IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ABDIEL SILVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Case No. 87094
District Court No. CR18-1135B

FILED
JAN 30 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

APPELLANT'S MOTION FOR DISQUALIFICATION

COMES NOW, Appellant, Richard Abdiel Silva (Appellant) by and through his proper person, consistent with the provisions of Nevada Rules of Appellate Procedure (NRAP), Appellant does hereby submit the foregoing "Appellant's Motion for Disqualification" (Motion), to be reviewed and GRANTED.

Appellant moves for the disqualification of each and every justice, judge of the Supreme Court of the State of Nevada (SCOTSON), and the Court of Appeals (COA), from sitting in appellate review of this appeal Case No. 87094.

This Motion is not made for any nefarious purposes, no reasons, nor is it made for any specious, nor spurious purpose, or reason. This Motion is made to protect Appellant's rights to the Due Process and Equal Protection Clause of the Fourteenth (14th) Amendment to the Constitution of the United States (COTUS). See Daniels v. Williams, 474 U.S. 327, 337 (1986), and Cleburne v. Cleburne Living Center, 473 U.S. 432, 437 (1985), respectively, as to the appellate process viewed in the State of Nevada.

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This Motion maybe one of a matter of first case impression, yet, upon review of the Motion, and the first three (3), issues of Appellant's Opening Brief, it becomes immediately, comprehensively, and abundantly clear as to why Appellant seeks disqualification of all justices, judges, and why this Motion must be GRANTED.

Matters relevant to Appellant's Opening Brief (O.B.), concern the violation of Article (Art.), 3, §1, to the Constitution of the State of Nevada (COTSON), plain and unambiguous language, that prohibits "any person" charged with the exercise of powers properly belonging to one of these departments, from exercising "any function", appertaining to either of the others. Art. 3, §1.

The Supreme Court of the United States (SCOTUS), has delineated: that an oath to support the U.S. Constitution is an oath to support its interpretation by the United States Supreme Court. Cooper v. Aaron, 358 U.S. 1, ( ).

The SCOTUS has interpreted the COTUS, that the Due Process Clause may sometimes demand recusal even when a judge "'has no actual bias.'" Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825 (1986). Recusal is required when objectively speaking, "the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." Withrow v. Larkin, 421 U.S. 35, 47 (1975); see also Williams v. Pennsylvania, 579 U.S. 1, 8 (2016) ("The Court asks not whether a judge harbors an actual, subjective bias, yet instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is

an unconstitutional potential for bias."

Appellant states that, as this Motion is further reviewed, comprehensively speaking, and quantitatively, it becomes abundantly clear, that, their is n't a judge or justice in the State of Nevada; that can perform the "independent" constitution" function", to provide an unbiased appellate review to Appellant's appeal. This as an objective matter, Appellant states that a judge or justice in the position of a judge or justice of the SCOTSON, or COA, is not likely to be neutral, whereby there is an unconstitional potential for bias. Withrow, 421 U.S. at 47; and Williams, 579 U.S. at 8.

Appellant's appeal is centered around Art. 3, §1, to the COTSON, separation of powers, the independence of one branch from the others, the requirement that one department cannot exercise powers of the other two is fundamental in our system of government. Galloway v. Truesdell, 83 Nev. 13, 19, 422 P.2d 237, 242 (1967), raised as an ineffective assistance of counsel claim (IAC).

Appellant's IAC iterates that Senate Bill No. 182 - Committee on Finance CHAPTER 304 [Approved March 22, 1951] (SB 182), is a "facially unconstitutional" legislative ACT of the Legislature of the State of Nevada (LOTSON), that SB 182 is repugnant to the plain and unambiguous language of Art. 3, §1, to the COTSON; and is an ACT that no set of circumstances exists under which the ACT would be valid, i.e. that, the law [ACT] is unconstitutional in all of its applications. Wash. State Grange v. Wash. Rep. Party, 552 U.S.

442, 449 (2008), citing United States v. Salerno, 481 U.S. 739, 745 (1987). That, SB 182 fails as a legislative ACT pursuant to King v. The Board of Regents, 65 Nev. 533, 556-57, 200 P.2d 221, 232 (1948), see also State v. Rogers, 10 Nev. 250, 253, 255 (1875).

The enactment of SB 182 by the LOTSON, the approval of SB 182, by the Executive Department of the State of Nevada (EXOTSON), and the "function" performed by the justices of the SCOTSON, of the Judicial Department of the State of Nevada (JDOTSON), as mandated by SB 182; is and has been the habitual disregard by the departments of Nevada's tripartite government, of a plain requirement of that instrument from which these departments derive their authority. Which Appellant now states, and demands to be scrupulously observed and obeyed. Rogers, 10 Nev. at 256.

Thus, this commingling of the JDOTSON, SCOTSON, with the department of the LOTSON, as mandated via SB 182's plain and unambiguous language, mandating the Commission be the justices of the Supreme Court, mandating the Commission perform the "function" of revising Nevada laws, and certain laws of the United States; mandating that the Commission shall have the powers and duties prescribed by the ACT; and mandating that the Commission members thereof shall receive such salary for their services prescribed by the act. (See accompanying Exhibit Senate Bill No. 182-Committee on Finance CHAPTER 304 [Approved March 22, 1951]).

There must be a "independent review", to determine whether the ACT SB182 disrupted the proper balance between the coordinate departments, the proper inquiry focusing on the extent to which it has prevented the JDOTSON, SCOTSON, the COA, from accomplishing its constitutionally assigned functions. Nixon v. Administrator of General Services, 433 U.S. 425, 443 (1977) citing United States v. Nixon, 418 U.S. 683, 711-12 (1974).

Appellant states that it is easly perceived where the disruption is and has been present to Nevada's tripartite government, and its readily easy to determine that the impact does not justify an overriding need to promote objectives within the constitutional authority of the LOTSON. Ibid.

Appellant's states that there is a due process standard in safeguarding Appellant's liberty against deprivations through actions of the state that embodies the fundamental conceptions of justice. Mooney v. Holohan, 294 U.S. 103, 112 (1935)

That, officers, elected officials of Nevada's tripartite government have not been protecting these fundamental conceptions. That, Appellant states that, due to the commingling of the JDOTSON, with the LOTSON, via the mandates of SB182, and the "functions" performed therefrom by the JDOTSON, members of the commission, the power of judging has been joined with the legislative, and the life and liberty of Appellant has been exposed to arbitrary control, for judges, justices of the SCOTSON

for over six(6), years were legislators; violating Art.3,§1, and Art.15,§2, to the COTSON. See also Galloway, 83 Nev. at 19, 422 P.2d at 242. That, this unconstitutional commingling of departments, offices, "functions", has not ever been corrected yet only exacerbated, by former elected officials, officers, members, and present officials, officers, members of Nevada's tripartite government.

Appellant states that judges, justices of the SCOTSON, and or COA, will deliberately continue to avoid examination of the "facial unconstitutionality" of SB182, failing to declare SB182 absolutely null and void, failing to declare SB182 An unconstitutional law cannot create an office. There can be no officer, either de jure or de facto, if there be no office to fill; that an office attempted to be created by an unconstitutional law has no legal existence, is without any validity, and that any person attempting to fill such a pretended office, whether by appointment or otherwise, is a usurper, whose acts would be absolutely null and void, ... A public office cannot exist without authority of law. An office cannot be created by an unconstitutional act, for such an act is no law. It confers no rights, imposes no duties, affords no protection, furnishes no protection, furnishes no shield, and gives no authority. It is in legal contemplation to be regarded as never having been possessed of any legal force or effect, and is always to be treated as though it never existed. See Bible v. Malone, 68 Nev. 32, 44-45, 231 P.2d 599, 603 (1951), citing Norton v. Shelby County,

118 U.S. 425, 442 (1886).

Likewise, failing to acknowledge, and/or declare the Commission, an office of the LOTSON, even though the Commission meets the standard under the law at the time of its creation, and the duties, and "functions" performed. See Mathews v. Murry, 70 Nev. 116, 121, 258 P.2d 982, 984 (1953), citing Kendell v. Cole, 38 Nev. 215, 219, 148 P. 551, 552 (1915).

Because of the unconstitutional commingling of the JNOTSON, with the LOTSON, since May 1st, 1951, the JNOTSON, has not had the constitutional duty "to say what the law is" Marbury v. Madison, [5 U.S. (1 Cranch) 137, 177-178 (1803)], that is to exercise its independent judgment in finding, interpreting, and applying the law (including the law of the Constitution) whenever the decision of a case and controversy should depend on it.

Whereby, the JNOTSON, the SCOTSON, and/or the COA, cannot provide to Appellant's appeal, the protection of the Due Process Clause, of those principles deemed "fundamental to the American scheme of justice." See Finger v. State, 117 Nev. 548, 568, 27 P.3d 66, 79 (2001), citing Duncan v. Louisiana, 391 U.S. 145, 149 (1968).

The SCOTSON in Clarke v. Irwin, 5 Nev. 111, 120 (1869), iterated as follows: "For forty years it has been held in these United States, 'that the power of determining whether a given law is repugnant to the principles of a constitution with which it is alleged to conflict, belongs to the judiciary, and that their decision is conclusive.'"

While the power is confessed, it is always exercised in subjection to certain rules of decision, which have been announced in an unbroken current of opinion from the state courts of last resort and the supreme court of the United States, the substance of which is thus well expressed by Mr. Sedgwick: "The leading rule in regard to the judicial construction of constitutional provisions is a wise and sound one, which declares that in cases of doubt every possible presumption and intendment will be made in favor of the constitutionality of the act in question, and that the courts will only interfere in cases of clear and unquestioned violation of the fundamental. It has been repeatedly said that the presumption is that every statute, the object and provisions of which are among the acknowledged powers of legislation is valid and constitutional, and such presumption is not to be overcome unless the contrary is clearly demonstrated."

From March 22, 1951, forward this sacred duty of judiciary, as delineated in Clarke, 5 Nev. at 120, has been abrogated, due to SB 182's mandates. That, since the JACOBSON, SCOTSON, performed the "functions" mandated in SB 182; whereby, after January 25, 1957, the judiciary, the JACOBSON, the decisions of the SCOTSON are not conclusive. That, SB 182's "facial unconstitutionality" is clear Wash. State Grange, 552 U.S. at 449, and is an unquestioned violation of the fundamental law. Ducan, 391 U.S. at 149.

That, in spite of SB182's "facial unconstitutionality", being repugnant to the constitution and government of the United States, and the constitution and government of the State of Nevada, the JNOTSON, SCOTSON, and COA have "not" interfered. That, even when called upon to do so the JNOTSON, SCOTSON, and the COA have not interfered to uphold the plain and unambiguous language of Art. 3, §1, to the COTSON, and the plain and unambiguous language of the Fourteenth (14th) Amendment Section 1, the Due Process and Equal Protection Clause. Thereby, violating Art. 15, §2, to the COTSON, and the 14th Amendment Section 3.

Whereby, Appellant has absolutely no reason to believe that the justices, judges of the JNOTSON, of the SCOTSON, or the COA will protect Appellant's fundamental constitutional rights. Whereby, the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable. Withrow, 421 U.S. at 47; Williams, 579 U.S. at 8.

Whereby, recusal, disqualification, etc., as respectfully requested is appropriately mandated. Withrow, supra; and Williams, supra.

CONCLUSION

That, Appellant via this Motion has reasonably set forth the facts, reasons, supported by law as to why each and every justice of the SCOTSON, and the COA must disqualify themselves from review of this

appeal, in that justices of the SCOTSON, and/or the COA, cannot:

1. say what the law is, in the State of Nevada, in that this Courts predecessors created the law, that this Court, and the COA sits to review;

2. perform its duty to constitutionally exercise its judgment in finding, interpreting and applying the law;

3. Constitutionally, independently, determine that SB 182 has disrupted the proper balance between the coordinate departments of the State of Nevada.

The inability of this Court, and/or the COA, to be able to perform these constitutionally assigned duties, and to do so without further violating Appellant's Constitutional rights, and to do the same without bias, makes this Court, and the COA not courts of competent jurisdiction.

Whereby, an Order must be issued setting forth the disqualification of the justices of the SCOTSON, and the COA. Additionally, that the Order set forth reasons for the Supreme Court of the United States (SCOTUS), or the Ninth Circuit Court of Appeals determine Appellant's appeal.

Respectfully submitted:

Dated this day of January, 2024.

RICHARD ABDIEL SILVA
APPELLANT PRO SE

Exhibit Cover Page

EXHIBIT NUMBER 1

other than carrying out the legitimate functions of the Nevada Childrens' Foundation, Inc., the same shall be taxed.

Eleventh—Notwithstanding any other provisions of this act or any section or subsection thereof, all claims for tax exemptions on real property shall be filed on or before the second Monday of July of the year for which the exemption is claimed.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act shall be in effect immediately upon its passage and approval.

Senate Bill No. 182—Committee on Finance

CHAPTER 304

AN ACT establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith.

[Approved March 22, 1951]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. There is hereby created a commission of the State of Nevada, to be known as the "commission for revision and compilation of Nevada laws," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

SEC. 2. As soon as practicable after the effective date hereof the commission shall commence the preparation of a complete revision and compilation of the constitution and the laws of the State of Nevada of general application, together with brief annotations and marginal notes to sections thereof. Such compilation when completed shall be known as "Revised Laws of Nevada,....," and the year of first publication shall be filled in the blank space of such title, for brevity such title may be cited as "Rev. Laws....."

SEC. 3. In preparing such compilation the commission is hereby authorized to adopt such system of numbering as it deems practical, to cause said compilation to be published in such number of volumes, but such volumes shall not exceed 750 pages, as shall be deemed convenient, and to cause such volumes to be bound in loose-leaf binders of good, and so far as possible, permanent quality. The pages of such compilation shall conform in size and printing style to the pages of the Statutes of Nevada, except that if necessary for marginal notes, the same may be of greater width, and roman style type only, shall

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SEC. 4. Upon completion
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SEC. 5. In complying with
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SEC. 6. The commission sh
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required by this act.

SEC. 7. From and after th
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SEC. 8. The compilation
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SEC. 9. The secretary of s
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SEC. 10. Upon request of

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CERTFICATE OF SERVICE BY MAILING

I, Richard A. Silva, hereby certify, pursuant to NRCP 5(b), that on this 22 day of January, 2024 I mailed a true and correct copy of the foregoing, "Appellant's Motion For Disqualification"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

District Attorney
Washoe County
State Of Nevada
One South Sierra Street
Reno NV 89501

CC:FILE

DATED: this 22 day of January, 2024.

RICHARD ARDIEL SILVA #1236297
APPELLANT /In Propria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS: