

IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*\*\*

ZANE M. FLOYD,

Defendant.

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK; AND  
THE HONORABLE MICHAEL P. VILLANI,  
DISTRICT JUDGE,

STATE OF NEVADA

Plaintiff/Real Party in Interest.

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ZANE M. FLOYD,

Petitioner.

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK; AND  
THE HONORABLE MICHAEL P. VILLANI,  
DISTRICT JUDGE,

WILLIAM GITTERE, Warden, Ely State  
Prison; AARON FORD; Attorney General,  
State of Nevada

Respondent/Real Parties in Interest

Supreme Court Case No. 99C159897  
District Court Case No. 99C159897  
Habeas Court Case No. A-21-832952-W  
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**PETITION FOR WRIT  
OF MANDAMUS AND  
PROHIBITION**

**VOLUME 3 OF 3**

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DOCUMENT	DATE	VOLUME	PAGE(S)
Agreement Between the County of Clark and The Clark County Prosecutors Association, July 1, 2020 to June 30, 2021	07/01/2020	1	111-155
Alexander M. Burrill, <i>A Law Dictionary &amp; Glossary</i> (2d ed. 1867), Vol. 1, select pages: <ul style="list-style-type: none"> <li>- Any, p. 106</li> <li>- Charge, p. 277</li> <li>- Excussio-Executive, pp. 583-84<sup>1</sup></li> </ul>	00/00/1867	1	030-035
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Bob Fulkerson (@bobfulkerson), Twitter, (Mar. 26, 2021)	03/26/2021	1	158
Bruce Wyman, <i>The Principles of the Administrative Law Governing the Relations of Public Officers</i> (1903), excerpt: <ul style="list-style-type: none"> <li>- Ch. 6, § 44, Officer, pp. 163-65</li> </ul>	00/00/1903	1	052-056
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<sup>1</sup> “Executive” is not defined in this dictionary.

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Dayvid Figler (@OyVegas), Twitter (Mar. 26, 2021)	03/26/2021	1	157
<i>State of Nevada v. Floyd</i> , Case No. 99C159897, Clark County District Court, Nevada, Decision and Order (denying Defense Motion for Reconsideration)	06/17/2021	3	585
Floyd R. Mechem, <i>A Treatise on the Law of Public Offices and Officers</i> (1890), excerpts: <ul style="list-style-type: none"> <li>- Chap. I., § 18, Executive Officers</li> <li>- Chap. II, § 38, Deputies</li> <li>- Chap. II, § 570, Authority of Deputies</li> </ul>	00/00/1890	1	046-051



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<i>Governor Sisolak issues statement regarding Assembly Bill 395</i> <a href="https://gov.nv.gov/News/Press/2021/Governor_Sisolak_issues_statement_regarding_Assembly_Bill_395/">https://gov.nv.gov/News/Press/2021/Governor_Sisolak_issues_statement_regarding_Assembly_Bill_395/</a> , May 13, 2021.	05/13/2021	3	521
J.J.S. Wharton, <i>Law Lexicon, or Dictionary of Jurisprudence</i> (2d Am. ed. 1860), select pages: <ul style="list-style-type: none"> <li>- Charge, p. 137</li> <li>- Executive, p. 285</li> <li>- Function, p. 322</li> <li>- Judicial, pp. 401, 406</li> <li>- Legislation/Legislator/Legislature, p. 432</li> <li>- Magistrate, p. 459</li> <li>- Power, p. 597-99</li> <li>- Prosecution, p. 616</li> <li>- Sovereign, p. 702</li> <li>- Trial, p. 751</li> </ul>	00/00/1860	1	001-014
James DeHaven, <i>Democratic leader mum on bill to ban death penalty as deadline looms at the Legislature</i> , Reno Gazette J., May 11, 2021.	05/11/2021	3	508-509
James DeHaven, <i>Sisolak lauds 'very productive' 2021 Nevada Legislature, vows to sign public option bill</i> , Reno Gazette J., June 2, 2021	06/02/2021	3	576-578

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Khaleda Rahman, <i>Nevada is Trying to Abolish the Death Penalty—Democrats Stand in the Way</i> , Newsweek, May 11, 2021.	05/11/2021	3	510-520
Kristen Kidman, <i>John L. Smith On The Death Penalty Ban: Why Won't It Pass In Nevada?</i> , KNPR's State of Nevada, May 18, 2021.	05/18/2021	3	556-559
Michael Kagan (@MichaelGKagan), Twitter (Mar. 26, 2021)	03/26/2021	1	159

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Michelle Rindels (@MichelleRindels), Twitter, (Mar. 26, 2021)	03/26/2021	1	162
Michelle Rindels, <i>Nevada Lawmakers discuss abolishing death penalty for first time since ill-fated 2017 effort</i> , The Nev. Independent, Mar. 31, 2021.	03/31/2021	1	167-170
Michelle Rindels, <i>Sisolak, Democrats spike efforts to repeal the death penalty in Nevada</i> , The Nev. Independent, May 13, 2021.	05/13/2021	3	522-524
Rae Lathrop (@raelathrop), Twitter (Mar. 26, 2021)	03/26/2021	1	160
<i>State of Nevada v. Floyd</i> , Case No. 99C159897, Clark County District Court, Nevada, Amended Opposition to Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution, Apr. 26, 2021	04/26/2021	2	434-452
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<i>State of Nevada v. Floyd</i> , Case No. 99C159897, Clark County District Court, Nevada, Reply to Opposition to Motion to Disqualify Clark County District Attorney's Office, Apr. 29, 2021	04/29/2021	3	477-491
<i>State of Nevada v. Floyd</i> , Case No. 99C159897, Clark County District Court, Nevada, State's Opposition to Defendant's Motion to Disqualify Clark County District Attorney's Office, Apr. 26, 2021	04/26/2021	2	462-476

<i>State of Nevada v. Floyd</i> , Case No. 99C159897, Clark County District Court, Nevada, State's Reply to Defendant's Opposition to Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution, May 5, 2021	05/05/2021	3	492-504
<i>State of Nevada v. Floyd</i> , Case No. 99C159897, A21832852-W, Clark County District Court, Nevada, Transcript of All Pending Motions, May 14, 2021	05/14/2021	3	525-551
Tabitha Mueller & Michelle Rindels, <i>Mixed signals from governor, election considerations blamed for failure of death penalty repeal effort</i> , The Nev. Independent, May 23, 2021.	05/23/2021	3	570-575

Respectfully submitted,

/s/ Brad D. Levenson  
BRAD D. LEVENSON  
Assistant Federal Public Defender

## CERTIFICATE OF SERVICE

In accordance with NRAP Rule 25(c)(1)(C) the undersigned hereby certifies that on this 24th day of June, 2021, I personally served a true and correct copy of the foregoing APPENDIX TO PETITION FOR WRIT OF MANDAMUS AND PROHIBITION by email to:

Alexander Chen  
Chief Deputy District Attorney  
motions@clarkcountyda.com  
Eileen.davis@clarkcountyda.com

Further Service on the following party was made via UPS on June 24th, 2021:

Hon. Michael Villani  
District Judge  
Department XVII  
Regional Justice Center  
200 Lewis Ave  
Las Vegas, NV 89155

/s/ Sara Jelinek  
An Employee of the  
Federal Public Defender, District of Nevada

## NOTICE OF FILING

In accordance with NRAP 21(a)(1), the undersigned hereby certifies that on this 24th day of June, 2021, I personally served a true and correct copy of the foregoing APPENDIX TO PETITION FOR WRIT OF MANDAMUS AND PROHIBITION, by email to:

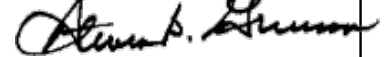
Alexander Chen  
Chief Deputy District Attorney  
motions@clarkcountyda.com  
Eileen.davis@clarkcountyda.com

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District Judge  
Department XVII  
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200 Lewis Ave  
Las Vegas, NV 89155

/s/ Sara Jelinek  
An Employee of the  
Federal Public Defender, District of Nevada





1 **OPPM**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 ALEXANDER CHEN  
6 Chief Deputy District Attorney  
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8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

11 -vs-

12 ZANE MICHAEL FLOYD,  
13 #1619135

14 Defendant.

CASE NO: 99C159897

DEPT NO: XVII

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY**  
16 **CLARK COUNTY DISTRICT ATTORNEY'S OFFICE**

17 DATE OF HEARING: MAY 14, 2021  
18 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
19 District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby  
20 submits the attached Points and Authorities in Opposition to Defendant's Motion to Disqualify  
21 Clark County District Attorney's Office.

22 This Opposition is made and based upon all the papers and pleadings on file herein, the  
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
24 deemed necessary by this Honorable Court.

25 //

26 //

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 19, 2000, Defendant Zane Floyd was unanimously found guilty beyond a  
4 reasonable doubt by a jury of his peers. The jury convicted Defendant Floyd of four counts of  
5 Murder with Use of a Deadly Weapon; one count of Attempt Murder with Use of a Deadly  
6 Weapon; one count of Burglary with Use of a Deadly Weapon; one count of First Degree  
7 Kidnapping with Use of a Deadly Weapon and four counts of Sexual Assault with Use of a  
8 Deadly Weapon. The case was prosecuted by the former Clark County District Attorney  
9 Stewart Bell and one of his chief deputies, William Koot.

10 On July 21, 2000, the same jury unanimously found beyond a reasonable doubt that the  
11 mitigating factors did not outweigh the aggravating circumstances and imposed a penalty of  
12 death for each of the four separate counts of Murder Use of a Deadly Weapon. Upon the jury's  
13 verdict imposing a penalty of death, Defendant Floyd initiated voluminous litigation to  
14 overturn the jury's verdict. Defendant Floyd's litigation eventually went to federal court where  
15 the Ninth Circuit Court of Appeals denied his appeal from the denial of a petition for a writ of  
16 habeas corpus. On November 2, 2020, slightly over twenty years from the jury's verdict, the  
17 United States Supreme Court denied certiorari which effectively ended Defendant Floyd's  
18 pending litigation.

19 Upon receiving notification that Defendant Floyd had exhausted his appellate remedies,  
20 the State began to prepare the statutorily mandated filings in this case, which included an  
21 extensive review of twenty years of procedural history. Coincidentally, the Nevada Legislature  
22 commenced their 81<sup>st</sup> session on February 1, 2021. Among the many proposed bills that  
23 eventually were introduced in the Legislature was A.B. 395, which calls for the outright  
24 abolition of the death penalty.

25 On March 31, 2021, the Assembly Committee on Judiciary held a hearing where  
26 proponents and opponents of the bill testified.<sup>1</sup> The make-up of representatives in favor of the  
27

28 

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<sup>1</sup> Video of the entire hearing can be found at <http://sg001-harmony.sliq.net/00324/Harmony/en/PowerBrowser/PowerBrowserV2/20210331/-1/?fk=7836&viewmode=1>

1 bill included multiple defense attorneys, including an attorney from the Federal Public  
2 Defender of Nevada, which is the Office that currently represents Defendant Floyd.

3 As part of the committee hearing, individuals were also called upon to voice opposition  
4 to the passage of A.B. 395. Included among the speakers that voiced opposition against the  
5 passage of A.B. 395 was the president of the Nevada District Attorney's Association, the  
6 District Attorney of the Washoe County, and the Clark County District Attorney, Steven  
7 Wolfson.

8 District Attorney Wolfson's testimony against the passage of A.B. 395 was consistent  
9 with an article published by the Las Vegas Review Journal on March 26, 2021.<sup>2</sup> In the article,  
10 District Attorney Wolfson indicated that the State would be seeking a warrant of execution in  
11 the coming weeks. Moreover, he was specifically quoted with the following:

12 "I think the timing is good...Our legislative leaders should recognize that  
13 there are some people who commit such heinous acts, whether it be the  
14 particular type of murder or the number of people killed, that this  
community has long felt should receive the death penalty."

15 "We [the State] would be moving forward with the Zane Floyd efforts at  
16 obtaining the order and warrant of execution notwithstanding the  
17 Legislature. ... **I'm not purposefully moving forward with Floyd  
because of the Legislature.** But because they're occurring at the same  
18 time, I want our lawmakers to have their eyes wide open because this is a  
landmark case. They need to be aware that there are these kinds of people  
out there where the jury has spoken loudly and clearly." *Emphasis added.*

19 Meanwhile in the same article, Clark County Public Defender Scott Coffee, who also  
20 testified at the Assembly committee in favor of A.B. 395, stated his belief that Floyd's case in  
21 general would have little effect on what the Legislature decides.

22 On April 13, 2021, the full Assembly voted on the passage of A.B. 395. The bill passed  
23 through the Assembly with a vote of 26-16.<sup>3</sup> Included in the 26 votes in favor of passage were  
24 individuals that either worked for, or currently work for the Clark County Public Defender's  
25 Office.

26  
27 <sup>2</sup> David Ferrara, DA to proceed with death penalty against gunman in 1999 store killings, Las Vegas Rev. J. (Mar. 26,  
28 2021), available at <https://www.reviewjournal.com/crime/courts/da-to-proceed-with-death-penalty-against-gunman-in-1999-store-killings-2315637/>.

<sup>3</sup> <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8006/Overview>

1 On April 14, 2021, the State filed a motion seeking the court's signature of an order  
2 and warrant of execution. Immediately upon the State filing its motion, Defendant Floyd filed  
3 the instant motion seeking to remove the Clark County District Attorney's Office.

#### 4 I. INTRODUCTION

5 Under the guise of the Nevada Constitution, Defendant Floyd seeks this Court to  
6 remove the Clark County District Attorney's Office from its duty to fulfill the jury's verdict  
7 of death in his case. NRS 176.505(3) states "[N]otwithstanding the entry of a stay of issuance  
8 of a remittitur in the appellate court of competent jurisdiction following denial of appellate  
9 relief in a proceeding brought pursuant to chapter 34 or 177 of NRS, the court in which the  
10 conviction was obtained **shall**, upon application of the Attorney General or the **district**  
11 **attorney of the county in which the conviction was obtained, cause another warrant to**  
12 **be drawn**, signed by the judge and attested by the clerk under the seal of the court, and  
13 delivered to the Director of the Department of Corrections." *Emphasis added*. Despite this  
14 statutory language that requires the District Attorney's Office to obtain a new order and  
15 warrant of execution, Defendant Floyd is now calling for the Clark County District Attorney's  
16 Office to be removed because of a manufactured conflict.

17 Noticeably, neither "Statement of the Case" filed by Defendant Floyd or by the State  
18 references Deputy District Attorneys Nicole Cannizaro or Melanie Scheible, who both serve  
19 as Senators in the citizen-based Nevada Legislature. In a desperate attempt to make the District  
20 Attorney's Office look outrageous, Defendant Floyd references Article 3, Section 1 of the  
21 Nevada Constitution's separation of powers clause to support his claim that the Clark County  
22 District Attorney's Office should be removed from the case. Although Defendant Floyd does  
23 not specifically state it, his position is essentially that the entire Office of the District Attorney  
24 is in violation of the Nevada Constitution, thereby making every prosecution seemingly null  
25 and void, because two individuals that are prosecutors in the District Attorney's Office also  
26 serve part-time at the Nevada Legislature. Defendant Floyd makes his separation of powers  
27 argument without any consideration to the fact that neither of the individual prosecutors has  
28 ever worked on his case.

1           Alternatively, Defendant Floyd argues that the District Attorney's Office should be  
2 removed because of a "likelihood of public suspicion and no social interest is served."  
3 However, the standard for removal of an entire District Attorney's Office from a case is a  
4 specific one, and the citation of mere conjecture by individuals cannot and does not meet the  
5 standard to remove an entire office from fulfilling its statutory obligations.

6           **II. THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE IS NOT IN**  
7           **VIOLATION OF THE NEVADA CONSTITUTION**

8           Although Deputy District Attorneys Cannizzaro and Scheible are not involved with this  
9 case, Defendant Floyd tries to disqualify the entire Clark County District Attorney's Office  
10 based on their service in the citizen-based Legislature. Article 3, Section 1(1) of the Nevada  
11 Constitution provides that "[T]he powers of the Government of the State of Nevada shall be  
12 divided into three separate departments, - the Legislative, - the Executive and the Judicial; and  
13 no persons charged with the exercise of powers properly belonging to one of these departments  
14 shall exercise any functions, appertaining to either of the others, except in cases expressly  
15 directed or permitted in this constitution."

16           Through the Nevada Constitution, each branch is given a specific role; "the Legislature  
17 enacts laws, the executive branch is tasked with carrying out and enforcing the laws, and the  
18 judicial power is the authority to hear and determine justiciable controversies." N. Lake Tahoe  
19 Fire v. Washoe Cnty. Commi'rs, 129 Nev. 682 (2014). Under our system of government, it is  
20 fundamental that the powers vested in the executive, legislative, and judicial departments be  
21 exercised without intrusion. City of North Las Vegas ex. Rel. Arndt v. Daines, 92 Nev. 292  
22 (2000).

23           The general premise behind the separation of powers doctrine is to prevent one branch  
24 of government from encroaching on the powers of another branch. Clinton v. Jones, 520 U.S.  
25 681, 699 (1976). This Court has previously considered what constitutes legislative, executive,  
26 and judicial powers: "Legislative power is the power of law-making representative bodies to  
27 frame and enact laws, and to amend and repeal them...The executive power extends to the  
28 carrying out and enforcing the laws enacted by the legislature... 'Judicial Power'...is the

1 authority to hear and determine justiciable controversies. Judicial power includes the authority  
2 to enforce any valid judgment, decree, or order.” Galloway v. Truesdell, 83 Nev. 13, 19 (1967).

3 The Nevada Constitution does not contain any broad provisions about what constitute  
4 incompatible public offices. *See ex rel. Davenport v. Laughton*, 19 Nev. 202 (1885). While  
5 the Nevada Constitution states that no person charged with the exercise of functions shall  
6 exercise the functions in a separate department, the type of person that the Constitution is  
7 referring to is someone that the Constitution has expressly granted powers. These are positions  
8 that are charged with a sovereign function of government. State ex rel. Kendall v. Cole, 38  
9 Nev. 215, 148 P.2 551 (1915). The Nevada Constitution is only referring to public officers,  
10 not all employees of those officers. For instance, in Kendall the Nevada Supreme Court listed  
11 numerous positions that while part of a judicial or executive office would not qualify as an  
12 “officer” as defined by the Constitution. *Id.* Similarly in Sawyer v. Dooley, the Nevada  
13 Supreme Court pointed out that “These departments are each charged by other parts of the  
14 constitution with certain duties and functions, and it is to these that the prohibition just quoted  
15 [Article 3 §1] refers.” Thus the type of person that is meant to be prohibited from exercising  
16 dual functions is limited to those exercising a sovereign function, not merely an employee.

17 Under Nevada’s Constitution, the legislature is responsible for establishing certain  
18 county officers, including the District Attorney’s Office. Article 4 § 32. The formation of such  
19 offices is clearly not violative of the separation of powers because the power is specifically  
20 proscribed by the Constitution. NRS Chapter 252 was the legislature’s conveyance of  
21 policymaking authority on the principal prosecutor. NRS 252.070 is the legislative enactment  
22 that allows the district attorney to appoint deputy district attorneys that work under the elected  
23 district attorney. Notably, NRS 252.070(1) explicitly states, “The appointment of a deputy  
24 district attorney must not be construed to confer upon that deputy policymaking authority for  
25 the office of the district attorney or the county by which the deputy district attorney is  
26 employed.” NRS 252.070(1) makes it clear that a deputy district attorney only serves under  
27 the district attorney, and does not hold a public office by virtue of prosecuting cases.  
28

1 Not only does NRS 252.070 indicate there is a difference between the elected district  
2 attorney and a mere deputy, but other cases have indicated the legal difference as well. For  
3 instance in Price v. Goldman, this Court made it clear that deputy district attorneys do not have  
4 the authority to authorize wire intercepts. 90 Nev. 299, 301 (1974). Relying upon the specific  
5 enumerated reasons, the Nevada Supreme Court agreed that ‘district attorney’ is not  
6 synonymous with everyone that works for the district attorney.

7 A Deputy District Attorney similarly is not the type of public officer that the Nevada  
8 Constitution contemplated because a Deputy District Attorney is merely an employee of an  
9 agency. See State ex rel. Mathews v. Murray, 70 Nev. 116, 120-21, 258 P.2d 982, 984 (1953).  
10 A Deputy District Attorney’s responsibilities are provided for by statute. However as the  
11 statutes above make clear, a deputy is not the same as an elected public official. A deputy  
12 simply does not possess the same powers or authority that was contemplated for the separation  
13 of powers clause. Since a Deputy District Attorney is a “public employee,” the separation of  
14 powers doctrine as listed in Article 3 §1 is not applicable.

15 Specifically, for district attorneys the Nevada Supreme Court has held that the  
16 separation of powers was not applicable to the exercise of certain powers by a county’s District  
17 Attorney because he was not a state constitutional officer. Lane v. Second Jud. Dist. Ct., 104  
18 Nev. 427, 437 (1988). In citing NRS 252.110, which sets forth the powers inured to the district  
19 attorney, the Court indicated that the district attorney is not an office created via the Nevada  
20 State Constitution, thus the separation of powers doctrine is inapplicable.

21 Although Deputy District Attorneys Cannizzaro and Scheible are mere employees of  
22 an executive agency thus putting them outside of the purview of the separation of powers  
23 clause, it should be noted that they do not simultaneously exercise their functions. Nevada’s  
24 legislative bodies meet for session once every other year. During those times, neither  
25 individual serves any type of executive function. Instead, both serve with their fellow  
26 legislators, which come from all different professions and backgrounds, to collectively  
27 propose, debate, and pass various laws. This argument that Defendant Floyd makes simply  
28

1 lacks merit, especially considering that neither individual has had any involvement with his  
2 case.

3 **A. Membership Is The Sole And Exclusive Function Of The Legislative Body**  
4 **Itself**

5 The composition and qualifications of an individual to serve in the legislature is left to  
6 the legislature itself. With the separate bodies of government in mind, the Nevada Constitution  
7 does place certain specified limitations on the eligibility for membership. Article 4 § 4 states  
8 that Senators shall be chosen from the qualified electors of their respective districts and that  
9 no Senator shall serve more than 12 years. Article 4 § 6 grants each House the authority to  
10 determine the qualifications of its own members. Article 4 § 8 specifically prohibits a member  
11 of the Legislature from accepting an appointment to a civil office of profit while serving.  
12 Article 4 § 9 makes certain federal officers ineligible for serving in the legislature. Article 6,  
13 § 11 even goes so far as to specifically say that judicial officers while they are serving are  
14 ineligible for other offices including any legislative positions. However, no such proscription  
15 applies to other agency employees. Clearly, of all the restrictions and qualifications set forth  
16 in the Nevada Constitution, there is no limitation that constitutionally prohibits a legislator  
17 that works as an employee for an executive agency. The principle that the Legislature is to  
18 determine its members' qualifications is also supported and recognized by the Nevada  
19 Supreme Court. *See Heller v. Legislature of State of Nev.*, 120 Nev. 456, 462, 93 P.3d 746,  
20 750 (2004).

21 The Legislature is given deference in determining who is qualified to be a member of  
22 the Legislature. As seen in *Heller*, the Supreme Court of Nevada refused to address this issue  
23 on the merits because to address the issue presented would in itself be a violation of the  
24 separation of powers. The Legislature was given the specific authority in the constitution to  
25 qualify their members, and the supreme court said that "by asking us to declare that dual  
26 service violates the separation of powers, the secretary urges our own violation of the  
27 separation of powers." *Heller*, at 459.



1 Despite the argument that Defendant Floyd attempts to make, there is simply no basis  
2 to remove the Clark County District Attorney's Office from the case on the grounds that the  
3 Office is in violation of Article 3 § 1 of the Constitution.

4 Hypothetically if one were to believe that the entire Clark County District Attorney's  
5 Office was in violation of the Nevada Constitution thereby warranting its removal in this case,  
6 it would correspondingly mean that the current Nevada Legislature is illegitimate because it  
7 has members that sometimes work in offices that perform various executive functions.  
8 However Defendant Floyd of course does not make this argument because to make that  
9 argument would hurt his self-interested claim and hopes that the Legislature does in fact  
10 abolish the death penalty. Despite being the individual responsible for murdering four innocent  
11 victims, Defendant Floyd instead tries to portray the Clark County District Attorney's Office  
12 as the one that is acting unlawfully. There simply is no merit to his claim.

13 **III. THERE IS NO CONFLICT TO DISQUALIFY THE CLARK COUNTY**  
14 **DISTRICT ATTORNEY'S OFFICE**

15 While Defendant Floyd has couched this argument based on an alleged a separation of  
16 powers argument, what he in essence is requesting is that this Court remove the District  
17 Attorney's Office from carrying out its lawful and statutory duty. Defendant Floyd attempts  
18 to make this argument by explaining that the Clark County District Attorney's involvement  
19 creates a "likelihood of public suspicion and no social interest is served." *Defendant motion*,  
20 p. 9.

21 "To prevail on a motion to disqualify opposing counsel, the moving party must first  
22 establish 'at least a reasonable possibility that some specifically identifiable impropriety did  
23 in fact occur,' and then must also establish that 'the likelihood of public suspicion or obloquy  
24 outweighs the social interests which will be served by a lawyer's continued participation in a  
25 particular case.'" Brown v. Eighth Judicial Dist. Court, 116 Nev. 1200, 1205, 14 P.3d 1266,  
26 1270 (2000) (quoting Cronin v. District Court, 105 Nev. 635, 640, 781 P.2d 1150, 1153  
27 (1989)).  
28

1 When a party wishes to disqualify a prosecutor, such impropriety must take the form  
2 of a conflict of interest. See NRPC 1.7, 1.9, 1.11; United States v. Kahre, 737 F.3d 554, 574  
3 (2013) (“proof of a conflict [of interest] must be clear and convincing to justify removal of a  
4 prosecutor from a case.”). Defendant has failed to demonstrate, or even address, the existence  
5 of a conflict of interest. Black’s Law Dictionary defines “conflict of interest” as follows:

- 6 1) A real or seeming incompatibility between one's private interests and  
7 one's public or fiduciary duties.  
8 2) A real or seeming incompatibility between the interests of two of a  
9 lawyer's clients, such that the lawyer is disqualified from representing both  
10 clients if the dual representation adversely affects either client or if the clients  
11 do not consent.  
12 *Black’s Law Dictionary* (11th ed. 2019).

13 The disqualification of lawyers who work in government offices is governed by Nevada  
14 Rule of Professional Conduct 1.11. Rule 1.11(d) specifically states that lawyers who are in  
15 government offices “does not impute the conflicts of a lawyer currently serving as an officer  
16 or employee of the government to other associated government officers or employees.”

17 Although not cited by Defendant Floyd, the general concept that Defendant Floyd is  
18 relying upon to disqualify the entire District Attorney’s Office was seemingly based in an  
19 overruled case called Collier v. Legakes, 98 Nev. 307 (1982). In Collier, the Nevada Supreme  
20 Court at the time implied that disqualification of a prosecutor’s office may be required “in  
21 extreme cases where the appearance of unfairness or impropriety is so great that the public  
22 trust and confidence in our criminal justice system could not be maintained without such  
23 action.” *Id.* At 310.

24 The standard applied in Collier, however, was explicitly disapproved of and overruled  
25 by State v. Eighth Jud. Dist. Ct. (Zogheib), 130 Nev. 158 (2014). While most cases that involve  
26 a conflict of interest deal with the removal of private attorneys or firms, additional scrutiny  
27 should apply when removing an entire district attorney’s office, and courts should “not  
28 unnecessarily interfere with the performance of a prosecutor’s duties.” *Id.*, at 164. Ultimately,  
the Court in Zogheib determined that the test is “the appropriate inquiry is whether the conflict  
would render it unlikely that the defendant would receive a fair trial unless the entire  
prosecutor’s office is disqualified from prosecuting the case.” *Id.*, at 165.

1           The problem for Defendant Floyd is that he can not even meet the first factor that  
2 requires an actual conflict for removal. Moreover, this Court is not being asked to remove the  
3 District Attorney's Office at a trial stage. Defendant Floyd has already been convicted and  
4 has lost his appellate and post-conviction remedies. This situation is not like Collier or  
5 Zogheib, which both dealt with the issue of whether an entire district attorney's office would  
6 need to be removed from a case because the office was employing an attorney who had  
7 previously represented the defendant. Even though the district attorney's offices were not  
8 barred from prosecuting in both Collier and Zogheib, here there is not even an allegation that  
9 the District Attorney's Office has any confidential or intimate knowledge about Defendant  
10 Floyd. The only conflict that Defendant Floyd is trying to manufacture is that by performing  
11 its statutory duties, the District Attorney's Office should be removed from proceeding on this  
12 case. His only support for the removal is that there is a pending bill that would abolish the  
13 death penalty, but he provides no legal support that prosecutors are obligated to refrain from  
14 prosecuting statutes that are being considered by the Legislature.

15           In so much as Defendant Floyd tries to impute a conflict using the separation of powers  
16 argument, neither Deputy District Attorney Cannizzaro or Scheible has ever even worked on  
17 his case. Thus even assuming arguendo that a conflict exists with regards to those two deputies,  
18 which the State adamantly maintains that there is not, it would still give no basis to remove  
19 the entire Clark County District Attorney's Office from fulfilling its obligations. If in Zogheib  
20 the District Attorney's Office was properly able to remain on the case even though the elected  
21 District Attorney had previously represented the defendant, then it can hardly be the case that  
22 the entire District Attorney's Office should be removed when the two deputies have never  
23 been involved with the case.

24           Additionally, even though Defendant Floyd is using an old standard that has already  
25 been repudiated by the Nevada Supreme Court, even under his proposed standard he would  
26 still have no right to removal of the District Attorney's Office. While Defendant Floyd wishes  
27 to use District Attorney Wolfson's words in a Las Vegas Review Journal article as a basis for  
28 removal, he cites to no rule or authority that the District Attorney said anything incorrect or

1 impermissible, either by statute or the Nevada Rules of Professional Conduct. In fact while  
2 Defendant Floyd makes the argument that the State's filing is purely political, District  
3 Attorney Wolfson testified at the Committee on Judiciary hearing on March 31, 2021 and  
4 never once even uttered Defendant Floyd's name. Thus, despite Defendant Floyd's attempt at  
5 casting scrutiny on the timing of the State's efforts to actualize the jury's verdict, he has no  
6 evidence whatsoever that the District Attorney's Office is doing anything improperly that  
7 would warrant its removal from this case.

8 Defendant Floyd argues for removal of the Clark County District Attorney's Office on  
9 political grounds. However, his request is transparent when considering that he has no issue  
10 with any other individual's political statements about the death penalty, so long as the position  
11 favors his own. He is represented by an office that testified in favor of A.B. 395. He is seeking  
12 that the Attorney General's Office take over his case, but he has no problem with the fact that  
13 the Attorney General has made public concerns regarding the death penalty<sup>4</sup>. Apparently the  
14 only entity that is not permitted to speak of the death penalty, in his mind, is the agency that  
15 prosecuted him.

16 He continues his argument by raising hypothetical questions of potential separation of  
17 powers violations such as conversations the District Attorney's Office may have had with the  
18 two Senators. Although there would be nothing improper if conversations about potential  
19 legislation did take place, Defendant Floyd is still unable to present evidence of any such  
20 conversation. Moreover, even the timeline used by Defendant Floyd clearly shows that all  
21 actions taken by the Assembly (not even the Senate where the deputy district attorneys serve)  
22 were matters of public record.

23 Not only is Defendant Floyd's hypothetical not true, but another member of the  
24 Assembly, Clara Thomas, also works as an employee for the District Attorney's Office<sup>5</sup>.  
25 Assemblywoman Thomas voted in favor of A.B. 395, which would abolish the death penalty.  
26 There simply is no merit to the image that Defendant Floyd wants to portray that District

27 <sup>4</sup> David Ferrara, Nevada's top officials disagree on capital punishment, Las Vegas. Rev. J. (Apr. 11, 2021), availab  
28 <https://www.reviewjournal.com/local/local-nevada/nevadas-top-officials-disagree-on-capital-punishment-2325897/>

<sup>5</sup> <https://www.leg.state.nv.us/App/Legislator/A/Assembly/81st2021/17>

1 Attorney Wolfson pressured any of the citizen legislators from voting in a way that deviates  
2 from their own personal conscience.

3 Furthermore, Defendant Floyd makes no mention of the members of the Legislature  
4 that also serve in the Public Defender's Office, including Assemblyman Jason Frierson who  
5 already has voted in favor of the passage of A.B. 395<sup>6</sup>. NRS 260.010 legislatively mandates  
6 that the boards of county commissioners provide for an office of public defender. Thus, similar  
7 to the District Attorney's Office which is legislatively created, public defenders also carry out  
8 an executive function to ensure that the laws are properly being applied within the courts. To  
9 be clear, Assemblyman Frierson absolutely should be able to serve in his legislative and  
10 executive capacities. However, the State finds it curious that Defendant Floyd would lobby to  
11 remove the District Attorney's Office under the guise of a separation of powers argument  
12 while never mentioning members that support A.B. 395 that are part of a non-legislative entity.

13 Defendant Floyd concludes his argument by explaining that the "citizens of the State  
14 of Nevada deserve the assurance that the lawyers representing the State and seeking Mr.  
15 Floyd's execution are doing so to 'see that the laws are faithfully executed.'" *Motion*, p. 13.  
16 As to this statement the State absolutely agrees. The District Attorney's Office is tasked by  
17 law with the responsibility of seeking an order and warrant of execution that satisfies the jury's  
18 judgment of death against Defendant Floyd. To ignore the jury's verdict by not seeking an  
19 order and warrant of execution would be the ultimate failure to faithfully execute the laws of  
20 this State.

## 21 CONCLUSION

22 Based upon the lack of legal arguments, and the lack of a defined conflict of interest,  
23 the State respectfully requests that Defendant Floyd's motion be denied.

24 ///

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28 \_\_\_\_\_  
<sup>6</sup> <https://www.leg.state.nv.us/App/Legislator/A/Assembly/Current/8>

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DATED this 26th day of April, 2021.

Respectfully submitted,  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY /s/ Alexander Chen  
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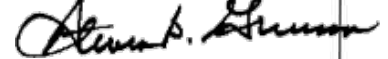
**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that service of the above and foregoing State’s Opposition to Defendant’s Motion to Disqualify Clark County District Attorney’s Office, was made this 26th day of April, 2021, by facsimile transmission to:

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Email: [brad\\_levenson@fd.org](mailto:brad_levenson@fd.org)  
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BY /s/ E. Davis  
Employee for the District Attorney's Office

AC//ed



1 **ROPP**  
2 STEVEN B. WOLFSON  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 ZANE MICHAEL FLOYD,  
13 #1619135

14 Defendant.

CASE NO: 99C159897

DEPT NO: XVII

15 **STATE'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR THE**  
16 **COURT TO ISSUE SECOND SUPPLEMENTAL ORDER OF EXECUTION AND**  
17 **SECOND SUPPLEMENTAL WARRANT OF EXECUTION**

18 DATE OF HEARING: MAY 14, 2021  
19 TIME OF HEARING: 8:30AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
21 District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby  
22 submits the attached Points and Authorities in Reply to Defendant's Opposition to Motion for  
23 the Court to Issue Second Supplemental Order of Execution and Second Supplemental  
24 Warrant of Execution.

25 This reply is made and based upon all the papers and pleadings on file herein, the  
26 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
27 deemed necessary by this Honorable Court.

28 //

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**POINTS AND AUTHORITIES**  
**ARGUMENT**

**THIS COURT CAN ISSUE THE ORDER OF EXECUTION WHILE DEFENDANT'S  
TWO MOTIONS AND THIRD POST-CONVICTION PETITION ARE STILL  
PENDING AND WITHOUT ASSURANCES FROM NDOC**

Defendant requests this Court to defer from issuing the Order of Execution or signing the Warrant of Execution until Defendant has the opportunity to fully litigate his pending motions and third post-conviction Petition. Opposition, at 2. However, this Court may issue the Order of Execution while Defendant's pleadings are still pending without signing the Warrant of Execution.

NRS 175.505(1) provides that when a defendant has exhausted his legal remedies, "if no legal reasons exist prohibiting the execution of the judgment, [the judge] shall make and enter an order requiring the Director of the Department of Corrections to execute the judgment at a specified time." As the State noted in its Motion, Defendant has exhausted all his post-conviction and appellate remedies under NRS 176.505. The Nevada Supreme Court and the United States Court of Appeals for the Ninth Circuit have affirmed the lawfulness of Defendant's convictions. The United States Supreme Court has declined to grant certiorari and there is nothing left for Defendant to appeal. Thus, Defendant has exhausted all other legal remedies.

Defendant has now filed two motions and a third post-conviction Petition attempting to delay this Court from issuing the Order of Execution. Defendant argues that both his Motion to Transfer Case Under EDCR 1.60(H) and Motion to Disqualify the Clark County District Attorney's Office must be fully litigated before this Court can sign the Warrant of Execution. Opposition, at 3-4. Defendant's two motions are simply without merit because this case is properly assigned to this Department under the Homicide Team as a death penalty case and Defendant provides no reason why this Court should disqualify the District Attorney's Office. Regardless, Defendant's two Motions will be litigated and heard by this Court on May 14, 2021, at the same time as the instant Motion Seeking an Order and Execution of Warrant.

1 Therefore, Defendant's two motions will be fully litigated before this Court even has to issue  
2 the Order of Execution.

3 Defendant also argues that this Court should not consider the State's Motion until  
4 Defendant is able to litigate his third post-conviction Petition and it is heard by the Nevada  
5 Supreme Court. Opposition, at 5-7. NRS 176.487 clearly states that a stay based upon the filing  
6 of a postconviction petition should only occur when the writ is "proper." The statute then  
7 delineates criteria for the court to consider. NRS 176.487 reads:

8 In making this determination, the court shall consider whether:

9  
10 1. The petition is the first effort by the petitioner to raise constitutional  
11 claims for relief after a direct appeal from a conviction and the petition raises  
12 claims other than those which could have been raised at trial or on direct  
13 appeal.

14 2. The petition is timely filed and jurisdictionally appropriate and does  
15 not set forth conclusory claims only.

16 3. If the petition is not the first petition for postconviction relief, it  
17 raises constitutional claims which are not procedurally barred by laches, the  
18 law of the case, the doctrines of abuse of the writ or successive petition or any  
19 other procedural default.

20 4. If the petition is a second or successive petition, it presents  
21 substantial grounds upon which relief might be granted and valid justification  
22 for the claims not having been presented in a prior proceeding.

23 5. The petition asserts claims based upon specified facts or law which,  
24 if true, would entitle the petitioner to relief.

25 6. The court cannot decide legal claims which are properly raised or  
26 expeditiously hold an evidentiary hearing on factual claims which are  
27 properly raised before the execution of sentence.

28 Defendant's third Petition "argues he is categorically exempt from the death penalty  
due to Fetal Alcohol Spectrum Disorder (FASD)." Opposition, at 5. However, the issue of  
Defendant's Fetal Alcohol Spectrum Disorder has already been litigated and determined by  
the district court and again by the Nevada Supreme Court. See Findings of Fact, Conclusions  
of Law and Order, April 2, 2008; see also Order of Affirmance, Case No. 51409, November  
17, 2010. Petitioner's third Petition is time-barred, successive, and a further attempt to delay  
his execution. Thus, this Court need not wait for his procedurally barred third Petition to be

1 heard by this Court and the Nevada Supreme Court before issuing the Order of Execution. To  
2 delay the issuance of the Order of Execution merely based on a third time-barred and  
3 successive Petition would essentially give defendants the ability to delay their executions in  
4 perpetuity.

5 Lastly, Defendant claims that this Court should not issue the Order or sign the Warrant  
6 of Execution until the Nevada Attorney General's Office or representatives from the Nevada  
7 Department of Corrections ("NDOC") can appear and "provide assurances" they are prepared  
8 to conduct the execution. Opposition, at 7-15. Specifically, Defendant requests for the  
9 Attorney General's Office and NDOC to provide assurances that: (1) they are prepared to  
10 conduct an execution, (2) whether it is safe to conduct an execution during the COVID-19  
11 pandemic, and (3) they are prepared to conduct the execution at the Nevada State Prison. Id.

12 While Defendant cites to numerous news articles related to the death penalty and  
13 previous death penalty cases from Nevada, Defendant fails to cite to any lawful authority that  
14 the Attorney General's Office or NDOC must provide assurances it is able to carry out the  
15 execution *before* issuing the Order or signing the Warrant. Neither NRS 176.495 nor 176.505  
16 require that NDOC "provide assurances" it is actually able to carry out the execution before  
17 this Court can issue the Order. Instead, NRS 176.355(2) gives the Director of the Department  
18 of Corrections the power to determine the logistics of the execution once there is an Order  
19 from the district court. Defendant cites to no statute that requires the NDOC to issue assurances  
20 of the manner and method or place of execution *before* this Court can issue the Order of  
21 Execution.

22 Defendant claims that NDOC should provide these assurances because of "the speed  
23 with which the CCDA has sought this execution warrant," and that "the rush to execution  
24 sought by the State" may lead to a "botched and tortuous execution." Opposition, at 7, 10. It  
25 is unclear how the State is "rushing" this execution, when Defendant previously asserted that  
26 the State strategically waited to file the Warrant of Execution until it was "politically helpful  
27 timing." Motion to Disqualify Clark County District Attorney's Office, April 14, 2021, at 8-  
28 9. Defendant cannot have it both ways—where he argues the State is both rushing this

1 execution and that the State strategically waited to file the Motion until it was “politically  
2 helpful timing.” The State simply cannot be both “rushing” an execution and delaying it.

3 Moreover, Defendant is concerned because he has not been fully vaccinated against  
4 COVID-19 and needs to be able to visit with his legal team to prepare his application for  
5 clemency to the Pardons Board. Opposition, at 11-13. Defendant’s legal team has clearly been  
6 able to defend his execution up until this point by filing two motions along with two replies,  
7 his third Petition, and the instant Opposition all within the last few weeks and during the  
8 COVID-19 pandemic. It is unclear to the State why NDOC must assure their COVID-19  
9 protocols before this Court can issue the Order so Defendant can meet with his legal team to  
10 apply for clemency—especially when his legal team has already been able to accomplish so  
11 much on his behalf up until this point without any NDOC assurances.

12 Obviously, based on the nature of the COVID-19 pandemic, there is nothing in the  
13 statute that mandates NDOC provide assurances of its COVID protocol for carrying out the  
14 execution. Like the manner, method, and place of execution assurances Defendant requests,  
15 this does not need to be addressed *before* this Court can issue the Order of Execution.  
16 Defendant does not have a legal right to apply for clemency to the Pardons Board before this  
17 Court can issue the Order of Execution. And even if Defendant applies for clemency to the  
18 Pardons Board, his chances of clemency are relatively low based on the nature and severity of  
19 the crime or factors involved. See Criteria for Evaluation of Inmate Applications for Clemency  
20 (attached as “Exhibit 1”). Thus, it is unclear why NDOC must provide assurances for its  
21 COVID-19 protocol before this Court can issue the Order.

22 Defendant’s instant Opposition highlights his many attempts to delay this execution.  
23 Defendant claims this Court must wait to issue the Order until his meritless Motions and  
24 procedurally barred third Petition can be heard. But Defendant has exhausted all his post-  
25 conviction and appellate remedies under NRS 176.505, and there is no reason this Court should  
26 not issue the Order based on his pending pleadings. Moreover, NRS 176.505 does not require  
27 the Attorney General’s Office or NDOC to “provide assurances” regarding the execution itself  
28

1 before this Court can issue the Order. Defendant has exhausted all legal remedies, and thus,  
2 this Court should issue the Order of Execution.

3 **CONCLUSION**

4 Obviously, Defendant is attempting to litigate multiple issues, in multiple courts in an  
5 attempt to thwart his execution. However nothing cited by Defendant is a reason not to  
6 complete the first and initial step of signing an Order of Execution. As such, the State  
7 respectfully requests that the Court follows the statute and issues the Order.

8 DATED this 5th day of May, 2021.

9 Respectfully submitted,

10 STEVEN B. WOLFSON  
11 Clark County District Attorney  
Nevada Bar #001565

12  
13 BY /s/ Alexander Chen  
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15 Chief Deputy District Attorney  
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**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that service of the above and foregoing State's Reply to Defendant's Opposition to Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution, was made this 5th day of May, 2021, by electronic transmission to:

BRAD LEVENSON  
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BY /s/ E. Davis  
Employee for the District Attorney's Office

AC//ed

# EXHIBIT 1

# EXHIBIT 1

ADDRESS ALL COMMUNICATIONS TO:

**PARDONS BOARD**  
1677 OLD HOT SPRINGS ROAD  
SUITE A  
CARSON CITY, NEVADA 89706  
TELEPHONE (775) 687-5049  
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DENISE DAVIS, EXECUTIVE SECRETARY

STATE OF NEVADA



BOARD OF PARDONS

BOARD OF PARDONS  
STEVE SISOLAK  
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KRISTINA PICKERING  
JUSTICE, MEMBER  
JAMES W. HARDESTY  
JUSTICE, MEMBER  
RONALD D. PARRAUIRRE  
JUSTICE, MEMBER  
LIDIA S. STIGLICH  
JUSTICE, MEMBER  
ELISSA F. CADISH  
JUSTICE, MEMBER  
ABBI SILVER  
JUSTICE, MEMBER

## **Criteria for the Evaluation of Inmate Applications for Clemency**

### **Disqualifying Institutional Conduct:**

- 1) Having been housed in disciplinary segregation for any period of time within the past 36 months.
- 2) Any guilty finding of a major disciplinary infraction within the past 24 months or a pending major disciplinary.
- 3) Three or more minor/general disciplinary infractions within the past 18 months.

### **Disqualifying Parole Status:**

- 1) Inmates who are eligible for release on parole to the community within 6 months.
- 2) Inmates who are serving a period of parole revocation or a single sentence imposed while on parole.
- 3) Inmates who have been denied release on parole to the community on the current sentence.

### **Pending Criminal Charges, Investigations or Appeals:**

- 1) Inmates with unresolved criminal charges will not be considered.
- 2) Cases that are under appeal in Nevada or Federal Court will generally not be considered.
- 3) Judicial remedies must be exhausted prior to being eligible for clemency review.
- 4) Inmates who are currently under investigation by the NDOC Inspector General or Attorney General's office will not be considered.



**Time and Sentence Disqualifications:**

- 1) An inmate with a sentence that is projected to discharge to the community within 12 months will not generally be considered.
- 2) Inmates who have served a prior prison sentence for a felony conviction and whose current maximum sentence or combined consecutive maximum sentences are 20 years or less will not be considered.
- 3) Applications from inmates sentenced to death or life without the possibility of parole for an offense committed between November 2, 1982 and July 1, 1995 will not be considered for a commutation of sentence that allows parole eligibility until 20 calendar years have passed.
- 4) Applications from inmates sentenced to death or life without the possibility of parole for an offense committed after July 1, 1995 will not be considered for a commutation of sentence that allows for parole.

**Exceptions:**

Extraordinary circumstances or case factors may exist that mitigate disqualifying criteria. Circumstances may include an act of heroism or a catastrophic event. Mitigating case factors may include the age of the offender at the time the offense was committed in conjunction with little or no prior criminal history.

In order to consider applicants who claim exemptions because of extraordinary circumstances, the applicant must clearly demonstrate why such consideration should be given. Since most inmate families endure hardships while a person is incarcerated, family hardship is not considered an extraordinary circumstance.

**Further consideration for offenses not categorized as the most serious:**

Each application will be considered on its own merit. Inmates meeting the published minimum criteria will be subject to further review and may also be disqualified for one or more of the following reasons:

- 1) The nature and severity of the crime or factors involved.
- 2) Prior criminal history.
- 3) Overall institutional adjustment.
- 4) The result of institutional evaluations (psychological reports, sexual psych panel reports and/or parole or other risk assessments).

**Qualifying Criteria:**

In order to be considered, an inmate must meet the published minimum criteria and demonstrate by clear and convincing evidence at least one of the following:

The applicant has within his or her capacity, made exceptional strides in self-development and self-improvement. The inmate has made responsible use of available rehabilitative programs to address treatment needs;

The applicant is suffering from a critical illness or has a severe and chronic disability, which would be mitigated by release from prison;

The applicant's further incarceration would constitute gross unfairness because of basic inequities involved, including:

- The severity of the sentence received in relation to the sentences received by co-defendants or in relation to other offenders serving sentences for crimes with similar characteristics;
- The extent of the applicant's participation in the offense;
- A history of abuse suffered by the applicant at the hands of the victim that significantly contributed to or brought about the offense.

**Evaluation of certain cases meeting the minimum criteria:**

The following is provided to assist in evaluating applications on inmates who are serving sentences for the most serious of crimes. Cases which have more mitigating case factors will be given more weight toward consideration than those with aggravating influences. **The mitigating factors listed in this document are not intended to lessen or diminish the gravity of the offense.**

***Murder convictions:***

Aggravating influences include:

A substantial degree of premeditation to commit the murder.

- Any evidence of torture or sexual connotations.
- The method in which the person was murdered required concentrated effort (ie, strangulation, stabbing or beating to death as opposed to a single gunshot).
- Mutilation of the victim's body.
- Luring the victim or murder by execution.
- Hiding the body.
- Child or disabled victim.
- Prior history of violence or institutional violence.

## Criteria for Inmate Clemency Applications

Page 4

Mitigating influences include:

- Having been a co-offender during the murder and not having been the person who actually inflicted the wound(s).
- The murder occurred incidentally during the commission of another crime with little or no premeditation to kill.
- The murder occurred while the offender was in a heightened emotional state, or was influenced by abuse inflicted by the victim.
- The offender was young when the murder was committed.

### *Sex offenses:*

Aggravating influences:

- The offender has prior arrests or convictions for sex related offenses.
- The victim was tied up or forcibly taken to another location.
- The victim was a child, elderly, or physically or mentally disabled.
- There were multiple victims.
- The duration of the offense lasted more than three hours or was repeated multiple times.
- The offense was planned or premeditated.
- The use of weapons or objects.
- The offender forcibly assaulted the victim, or threatened the use of force or other violence to coerce compliance.

Mitigating influences:

- The offense occurred with an adult victim, was situational, not premeditated and occurred only one time and the offender has no prior instances of sexual deviance or violence.
- The activity appeared to be consensual in nature and the offender has no prior arrests or convictions that are sexual or violent in nature (ie, lewdness with a minor and the minor is sexually active and the offender is not significantly older than the victim or the offender operates in a diminished capacity).

Criteria for Inmate Clemency Applications

Page 5

**Inquiries and Correspondence:**

The Executive Secretary and staff for the Pardons Board can be reached at (775) 687-5049.  
Correspondence should be addressed to:

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Nevada state Senator Nicole Cannizzaro, (Ethan Miller/Getty Images)

POLITICAL REPORT

## NEVADA PROSECUTORS ARE STANDING IN THE WAY OF ABOLISHING THE DEATH PENALTY

**Time is running out for the state Senate to advance a bill repealing the death penalty. Two influential Democratic senators also work as prosecutors, and the state's DA association is fighting the reform.**

Nevada, a state where district attorneys are fond of death sentences, is close to repealing capital punishment. When the Assembly passed a bill to abolish the death penalty in April, the chamber's Democrats, who hold the majority, all voted in its favor, sending it to the Democrat-controlled Senate.

But a pair of Democratic senators, both of whom work as prosecutors when the legislature is not in session, may derail the effort. Nicole Cannizzaro is the Senate majority leader and has not committed to bringing forward the legislation, Assembly Bill 395. Melanie Scheible leads the Judiciary Committee, which has yet to hold a hearing or vote on the bill. The clock is ticking; the bill would need to pass the committee by next week, and the entire legislative session is winding down at the end of May.

Cannizzaro and Scheible are deputy district attorneys in the office of Clark County (Las Vegas) DA Steve Wolfson. Wolfson is a staunch foe of death penalty abolition who has sought death sentences in dozens of cases over his tenure, testified against AB 395, and is trying to schedule an execution just as this debate is coming to a head in the state Capitol.

**Daniel Nicheanian**

May 07, 2021

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"There's an apparent conflict of interest, where the people that are making laws are enforcing laws," Scott Coffee, a longtime public defender in Clark County who has worked on many capital cases, told The Appeal: Political Report. "Walking into that office after repealing the death penalty would be kind of like walking into the Red Sox dugout after trading Babe Ruth." Neither Cannizzaro nor Scheible responded to requests for comment for this article.

The Nevada Association of District Attorneys, the state's prosecutorial lobby, has been urging lawmakers to reject AB 395. Its president, Elko County DA Tyler Ingram, testified against abolishing the death penalty in the Assembly. "Throughout Nevada, prosecutors make the decision to seek the death penalty sparingly and judiciously," Ingram told the Assembly. "It is reserved for the worst of the worst."

But Nevada prosecutors have pursued the death penalty so frequently that they have helped make their state an outlier even by national standards.

Nevada has about 70 people on death row. Relative to the state's population, that is the second-highest number in the country, behind Alabama. The numbers are "completely out of whack with the rest of the country and the rest of the free world, to be quite honest," said Coffee, who blames a "culture" where DAs seek death sentences "in volume because it's always been sought in volume."

And state prosecutors have filed notices seeking death sentences in dozens of additional cases—but have either failed to secure them or else dropped their quest. Critics say prosecutors use these notices to gain leverage in plea negotiations.

The Nevada District Attorneys Association, contacted through its president and through two registered lobbyists, did not respond to requests for comment.

For Assemblymember Steve Yeager a Democrat who is a chief sponsor of AB 395, the death penalty gives prosecutors an alarming degree of discretion over someone's life.

Yeager worked as a public defender in Clark County for eight years, going up against the county's prosecutors. He says he already opposed the death penalty before that experience, but his resolve hardened when he witnessed the "unjustifiable differences" in how prosecutors handled similar cases. A disproportionate share of the people on Nevada's death row are Black, and Yeager says last summer's protests for racial justice have helped push this bill further than similar measures have gone in the past.

AB 395, as currently drafted, would commute the sentences of people on Nevada's death row to life without the possibility of parole—in addition to barring future death sentences.

Nevada has not executed anyone since 2006, in part due to its difficulties obtaining execution drugs from manufacturers. But abolition advocates point to the resurgence of federal executions under President Donald Trump to warn that a pause could end at any moment.

Wolfson, the Clark County DA, is looking to break Nevada's stretch by trying to schedule an execution for Zane Michael Floyd, who was sentenced to death in 2000 for the murders of four people. There is a hearing scheduled in state court for next week, shortly before the deadline by which the Judiciary Committee must act on AB 395, though a federal judge said on Thursday that he may intervene to block the proceedings.

Holly Welborn, policy director at the ACLU of Nevada and a member of the Nevada Coalition Against the Death Penalty, says the DAs' involvement in the death penalty debate this year mirrors how they've torpedoed past criminal justice reform proposals. She regrets that lawmakers let them have such sway in legislative proceedings.

"It's almost like they have a veto, that everything has to be signed off by the DAs, by some law enforcement entity," Welborn said. Referencing a 2019 omnibus reform bill that several DAs opposed that was weakened before its final passage, she added, "It seems that every change in a bill is at the request of law enforcement, who then still show up and oppose these measures."

This dynamic has played out before, in ways strikingly similar to the current debate on the death penalty.

In 2019, the Assembly overwhelmingly passed legislation to limit civil asset forfeiture. Advocates who supported the bill called on Cannizzaro to allow a Senate vote on the bill, much like they are doing now with AB 395. But the bill never received a vote in the Senate.

The Nevada District Attorneys Association testified against that asset forfeiture bill in the Senate's Judiciary Committee. This year, when lawmakers introduced a watered down version that also has yet to get a vote, the association testified against it again. The group has also been resisting a bill that would toughen use-of-force standards for police.

**Daniel Nchanian**

May 07, 2021

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Throughout the country, DAs and their statewide associations play a similar role of adamantly fighting reform, but they are facing a reckoning in some states. Reform advocates in Nevada hope their state can follow suit. “This is something that we’re not tolerating anymore,” Wellborn said, describing renewed efforts by criminal justice reform advocates to expand whose voices are heard at the state Capitol.

Leslie Turner, an organizer with Mass Liberation, credits AB 395’s progress to community organizing. “We really focused on getting into impacted communities and empowering our own community members, reducing the stigma and shame about having been impacted by the criminal justice system,” she said. “And I think that that has created a lot of momentum around criminal justice reform in general.”

“There is a difference between the emotional satisfaction that comes from revenge, versus actual justice,” Turner added about the death penalty. “Justice to me is making sure that this doesn’t happen in the future. We’re having three or four mass shootings a week, because we never actually got to the root cause of why this was happening. ... We just react over and over again. I think there’s just a mass refusal in the community to accept this anymore.”

Local elections have also added to the influence of public defenders, sparking new fault lines even within the Democratic Party. In addition to former public defender Yeager, the chief sponsor of AB 395 in the Senate—Democrat James Ohrenschall—works as a public defender in Clark County when the legislature is not in session.

Public defenders also secured a string of victories in judicial races in Clark County last year after running on promises to bring a decarceral outlook to the bench. In response, Wolfson called on the state to move away from electing its judges. Wolfson himself is up for re-election as DA in 2022.

The Nevada Democratic Party has faced broader turmoil this year. A slate aligned with the Democratic Socialists of America took over the leadership of the state party. And Judith Whitmer, the incoming state party chairperson, supports abolishing the death penalty.

Even if the Senate were to pass AB 395, though, Democratic Governor Steve Sisolak has tentatively indicated he may block the legislation. He said he would have a “hard time” supporting a bill that fully abolishes the death penalty.

Death penalty opponents remain hopeful that the state’s broad political transformations, combined with the reckoning brought about by protests and the nationwide tide against executions, can outweigh Nevada’s propensity for capital punishment.

Wellborn invoked the anti-death penalty movement’s recent triumph in Virginia, another state that long embraced executions. “We know that the death penalty system is too broken to fix in the state of Nevada, and anywhere else in this country,” she said. “Virginia at one time had the highest rate of executions in the country. If they can do it, we certainly can do it here in Nevada.”

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### POLITICS

# Democratic leaders mum on bill to ban death penalty as deadline looms at the Legislature

*State senators have three days to act on the measure ahead of Friday cutoff for sending bills to the floor*

**James DeHaven** Reno Gazette Journal

Published 3:08 p.m. PT May 11, 2021

After weeks of delays and finger-pointing, proponents are starting to get very nervous about long-awaited legislation to abolish the death penalty in Nevada.

Backers of Assembly Bill 395, which would convert all existing death sentences into life sentences without parole, last month celebrated a rare legislative victory that put them closer than they've ever been to repealing the Silver State's capital punishment law.

But AB 395 is yet to be considered in the Senate, where its fate will depend on a pair of legislators employed by one of the state's most prominent death penalty proponents.

**ICYMI:** Nevada Assembly advances death penalty ban in historic vote for lethal injection opponents

**Related:** Nevada Assembly speaker was sued over death penalty ban's demise — he's not worried

State Sens. Nicole Cannizzaro and Melanie Scheible, both Democrats from Las Vegas, work as criminal prosecutors under Clark County District Attorney Steve Wolfson — who not only supports capital punishment, but is actively seeking an execution date for a man convicted of walking into a Las Vegas supermarket and killing four people in 1999.

Neither Cannizzaro, the state Senate Majority Leader, nor Scheible, who chairs the chamber's Judiciary Committee, have committed to giving the bill a hearing.

Both have hinted the measure would have a better chance of meeting Friday's crucial bill passage deadline if it were amended to address concerns raised by Gov. Steve Sisolak.

Sisolak, a practicing Catholic, has expressed reservations about doing away with the death penalty, and Democratic allies in the statehouse don't appear in any hurry to make him put his signature where his mouth is.

The first-term governor said at an April press conference that he opposes the death penalty in most circumstances, but added that some "incredibly severe" situations may warrant capital punishment.

Referencing the October 1, 2017 mass shooting at the Route 91 Harvest Music festival in Las Vegas, Sisolak said he "has a hard time with the idea of a complete abolishment of the death penalty."

Scheible, a once outspoken opponent of the death penalty, declined to give specifics on ongoing talks to amend the measure.

"We're still working on it," she added in a brief Tuesday interview with the Reno Gazette Journal. "We're reviewing the bill, talking with the sponsor. ... We are trying to find a path forward."



Cannizzaro had similarly little to say on the subject.

“We’re having ongoing conversations,” she told a reporter. “We’ll see where they go.”

Cannizzaro and her colleagues have three days to make up their mind about the death penalty ahead of a Friday deadline to move bills out of both chambers of the Legislature. Democrats currently enjoy a three-seat majority in the state Senate.

AB 395 passed the Assembly last month on a strict party-line vote, with all 16 Republicans opposed.

Advocates have made at least four failed attempts to repeal capital punishment. The most recent effort, carried by ex-Assemblyman Ozzie Fumo in 2019, died without receiving a hearing.

Nevada has imposed 189 death sentences since the penalty was reinstated in 1976. More than half of those were reversed on appeal. Only 12 executions were actually carried out.

Legislators are scheduled to wrap up the state’s hectic, 120-day lawmaking session on May 31.

*James DeHaven is the politics reporter for the Reno Gazette Journal. He covers campaigns, the Nevada Legislature and everything in between. Support his work by subscribing to RGJ.com right here.*

**U.S.**

## Nevada is Trying to Abolish the Death Penalty— Democrats Stand In the Way

BY **KHALEDA RAHMAN** ON 5/11/21 AT 3:44 AM EDT

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**U.S.****NEVADA****DEATH PENALTY****EXECUTIONS****CAPITAL PUNISHMENT**

When Monique Normand's elderly uncle, Willie Normand, was murdered in 2017, the death penalty wasn't something that occurred to her.

"My family was completely devastated," Normand, 39, told *Newsweek*. "I remember my dad calling a couple of days later, after they found the woman who murdered him... one of the things he shared was, 'I don't want to see the death penalty.'

"I wasn't even thinking about that. And I sat with that and I was like, 'Yeah, he's right.' It just made me anxious even thinking about it."

She added: "We felt it would be more traumatizing to then put this person to death."

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Normand said she later discovered that Shaunice McKinley, the young woman who fatally stabbed her 80-year-old uncle and stole his car, had endured trauma throughout her life as well.

"Not that that justifies anything that she did," Normand said, "but for me, it was helpful to understand."

Normand was studying mass incarceration at the time, and is now a therapist and activist who serves on the board of the Nevada Coalition Against the Death Penalty.



Monique Normand, who serves on the board of the Nevada Coalition Against the Death Penalty, says she is hopeful the state will soon repeal the death penalty.

MONIQUE NORMAND

### NEWSWEEK SUBSCRIPTION OFFERS >

Her hopes for an end to capital punishment in the state were buoyed after the Nevada Assembly recently voted to advance a bill to repeal the death penalty. Every Democratic member of the chamber approved the bill, sending it to the state Senate, where Democrats also hold a majority.

Similar bills have been introduced several times over the past 20 years, but had never passed a policy committee before.

In its current form, Assembly Bill 395 would commute the sentences of inmates on death row to life imprisonment without the possibility of parole, and bar future death sentences.

### **'An uphill battle'**

"We're going to do everything in our power to ensure that we get it through the Senate as well," Holly Welborn, the policy director of the American Civil Liberties Union of Nevada, told *Newsweek*.

But according to non-profit news website The Appeal, two Democratic state senators who work as prosecutors when the legislature is not in session are stalling the effort.

AB 395 needs to pass the Senate Judiciary Committee, which has yet to hold a hearing or vote on the bill, by next week, before the entire legislative session winds down at the end of this month.

Nicole Cannizzaro, the Senate majority leader, has reportedly not committed to giving the bill a hearing. Both Cannizzaro and Melanie Scheible, who chairs the Judiciary Committee, have day jobs at the Clark County District Attorney's Office.

Cannizzaro and Scheible have been contacted for comment.

Even if the bill passes the Democrat-controlled state Senate, Nevada's Gov. Steve Sisolak, also a Democrat, has suggested that he may not sign it into law. At a news conference last month, he said he "has a hard time with the idea of a complete abolishment of the death penalty."

Sisolak's office has been contacted for additional comment.

"It's going to be an uphill battle," Welborn told *Newsweek*. "We're very aware of the challenges ahead of us, but we do have a broad coalition that's ready to face those challenges and insist that we push this through this year."

There are 70 inmates on Nevada's death row, according to the Death Penalty Information Center, but the state has not executed anyone since 2006, partly due

to difficulties in procuring lethal injection drugs.

But time is running out for some. The Associated Press reported that prosecutors have proposed Zane Michael Floyd, a mass murderer, be executed in late July.

Still, Normand says she is "feeling positive" that Nevada will soon follow in the footsteps of Virginia in abolishing the death penalty. "I definitely think this is the year, this is the year for change," she said.

### **'Rife with racial bias'**

She believes the push in Nevada has been accelerated by the racial justice protests that took place across the nation following the murder of George Floyd, a 46-year-old Black man killed by a white police officer, in Minneapolis almost a year ago.

Many Americans were "just not seeing the discrimination, the racial bias that has been taking place in this country for years," Normand, who is Black, said.

"There's been lots of people that have been saying that for years, but it took this horrific thing to happen for people to see how biased our systems are, especially when it comes to mass incarceration and especially when it comes to policing."

The application of the death penalty in Nevada is "rife with racial bias," Welborn explained. Around 40 percent of those on Nevada's death row are Black, she said, though Black people account for about nine percent of the state's population.

"When district attorneys pursue the death penalty, they do so in a racially biased manner," she said, adding that three innocent people in Nevada have been released from death row.

"We can trace the origins of the modern death penalty to slavery, and to the Restoration era, and to the lynching of Black Americans," Welborn added.





Anti-death penalty activist Judy Coode of Pax Christi International demonstrates in front of the U.S. Justice Department's Robert F. Kennedy Building July 13, 2020 in Washington, DC.

CHIP SOMODEVILLA/GETTY IMAGES

"If we're really fighting toward racial justice, we cannot move toward that goal while having the death penalty available to prosecutors. It's well past time to put this behind us."

Cassandra Stubbs, the director of the ACLU Capital Punishment Project, told *Newsweek* that the situation in Nevada is playing out amid a national movement towards the end of capital punishment in the U.S.

"Now, for the first time in this country, we have a majority of states that prohibit executions," Stubbs said.

"Not coincidentally, this comes at a time when public support for the death penalty is just continuing to crater," she added, citing a 2019 Gallup poll that saw a majority of Americans say life imprisonment without parole was a better punishment for murder than the death penalty.

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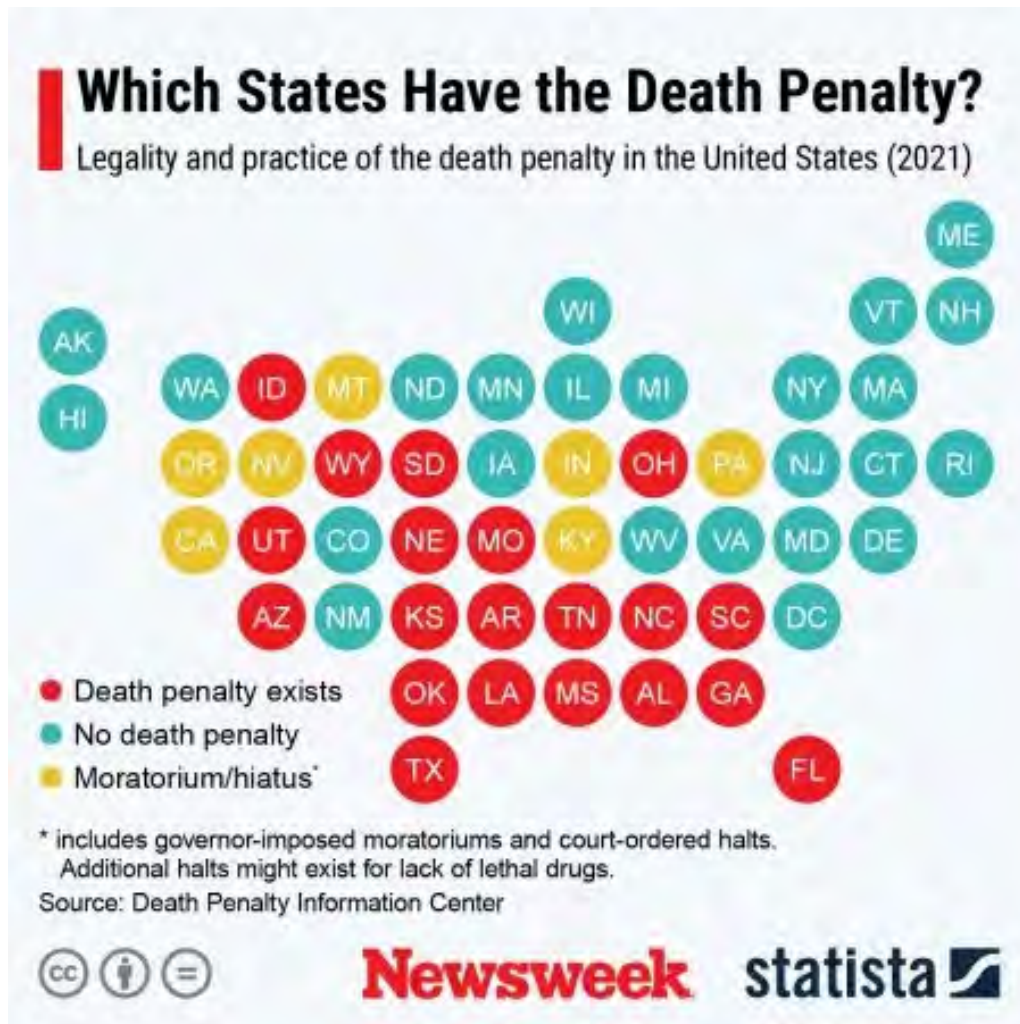
"I think there's no question that Nevada is part of this national rejection of capital punishment," Stubbs said. "There hasn't been execution west of Texas in the last five years. The majority of states in the West are both not executing anyone and seriously considering repeal legislation."

Stubbs added that the spree of federal executions during the last months of Donald Trump's administration, amid the raging coronavirus pandemic, led to increased support for abolition.

"The Federal executions were a barbaric spree that crystallized for many so many of the problems that we see with the death penalty," she said.

"We saw that the application of the federal death penalty is just so fundamentally unfair and broken. People with serious mental illness who were incompetent to be executed were executed without fair process. We saw the racial bias and racism of the federal death penalty on full display."

The graphic below, provided by Statista, shows which U.S. states have the death penalty in 2021.



The legality and practice of the death penalty in the United States.  
STATISTA



# Governor Sisolak issues statement regarding Assembly Bill 395

Carson City, NV - May 13, 2021

Today, Nevada Governor Steve Sisolak issued the following statement on Assembly Bill 395:

“At this time, there is no path forward for Assembly Bill 395 this legislative session. I’ve been clear on my position that capital punishment should be sought and used less often, but I believe there are severe situations that warrant it. I understand there are those who will be disappointed by this outcome, however the process of determining which crimes are severe enough to warrant this punishment deserves thoughtful consideration.

As Governor, I strongly believe that this discussion requires robust communication and input so that the voices of victims’ families and the advocates of the proposed measure can be heard. I remain committed to working on reforming the criminal justice system to ensure fairness in policing and sentencing.”

###

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[press@gov.nv.gov](mailto:press@gov.nv.gov)

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## SISOLAK, DEMOCRATS SPIKE EFFORTS TO REPEAL THE DEATH PENALTY IN NEVADA



MICHELLE RINDELS

MAY 13TH, 2021 - 1:09PM

Nevada leaders are scrapping a bill that would have banned capital punishment in the state, dashing the hopes of advocates who had celebrated that the measure had made more progress than ever before in the Legislature.

In a statement on Thursday, Gov. Steve Sisolak said there is “no path forward” for efforts by Democratic lawmakers to abolish capital punishment, striking a blow to the hopes of criminal justice reform advocates that the Democratic trifecta in the Legislature and governor’s office would finally take steps to end the death penalty.

“I’ve been clear on my position that capital punishment should be sought and used less often, but I believe there are severe situations that warrant it,” the governor said in a statement. “I understand there are those who will be disappointed by this outcome, however the process of determining which crimes are severe enough to warrant this punishment deserves thoughtful consideration.”

The bill, [AB395, passed out of the Assembly](#) in April on a 26-16 vote with all Republicans in opposition. But key decision makers in the Senate — including two top leaders whose day jobs are working for Clark County District Attorney Steve Wolfson, who is a prominent opponent of abolition — did not schedule the measure for a hearing ahead of a key Friday deadline for bills to pass from their second house committee.

Asked about criticism that the Legislature is not living up to its commitments to address racial disparities in the criminal justice system — racial disparity is a major concern raised in the death penalty debate — Senate Majority Leader Nicole Cannizzaro (D-Las Vegas) defended the body’s work and pointed to action taken on other issues including bail reform and police use of force.

“People who live in our communities want to have a fair system. They want to know that if they find themselves or their family members in there that is fair. They want to know that when they’re victims of crime, that people are going to be treated fairly and their voices are going to be heard,” she told reporters in a brief interview after Sisolak made his announcement. “We’ve done a lot of work here in the state of Nevada and I would encourage anyone who thinks we’re not doing enough to take a look at other states and ask whether or not we are, because I know when I talk to colleagues from other states, they are amazed that, that we are able to make such progress.”

Assembly Speaker Jason Frierson said in a statement that advocates had worked on potential amendments to restrict but not fully abolish the death penalty, but acknowledged that it had been a “difficult task with all of the many considerations that go into these cases.”

"While we are disappointed that we could not get across the finish line this session on AB395, we have to accept that there is a process and many of our priorities don't ultimately come to fruition," he said in the statement. "We will continue working on policies we believe are sound and continue working with our colleagues on meaningful reform to the inequities that exist in our criminal justice system."

Assemblyman [Steve Yeager](#) (D-Las Vegas), who presented the bill and chairs the committee that sponsored it, said it was time to refocus and move on to other tasks of the session.

"There's disappointment, but ... we live to fight another day and I certainly don't feel discouraged," he said. "Certainly doesn't take away with some of the other really good criminal justice reform measures that we've been doing over the last three sessions, and I just hope that's not lost. I mean, we really have made substantial progress. This was one piece of that."

Advocates had [turned up the pressure on lawmakers](#), holding a press conference early this week to argue that capital punishment disproportionately affects people of color.

"This past summer, there were promises made about reforms around racial justice issues," Yvette Williams, chair of the Clark County Black Caucus, said at the press conference. "We're looking very closely and paying attention to not only what's voted on the floor, but what bills come before each committee ... who's deciding what's going to be heard."

Supporters of the bill aired their grievances during the public comment period at a meeting of the Senate Judiciary Committee, which would have been the place where the bill was heard. Officials with the ACLU of Nevada said the blame for future executions would lie with lawmakers who opted not to hear the bill and end the practice.

"Party leaders in the Senate and Governor's office have shown that their commitment to meaningful reform is nothing but lip service," said Athar Haseebullah, the group's executive director. "The people of Nevada are ready to end the death penalty. They deserve to have a voice, and they deserve true leadership in the Legislature rather than just political cronyism. This is an embarrassment."

In spite of polls, advertising and other lobbying activities, Sisolak maintained he was [uncomfortable with repealing the death penalty in extreme cases](#) such as mass shootings.

The demise of the bill comes as the Clark County district attorney's office is pushing for the execution for [Zane Floyd](#), who was convicted of killing four people inside a Las Vegas grocery store two decades ago. Prosecutors want to schedule an execution in late July after the state prison director testified that the system needs at least four months to [prepare for a lethal injection](#).

The execution would be Nevada's first enactment of capital punishment in 15 years. The state came close to executing Scott Dozier in 2018, but a protracted legal fight about the drugs in the lethal injection delayed the execution, and Dozier died by suicide in 2019.



*Reporters Riley Snyder and Tabitha Mueller contributed to this report. Updated at 2:59 p.m. on 5/13/21 to add comment from ACLU, Yeager.*

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- Steve Wolfson - \$1,000.00
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- Yvette Williams - \$120.00

**Michelle Rindels**

Michelle Rindels is a staff writer and assistant editor whose coverage areas include the economic repercussions of the pandemic, the cannabis industry, criminal justice and the Legislature. She also oversees the Indy's internship program and contributes to the Indy's Spanish-language coverage.

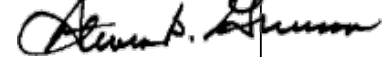


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4  
5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7  
8 **THE STATE OF NEVADA,**  
9 **Plaintiff,**

10 **vs.**

11 **ZANE M. FLOYD,**  
12 **Defendant.**

CASE#: 99C159897  
A21-832852-W

DEPT. XVII

13  
14 **BEFORE THE HONORABLE JACOB VILLANI, DISTRICT COURT JUDGE**  
15 **FRIDAY, MAY 14, 2021**

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **ALL PENDING MOTIONS**

18 **APPEARANCES:**

19 **For the State:**

**ALEXANDER G. CHEN, ESQ.**  
**Chief Deputy District Attorney**  
**BRIANNA STUTZ, ESQ.**  
**Deputy District Attorney**

22 **For the Defendant:**

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25 **RECORDED BY: CYNTHIA GEORGILLAS, COURT RECORDER**

1 Las Vegas, Nevada, Friday, May 14, 2021

2  
3 [Case called at 8:28 a.m.]

4 THE COURT: The Zane Floyd matter. Appearances for the  
5 record please.

6 MR. CHEN: Alex Chen and Brianna Stutz on behalf of the  
7 State.

8 MR. LEVENSON: Good morning, Your Honor, Brad  
9 Levenson and David Anthony from the Federal Public Defender's Office  
10 on behalf of Zane Floyd. Mr. Floyd has waived his appearance today.  
11 And we do not believe he's appearing by video either.

12 THE COURT: All right. Thank you.

13 All right. We have some matters in court on calendar today.  
14 The first one we should deal with is the motion to transfer the case  
15 because that's -- we can't go any further depending on how that turns  
16 out. So go ahead counsel.

17 MR. ANTHONY: Thank you, Your Honor. So after reviewing  
18 our pleading and the pleading of the State, it appears that there are  
19 certain issues that are really not in dispute today. And to start out with, I  
20 think that we can all agree that what is most controlling here are the  
21 statutes passed by the legislature. The statutes passed by the  
22 legislature control over any inconsistent court rules. And so what I'd like  
23 to do is I'd like to start by talking about the applicable statutes that we've  
24 cited in our motion that we believe dictate the outcome of the transfer  
25 motion. And that is the NRS 176.495 and 176.505.

1 Both of those statutes refer to quote: the court in which the  
2 conviction was had. And 505 refers to the court in which the death  
3 sentence was obtained. And those are the courts that are referenced in  
4 those statutory provisions. We believe that applying those statutes has  
5 to result in the conclusion that this case has to be heard in Department  
6 V. Department V was the department that heard the trial. It was the one  
7 that imposed the sentence of death. All of the prior post-conviction  
8 proceedings also occurred in Department V.

9 Which also raises another statutory provision that is relevant  
10 here and that is NRS 34.730. When the habeas rules or the statute talks  
11 about the assignment of post-conviction matters, it states under section  
12 (3)(b) that the case needs to be assigned to the initial judge or court.  
13 We believe that interpreting that language has to result in the conclusion  
14 that we're talking about the particular department that heard the case.

15 And so as far as the statutory scheme itself, we believe it's  
16 very clear on this issue and that it makes sense the reason that the  
17 legislature would have the statute worded that way. Because they want  
18 to make sure that the court that initially heard the case and that has the  
19 case file is the same court that is seeing the case throughout.

20 And in my own experience litigating capital habeas matters,  
21 that is the way that it seems to work, which is that if a new capital  
22 habeas petition is filed I haven't had any case that's been randomly  
23 assigned to a murder court judge. Instead it's in the department that it  
24 was in for the prior proceedings, for the trial, for the sentence, for the  
25 prior post-conviction matter.

1           And so I think just right off to start with, what we would say is  
2 that the statutes controlled here. The State doesn't have a contrary  
3 position to argue on this point. And if we can resolve it on the statutory  
4 grounds, I don't think we even need to get to the next level which is to  
5 talk about the relevant court rules and the issue about -- you know, the  
6 fact that -- you know, as we sit here right now we don't have any  
7 information as to why the case migrated to Department XVII. Usually  
8 there is a clerk's order, like there is in the state habeas case, that notes  
9 when a case is being transferred from one place to another. And that's  
10 not something that we have here either.

11           So to the extent that the Court doesn't believe that this issue  
12 can be resolved based on the statute, what we would ask for as an  
13 alternative is we would ask for a hearing to determine the whats and the  
14 whys about why the case was transferred to Department XVII and  
15 whether that was an appropriate transfer. And we believe based on the  
16 statutory scheme primarily, but also based on the statewide rules of  
17 criminal procedure first of all, and secondly the Chief Judge's order last  
18 December assigning criminal cases from Department V to Department I  
19 that we believe for that reason that if the Court isn't inclined to accept  
20 the argument about Department V, then it appears that Department I  
21 would be the alternative place if we're going based on the Court rules as  
22 opposed to what we believe is clearly required by the statute.

23           THE COURT: Is your argument that this matter should just  
24 stay with the department. It's not so much to stay with the judge.  
25 Because we know that the judge who handled this matter back in the

1 day is no longer on the bench so that Judge can't hear the case. And if  
2 the department now is 100% civil, do you want a civil judge hearing this  
3 case? And as you know we have some judges in history of our court  
4 system that handle construction defect. Would you want a construction  
5 defect judge handling this matter?

6 MR. ANTHONY: Well to answer the Court's question I think  
7 that the statutory scheme is pretty clear on this point. And it -- if you  
8 look -- again we're talking about 34.730, it says to the original judge or  
9 court.

10 And the other thing that was interesting, Your Honor, when I  
11 was researching the legislative history on this, is that I looked back in  
12 time when we had a three judge panel statute. And the time we had a  
13 three judge panel statute under NRS 176.505, they had a provision that  
14 said that if the execution warrant was going to be signed, it had to be  
15 signed by the judge who took the plea or his successor. And so when  
16 we have a three judge panel statute, it was even more clear that what  
17 we were talking about is the judge or his successor.

18 So in answer to the Court's question, absolutely, it's our  
19 contention that this is talking about the department that heard the case.  
20 And we believe that is required and it's elucidated by NRS 34.730. And  
21 also I believe it's elucidated by the legislative history. Because when we  
22 have a three judge panel system that's exactly the way the statute was  
23 worded. It said the judge who took the plea or his successor, and that to  
24 me, that means that we're talking about the department.

25 THE COURT: The -- neither party cited this. We did our

1 research and I'm not sure what -- one moment please.

2 [Colloquy between the Court and staff]

3 THE COURT: There's a -- we were able to pull up and I don't  
4 know the official name for it, but it appears to be history sheet through  
5 Odyssey. And this case all of Department V's cases were transferred to  
6 this department December 28<sup>th</sup>, 2008. And if this is accurate, am I not  
7 the successor Judge for this particular matter?

8 MR. ANTHONY: Well, first of all, Your Honor, what I would  
9 say is that I'm at a little bit of a loss. When I looked at Odyssey I didn't  
10 see any notation of any transfer motion. So I haven't seen what the  
11 Court's looking at --

12 THE COURT: We're going run two -- we're going two run  
13 copies for both sides.

14 MR. ANTHONY: Okay, yeah, I would appreciate taking a look  
15 at that. But I guess what I would say, again coming back, Your Honor,  
16 to the more fundamental point. If the statutory scheme controls, then the  
17 statutory scheme controls over any court rules that are inconsistent with  
18 the statutory scheme. And that's our position.

19 Normally, Your Honor, this isn't an issue that arises. Because  
20 as we know most cases are processed, they might have a post-  
21 conviction action and then, you know, the case is concluded. Capital  
22 cases are unique, because we find ourselves at the end of the line. And  
23 as the Court said, and again I'm going to assume that, you know, the  
24 notation that the Court mentioned was accurate in every way, that there  
25 may be things that happen subsequently by court rule that might move a

1 case around. But it's our contention that it's the statutory scheme that  
2 controls here.

3 And the case that we cited is very clear on that proposition.  
4 And I don't think that the State really has even a contrary position about  
5 what controls. And we all know that that statutes control to the extent  
6 there's any inconsistency.

7 THE COURT: All right. Thank you, counsel.

8 [Noise coming from Bluejeans videoconference]

9 THE COURT: If anyone is on Bluejeans please mute your  
10 phone or computer. We have another hearing going on. Thank you.

11 State.

12 MR. CHEN: Thank you, Judge. So the statute does control,  
13 but our position is essentially that the statute -- that defense is making  
14 an argument that almost defies logic by going so strict about the words  
15 in the statute that this case could never receive an order or warrant of  
16 execution.

17 And what I mean by that is this case is 20 years in the making.  
18 How many, as you mentioned, Your Honor, earlier, how many judges  
19 are on the bench for that long or even longer based upon that length of  
20 what the post-conviction proceeding. Here what we have is that all the  
21 cases that were death penalty were randomly assigned to one of these  
22 four homicide tracks.

23 And what I can say about the statutory construction that Mr.  
24 Anthony's referencing is that he even said that when the three judge  
25 panel was in place the statute said his successor. So are we to assume

1 that now that for history we've had female judges, we have a majority of  
2 female judges here in the Eighth Judicial District Court, that no female  
3 judge could potentially ever hear this case simply because the statute at  
4 one point said his. I think the spirit of that statute is that the case is  
5 supposed to go strictly to the department to which it's assigned. If  
6 Department V cases in fact were transferred here, then we believe that  
7 this is the appropriate department. That's all I have.

8 THE COURT: All right. I'll give counsel each an opportunity  
9 to review the document and see if you just want to add anything. I know  
10 I'm just handing it to you right now.

11 [Pause]

12 THE COURT: Anything to add?

13 MR. ANTHONY: Your Honor, I would just say obviously from  
14 what the Court notice shows, it shows that the case was transferred from  
15 Judge Glass. That was Department V. So that is consistent with our  
16 position. Of course, I haven't actually seen this page before, but I have  
17 no reason to doubt that it's authentic and I don't have any dispute about  
18 whatever this is what in fact it purports to be. So I don't have any debate  
19 about that.

20 The only thing I would say, Your Honor, just very briefly. In  
21 response to the State's argument, statutes in the olden days used to use  
22 the word he. And even though they use the word he they also apply to  
23 female judges, you know. So I don't think that the argument about his  
24 successor necessarily meant that in 2001, a woman couldn't sit on a  
25 three judge panel.



1 THE COURT: I'm not buying that argument so --

2 MR. ANTHONY: Oh, okay.

3 THE COURT: That's fine.

4 MR. ANTHONY: All right.

5 THE COURT: I didn't really mean to cut you off, but you didn't  
6 need to go any further because I'm not buying the argument that it's he  
7 so we can't have a female judge hear this case. So --

8 MR. ANTHONY: Understood, Your Honor.

9 THE COURT: -- anything else regarding this sheet or  
10 anything else regarding your argument?

11 MR. ANTHONY: Nothing else on the sheet, Your Honor,  
12 relevant to our argument.

13 THE COURT: And how about from the State?

14 MR. CHEN: No, Your Honor.

15 THE COURT: All right. Under the statute it says successor  
16 judge by court. By 2008, I was, since all the cases were transferred out  
17 of that department, I am the successor judge on this particular case.  
18 Also I find that the creation of the homicide team allows me to hear this  
19 matter. And so I am going to deny the motion.

20 The next motion is to disqualify the DA's Office. And I just  
21 want to make sure, counsel, I don't know Mr. Anthony, Mr. Levenson,  
22 who is going to handle this. I do have a question for each side. Defense  
23 is not arguing a conflict of interest or arguing to separation of powers.  
24 Because I think the State, in their opposition, addressed the separation  
25 of powers, but then the also talked about a conflict of interest. So I just

1 want to make sure we're strictly separation of powers argument. Is that  
2 correct?

3 MR. LEVENSON: That's correct, separation of powers.

4 THE COURT: Okay.

5 MR. LEVENSON: And, Your Honor, may I approach the  
6 lectern?

7 THE COURT: Sure.

8 MR. LEVENSON: Thank you, Your Honor. So we're asking  
9 the Court this morning to disqualify the Clark County District Attorney's  
10 Office from continuing to represent the State in prosecuting Mr. Floyd's  
11 case. And we're asking this Court, pursuant to NRS 252.100, to appoint  
12 another person to perform the duties of the District Attorney.

13 This Court has broad discretion in determining who appears  
14 before it. And this Court has an affirmative responsibility for controlling  
15 the conduct of the attorneys practicing before the Court. So we think  
16 this Court should disqualify the District Attorney, because there is and  
17 this is the standard and I believe we agree with the State on this. There  
18 is at least reasonable possibility that some specifically identifiable  
19 impropriety did occur and the likelihood of public suspicion outweighs  
20 keeping the District Attorney on this case.

21 So with respect to the first part, the identifiable impropriety, DA  
22 Wolfson expressed opposition to A.B. 395 and the two Senate  
23 Prosecutors Cannizzaro and Scheible ensured the bill did not get out of  
24 the judiciary committee or even heard for a vote, and that of course  
25 happened yesterday. With respect to the second part of the test, which

1 is a likelihood of public suspicion, the media has highlighted the  
2 impropriety of the senate prosecutors and the public suspicion about this  
3 can only grow from there.

4 So I'd like to just briefly go over the fact, which I think are  
5 important for this Court to look at. Mr. Floyd was -- his sur petition to the  
6 US Supreme Court was denied on November 2<sup>nd</sup>, 2020. At that point he  
7 was out of legal options and a District Attorney at any point could have  
8 issued a warrant, an execution warrant.

9 Five months later, almost five months later on March 24<sup>th</sup>,  
10 Assembly Bill 395 which is the bill proposing to abolish the death penalty  
11 was read for the first time in the judiciary committee. Two days later, the  
12 Review Journal issued an article stating that the DA's Office would seek  
13 a warrant against Mr. Floyd.

14 And this is what DA Wolfson said to the newspaper: I think  
15 the timing is good. Our legislative leaders should recognize that there  
16 are some people who commit such heinous acts, whether it be the  
17 particular type of murder or the number of people killed, that this  
18 community has long felt should receive the death penalty. I'm not  
19 purposefully moving forward with Floyd's case because of the  
20 legislature, but because they're occurring at the same time, I want our  
21 law makers to have their eye wide open because this is a landmark  
22 case.

23 About a month later on April 13<sup>th</sup>, A.B. 395 was approved on  
24 the assembly floor. And the very next day, April 14<sup>th</sup>, the DA's Office  
25 sought a warrant for Mr. Floyd's execution. DA Wolfson has a

1 supervisory role over the two senate prosecutors. He made his  
2 preference known to the media regarding the abolition bill. And he  
3 appears to abuse his power in his office to highlight a case and tell the  
4 legislative leaders how they should vote on the pending legislation.

5 The political implications of the DA's statements have been  
6 picked up by the press. And I believe that I gave to the Court a list of  
7 seven articles which we intend to file electronically later today.

8 On March 30<sup>th</sup>, 2021, the Review Journal printed an article  
9 that said the DA to Proceed with Death Penalty Against Gunman in 1999  
10 Store Killings. That article pointed out that DA Wolfson supported the  
11 death penalty and that two prosecutors serving the Nevada Legislature,  
12 including senate majority leader Cannizzaro were going to decide the  
13 fate of the bill.

14 April 18<sup>th</sup>, 2021, the Nevada Independent issued an article  
15 called Criminal Justice Reform Shouldn't Depend on a Deputy District  
16 Attorney. And that article pointed out that Cannizzaro's day job as a  
17 Deputy DA and that her boss DA Wolfson had recently testified in  
18 support of a -- against A.B. 395.

19 On April 19<sup>th</sup>, 2021, the Review Journal issue -- published an  
20 upend entitled Trending Death, which pointed out the barrier to the  
21 passes of the abolition bill was through the senate judiciary committee  
22 that had two senate prosecutors on the panel.

23 May 7<sup>th</sup>, 2021, the Nevada Appeal published an article called  
24 Nevada Prosecutors Are Standing in the Way of Abolishing the Death  
25 Penalty. Again it pointed out that a pair of senators who are also

1 prosecutors could derail the abolition effort.

2 May 12<sup>th</sup>, 2021 Nevada Appeal published another article  
3 Prosecutor Senators Pressed to Quit Dragging on Death Penalty  
4 Abolition Bill. And again this article pointed out that key senators are  
5 also Clark County Prosecutors.

6 So yesterday, the abolition bill died without a hearing, without  
7 Cannizzaro or Schieble even bringing it to the floor. And in article  
8 published by the Review Journal yesterday called Death Penalty Ban  
9 Fails in the Legislature, it talks about after the bill cleared the Assembly  
10 by a wide margin the legislation stalled in a Senate Judiciary Committee.  
11 The committee included, and this is a quote: Two democrats, majority  
12 leader Nichole Cannizzaro and fellow Las Vegas Senator Melanie  
13 Schieble, both of whom are prosecutors in a Clark County DA's Office  
14 where DA Steve Wolfson has been outspoken in his support for keeping  
15 the death penalty.

16 Also yesterday the Huffington Post issued an article called  
17 Nevada Democrats Squander Opportunity to End the Death Penalty.  
18 And this article points out again you have the Senate Judiciary Chair  
19 Melanie Schieble and the Senate Majority Leader Nichole Cannizzaro  
20 both work as prosecutors for the Clark County DA's Office when the -- is  
21 out of session. And their boss DA Wolfson has testified against A.B.  
22 395. So Schieble who had -- also the article talks about how Schieble  
23 had previously stated her support for ending the death penalty, did not  
24 hold a hearing. And Cannizzaro never committed to holding a floor vote.

25 It is clear from what happened yesterday that the senate

1 prosecutors were involved in derailing the bill. Cannizzaro's statement  
2 makes clear that with weeks left in the session she decided there was no  
3 path forward. She as a senate majority leader had the ability to get rid of  
4 all deadlines on bills. And this bill could have circulated for another two  
5 and a half weeks. But she decided at that point there was no consensus  
6 on the bill. Questionable who she was discussing this with, but it was  
7 her decision and her decision alone that killed the bill. It's important to  
8 note why the Assembly passed this with a clear majority this bill  
9 languished for exactly one month without a vote. And again that was  
10 because of the two senate prosecutors.

11 And while the DA's statements and Cannizzaro's statements  
12 yesterday certainly raise questions about how closely they were working  
13 together, the answers actually matter less than what members of the  
14 public might ask. Disqualification standards does not ask whether public  
15 suspicion is confirmed but whether there is a reasonable likelihood of  
16 suspicion.

17 And there is no overwhelming interest in keeping the District  
18 Attorney on this case. This case has not been in state court in over 10  
19 years. None of the prosecutors are left on this case. And whoever has  
20 this case would have to get up to speed with a lengthy record.

21 On the other hand, Your Honor, there is a strong interest in  
22 disqualifying the DA's Office from this case. The citizens of this state, as  
23 well as Mr. Floyd, deserve the assurance that this lawyers representing  
24 the state who are seeking Mr. Floyd's execution, the harshest penalty  
25 that there is in law, are doing so fairly and not to further an agenda to

1     manipulate the other branches of government.

2             Does this Court have any questions?

3             THE COURT: I do. I didn't see in either briefing the specific  
4     status of the two senators. Are they on leave of absence right now? Are  
5     -- do they resign and then come back to the office at the end of the  
6     legislative session? Are they getting a pay check from the DA's Office or  
7     a paycheck from the Legislative Bureau? I don't have that information.  
8     Do you have that information, counsel?

9             MR. LEVENSON: So this is the answer I have for you. It  
10    doesn't matter because AG Opinion 357, which is a December 22<sup>nd</sup>,  
11    1954 opinion, the AG stated that a leave of absence of state employees  
12    for purposes of serving as elected members of the legislature is not  
13    sanctioned by section 1, article 3. So they can't be on leave. If they're  
14    not on leave, then they're getting paid by both. And if they are on leave,  
15    it's not permitted by the Attorney General's Opinion. So we'd say the  
16    answer doesn't matter whether they're on leave or not. They would not  
17    be permitted to be on leave and then be rehired.

18            THE COURT: So any actions they've taken since they've  
19    become state senators are a nullity?

20            MR. LEVENSON: No, absolutely not. And we're not asking  
21    this Court at all to get into the process of what composes the legislature.  
22    This is a very finite and simple issue, whether the DA's Office should still  
23    be prosecuting this case. Whatever happens in the legislature, we're not  
24    asking you to get involved in. We're asking you to control the people  
25    that are in front of you practicing. And in this case the DA's Office

1 should not be prosecuting Mr. Floyd's case.

2 It's a very simple question, unlike the other cases, the other  
3 separation of powers case. I know there was one before you before that  
4 asked for the striking of the death penalty. Other ones asked for a  
5 reversing of the conviction. This is a very finite point we're asking, which  
6 is who is prosecuting this case.

7 THE COURT: So by having these two state senators, they've  
8 disqualified the entire office, is -- the DA's Office?

9 MR. LEVENSON: They have. Because of the -- again we  
10 don't need to know what was in their head. We just need to know what  
11 the public suspicion would bear out. And based on the seven articles,  
12 and there are more, but just based on the seven articles, people have  
13 picked up -- and social media as well, and I believe we have a footnote  
14 in our brief about the social media. It is clear that people have realized  
15 that the two people that stood in the way of the abolition bill are deputy  
16 district attorneys and their boss has publicly come out against A.B. 395.  
17 And yesterday it bore out.

18 THE COURT: Is it the Court's position to get into the  
19 legislative thought process of the two senators?

20 MR. LEVENSON: Absolutely not, Your Honor. Again we  
21 don't need to do that.

22 THE COURT: Okay.

23 MR. LEVENSON: We don't need to know what's in the brain  
24 of the legislatures -- legislators. We just need to know what the public  
25 suspicion is. And again we point to the press as bearing that out.



1 THE COURT: All right. Thank you.

2 State.

3 MR. CHEN: Thank you, Your Honor. This Court's ruling  
4 shouldn't be based on media articles. It shouldn't be based on Twitter  
5 feeds. It shouldn't be based on that type of public perception.

6 What we have here is they're essentially just trying to say that  
7 the DA's Office is cloaked in this impropriety simply because two of the  
8 deputies happen to also serve in our office. And as the Court's question  
9 earlier, I know for a fact that they are not compensated by the office  
10 while they're serving their duties. It changes a lot of things for them by  
11 taking time off and serving in the legislature instead of working in the  
12 Clark County District Attorney's Office. So our position is those are two  
13 separate entities. However, there's just nothing that Mr. Levenson has  
14 pointed out that puts this DA's Office in a light that is either contrary to  
15 law or contrary to what the office is trying to do right now in Mr. Floyd's  
16 execution.

17 There is a statute that calls for the order and the warrant of  
18 execution. And by statute we are fulfilling that statute. DA Wolfson has  
19 made opinions regarding the death penalty as well as A.B. 395, but  
20 there's nothing that prohibits him from doing that. And in fact, a lot of  
21 individuals running for office probably have an opinion on something like  
22 this. It would not automatically mean that they can't fulfill their duties  
23 whether from the bench or from the District Attorney's Office, because  
24 these are statutorily granted.

25 Now I would also say that when I was reading the reply for

1 instance in this case that was filed by the Mr. Levenson and Mr.  
2 Anthony, it basically had some really stinging things to say about the  
3 State's opposition. And I was thinking for a moment that wow, this is so  
4 stinging that maybe I'm wrong. Maybe I'm doing something wrong, but  
5 then I looked to the end of their conclusion and it basically says,  
6 pursuant to NRS 252.100, it says the Court should appoint some other  
7 person to perform the duties of the District Attorney.

8 Now if you read that statute in conjunction with NRS 176.495,  
9 the only two individuals or offices that can even seek a warrant of  
10 execution are the Attorney Generals or the District Attorney's Office that  
11 prosecuted the case, which would be the Clark County District Attorney's  
12 Office. Even under what they're proposing it would essentially mean if  
13 this Court were to all of the sudden appoint a third entity as the  
14 prosecutor in this case, a warrant of execution could never be fulfilled.  
15 And to me it seems like their motivations to get the Clark County District  
16 Attorney's Officer off of this case are clear when they're calling for the  
17 Court to appoint a third party prosecutor.

18 I would also just point out that in terms of the public and  
19 perception that Mr. Levenson was talking about, the Governor of this  
20 state also issued a statement after A.B. 395 failed. And he had  
21 indicated that he wanted -- his preference would have been that the  
22 legislation modified some things regarding the death penalty bill, but he  
23 didn't want something and wouldn't sign something that called for its  
24 outright abolition. And that's what A.B. 395 did. So to only blame two  
25 senators who are a part of the larger senate, I think is a disingenuous

1 argument.

2 But at the end of everything, Your Honor, the State is merely  
3 fulfilling its duty. Mr. Floyd has been convicted and now we're seeking  
4 to fulfill the next steps. And so there really is no reason for this office to  
5 be removed from the case.

6 THE COURT: Do the two Deputy DA/Senators hold a public  
7 office? Because that's under the case law that you've cited as far as  
8 only if the person holds a public office. And your argument is only the  
9 DA, Mr. Wolfson versus the two senators and Deputy DAs.

10 MR. CHEN: Our position is that they are employees of the  
11 office. But they are not the public officers when they serve as Deputy  
12 District Attorneys.

13 THE COURT: Does the statute say public officers or public  
14 office?

15 MR. CHEN: I believe it's officers, Judge.

16 THE COURT: And are they public officers by being Deputy  
17 District Attorneys under the Executive Branch?

18 MR. CHEN: I don't believe that they are. I think Mr. Wolfson  
19 is the one who holds the office. He's the one who sets the policies for  
20 the office. And that's really what the executive function is, they're setting  
21 the policies. So it's our position that they would not qualify.

22 THE COURT: All right. Thank you.  
23 Counsel.

24 MR. LEVENSON: Thank you, Your Honor. In answer to your  
25 question, the statute doesn't talk about public officer or offices, it talks

1 about their functions. And so we think that they would qualify as the  
2 prosecutor -- senate prosecutors.

3 Just three quick points, if this Court were to appoint under the  
4 statute, that person appointed or persons would be acting on behalf of  
5 the District Attorney's Office. So I disagree with Mr. Chen that a warrant  
6 couldn't be issued. They would be acting as the District Attorney's  
7 Office.

8 [Noise coming from Bluejeans videoconference]

9 THE COURT: I think that's through the jail system so it's --

10 MR. LEVENSON: Yeah.

11 THE COURT: -- we can't do anything about that.

12 MR. LEVENSON: Can I have just a moment, Your Honor?

13 THE COURT: Sure.

14 MR. LEVENSON: It's problem not reading my own  
15 handwriting. There were amendments that were brought forward to the  
16 senate prosecutors, today is Friday, on Wednesday evening as far as  
17 we understand it. And those amendments would have done what the  
18 Governor had requested. So again, the death of A.B. 395 was at the  
19 hands of the senate prosecutors.

20 And again we don't have to know what's in their brains. We  
21 don't have to scoop them out and examine them. What we have to look  
22 at is the likelihood of public suspicion.

23 And Mr. Chen says don't look at the media reports. But that's  
24 how we look at what the public is doing. You look at a poll; you look at  
25 the media reports. You see what the media is reporting. You look at the

1 comments underneath. So I think it's a valid use to look at what the  
2 media was able to point out was the problem. And that problem again  
3 as I said bore out yesterday afternoon.

4 Unless the Court has any other questions.

5 THE COURT: Counsel, statute questions, 252.070 is that  
6 correct.

7 MR. LEVENSON: Right.

8 MR. CHEN: 100, I believe is the one they cite, 252.100.

9 THE COURT: 100, let me pull it up again.

10 MR. LEVENSON: I'm sorry. So I quoted the article 3, section  
11 1. I didn't realize you were looking at the statute.

12 THE COURT: State, you said 100 -- .100?

13 MR. CHEN: Yes, that's what's cited.

14 THE COURT: I'm going to ask both sides a question under  
15 252.070, sub section 1. It says the appointment of a Deputy District  
16 Attorney, that's what we have here, must not be construed to confer  
17 upon that deputy policy making authority for the office of the District  
18 Attorney or the county in which the Deputy District Attorney is employed.  
19 So under that statute is says that the appointment of a Deputy DA does  
20 not confer that deputy policy making authority. Does that have any  
21 impact on your argument? And that's a question for both sides.

22 MR. CHEN: Your Honor, I --

23 THE COURT: Do you want to look at it real --

24 MR. LEVENSON: Thank you, Your Honor.

25 THE COURT: 070, you can take it.

1 MR. LEVENSON: Thank you. From our point of view, Your  
2 Honor, it doesn't change anything. You still have DA Wolfson making a  
3 public statement. He is the public figure. And there's still the suspicion  
4 that pressure is being borne upon the prosecutors.

5 And one other point, Your Honor, as far as I understand it, the  
6 only person who can decide not to pay someone in his office is DA  
7 Wolfson. It's his determination whether to put someone on leave and  
8 when to bring them back. And I still believe that the 1952 AG Code --  
9 AG opinion says he cannot do that. But he is giving them the  
10 opportunity to serve in the legislature and then come back.

11 So again public suspicion you would wonder if they didn't do  
12 what they were supposed to do, would they be invited back in the same  
13 positions. So again, we have to look at the likelihood of public suspicion.  
14 And I think that has been fairly met here.

15 THE COURT: All right. Thank you.

16 State, your analysis of 252.070, subsection (1).

17 MR. CHEN: Yes, thank you, Your Honor. We did include that  
18 in our response. We do believe that again there is a difference between  
19 the senators who serve in our office from the elected District Attorney  
20 that's created through NRS 252.

21 We also pointed to a case for instance, *Price v. Goldman*.  
22 That was one where they said not any deputy can accept -- can approve  
23 a wire intercept. And they made it very specific that there's a difference  
24 between the person and the powers that the District Attorney can have  
25 versus just the mere deputy.

1           And piggybacking off of NRS 252.070, you have 252.100 that  
2 is cited by defense and the one that call for us to be removed and  
3 someone else to be appointed. And Mr. Levenson had just said that  
4 some other person would be standing in for the DA's Office. But as they  
5 had just said a moment ago, when they were arguing about what  
6 department this should be in, they said the statutes are most controlling.  
7 But the statute on issuing a warrant, NRS 190 -- 176.495 doesn't say a  
8 substitute. So in the case of where the case should be heard, it does  
9 say the subsequent department. But when you're talking about who can  
10 obtain an actual warrant of execution, there's only two parties referenced  
11 by the statute. And if the statute was most controlling then that means it  
12 has to be the Attorney General's Office or the District Attorney's Office.  
13 So there's just no basis for the removal of our office, Your Honor.

14           THE COURT: All right. Thank you. This is the defense  
15 motion. You have the very last word.

16           MR. LEVENSON: Again, Your Honor, I think it's really  
17 important that we don't get lost in the weeds here. We don't need to  
18 know specifically what Cannizzaro and Schieble were thinking. We have  
19 the DA's point of view about abolishing 395. And the standard is  
20 likelihood of public suspicion. So I think again we have fairly met that  
21 burden.

22           THE COURT: On this particular matter I did want to hear from  
23 both parties and I appreciate your presentation today. I'm going to  
24 consider further your arguments this morning and I will endeavor to have  
25 a decision out before 5 o'clock today. I have a calendar starting

1 basically now and I have an evidentiary hearing this afternoon, but in  
2 between my various hearings I'm going to look at these matters again.  
3 And again my goal is to have a decision out by 5 this afternoon. Thank  
4 you, counsel.

5 Now it's my understanding is that there's another motion  
6 pending and the parties had agreed to -- or two other motions. Parties  
7 had agreed to continue those motions to another date. Have the parties  
8 discussed a convenient time for that?

9 MR. CHEN: So, Your Honor, we have spoke --

10 THE COURT: Whether it's in this department. I've already  
11 ruled it's going to be in this department, but I don't know if the parties  
12 have discussed a convenient time for each side.

13 MR. CHEN: So this one we had a little bit of a different  
14 opinion. We'll leave it to the Court's discretion. Our position would be  
15 there are other hearings that are going on both here and in Federal  
16 Court. They have other actions here in State Court that are outside of  
17 your department. And then they also have federal actions as well. So  
18 my preference was going to be to continue if for two weeks. I believe  
19 they wanted 30-day status checks. So I know it's not a grave difference  
20 between the two weeks and the 30 days.

21 But our -- the State's position would essentially be that the  
22 proposed order that we have right now and we're asking the Court to  
23 sign an order for the week of July 26<sup>th</sup>. Based upon that, I would rather  
24 have shorter status checks to make sure that we can fulfill all necessary  
25 obligations prior to that date. So our preference would be for two weeks.



1 But I do believe they're seeking for a longer day if we're going to hear  
2 those motions.

3 MR. LEVENSON: And, Your Honor, --

4 THE COURT: Let me hear from defense.

5 MR. LEVENSON: -- we're certainly in agreement that we're  
6 ask -- we're not asking the Court to sign any order today. We're asking  
7 to come back. We have been in Federal Court. We're going to be back  
8 in Federal Court next week. Based on what we have heard from the  
9 Judge, we believe that there will be -- there could be a stay for 90 or 120  
10 days depending on how things start to play out, until execution protocol  
11 is actually given over by Nevada Department of Corrections. So at this  
12 point we think two weeks is too soon and we would ask for 30-day status  
13 checks to keep the case moving.

14 THE COURT: And do you have a specific date in Federal  
15 Court right now?

16 MR. LEVENSON: We return --

17 THE COURT: I know you're going today or soon.

18 MR. LEVENSON: We return on Thursday, this Thursday.

19 THE COURT: Okay. And is the Judge -- the Federal Court  
20 Judge -- what specific issue is the Judge dealing with on Thursday?

21 MR. LEVENSON: I think we're --

22 MR. ANTHONY: Your Honor, the issue that's going to be  
23 dealt with is the issue of document disclosure from the Nevada  
24 Department of Corrections. We're going to be reviewing a privilege log  
25 that was put together by the Department of Corrections. And secondly,

1 we're going to be proffering to the Court what the plaintiff expects with  
2 respect to the discovery period that we're asking for. So we're going to  
3 be talking about who we're going to depose. What type of Rule 35  
4 subpoenas we're going to be issuing to other jurisdictions. There's  
5 going to be a site inspection. Those are things we're going to be  
6 discussing next Thursday.

7 THE COURT: All right. What I'm going to do is I'll set this --  
8 the matter for argument three weeks from today. The reason why I'm  
9 splitting the baby here so to speak is that every two week is a homicide  
10 calendar and this will probably be lengthy argument and this way I'll  
11 have the whole morning I can dedicate to this matter. All right. So we'll  
12 go out three weeks at 8:30 on the following day.

13 THE CLERK: Okay. So it'll be June 4<sup>th</sup>.

14 MR. CHEN: Your Honor, can we anticipate that actually that  
15 will be at the end of the calendar because of the lengthy argument?

16 THE COURT: No, I won't have a calendar.

17 MR. CHEN: Oh, I see.

18 THE COURT: That's what I'm saying for this --

19 MR. CHEN: Okay.

20 THE COURT: - because every two weeks I have the homicide  
21 calendar, so that's why I'm passing it three weeks so I won't have a  
22 homicide calendar.

23 MR. CHEN: Understood. Thank you.

24 THE COURT: All right. Thank you.

25 MR. LEVENSON: Thank you, Your Honor.

1 MR. ANTHONY: Your Honor, --

2 THE COURT: Yeah.

3 MR. ANTHONY: -- sorry, just one more thing. I understand  
4 the Court made a ruling on the transfer motion. I know -- I was  
5 wondering what the process was going to be for preparing the order.  
6 The reason that I ask that, Your Honor, is that under EDCR 1.60(h) I  
7 need to file an objection within 5 days with the presiding criminal judge.  
8 I believe that may be Judge Jones now.

9 THE COURT: Yeah.

10 MR. ANTHONY: I know that Your Honor used to be the  
11 presiding criminal judge. So I don't know if there -- I was going to ask  
12 about any logistics about -- I don't know if the Court had any ideas about  
13 a timeframe for an order. And the only reason I ask is just so I can meet  
14 whatever deadline I need to meet for raising the objection with Judge  
15 Jones.

16 THE COURT: I'll provide that information in my minute order  
17 this afternoon.

18 MR. ANTHONY: Thank you, Your Honor.

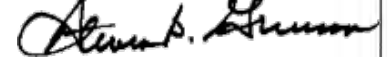
19 THE COURT: Okay. All right. Thank you.

20 [Hearing concluded at 9:10 a.m.]

21 \*\*\*\*\*

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

24   
25 Jessica Kirkpatrick  
Court Recorder/Transcriber



1 **ORDR**

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 ZANE MICHAEL FLOYD,

8 Defendant.

CASE NO: 99C159897

DEPT NO: XVII

9  
10 **DECISION AND ORDER DENYING DEFENDANTS MOTION TO DISQUALIFY**  
11 **CLARK COUNTY DISTRICT ATTORNEY'S OFFICE**

12 DATE OF HEARING: MAY 14, 2021

13 TIME OF HEARING: 8:30 AM

14 THIS CAUSE having come on for hearing before the Honorable MICHAEL  
15 VILLANI, District Judge, on the 14th day of May 2021, with the Defendant not being  
16 present. The Court having considered the matter, including briefs, transcripts, arguments of  
17 counsel, and documents on file herein, now therefore, the Court makes the Decision on  
18 Defendant's Motion to Disqualify Clark County District Attorney's Office

19 On October 11, 2019, the 9th Circuit of Appeals denied Defendant's Petition for Writ  
20 of Habeas corpus. On November 2, 2020, the United State Supreme Court denied  
21 certiorari. On April 14, 2021, Defendant filed his Motion to Disqualify Clark County  
22 District Attorney's Office. Said motion is based up the argument that two Deputy District  
23 Attorneys are presently working as State Senators. It is argued that such a situation violates  
24 the separation of powers doctrine and, therefore, the entire Clark County District Attorney's  
25 office should be disqualified from representing the State of Nevada in the present case. Nev.  
26 Const. Art 3, § 1 provides the following:

27 ///

28 ///

1 The powers of the Government of the State of Nevada shall be  
2 divided into three separate departments, the legislature, the  
3 executive and the Judicial; and no person charged with the  
4 exercise of powers properly belonging to one of these  
5 departments shall exercise any functions, appertaining to either  
6 of the others, except in cases expressly directed or permitted in  
7 this constitution.  
8

9 The Defense does not dispute that the Senators in question are on leave of absence  
10 from the District Attorney's office while the legislature is in session. NRS 252.070(1)  
11 provides:


12 All district Attorneys may appoint deputies, who are authorized  
13 to transact official business relating to those duties of the office  
14 set forth in NRS 252.080 and 252.090 to the same extent as their  
15 principals and perform such duties as the as the district attorney  
16 may from time to time direct. The appointment of a deputy  
17 district attorney must not be construed to confer upon that deputy  
18 policy making authority for the office of the district attorney or  
19 the county by which the deputy district attorney is employed.  
20

21 Senators Cannizzaro and Scheible are on leave of absence from the District attorney's  
22 office and, therefore are not performing executive branch functions under their current status  
23 as legislators, they are being compensated by the legislative branch of government opposed  
24 to the executive branch, and while serving in the legislature they are not under the control of  
25 the elected District Attorney. As such, the Court finds that under the present scenario there  
26 is not a separation of powers violation.  
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**ORDER**

THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion to Disqualify  
Clark County District Attorney's Office is hereby denied.



DISTRICT JUDGE

**MICHAEL P. VILLANI**

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 18th day of  
May, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ZANE M. FLOYD #1624493  
P.O. BOX 1989  
ELY, NV 89301

BY /s/ Samantha Albrecht  
Samantha Albrecht  
Court Clerk for Judge Villani

JN/mc/lm/GCU

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## John L. Smith On The Death Penalty Ban: Why Won't It Pass In Nevada?

*Associated Press*

This Nov. 10, 2016 file photo released by the Nevada Department of Corrections shows the newly completed execution chamber at Ely State Prison in Ely, Nev.

**LISTEN** (14:44)

Download

**May 18, 2021 by Kristen Kidman**

The death penalty will remain in Nevada, and some Democrats aren't happy about it.

Nevada Public Radio contributor John L. Smith said the bill to ban the death penalty was "dead in the water" when it didn't pass through the State Senate.

"However, it really went as far as it has ever gone in the state," he said.

He said when the Assembly passed the bill with no support from Republicans it was a sign that problems lay ahead for it.

Once it reached the State Senate, it met with a couple of members of that body that work for the Clark County District Attorney's office and the district attorney is outspoken against banning the death penalty.

"Two Democrats, Democratic state senators. Majority Leader Nicole Cannizzaro and Melanie Scheible, they work for the district attorney, Steve Wolfson, they come to this issue with a different perspective," he said, "They've also got their own professional lives, I imagine, to consider."

In addition, Smith noted that Gov. Steve Sisolak was "not on board."



"You've got a lot of different things tugging on this issue," he said, "It is still very controversial, despite the fact that the majority of the states have already outlawed it, and other states are considering it."

*Support comes from*

Smith said there is a lot working against a ban, but from a different perspective, the bill actually got a "pretty powerful hearing" by Assemblyman Steve Yeager, who introduced the bill, and his supporters.

"It gained some ground, at least in the consciousness of the state," he said.

Smith said besides the moral argument against the state putting someone to death, there are racial challenges that go along with the death penalty.

"A majority of minority persons convicted of crimes wind up on the death row," he said, "It's that way in Nevada."

He also noted that the death penalty is not all that practical to carry out. They are time consuming and expensive. Plus, most defendants fight them which drags out the whole process.

"Plus, there are no do-overs," he said, "If you make a mistake, and mistakes have historically been made... there is no way to fix it."

Smith said those reasons and more have persuaded other states, and a majority of other countries, to ban the death penalty.

Gov. Sisolak's opinion on the death penalty had an impact on the bill to ban the practice. He said he believes in the death penalty in "extreme cases."

"Clearly, the governor is trying to have it both ways," Smith said, "To be a person who is sensitive to these issues, but the fact is, it's already reserved for the worst of the worst."

The 'worst of the worst' can be defined in a lot of different ways, Smith said. It can range from an act of terrorism to murdering a child. There is a whole list of aggravating factors that can move a case to the death penalty category.

"There is a lot of wiggle room in this area," he said, "And this is one of those things that folks who oppose it say it can really apply to almost anything, including the people who did not actually physically commit the crime of murder."

People who were somehow an accomplice to murder can receive the death penalty, Smith said, which is something that other states are looking at abolishing all together.

"I think when the public sees that more and more states are falling into line with the impracticality and historical racial issues and all the other problems with the death penalty, that it's just not worth it," he said.

But Nevada is not ready to "make that statement," Smith said.

### **Occupational Licensing**

Under State Senate Bill 335 several professional licensing boards would be abolished and instead the state would set up a Division of Occupational Licensing.

"These boards on paper look terribly useful," Smith said, "In practice, over the decades, these boards have often been gatekeepers to competition."

He said the boards are often filled with people from the industry they are overseeing, which sounds like a good idea, but in reality, they've kept people out as often as they've invited them in.

"The standards that they have upheld have been really, really inconsistent," he said, "A lot of these boards were just kind of created as political sops for favored contributors and things like that."

Smith said over the years people have tried to individually take out one board or another, but “they are just like zombies, they keep coming back.”

The effort now is to eliminate the boards and move their operations into the Department of Business and Industry.

There is pushback to the bill mainly from people in the acupuncture business, Smith said.

“The Board of Oriental Medicine is probably the greatest example of why these boards should exist,” he said, “The board has existed and continues to exist at a pretty high professional level.”

Nevada was one of the first states to legalize acupuncture back in the 1970s.

Those opposed to the bill feel like it is taking acupuncture and lumping it in with other practices that are not medical.

“It looks like there’s a bias being brought to bear at least that’s what people who are pushing back are saying,” Smith said.

### **Rep. Mark Amodei R-NV., and Rep. Liz Cheney’s ouster from House Leadership**

“For Mark Amodei, he’s a fellow at a crossroads in his career. He is faced with the idea that he might run for higher office than his very reliable seat in Congress from Northern Nevada,” Smith said.

Smith said Amodei has seen from Cheney’s disappearance from Republican leadership that former President Donald Trump’s influence is very strong.

“Acknowledging that as a reality is no sin, but not pushing back against things like the false narrative of January 6 and the false narrative of somehow a massive voter fraud throughout country, not being demonstrative about that is like a character check, at least as I see it,” he said.

Smith said Amodei is not an “Adam Laxalt who is a kind of MAGA hat, fanboy,” but he does have some challenges ahead mainly because he’s voted on both sides of some issues, including COVID relief bills.

**Guests:** John L. Smith, contributor

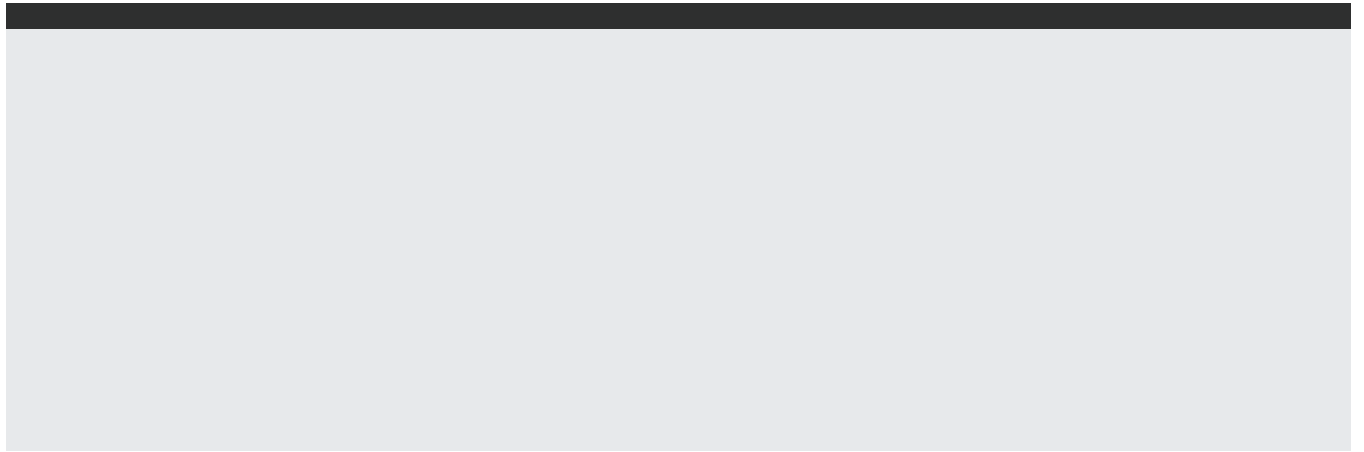
**More from:** [Nevada & the Southwest](#), [death penalty](#), [Politics](#), [2021 legislative session](#), [Democrats](#), [Republicans](#), [mark amodei](#), [president donald trump](#), [Rep Liz Cheney](#), [KNPR’s State of Nevada](#)

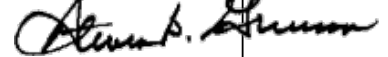
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DISTRICT COURT  
CLARK COUNTY, NEVADA

12 STATE OF NEVADA,

13 Plaintiff,

14 v.

15 ZANE MICHAEL FLOYD,

16 Defendant.

Case No. 99C159897  
Dept. No. XVII

**MOTION FOR RECONSIDERATION**

Date of Hearing:  
Time of Hearing:

**(DEATH PENALTY CASE)**

**EXECUTION WARRANT SOUGHT  
BY THE STATE FOR THE WEEK OF  
JULY 26, 2021**

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**NOTICE OF HEARING ON MOTION FOR RECONSIDERATION**

PLEASE TAKE NOTICE that the above entitled Motion for Reconsideration will come on for hearing before this Court in Department No. \_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_am/pm located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89101.

DATED this 19th day of May, 2021.

Respectfully submitted  
RENE L. VALLADARES  
Federal Public Defender  
  
/s/ David Anthony  
DAVID ANTHONY  
Assistant Federal Public Defender  
  
/s/ Brad D. Levenson  
BRAD D. LEVENSON  
Assistant Federal Public Defender

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1 Noting the senator-prosecutors' separation of powers violation, and the Clark  
2 County District Attorney's comments and timing in this case, Floyd moved to  
3 disqualify the Clark County District Attorney's Office. The State opposed, making  
4 no arguments or representations regarding the leave status of the senator-  
5 prosecutors. Floyd replied.

6 This Court heard argument on May 14, 2021. Then, for the first time, the  
7 issue of the senator-prosecutors' leave status arose. This Court did not hold an  
8 evidentiary hearing, order discovery, or request declarations or affidavits regarding  
9 the leave status of the senator-prosecutors. This Court denied relief, reasoning:

10 Senators Cannizzaro and Scheible are on leave of absence  
11 from the District attorney's office and, therefore are not  
12 performing executive branch functions under their current  
13 status as legislators, they are being compensated by the  
legislative branch of government opposed to the executive  
branch, and while serving in the legislature they are not  
under the control of the elected District Attorney. As such,  
the Court finds under the present scenario there is not a  
separation of powers violation.<sup>5</sup>

14 Floyd asks this Court to reconsider its order denying his motion to disqualify  
15 the Clark County District Attorney's Office.

## 16 **II. ARGUMENT**

17 This Court has inherent authority to revise its orders while it maintains  
18 jurisdiction in the case. *See, e.g., Tener v. Babcock*, 97 Nev. 369, 370, 632 P.2d 1140

---

22  
23 <sup>5</sup> Order 2; *see also* Minute Order (May 14, 2021).

1 (1981).<sup>6</sup> Because of the unusual importance of this issue, and the need for a  
2 complete record, Floyd urges the Court reconsider its order.

3 This Court found that “Senators Cannizzaro and Scheible are on leave of  
4 absence from the District attorney’s office . . . .” Floyd emphasizes and reiterates  
5 that this is irrelevant to the separation of powers analysis. The Clark County  
6 District Attorney’s Office is in violation of Art. 3, § 1 of the Nevada Constitution  
7 regardless of the leave status of the senator-prosecutors.

8 However, even assuming their leave status is relevant, this Court’s holding  
9 lacks a sufficient factual basis. Floyd does not concede that this Court has the  
10 authority to reach this finding without some sort of evidentiary basis. Indeed,  
11 because the pleadings between the parties did not once reference the leave status of  
12 the senator-prosecutors, or suggest that that status had legal significance, Floyd  
13 had no opportunity to request factual development in the form of an evidentiary  
14 hearing or discovery. Thus, this Court erred in noting, “The Defense does not  
15 dispute that the Senators in question are on leave of absence from the District  
16 Attorney’s office while the legislature is in session.”<sup>7</sup> Floyd had no chance to dispute  
17 this finding before it was made.

---

20 <sup>6</sup> See also Steven S. Gensler & Lumen Mulligan, *Federal Rules of Civil*  
21 *Procedure, Rules and Commentary, Rule 54* (Feb. 2020 Update) (“Trial courts have  
22 considerable discretion to revisit and revise their interlocutory rulings in the  
interests of justice.”). In the alternative, Floyd asks this Court to construe this  
23 pleading as seeking leave for reconsideration and seeking reconsideration. See Dist.  
Ct. R. 13(7); see also 8th Jud. Dist. Ct. R. 7.12.

<sup>7</sup> Order at 2.



1           This is important because, if this Court’s ruling is dependent on the specific  
2 employer-employee relationship between the senator-prosecutors, then leave during  
3 the legislative session is not the only factual matter that is relevant to whether  
4 there is a separation-of-powers violation. For example, the senator-prosecutors were  
5 employed by the Clark County District Attorney’s Office in November, December,  
6 and January, while the office was not filing pleadings in Floyd’s case. Nothing in  
7 the record suggests that the senator-prosecutors had “taken leave” from their role  
8 as senators. Additionally, there is no record related to senator obligations in  
9 between legislative sessions. For example, both senator-prosecutors serve on  
10 interim committees.<sup>8</sup>

11           Finally, there is no record related to other employer-employee issues. For  
12 example, taking leave without pay is “in the District Attorney’s sole discretion” and  
13 may only be granted “for a period not to exceed 90 calendar days, without prejudice  
14 to his/her status.”<sup>9</sup> Notably a legislative session is 120 calendar days. Nev. Const.  
15 art. 4, § 2 (“The Legislature shall adjourn sine die each regular session . . . at the  
16  
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18  
19           <sup>8</sup> To take two examples: Senator Cannizzaro serves on the Legislative  
20 Commission, which met twelve times during the interim between the 2019 and 2021  
21 sessions. *See* Leg. Comm., Members, (2019–2020 Interim); *see also* Leg. Comm.,  
22 Meetings (2019–2020 Interim). Senator Scheible served on the Legislative  
23 Committee on Public Lands. *See* Leg. Comm. on Public Lands, Members (2019–  
2020 Interim).

24           <sup>9</sup> *Agreement between the County of Clark & the Clark County District*  
25 *Prosecutors Association*, 16–17 (July 1, 2020 to June 30, 2021) [hereinafter  
26 *Agreement*], available at [https://files.clarkcountynv.gov/clarknv/  
Human%20Resources/Bargaining%20Unit%20Contracts/  
Prosecutors%20CBA%202020%20-2021.pdf?t=1619705884322&t=1619705884322](https://files.clarkcountynv.gov/clarknv/Human%20Resources/Bargaining%20Unit%20Contracts/Prosecutors%20CBA%202020%20-2021.pdf?t=1619705884322&t=1619705884322).

1 end of the 120th consecutive *calendar day* of that session . . . .” (emphasis added)).<sup>10</sup>

2 The record does not indicate when or how the District Attorney exercises this  
3 discretion, which could be relevant because this discretion places the District  
4 Attorney in a position of power over the senator-prosecutors with regard to their  
5 future ability to receive leave without pay. Additionally, the record does not indicate  
6 how this period of “leave without pay” is considered in the District Attorney’s  
7 discretionary decisions related to promotions, raises, or seniority-based layoffs.<sup>11</sup>

### 8 **III. CONCLUSION**

9 In light of these important questions, Floyd requests that this Court  
10 reconsider its order. In addition, should this Court conclude that the senator-  
11 prosecutors’ status of being on leave without pay is dispositive, this Court should  
12 require factual development in the form of (a) document production related to the  
13 Clark County District Attorney’s leave policy; (b) production of any agreements or  
14 communications with the senator-prosecutors regarding their leave related to their  
15 responsibilities as legislators; (c) production of any documents related to how “leave

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17 <sup>10</sup> Without factual development, Floyd is left to speculate whether some  
18 other arrangement has been made to allow the senator-prosecutors to take extra  
19 leave without pay, or whether some special accommodation has been made to  
20 exempt the senator-prosecutors from the general county policy that “[a]n employee  
absent without authorized leave for more than five days may be regarded as having  
abandoned his/her position in the County service. A termination under these  
conditions will render the employee ineligible for placement on a rehire list.” *Clark*  
*County Merit Personnel System, Personnel Policies*, at 40, III(G) (effective Feb. 17,  
2004), available at [https://files.clarkcountynv.gov/clarknv/Human%20Resources/  
1MPS-PartI-Amended-final.pdf?t=1619705879218&t=1619705879218](https://files.clarkcountynv.gov/clarknv/Human%20Resources/1MPS-PartI-Amended-final.pdf?t=1619705879218&t=1619705879218).

21 <sup>11</sup> *See, e.g., Agreement*, 12 (“Employees shall receive a salary increase of zero  
22 or between three (3) or five (5) percent.”); *id.* at 13 (performance “determined by the  
District Attorney”); *id.* at 15 (“employees shall be laid off based on . . . seniority . . .  
.”); *but see Agreement*, 12 (suspending annual salary adjustment between January  
23 1, 2021 through December 31, 2021).

1 without pay” is considered in raise, promotion, or layoff decisions; and (d)  
2 designation of a most knowledgeable person so that the parties may receive  
3 testimony about these matters.

4 DATED this 19th day of May, 2021.

5 Respectfully submitted  
6 RENE L. VALLADARES  
Federal Public Defender

7 /s/ David Anthony  
8 DAVID ANTHONY  
Assistant Federal Public Defender

9 /s/ Brad D. Levenson  
10 BRAD D. LEVENSON  
Assistant Federal Public Defender

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**CERTIFICATE OF SERVICE**

In accordance with EDCR 8.04(c), the undersigned hereby certifies that on this 19th day of May, 2021, a true and correct copy of the foregoing MOTION FOR RECONSIDERATION, was filed electronically with the Eighth Judicial District Court. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

Alexander Chen  
Chief Deputy District Attorney  
motions@clarkcountyda.com  
Eileen.davis@clarkcountyda.com

/s/ Sara Jelinek  
An Employee of the Federal Public Defenders  
Office, District of Nevada

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**DISTRICT COURT  
CLARK COUNTY, NEVADA  
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Electronically Filed  
5/20/2021 7:41 AM  
Steven D. Grierson  
CLERK OF THE COURT



The State of Nevada vs Zane M Floyd

Case No.: 99C159897

Department 17

**NOTICE OF HEARING**

Please be advised that the Defendant's Motion for Reconsideration in the above-entitled matter is set for hearing as follows:

**Date:** June 11, 2021

**Time:** 8:30 AM

**Location:** RJC Courtroom 11A  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Marie Kramer  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Marie Kramer  
Deputy Clerk of the Court

## MIXED SIGNALS FROM GOVERNOR, ELECTION CONSIDERATIONS BLAMED FOR FAILURE OF DEATH PENALTY REPEAL EFFORT



TABITHA MUELLER



MICHELLE RINDELS

MAY 23RD, 2021 - 2:00AM

After more than 20 years of trying to ban the state's death penalty, and following former death penalty stronghold [Virginia's repeal of capital punishment](#) in mid-March, activists hoped that the 2021 legislative session would finally be the time for Nevada to end capital punishment.

But in spite of the state's Democratic trifecta, those efforts culminated in one of the biggest heartbreaks of the session for criminal justice reform advocates [when the bill was spiked](#) by Gov. Steve Sisolak and legislative Democratic leaders earlier this month.

Though no one has been executed in the state since 2006, the Clark County district attorney's office is now pushing for the execution of Zane Floyd, who was convicted of killing four people inside a Las Vegas grocery store two decades ago. Advocates said the move made passing a repeal even more urgent this session.

So why did repeal fail?

No single cause of death is named on the legislative coroner's report, but interviews with involved parties suggest a combination of factors — ranging from personal belief, mixed gubernatorial signals, potential election-related considerations and the fact that the two senators responsible for hearing the bill work for the Clark County district attorney — helped kill the measure and keep Nevada as one of [24 states](#) with the death penalty.

The entire debate takes place against the backdrop of a state still closely divided in party registration, with some top senators — including Senate Majority Leader Nicole Cannizzaro (D-Las Vegas) — winning election by a single percentage point. Republicans flipped several legislative seats in the 2020 election, and Gov. Steve Sisolak's expected re-election challenger in 2022 is Clark County Sheriff Joe Lombardo — a candidate likely to highlight a message of law and order.

Those political dynamics make public opinion a key consideration, but the data has been somewhat inconclusive. A [2017 poll](#) commissioned by *The Nevada Independent* indicated that most Nevadans support the death penalty, but advocates have long questioned whether the solid tilt toward capital punishment had to do with the way the poll question was phrased.

Anti-death penalty activists commissioned [a new survey released earlier this year](#) that showed much closer results — and even a slight lean toward abolition — when questions were phrased differently.

Past legislative sessions have often seen a small group of progressive Democrats introduce capital

punishment repeal bills, but the measures never advanced far, with leadership hesitant to push a politically dicey issue through the process in the face of a likely veto. In 2017, Gov. Brian Sandoval signaled opposition to a repeal bill, and after getting one committee hearing it was never brought up for a vote.

So, when Assembly members this session voted on party lines to [abolish the death penalty](#), with Republicans opposed, activists celebrated the measure's move out of committee to a floor vote, the furthest the concept had ever traveled in the Legislative Building. They said the bill was essential to doing away with an "eye for an eye" mentality and a practice they say does not help hurting families move on from violence, disproportionately affects people of color and is an expensive endeavor that could lead to killing innocent people.

Opponents, including Clark County District Attorney [Steve Wolfson](#) and individuals who have lost loved ones to violence, however, pushed back against the repeal, saying the death penalty is necessary as a prosecutorial tool and should be an option for individuals who committed atrocities such as the October 1 shooting.

"There are differences between perpetrators and crimes," Wolfson told the [Las Vegas Review-Journal](#) in April. "I strongly believe that the death penalty should be reserved for the very rare and extreme circumstances. ... The solution is to engage and refine the law, not abandon an option the voters support."

During a hearing on the measure in [late March](#), lawmakers also heard from Jennifer Otremba, who described the murder of her 15-year-old daughter Alyssa in 2011 near her Las Vegas home. Javier Righetti, who was 19 at the time of the killing, [received a death sentence in 2017](#).

"He did not consider Alyssa's life. Why should his life be considered?," Otremba said. "I waited five and a half years for justice for my daughter, and if I have to continue to fight politicians for the rest of my life to ensure that justice is served, then I will do that."

The measure had faced an uncertain future in the Democrat-controlled Senate — which is helmed by Cannizzaro, a prosecuting attorney for the Clark County district attorney. Cannizzaro was repeatedly [noncommittal](#) when asked whether she would allow the bill to get a hearing if it passed the Assembly, including in a [Nevada Independent forum](#) ahead of the session in January, and maintained that noncommittal stance for months.

Senate Judiciary Committee Chairwoman [Melanie Scheible](#) (D-Las Vegas), a fellow prosecutor in the district attorney's office and the key gatekeeper on the decision to give the bill a hearing, had appeared willing to give the bill a chance. Prior to the session, she [had indicated her support](#) for efforts to abolish the death penalty, and [said](#) just two weeks before the bill died that she would be willing to hear it if an amendment was brought forward addressing the concerns expressed by Sisolak.

During a brief interview with *The Nevada Independent* on Thursday, Scheible said she would have considered an amendment with a broad base of support, but that nothing came to fruition.

Schedules are constantly moving, she said, adding that she tries to make sure there is always time to hear a bill, but "it takes a lot of people in this government to make such a sweeping change and so without full consensus, we weren't able to."

Scott Coffee, a public defender, said a proposed amendment that had been drafted but never released publicly tracked closely with what the governor said was palatable — making exceptions for mass shootings and terrorism. The organization Gun Violence Archive has set a definition of mass shooting as four people shot but not necessarily killed in a single event.

That's partly why an [abrupt announcement](#) — memorialized in a series of synchronized press releases from the governor and legislative leaders — that Nevada leaders were scrapping the bill came as a shock to those working on the cause.

*Holly Welborn with the Nevada ACLU speaks during the "Protest & Vigil for Death Penalty Abolition" hosted by the Nevada Coalition Against the Death Penalty, in front of the Legislative Building on May 17, 2021. (Joey Lovato/The Nevada Independent)*

Branden Cunningham and Mark Bettencourt, leaders of the Nevada Coalition Against the Death Penalty, told *The Nevada Independent* that there were ongoing conversations surrounding an amendment to the bill prior to its demise.

"From everything we heard, [Scheible] was willing to work and hear the bill," Cunningham said. "We had heard that she had set time aside to hear the bill ... the calendar was open ... and instead of a hearing we got the three statements that came out."



Coffee said the press releases announcing that the bill would not advance were a surprise to him. Up to that point, advocates were actively working on the issue, hoping to connect lawmakers with the pollster commissioned by the coalition to assuage concerns.

"I have to believe the concern was over losing Senate seats," Coffee said. "There's always another election. There's always another excuse."

He said he wishes the governor would have shown more initiative on the matter but ultimately blamed senators for not hearing the bill.

"The Senate got accommodated on everything they asked for," Coffee said. "It's laughable to talk about how good we did on criminal justice reform when we can't get a vote on a platform issue."

Shortly after the announcement that the bill was dead, Cannizzaro defended the progress the Legislature had made on bail reform and police use of force, challenging people who say the Legislature was not doing enough. Asked whether she was personally in favor of a bill with a carveout for crimes such as mass shootings, Cannizzaro demurred.

"I don't think that I am opposed to having conversations on this topic. That has been happening," Cannizzaro said. "Obviously Chair Yeager worked to try to come up with some compromise, and we're just not going to be able to get there."

Though she supports the abolition of the death penalty, Scheible said the decision to not hear the bill was part of a broader discussion.

"I do work in a team and part of my job as the chair of a committee is to ensure that I am making good policy decisions, not pushing my own personal agenda," she said. "Sometimes I get to do the things that I personally want, sometimes I do the things that we need as a state, the things that my body supports, that our coalition supports, and so it's a group effort."

That group effort started and ended with Sisolak, the state's first Democratic governor in two decades after his election in 2018, but who also was chair of the Clark County Commission when the worst mass shooting in American history took place in his jurisdiction. Sisolak was at the forefront of the response to the 1 October massacre and has talked about the effect the incident had on him personally and on his views of capital punishment during his 2018 campaign and beyond.

Sisolak [had previously affirmed without qualification](#) that he opposed the death penalty, but he never formally endorsed the legislation. Asked about the bill as the session progressed, Sisolak stuck tightly to talking points — even reading from a prepared statement when asked an impromptu question about the Assembly passing the bill — to emphasize that he opposed capital punishment but believed the measure is necessary for specific situations, such as mass shootings.

Sisolak's hesitation over the legislation was likely heightened by [the coming entrance of Lombardo](#) into the 2022 governor's race, where Democrats — with Joe Biden in the White House — are generally expected to suffer some midterm losses. Republicans in state and nationwide have used a pro-police campaign message in recent election cycles, so a death penalty repeal may have added more fuel to that campaign

Past governors — such as Brian Sandoval in 2015 and Kenny Guinn in 2003 — opted to wait until their second term in office, post-midterms, to tackle high-profile policy goals.

*A protester holds a candle in front of the Legislative Building during the "Protest & Vigil for Death Penalty Abolition" hosted by the Nevada Coalition Against the Death Penalty on May 17, 2021. (Joey Lovato/The Nevada Independent)*

Activists and advocates criticized lawmakers for not giving the bill a public hearing, though, calling the decision "undemocratic" during a protest and vigil last Monday.

"You have to answer to the people," Leslie Turner with the Mass Liberation Project said during the protest. "It doesn't make sense that the death penalty bill is dead now, with no explanation, no checking in with the community."

Cunningham said those pushing for the abolition of the death penalty spoke with various senators and that it seemed as though most of them were open to considering the legislation.

At least one Republican lawmaker was a likely supporter of the bill — Sen. Scott Hammond (R-Las Vegas).

"Generally I'm in favor of repealing it," he said in an interview on Tuesday. "I think it makes a lot of fiscal sense, I think it makes a lot of moral sense."

Though she was disappointed and frustrated by the death of the bill, Monique Normand, an anti-death penalty activist whose uncle was murdered in 2017, told reporters after the vigil and protest that the death penalty would not have brought her uncle back and the fight is far from over.

“People's lives are on the line,” she said. “We do have to hold [lawmakers] accountable and we can't just let them get away with, ‘you're gonna vote for us.’ No, we don't have to vote for anyone, we can withhold our votes, our votes matter. Our lives matter.”

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- *Brian Sandoval - \$900.00*
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- *Steven Yeager - \$1,350.00*
- *joseph lombardo - \$1,800.00*

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## reno gazette journal

### POLITICS

# Sisolak lauds 'very productive' 2021 Nevada Legislature, vows to sign public option bill

*First-term Democrat praises policy victories scored in spite of pandemic*

**James DeHaven** Reno Gazette Journal

Published 1:06 p.m. PT Jun. 2, 2021 | Updated 2:29 p.m. PT Jun. 2, 2021

Gov. Steve Sisolak is “damn proud” of the Nevada Legislature’s accomplishments over the past four months, including passage of a controversial state-regulated public health insurance option opponents have pressed him to veto.

Sisolak on Tuesday confirmed he will sign Senate Bill 420, disappointing top hospitals and private insurers who vehemently resisted lawmakers’ latest effort to drive down the state’s stubbornly high rate of uninsured residents.

The measure, introduced late last month by state Senate Majority Leader Nicole Cannizzaro and promptly dubbed “CannizzaroCare,” aims to reduce sky-high premium costs by requiring private insurers to offer a discounted health plan that would be sold on or off the state’s Obamacare exchange. The bill won’t take effect until 2026.

**More:** CannizzaroCare: Game-changer for Nevada's uninsured — or public option in name only?

**Related:** Sisolak to Nevada Legislature: Be sensible with unexpected funds from federal stimulus package

Sisolak, speaking during a wide-ranging interview with reporters at the Capitol, declined to say exactly which measures he does not plan to sign.

Nor did the first-term Democrat offer much insight into the high-profile demise of a proposal to ban the death penalty — a punishment Sisolak has said he opposes except in “incredibly severe” situations.

The governor said his office did contemplate legislation that could have limited the scope of crimes eligible for capital punishment, but ultimately dropped the idea amid ongoing efforts to contain the COVID crisis.

Sisolak went on to say he is firmly committed to running for re-election next year, and outlined his case for why voters should send him back to Carson City in 2022.

Here’s a few of the highlights from Sisolak’s post-session sit down:

## Death penalty

Backers of Assembly Bill 395, which would have converted all existing death sentences into life sentences without parole, in April celebrated a rare legislative victory that put them closer than they’ve ever been to repealing Nevada’s capital punishment law.

But the bill was never heard in Senate, where its fate depended on a pair of legislators employed by one of the state’s most prominent death penalty proponents.

State Sens. Nicole Cannizzaro and Melanie Scheible, both Democrats from Las Vegas, work as criminal prosecutors under Clark County District Attorney Steve Wolfson — who not only supports capital punishment, but is actively seeking an execution date for a man convicted of walking into a Las Vegas supermarket and killing four people in 1999.

Neither Cannizzaro, the state Senate Majority Leader, nor Scheible, who chairs the chamber's Judiciary Committee, ever committed to giving the bill a hearing.

Sisolak, a practicing Catholic, has consistently expressed reservations about doing away with the death penalty, and his Democratic allies in the statehouse never seemed in any hurry to make him put his signature where his mouth is.

The governor said he hopes to see the policy debate reemerge in future sessions, though he stopped well short of suggesting his office would take the lead on legislating death penalty carve outs meant to fit his stance on the issue.

Michelle White, Sisolak's chief-of-staff, said his office had considered drawing up such a bill, but found it tough to pick out which criminal offenses deserved capital punishment, especially in the midst of a pandemic.

"When you look to narrow down that list, that's a difficult process to go through," White told reporters on Tuesday. "These are big, consequential decisions that take some time."

"This office was a full emergency response operation for over a year. ... There's a lot of policies we wish we had time more time on, and that includes the death penalty."

Sisolak said he gave "zero" thought to the political ramifications of opposing the death penalty ahead of a re-election campaign that could see Republican opponents try to cast him as soft on crime.

## Innovation Zones

The governor said he remains a believer in Innovation Zones, his headline-grabbing attempt at allowing Blockchains Inc. and other companies to form new, county-like governments in the state.

Sisolak in April downgraded the ambitious proposal to an interim study set to be conducted by a bipartisan committee of state lawmakers, effectively placing an 18-month hold on Blockchains CEO Jeff Berns' vision for a 35,000-person, company-owned "smart city" on 5,000 acres of mountainous desert in Storey County.

**More:** How a cryptocurrency tycoon is working Nevada's elite to get his own government

**Related:** Sisolak scuttles Innovation Zone bill, seeks study on giving Blockchains its own government

That proposal attracted months of searing criticism from progressives and environmentalists — not to mention a lampooning on late night TV — but Sisolak said the legislation enabling it was simply misinterpreted.

He said governors in other states contacted him expressing interest in the proposal, one he has long defended as a needed tool for diversifying Nevada's post-COVID economy.

"I think the concept was misunderstood because the detractors put it out there like it's a 'company town,'" Sisolak said. "That's not at all what it is. ... I'm very hopeful this group (of lawmakers) is going to study the benefits and see this is a possibility."

Senate Concurrent Resolution 11, the measure enacting an upcoming study of the Innovation Zones concept, passed the Legislature late last month despite continued concerns raised by Storey County and other skeptics.

## Special sessions

Sisolak is yet to schedule expected special legislative sessions meant to divvy up a multibillion-dollar torrent of federal COVID aid and complete the constitutionally mandated redrawing of Nevada's political districts.

The governor said he's still combing through federal guidance on how to spend the state's \$2.9 billion share of President Joe Biden's American Rescue Plan, adding that "when there's a session necessary, we'll call it."

Lawmakers are unlikely to take up redistricting efforts until October, but have started some of their upcoming budget work in the form of Senate Bill 461, which roped off \$335 million in federal dollars to replenish the state's battered unemployment trust fund. The bill also outlines a "waterfall" of priorities for future use of federal funds.

Sisolak said he's working closely with his colleagues at the Legislature on the appropriate use of the cash, and bristled when asked about oft-reported communication breakdowns between the two branches.

He then ticked off a lengthy list of policy victories scored since the Legislature convened in February, singling out multimillion-dollar energy grid and unemployment office overhauls as just two examples of bills he was proud to see lawmakers pass in the midst of a global pandemic.

COVID-19 asked questions of governors that have never been asked before, Sisolak concluded, and he thinks he's answered most of them.

"I think under the circumstances, we're in a much better position than we were a while ago, when I stood on the balcony at the Grant Sawyer (State Building) and made the decision to shut down the Strip," he said. "We made the best decisions based on the information we had at the time, and I'm confident we saved a lot of lives.

"Did we suffer along the way? Yeah. And that weighs on my mind every day. But I did everything I could to save every single life."

*James DeHaven is the politics reporter for the Reno Gazette Journal. He covers campaigns, the Nevada Legislature and everything in between. Support his work by subscribing to RGJ.com right here.*

## THIS IS THE WAY THE LEGISLATURE ENDS



JON RALSTON

JUNE 6TH, 2021 - 2:00AM

All sessions end the same way:

Complex legislation is barely vetted and jammed through, unintended consequences are all but guaranteed.

The governor boasts his budget was passed virtually intact and then rattles off a list of “accomplishments” and praises the folks across the courtyard for their statesmanship.

Legislative leaders brag about how they came together for the people of the great state of Nevada, shortly after Republican votes for taxes have been corralled.

Lobbyists lament that this has been the (insert superlative) session of them all, then whisper to their (mostly clueless about how it all works) clients that they did everything that was possible.

And so the ritual is repeated, every two years with a sameness that [Bill Murray's weatherman](#) would recognize and seems depressingly immutable. This session was only slightly different than most, thanks to COVID and a legislatively sealed building for most of the session, leaving lobbyists wailing to be let in with the ferocity of [Dustin Hoffman pounding on the church glass in "The Graduate."](#) And this was no holy place, unless you include worshipping at the altar of Battle Born Progress and the Progressive Leadership Alliance of Nevada.

Hello, darkness my old friend.

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The lamentations are not all wrong. It's a terrible, broken process, but it was broken long ago by having the Legislature be part-time, every other year with a joke of a lawmaker salary that often attracts ne'er-do-wells who can't get another job; term limits, which throws the good legislators out with the bad; and the imposition of a 120-day limit, which renders real deliberation nearly impossible and is incentive for The Rush to Close and concomitant shenanigans.

Add that the process has become more and more politicized over the years, with partisan operatives running around the building whose only job is to sow division, and lawmakers who worry more about their ideological flanks and special interest Twitter stalkers than working to pass compromise legislation.

This session, the frequently apocalyptic pronouncements of the business community confronted with an all-Democratic capital did not come to pass, nor did the hyperventilating over a progressive agenda that apparently sought to free all criminals and defund the police (and that never materialized). The Chicken Littles, the Carson Cassandras were again proved wrong.

And the much-ballyhooed mining tax, which will raise less than \$200 million a biennium for a \$9 billion dollar budget, was only passed because of sops to a handful of Republicans and a gaming industry worried about its own taxing ballot question qualified by the Clark County teachers union. Or as one longtime lobbyist told me: "Mining survives but at their own expense, teachers get a fourth of the money they are looking for, the left wing loses the shutdown effort but gaming gets their tax ballot question pulled!"

Yes, that's essentially what happened. But there is both more and less to it than that. Take the three most high-profile passed bills, which are emblematic of Session '21.

The mining tax [will not raise that much money](#), and the encomia thrown the industry's way, mostly by industry flacks, is a little much to take. It will raise a lot less than the resolutions that could have been headed to the ballot, and the industry still has its protections enshrined in the state Constitution.

Please, Br'er Gang of 63, don't throw us in THAT briar patch.

But – and this is not an insignificant but – just as The Commerce Tax passed in 2015 didn't raise a lot of money, the mining tax bill did create a new revenue stream and codified a new tax. And you don't need to be a legislative insider to understand that taxes are almost never repealed but often are increased.



As Nevada charts its future, the more revenue streams it has to choose from, the better. (This I understand even better now as the head of a nonprofit!) And in the endless, repetitive effort to gather enough votes to surmount the two-thirds requirement for taxes in the Constitution – another terrible policy that empowers major special interests and tiny minorities – the more choices they have, the better.

Second, in a session suffused by COVID, the major health care policy enacted was a so-called public option. An option, as one lobbyist pointed out and *The Indy*'s Megan Messerly has reported, "that has no public involvement other than issuance of a governmental mandate to the private sector to do something. By all appearances, that mandated task will guarantee losses for the private sector."

It also doesn't take effect until 2026. And five years is an eternity for mischief-makers.

But – again a substantial but – the so-called public option, even if it is a variant, is now in Nevada Revised Statutes. It will be difficult to repeal, easy to tweak. That ain't nothing.

Finally, the most lobbied bill of the session may well have been the so-called Right to Return legislation carried by friends of the Culinary union and is as special as any special-interest legislation has ever been. It pitted the most potent Democratic special interest against the most potent special interest in the state, and nearly all of the negotiations took place at the highest levels and out of the sight of everyone — including the Legislature!

This is sausage the gamers only grudgingly accepted after making changes, but that the Culinary can take credit for jamming through. The Culinary and its brothers in the AFL-CIO gushed afterwards about the law, while gaming lobbyists privately suggested the measure was imbalanced and could inhibit hiring while driving wedges between union and non-union properties that will be difficult to repair.

This is one where the devilish details will be seen in the ensuing months and years, and we will discover whether this is a revelatory, pro-worker bill (that exempted small businesses at the last moment) passed in a right to work state or one that further cripples an essential industry already devastated by the pandemic.

All three of these complicated measures, and a massive energy bill, were dropped into the Legislature at the eleventh hour, as if to create an object lesson on how messed up the process is. And in so doing, they also exposed how the Democratic triumvirate of Gov. Steve Sisolak, state Senate Majority Leader Nciole Cannizzaro and Speaker Jason Frierson was not one for the ages. This wasn't Caesar, Pompey and Crassus, although it would be unfair to relegate them to Three Stooges status, either.

The governor, dealt a terrible hand because of COVID, did not play his cards well and was not even at the table for most of the session. As one insider put it: "The governor laid back too long. If he thought leadership was going to exercise control, he has to be disappointed. He could have moderated some of the nonsense."

But Sisolak, who has never really cottoned to a process where he had to get 22 and 11 votes instead of just three other county commissioners in order to get his way, did play a major role behind the scenes (along with his small staff) in closing the session. And any inside baseball criticism of his performance is far overshadowed by Sisolak coming out of the session with some major new laws, a rebounding economy and a chaotic GOP field of foes that will help his re-election.

The Republican minority was stunningly inept at going after the governor with two leaders, Robin Titus and James Settlemeyer, who essentially played no role in the endgame. As usual, a handful of moderates played ball and were key to the compromises, while the so-called Freedom Caucus (labeled the "Free-dumb Caucus" by other Republicans) and ranters such as Annie Black and Ira Hansen were heard but accomplished nothing. (Hansen at least has his own thoughts and beliefs, while Black essentially was a performance artist who had no interest in legislating.)

As for the leaders, Frierson's cat-herding skills were tested by 25 colleagues who were each caucuses unto themselves, and he spent an inordinate amount of time killing his own party's bills. Frierson had a testy relationship with Cannizzaro, who garnered a reputation for being insular but who nevertheless has her name on two of the most important bills of the session – Right to Return and the public option.

The one measure that seemed to encapsulate this trio's relationships – or lack thereof – was the death penalty repeal, which progressives celebrated getting out of the Assembly as if that house had approved the 13<sup>th</sup> Amendment. But it never really had much hope in a Senate led by a prosecutor and with a governor concerned about his re-election, especially against a possible GOP nominee who is a sheriff.

Maybe if they talked a little more, a little earlier...

As in any session, lower profile laws were enacted that will have a meaningful impact on people's lives, including some criminal justice measures (derided as half- or eighth-measures by some progressives) and an elections bill that embeds mail voting and raises the eternal question of why Republicans are so upset about more people casting ballots.

In the end, though, it was more of the same: Flawed people in a flawed process passing flawed legislation. It's hard to envision it getting better anytime soon, and good people may be leaving – I wouldn't be surprised to see both legislative leaders decide they have a right to not return, and with no heirs apparent – especially Maggie Carlton, perhaps the last regular person who came to Carson City two and a half decades ago not knowing anything and who will leave (after the inevitable special sessions for redistricting and other matters) knowing almost everything. Agree or disagree with her, Carlton worked as hard as anyone, stuck to her core beliefs and you always knew where she stood.

We need more of that, not less. And what the Legislative Building really needs is to be designated as an Innovation Zone, where those inside have the power to make changes that will give them more autonomy, more staff and more time.

It's long overdue.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 09, 2021**

99C159897

The State of Nevada vs Zane M Floyd

**June 09, 2021**

**3:00 AM**

**Minute Order**

**HEARD BY:** Villani, Michael

**COURTROOM:** Chambers

**COURT CLERK:** Samantha Albrecht

**RECORDER:**

**REPORTER:**

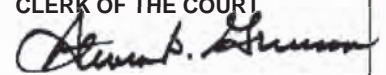
**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- COURT ORDERED, Defendant's Motion for Reconsideration set for 6/11/2021 at 8:30 am OFF CALENDAR. Court to rule on the pleadings and issue a written Order next week.

CLERK'S NOTE: A copy of this Minute Order was provided by e-mail to counsel. 6/9/2021 sa



1 **ORDR**

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 ZANE MICHAEL FLOYD,

8 Defendant.

CASE NO: 99C159897

DEPT NO: XVII

9  
10 **DECISION AND ORDER**

11 DATE OF HEARING: June 11, 2021  
12 TIME OF HEARING: 8:30 AM

13 THIS MATTER being considered upon the pleading on file herein:  
14

15 This COURT FINDS there is no change in circumstances and this court prior decision  
16 is not clearly erroneous to Reconsider Defense's prior Motion to Disqualify Clark County  
17 District Attorney's Office.

18 **ORDER**

19 IT IS HEREBY ORDERED that Defense Motion for Reconsideration DENIED.  
20

21 Date: June, 17, 2021



24 DISTRICT JUDGE

25 MICHAEL P. VILLANI  
26  
27  
28