

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUCATION FREEDOM PAC,
Appellant,

vs.

RORY REID, AN INDIVIDUAL;
BEVERLY ROGERS, AN
INDIVIDUAL; AND BARBARA
K. CEVASKE, IN HER OFFICIAL
CAPACITY AS NEVADA
SECRETARY OF STATE,
Respondents.

Electronically Filed
May 26, 2022 02:13 p.m.
Supreme Court Case No. 84736
District Court Case No. Elizabeth A. Brown
22OC000281B Clerk of Supreme Court

REPLY IN SUPPORT OF
EMERGENCY MOTION TO EXPEDITE APPEAL
ON ORDER SHORTENING TIME

“[J]ustice delayed is justice denied.” *Dougan v. Gustaveson*, 108 Nev. 517, 523, 835 P.2d 795, 799 (1992). Appellant requests this Court rule on its motion to expedite the appeal so that it may submit its Constitution Initiative to the public. But more than that, Appellant hopes for an expedited decision so that the judicial process is not used as a sword to disenfranchise voters, but a shield from the district court’s incorrect ruling on the Description of the Petition. NRAP 2 permits this Court to expedite a case with good cause. NRAP 27(e) allows this Court to hear

an emergency motion. Given that Appellant has no remedy if the Court is unable to rule on the instance *Motion*, and the time will run on its ability to gather signatures and submit the Initiative Petition for the ballot, Appellant respectfully requests this Court use its discretion to grant the *Motion* and expedite the appeal on an order shortening time.

Respondent makes three arguments: (1) the Petition should have been filed sooner; (2) the Appeal should have been filed sooner; and (3) Appellants cannot get the required number of signatures, so this Court should consider the Appeal moot. Each of these arguments is addressed in turn.

First, Appellants complied with all statutory deadlines; Respondents are the parties who caused unnecessary delays in seeking judicial review. Appellant filed its Initiative Petition on January 31, 2022, which should have left at least sufficient time for judicial review—assuming the district court complied with statutory deadlines—and complied with state law. NRS 294.035. Appellant relied on NRS 295.061(1), which required the district court to hold a hearing within 15 days. However, the district court failed to comply with the statute. As a result, instead of holding a hearing by the date required by statute—March 9, 2022, the district court did not hold a hearing until March 29, 2022. And then, it failed to enter an order until 20 days later, on April 19, 2022.

The primary reason the district court failed to comply with the statutory deadlines was due to Respondents' delays. Respondents waited until the last possible day to challenge the Petition. 1 JA 1-14. Respondents also failed to properly name Education Freedom PAC as a defendant, which caused further delay, forcing Education Freedom PAC to seek court approved intervention. 1 JA 58-59. And, Respondents peremptory challenge forced this Court to appoint a senior judge, causing even more delay.

Second, Appellant complied with NRAP's timelines for appeal and did not cause unnecessary delay in filing the Appeal. Appellant's Appeal is timely. It should not be prejudiced merely because it abided by this Court's prescribed timelines. Additionally, Appellant received new counsel which required Appellant's counsel to assess the case and prepare the Appeal. While the notice of appeal 30 days after, the Opening Brief was prepared swiftly, and this *Motion* was delivered to court soon after receiving a case number.

Third, Appellant is likely able to acquire the number of signatures necessary for the Initiative Petition to be placed on the ballot if this Court rules consistent with this motion. This Court should not presume the matter is moot merely because Respondent feels it is unlikely Appellant will receive enough voters. When evaluating whether a case is moot, a court should not be "push[ed] . . . into rank speculation." *Mille Lacs Band of Ojibew v. County of Mille Lacs, Minnesota*, 2022

WL 624661 (D. Min. 2022). This court require a controversy to render an opinion. *NCAA v. University of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). Here, there is a live controversy as there is still a chance Appellants can acquire the number of signatures necessary for the Petition to be placed on the ballot if this Court grants the present *Motion*.

Given that many of Respondents' claims for Appellant's delay are in-fact based on either their actions in the district court or due to the district court's failure to abide by statutory timelines, this Court should be skeptical of the opposition merely because Appellant may not be able to get signatures. As is explained in the sworn declaration included in the opposition to Respondents' motion for order to show cause, which is incorporated here by reference, there is still time to acquire signatures. However, Appellant's ability to acquire signatures hinges on this Court's discretion to grant or deny this *Motion*. Appellant respectfully requests that this Court grant this *Motion* so that Appellant will be able to submit the Constitution Initiative to the public. To rule otherwise will leave voters disenfranchised, without the opportunity to vote for a change in their children's' education. The district court and Respondents have already significantly delayed Appellant's ability to seek judicial review. This *Motion*, and the accompanying request for an order shortening time, is the only way to ensure this Court can consider the merits of Appellant's Appeal.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court expedite review of this Appeal, and that the Court order that: Opening Briefs shall be due May 25, 2022; Answering Briefs be due June 1, 2022; and Reply Briefs shall be due June 7, 2022. This Motion has been served electronically to opposing counsel and to the Secretary of State's representative.

Dates this 26th day of May, 2022.

By: /s/ Jason D. Guinasso

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this date I caused to be served a true and correct copy of
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(Via Electronic service through the Nevada Supreme Court's Eflex system)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 26, 2022, at Reno, Nevada.

/s/ Bernadette Francis-Neimeyer

Bernadette Francis-Neimeyer