

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

NEVADANS FOR
REPRODUCTIVE
FREEDOM, A POLITICAL
ACTION COMMITTEE,

Appellant,

v.

DONNA WASHINGTON,
AN INDIVIDUAL;
COALITION FOR
PARENTS AND
CHILDREN, A POLITICAL
ACTION COMMITTEE,
AND FRANCISCO V.
AGUILAR, IN HIS
OFFICIAL CAPACITY AS
THE NEVADA
SECRETARY OF STATE,

Respondents.

Docket No. 87681

OPPOSITION TO THE BALLOT
INITIATIVE STRATEGY CENTER
FOUNDATION'S MOTION FOR
LEAVE TO FILE AMICUS BRIEF

Respondents Donna Washington and Coalition for Parents and Children (“Respondents”), by and through their counsel of record Jason D. Guinasso, Esq., of the law firm Hutchison & Steffen, PLLC, hereby submit,

pursuant to Nevada Rule of Appellate Procedure (“NRAP”) 29, this Opposition to the Ballot Initiative Strategy Center Foundation’s (the “Foundation”) Motion for Leave to File an Amicus Brief. Respectfully, the Foundation has not shown that it is permitted to participate in this matter as amicus for the reasons stated below. As such, the Foundation should not be granted leave to participate as amicus in this appeal.

There are limitations on permitting amicus curiae to participate in an appeal. *See Greater Las Vegas Short Term Rental Ass’n v. Clark County*, Docket No. 86264 (Nev., Oct. 13, 2023) (Order Denying Motion) (citing *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997)). Participation by amicus curiae is appropriate:

when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case . . . , or when the amicus has unique information or perspective that can help the court beyond the help the lawyers for the parties are able to provide.

Ryan, 125 F.3d at 1063. An amicus brief should provide unique insight into law that is not presented by the parties. *See Miller-Wohl Co., Inc. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982).

Here, Appellant is already represented by highly competent counsel. For instance, Mr. Schragger recently prevailed in an important appeal involving a district court order enjoining an initiative petition's circulation and placement on the ballot. *See Educ. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47, 512 P.3d 296 (2022). This appeal involves similar issues. The Foundation cannot participate as amicus on the ground that Appellant lacks competent counsel because Mr. Schragger is a renowned practitioner.

The Foundation has not alleged that it has an interest in another case that may be affected by the outcome of this appeal. Instead, the Foundation admits that it is a "District of Columbia nonprofit organization" and is "concerned that the district court's decision in this case . . . would set a dangerous precedent barring ballot measures." *See Motion for Leave*, at *1-2 (Dec. 22, 2023). Respectfully, these allegations fail to show that the Foundation has *any* interest in another case that may be affected by this appeal. Thus, the Foundation has not shown that its participation as amicus is necessary to protect any interest.

Finally, the Foundation has not set forth arguments that uniquely assist the court in resolving the issues on appeal. Appellant and the Foundation both argue that the district court erred by concluding that the

Petition contains an unfunded mandate. AOB 42-45; *Amicus Brief* (“AB”), at 4-14. These briefs cite many of the same or similar authorities. For instance, both briefs cite *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 141 P.3d 1224 (2006), to argue that the district court erroneously concluded that the Initiative Petition contained an unfunded mandate. See AOB 43-44; AB 6-8, 11. Both briefs also cite *Helton v. Nevada Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309 (2022), for the same argument. See AOB 45; AB 8-9, 11. At bottom, amicus is largely reinforcing the arguments set forth by Appellant. This is an improper role for amicus.

Based on the foregoing analysis, Respondents respectfully ask this Court to deny leave for the Foundation to file an amicus brief. The existing parties can adequately present the issues to this Court without amicus.

DATED: December 27, 2023.

HUTCHISON & STEFFEN, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that that this OPPOSITION TO THE BALLOT INITIATIVE STRATEGY CENTER FOUNDATION'S MOTION FOR LEAVE TO FILE AMICUS BRIEF was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

DATED: December 27, 2023.

HUTCHISON & STEFFEN, PLLC

By: /s/ Bernadette Francis-Neimeyer
An employee of Hutchison & Steffen, PLLC