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IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM MANTLE,
Appellant/Cross-Respondent,

vs.

JENNIFER BREKHUS, A/K/A JENNY
BREKHUS,
Respondent/Cross-Appellant,

Case No. 84821

THE CITY OF RENO,
Cross-Respondent

REPLY TO RESPONSE TO MOTION TO DISMISS APPEAL AS MOOT

COMES NOW, Respondent/Cross-Appellant JENNIFER BREKHUS, A/K/A JENNY BREKHUS (“Brekhus”), by and through the undersigned counsel, and hereby files the following reply to the July 27, 2022 response of WILLIAM MANTLE (“Mantle”) to Brekhus’ July 25, 2022 Motion to Dismiss Appeal as Moot.¹

At the outset, Mantle’s Response to Motion to Dismiss Appeal as Moot (“Response”) does not address or dispute the facts or the law as presented in Brekhus’ Motion – namely that the fundamental issue is to ensure an allegedly non-qualified elector does not appear on the ballot is moot. Rather, Mantle’s Response raises the following issues: (1) Mantle seeks to exercise his right to due process under the United States and Nevada Constitutions; (2) Mantle argues that Brekus unsuitably participated in an election; (3) Mantle argues Brekus’ cross-appeal means the case is not moot; and (4) Mantle spent time and resources on the matter. As shown below, these arguments are misplaced or not relevant to the issue before the Court.

Issue 1: There is no due process claim before the Court. Mantle’s arguments that he would be denied due process if the Court rules that the appeal is moot are irrelevant here. When a court dismisses a case for mootness, all the due process required has been completed. Under the 5th Amendment and Article 1 Section

¹ The undersigned counsel conferred with counsel for the City of Reno, who indicated that a response to Brekhus Motion would not be filed.

8(2) of the Nevada Constitution the right to due process applies in cases where a person may be deprived of “life, liberty, or property.” There is no issue of Mantle being deprived of any of these rights. Further, under Article III of the US Constitution and this Court’s mootness jurisprudence there is no case or controversy at issue here because it is uncontested that Brekhus will not appear on the ballot for the 2022 mayoral election for the City of Reno, which is the only injury that could have theoretically been prevented had Brekhus won the primary. See *Valdez-Jimenez v. Eighth Judicial Dist. Court of Nev.*, 460 P.3d 976, 979 (Nev. 2020) (where this Court denied petition for writ of mandamus because petitioner was no longer subject to pretrial detention).

Issue 2: Mantle’s opinion is that Brekhus unsuitably participated in the primary election. However, even if this Court were to conclude that this is the case, the question is what could possibly be done about it now? Upon the District Court issuing its May 2, 2022 Order Denying Motion to Dismiss and Finding Brekhus’ Candidacy for the 2022 Mayoral Election Constitutional (“Order”), Mantle could have immediately sought emergency relief under the provisions of this Court’s rules, specifically by filing for an emergency writ under NRS 34.170, NRAP 21(6) and NRAP 27(e) to keep Brekhus off of the primary ballot. He did not do so. While Mantle alludes to “additional methods of relief,” in his Response, he does elaborate on what he means. No matter the outcome, this appeal will not

result in a judgment which can be carried into any effect - as the Court cannot (and certainly should not) order a “do over” of the primary. *Valdez-Jimenez.*, 460 P.3d at 979 (Nev. 2020).

Issue 3: As argued in the Motion, Brekhus’ cross-appeal, with the exception of the attorney’s fees issue, will also be moot if the Court grants Brekhus’ Motion. While Mantle argues that the act of filing the cross-appeal “keeps these issues alive,” Mantle fails to clearly explain why this would be the case - and does not support this claim with any relevant authority. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (courts should decline to consider issues that are not cogently argued or supported by relevant authority).

Issue 4: The fact that Mantle spent time and resources on this matter is not relevant to the question of law as to whether the case before the Court is moot.

Mantle seeks to conscript Brekhus to brief, and this Court to decide, a now abstract question of law with no real world consequences to these parties. The appeal is moot and should be dismissed.

(signature on following page)

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WHEREFORE, Brekhus moves that this Court dismiss Mantle's appeal.

Dated: July 29, 2022:

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CERTIFICATE OF SERVICE

Pursuant to NRCP 25(c), I certify that on the date indicated below, I caused service to be completed by:

_____ personally delivering;

_____ delivery via Reno/Carson Messenger Service;

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___x___ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,

___x___ delivery via electronic means (fax, eflex, NEF, etc.)

a true and correct copy of the foregoing pleading addressed to:

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By: /s/ Luke Busby, Esq.

Dated: Jul 29, 2022