Case No.: _____

In the Supreme Court of Nevada

LAS VEGAS DRAGON HOTEL, LLC, a Nevada limited liability company doing business as ALPINE MOTEL APARTMENTS,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and THE HONORABLE MARIA GALL, District Judge,

Respondents,

and

DEBORAH CIHAL CRAWFORD, individually and as heir to the ESTATE OF TRACY ANN CIHAL; JOHN DOE ADMINISTRATOR, as special administrator of the ESTATE OF TRACY ANN CIHAL; DIANE ROBERTS, individually and as heir to the ESTATE OF DONALD KEITH BENNETT; MIA LUCILEE BENNETT, individually and as heir to the ESTATE OF DONALD KEITH BENNETT, by and through her guardian ad litem Diane Roberts; DONALD ROBERTS, individually and as heir to the ESTATE OF DONALD KEITH BENNETT; and JOHN DOE ADMINISTRATOR, as special administrator of the ESTATE OF DONALD KEITH BENNETT; FRANCIS LOMBARDO, III, individually and as heir to the ESTATE OF FRANCIS LOMBARDO, JR.; JOHN DOE ADMINISTRATOR, as special administrator of the ESTATE OF FRANCIS LOMBARDO, JR.; RICHARD AIKENS; MICHELLE AIKENS; MICHAEL AIKENS, a minor by and through his natural parents, Richard Aikens and Michelle Aikens; BRIANNA AIKENS, a minor by and through her natural parents, Richard Aikens and Michelle Aikens;

DEJOY WILSON; JOHNATHAN WILSON; RETOR JONES, JR.; HELEN CLARK; VICTOR COTTON; CHRISTINA FARINELLA; HAILU ADDIS; DENICIA JOHNSON; PAUL WISE; CARMAN MCCANDLESS; PARALEE MINTER; AUDREY PALMER; SARA RACHAL; KELVIN SALYERS; JOE AGUILERA; DAYSHENA THOMAS; ANDREW THOMAS, a minor by and through his natural parent, Dayshena Thomas; SANDRA JONES; TIACHERELL DOTSON; A'LAYNA DOTSON, by and through her natural parent, Tiacherell Dotson; CLEA ROBERTS; NELSON BLACKBURN; FLOYD GUENTHER; DOYLE MYERS; LAURA EDWARDS; ROY BACKHUS; JIMMY BROWN-LACY; DELMARKAS COMBS; CHARLES COUCH; STEPHANIE COUCH; ASHLEY ROGERS, a minor by and through her natural parent, Cheryl Rogers; CHERYL ROGERS; MATTHEW SYKES; THELMA SYKES; DAVID BARBARA; EDDIE ELLIS; C EUGENE FRAZIER; JEREMY GORDON SCOTTI HUGHES; TOMMY CALDERILLA; KAREN KELLY, Clark County Public Guardian for CHRISTIAN SPANGLER,

Real Parties in Interest.

PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION

With Supporting Points and Authorities

Lead District Court Case No. A-20-808100-C
Consolidated with Case Nos. A-20-810951-C, A-20-810949-C, A-20-814863-C, A-20-816319-C, and A-20-817072-C

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VERIFICATION

STATE OF NEVADA)
COUNTY OF CLARK)

Under penalty of perjury, I declare that I am counsel for the petitioner in the foregoing petition and know the contents thereof; that the pleading is true of my own knowledge, except as to those matters stated on information and belief; and that as to such matters I believe them to be true. I, rather than petitioner, make this verification because the relevant facts are procedural and thus within my knowledge as petitioner's attorney. This verification is made pursuant to NRS 15.010.

Dated this 27th day of July, 2022.

/s/ Daniel F. Polsenberg
DANIEL F. POLSENBERG

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 judges of this court may evaluate possible disqualification or recusal.

Petitioner Las Vegas Dragon Hotel, LLC d/b/a Alpine Motel Apartments is a limited liability company. It has no corporate parent and is a sole-member limited liability company.

Petitioner has been represented by Steven T. Jaffe, Michelle R. Schwarz, and Taylor R. Anderson at Hall Jaffe & Clayton, LLC; and Daniel F. Polsenberg, Joel D. Henriod, and Abraham G. Smith at Lewis Roca Rothgerber Christie LLP.

Dated this 27th day of July, 2022.

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ROUTING STATEMENT

The Supreme Court should retain this petition. The principal issue raises a concern of statewide public importance—whether NRS 41.800 applies to corporations and unincorporated entities' use of their own property and imposing liability against them for such use. NRAP 17(a)(12).

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ISSUES PRESENTED

1. The legislative history and the circumstances surrounding its adoption make clear that NRS 41.800 was enacted to give business owners a remedy *against* those who block ingress or egress, such as in picketing situations. Does the statute nevertheless create a cause of action against private business owners for their use of their own property?

2. The Nevada Legislature passed NRS 41.800 in 2015 by a striker amendment, to protect companies and "their ingress and egress." The statute contemplates a "person's" intent but does not give any indication as to how a corporate entity would form that intent. Does the statute's regulation of a "person's" conduct apply to a limited liability company?

3. Does NRS 41.800 prohibit the blocking of any single access point, regardless of free passage elsewhere?

STATEMENT OF FACTS

This matter arises out of a fire at the Alpine Motel & Apartments ("Alpine Motel") in Las Vegas on December 21, 2019.

A. The Parties

Alpine Motel is owned by defendant/petitioner Las Vegas Dragon Hotel, LLC ("LV Dragon Hotel"). Defendant Adolfo G. Orozco is the managing member. Plaintiffs were residents or estates of residents of the Alpine Motel at the time of the fire.

B. Procedural Background

Plaintiffs filed suit against petitioners LV Dragon Hotel and Orozco (collectively the "hotel defendants"), among others, for injuries sustained the fire. Plaintiffs' claims against these defendants are predominately common-law tort claims, but plaintiffs also raised a novel negligence per se theory based on the recently enacted NRS 41.800.[1]

[1] In their first amended complaint, plaintiffs raised causes of action against LV Dragon Hotel and Orozco for (1) negligence per se violation of NRS 41.800, NRS 118A.290, and NRS Chapter 477; (2) general negligence (3) negligent inflection of emotional distress; (4) intentional infliction of emotional distress; and (5) loss of consortium. There were other causes of action against other defendants, but they were not

The hotel defendants moved to dismiss and to strike the negligence *per se* claim, arguing that these defendants cannot be held liable under NRS 41.800 on two bases. *First*, they posited that NRS 41.800 does not itself define "person" at all let alone to include a business entity, and that a business entity was not the type of "person" that the statute contemplated, given its own text. *Second*, they noted that the legislative history for NRS 41.800 makes clear that the statute is a remedy to be used ***by*** a property owner ***against*** others who block ingress or egress to the property, such as in picketing. It is not intended as a basis for civil liability against the property owner for lack of egress or a supposed safety issue.

In their oppositions, plaintiffs argued that NRS 0.039 provides a filler definition for "person," which includes an entity like LV Dragon

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brought against the hotel defendants.

Plaintiffs also moved to amend, seeking to add a cause of action for alter ego liability against LV Dragon Hotel and Orozco, and adding other defendants to that claim.

Various groups of plaintiffs have filed various complaints that have all been consolidated under one action, but they all in some way incorporate the claims under NRS 41.800 into their causes of action, either through a separate and distinct claim or as a theory of negligence per se.

Hotel. As to the applicability of NRS 41.800 as a basis for a right of action for negligence per se, they contended that the statute is not ambiguous and so the district court should not even consult the legislative history, no matter how clear the legislative intent is from that record, or how absurd the result. (1 App. 22–24; 1 App. 33–36; 1 App. 45–48.)

C. Judge Bare Sends Mixed Messages on the Ambiguity of NRS 41.800 but Declines to Consult the Legislative History

At the hearing on the motions, Judge Bare explained that in his ten years overseeing civil cases, he had never come across NRS 41.800 as the basis for a claim. (1 App. 142:12–13.) The judge initially held that there was no need to consult the legislative history because the statute was unambiguous. Inevitably, however, Judge Bare found himself engaging in legislative interpretation. Specifically, he said, "I think, the Legislative message that this statute, 41.800, is designed to clearly provide a civil court, a civil action remedy to any person is what it says." (1 App. 143:4–6.) He also conceded that it was particularly challenging to determine the proper application of NRS 41.800:

> You know, there[are] 32 general jurisdiction Judges, and my guess is about half of them would do one thing and half

> would do the other on this because it presents an interesting little quandary for a Judge and for lawyers, and it's a good one. It's one that lets you think.

Id. at 181:6–10; *see also id.* at 181:23–25 ("And that's where I get to this idea that some Judges would think one thing, and some would think another, most likely. Well, you have one [judge]; you just have me, at least for now.").

Shortly after the hearing, Judge Bare issued an order on December 22, 2020, denying the hotel defendants' motions to dismiss and to strike. *See* 1 App. 189. In the order, Judge Bare found that "the court may not look at legislative intent unless a statute is ambiguous." *Id.* And he found that because the word "person" in NRS 41.800 can be defined by NRS 0.039, the statute is not ambiguous and does apply to LV Dragon Hotel. *Id.*, at 1 App. 190. Thus, the trial court did not "look at the legislative intent of NRS 41.800 because in the [c]ourt's opinion, the statute is unambiguous." *Id.*, at 1 App. 190–91.

Shortly thereafter, Judge Bare was replaced on the case by Judge Kierny.

On December 13, 2021, the hotel defendants moved for clarification of the court's order denying the motions. While Judge Bare

had focused largely on the meaning of "person." The hotel defendants noted that the order was unclear about its reasoning as to two other issues:

- Whether NRS 41.800 prohibits an owner of private property from obstructing access to and from the owner's own property, and
- Whether NRS 41.800 applies even when a person obstructs just one of several passageways, such that there remains at least one "free passageway" for ingress and egress.

(1 App. 205.) On February 23, 2022, without a hearing, the district court denied the motion for clarification, concluding that the prior order "was clear and left no room for ambiguity." (2 App. 330.)

SUMMARY OF THE ARGUMENT

NRS 41.800 clearly states that a person must "intentionally" carry out the "obstruction." However, the statute does not specify who such a "person" is on behalf of an entity and does not itself define "person." Therefore, the legislative history should be evaluated. The legislative history makes clear that the "person" to whom NRS 41.800 is directed is one disrupting the use of the property by the owner, not the property owners, themselves. At the very least, the term should be limited to natural persons picketing, protesting and impinging on the use of

others' property, not as a regulation of corporate entities' use of their own premises.

It is clear that the statute protects property owners from others' efforts to block access to the property, as in picketing situations. This was a statute intended to regulate activities of other persons affecting commercial activity on a property owner's property, not to regulate the safety of commercial buildings themselves. Plaintiffs' interpretation, that the statute imposes liability on property owners for *any* obstruction—no matter how brief or how reasonable—of an access route to their own property—is wholly outside the statute's intended scope. Under plaintiffs' interpretation, any property owner in Nevada who locks their own door could be held liable under NRS 41.800. The statute provides for attorney fees, actual damages, declaratory and injunctive relief, and so the potential prejudicial application of the statute against property owners across Nevada is significant.

WRIT RELIEF IS APPROPRIATE

NRS 41.800 is a relatively recent statute that this court has not interpreted, either regarding either its applicability or its meaning, at all. This court should grant this petition because the issues here are of

state-wide concern to businesses and property owner, especially concerning hotels and commercial residences. These issues involve whether the statute imposes liability on corporate land owners, as opposed to natural persons attempting to restrict the land owners' use of their own property. Similarly, the question whether NRS 41.800 regulates businesses' use of their own property is an important issue that cries out for clarification. *Smith v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 113 Nev. 1343, 1348, 950 P.2d 280, 282 (1997) (granting the petition for mandamus or prohibition and "compelling the district court to vacate its order denying petitioners' motion to dismiss. . . and to reconsider that motion in light of the views expressed in this opinion."). Unless this court clarifies the application of NRS 41.800, businesses throughout Nevada, including vast interests in hotels and residential rental properties, will improperly face claims and liability under this statute.

The interpretation of the statute, moreover, presents pure questions of law. This court can resolve these questions as a matter of statutory construction on the existing record. *See Matter of Beatrice B.*

Davis Family Heritage Tr., 133 Nev. 190, 194, 394 P.3d 1203, 1207 (2017).

This Court should hear this petition now, not only to foreclose the novel use of the statute to impose improper liability in this case, but also to prevent a wave of similar cases following the lead of this litigation. Resolving the issue now would correct the improper imposition of liability on commercial landowners before it takes place.

STANDARD OF REVIEW

"This court reviews a district court's . . . statutory construction de novo, even when considered in a writ petition." *Humphries v. Eighth Jud. Dist. Ct.*, 129 Nev. 788, 792, 312 P.3d 484, 487 (2013).

ARGUMENT

I.

THE REASONABLE INTERPRETATION OF NRS 41.800 IS TO PREVENT PERSONS PICKETING OR PROTESTING FROM OBSTRUCTING PROPERTY, NOT TO REGULATE CORPORATE USE OF PROPERTY

A. The Statue at Issue: NRS 41.800

The Nevada Legislature enacted NRS § 41.800 in 2015. Statute reads:

1. ***A person shall not intentionally obstruct***:

(a) ***The ingress or egress to any public or private property*** from any other public or private place in such a manner *as not to leave a free passageway for persons and vehicles lawfully seeking to enter or leave the property* via the public or private place; or

(b) ***Any public or private roadway***, including, without limitation, intersections, so as to prevent the safe passage of vehicles thereon or therethrough.

2. In addition to any other remedy, ***a person aggrieved by a violation of subsection 1 may bring a civil action*** in a court of competent jurisdiction against any person who commits the violation to seek any or all of the following relief:

(a) ***Declaratory and injunctive relief***, including, without limitation, injunctive relief to ***enjoin any ongoing activity*** that violates any provision of subsection 1. For the purposes of injunctive relief, a person who brings an action pursuant to this subsection is entitled to a ***rebuttable presumption of irreparable harm***.

(b) Actual damages.

(c) ***Reasonable attorney's fees and costs***.

(d) Any other legal or equitable relief that the court deems appropriate

3. A person who violates the provisions of this section is not subject to criminal liability.

NRS 41.800.

B. Principles of Statutory Construction and Exceptions to the Plain-Language Doctrine

This court normally construes statutes under their plain meaning. There are recognized exceptions to this rule.

"[T]his court interprets statutes by their plain meaning unless there is ambiguity, 'the plain meaning would provide an ***absurd result***,' or the plain meaning '***clearly was not intended***.'" *Harper v. Copperpoint Mut. Ins. Holding Co.,* __ Nev. Adv. Op. 33, __ P.3d __ (May 12, 2022), quoting *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020) (emphasis added). Under all three of these principles of construction, this Court is aimed at individuals who obstruct commercial property, such as picketers and protester. The intent of the statute is not to regulate the corporate land owners' use of its property.

C. NRS 41.800 Prohibits Persons such as Picketers and Protestors from Intentionally Obstructing Premises

NRS 41.800(1) provides that a "person shall not ***intentionally*** obstruct * * * ingress or egress to ***any public or private property***; or * * * [a]ny public or private roadway…" (emphasis added). From the statute's own text, we can see that the purpose of the prohibition is to

have that person's activity "leave a free passageway for persons and vehicles lawfully seeking to enter or leave the property" and to allow for "the safe passage of vehicles…."

From this text, it is clear that the statute prohibits a person from obstructing private or public property with the intent to limit access to and from that property. Such a prohibition obviously applies to—and is limited to—circumstances where other persons intentionally performed acts such as picketing, protesting, or similarly impinging on the landowners' use of premises. Read otherwise, it would create an absurd result where no property owner, either public or private, could lock their own doors or close any gate to their own property.

D. The Circumstances of Its Passage Confirm this Interpretation of NRS 41.800

One of the important interpretive tools is to consult the One of the important interpretive tools is to consult the circumstances, or the tumult, that prompted the passage of the legislation. 2A NORMAN SINGER & SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 48:3 (7th ed. updated Nov. 2021) (observing that courts look to "the circumstances under which an act was passed" and that "[a]s with all legislative history, courts generally turn to a law's pre-enactment

history to discover its purpose, or object, or the mischief at which it was aimed, when the statute's language is inadequate to reveal legislative intent") (collecting cases). Contemporaneous commentary illuminates the purpose and context of NRS 41.800. The U.S. Chamber of Commerce's executive director of labor policy explained that NRS 41.800 "establishes ***much-needed limitations on disruptive picketing at businesses*** in the Silver State." Sean P. Redmond, *Nevada Law Curtails "Mass" Picketing*, WAYBACK MACHINE (June 30, 2015), https://web.archive.org/web/20210223040114/https://www.uschamber.com/article/nevada-law-curtails-mass-picketing (emphasis added). He went on to explain that the reason NRS 41.800 was enacted was because there were many labor disputes where picketers or protestors would block the Las Vegas Boulevard and harass guests trying to enter a casino. *See id.*

Contemporaneous media coverage of the bill confirms that the widely understood purpose of the bill was to regulate picketing of businesses. *See, e.g.*, Associated Press, *Portions of Nevada Bill Restricting Picketing Re-Emerge*, RENO GAZETTE JOURNAL (May 31,

2015), https://www.rgj.com/story/news/politics/2015/05/31/portions-nevada-bill-restricting-picketing-re-emerge/28260583/ (noting that "[p]ortions of a bill aimed at making it more difficult to picket and protest businesses have re-emerged in [A.B. 258] late in the legislative session").

E. The Statute's Use of the Word "Person" and the Legislative History Indicate that NRS 41.800 Prohibits a Person's Obstruction of Commercial Property, Not Corporate Use of its own Property

NRS 41.800 prohibits a "***person***" from "intentionally obstruct[ing] * * * [t]he ingress or egress to any public or private property…." But the statute itself does not define person.

The reasonable meaning of person in this statute is that the prohibition is directed against an individual person's obstruction of another's property. This is the issue that prompted the enactment of the statute.

This meaning is also reflected in the legislative history. In opposing AB 258 in 2015,[2] Senator Aaron Ford described the intent of

[2] In 2015, AB 258 was originally introduced as dealing with the sale of securities. On May 31, 2015, however, a striker amendment of NRS § 41.800 was introduced and adopted. *See* Nevada Senate Journal, 78th Sess. No. 119. As the amendment was introduced on the Senate floor,

the bill as protecting the rights of companies to access to their property, as opposed to protecting individuals:

> SENATOR FORD: * * * I think it is s that ***we are affording certain privileges to companies***, and in circumstances like this, ***we are giving a private right of action to a business*** to protect its profits but not to a young kid to protect his psyche from conversion therapy for example. ***We are giving attorney's fees to companies to protect their ingress and egress*** but we remove the opportunity for home owners to recover those same attorney's fees for a defectively constructed doorway entering into their home. Also, ***we are also offering a presumption against an individual that presumes damages*** but not against a company for product liability.

Id. (emphasis added).

It is telling that a leading legislator, the business community, and the public media all contemporaneously viewed NRS 41.800 as *shielding* businesses, like petitioners, from persons interfering with their use of their property. The addition of the attorney fee award also indicates the legislature's intent to encourage use of the statute even where the actual damages may be limited and only declaratory or injunctive relief to remove the protestors would be sought.

In contrast, real parties in interest contend that the word "person," for whom NRS 41.800 creates liability, should bear a much

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rather than committee, there is less legislative history than in other circumstances.

broader meaning, partially based on NRS 0.039, creating liability for ***all*** possible natural or artificial persons, including corporate landowners managing their own property. While plaintiffs attempt to expand the meaning of the word—and the statute—to create liability beyond where a person obstructs commercial property to include corporate control of its own property, that is not consistent with the intent of the statute and leads to absurd results.

Plaintiffs' interpretation is too broad—and too convenient. This court has recently explained that "[t]he word 'person' has many definitions," depending on the circumstances. *Lofthouse v. State*, 136 Nev. Adv. Op. 44, 467 P.3d 609, 612–13 (2020).[3] Under the circumstances of this statute, the word should be given an appropriately

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[3] This court in *Lofthouse* listed some of the various definitions of "person":

> NRS 0.039 ("Except as otherwise expressly provided in a particular statute or required by the context, 'person' means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization."); *Person, Black's Law Dictionary* (4th ed. 1951) ("'Persons' are of two kinds, natural and artificial."); *Person, Merriam-Webster's New International Dictionary of the English Language* (2d ed. 1959) (listing nine definitions including "[a] human being" and "[t]he bodily form of a human being").

467 P.3d 609 at 612–13.

narrow interpretation, meaning a natural person who interferes with corporate property, not the corporate landowner, itself.

Another problem with applying this general "person" definition to NRS 41.800 is that neither statute indicates *how* liability is imputed to a corporation or an unincorporated organization for some intentional act. While the law does often regard corporations as persons, it does not always do so. And when it does, it still must account for critical differences between corporations and natural persons—in particular, the fact that "[a] corporation can acquire knowledge or receive notice only through its officers and agents." *In re Amerco Derivative Litig.*, 127 Nev. 196, 214, 252 P.3d 681, 695 (2011) (quoting *Strihecker v. Mut. Buidling & Loan Ass'n of Las Vegas*, 55 Nev. 350, 34 P.2d 1076, 1077 (1934)); *see also, e.g.*, *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 158 (2001) (noting that a "corporate owner/employee, [as] a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status"). In NRS 41.800, however, there is no language explaining whether or how the intentional act of the corporation's agent or officer is imputed to the corporation for purposes of liability. This contrasts

sharply with other Nevada statutes, which virtually never impose corporate liability without addressing the issue of how to impute representatives' actions and intent to the corporation,[4] especially when the liability is predicated on intentional acts.

F. The Statutory Provision for Injunctive Relief also Confirms this Interpretation

Besides damages and fees, NRS 41.800(2) provides for

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[4] For example, the following statutory provisions that explain precisely who, on behalf of the corporate entity, can impute liability on the entity:

- Under NRS 207.175, "[a]ny person, firm, or **any officer or managing agent** of any corporation or association who knowingly and willfully violates. . . ." (emphasis added).

- NRS 360.490(1) states "[a]ny person who engages in business in this state without having the appropriate permit or license for the business as required by this title or chapter 585 of NRS or who continues to engage in the business after such a permit or license has been suspended, and **each officer of any corporation** which so engages in business, is guilty of a misdemeanor." (emphasis added).

- NRS 571.110 explains, that "[a]ny person, corporation, common carrier, **agent or employee of any corporation** violating or assisting in violating. . . ." (emphasis added).

These statutes, unlike NRS 41.800, describe who from the corporation or entity can hold the corporation or liability responsible. However, NRS 41.800 does no such thing.

"[d]eclaratory and injunctive relief, including, without limitation, injunctive relief to enjoin any ongoing activity that violates any provision of subsection 1." In those circumstances, the statute also establishes "a rebuttable presumption of irreparable harm."

Such a provision seems geared to allowing commercial landowners and occupiers a legal boost to obtaining a temporary restraining order and preliminary injunction to quell protesting that is affecting the business property.

II.

AT MOST, NRS 41.800 IS AMBIGUOUS

Judge Bare was right that NRS 41.800 "presents an interesting little quandary." (1 App. 181:8). Indeed, the statute's language is so unclear in several regards that it is difficult to explain Judge Bare's subsequent finding that NRS 41.800 was unambiguous. (1 App. 190.) In particular, the statute contains seemingly contradictory language about the level of intent that triggers liability, it is ambiguous as to the meaning of "person," and it raises questions about what sorts of "obstruct[ions]" it regulates.

A The Wording about "Intentional Obstruct[ion]" of "Ingress and Egress" Confirms that the Statute Is Directed Toward Acts Similar to Picketing, Rather than Regulation of a Land Owner's Use of Its Own Property

NRS 41.800 prohibits the intentional obstruction of "[t]he ingress or egress to any public or private property from any other public or private place in such a manner as not to leave a free passageway for persons and vehicles lawfully seeking to enter or leave the property via the public or private place." NRS 41.800(1)(a). This is consistent with the legislative intent that the statute prohibits a person from intentionally interfering with the use of commercial property, rather than regulating the landowner's maintenance of its own property

Unlike the plain language in the statute at issue in *Harper*, the text of NRS 41.800 does not clearly support plaintiff's interpretation that the legislature meant to prohibit private property owners from "obstruct[ing]" access to and from ***their own*** property. Indeed, interpreting NRS 41.800 as imposing liability whenever a property owner blocks ingress to or egress from the property owner's *own* home or business produces absurd results. If the statute created such a broad cause of action, then business owners would risk liability for declaratory

and injunctive relief, damages, and attorney's fees every time they block an access route to their very own businesses, perhaps even briefly, and even for repairs or other legitimate reasons.[5] This would seemingly include situations where a business marks off an entrance with caution tape or safety cones while repairing a broken door; it could also include blocking one's driveway while washing a car, having landscaping or other debris obstructing a walkway, keeping a cluttered or disorderly entrance area, and a host of other innocuous actions property owners take on a regular basis. Under plaintiffs' sweeping reading of NRS 41.800, which the district court endorsed, even obstructions *within* a home or business might create liability whenever someone—like a law enforcement officer executing a valid search warrant—is "lawfully seeking to enter or leave." Neither plaintiffs nor the district court have identified any limiting principle by which NRS 41.800 could apply

[5] To be sure, the statute applies only where persons are "*lawfully* seeking to enter the public or private property." NRS 41.800(a) (emphasis added). Thus, it would presumably not apply where a business obstructs its doors after closing time, because non-employees would have no lawful right to access the property. However, it is unclear how it applies to business that obstruct one entrance during business hours (while leaving others open), or homeowners who block access to their front doorstep, as in both cases individuals could still lawfully access those areas.

under the circumstances here without also applying in such absurd situations.

B. Other Ambiguities in NRS 41.800

It is also unclear whether the statute prohibits *any* obstruction of ingress and egress: for example, blocking access via one door, or from one side of the building, while still providing ample access via other routes. Facially, the statute refers to the blocking of "[t]he ingress or egress to any public or private property from any other public or private place *in such a manner as not to leave a free passageway via the public or private place*." NRS 41.800(1)(a) (emphasis added). On one hand, this seems to indicate that one is not liable for blocking *some* access routes so long as there remains at least one "free passageway," *id.* However, it also appears that that free passageway must provide access to and from the same "public or private place" as any obstructed passageway. This requirement is unclear, and arbitrary at best. Suppose a building occupies a corner of an intersection and has two doors, one exiting to the sidewalk of each street. If the building owner temporarily blocks one of those doors, perhaps for cleaning or maintenance work, is the owner liable under plaintiffs' interpretation of NRS 41.800 for failing to

maintain access via that same street? What if the door around the corner is only several feet away and just as easy for customers to access? Does liability depend on some totality-of-the-circumstances evaluation of how reasonably accessible other passageways are, or does liability categorically attach any time a property owner obstructs all routes to and from a particular "place"? If the latter, what constitutes a "place"? The plain language of NRS 41.800 gives no indication how to answer any of these questions.

In sum, the language of NRS 41.800 is ambiguous as it raises a host of unanswered questions regarding the level of intent necessary to trigger liability, whether the statute regulates only natural persons or corporations as well, and what kinds of obstructions of private property the statute prohibits. Regarding the level of intent, the statute is entirely ambiguous. Regarding the meaning of "person" and the kinds of prohibited obstructions, a broad application reading of the statute's language, like the district court adopted in this case, would extend the statute's reach so far as to yield absurd results that the Legislature surely did not intend. *See J.E. Dunn Nw., Inc. v. Corus Constr. Venture, LLC*, 127 Nev. 72, 80, 249 P.3d 501, 506 (2011) ("This court seeks to

avoid interpretations that yield unreasonable or absurd results." (quotation marks and citation omitted)); *Gallagher v. City of Las Vegas*, 114 Nev. 595, 600, 959 P.2d 519, 521 (1998) ("Our interpretation should be in line with what reason and public policy would indicate the legislature intended, and should avoid absurd results.").

C. This Court Should Look at Legislative History and Contemporaneous Circumstances Because NRS 41.800 is Ambiguous

This court has explained that "[w]hen interpreting a statute, legislative intent 'is the controlling factor.'" *State v. Lucero*, 127 Nev. 92, 95–96, 249 P.3d 1226, 1228 (2011) (quoting *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983)). The starting point for determining legislative intent is the statute's plain meaning; when a statute "is clear on its face, a court cannot go beyond the statute in determining legislative intent." *Id.*

However, "when the statutory language lends itself to two or more reasonable interpretations the statute is ambiguous, and [it] may then look beyond the statute in determining legislative intent." *Id.* (internal quotations omitted); *Café Moda v. Palma*, 128 Nev. 78, 82, 272 P.3d 137, 140 (2012). And when this Court is tasked with interpreting an

ambiguous statute, it looks "to the legislative history and construe[s] the statute in a manner that is consistent with reason and public policy." *State v. Lucero* (internal citations omitted); *see also Moore v. State*, 122 Nev. 27, 32, 126 P.3d 508, 511 (2006) (looking to legislative history to determine legislative intent behind ambiguous statute); *Robert E.,* 99 Nev. at 445–48, 664 P.2d at 959–61 (looking to legislative history, reason, and public policy to determine legislative intent behind ambiguous statute). The court may also consider the circumstances and public attention that incited the adoption of the legislation. *Id.*; *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (considering the background purpose for Congress to have passed the Affordable Care Act and rejecting an overly literal interpretation of "an Exchange established by the State" that would "likely create the very 'death spirals' that Congress designed the Act to avoid"); *cf. Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 798–99, 358 P.3d 234, 239 (2015) (considering, in a rational-basis analysis for equal protection, the "health care crisis" that NRS chapter 41A was adopted to ameliorate, along with the "rising cost of medical malpractice insurance" that California's similar statutory scheme aimed to address). Judge Bare noted that half the judges in the

courthouse would reach a different interpretation, yet the district court found the statute was unambiguous. If it was unambiguous, how would half the courthouse reach a different conclusion?

CONCLUSION

The reasonable interpretation of NRS 41.800 is that it applies to persons performing acts such as picketing and protesting who intentionally obstruct commercial property, not to create liability of landowners for the use of their own property. The plain language of the statute does not support plaintiffs' interpretation. The legislative history and the circumstances surrounding the enactment of the statute prove that the legislative intent was geared toward protestors, not plaintiffs' interpretation. As such, plaintiffs' interpretation leads to results in an absurdly overbroad statute that would arguably impose liability on virtually any property owner who temporarily blocks an access route.

Just like any of the other allegations in this case regarding negligent maintenance of defendants' property, the alleged failure to maintain adequate exit routes is appropriately addressed under ordinary principles of tort law for negligence and premises liability—not

an obscure statute, written specifically for the unique circumstances of picketing, that authorizes injunctive relief and automatic attorney's fees.

For these reasons, this court should grant the writ and reverse the district court's denial of defendants' motion to dismiss plaintiffs' claims based on NRS 41.800.

Dated this 27th day of July, 2022.

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1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2010 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 21(d) because, except as exempted by NRAP 32(a)(7)(C), it contains 5,050 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

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