Case No. 82263

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

v.

STEPHEN A. WYNN, an individual,

Respondent.

ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
CASE NO. A-20-809249-J

RESPONDENT'S ANSWERING BRIEF

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. Respondent Stephen A. Wynn is an individual. He has been represented in the proceedings below by Donald J. Campbell, J. Colby Williams, and Philip R. Erwin of Campbell & Williams.

DATED this 12th day of July, 2021.

CAMPBELL & WILLIAMS

By /s/ *J. Colby Williams*
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RESPONSE TO ROUTING STATEMENT

Though Respondent does not acquiesce in the arguments contained in Appellants' Routing Statement, he agrees this matter should be assigned to the Supreme Court.

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COUNTERSTATEMENT OF THE ISSUES PRESENTED

1. Did the district court properly entertain Respondent's petition for a writ of prohibition challenging subject-matter jurisdiction in the disciplinary action below where (i) NRS 463.318(2) expressly permits the availability of extraordinary writs, (ii) Appellants acknowledged the district's court's discretion to entertain writ petitions, (iii) an important issue of law needs clarification, (iv) the record below is fully developed and relates solely to statutory interpretation, and (v) the availability of judicial review and/or an appeal is an inadequate remedy to correct an invalid exercise of subject matter jurisdiction.

Respondent respectfully submits the answer to this question is yes.

2. Has the Nevada Legislature expressly or impliedly delegated Nevada's gaming regulators the power to discipline a person who no longer has any involvement with a Nevada gaming licensee and, thus, poses no threat to the industry or the public.

Respondent respectfully submits the answer to this question is no.

COUNTERSTATEMENT OF THE CASE

The Nevada Legislature knows how to empower an administrative agency with continuing jurisdiction to pursue disciplinary proceedings against a lapsed, expired, or voluntarily surrendered license or approval it was charged with overseeing. The Legislature has granted this power repeatedly, expressly, and

succinctly more than a dozen times throughout the Nevada Revised Statutes—each time using nearly identical language to accomplish that purpose. One place the Legislature has not employed such language is NRS Chapter 463, which governs licensed gaming in Nevada (the "Gaming Control Act" or "Act"). Through this action, then, Appellants Nevada Gaming Commission (the "Commission") and Nevada Gaming Control Board (the "Board" and, together with the Commission, the "Agencies") ask this Court to sanction an unprecedented exercise of their disciplinary jurisdiction. Indeed, the Agencies have candidly acknowledged that the proceedings below represent the first time in the storied history of Nevada gaming where they have pursued discipline against an individual who voluntarily departed the industry and undisputedly lacks any material involvement with a gaming licensee.

Nearly two years after Respondent Stephen A. Wynn ("Mr. Wynn") ceased to occupy his positions as the Chairman, Chief Executive Officer, and controlling shareholder of Wynn Resorts, Limited ("Wynn Resorts" or the "Company"), the Board filed a disciplinary complaint against him in October 2019 seeking substantial fines and the revocation of Mr. Wynn's "findings of suitability." The Board's action against Mr. Wynn also came more than seven months after the Agencies resolved a similar disciplinary complaint against Wynn Resorts whereby the Company agreed to pay a record $20 million fine to the State of Nevada.

Pursuant to a stipulated briefing schedule and procedure, Mr. Wynn moved to dismiss the complaint on grounds the Board and the Commission lacked subject matter jurisdiction over him given that the statutes then being relied upon by the Board (*e.g.*, NRS 463.0129, NRS 463.1405, and NRS 463.310) as well as related regulations the Board chose to ignore (*e.g.*, Nev. Gaming Comm'n Regs. 4.030 and 16.400) are all phrased in the present tense and, thus, limit the Agencies' disciplinary jurisdiction to those persons who have ongoing, material involvement with a gaming licensee. Relying on the foregoing statutes, as well as a new one raised by the Board for the first time at oral argument (*i.e.*, NRS 463.143), the Commission unanimously denied Mr. Wynn's motion and subsequently issued a written order.

The parties stipulated to stay the disciplinary proceedings while Mr. Wynn petitioned for judicial review and/or writs of prohibition and mandamus from the district court. After extensive briefing and two hearings, the district court granted Mr. Wynn's petition. The district court determined, *inter alia*, the Agencies lacked jurisdiction over Mr. Wynn under the plain language of the subject statutes and regulations since he had no direct or indirect material involvement with a gaming licensee. The district court additionally found that the Board's purported basis for "retaining" jurisdiction over Mr. Wynn—the implementation of a so-called "administrative hold" on his findings of suitability—had no support in the Act or the Commission's regulations.

Contrary to the Agencies' suggestion on appeal, the district court's order is not an improper obstruction of the Agencies' ability to fulfill their assigned duties. OB at 2 (quoting *Gaming Control Bd. v. Dist. Ct.*, 82 Nev. 38, 40, 409 P.2d 974, 975 (1966)). The Commission expressly acknowledged below that "the Act may permit the consideration of extraordinary writ petitions, such as the writ of mandamus or prohibition that Wynn has requested." (JA 357:25-27) (citing NRS 463.318(2) ("Extraordinary common-law writs or equitable proceedings are available[.]").) The existence of NRS 463.318(2) is just one of the factors that distinguishes this case from *Gaming Control Bd.* as the statute did not exist when that opinion was issued more than fifty years ago. 82 Nev. at 40, 409 P.2d at 975 (relying on prior version of NRS 463.315(13) that expressly prohibited use of extraordinary writs). The Board likewise agreed the district court "ha[d] discretion to entertain Mr. Wynn's petition for writ of prohibition" (JA 509:18-19), which is exactly what it did. (JA 615:24) ("a writ of prohibition is proper").

This appeal followed.

COUNTERSTATEMENT OF FACTS

A. The Parties.

Mr. Wynn is the founder of Wynn Resorts, the former Chief Executive Officer of the Company, the former Chairman of its Board of Directors, and the Company's former controlling shareholder. (JA 153:18-19.) The Commission is an

administrative agency of the State of Nevada organized and existing under NRS Chapter 463. *See* NRS 463.022. (JA 351:23-25.) The Board is an administrative agency organized and existing pursuant to NRS 463.030. (JA 153:13-16.)

As the Commission previously explained, the Agencies are "both charged with administering the Act for the protection of the public and in the public interest. Among the Board's many duties, relevant here is that it performs an investigatory function, and makes recommendations to the [Commission]. The Commission, in turn, conducts disciplinary proceedings based on the Board's recommendations, and is the ultimate decisionmaker and factfinder." (JA 351:18-25) (internal quotations and citations omitted).

B. Background.

The Agencies acknowledge Mr. Wynn is an "innovator in the gaming industry" who reinvented modern Las Vegas through the opening of The Mirage casino-resort in 1989. (JA 64-65); OB at 3. Mr. Wynn thereafter opened The Treasure Island casino-resort and The Bellagio under the umbrella of Mirage Resorts, Inc. (*Id.*) After achieving unprecedented success with the foregoing Las Vegas properties, Mr. Wynn sold Mirage Resorts and founded Wynn Resorts in 2002. (*Id.*) Once Mirage Resorts was sold, Mr. Wynn's gaming approvals ended, and he was required to undergo investigations and obtain "findings of suitability" as a new applicant when he sought to return to the industry in 2005. (JA 68-80.) In

Mr. Wynn's 45-plus-year tenure in licensed gaming, the Board had never brought any disciplinary action against him, and he and his companies received numerous approvals from the Commission over the decades. (JA 53:13-17.)

Wynn Resorts, through its subsidiary Wynn Las Vegas, LLC ("Wynn Las Vegas"), opened the Wynn Las Vegas casino-resort in April 2005. (JA 68-80.) The Board recommended, and the Commission approved, Wynn Las Vegas for a non-restricted gaming license in March 2005, and likewise found Mr. Wynn suitable. (*Id.*) A "finding of suitability" is a term of art under the Act and specifically defined in the Commission's regulations. *See* Nev. Gaming Comm'n Reg. 4.030(10). Here, the findings constituted an authorization and approval for Mr. Wynn to occupy and act in his position as Chairman, CEO and controlling shareholder of the Company. (JA 68-80.) A finding of suitability is not a gaming license, which is issued to the operating entity (*i.e.*, Wynn Las Vegas) and not to any individuals holding positions of authority within the entity. *Compare* Nev. Gaming Comm'n Reg. 4.030(1) (defining restricted and nonrestricted "gaming licenses") with 4.030(10) (separately defining "findings of suitability"); (*see also* JA 566) (Board counsel explaining the distinction between gaming licenses and findings of suitability).

On January 26, 2018, *The Wall Street Journal* published an article alleging that some former Wynn Resorts employees had accused Mr. Wynn of engaging in sexual misconduct while he was the Company's Chairman and CEO. (JA 54:19-

22.) *The Wall Street Journal* and other media outlets thereafter published additional articles and stories on the same subject, many of which contained demonstrably false statements for which Mr. Wynn continues to pursue legal relief. (*Id.*)[1]

C. Mr. Wynn Separates Himself from all Involvement with Wynn Resorts.

Confronted with the above allegations, Mr. Wynn decided to resign as Chairman and CEO of Wynn Resorts so that the Company he created could continue its successes and avoid or minimize possible damage to Wynn Resorts' employees, suppliers, creditors and shareholders from the distraction that allegations of this nature might cause. (JA 55:6-10.) Mr. Wynn's resignation was effective February 6, 2018. (JA 82-83.) Mr. Wynn and Wynn Resorts thereafter entered into a written agreement on February 15, 2018, outlining the terms of his separation from the Company and its affiliates, which included Mr. Wynn's agreement to forego a severance package worth approximately $330 million. (JA 85-91.)

At the time of his resignation, Mr. Wynn owned approximately twelve percent of Wynn Resorts' stock through a family partnership. (JA 99.) Mr. Wynn acted promptly to divest his stock ownership in an orderly manner, completing the sale of all his Company holdings by March 22, 2018. (JA 93.)

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[1] *See, e.g.*, *Wynn v. Bloom*, --- Fed. Appx. ---, 2021 WL 1149142 (9th Cir. Mar. 25, 2021); *Wynn v. Associated Press*, 136 Nev. Adv. Op. 70, 475 P.3d 44 (2020); *Nielsen v. Wynn*, 470 P.3d 217, 2020 WL 5230591 (Nev. Sept. 1, 2020) (unpub. disp).

Although the Separation Agreement permitted Mr. Wynn to remain in his residence at Wynn Las Vegas until June 1, 2018, Mr. Wynn moved out in April 2018. (JA 56:3-5.) Similarly, although Wynn Resorts' bylaws permitted Mr. Wynn to vote at the Company's annual shareholders meeting on May 16, 2018 based on his stock ownership as of March 2018, Mr. Wynn did not vote or otherwise participate at said meeting. (JA 56:5-8.) In short, Mr. Wynn ceased all direct or indirect ownership and material involvement with Wynn Resorts and its affiliates by March 2018. Acknowledging this fact, the Board affirmatively removed Mr. Wynn as an officer and director from its Location Detail Report on the Wynn Las Vegas license by February 23, 2018 and as a shareholder by March 28, 2018. (JA 74; 612:14-19.)[2]

D. Mass Gaming Determines that Mr. Wynn Is No Longer a "Qualifier."

At the time *The Wall Street Journal* article was published, Wynn Resorts and its affiliates were constructing a new casino resort in Everett, Massachusetts that was subject to investigation, approval and regulation by the Massachusetts Gaming Commission ("Mass Gaming"). (JA 96.) On or about March 27, 2018, Mr. Wynn's counsel notified Mass Gaming of the changed circumstances described above, which raised the question whether Mr. Wynn remained an individual "qualifier" requiring

[2] A Location Detail Report is a Board record that "displays all public information for a single licensed location." *See* https://gaming.nv.gov/index.aspx?page=297 (last visited July 7, 2021).

approvals under the Massachusetts regulatory scheme. (*Id.*) Mass Gaming conducted a hearing on April 27, 2018 to consider the issue. (*Id.*) It issued a written Decision and Order on May 7, 2018, finding that Mr. Wynn would no longer be a qualifier after the Wynn Resorts annual shareholders meeting on May 16, 2018, and that Wynn Resorts no longer needed to obtain Mass Gaming approval for Mr. Wynn. (JA 96-103.)

Mass Gaming made extensive findings regarding Mr. Wynn's non-qualifier status, including that Mr. Wynn was no longer an officer, director, or shareholder of Wynn Resorts and "***accordingly, he can no longer exercise control or provide direction to Wynn MA, LLC or Wynn Resorts, Ltd. in [any] of those capacities as a matter of law***." (JA 100) (emphasis added). Mass Gaming likewise determined that Mr. Wynn was (or would be) eliminated as a qualifier under the remaining factors set forth in its licensing scheme upon the completion of Wynn Resorts' next annual shareholders meeting in May 2018. (JA 102-03.)

Given his status as a non-qualifier, Mr. Wynn was under no obligation to cooperate with Mass Gaming's ongoing investigation into Wynn Resorts. Despite this fact, Mr. Wynn's counsel continued to field and respond to various inquiries from Mass Gaming investigators. (JA 57.)

E. The Board's Interaction with Mr. Wynn's Counsel.

On or about June 29, 2018, the Board sent a letter to Mr. Wynn, in care of his counsel, notifying him that it intended to schedule an investigative hearing in late August 2018 at which he would be required to appear and present testimony. (JA 105.) This was the first official Board communication to Mr. Wynn that it sought to interview him as part of an investigation into the allegations contained in the aforementioned media reports. Even though Mr. Wynn had not been affiliated with any Nevada gaming licensee for months by that time, Mr. Wynn's counsel agreed to meet with Board agents in the spirit of cooperation just as they had continued to respond to occasional inquiries from Mass Gaming. (JA 58:5-10.) Mr. Wynn's counsel flew to northern Nevada and met with Board agents on August 30, 2018 in Carson City. (*Id.*)

During the meeting, Mr. Wynn's counsel reaffirmed the undisputed fact that Mr. Wynn had completely separated himself from Wynn Resorts and, thus, was no longer directly or indirectly involved with any Nevada licensee such that he would remain subject to the jurisdiction of the Board and the Commission. (JA 58:11-14.) Mr. Wynn's counsel further advised that Mr. Wynn had no intention of returning to any role involved with Nevada gaming. (JA 58:14-15.) Finally, Mr. Wynn's counsel advised that while Mr. Wynn was willing to cooperate with the Board's investigation despite his departure from the gaming industry, such cooperation

would necessarily have to be limited to answering written inquiries as Mr. Wynn was a party to a number of ongoing lawsuits seeking to vindicate his good name and had to be vigilant about protecting any applicable privileges and work product. (JA 58:15-20); *see also supra* at 7, n.1.

Despite the positions articulated by Mr. Wynn's counsel, the Board's agents advised they intended to formally interview Mr. Wynn on September 7, 2018. (JA 58:21-22.) Mr. Wynn's counsel provided written correspondence to the Board on September 5, 2018 wherein he reiterated the above points made at the August 30 meeting. (JA 107-109.) The Board greeted the letter from Mr. Wynn's counsel with silence. (JA 59:3-5.) It never responded to the letter. (*Id.*) Nor did it ever contest that Mr. Wynn was no longer directly or indirectly involved with any Nevada licensee. (*Id.*)

F. The Commission Fines Wynn Resorts $20 Million.

On January 25, 2019, the Board filed a complaint against Wynn Resorts and Wynn Las Vegas based on the alleged failure to investigate allegations of wrongdoing made against Mr. Wynn. (JA 111-132.) The complaint is notable given the Board's admission that Mr. Wynn had resigned from all positions he held with Wynn Resorts and its affiliates in February 2018 and that he held no ownership interest therein by March 2018. (JA 118:1-5.) According to the Agencies, the complaint was preceded by a multi-month investigation that included interviews

with current and former employees as well as the review of an internal investigation by Wynn Resorts, various public documents and settlement agreements, Company policies and procedures, and written statements Mr. Wynn had provided to Mass Gaming. OB at 8-9.

Simultaneously with the filing of the complaint, the Board and the Wynn entities executed a stipulation regarding settlement that remained subject to Commission approval. (JA 134-140.) The Commission approved the stipulation at a hearing held on February 26, 2019 and imposed a $20 million fine on Wynn Resorts, as the stipulation allowed, which was memorialized in an addendum thereto. (JA 142-143.)[3]

G. Mass Gaming Subsequently Fines Wynn Resorts $35 Million.

Just over a month after the Commission fined Wynn Resorts, Mass Gaming conducted an adjudicatory hearing regarding the Company's suitability for a Massachusetts gaming license. (JA 145-147.) On April 30, 2019, Mass Gaming issued a written decision finding that Wynn Resorts, Wynn MA, LLC and their qualifiers were suitable to maintain a gaming license in the Commonwealth, subject to the fines and conditions set forth in the decision. (*Id.*) Mass Gaming imposed a

[3] Wynn Resorts received this exact sum from Mr. Wynn in a subsequent settlement of related derivative litigation brought by Company shareholders in the Eighth Judicial District Court. *See In re Wynn Resorts, LTD Derivative Litig.*, Lead Case No. A-18-769630-B (Notice of Settlement dated Nov. 27, 2019 (Ex. 1 at 5:18-24)) (on file); (*see also* JA 194:24-28).

$35 million fine on Wynn Resorts, nearly double that imposed by the Commission. (*Id.*)

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

In or about Summer 2019, Mr. Wynn's attorneys learned the Board was considering a disciplinary action against Mr. Wynn. (JA 60:15-16.) To spare taxpayers and Mr. Wynn the expense and fatigue associated with protracted administrative and/or judicial proceedings resurrecting the subject matter addressed in the Wynn Resorts disciplinary actions, Mr. Wynn's counsel contacted Board agents about a possible negotiated resolution. (JA 60:16-20.) Even though it is Mr. Wynn's position that the Board and the Commission have no jurisdiction over him given his lack of any involvement with a Nevada licensee, Mr. Wynn was nonetheless willing to consider entering a stipulation whereby he would agree not to seek any involvement in the Nevada gaming industry in the future. (JA 60:20-66:1.) The parties were unable to reach a resolution. (JA 61:1-2.)

On October 14, 2019, nearly two years after Mr. Wynn had ceased all involvement with any Nevada licensee, the Board sent his counsel a letter advising that "the Nevada Gaming Control Board will seek to have the Nevada Gaming Commission revoke the Findings of Suitability for Mr. Stephen A. Wynn." (JA 149.) The Board filed its complaint against Mr. Wynn the same day, which expressly acknowledged he is no longer an officer, director or stockholder of Wynn Resorts or

its affiliates. (JA 151-173.) The complaint instead alleged that the Board retained jurisdiction over Mr. Wynn because it placed an "administrative hold" on his findings of suitability. (JA 153:17-25.) The statutes and regulations governing Nevada gaming are, however, devoid of any concept known as an "administrative hold." Nor did the Board ever provide Mr. Wynn with any written notice that it was placing an "administrative hold" on his prior gaming approvals. (JA 61:17-19.)

The complaint against Mr. Wynn largely mirrors the complaint the Board filed against Wynn Resorts. (JA 61:20-21.) It is not premised on any "new" developments or then-occurring conditions, other than the allegation that Mr. Wynn failed to appear at the September 7, 2018 interview. (JA 61:21-67:2.) The only notable event that occurred between the resolution of the complaint against Wynn Resorts in February 2019 and the filing of the complaint against Mr. Wynn seven months later was Mass Gaming's imposition of a $35 million fine against Wynn Resorts in April 2019. In other words, the Board's complaint against Mr. Wynn was not premised on any alleged misconduct not known to Nevada regulators when they resolved Nevada's issues with Wynn Resorts. Instead, regulators appear to have reacted after Massachusetts extracted nearly double the amount of money from Wynn Resorts that Nevada had recovered based on the same allegations.

The Board seeks two forms of relief. First, it requests the Commission "to fine Mr. Wynn a monetary sum pursuant to the parameters defined in NRS

463.310(4) for each separate violation of the provisions of the Nevada Gaming Control Act or the Regulations of the Gaming Commission." (JA 173:7-9.) Second, the Board requests that the Commission "revoke Mr. Wynn's Findings of Suitability pursuant to the parameters defined in NRS 463.310(4)." (JA 173:10-11.)

I. Proceedings Before the Commission.

On November 7, 2019, the Commission Chair approved a stipulation setting forth a briefing schedule and procedural framework to address the threshold question of jurisdiction prior to conducting any substantive hearing on the merits of the Board's complaint. (JA 24-26.) Mr. Wynn thereafter moved to dismiss the complaint on November 14, 2019, arguing that neither the Act nor the applicable gaming regulations expressly or impliedly authorize the Board to pursue, and the Commission to impose, discipline against persons who no longer have any involvement with gaming licensees. (JA 27-173.) The Board opposed the motion on November 27, 2019 (JA175-188), and Mr. Wynn filed a reply in support thereof on December 9, 2019. (JA 189-207.)

The Commission conducted a hearing on December 19, 2019 during which the Board's counsel argued for the first time that NRS 463.143 vested the Commission with jurisdiction over this matter. (JA 232:14-20; 236:20-25.) After considering argument from the parties' respective counsel, the Commission members voted unanimously to deny Mr. Wynn's motion. (JA 241-253.) On

January 9, 2020, the Commission issued its written order denying Mr. Wynn's motion. (JA 257-261.) Notably, the order begins its legal analysis with the late-cited NRS 463.143, proclaiming that this statute permits the Commission to carry out its legislative duties "***without limitation***." (JA 259:10-12; 266:18-19) (emphasis added). The Commission's order failed to address the concept of an "administrative hold," the alleged authority therefor, or the fact that the plain language of the relevant statutes and regulations are all phrased in the present tense. (JA 257-261.)

The Commission Chair thereafter approved a second stipulation continuing the stay of disciplinary proceedings while Mr. Wynn petitioned for judicial review and/or an extraordinary writ. (JA 262-64.)

J. The District Court Proceedings.

Mr. Wynn filed his petition for judicial review, alternatively, for writs of mandamus and/or prohibition on January 27, 2020. (JA 264-90.) The Agencies and Mr. Wynn entered another stipulation whereby they agreed to a briefing schedule and related matters concerning Mr. Wynn's petition. (JA 296-99.) Mr. Wynn filed his opening brief on March 13, 2020. (JA 308-41.) The Agencies each countermoved to dismiss Mr. Wynn's petition, and filed their respective answering briefs on April 10, 2020. (JA 342-73; 374-401). The countermotions argued that the Commission's order was not a final decision or order and, thus, not subject to judicial review under NRS 463.315. (JA 356-57; 391-92.) Though the Agencies

agreed the district court had discretion to entertain Mr. Wynn's writ petition, they nonetheless contended it did not meet the criteria for extraordinary relief. (JA 357-58; 392-93.) Mr. Wynn filed his consolidated opposition and reply brief on May 1, 2020 (JA 423-57), and the Agencies each filed replies in support of the countermotion on May 22, 2020. (JA 481-503; 504-11.) Mr. Wynn filed a notice of supplemental authorities on October 13, 2020. (JA 577-95.)

The district court heard the countermotion on September 17, 2020. (JA 533-576.) Under questioning from the Court, the Commission acknowledged it was unaware of any prior precedent where the Agencies ever sought to discipline a person after voluntarily departing the industry. (JA 563:3-564:2.) While the Commission tried to analogize this situation to one where courts have upheld the Commission's authority to ban certain criminal elements from entering casinos, the district court correctly observed that this is not a "black book" situation, which is "very different." (*Id.*) Indeed, the Board's complaint neither mentions nor seeks relief under any of the excluded persons statutes (*i.e.*, NRS 463.151-463.155), thus confirming the inapplicability of the proffered "black book" analogy. (JA 1-23.) Were it otherwise, the Board likely would not have recognized that Mr. Wynn is "entitled to the greatest bit of thanks for everything he has done for this community, how he has built the modern casino industry[.]" (JA 561:16-20.)

The district court conducted another hearing on November 17, 2020. (JA 596-610.) The court began by asking the Agencies the source of authority for the "administrative hold" purportedly used to "retain" jurisdiction over Mr. Wynn after his disassociation from Wynn Resorts. (JA 598:20-599:12.) The Commission quickly disavowed any responsibility for use of the term, pointing out that "[t]he Gaming Control Board is the one who drafted the Complaint." (JA 599:18-19.) The Commission was unsure "why that language is in the jurisdiction section," but suggested it was "not really relevant" because the Commission's disciplinary authority came from the Act. (JA 599:19-600:18.) The Board never answered the court's question. The court's remaining questions focused on whether there were any other instances in which the Agencies have pursued discipline where the person no longer has any direct or indirect contacts with gaming (answer: only one other time in an unidentified complaint conveniently filed *after* Mr. Wynn's) (JA 602:4-25), and the process for the Board's removal of a person from a gaming licensee's Location Detail Report. (JA 605:2-21.)

The district court issued an order granting Mr. Wynn's petition on November 19, 2020. (JA 611-622.) As an initial matter, the court found that the Commission's order was not a final decision or order under NRS 463.315(1) and, thus, appeared to deny Mr. Wynn's petition for judicial review under that statute. (JA 614:18-615:15.) The court nevertheless found that a writ of prohibition was proper as Mr. Wynn was

challenging the Agencies' subject matter jurisdiction and had no adequate remedy at law. (JA 615:16-616:17.)

On the substantive question presented, the Court reviewed NRS 463.0129, NRS 463.1405(1), (3) and (4), and Nev. Gaming Comm'n Reg. 4.030, and concluded the plain language of those statutes and regulations limits the Agencies' disciplinary jurisdiction to persons "having" a direct or indirect material involvement with a gaming licensee. (JA 617:1-620:7.) The court further determined that Mr. Wynn had no such involvement at the time the Board filed its complaint in October 2019, and that the "administrative hold" the Board relied upon to "retain" jurisdiction over Mr. Wynn had no support in the Act. (JA 620:26-621:17.) Finally, the court concluded that the unprecedented nature of the disciplinary proceeding against Mr. Wynn undercut the Agencies' position that their jurisdiction was clear. (JA 621:18-622:3.) The Agencies appealed on December 23, 2020. (JA 665-685.)

SUMMARY OF ARGUMENT

No one disputes the vital role legalized gaming plays in Nevada's economy. Nor does anyone dispute that the Board and the Commission have broad power to regulate and control the gaming industry in a manner to protect the public's health, safety, and welfare. That said, this Court has expressly recognized "that there are limitations on the police power of the state"—even when it comes to gaming. *State*

v. Glusman, 98 Nev. 412, 423, 651 P.2d 639, 646 (1982). The district court properly determined that the Legislature has, in fact, prescribed standards limiting the Agencies' jurisdiction to applicants seeking to enter Nevada's gaming industry and those who have ongoing involvement with a licensed gaming operation.

The plain language of NRS 463.1405(1), for example, expressly limits the Board's continuing observational powers to "licensees and other persons ***having*** a ***material involvement*** directly or indirectly with a licensed gaming operation or registered holding company." (emphasis added). Neither the Board nor the Commission have meaningfully grappled with the Legislature's use of the present tense term "having." The most the Agencies have said on this point is that "[s]uitability does not concern a person's temporal connection to a particular license, but more broadly their worthiness to be associated with gaming in this State." OB at 5. But this conclusory statement not only ignores the statutory language, it improperly tries to broaden the Agencies' jurisdiction to persons nebulously "associated" with gaming as opposed to those "having a material involvement" therein. That is impermissible as administrative agencies cannot enlarge their own jurisdiction. *See S. Nev. Mem'l Hosp. v. State Dep't of Human Res.*, 101 Nev. 387, 705 P.2d 139 (1985).

The Commission's regulations, moreover, actually define the term "material involvement." In the context of a corporate licensee like Wynn Las Vegas, a person

has material involvement only if he "***is*** a controlling person or key employee" or "***exercises*** significant influence upon the management or affairs of the corporation." *See* Nev. Gaming Comm'n Reg. 16.400 (emphases added). The Board and the Commission have likewise failed to address these present tense terms notwithstanding that this Court and the Legislature have instructed that verb tense is significant when construing statutes. *See Bielar v. Washoe Health Sys., Inc.*, 129 Nev. 459, 467, 306 P.3d 360, 365-66 (2013); NRS 0.030(1)(b).

The Agencies instead criticize the district court for even considering NRS 463.1405(1) and not skipping directly to the Agencies' preferred subsections of the same statute, NRS 463.1405(3) and (4), which respectively grant the Board power to recommend, and the Commission power to revoke, findings of suitability. OB at 21-23. Statutory interpretation is not, however, akin to a buffet where one can choose the language it likes while disregarding what it finds displeasing. All portions of a statute must be construed together as a whole giving the terms their plain meaning. The district court reviewed NRS 463.1405(1), (3), and (4). (JA 617-18.) When properly construed as a whole and sequentially, subsection (1) defines who can be the subject of a Board's recommendation under subsection (3), which is a necessary predicate to the Commission making a disciplinary decision under subsection (4).

The continuing existence of a person's "findings of suitability" is another necessary predicate for the Agencies' disciplinary jurisdiction. "Findings of suitability" are required when a person is "***directly or indirectly involved with licensees***" and, then, only for "***so long as that involvement continues***." Nev. Gaming Comm'n Reg. 4.030(10) (emphasis added). A finding of suitability "relates only to the specified involvement for which it was made," and is not transferable when the nature of the person's involvement with the licensee changes from that for which he or she was originally found suitable. *Id.* Mr. Wynn's "involvement" with Wynn Resorts undeniably changed when he resigned as an officer and director, and sold his stock. His findings of suitability ended at that point, by operation of the Commission's own regulations, so no findings of suitability remain in existence. An approval that does not exist cannot be "revoked."

The Agencies proffer three responses to the dilemma posed by Mr. Wynn's nonexistent suitability findings. Initially, the Board alleged it "retain[ed]" jurisdiction over Mr. Wynn through a so-called "administrative hold" on his findings of suitability notwithstanding that the Board removed him from its Location Detail Report on the Wynn Las Vegas license in early 2018. Neither the Commission nor the Board could identify any source of authority for an "administrative hold," and the district court properly found that nothing in the

relevant statutes or gaming regulations expressly or impliedly authorized the use of such a device to maintain perpetual jurisdiction over those who have left Nevada's gaming industry.

The Agencies additionally rely on select subsections of NRS 463.310 for the proposition that they can revoke "any" finding of suitability, which apparently means "all" suitability findings regardless of when they were issued, when a purported infraction occurred, and when a suitable person left the industry and was removed from the Board's location report. OB at 18. Respectfully, such an interpretation would not only lead to absurd results, it again ignores other subsections of the same statute that employ the present tense to limit the Agencies' disciplinary powers to a person who "is" found suitable. *See, e.g.*, NRS 463.310(2)(b); NRS 463.310(4)(d).

Lastly, the Agencies close their brief by citing several non-Nevada cases for the proposition that a person cannot avoid investigation and potential discipline through the unilateral action of surrendering a license. OB at 23-24. The argument is flawed factually and legally.

Factually, Mr. Wynn did not unilaterally surrender his findings of suitability after the commencement of the underlying disciplinary proceedings like some of the licensees in the Agencies' caselaw. Mr. Wynn's findings necessarily ended pursuant to Reg. 4.030(10) when his involvement with Wynn Resorts indisputably

changed, and *the Board* thereafter removed him from its Location Detail Report for Wynn Las Vegas—both of which occurred long before this action commenced.

Legally, the statutory schemes of other states obviously do not control the interpretation of Nevada's Gaming Control Act. That said, the Agencies' cases are actually instructive because they demonstrate how state legislatures can expressly empower administrative agencies with continuing jurisdiction to pursue discipline after a license lapses, expires or is voluntarily surrendered. Notably, the Nevada Legislature has expressly delegated such power to multiple other agencies charged with overseeing licensed professionals like physicians, massage therapists, and contractors. *See, e.g.*, NRS 630.298; NRS 640C.695; NRS 624.300(8). That a similar delegation of power appears nowhere in NRS Chapter 463 speaks volumes.

ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO.

Mr. Wynn agrees this Court reviews a district court's decision regarding subject matter jurisdiction de novo. OB at 13. The Court also reviews questions of statutory interpretation de novo, even in the context of writ proceedings. *Pawlik v. Shyang-Fenn Deng.*, 134 Nev. 83, 85, 412 P.3d 68, 70-71 (2018). Though the agencies acknowledge the latter point, they seek to tilt review in their favor through the principle that courts will "defer to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." OB

at 14 (quoting *Taylor v. Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013)). While correctly stated, the principle is inapplicable here.

To begin, the subject statutes and regulations are unambiguous. "An administrative agency's interpretation of a regulation or statute does not control if an alternative reading is compelled by the plain language of the provision." *Local Gov't Employee-Mgmt. Relations Bd. v. Educ. Support Employees Ass'n*, 134 Nev. 716, 720-21, 429 P.3d 658, 662 (2018). Next, the Agencies' interpretations are premised on cherry-picked portions of statutes that disregard other sections of the same statutes as well as Commission regulations that help define the plain meaning of applicable terms. *See* Point III(B)(2) and (3), *infra*. The Agencies' interpretations, accordingly, are not fairly within the language of the statutes. *See Home Warranty Adm'r of Nev., Inc. v. Dep't of Bus. and Indus.,* 137 Nev. Adv. Op. 5, 481 P.3d 1242, 1246-47 (2021) (declining to defer to agency interpretation where hearing officer disregarded applicable statutory definition).

Nor can the Agencies legitimately invoke deferential review by suggesting the district court must have found an ambiguity in NRS 463.1405 because it reviewed subsection (1) in addition to the Agencies' preferred subsections (3) and (4). OB at 22-23. As this Court has explained:

> When interpreting a statute, ***this court must give its terms their plain meaning, considering its provisions as a whole*** so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory.

S. Nev. Homebuilders Ass'n v. Clark Cty., 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (emphasis added); *see also id.* at 451-52, 117 P.3d at 175 ("But this subsection [NRS 278.230(2)] must be read in the context of NRS 278.230(1) and the statutory scheme in which it appears."); *Cable v. State ex rel. its Employers Ins. Co. of Nev.*, 122 Nev. 120, 126, 127 P.3d 528, 532 (2006) ("subsections of a statute will be read together to determine the meaning of the statute."). As we address in more detail below, the Agencies' desire to read NRS 463.1405(3) and (4) in isolation is not only improper, but leads to absurd results.[4]

II. THE DISTRICT COURT PROPERLY CONSIDERED AND GRANTED MR. WYNN'S PETITION FOR A WRIT OF PROHIBITION.

Mr. Wynn asked the district court to review the Commission's order through two alternative paths: (i) judicial review pursuant to NRS 463.315, or (ii) a writ of mandamus and/or prohibition pursuant to NRS Chapter 34. The district court determined the Commission's order was not a "final decision or order" under NRS 463.315(1) and, thus, denied judicial review on that basis. (JA 614-15.) The court

[4] The Agencies misplace reliance on *State v. Hughes*, 127 Nev. 626, 629 n.2, 261 P.3d 1067, 1069 n.2 (2011). OB at 22. There, the district court initially determined the plain meaning of a statutory term, but ultimately concluded it was ambiguous after consulting *different* statutes. This Court cautioned lower courts not to consult other statutes as extrinsic aids when the statute under consideration is unambiguous. *Id.* The difference here, of course, is that the district court simply considered NRS 463.1405 as a whole, which is entirely proper.

nonetheless determined that a writ of prohibition was proper as Mr. Wynn was challenging the agencies' subject matter jurisdiction and lacked an adequate remedy at law. (JA 615-16.) While Mr. Wynn maintains he was entitled to judicial review under NRS 463.315(1) for the reasons argued below, (*see* JA 432-36), we will not waste resources rearguing those points, but instead move directly to why writ relief is appropriate.

A writ of prohibition is available to arrest or remedy actions taken by a board or tribunal without or in excess of its jurisdiction. *See* NRS 34.320. Writ relief is an extraordinary remedy, which courts will not entertain unless a party is without a plain, speedy, and adequate remedy at law. *See Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. 30, 35, 342 P.3d 997, 1001 (2015). While the Agencies are correct to the extent a right to petition for judicial review or to file an appeal is "generally" considered an adequate remedy, OB at 17, this Court has repeatedly instructed that those rights are not adequate to correct an invalid exercise of personal or subject matter jurisdiction.[5] Regardless, "[e]ven if an adequate legal remedy exists, [the] court will consider a writ petition if an important issue of law needs

[5] *See Fulbright, supra* (citing *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 373-74, 328 P.3d 1152, 1156 (2014) ("the right to appeal is inadequate to correct an invalid exercise of personal jurisdiction over a defendant")); *see also Bd. of Review, Nev. Dep't of Emp't v. Second Jud. Dist. Ct.*, 133 Nev. 253, 255, 396 P.3d 795, 797 (2017) (requested writ relief was properly before the Court where it "present[ed] an issue of subject matter jurisdiction[] necessitating [ ] immediate consideration[.]").

clarification." *In re Beatrice B. Davis Family Heritage Trust*, 133 Nev. 190, 194, 394 P.3d 1203, 1207 (2017). All these considerations exist here.

Mr. Wynn is challenging the Agencies' subject matter jurisdiction, which is appropriate to consider via a petition for writ relief. The lack of an adequate legal remedy is obvious as it would be a tremendous waste of resources to go through discovery and a substantive evidentiary hearing if the Agencies lack subject matter jurisdiction at the outset. Indeed, the harm to Mr. Wynn and his reputation would be irreparable once the public hearing is held, rendering any future appellate relief on the jurisdictional issue a hollow victory. Even if an adequate legal remedy arguably exists, Mr. Wynn's petition presents an important issue of first impression that is capable of recurring and requires clarification—*i.e.*, whether the Nevada Legislature expressly or impliedly authorized Nevada's gaming regulators to discipline an individual who no longer has any involvement with a Nevada gaming licensee.

The Agencies' concern about improper judicial intrusion into disciplinary proceedings under the Act is grossly overblown. OB at 2, 17. As a threshold matter, the Agencies both recognized that the district court had discretion to entertain Mr. Wynn's writ petition. *See supra* at 4, 16-17. While certain decisions in the gaming context are not subject to judicial intervention, *see, e.g.*, NRS 463.318(2) (no judicial review of licensing denials), other statutory provisions expressly authorize a role for

the courts. *See id.* ([e]xtraordinary common-law writs or equitable proceedings are available"); *see also* NRS 463.343 (permitting declaratory relief actions to obtain judicial interpretation of gaming statutes). Such provisions are entirely consistent with well-established exceptions to the exhaustion of administrative remedies doctrine that permit judicial intervention in the gaming context and that of other administrative agencies.

The exhaustion doctrine, for example, "does not require one to initiate and participate in proceedings where an administrative agency clearly lacks jurisdiction, or which are vain and futile." *Engelmann v. Westergard*, 98 Nev. 348, 353, 647 P.2d 385, 388-89 (1982). Nor does the doctrine apply where the issues relate solely to the interpretation of statutes. *See State Dep't of Bus. & Indus. v. Check City*, 130 Nev. 909, 914, 337 P.3d 755, 758 (2014) ("Exhaustion is not required where, as here, the only issue is the interpretation of a statute."). The Court has expressly applied this exception in the gaming context. *See Glusman*, 98 Nev. at 419, 651 P.2d at 644 ("it is within our discretion not to apply the exhaustion doctrine especially where the issues relate solely to the interpretation or constitutionality of a statute.").

Unlike other litigants disappointed with actions of the Board or the Commission, Mr. Wynn did not attempt to circumvent the Agencies and proceed straight to court. He instead presented his jurisdictional arguments directly to the Commission pursuant to a stipulation agreed to by the Board and approved by the

Commission Chair. (JA 24-26.) Mr. Wynn only proceeded to district court after the Commission ruled and, again, he did so in compliance with another Commission-approved stipulation. (JA 262-64.) The subject legal issues present important questions of first impression, turn exclusively on the interpretation of statutes, and have been fully developed before the Commission and the district court. For all these reasons, this matter is appropriate for the Court's consideration. *See Glusman,* 99 Nev. at 419, 651 P.2d at 644 (magnitude of the legal issues and likelihood of future recurrence justified a "present determination on the merits").[6]

III. THE AGENCIES LACK JURISDICTION TO PURSUE AND IMPOSE DISCIPLINE AGAINST THOSE NO LONGER INVOLVED WITH LICENSED GAMING OPERATIONS.

A. The Agencies Have No Inherent Regulatory Powers Beyond Those Expressly Granted or Clearly Implied by Statute.

The Commission and the Board are state administrative agencies created by the Act. *See* NRS 463.022 (creation of Commission); NRS 463.030 (creation of

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[6] The Agencies' examples of improper "judicial interference" are easily distinguishable. OB at 2, 17 (citing *Gaming Control Bd.*, 82 Nev. at 40, 409 P.2d at 975 and *State v. Eighth Jud. Dist. Ct.*, 111 Nev. 1023, 899 P.2d 1121 (1995)). In *Gaming Control Bd.*, the licensee proceeded directly to district court and improperly obtained a stay of the Board's disciplinary action. 82 Nev. at 39-40; 409 P.2d at 974-75. In *State*, the Commission issued an exclusionary order against a gaming customer who then sought and obtained a stay of execution from the district court. 111 Nev. at 1121-22, 899 P.2d at 1024-25. This Court overturned both decisions as only the Commission is empowered to stay its own rulings or proceedings. *See* NRS 463.315(5). Here, as explained above, all parties agreed (twice) that the substantive disciplinary proceedings would be stayed pending final resolution of the threshold jurisdictional issue.

Board). As administrative agencies, the Commission and the Board have "no general or common law powers, but only such powers as have been conferred by law expressly or by implication." *Andrews v. Nevada State Bd. of Cosmetology*, 86 Nev. 207, 208, 467 P.2d 96, 96 (1970). "Administrative agencies cannot enlarge their own jurisdiction nor is subject matter jurisdiction conferred upon an agency by consent or failure to raise the agency's lack of jurisdiction." *S. Nev. Mem'l Hosp.*, 101 Nev. at 394, 705 P.2d at 144; *see also Andrews*, 86 Nev. at 208, 467 P.2d at 97 ("Official powers of an administrative agency cannot be assumed by the agency, nor can they be created by the courts in the exercise of their judicial function.").

"The grant of authority to the agency must be clear." *Andrews*, 86 Nev. at 208, 467 P.2d at 97. While an "administrative agency may possess an implied power, any implied power must be essential to carry out an agency's express duties." *City of Henderson v. Kilgore*, 122 Nev. 331, 335, 131 P.3d 13, 14 (2006). Applying the foregoing principles and fundamental rules of statutory construction, it is clear the Nevada Legislature neither expressly nor impliedly authorized the Agencies to discipline persons who no longer have any involvement with gaming licensees.

B. Neither the Act Nor the Commission's Regulations Authorize the Agencies to Discipline Persons Who No Longer Have Material Involvement with Gaming Licensees.

"When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." *City of Henderson,* 122 Nev. at 334, 131 P.3d at 13. This Court has instructed that "verb tense is significant in construing statutes," *Bielar*, 129 Nev. at 467, 306 P.3d at 365-66 (citing *United States v. Wilson*, 503 U.S. 329, 333, 112 S.Ct. 1351, 1354 (1992)), as has the Legislature. *See* NRS 0.030(1) (stating, in part, "[e]xcept as otherwise expressly provided in a particular statute or required by the context . . . [t]he present tense includes the future tense." [but *not* the past tense]). NRS 0.030 is patterned after 1 U.S.C. § 1, which is known as "The Dictionary Act," and similarly provides that "words used in the present tense include the future as well as the present." The Ninth Circuit has explained that "Congress did *not* say that its usage of the present tense applies to past actions, an omission that, given the precision of The Dictionary Act in this regard, could not have been an oversight." *United States v. Jackson*, 480 F.3d 1014, 1019 (9th Cir. 2007) (emphasis in original).[7]

[7] "When the Legislature adopts a statute substantially similar to a federal statute, a presumption arises that the legislature knew and intended to adopt the construction placed on the federal statute by federal courts." *Int'l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 122 Nev. 132, 153, 127 P.3d 1088, 1103 (2006).

While the Commission's order and the Agencies' Opening Brief cite various statutes (or select portions thereof) that purportedly authorize the Agencies to impose discipline against Mr. Wynn (*see* JA 259-61; OB at 4-6, 10, and 18-21), the plain language of those statutes and the definitions of applicable terms contained therein demonstrate that the Agencies' jurisdiction is limited to applicants seeking to enter the gaming industry or those presently involved with Nevada licensees. Mr. Wynn is neither.

1. NRS 463.0129

The Agencies cite NRS 463.0129(1)(a) to express the vital importance of gaming to Nevada's economy, and NRS 463.0129(1)(c) for the principle that "[p]ublic confidence and trust can only be maintained by strict regulation of all persons . . . related to the operation of licensed gaming establishments[.]" OB at 5 (quoting NRS 463.129 [sic]). Mr. Wynn has no quarrel with either policy point. Notably, though, NRS 463.0129(1)(c) is phrased in the present tense when it states that the public trust "***can*** only be maintained" (emphasis added) and, hence, makes clear that the statute's focus is on current threats that would undermine the public's confidence and trust if not dealt with appropriately. Insofar as the same subsection authorizes "strict regulation of all persons . . . ***related*** to the operation of licensed gaming establishments" (emphasis added), the district court correctly found that Mr. Wynn is undisputedly outside its purview as he is no longer "related to the operation"

of any licensed gaming establishments given his resignation as an officer and director of Wynn Resorts in February 2018, and the sale of his Company stock in March 2018. (JA 619.)[8]

2. NRS 463.1405

The Agencies rely heavily on NRS 463.1405(3) and (4) for the respective propositions that the Board has "full and absolute power" to recommend revocation of, and the Commission has "full and absolute power" to revoke, "any" finding of suitability. OB at 6. Again, Mr. Wynn does not dispute the text of these two subsections. They must, however, be construed a whole with the remainder of the statute and in light of the defined terms contained therein. *See S. Nev. Homebuilders Ass'n*, 121 Nev. at 449, 117 P.3d at 173. That is where the Agencies' analysis goes astray.

NRS 463.1405(1). The Agencies' myopic focus on subsections (3) and (4) of NRS 463.1405 puts the cart before the horse. After all, the Agencies cannot exercise jurisdiction over just anyone. The plain language of NRS 463.1405(1) limits the scope of the Board's jurisdiction to investigate and observe to (i) those who are

[8] The plain meaning of a term used in a statute can be ascertained through contemporaneous dictionary definitions. *See Advanced Pre-Settlement Funding LLC v. Gazda & Tadayon*, 437 P.3d 1050, 2019 WL 1422713, at *2 (Nev. Mar. 28, 2019). The term "related" is defined as "1. Connected in some way; having relationship to or with something else <a closely related subject>." *Black's Law Dictionary* (11th ed. 2019). Mr. Wynn has not been "connected" to the operation of Wynn Resorts for more than three years.

seeking to enter the gaming industry (*i.e.*, an "applicant"), or (ii) those who are presently involved in the gaming industry on a continuing basis:

> The Board shall investigate the qualifications of each applicant under this chapter before any license or any registration, finding of suitability or approval of acts or transactions for which commission approval is required or permission is granted, ***and shall continue to observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation***[.]

Id. (emphasis added). Properly construing NRS 463.1405 as a whole, subsection (1) grants the Board the power to investigate applicants (including the ability to obtain records from the FBI in accordance with subsection (2)) and to continue to observe licensees and others "having a material involvement" with licensed gaming operations. Subsection (3) grants the Board the power to make recommendations based on the investigations and observations authorized by subsection (1), and subsection (4) grants the Commission the absolute power to make certain decisions based on the Board's recommendations. This is entirely consistent with the Agencies' own description of their respective roles. *See supra* at 5; *see also*, *infra* Point III(B)(3) (discussing NRS 463.310(4)).

The key word in this statute is "having," which the Seventh Circuit recently addressed when interpreting a provision of the Americans with Disabilities Act:

> 'Having' means presently and continuously. It does not include something in the past that has ended or something yet to come. To settle the technical debate, it is a present participle, used to form a progressive tense. *See* Bryan A. Garner, Garner's Modern American Usage 1020 (4th ed. 2016) (defining 'present participle' as '[a]

> nonfinite verb form ending in -ing and used in verb phrases to signal the progressive aspect').

Shell v. Burlington N. Santa Fe Ry., Co., 941 F.3d 331, 336 (7th Cir. 2019). This Court recognized the same principle in an attorney discipline matter when interpreting the phrase "***posing*** a substantial threat of serious harm to the public." *See In re Discipline of Agwara*, 132 Nev. 983, 2016 WL 4005655, at *1 (Nev. July 22, 2016) (unpub. disp.) ("[w]e interpret ***the present tense*** used in the language of the rule to require a showing that the attorney ***poses a current*** threat of harm.") (emphases added) (interpreting SCR 102(4)(b)).

The teaching from these authorities is that where a statute, rule or regulation uses a present participle to denote a condition, like "having a material involvement" in NRS 463.1405(1) or "posing a substantial threat" in SCR 102(4)(b), it requires that condition to be current and ongoing, not something in the past. The definitions of other material terms in NRS 463.1405—definitions the Agencies either ignore or downplay—confirm this reading.

Nev. Gaming Comm'n Reg. 16.400. The regulations define "material involvement" in the context of a corporate licensee like Wynn Las Vegas, as follows: "[a] person may be deemed to have a material relationship to, or ***material involvement*** with, a corporation, affiliated company or a licensee if the person ***is*** a controlling person or key employee of the corporation, affiliated company or a licensee, or if the person, as an agent, consultant, advisor or otherwise, ***exercises*** a

significant influence upon the management or affairs of the corporation, affiliated company or a licensee." Nev. Gaming Comm'n Reg. 16.400 (emphases added). Regulation 16.400 is framed in the present tense and, therefore, does not authorize the Agencies to exercise jurisdiction over a person like Mr. Wynn who "[***was***] a controlling person or key employee of the corporation" or "[***exercised***] significant influence upon the management or affairs of the corporation." *See Hager v. State*, 135 Nev. 246, 256-57, 447 P.3d 1063, 1071 (2019) ("The use of the present tense—criminalizing firearm possession by a person 'who *is* an unlawful user'—was not idle.") (quotations omitted) (emphasis in original).

Nev. Gaming Comm'n Reg. 4.030. Though the Agencies emphasize their absolute power to revoke "findings of suitability" under NRS 463.1405(3) and (4), they consistently disregarded this defined term in the proceedings below, and now criticize the district court for considering it, claiming the subject regulation merely defines when the Commission initially requires a person to be found suitable. OB at 19. The definition, however, goes further than that:

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

Nev. Gaming Comm'n Reg. 4.030(10) (emphases added).

The plain language makes clear that the Commission only requires findings of suitability when a person is "directly or indirectly involved with licensees" and, then, only for "so long as that involvement continues." As the other side of the same coin, logic dictates the Commission's power to "revoke" findings of suitability can likewise exist only when a person has ongoing involvement with a licensee. *Cf. Glusman*, 98 Nev. at 421, 651 P.2d at 645 ("[NRS 463.170(2)] describes with specificity the standards of conduct applicable to a determination of suitability and, by converse logic, that conduct which is inconsistent with suitability[.]").

More importantly, because a finding of suitability "relates only to the specified involvement for which it was made" and is otherwise non-transferable without Commission approval, Mr. Wynn's previous suitability findings as an officer, director, and stockholder of Wynn Resorts did not continue to survive in the ether—unmoored from any Nevada licensee or gaming property—once Mr. Wynn disassociated himself from Wynn Resorts and the gaming industry as a whole. Simply put, there is nothing for the Commission to "revoke."

The Board recognized as much after it removed Mr. Wynn from its Location Detail Report for the Wynn Las Vegas license in February and March, 2018. Recognizing that Mr. Wynn's voluntary departure from Wynn Resorts meant he no longer had any involvement with a gaming licensee, the Board attempted to "retain"

jurisdiction over him by placing a so-called "administrative hold" on Mr. Wynn's suitability findings. The Board, however, never notified Mr. Wynn of this action. That is likely because the words "administrative hold" are found nowhere in the Act or the gaming regulations—a point never contested by the Agencies—which means the Legislature has not expressly authorized the Board to employ such a device.

Indeed, the Commission was forced to acknowledge that it is unsure how the Board used an "administrative hold" to "retain" jurisdiction over Mr. Wynn. (JA 599:19-600:18.) The Commission's counter that this device is "not really relevant" because its own jurisdiction comes from the Act, *see id*., obscures a critical point. Pursuant to the statutes being relied upon by the Agencies, *see, e.g.*, NRS 463.310(4) ("[a]fter the provisions of subsections 1, 2, and 3 have been complied with, the Commission may . . . .") (discussed *infra*), and their own description of their respective roles in the disciplinary context (JA 351:18-25), the Commission is dependent on the Board first to investigate and make recommendations before the Commission can make disciplinary decisions. Simply put, if the Board lacks jurisdiction in the first instance, so does the Commission. The notion that the Commission can unilaterally revoke findings of suitability in a vacuum under NRS 463.1405(4) is, respectfully, absurd. *See Young v. Nev. Gaming Control Bd.*, 136 Nev. Adv. Op. 66, 473 P.3d 1034, 1036 (2020) (courts will not interpret statutes according to plain meaning if it "would provide an absurd result").

The remaining question is whether the Legislature impliedly authorized use of an "administrative hold"—*i.e.*, is it "essential" to the Board's ability to carry out its express statutory duties? *See City of Henderson*, 122 Nev. at 335, 131 P.3d at 14. Clearly not. The Board has express power to deal with applicants and persons who have an ongoing, material involvement in the operation of a licensee. For the reasons set forth herein, an "administrative hold" is not essential to the Board's ability to carry out its express duties regarding applicants and involved persons once someone has left the gaming industry altogether, and has no involvement in gaming operations of any licensee.

When NRS 463.1405 is read as a whole and in conjunction with the defined terms contained in Regulations 4.030(10) and 16.400, it is evident the Agencies lack the power to pursue and impose discipline on Mr. Wynn as he undisputedly had no ongoing involvement with any licensed gaming operation at the time the Board commenced this action in October 2019. The Agencies cannot escape this result by ignoring the language used in one of the principal statutes they are relying upon and Commission regulations that define material terms contained therein.

3. NRS 463.310

Like their argument related to NRS 463.1405(3) and (4), the Agencies contend that NRS 463.310(2)(a) grants the Board the power to investigate and recommend revocation of any suitability finding, and NRS 463.310(4)(b) grants the Commission

the power to effectuate a revocation. OB at 18. Mr. Wynn does not contend otherwise, but the Agencies' interpretations again ignore other relevant subsections of the same statute as well the definition of "findings of suitability" contained in the regulations.

NRS 463.310 establishes the procedures for disciplinary actions under the Act—*i.e.*, how the Board conducts investigations and makes the recommendations contemplated in NRS 463.1405(3) and how the Commission makes the disciplinary decisions contemplated in NRS 463.1405(4). Notably, NRS 463.310(4) provides that the Commission can only impose discipline *after* compliance with the earlier provisions of subsection (1) (a Board investigation), subsection (2) (a Board complaint), and subsection (3) (a hearing). Subsection (4), in other words, confirms the folly of the Commission's suggestion that the Board's baseless "administrative hold" is irrelevant because the Commission can somehow proceed directly to a revocation under NRS 463.1405(4). The Commission's disciplinary jurisdiction is plainly dependent upon the Board's threshold power to act. Mr. Wynn has already explained why the Board lacks such power here: his findings of suitability ended when he disassociated himself from Wynn Resorts and, thus, no longer had any involvement with a gaming licensee at the time the Board commenced this action. *See* Point III(B)(2), *supra*.

The Agencies' reliance on NRS 463.310 as support for their power to recommend and impose fines against Mr. Wynn is equally flawed. The plain language of the statute limits the Board's ability to recommend, and the Commission's power to impose, fines against "a person or entity which ***is*** . . . found suitable," *see* NRS 463.310(2)(b); NRS 463.310(4)(d) (emphasis added), not a person who was found suitable at one time, but whose findings ended because he left the industry. The Agencies disregard this present tense terminology as well.

4. NRS 463.140(5)

NRS 463.140(5) is another basis on which the Agencies premise their disciplinary jurisdiction over Mr. Wynn, arguing that "the Commission has subject matter jurisdiction over complaints that seek to fine witnesses that disregard the Board's Order to Appear." OB at 10. The problem is that in their delayed zeal to enforce the "order to appear" from August 2018, the Agencies seek the identical ultimate discipline against Mr. Wynn in his capacity as a mere "witness"—revocation of suitability findings and substantial fines—they are otherwise precluded from imposing against him in his former capacity as Chairman, CEO and controlling shareholder of Wynn Resorts.

Succinctly stated, Mr. Wynn's findings of suitability ceased to exist long before the Board filed its complaint. The power to recommend and impose fines is limited to a person who has a current material involvement with a gaming licensee

(NRS 463.1405(1)), including someone who "is" found suitable (NRS 463.310(2)(b); NRS 463.310(4)(d)), which does not encompass Mr. Wynn anymore given his departure from the gaming industry well over three years ago. Nothing in NRS 463.310 empowers the Agencies to punish a "witness" who purportedly "ignored" a notice to appear (OB at 18-19)—a charge Mr. Wynn adamantly disputes—in the same manner as existing licensees, registrants and suitable persons who are the express focus of the statute. Because NRS 463.310 is a penal statute that authorizes potential revocations and fines, it is subject to strict construction*, see State v. Wheeler*, 23 Nev. 143, 44 P. 430, 432 (1896) ("the parts of a penal statute which subject to punishment or penalty are, from their odious nature, to be construed strictly"), and should not be stretched to reach Mr. Wynn.

5. NRS 463.143

The Commission's order relied in large part on NRS 463.143, which provides that "[t]he Commission may exercise any proper power and authority necessary to perform the duties assigned to it by the Legislature, and it is not limited by an enumeration of powers in this chapter." (JA 259-60.) The Commission interpreted this statute to constitute express legislative authority to carry out its duties "without limitation." (JA 260.) Though the Agencies quote this statute at the beginning of their brief, OB at 4-5, they engage in no substantive analysis thereof. It is thus unclear whether the Agencies continue to rely on NRS 463.143 as an independent

basis for their disciplinary jurisdiction. Out of an abundance of caution, we briefly explain why the statute is inapposite.

First, NRS 463.143 is limited to the *Commission's* delegated powers, so it obviously cannot justify any expansion of the *Board's* powers (upon which the Commission's disciplinary jurisdiction is predicated as explained above).

Second, the plain language of the statute merely authorizes the Commission to exercise any "proper" power needed to carry out the duties assigned to it by the Legislature. Because the Legislature never delegated the Commission the power to punish people who have left the gaming industry, NRS 463.143—when properly interpreted—adds nothing to the jurisdictional calculus.

Third, "[t]he power conferred upon the Legislature to make laws cannot be delegated to any other body or authority." *Banegas v. State Indus. Ins. Sys*., 117 Nev. 222, 227, 19 P.3d 245, 248 (2001) (citing Nev. Const. art. 3, § 1). While the Legislature "may authorize administrative agencies to make rules and regulations supplementing legislation if the power given is prescribed in terms sufficiently definite to serve as a guide in exercising that power," *see id.*, "[a] statute that gives unlimited regulatory power to a commission, board, or agency without prescribed restraints offends the constitution." *3613 Ltd. v. Dep't of Liquor Licenses & Control*, 978 P.2d 1282, 1287 (Ariz. Ct. App. 1999); *accord McNeill v. State*, 132 Nev. 551, 557, 375 P.3d 1022, 1026 (2016) (under proffered interpretation "delegation of

power would fail because the Legislature has not provided guidelines informing the Board how, when, or under what circumstances, it may create additional conditions.").

Applying these principles here, the Legislature has provided no guidelines informing the Agencies how, when, and under what circumstances they can seek discipline against a person who no longer has any involvement with a gaming licensee. The district court recognized as much when it expressed concern about a statute of limitations that potentially never ends, which the Board's counsel acknowledged is "***a problem for the legislature to fix***." (JA 571:2-17) (emphasis added). The absence of any guiding standards is yet another reason the Court should reject the Agencies' contention that NRS 463.143 grants the Commission power to carry out its duties "without limitation."

C. The Agencies' Comparison of Mr. Wynn to Out-of-State Professionals Who Tried to Surrender Their Licenses in the Face of Disciplinary Proceedings Misses the Mark.

The Agencies undermine their own cause by citing various non-Nevada cases for the proposition that Mr. Wynn cannot avoid potential discipline through the unilateral action of "essentially surrendering his privileged status before the gavel falls." OB 23-24. Not only are the Agencies' cases factually distinguishable, they nicely illustrate how a state legislature can expressly empower an administrative agency with continuing disciplinary jurisdiction over lapsed, expired, or surrendered

licenses. Indeed, the Nevada Legislature has done so more than a dozen times—just not in the context of licensed gaming.

Though the Agencies cite several cases to support this argument, their analysis focuses on *Pahl v. Bd. of Chiropractic Exam'rs*, 993 P.2d 149 (Or. Ct. App. 1999). OB at 23. *Pahl* is distinguishable on a number of grounds. To begin, this matter is controlled by Nevada's statutory and regulatory scheme governing legalized gaming whereas *Pahl* was controlled by Oregon's altogether different statutory scheme governing chiropractors. *See Pahl,* 993 P.2d at 150 ("professional licenses are statutory creations" whose termination is "subject to legislative control"). Next, *Pahl* attempted to surrender his license after the Board of Chiropractic Examiners issued him a notice of intent to suspend him, and the Board refused to accept the surrender. *Id.* In contrast, Mr. Wynn did not attempt to "surrender" anything. His findings of suitability ended nearly two years prior to the Board's complaint being filed as the Board's own records confirm it completely removed Mr. Wynn from the Wynn Las Vegas license no later than March 2018.

In Nevada, the distinction between the attempted voluntary surrender of a gaming license versus the expiration of suitability findings is significant under the Act. While NRS 463.270(8) provides that "[t]he voluntary surrender of a license by a licensee does not become effective until accepted in the manner provided in the regulations of the Commission," neither the Act nor the regulations impose a similar

"acceptance of surrender" requirement on findings of suitability, which are distinct from gaming licenses. *See supra* at 6. The Legislature's omission is presumed to be intentional. *See Diamond v. Swick*, 117 Nev. 671, 676-77, 28 P.3d 1087, 1090 (2001). Thus, even if Mr. Wynn's departure from Wynn Resorts is mischaracterized as a "surrender," nothing in the Act required him to obtain the Agencies' blessing in advance.[9]

The *Pahl* court likewise recognized the distinction between the attempted surrender of a professional license versus its prior expiration, and noted that the Oregon legislature had amended several professional licensing schemes to extend disciplinary authority in the latter situation. 993 P.2d at 151-52, n.2. The Nevada Legislature has done the same repeatedly, expressly, and succinctly. In the context of physicians, for example, the law provides:

> The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license by a licensee, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking a license.

[9] The surrender-approval requirement for gaming licenses, in contrast to the absence of a similar requirement for findings of suitability, makes sense when the Court considers that a gaming licensee bears multiple winding-up responsibilities under the Act, which have no application to an individual who had been found suitable to be involved with the licensee but is moving on from that position for whatever reason. *E.g.*, https://gaming.nv.gov/modules/showdocument.aspx?documentid=299 (last visited July 11, 2021) (Policy Memorandum listing Procedures for Casino Closures or Changeovers).

NRS 630.298. The Legislature has delegated similar powers to multiple other agencies, each time using nearly identical language.[10] A similar grant of authority appears nowhere in the Act. Presumably, the Legislature could have used the same straightforward language to give the Agencies the power they wish they had over those whose findings of suitability have ended and, thus, no longer have any material involvement with a gaming licensee. The absence of any similar provisions in NRS Chapter 463 is again presumed to be intentional. *Diamond*, 117 Nev. at 676-77, 28 P.3d at 1090.[11]

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[10] *See, e.g.*, NRS 119.327 (sales of subdivided land); NRS 119A.659 (time shares sales); NRS 624.300(8) (contractors); NRS 633.509 (osteopaths); NRS 636.290 (optometrists); NRS 640C.695 (massage therapists); NRS 645.675 (real estate brokers and salespersons); NRS 645A.097 (escrow agencies and agents); NRS 645B.740 (mortgage loan originators); NRS 645C.525 (real estate appraisers); NRS 645D.690 (energy auditors); NRS 645G.530 (exchange facilitators).

[11] The Agencies' other cases (*see* OB at 23, n.2) are distinguishable for a variety of reasons, including that the licensee's surrender of his license did not automatically extinguish his ability to keep practicing (*Cross*), the licensee could unilaterally reactivate his license at any time (*Boedy*), the licensee failed to follow statutory procedures for surrendering his license (*Gregory*), and the licensee attempted to surrender his license after citation was formally issued (*Senise*). Underscoring the fact-specific nature of the issue, different courts have reached the opposite result and held that administrative agencies lacked jurisdiction to pursue discipline against expired licenses under the applicable statutory scheme. *See, e.g., Mangels v. Comm'r of Motor Vehicles,* 487 A.2d 1121 (Conn. Sup. 1984); *Stern v. Conn. Med. Examining Bd.*, 545 A.2d 1080 (Conn. 1988); *Haggerty v. Dept. of Bus. and Prof'l Reg.*, 716 So.2d 873 (Fla. Ct. App. 1998); *Doe v. State Ethics Comm'n*, 494 P.2d 559 (Hawaii 1972); *Schurman v. Bureau of Labor*, 585 P.2d 758 (Or. Ct. App. 1978).

D. Mr. Wynn's Departure from Wynn Resorts Did Not Impede the Agencies' Regulatory Roles.

The Agencies contend the district court's order leaves a "vexing" question unanswered, namely "how the Board and the Commission's regulatory role can function when discipline can be avoided at the sole discretion of the individual under scrutiny?" OB at 13. Contrary to the Agencies' assertions, Mr. Wynn has answered this (loaded) question repeatedly when explaining how the Agencies' obligation to protect the public was fully discharged long before the Board filed its complaint against him in October 2019. (JA 47-49; 452-54.) We do so once more.

First, the Board and the Commission clearly retain power over alleged violations of gaming laws or regulations even after an alleged violator has left the industry. The licensee and its existing management (*i.e.*, those "having a material involvement . . . with a licensed gaming operation") remain accountable under the Act such that the Board and the Commission can pursue and impose discipline (including revocation and fines) against their respective licenses and findings of suitability. *See* NRS 463.1405(1)-(4); NRS 463.270(8); NRS 463.310. This is precisely why the disciplinary proceeding against Wynn Resorts and Wynn Las Vegas was within Agencies' jurisdiction, and netted the State of Nevada a record $20 million fine. That the Agencies may "want" to brand Mr. Wynn with a scarlet letter and pursue more fines from him individually does not mean either pursuit is permitted under the Act.

Second, because Regulation 4.030(10) limits a finding of suitability "only to the specified involvement for which it was made," if Mr. Wynn ever seeks to re-enter the industry in the future, he would be subject to seeking a new approval from the Commission at which time the Board and the Commission would be able to exercise their express statutory powers to investigate him and, if appropriate, to deny his application. *See* NRS 463.1405(1)-(4). Such a process unquestionably protects the public and satisfies the public policy of the State.

Third, if the Commission revokes any officer's, director's, or employee's findings of suitability, "the publicly traded corporation shall immediately remove that officer, director or employee from any office or position wherein the officer, director or employee is actively and directly engaged in the administration or supervision of, or any other significant involvement with, the gaming activities of the corporation or any of its affiliated or intermediary companies." NRS 463.637(2). This remedy was obtained years ago: Mr. Wynn voluntarily resigned from his positions as an officer, director or employee of Wynn Resorts in February 2018, and the Company so notified the Board.

Fourth, if the Commission revokes a person's findings of suitability, the licensee that employed the person may not "[p]ay the person any remuneration for any service relating to the activities of a licensee, except for amounts due for services rendered before the date of receipt of notice of such action by the Commission."

NRS 463.645(1). This remedy was obtained years ago: Mr. Wynn voluntarily gave up his rights to any remuneration when he resigned, which the Company accepted and did not pay.

Fifth, if the Commission revokes the suitability of a controlling stockholder, the affiliated corporation must pursue lawful efforts to require such person to relinquish his or her voting securities, and said person cannot exercise any voting rights. *See* Nev. Gaming Comm'n Reg. 16.440. These remedies were obtained years ago: Mr. Wynn voluntarily sold his voting securities in orderly fashion, respecting the rights of the public markets, other stockholders, and regulatory authorities, without waiting for any "revocation" of his stockholder rights.

Sixth, the only alleged harm the Agencies have ever been able to articulate throughout these proceedings is that without formally-revoked findings of suitability, Mr. Wynn could surreptitiously re-enter Nevada gaming as a consultant to a licensee. (JA 606:15-607:11.) Notwithstanding the rank speculation of this purely hypothetical scenario (JA 607:14-608:10), if the Agencies' true concern was ensuring the permanency of Mr. Wynn's departure from Nevada's gaming industry, then the parties could have entered a stipulation or contract to that effect without the taxpayer expense associated with this disciplinary proceeding. Such an agreement would be enforceable under Nevada law. *See Cohen v. State*, 113 Nev. 180, 183-84, 930 P.2d 125, 127-28 (1997) (upholding enforceability of stipulated agreement

entered into between the Board and applicant, which had been approved by the Commission). Mr. Wynn was willing to consider a negotiated resolution along these lines to avoid the expense and spectacle of protracted administrative/judicial proceedings, but the parties were unable to reach an agreement.

In the end, the only goal of the instant disciplinary proceedings that has not already been achieved is the Agencies' desire to impose additional fines against Mr. Wynn individually on top of those already levied against Wynn Resorts. Nothing in the Act or regulations, however, expressly or impliedly authorizes the Board to seek, or the Commission to impose, what essentially amounts to an exorbitant "exit tax" to leave Nevada's gaming industry. The Agencies' residual efforts to impose fines and revocation penalties after the public has been protected, and the public interest has been served, is nothing more than vindictiveness. Spite, fortunately, is not a delegated power under the Act. If the Agencies seek to expand their powers to enable the disciplinary pursuit of those who no longer have any involvement in Nevada's gaming industry, they must lobby the Legislature.

CONCLUSION

The Board and the Commission are empowered to oversee those having an ongoing material involvement with a licensed gaming operation. That power does not reach those who have received approvals but no longer have any such material involvement. To extend the Legislature's delegation of power to encompass anyone

who has ever received a finding of suitability would give regulators the power to seek and order revocations forever, even after death, if alleged unsuitable conduct is later "uncovered." The Legislature wisely limited its delegation to persons who *have* (present tense) material involvement with a licensed gaming operation. Neither the Board nor the Commission are permitted to expand their authority beyond this express delegation to those who do not hold any position with a gaming licensee and who do not present any danger to the public health, safety, morals, good order and general welfare of Nevada citizens.

The district court's order should be affirmed.

DATED this 12th day of July, 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in size 14 pt., double spaced, Times New Roman.

I further certify that this Answering 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 is proportionately spaced, has a typeface of 14 points or more, and contains 12,690 words.

I further certify that I have read this Answering Brief, and to the best of my knowledge, information, and belief, it is neither frivolous nor interposed for any improper purpose. I further certify that the foregoing brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the briefs regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the subject briefs do not conform with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 12th day of July, 2021.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, pursuant to NRAP 25(c), electronically file the foregoing **Respondent's Answering Brief** with the Clerk of the Court by using its electronic filing system on the 12th day of July, 2021. I further certify that the following participants in the case are registered electronic filing system users, and will be served electronically:

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