ensure that he
20 was no longer part of the industry, then we were willing to
21 consider a stipulation to that effect. Okay? So, that's
22 point one.

23 Point two, does anyone realistically think, with
24 all the attention that has been focused on Wynn Resorts,
25 and the fine that it paid, and the deterrent effect of that

1 fine, that someone is going to go surreptitiously enter
2 into a consulting agreement with Mr. Wynn? I mean, with
3 all due respect, Your Honor, give me a break. I mean,
4 that's the best they can come up with? Because that's what
5 this entire proceedings is about. They're afraid someone's
6 going to secretly consult with Mr. Wynn or sign an
7 agreement. I'll tell you right now, my client, I'd have to
8 get authority. I'm pretty sure we'd agree to that no
9 problem, Judge. So, again, I think that's just -- you
10 know, meritless.

11 THE COURT: Thank you. All right. I don't have
12 any other questions. And I will issue this order, not a
13 minute order but my order by the end of the week. Okay?

14 MR. WILLIAMS: Very good. Thank you, Your Honor.

15 MR. IRELAND: Thank you, Your Honor. Thank you,
16 Your Honor.

17 MR. CAMPBELL: Thank you very much, Your Honor.
18 We very much appreciate the attention and time you spent.

19 THE COURT: Yes. And be very careful out there.
20 We're getting used to [inaudible]. But it's still -- it's
21 work -- very. I had a friend whose daughter passed away in
22 early March and she was 30. So, from -- it really made an
23 impression on me. So, be careful everybody. And she
24 didn't have any of the premorbid conditions. She was very
25 healthy, a young pharmacist. So, be careful. Okay?

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MR. WILLIAMS: Absolutely. Thank you, Your Honor.
THE COURT: Have a good day.
MR. WILLIAMS: Absolutely. Thank you, Your Honor.
MR. CAMPBELL: Thank you, Your Honor.
MR. WILLIAMS: You and your staff as well.
MR. IRELAND: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 10:10 A.M.

* * * * *

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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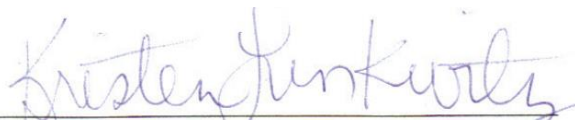
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20 KRISTEN LUNKWITZ

21 INDEPENDENT TRANSCRIBER

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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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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 _____
26 ⁴At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board
27 drafted the complaint, stated the administrative hold is not the basis for Respondents’ asserted jurisdiction over
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.

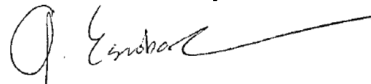
7 **ORDER**

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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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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Attorneys for Petitioner
Stephen A. Wynn

DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,
Petitioner,

vs.

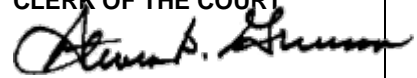
NEVADA GAMING COMMISSION, a
political subdivision of the State of Nevada;
and NEVADA GAMING CONTROL
BOARD, a political subdivision of the State
of Nevada,

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



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

4 DATED this 25th day of November, 2020.

5
6 CAMPBELL & WILLIAMS

7 By: /s/ J. Colby Williams

8 DONALD J. CAMPBELL, ESQ. (1216)

9 djc@cwlawlv.com

10 J. COLBY WILLIAMS, ESQ. (5549)

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12 700 South Seventh Street

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14 Telephone: (702) 382-5222

15 Facsimile: (702) 382-0540

16 *Attorneys for Petitioner*

17 *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.

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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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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
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25 _____
26 ⁴At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board
27 drafted the complaint, stated the administrative hold is not the basis for Respondents’ asserted jurisdiction over
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.

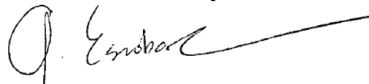
7 **ORDER**

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

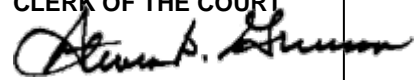
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*Attorneys for Respondent
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DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

vs.

Case No. A-20-809249-J
Dept. No. XIV

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.

NEVADA GAMING COMMISSION'S NOTICE OF APPEAL

TO: STEPHEN A. WYNN, Petitioner

TO: DONALD J. CAMPBELL AND J. COLBY WILLIAMS, attorneys for Petitioner

NOTICE IS HEREBY GIVEN that Respondent Nevada Gaming Commission,
through its counsel, appeals to the Supreme Court of Nevada the Order Granting

...

...

...

1 Petitioner's Petition for Judicial Review entered in this action on November 25, 2020, a
2 copy of which is attached here to as Exhibit "A".

3 DATED this 23rd day of December, 2020.

4 AARON D. FORD
5 Attorney General

6 By: /s/ Kiel B. Ireland
7 Darlene Caruso (Bar No. 5866)
8 Chief Deputy Attorney General
9 Kiel B. Ireland (Bar No. 15368C)
10 Deputy Attorney General
11 *Attorneys for Respondent*
12 *Nevada Gaming Commission*
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/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A

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Attorneys for Petitioner
Stephen A. Wynn

DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

vs.

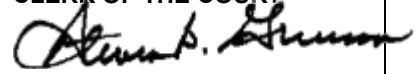
NEVADA GAMING COMMISSION, a
political subdivision of the State of Nevada;
and NEVADA GAMING CONTROL
BOARD, a political subdivision of the State
of Nevada,

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
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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
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.

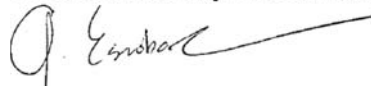
7 **ORDER**

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

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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

16 Jon Williams jcw@cwlawlv.com

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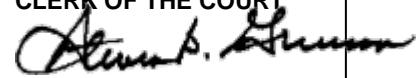
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State of Nevada ex rel. The Nevada Gaming Control Board

DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

Case No. A-20-809249-J
Dept. No. XIV

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.

NOTICE OF APPEAL

Notice is hereby given that the Nevada Gaming Control Board, Respondent above-named, hereby appeals to the Supreme Court of Nevada from the Order Granting Petitioner's Petition for Judicial Review and Writ of Prohibition entered in this action on the 25th day of November, 2020, a copy of which is attached hereto as Exhibit "A".

Respectfully submitted December 23, 2020.

AARON D. FORD
Attorney General

By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Attorneys for Respondent
State of Nevada ex rel. The Gaming
Control Board

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/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A

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Attorneys for Petitioner
Stephen A. Wynn

DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,
Petitioner,

vs.

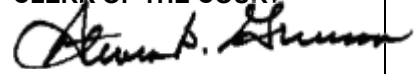
NEVADA GAMING COMMISSION, a
political subdivision of the State of Nevada;
and NEVADA GAMING CONTROL
BOARD, a political subdivision of the State
of Nevada,

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



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

4 DATED this 25th day of November, 2020.

5
6 CAMPBELL & WILLIAMS

7 By: /s/ J. Colby Williams

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16 *Attorneys for Petitioner*

17 *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.

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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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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
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25 _____
26 ⁴At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board
27 drafted the complaint, stated the administrative hold is not the basis for Respondents’ asserted jurisdiction over
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.

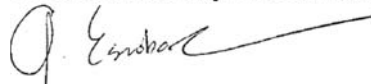
7 **ORDER**

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)

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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

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