IN THE SUPREME COURT OF THE STATE OF NEVADA

WELLS FARGO BANK, Appellant, vs. DUKE RENSLOW and TINA RENSLOW, Respondents.	Case No. 58283 Dist. Court Case No. CV 10 03382

APPEAL
From the Second Judicial District Court
The Honorable Patrick Flanagan, District Judge

BRIEF OF AMICUS CURIAE

CIVIL RIGHTS FOR SENIORS

SUPPORTING AFFIRMANCE IN FAVOR OF RESPONDENTS

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IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus Curiae Civil Rights for Seniors is a Nevada non-profit corporation funded wholly through contributions and dues of its members. As its name implies, it advocates for civil rights for seniors.

Amicus Curiae has an interest in the constitutionality of the NRS 107.086, which will hereinafter sometimes be referred to as "the Foreclosure Mediation Law," challenged in this case by the Appellant Wells Fargo Bank ("Wells Fargo"). Its particular interest is in the constitutionality of Nevada's district courts' authority to impose loan modifications in appropriate cases (NRS 107.086(5)) as a means to address the real estate foreclosure crisis. While the crisis has affected all Nevadans, it has been especially devastating to many of Nevada's seniors. Unlike many younger Nevadans, most seniors lack the ability to "start over" following the loss of a home in foreclosure. Even those senior homeowners who are not facing foreclosure suffer from the continued downward spiral of real estate values the Foreclosure Mediation Law was designed to stop, since for many seniors the equity in their homes represents their most valuable asset. In many cases that equity is all they have to show for a lifetime of gainful employment and all they have to finance living expenses during their retirement years.

NRS 107.086, designed to "keep Nevadans in their homes," is of therefore particular importance to Nevada's seniors and consequently to Civil Rights for Seniors, which wishes to present arguments here in favor of the constitutionality of the Foreclosure Mediation Law. Civil Rights for Seniors urges the Court to affirm the judgment in favor of the Respondents, Duke and Tine Renslow ("the Renslows").

ARGUMENT

I. INTRODUCTION

A. Factual and procedural posture.

As set forth in the briefs already on file, the Renslows are Nevada homeowners who participated in foreclosure mediation in accordance with the Foreclosure Mediation Law. Wells Fargo, which is not the beneficiary but instead the servicer of the Renslows' mortgage loan (Joint Appendix ("J.A.") 99, 209; Wells Fargo's Opening Brief, page 2, line 15), participated in the mediation, but the mediation did not result in any agreement modifying the loan. The Renslows sought sanctions in a subsequent district court proceeding that ultimately resulted in a district court order imposing sanctions against the Wells Fargo in the amount of $30,000 and sanctions against the beneficiary in the form of a loan modification, as authorized by NRS 107.086(5).

The beneficiary of the loan did not appear at the mediation[1] nor in the district court proceeding, and is not a party to this appeal.

Wells Fargo now contends that the Foreclosure Mediation Law violates various provisions of the United States and Nevada Constitutions, a contention that Civil Rights for Seniors strongly disagrees with.

B. The Foreclosure Mediation Law and its background.

The 2009 Nevada Legislature enacted the Foreclosure Mediation Law (A.B. 149, now codified as NRS 107.086) in response to the foreclosure crisis facing the State of Nevada. Its purpose, as expressed by its primary sponsor, then-Assembly Speaker Barbara Buckley, was to

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[1] Wells Fargo's Opening Brief, pg. 5, lines 4. An attorney for Wells Fargo attended in person and an employee of Wells Fargo by the name of Mr. Eastman participated in the mediation by telephone. *Id.*, pg. 4-5. Whatever authority Mr. Eastman had to negotiate a loan modification was limited to "the parameters of the contract with the investor." Wells Fargo's Opening Brief, pg 5, lines 8-9. It did not include authority to modify the Renslows' loan under the Home Affordable Modification Program. J.A. 97.

"keep Nevadans in their homes" through the crisis. Speaker Buckley reported to the Legislature that there were over 75,000 home foreclosures in Nevada in 2008 and that a similar number was estimated for 2009. Nearly half (48%) of Nevada homeowners owed more on their homes than the homes were worth. Hearing on A.B. 149 Before the Joint Meeting of the Assembly Committee on Commerce and Labor and the Senate Committee on Commerce and Labor, 75th Leg. (Nev., Feb. 11, 2009).

"We are caught in a vicious cycle, and it continues to spiral downwards," reported Speaker Buckley. *Id.*, at p. 4. The crisis did not just affect homeowners in danger of foreclosure, but the entire community, by leading to bank and investment losses, threatening jobs, and increasing crime. *Id.*, at p. 4-5.

In a foreclosure, nearly everyone loses – the homeowner, the lender, and the community.[2] The Speaker cited an estimate from the Congressional Research Service that the average cost of a foreclosure to the homeowner is $7,200, to the lender is $50,000, and to the neighbors is $78,000. Preventing the foreclosure would cost $3,300 per home. *Id.*

Even though negotiations between homeowners and beneficiaries facing foreclosure can benefit the parties to the loan as well as the community in general, Speaker Buckley explained that the complexities of the lending business can impede negotiations even when loan modification makes economic sense. In many cases, loan servicers "service" the loans for remote beneficiaries. Sometimes it is not clear who the beneficiary is. *Id.*

The legislative solution was to provide a mechanism to bring beneficiaries and homeowners to the bargaining table for negotiations supervised by trained mediators. Implicit in the plan is the notion that if both parties participate in good faith, they will manage to find

[2] Possible exceptions include servicers, who earn fees from foreclosures (see, Amicus Curiae Brief of State of Nevada, filed December 9, 2011, pgs. 2-3, and trustees, who likewise profit from foreclosures.

alternatives to foreclosure, including loan modification agreements, in many cases. The participation of the actual beneficiary, not the servicer, is essential. Speaker Buckley told the Legislature, "We are going to clarify the language to make it absolutely clear that the lenders, and not the intermediaries, are the ones required to come to the mediation." *Id.*, at page 12.

Under NRS 107.086, once a notice of default and election to sell is recorded, the homeowner may elect to participate in the Foreclosure Mediation Program. If the homeowner elects mediation, the beneficiary is precluded from proceeding with the foreclosure until the mediation process is complete. NRS 107.086(2)(c). The beneficiary must attend a mediation session, must bring documents to the mediation session that show the attendee is really the beneficiary (*Leyva v. National Default Servicing Corp.*, ___ Nev. __, 127 Nev. Adv. Op. 40, 255 P.3d 1275, 1279 (2011), and must participate in the process in good faith. NRS 107.086(5). If the beneficiary is represented at the mediation by another person, that person must possess "authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust." NRS 107.086(4). Contrary to the assertion of Wells Fargo, the beneficiary is not required to offer or agree to anything, but is only required to comply with the duties set forth in NRS 107.086(4) and (5). If the beneficiary complies with those duties but the parties do not reach an agreement modifying the loan, the foreclosure may proceed. NRS 107.086(7). But if the beneficiary fails to comply with its duties, the mediator prepares a petition and recommendation concerning the imposition of sanctions against the beneficiary or the representative. The district court is then authorized to impose sanctions, including a modification of the underlying loan. NRS 107.086(5).

Alluding to the Contract Clauses of the federal and state constitutions,[3] Speaker Buckley assured the Legislature that legal counsel had advised that A.B. 149 was constitutional. Hearing on A.B. 149 Before the Joint Meeting of the Assembly Committee on Commerce and Labor and the Senate Committee on Commerce and Labor, 75th Leg. (Nev., Feb. 11, 2009), page 14-15.

The banking industry supported A.B. 149 before the Legislature. At no time did it raise any constitutional concerns. In fact Bank of America's representative, who evidently was also associated with Snell and Wilmer (the firm arguing on behalf of Wells Fargo in this case that the legislation is unconstitutional), stated that "Bank of America strongly supports this bill." Hearing on A.B. 149 Before the Senate Committee on Commerce and Labor, 75th Leg. (Nev., May 18, 2009), p. 16. The Nevada Bankers Association and HSBC Banking also supported A.B. 149. *Id.,* at pp. 16-7.

The Foreclosure Mediation Law expresses a clear public policy that favors loan modification in appropriate cases as the preferred alternative to foreclosure and as a means to address the vicious downward spiraling cycle in which Nevada is caught. The Legislature expressed such policy by requiring that any beneficiary's representative who attends the mediation must have "authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust" (NRS 107.086(4)), by permitting the foreclosure to proceed in cases where the homeowner attends the mediation only if the mediator reports that the parties were "unable to agree to a loan modification" (NRS 107.086(7)), and by authorizing district courts to modify loans in appropriate cases and on proper terms. NRS 107.086(5).

In the view of Civil Rights for Seniors, the district court's power to modify loans is a key provision essential to the success of the legislation. Contrary to the assertion in Wells Fargo's

[3] U.S. Const., Art. 1, sec. 10; Nev. Const. Art. 1, sec. 15.

brief, the Foreclosure Mediation Law does not authorize courts to "rewrite the contract on a whim." Wells Fargo's Opening Brief, pg. 12, lines 12-14. Nor does it require beneficiaries who comply with its requirements to modify loans if they elect not to. They are only required to meet their minimal obligations set forth in the statute, including the obligation to participate in the mediation in good faith. The district court's authority to modify a loan arises only when the beneficiary fails to comply with one or more of the four duties set forth in NRS 107.086(5), and only when such modification appears "appropriate." *Id.* Further, the modification must be on terms that are "proper." *Id.* It goes without saying that such a modification cannot be ordered until and unless the Court has afforded the parties due process, i.e., a full and fair opportunity to be heard on the subject. *See, infra.*

Nothing in the language of the statute or the legislative history indicates that the court's power to modify loans exists for any punitive purpose. Instead, the legislation recognizes that if the parties participate in good faith, they will reach a loan modification in many cases on terms that will benefit both by keeping the homeowner in the home and assuring the beneficiary of a continued stream of income. Thus, in cases where the beneficiary does not appear, either because it cannot be identified or because it chooses not to participate, the court's power to modify the loan is not a penalty for non-participation but a substitute for participation.

A judicially imposed loan modification is "appropriate" when the beneficiary does not comply with the Foreclosure Mediation Law. A "proper" modification is one that appears to the court, based on the evidence provided to it, that it is beneficial to both the homeowner and the beneficiary considering the disadvantages both endure if the foreclosure proceeds.

II.

WELLS FARGO WAIVED THE CONSTITUTIONAL ARGUMENTS BY FAILING TO RAISE THEM IN THE DISTRICT COURT

Although Wells Fargo Bank argues in its opening brief that the Foreclosure Mediation Law is unconstitutional, it failed to raise the issue in the district court. "The failure to raise an argument in the district court proceedings precludes a party from presenting the argument on

appeal." *Cervantes v. Health Plan of Nevada, Inc.*, ___ Nev. ___, ___, 127 Nev. Adv. Op. 70 (October 27, 2011), citing *Mason v. Cuisenaire*, 122 Nev. 43, 48 (2006).

While it is true that the Court may address constitutional issues raised for the first time on appeal (*Somee v. State*, 124 Nev. 434, 444 (2008)), the Court may also decline to do so. *Munoz v. State ex rel. Dept. of Highways*, 92 Nev. 441, 444 (1976). Wells Fargo does not propose any good reason for the Court to consider the issues it failed to raise in the district court.

III.

WELLS FARGO LACKS STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE COURT-ORDERED LOAN MODIFICATION

In order to raise an issue, one must have standing to do so. "Standing is the legal right to set judicial machinery in motion." *Secretary of State v. Nevada State Legislature*, 120 Nev. 456, 460, (2004). "The rule is well established that one who is not prejudiced by the operation of a statute cannot question its validity." *Spears v. Spears*, 95 Nev. 416, 418 (1979).

"Where constitutional matters arise, this court has required plaintiffs to meet increased jurisdictional standing requirements." *Stockmeier v. Nev. Dept. of Corrections Psychological Review*, 122 Nev. 385, 393 (2006), citing *Sereika v. State*, 114 Nev. 142, 151 (1998) and *Worldcorp v. State, Dep Tax.*, 113 Nev. 1032, 1036 (1997). "A person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the court." *Sereika, supra*, at p. 151, quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 610-11 (1973).

Wells Fargo Bank has standing of course to challenge the imposition of monetary sanctions against it, but it does not have standing to challenge the constitutionality of a court-ordered modification of the loan to which Wells Fargo is not a party.

Strict application of the standing rule is especially important here. As the State of Nevada points out in its Amicus Curiae Brief, there is a conflict between the interests of Wells Fargo and the beneficiary. While the modification ordered here results in lower monthly payments to the beneficiary, it also assures the beneficiary that it will nevertheless continue to receive a steady income stream, which may well be a better alternative than foreclosure.

Nothing in the record before this Court establishes that the beneficiary so much as objects to the modified loan terms, much less considers them unconstitutional.

IV.

THE FORECLOSURE MEDIATION LAW IS CONSTITUTIONAL

A. The law does not effect a taking of property for public purposes.

Wells Fargo complains that the Foreclosure Mediation Law amounts to a *per* se regulatory taking under *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 670 (2006), where this Court stated that such a taking occurs "when a public agency seeking to acquire property for a public use enumerated under NRS 37.010 fails to follow the procedures set forth in NRS Chapter 37 . . ."

Sisolak is entirely inapplicable. This is not a case of a public agency seeking to acquire property for a public use enumerated under NRS 37.010. The public uses enumerated in NRS 37.010 include common public uses such as for public buildings and grounds, bridges, public parks, railroads, aqueducts, and so forth (NRS 37.010(1)) as well as more arcane uses such as for "pipeline of [the] sugar beet industry." NRS 37.010(1)(*l*).

Nor does Wells Fargo identify a "public agency" that has allegedly taken Wells Fargo's property as *Sisolak* would require.

Wells Fargo cites no cases where the imposition of monetary sanctions or the adjustment of a contract against a party for failure to comply with a legal obligation has been analyzed as an unconstitutional "taking" of property without just compensation. For the purposes of constitutional analysis, a taking occurs "when the government encroaches upon or occupies private land for its own public use." 26 Am.Jur. 2d, Eminent Domain, sec. 9, p. 425. Also, it has been recognized that a government regulation that denies all economically beneficial or

productive use of land can amount to a taking, as can as state action that denies a landowner all use of his or her property. *Id.*

Wells Fargo fails to identify any real property or tangible personal property taken from it. Instead it complains that the sanctions it was ordered to pay amount to a taking of its property. Assuming that money qualifies as property for takings-clause analysis,[4] "the taking of money is different, under the Fifth Amendment, from the taking of real or personal property. The imposition of various monetary exactions-taxes, special assessments, and user fees-has been accorded substantial judicial deference." *San Remo Hotel L.P. v. City And County of San Francisco*, 27 Cal.4th 643, 671 (2002).

This case simply does not present a "takings" case under Fifth Amendment principles. The square peg of the Foreclosure Mediation Law does not fit into the round whole of the takings clause.

B. <u>The law does not violate the Contract Clause.</u>

Quoting *Allied Structural Steel. Co. v. Spannus*, 438 U.S. 234, 241 (1978), Wells Fargo hails the Contract Clause as "perhaps the strongest single check on state legislation during our early years as a Nation," but if Wells Fargo had quoted the entire sentence one would be left with a considerably more accurate impression of the Clause's importance in modern times. This is what the Supreme Court actually said:

> Although it was perhaps the strongest single constitutional check on state legislation during our early years as a Nation,[ftnt.]the *Contract Clause receded into comparative desuetude with the adoption of the Fourteenth Amendment* [emphasis added], and particularly with the development of the large body of jurisprudence under the Due Process Clause of that Amendment in modern constitutional history.

[4] In *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 645-7 (2007), this Court held that the personal property damaged during a storm emergency was indeed "private property" within the meaning of the takings clause of the Nevada Constitution (Nev. Const. Article 1, Section 8, Clause 6), but the Court has not addressed whether a monetary fine or penalty levied against a party can amount to a taking.

Moreover, as Justice Stevens noted in *Keystone Bituminous Coal Association v. DeBenedictis* , 480 U.S. 470, 502 (1987), "It is well-settled that the prohibition against impairing the obligation of contracts is not to be read literally."

A court considering whether a state statute violates the Contract Clause follows a three-step analysis. *Energy Reserves Group, Inc. v. Kansas Power and Light Co.* 459 U.S. 400, 421 (1983). "The threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." [Citation.]" *Id.,* at p. 411. If so, the second step is to determine whether the State, in justification, has "a significant and legitimate public purpose behind the regulation." *Id.* "Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.' [Citation.]" *Id.,* at p. 412.

1. <u>The Foreclosure Mediation Law does not operate as a substantial impairment of a contractual relationship.</u>

The "threshold inquiry" itself requires its own three-part analysis: "1) whether there is a contractual relationship; 2) whether a change in the law has impaired that contractual relationship; and, 3) whether the impairment is substantial." *Transport Workers Union of America v. Southeastern Pennsylvania Transportation Authority*, 145 F.3d 619, 621 (3d Cir. 1998).

a. <u>Contractual relationship.</u>

There is a contractual relationship between the beneficiary and the Renslows.

b. <u>Impairment.</u>

Wells Fargo argues that Judge Flanagan's order modifying the terms of the loan between the Renslows and the beneficiary impaired an obligation of the contract. But the Contract Clause address only legislative, not judicial actions:

> It has been settled by a long line of decisions, that the provision of § 10, Article I, of the Federal Constitution, protecting the obligation of contracts against state action, is directed only against impairment by legislation and not by judgments of courts. The language—'No state shall . . . *pass any* . . . *law* [emphasis in original] impairing the obligation of contracts'—plainly requires such a conclusion.

Tidal Oil Co. v. Flanagan, 263 U.S. 444, 451, (1924). The enactment of the Foreclosure Mediation Law did not impair the obligation a contract, because it did not, in and of itself, modify the loan between the beneficiary and the Renslows or exact a penalty from Wells Fargo. Instead, it was the subsequent order of the district court that resulted in the loan modification and monetary sanctions. But such a judicial act does not bring the Contracts Clause into play. *Tidal Oil, supra.*

The Foreclosure Mediation law does not in and of itself result in a modification of the terms of any loan itself. It merely requires a beneficiary who wishes to avail itself of the non-judicial foreclosure procedure set forth in NRS 107.080, et seq. to come to the bargaining table to negotiate in good faith for a loan modification with a homeowner who elects mediation.

The cases mentioned by Wells Fargo involving statutes violative of the Contract Clause are distinguishable for this reason. In *Allied Structural Steel Co. v. Spannus*, 438 U.S. 234 (1978), a Minnesota statute accelerating the vesting of pension benefits violated the Contracts Clause. The acceleration occurred the moment the statute became law and without any subsequent judicial action. Similarly, in *Treigle v. Acme Homestead Ass'n,* 297 U.S. 189 (1936), the law in question restricted the right of stockholders in domestic building and loan associations to withdraw from the association and receive the amount of his investment and a share of the

profits, a right they enjoyed prior to the enactment of the law. 297 U.S. at 191. The law itself did so without any judicial act and did so with respect to all stockholders in all such associations, not just those who failed to comply with some statutory requirement. Likewise, in *United States Trust Co. v. New Jersey,* 431 U.S. 1 (1977), the enactment of a New Jersey statute which repealed an earlier statutory covenant made by New Jersey and New York that had limited the ability of New York and New Jersey Port Authority to subsidize rail passenger transportation from revenues and reserves violated the Contract Clause. Again, it was the legislative act itself, without more, without judicial action, that effected an impairment New Jersey's contract with bondholders.

Here, the Foreclosure Mediation Law did not in and of itself impair the obligation of the contract by modifying the loan in question. The situation would be different if in response to the real estate foreclosure crisis, the legislature, for example, enacted a law providing that all mortgage balances were automatically reduced to the fair market value of the property or by to some other amount. It was the district court, not the Legislature, that modified the loan. The court did so only after the beneficiary failed to comply with its obligations under the Foreclosure Mediation Law, the mediator reported the failure to the Mediation Administrator, and the district court held and full and fair hearing at which the beneficiary could have appeared, presented evidence, and argued against the loan modification.

Moreover, "a contract may be abrogated altogether without impairing the obligation of contract if another and equally adequate remedy for the enforcement of the obligation remains ..." 16B Am.Jur.2d, Constitutional Law, sec. 780, p. 225, citing *Richmond Mortgage and Loan Corp. v. Wachovia Bank and Trust Co.,* 300 U.S. 124 (1937); *Ingraham v. Hanson,* 297 U.S. 378 (1936). Here, the beneficiary was at all times free to pursue the equally adequate remedy of

judicial foreclosure under NRS 40.430 in which case the beneficiary would have avoided the foreclosure mediation altogether. It was the beneficiary's choice to pursue non-judicial foreclosure under NRS 107.080.

c. Substantiality of impairment.

"The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage." *Allied Structural Steel Co., supra,* 439 U.S. at 245.

Any legislative impairment of the contract was minimal at best. NRS 107.086 simply required, as a condition of utilizing the procedure of non-judicial foreclosure procedure, the beneficiary to participate in mediation in good faith and to demonstrate by bringing certain documents to the mediation that it in fact had the right to foreclose.

2. There is a significant and legitimate public purpose behind the Foreclosure Mediation Law.

In analyzing the public purpose behind a statute alleged to impair the obligation of a *private*, as opposed to *public,* contract, the "court will defer to the legislative judgment concerning the importance of the public purpose and the manner in which that purpose is being pursued." *Transport Workers, supra,* at p. 621, citing *Energy Resources, supra,* at pp. 412-3. Here, the severity of the foreclosure crisis and the importance of "keeping Nevadans in their homes" provides more than adequate justification for the imposition of the simple requirement that beneficiaries come to the table to talk with homeowners who elect mediation.

3. Any the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the adoption of the Foreclosure Mediation Law.

On this issue, the Court defers to the Legislature as well. *Transport Workers, supra.* Mandating mediation, at which the beneficiary is under no obligation to offer anything but is required only to participate in good faith, is a more than appropriate way to address the foreclosure crisis and its effect on Nevada and Nevadans, as identified by the Legislature (*see discussion, supra*).

C. <u>The Foreclosure Mediation Law does not offend the separation of powers doctrine.</u>

Wells Fargo and Amicus Curiae United Trustees Association (UTA) argue that the Foreclosure Mediation Law offends the separation of powers doctrine by delegating administration of the program to the judicial branch. United Trustees Association describes itself as "an organization comprised of those acting as foreclosure trustees." UTA's Motion for Leave to File Amicus Curiae Brief, filed October 13, 2011. Since UTA's members profit from the booming foreclosure business in Nevada, it is not surprising at all that UTA would hope to have the Foreclosure Mediation Law – designed to make foreclosure "the remedy of last resort" – declared unconstitutional.

Wells Fargo requests the Court to take judicial notice of the district court's order dated May 6, 2011, in *Kuhl v. Carrington Mortgage Services, LLC, et al.,* Second Judicial District Court Case No. CA 11-00325, in which the Honorable Patrick Flanagan stated, "the Foreclosure Mediation Program is certainly an Administrative Agency." Appellant's Opening Brief, page 19, lines 4-7. If the Court is inclined to do so, it ought also to take judicial notice of Judge Flanagan's subsequent acknowledgement that his statement in *Kuhl* was incorrect. "To the extent this Court previously indicated that the Foreclosure Mediation Program *was* an administrative agency, that statement was incorrect. . . . This Court finds that the Foreclosure Mediation Program is not an administrative agency within the definition of that term under

Nevada law." Order, filed August 25, 2011 in *Deutsche Bank, et al. v. Truex,* Second Judicial District Court Case No. CV11-00584, page 12, lines 4-11.[5]

D. No due process violation occurred.

On the subject of due process, Civil Rights for Seniors agrees completely with the arguments set forth in the Respondents' Answering Brief and the State of Nevada's Amicus Curiae Brief and sees no need to repeat them here.

CONCLUSION

Amicus Curiae Civil Rights for Seniors urges the Court to affirm the judgment of the district court.

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 12th day of December, 2011.

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[5] The State of Nevada attached a copy of Judge Flanagan's order in *Truex* to its Amicus Curiae Brief filed on December 9, 2011.

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing document by depositing copies thereof addressed as follows in the US Mail at Tahoe City, California on the 12th day of December, 2011:

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