

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA POLICY RESEARCH
INSTITUTE, a Nevada domestic
nonprofit corporation,

Appellant,

vs.

NICOLE J. CANNIZZARO, an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; JASON FRIERSON, an individual engaging in dual employment with the Nevada State Assembly and Clark County Public Defender; HEIDI SEEVERS GANSERT, an individual engaging in dual employment with the Nevada State Senate and University of Nevada, Reno; GLEN LEAVITT, an individual engaging in dual employment with the Nevada State Assembly and Regional Transportation Commission; BRITTNEY MILLER, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District; DINA NEAL, an individual engaging in dual employment with the Nevada State Senate and Nevada State College; JAMES OHRENSCHALL, an individual engaging in dual employment with the Nevada State Senate and Clark County Public Defender; MELANIE SCHEIBLE, an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; JILL TOLLES, an individual engaging in dual employment with the Nevada State

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Case No. 82341

Appeal from Eighth Judicial District
Court, Clark County, Nevada,
Case No. A-20-817757-C

**RESPONDENT-LEGISLATORS'
JOINT OPPOSITION TO
MOTION FOR THE COURT TO
SUSPEND THE RULES
PURSUANT TO NRAP 2 AND
EXPEDITE ITS DECISION
UPON EXPEDITED BRIEFING
OR, IN THE ALTERNATIVE,
WITHOUT BRIEFING UPON
SUBMISSION OF THE RECORD
AND COUNTERMOTION FOR
LEGISLATIVE CONTINUANCE
AS MATTER OF RIGHT
PURSUANT TO NRS 1.310**

Assembly and University of Nevada,
Reno; SELENA TORRES, an individual
engaging in dual employment with the
Nevada State Assembly and Clark County
School District; and THE
LEGISLATURE OF THE STATE OF
NEVADA,

Respondents.

**RESPONDENT-LEGISLATORS' JOINT OPPOSITION TO MOTION
FOR THE COURT TO SUSPEND THE RULES PURSUANT TO NRAP 2
AND EXPEDITE ITS DECISION UPON EXPEDITED BRIEFING OR,
IN THE ALTERNATIVE, WITHOUT BRIEFING UPON SUBMISSION
OF THE RECORD AND COUNTERMOTION FOR LEGISLATIVE
CONTINUANCE AS MATTER OF RIGHT PURSUANT TO NRS 1.310**

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POINTS AND AUTHORITIES

I. INTRODUCTION

Respondent-Legislators oppose the Motion filed by Appellant Nevada Policy Research Institute (“NPRI”) to suspend the Nevada Rules of Appellate procedure and expedite briefing, or decide this appeal without briefing, as there are no grounds for any such relief, all of which would be prejudicial to Respondent-Legislators. Additionally, improperly couched within its procedural Motion for specific relief related to briefing and scheduling, NPRI has included substantive arguments on the merits of the issues on appeal. NPRI’s Motion pages 4-8 and 10-11. Because NPRI’s arguments on the merits are inappropriate for its procedural motion, Respondent-Legislators do not address those arguments on the merits in this Opposition, and those arguments should be ignored by this Court.

Finally, under NRAP 27(a)(3)(B), Respondent-Legislators file a counter motion for a legislative continuance as a matter of right pursuant to NRS 1.310. Under the statute, Respondent-Legislators are entitled to a legislative continuance for “[t]he duration of the [2021] session and for an additional 7 calendar days following the [2021] session.” NRS 1.310(2)(a)(1). Therefore, assuming the legislature does not extend beyond regular session, this appeal should be continued until June 8, 2021. Respondent-Legislators do not object to this Court setting NPRI’s opening brief to be due on June 8, 2021, but there should be no obligations on Respondent-

Legislators, including, without limitation, responding to any other motions or filings by NPRI, during the legislative continuance as a matter of right pursuant to NRS 1.310.

II. BACKGROUND

In the underlying litigation, NPRI has alleged that Respondent-Legislators are persons simultaneously holding elected offices in the Nevada Legislature (“Legislature”) and paid positions with the executive branch of the Nevada State Government or with local governments in violation of the separation-of-powers provision in Article 3, Section 1 of the Nevada Constitution.¹ The District Court did not reach the merits of that issue as it properly found that NPRI lacked standing. The case was dismissed on those grounds, and NPRI challenges that finding, as well as various ancillary findings in its appeal, in the hope that a reversal will permit it to litigate those issues in the District Court. The merits of the litigation, and indeed the issues on appeal, are not addressed here. The relief sought in the Motion is improper and should be denied in its entirety. Further, this appeal should be stayed until June 8, 2021, pursuant to NRS 1.310.

¹ On February 9, 2021, Respondent Heidi Gansert filed a Motion to Dismiss the appeal on the basis that she is no longer employed by the Nevada System of Higher Education and, therefore, that the separation of powers argument advanced by NPRI no longer applies to her. Accordingly, the Court could properly rule on Respondent Gansert’s motion outside of this request for a continuance.

III. ARGUMENT

a. This Appeal Should be Stayed Pursuant to NRS 1.310

Going back to 1960, the Legislature recognized that to carry out its legislative functions as an independent and coequal branch of government, all legislators must be available and performing their legislative functions during each legislative session without interruption, hindrance or distraction from litigation, especially given the extremely limited timeframe of the 120-day regular session or any special session. *See* 1960 Nev. Stat., ch. 201, § 1, at 365 (enacting the legislative continuance statute in NRS 1.310). By enacting NRS 1.310, the Legislature ensured that, during its legislative sessions, Nevada’s citizen legislators are able to focus on their primary obligation to the citizens of Nevada – legislating without interruption, hindrance or distraction from litigation.

To achieve this essential public purpose, NRS 1.310 allows legislators to seek from the court a continuance of any litigation to which they are a party (or even an attorney for a party). The statute states that, upon motion, the court “**shall grant**” the continuance, although there is a narrow exception for certain emergency or extraordinary circumstances. Such circumstances are not present here, despite NPRI’s conclusory statements that they are. NRS 1.310, as amended in 2019, states as follows:

1. Except as otherwise provided in subsection 3, if a person:
 - (a) **Is a member of the Legislature** or the President of the Senate;

(b) **During any regular or special session of the Legislature, is:**

(1) **A party to any action or proceeding in any court** or before any administrative body; or

(2) An attorney for a party to any action or proceeding in any court or before any administrative body who was actually employed as the party's attorney before the commencement of the session; and

(c) Files with the court or administrative body a motion or request for a continuance of the action or proceeding pursuant to this section,

➔ **the court or administrative body shall grant the continuance of the action or proceeding**, including, without limitation, any discovery or other pretrial or posttrial matter involved in the action or proceeding, subject to the provisions of subsection 2.

2. A continuance granted pursuant to subsection 1 must be:

(a) Effective for:

(1) **The duration of the session and for an additional 7 calendar days following the session;** or

(2) A shorter period if requested by the person who filed the motion or request for a continuance of the action or proceeding.

(b) Granted without the imposition of any bond, costs or other terms.

3. If any party objects to a motion or request for a continuance that is filed pursuant to subsection 1, the court or administrative body shall not deny the requested continuance, in whole or in part, unless the objecting party satisfies the burden to prove that, as a direct result of emergency or extraordinary circumstances, the objecting party:

(a) **Has a substantial existing right or interest that will be defeated or abridged if the requested continuance is granted; and**

(b) **Will suffer substantial and immediate irreparable harm if the requested continuance is granted.**

NRS 1.310 (emphasis added).

Because NPRI cannot satisfy its burden to prove the narrow exception in NRS 1.310(3), Respondent-Legislators are entitled to a legislative continuance as a matter of right, and this appeal should be continued until June 8, 2021. Respondent-Legislators do not object to this Court setting NPRI's opening brief to be due on

June 8, 2021, but there should be no obligations on Respondent-Legislators, including, without limitation, responding to any other motions or filings by NPRI, until after June 8, 2021.

i. The Legislative History of the 2019 Amendments to NRS 1.310 Make Clear Emergency and Extraordinary Circumstances are Narrow and Do Not Exist Here

In 2019, the Legislature adopted SB 554 (2019), which amended the legislative continuance statute in NRS 1.310. *See* 2019 Nev. Stat., ch. 564, § 1, at 3606-07. On pages 1-2 of the bill, attached hereto as **Exhibit A**, the Legislative Counsel's Digest explains the history of legislative continuance statutes and includes citations to case law from other jurisdictions applying legislative continuance statutes under various circumstances. *See id.* at 3604-06. While the narrow exception for certain emergency or extraordinary circumstances in the amended statute has not been reviewed by this Court, similar statutes around the country indicate the narrow application of similar exceptions. *See also Degraw v. Eighth Jud. Dist. Ct.*, 134 Nev. 330, 332-33 & n.1 (2018) (discussing cases interpreting legislative continuance statutes from other jurisdictions).

Generally speaking, in the absence of emergency or extraordinary circumstances, courts typically have found that a continuance under such statutes should be granted as a matter of right. *See, e.g., Williams v. Bordon's, Inc.*, 262 S.E.2d 881, 883-84 (S.C. 1980) (“[A]s a general rule, a request for a continuance in

a civil case because of counsel's legislative duties should be granted, when timely requested and made in good faith, unless a substantial right of the parties to the litigation will be defeated or abridged by the delay.").

With regard to the exception for emergency or extraordinary circumstances, courts typically have construed the exception narrowly. Generally speaking, courts have found the exception applicable in cases involving family law matters, such as child custody or support; in cases where it is necessary to protect assets from being harmed, such as misappropriation of trade secrets; and in cases that meet the standards for a preliminary injunction. *See, e.g., Thurmond v. Super. Ct.*, 427 P.2d 985, 987-88 (Cal. 1967) (child support); *Verio Healthcare v. Super. Ct.*, 208 Cal.Rptr.3d 436, 443-48 (Cal. Ct. App. 2016), review denied (Dec. 21, 2016) (misappropriation of trade secrets); *A.B.C. Bus. Forms v. Spaet*, 201 So.2d 890, 891-92 (Fla. 1967) (emergency injunctive relief); *Waites v. Sondock*, 561 S.W.2d 772, 774 (Tex. 1977) (child support).

In its motion to expedite, NPRI contends that the legislative continuance statute in NRS 1.310:

allows a party to successfully object to a continuance where it has "a substantial existing right or interest that will be defeated or abridged" and will "suffer substantial and immediate irreparable harm" if the continuance is granted. NRS 1.310(3). NPRI has shown these extraordinary circumstances herein, above, where Respondents' dual employment violates the Nevada Constitution, and the legislative session is the only time Respondents' [government] employment challenged by NPRI's lawsuit is otherwise suspended.

NPRI's Motion page 9.

NPRI's attempt to invoke the exception is not supported by the facts because there are no emergency or extraordinary circumstances in this case, as set forth in more detail below. Likewise, NPRI's attempt to invoke the exception is not supported by the case law from other jurisdictions applying similar legislative continuance statutes because the circumstances of this case are not analogous to the circumstances where courts from other jurisdictions have denied legislative continuances based on emergency or extraordinary circumstances.

Here, NPRI has not set forth any facts or evidence that it has a substantial existing right or interest that will be defeated or abridged if a continuance is granted, nor that it will suffer substantial and immediate irreparable harm in such case. These exceptions are narrow and have not been satisfied by NPRI. Therefore, Respondent-Legislators are entitled to a legislative continuance as a matter of right.

i. Distinction Between this Case and Supreme Court Cases Nos. 82236 and 82249

NPRI references two pending and consolidated writ petitions in criminal cases, Supreme Court Cases Nos. 82236 and 82249. In the criminal writ petitions, the State is challenging district court orders concluding that a deputy district attorney who prosecutes criminal cases and who also serves in the Legislature violates a criminal defendant's procedural due process rights on the basis that such dual service violates

the Separation of Powers Doctrine. NPRI contends that there is no reason to apply NRS 1.310 in this civil appeal if the statute is not being applied in the criminal writ petitions. NPRI's Motion page 10. NPRI misses the mark for several reasons.

First, NRS 1.310 is not available in the criminal writ petitions because there are no legislators who are personally named as parties or serving as appellate counsel for the parties in those cases. As such, NRS 1.310 simply does not apply in the criminal writ petitions. Second, because Respondent-Legislators are personally named as parties in this civil appeal, their participation in this case during the 2021 legislative session will unquestionably cause interruption, hindrance or distraction which will undermine their ability to properly dedicate themselves fully to their legislative duties. That is the very purpose of the NRS 1.310, and the reason that circumstances allowing its avoidance are extremely narrow. Such circumstances do not exist in this case.

b. There are No Grounds to Suspend the Rules Pursuant to NRAP 2 and Expedite Briefing

Aside from failing to overcome Respondent-Legislators' entitlement to a continuance pursuant to NRS 1.310, NPRI also fails to articulate any good cause to suspend the Rules and expedite briefing "to allow its appeal of Judge Crockett's dismissal and related rulings to conclude during this 120-day period." NPRI's Motion page 9. Rather, it states, without logical basis, that "NPRI has shown these extraordinary circumstances herein, above, where Respondents' dual employment

violates the Nevada Constitution, and the legislative session is the only time Respondents' [government] employment challenged by NPRI's lawsuit is otherwise suspended." *Id.*

There is no good cause, much less extraordinary circumstances, to suspend the Rules and expedite briefing. Based on public information submitted to this Court in *Heller v. Legislature*, 120 Nev. 456 (2004), government employees have been serving in the Legislature for more than 100 years.² Their continued service in the Legislature does not create the type of extraordinary circumstances necessary to suspend the Rules and expedite briefing. Further, it is likely that most Respondent-Legislators will continue to serve as legislators and government employees during their respective two and four-year terms, which do not expire until after the next applicable general election in 2022 or 2024. Finally, even if expedited briefing were ordered, NPRI's best outcome in this appeal would be a finding that it has standing to bring its lawsuit. It would then return to the District Court to proceed with litigation on the merits of the constitutional issues. Thus, even if NPRI's motion to expedite this appeal is granted, it would be unrealistic to contend that the merits of

² See **Exhibit B**, *Affidavit of Guy L. Rocha, Former Assistant Administrator for Archives and Records of the Division of State Library and Archives of the Department of Cultural Affairs of the State of Nevada* (Apr. 29, 2004), submitted as exhibit in *Heller v. Legislature*, Doc. No. 04-08124, Answer of Respondent Legislature in Opposition to Petition for Writ of Mandamus (May 4, 2004) (App. at 1-3).

the constitutional issues would be resolved in the District Court before the end of the 2021 legislative session.³ There is simply no good cause to suspend the Rules under these circumstances.

Moreover, even assuming this Court does not continue this appeal pursuant to NRS 1.310 as requested, it would be fundamentally unfair, and prejudicial, to require these citizen legislators to assist (and worry about) this appeal while at the same time serving their fellow citizens over the coming months during the high intensity and demanding legislative session. In the event there is no continuance, the 30 days permitted following the filing of the opening brief pursuant to NRAP 31(a)(1)(B) should not begin to run until June 8, 2021, at the very earliest.

c. There are No Grounds to Submit this Appeal Without Briefing Upon Submission of the Record

NPRI offers no grounds to suspend the Rules and decide this appeal without briefing. NPRI cites no other case on which such suspension occurred and completely fails to articulate why this appeal is appropriate for such a radical departure of established procedure. Such suspension would be prejudicial to Respondent-Legislators. Aside from the fact that NPRI has offered a “mini-brief” couched as a Motion, Respondent-Legislators request and should be permitted to

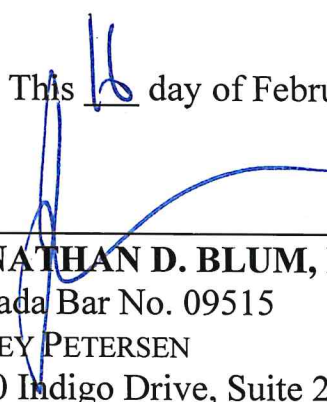
³ Of course, it is likely that regardless of a reversal on the issue of standing, any subsequent ruling at the District Court level would almost assuredly be appealed by the losing party. Thus, this case will not be resolved in the next 120 days, regardless of the ruling on this Motion.

fully address the issues raised in the appeal. Simply reviewing the briefs addressed to the District Court on a Motion to Dismiss Standard are insufficient to properly evaluate the issues presented to this Court. As such, this request should also be denied.

IV. CONCLUSION

Based on the foregoing, all aspects of this appeal should be continued until June 8, 2021 pursuant to NRS 1.310. Alternatively, the time for Respondent-Legislators to serve their answering brief should not begin to run until June 8, 2021, at the earliest. The Motion should be denied.

DATED: This 16 day of February, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of WILEY PETERSEN, and that on the 16 day of February, 2021, pursuant to NRAP 25 and NEFCR 9, I filed and served a true and correct copy of RESPONDENT-LEGISLATORS' JOINT OPPOSITION TO MOTION FOR THE COURT TO SUSPEND THE RULES PURSUANT TO NRAP 2 AND EXPEDITE ITS DECISION UPON EXPEDITED BRIEFING OR, IN THE ALTERNATIVE, WITHOUT BRIEFING UPON SUBMISSION OF THE RECORD AND COUNTERMOTION FOR LEGISLATIVE CONTINUANCE AS MATTER OF RIGHT PURSUANT TO NRS 1.310, by means of the Nevada Supreme Court's electronic filing system, directed to:

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EXHIBIT A

Senate Bill No. 554—Committee on Judiciary

CHAPTER.....

AN ACT relating to state governmental operations; revising provisions governing application of the legislative continuance statute in certain judicial or administrative proceedings; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the common-law rules developed in England are generally the rules of decision that govern in all the courts of this State unless: (1) those common-law rules conflict with any federal or state constitutional provisions; or (2) the Legislature changes or abolishes those common-law rules by statute. (NRS 1.030; *Cunningham v. Washoe Cnty.*, 66 Nev. 60, 64 (1949) (“Nevada has by statute adopted the principles of the common law and has in a number of instances modified the common law by statutory enactment.”)) Under the common-law rules, if a lawyer representing a party in judicial proceedings was also a state legislator, the court was not bound to recognize the lawyer-legislator’s required attendance at a legislative session as a sufficient cause to grant a continuance of the judicial proceedings during the legislative session. (*Johnson v. Theodoron*, 155 N.E. 481, 483 (Ill. 1927) (“At common law attendance on the sessions of a legislative body was not a cause for a continuance which a court was bound to recognize.”)) However, in exercising its judicial discretion in a particular case, the court was not precluded from granting a continuance to accommodate the lawyer-legislator’s required attendance at the legislative session.

Starting in the late 1800s, state legislatures began enacting legislative continuance statutes with the intent to abrogate the common-law rules and statutorily establish that a lawyer-legislator’s attendance at a legislative session is a “sufficient cause” for a continuance which the court is bound to recognize. (*St. Louis & Se. Ry. Co. v. Teters*, 68 Ill. 144, 146-47 (1873); *Hudgins v. Hall*, 32 S.E.2d 715, 718-19 (Va. 1945); *State ex rel. Snip v. Thatch*, 195 S.W.2d 106, 107-08 (Mo. 1946); J. J. Marticelli, Annotation, *Counsel’s Absence Because of Attendance on Legislature as Ground for Continuance*, 49 A.L.R.2d 1073 (1956 & Westlaw 2019)) Currently, at least 14 other states have legislative continuance statutes as part of their existing law. However, the language in these statutes varies considerably among the states. (Cal. Civ. Proc. Code § 595; Fla. Stat. Ann. § 11.111; Ga. Code Ann. § 9-10-150; La. Stat. Ann. § 13:4163; Minn. Stat. Ann. § 3.16; Miss. Code Ann. § 11-1-9; Mo. Ann. Stat. § 510.120; N.Y. Jud. Law § 469; 12 Okl. St. Ann. § 667; S.C. Code Ann. § 2-1-150; Tenn. Code Ann. § 20-7-106; Tex. Civ. Prac. & Rem. Code Ann. § 30.003; W.Va. Code Ann. § 4-1-17; Wis. Stat. Ann. § 757.13)

In some states, courts have subjected legislative continuance statutes to heightened scrutiny to ensure that the statutes do not violate: (1) the separation-of-powers doctrine by invading the province of the judiciary to facilitate the prompt administration of justice, prevent irreparable harm and discourage unreasonable delays; and (2) the right to due process of law by denying litigants timely access to the courts when a substantial existing right or interest will be defeated or abridged by the continuance.

For example, in some states, courts have struck down legislative continuance statutes as facially unconstitutional when the statutory language is not capable of a constitutional interpretation because the language requires mandatory continuances



in all cases and fails to provide the objecting party, in certain exceptional cases, with a reasonable opportunity to prove that as a direct result of emergency or extraordinary circumstances, a substantial existing right or interest will be defeated or abridged by the requested continuance and the party will thereby suffer substantial and immediate irreparable harm. (*McConnell v. State*, 302 S.W.2d 805, 807-09 (Ark. 1957); *Booze v. Dist. Ct. of Lincoln Cnty.*, 365 P.2d 589, 591 (Okla. Crim. App. 1961); *Granai v. Witters, Longmoore, Akley & Brown*, 194 A.2d 391, 392-93 (Vt. 1963); *Lemoine v. Martineau*, 342 A.2d 616, 620-22 (R.I. 1975); *City of Valdez v. Valdez Dev. Co.*, 506 P.2d 1279, 1282-84 (Alaska 1973))

By contrast, in other states, courts have upheld legislative continuance statutes as facially constitutional when the statutory language is capable of a constitutional interpretation because, even though the language requires mandatory continuances in most cases, the language is nevertheless interpreted to provide the objecting party, in certain exceptional cases, with a reasonable opportunity to prove that as a direct result of emergency or extraordinary circumstances, a substantial existing right or interest will be defeated or abridged by the requested continuance and the party will thereby suffer substantial and immediate irreparable harm. (*Johnson v. Theodoron*, 155 N.E. 481, 483 (Ill. 1927); *Kyger v. Koerper*, 207 S.W.2d 46, 48-49 (Mo. 1946) (Hyde, J., concurring opinion joined by majority of court); *Nabholz Const. Corp. v. Patterson*, 317 S.W.2d 9, 11-12 (Ark. 1958); *Thurmond v. Super. Ct. of City & Cnty. of San Fran.*, 427 P.2d 985, 986-88 (Cal. 1967); *A.B.C. Bus. Forms, Inc. v. Spaet*, 201 So. 2d 890, 891-92 (Fla. 1967); *Waites v. Sondock*, 561 S.W.2d 772, 774 (Tex. 1977); *Williams v. Bordon's, Inc.*, 262 S.E.2d 881, 883-84 (S.C. 1980); *Strickland v. State*, 477 So. 2d 1347, 1348 (Miss. 1985); *State v. Chvala*, 673 N.W.2d 401, 404-08 (Wis. Ct. App. 2003); *Verio Healthcare, Inc. v. Super. Ct. of Orange Cnty.*, 208 Cal. Rptr. 3d 436, 443-48 (Cal. Ct. App. 2016))

In Nevada, existing law includes a legislative continuance statute. (NRS 1.310) Under the existing statute, if a party to any judicial or administrative action or proceeding is a member of the Legislature or President of the Senate, that fact is sufficient cause for the adjournment or continuance of the action or proceeding for the duration of any legislative session. The existing statute also provides that if an attorney for a party to any judicial or administrative action or proceeding was actually employed before the commencement of any legislative session and is a member of the Legislature or President of the Senate, that fact is sufficient cause for the adjournment or continuance of the action or proceeding for the duration of any legislative session. Finally, the existing statute provides that the adjournment or continuance must be granted without the imposition of terms.

In 2017, a state district court in Clark County found that Nevada's existing legislative continuance statute is "unconstitutional as written as it violates the separation of powers doctrine of the Nevada Constitution by allowing the legislature to commandeer the inherent power of the judiciary to govern its own procedures, removing all discretion from the Court." (*Degraw v. Eighth Jud. Dist. Ct.*, 134 Nev. Adv. Op. 43, 419 P.3d 136, 138 (2018)) The district court also stated that "[t]here are instances in which the postponement of an action would result in irreparable harm or defeat an existing right, and emergency relief is warranted. In those instances, the Court must be able to be allowed to exercise discretion." (*Degraw*, 419 P.3d at 138) Following the district court's decision, a writ petition was filed with the Nevada Supreme Court seeking review of the district court's decision. However, while the writ petition was pending, the parties resolved their case in the district court. As a result, the Nevada Supreme Court concluded that review of the district court's decision was not warranted because the writ petition had been rendered moot. Therefore, the Nevada Supreme Court did not reach the



merits of whether Nevada's existing legislative continuance statute is unconstitutional as written. (*Degraw*, 419 P.3d at 137-140)

Section 1 of this bill revises Nevada's existing legislative continuance statute to provide that, except for certain emergency or extraordinary circumstances, a court or administrative body is required to grant a requested continuance to a member of the Legislature or the President of the Senate when he or she is: (1) a party to any judicial or administrative action or proceeding during the legislative session; or (2) an attorney for such a party, so long as he or she was actually employed as the party's attorney before the legislative session. **Section 1** also provides that the continuance is effective for the duration of the legislative session and for an additional 7 calendar days following the session, unless a shorter period is requested by the person asking for the continuance. **Section 1** further provides that the continuance must be granted without the imposition of any bond, costs or other terms. Finally, **section 1** provides that if any party objects to the requested continuance, the court or administrative body cannot deny the requested continuance, in whole or in part, unless the objecting party satisfies the burden to prove that, as a direct result of emergency or extraordinary circumstances, the objecting party: (1) has a substantial existing right or interest that will be defeated or abridged if the requested continuance is granted; and (2) will suffer substantial and immediate irreparable harm if the requested continuance is granted.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 1.310 is hereby amended to read as follows:

1.310 1. ~~If a~~ *Except as otherwise provided in subsection 3, if a person:*

(a) *Is a member of the Legislature or the President of the Senate;*

(b) *During any regular or special session of the Legislature, is:*

(1) A party to any action or proceeding in any court or before any administrative body ~~{is a member of the Legislature of the State of Nevada, or is President of the Senate, that fact is sufficient cause for the adjournment or continuance of the action or proceeding, including, without limitation, any discovery or other pretrial or posttrial matter involved in the action or proceeding, for the duration of any legislative session.~~

~~—2. If an~~ ; or

(2) *An* attorney for a party to any action or proceeding in any court or before any administrative body ~~{,}~~ who was actually employed *as the party's attorney* before the commencement of ~~{any legislative} the session {, is a member of the Legislature of the State of Nevada, or is President of the Senate, that fact is sufficient cause for the adjournment or}~~ ; and



(c) *Files with the court or administrative body a motion or request for a continuance of the action or proceeding pursuant to this section,*

↳ *the court or administrative body shall grant the continuance of the action or proceeding, including, without limitation, any discovery or other pretrial or posttrial matter involved in the action or proceeding, subject to the provisions of subsection 2.*

2. *A continuance granted pursuant to subsection 1 must be:*

(a) *Effective for ~~the~~:*

(1) *The duration of ~~any legislative session.~~*

~~3. The adjournment or continuance provided for in subsections 1 and 2 must be granted~~ *the session and for an additional 7 calendar days following the session; or*

(2) *A shorter period if requested by the person who filed the motion or request for a continuance of the action or proceeding.*

(b) *Granted without the imposition of any bond, costs or other terms.*

3. *If any party objects to a motion or request for a continuance that is filed pursuant to subsection 1, the court or administrative body shall not deny the requested continuance, in whole or in part, unless the objecting party satisfies the burden to prove that, as a direct result of emergency or extraordinary circumstances, the objecting party:*

(a) *Has a substantial existing right or interest that will be defeated or abridged if the requested continuance is granted; and*

(b) *Will suffer substantial and immediate irreparable harm if the requested continuance is granted.*

Sec. 2. The amendatory provisions of this act apply to any judicial or administrative proceedings:

1. Commenced on or after the effective date of this act; or

2. Commenced before the effective date of this act if the proceedings are pending or otherwise unresolved on the effective date of this act.

Sec. 3. This act becomes effective upon passage and approval.



EXHIBIT B

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1 seat in the Nevada Assembly before or after Mr. Frohlich accepted his position with the State
2 Mental Hospital. During his legislative term, Mr. Frohlich also was a local candidate in Reno for a
3 seat on the School District Board of Trustees, but he lost at the election held on April 2, 1932. At
4 the general election held on November 8, 1932, Mr. Frohlich was again a local candidate in Reno,
5 and this time he was elected to the Office of Justice of the Peace.

6 4. Another early example that I have been able to find of a state legislator who held a position
7 as a state executive department employee while serving simultaneously as a member of the Nevada
8 Legislature is Assemblyman Harry E. "Hap" Hazard. Mr. Hazard was elected to the Nevada
9 Assembly in November 1938 while working for the Las Vegas Review-Journal. After the 1939
10 Legislative Session, Mr. Hazard was appointed by the State Tax Commission as the supervisor of
11 the Liquor Division of the State Tax Commission effective April 16, 1939. Mr. Hazard relocated
12 from Las Vegas to Carson City where Mr. Hazard worked in the Executive Department during the
13 remainder of his legislative term. I have not found any evidence in Nevada newspapers of an
14 official resignation by Mr. Hazard from his seat in the Nevada Assembly before or after Mr.
15 Hazard accepted his position with the State Tax Commission. Mr. Hazard was not a member of the
16 Nevada Legislature during the 1941, 1943 and 1945 Legislative Sessions. In 1946, Mr. Hazard
17 was again elected to the Nevada Assembly. During the 1947 Legislative Session, Mr. Hazard
18 served as the Speaker of the Assembly. While a member of the 1947 Legislature, Mr. Hazard also
19 served as a member of the Board of the Clark County Housing Authority, a local government
20 agency.

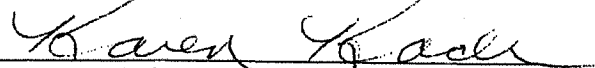
21 5. The earliest known example that I have been able to find of a state legislator who held a
22 position as a local government employee while serving simultaneously as a member of the Nevada
23 Legislature is Assemblyman Mark Richards Averill. Mr. Averill served in the Nevada Assembly
24 during the 1903 Legislative Session, and Mr. Averill also served as the clerk of a local school

1 district during his legislative term. Another early example is Mr. Averill's daughter, Ruth Averill,
2 who served in the Nevada Assembly during the 1921 Legislative Session. Ruth Averill was a
3 primary school teacher during her legislative term.

4
5 DATED this 29th day of April, 2004.

6 
7 GUY L. ROCHA

8 Subscribed and sworn to before me this 29th day of April, 2004.

9 
10 Notary Public in and for the State of Nevada

