

IN THE SUPREME COURT OF THE STATE OF NEVADA

PRO PETROLEUM, LLC; RIP GRIFFIN  
TRUCK SERVICE CENTER, INC.; AND  
DAVID YAZZIE, JR.,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK;  
AND THE HONORABLE SUSAN H.  
JOHNSON, DISTRICT COURT JUDGE,

Respondents,

and

DAKOTA JAMES LARSEN,

Real Party in Interest.

No. 83536

Electronically Filed  
Jan 06 2022 09:44 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

***REAL PARTY IN INTEREST'S REPLY IN SUPPORT OF THE  
MOTION TO DISMISS PETITION AS MOOT***

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## ***INTRODUCTION***

Petitioners, Pro Petroleum, LLC, Rip Griffin Truck Service Center, Inc., and David Yazzie, Jr., (collectively Pro Petroleum) filed a petition for a writ of mandamus or, alternatively, prohibition seeking this court's extraordinary intervention in a discovery dispute to determine the constitutionality of NRS 52.380. Pet. 1. Given that this court recently held that NRS 52.380 is unconstitutional, *see Lyft, Inc. v. Eighth Jud. Dist. Ct.*, 137 Nev., Adv. Op. 82, \_\_\_ P.3d \_\_\_, \_\_\_ (2021), and given that Pro Petroleum's petition requests no other relief from this court, Real Party in Interest, Dakota Larsen, respectfully moves this court to dismiss Pro Petroleum's petition as moot. *See* NRAP 27(a)(1) (providing that a party may move this court for relief).

## ***ARGUMENT***

### ***I. Standard of review***

A writ of mandamus is available to, among other uses, "control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 122 Nev. 132, 142, 127 P.3d 1088, 1096 (2006); NRS 34.160. This court recognizes two appropriate uses of a writ of mandamus, traditional and advisory. *Walker v. Second Jud. Dist. Ct.*, 136 Nev., Adv. Op. 80, 476 P.3d 1194, 1196-99 (2020).

## ***II. The instant petition is not appropriate for traditional mandamus***

To warrant traditional mandamus, the petitioner must substantially “demonstrate a clear legal right to a particular course of action,” which the district court manifestly abused, and the petitioner must demonstrate that the requested writ will remedy the alleged error. *Id.* at 1196. While the district court’s reliance upon NRS 52.380 was unconstitutional, Pro Petroleum’s petition does not request any relief from this court that will remedy that error. *See* Pet. 1-17. Indeed, there is no remedy that this court can provide, as Larsen has undergone a superseding surgery, which prevents Pro Petroleum from reconducting its NRCP 35 physical examination without an observer present. Accordingly, the underlying petition will not avail Pro Petroleum. Furthermore, as this court recognized, the district court’s error did not prejudice Pro Petroleum’s substantial rights. *See Pro Petroleum, LLC v. Eighth Jud. Dist. Ct.*, No. 83536 (Nev. Nov. 10, 2021) (order denying stay); NRCP 61 (providing that this court “must disregard all errors and defects that do not affect any party’s substantial rights”). Accordingly, the underlying petition does not warrant traditional mandamus relief, and Larsen respectfully urges this court to enter dismissal.

### ***III. The instant petition is not appropriate for advisory mandamus***

The second appropriate form of mandamus relief is advisory mandamus. *Walker*, 136 Nev., Adv. Op. 80, 476 P.3d at 1198-99. Advisory mandamus is appropriate where the petitioner asks this court to clarify a legal issue of statewide importance, and such an answer will promote judicial economy and administration. *Id.* Here, the underlying petition is moot given that this court already held that NRS 52.380 is unconstitutional. *See Lyft, Inc.*, 137 Nev., Adv. Op. 82, \_\_\_ P.3d at \_\_\_. Accordingly, there is nothing left for this court to decide in Pro Petroleum's petition, and Larsen respectfully urges this court to enter dismissal.

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### *CONCLUSION*

Given that this court recently held that NRS 52.380 is unconstitutional and given that Pro Petroleum's petition requests no other relief from this court, Real Party in Interest, Dakota Larsen, respectfully moves this court to dismiss Pro Petroleum's petition as moot. Should this court conclude otherwise, Larsen respectfully requests that this court grant her an extension to file an answer to the underlying petition 30 days after this court resolves the motion to dismiss.

DATED this 6th day of January 2022.

CLAGGETT & SYKES LAW FIRM

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***CERTIFICATE OF SERVICE***

I hereby certify that I electronically filed the foregoing **REAL PARTY IN INTEREST'S MOTION TO DISMISS PETITION AS MOOT** with the Supreme Court of Nevada on the 6th day of January 2022. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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I further certify that I emailed the foregoing document to the following:

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/s/ Anna Gresl  
Anna Gresl, an employee of  
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