

IN THE SUPREME COURT OF THE STATE OF NEVADA

STAVROS ANTHONY, an individual,

Appellant,

v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government
entity; ROSS MILLER, an individual,

Respondents.

Supreme Court No. 82269

District Case No. E-20-82187-1 Filed
Jan 05 2021 11:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**REPLY IN SUPPORT OF
MOTION TO EXPEDITE
APPEAL**

Miller's Opposition makes several quick arguments over approximately 2.25 pages climaxing in a request for two weeks instead of the shorter five-day turnaround currently proposed for his briefing.

Miller argues that “[t]here is no current emergency; Mr. Miller has taken office and is fulfilling his charge on behalf of the constituents of the district.” (Opp’n at 5.) Obviously, this is the reason, as explained in *LaPorta*, that this appeal should be decided as expeditiously as possible. *See LaPorta v. Broadbent*, 91 Nev. 27, 29, 530 P.2d 1404, 1405 (1975) (because “the public interest requires an early determination of the issue” and “delay in the selection of this representative would hamper the legislative process”).

Anthony will defer to this Court's determination on this front, but urges that the parties already know the facts and the arguments they are going to make on appeal through the motion practice of the preliminary injunction and a motion for a

writ of mandamus in the district court. There is no reason to allow Miller to further delay this case.

1. Anthony Has Not Delayed This Appeal.

Miller claims baselessly that Anthony has delayed resolution of this case. This is not true. Although the appeal from the order denying a preliminary injunction could have been pursued sooner, Anthony elected instead to pursue mandamus relief in district court, where limited discovery could be conducted, a complete record of the underlying claims and proceedings could be created, and a final, rather than interlocutory, order could be entered in district court. This appeared to Anthony to be the most expeditious and appropriate way to proceed.

The district court denied Anthony's request for a writ of mandamus. Anthony believes the district court's order to be incorrect as a matter of law. That erroneous denial does not make the procedure followed by Anthony incorrect or improper, nor does it demonstrate delay on the part of Anthony. Anthony has pursued this matter at every level with dispatch.

The district court entered its order denying the claim for a writ of mandamus on December 31, 2020. Anthony submitted his notice of appeal from that order the following day—a national and state holiday—January 1, 2021. It is hard to reasonably argue that an appeal filed the next calendar day on a national holiday constitutes undue delay meriting a waiver of any claim for relief.

The delay in the briefing and finalization of the district court's decision was: (1) Miller requested to take a deposition of the Registrar of Voters; and (2) the deposition was scheduled for December 2, 2020, the day after the Commission decided to change its vote for a new election based on the district court's ruling, but Miller asked that the deposition be moved to December 7, 2020, to accommodate Miller. Everyone else, including the Registrar, was ready to proceed on December 2, 2020.

Now Miller contends that delay in bringing the matter to this Court is cause to deny this appeal. It is confusing that Miller can seek to develop the record below with a deposition of the Registrar, the district court can grant that request, Anthony can accept the request to accommodate Miller, but Miller can now claim that development of the record is a bad thing because of timing.

The development of the record yielded many adverse facts against Miller's case. A more robust record is beneficial for this Court to understand both the factual and legal reasons for reversing the district court's decision on the claim for a writ of mandamus, and directing that a writ issue.

The district court and the parties have known from the beginning of this case that it would ultimately lead to the Nevada Supreme Court. The district court and the parties have accepted and managed expedited briefing schedules throughout the case. There is simply no need for an extended briefing schedule.

Further, it is fundamentally unfair and wrong for Miller to attribute any kind of prejudice or undue delay to Anthony when Anthony has acted swiftly at every turn to bring the case to this Court and to achieve a final resolution, while also professionally accommodating Miller's desires for more time in the district court.

In short, Miller's arguments of delay ring hollow and lack merit.

2. Legal Analysis.

Miller's arguments about this Court's lack of authority to proceed also lack merit. Miller seems to insinuate that because Miller has already been placed as a member of the Commission that this Court no longer has authority to unseat him because Anthony did not file a separate legal action to challenge the election results under a different statute—a statute that would not yield a new election for both candidates, but rather at best would result in the declaration of a vacant seat to be filled by the Governor.

It is truly a novel theory to argue that the Nevada Supreme Court cannot consider appeals of an action in district court and lacks the authority to undo the legal errors of a district court when a party moved to prevent those errors through both an injunction and a claim for a writ of mandamus. Miller cites no legal authority for this unsupportable position.

Anthony acknowledges that he is not trying to unseat Miller through NRS 293.417—a statute that was not cited in any of the briefing to the district court by

any party. Anthony also recognizes that he is not seeking relief from this Court by way of unseating Miller so that the seat can be filled by Governor Sisolak.

Anthony seeks relief available to him under NRS 293.465: a new election.

This appeal is solely about whether the district court erred when it found the Commission's initial 6-1 vote to hold a new election in Clark County Commission, District C, was not sustainable under NRS 293.465 or other election statutes (finding that NRS 293.465 did not apply and denying a preliminary injunction), and later when the district court found that the new election was not required by NRS 293.465 or other election statutes (denying the claim for a writ of mandamus). It was Miller who initiated the district court action to change the Commission's decision to hold a new election even though the Registrar had reported that the election results were untrustworthy. Miller was admittedly successful in the district court. But Anthony preserved his arguments and claims at every turn in the case in the district court, and this Court is squarely within its authority to reverse the erroneous district court decision and to correctly interpret and apply NRS 293.465 and other election statutes on a more fully developed record.

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3. Conclusion.

This Court should issue an expedited briefing schedule to resolve this appeal.

DATED this 5th day of January, 2021.

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CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on the 5th day of January, 2021 the foregoing **MOTION TO EXPEDITE APPEAL** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list below.

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