

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

LAS VEGAS POLICE PROTECTIVE  
ASSOCIATION, INC.,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK; AND THE  
HONORABLE NANCY L. ALLF,  
DISTRICT JUDGE,

Respondents,

and

JORDAN TRAVERS; AND LAS  
VEGAS METROPOLITAN POLICE  
DEPARTMENT,

Real Parties in Interest.

Case No.: 83793

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Petition from the Eighth Judicial  
District Court, The Honorable Nancy L.  
Allf Presiding, Dept. No. XXVII, Case  
No. A-21-832601-P.

**REAL PARTY IN INTEREST LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT'S ANSWERING BRIEF**

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## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Attorney of Record for Real Party in Interest LVMPD: Nick D. Crosby, Esq., of Marquis Aurbach, Chtd.
2. Attorneys of Record for Petitioner: Anthony P. Sgro, Esq and Jennifer Willis Arledge, Esq., of Sgro & Roger, and David Roger, Esq.
3. Attorneys of Record for Real Party in Interest Jordan Travers: Daniel Marks, Esq. and Adam Levine, Esq., of the Law Office of Daniel Marks.
4. Publicly held companies associated: None.

Dated this 18th day of January, 2022.

MARQUIS AURBACH CHTD.

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## **I. INTRODUCTION**

The Las Vegas Metropolitan Police Department (“Department”) does not take a position on the issue of intervention. The issue presented to the District Court in the underlying action surrounded Real Party in Interest Jordan Travers’ challenge to the Department’s decision to not allow representation during an interview conducted pursuant to Nevada Revised Statute chapter 289 because his representative of choice was affiliated with an employee organization that was not the exclusive bargaining agent. The decision not to allow the representative was based upon a decision issued by the Employee Management Relations Board (“EMRB”). In the District Court action, the Department did not take a position on Travers’ challenge, nor has it taken a position – one way or the other – on any other similar case presented before the EMRB or District Court. Similarly, the Department did not take a position on Petitioner the Las Vegas Police Protective Association, Inc.’s (“LVPPA”) Motion to Intervene. The Department has, and will continue, to abide by any order or decision issued by a court or administrative agency with jurisdiction over the Department.

## **II. THE DISTRICT COURT ACTION**

### **A. TRAVERS’ PETITION.**

Real Party in Interest Jordan Travers (“Travers”) filed his Petition for Injunctive Relief in the District Court on April 8, 2021 pursuant to Nevada Revised

Statute 289.120. (Appx., Vol. I, pp. 174-177). In the Petition, Travers alleged that he was denied a representative of his choosing during an interview/interrogation recognized under Nevada's Peace Officers Bill of Rights, Nevada Revised Statute chapter 289. (Id. at p. 176, ¶ 15). Specifically, Travers alleged that he was provided a mandatory notice of interview pursuant to Nevada Revised Statute 289.060 on March 9, 2021 for an interview with the Department's Critical Incident Review Team ("CIRT"). (Id. at p. 175, ¶ 6). Travers is not a member of LVPPA, which is the recognized, exclusive bargaining agent for rank-and-file police and corrections officers employed by the Department. (See id. at p. 175, ¶ 8).

Travers alleged that he secured coverage from the Fraternal Order of Police Legal Defense Plan (the "Plan") which, according to the Petition, is a "self-funded benefits plan which provides an attorney to covered officers in connection with Civil, Criminal or Administrative proceedings...." (Id. at p. 175, ¶ 9). Travers alleged the Plan is not an employee organization or union. (Id. p. 176, ¶ 11). Prior to his interview with CIRT, Travers was approved for Plan-covered counsel for his interview, and he selected Adam Levine as his counsel. (Id. at p. 176, ¶ 13).

The Department was notified that Travers would be represented by Plan counsel, and, on March 4, 2020, LVMPD Labor Counsel Jamie Frost ("Frost") advised Mr. Levine of the following:

As we discussed, given the fact that your representation of Officer Travers is due to his membership with the [Fraternal Order of Police], the Department will not be allowing you to represent Officer Travers at his CIRT interview on Monday. The recent EMRB decision prohibits any representative from a rival organization.

(Appx., Vol., p. 180).

Travers argued that Nevada Revised Statute 289.080(1) and (2) recognized a peace officers' statutory right to two representatives of her/his choosing during an interview or interrogation conducted pursuant to Nevada Revised Statute 289.057. (Id. at p. 181). Travers argued that the rights outlined in Nevada Revised Statute 289.080 superseded the principles of exclusive union representation, as announced by the EMRB. (Id. at pp. 182-183). The ultimate conclusion advanced by Travers was that "NRS 289.080(1) and (2) do not permit LVMPD to exclude representatives chosen by peace officers simply because they are (erroneously in this case) believed to be affiliated with a rival employee organization." (Id. at p. 183). Moreover, Travers argued that the Department's decision to exclude Mr. Levine from the CIRT interview was incorrect because Plan attorneys represent individual officers and not the Plan or any employee organization. (Id. at pp. 185-186).

The Department filed its response to the Petition for Injunctive Relief. (Appx., Vol. II, pp. 276-329). In its response, the Department stated it did not take a position on the issue – which is the same position it had taken on every other

matter challenging the issue. (Id. at pp. 276-280). A hearing was held on May 20, 2021, and the District Court announced it would grant the Petition. (See id. at p. 334). Thereafter, the Court issued its Findings of Fact, Conclusions of Law and Order Granting Permanent Injunction Pursuant to NRS 289.120 (“Order”). (Id. at pp. 335-339). Notice of Entry of the Order was filed May 28, 2021. (Id. at p. 343-345).

## **B. LVPPA’S MOTION TO INTERVENE.**

On June 22, 2021, LVPPA filed its Motion to Intervene. (Appx., Vol. III, pp. 354-470). In the Motion to Intervene, LVPPA argued that it was an indispensable party under Nevada Rule of Civil Procedure 19 and that the District Court’s Order resulted in inconsistent rulings from another District Court judge. (Id.) Travers filed his opposition to the Motion to Intervene on June 28, 2021. (Id. at pp. 471-525). The Department filed a response to the Motion to Intervene on the same day, and notified the Court it took no position on the issue. (Id. at pp. 526-530). On July 21, 2021, LVPPA filed its Reply in Support of the Motion to Intervene. (Id. at pp. 531-538).

The District Court held a hearing on the Motion to Intervene on August 18, 2021 and denied the Motion to Intervene. (Id. at p. 539). Notice of Entry of the Order denying the Motion to Intervene was filed October 20, 2021. (Id. at pp. 568-572).



### **III. LEGAL ARGUMENT**

The Department does not take a position – one way or the other – on LVPPA’s claims regarding denial of the Motion to Intervene. As it did in the District Court regarding the Motion to Intervene and the underlying Petition for Injunctive Relief, the Department does not have a position to take on the issues and will continue to abide by any order issued by this Court, the District Court, the EMRB or any other agency with jurisdiction over the Department.

### **IV. CONCLUSION**

The Department does not take a position on the Petition for Writ of Mandamus or Alternatively Writ of Prohibition.

Dated this 18th day of January, 2022.

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## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 1,026 words; or

☐ does not exceed \_\_\_\_\_ pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 18th day of January, 2022.

MARQUIS AURBACH COFFING

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **REAL PARTY IN INTEREST LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S ANSWERING BRIEF** was filed electronically with the Nevada Supreme Court on the 18th day of January, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

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