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IN THE SUPREME COURT OF THE STATE OF NEVADA

HONORABLE CATHERINE
RAMSEY NORTH LAS VEGAS
MUNICIPAL COURT JUDGE

Petitioner,
vs.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, CNTY OF CLARK, ERIC
JOHNSON, District Court Judge,

Respondent,

THE CITY OF NORTH LAS VEGAS
AND BARBARA A. ANDOLINA City
Clerk of NORTH LAS VEGAS,
BETTY HAMILTON, MICHAEL
WILLIAM MORENO, and BOB
BORGENSEN, individually and as
Members of "REMOVE RAMSEY
NOW,"

Real Parties in Interest

Supreme Court Case No.:

Case No.: A-15-719406-P

Dept No.: XX

Consolidated with:

Case No.: A-15-719651-C

PETITION FOR A WRIT OF MANDAMUS, CERTIORARI OR PROHIBITION

The petition of the Honorable Catherine Ramsey respectfully shows that:

I.

Petitioner is a Municipal Court Judge for respondent City of North Las

*Transferred from docket no. 68394
per order filed 7-27-15*

15-22687

1 Vegas, Nevada, an incorporated municipality, was elected in the general election
2 of 2011 to a six year term and assumed judicial office on July 5, 2011.
3

4 II.

5 In 2015, Real Parties in Interest BETTY HAMILTON, MICHAEL
6 WILLIAM MORENO, and BOB BORGERSON, created an ad hoc group that
7 circulated petitions to obtain signatures from voters who had voted in the 2011
8 election for the purpose of recalling JUDGE RAMSEY from her judicial office.
9 The ad hoc group claimed that Judge Ramsey had taken excessive absences from
10 her judicial duties and a host of other alleged wrongdoings. A sample of the recall
11 petition is attached hereto as **RAM Vol. I, 189-192.**
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14
15

16 III.

17 After gathering the necessary signatures, those Real Parties in Interest
18 formally submitted their Petition to Real Party in Interest BARBARA
19 ANDOLINA, the official clerk of CITY OF NORTH LAS VEGAS on or about
20 May 28, 2015.
21
22

23 IV.

24 After the Secretary of State used their selected criteria and process, they
25 verified a statistical sample of the signatures of the voters and determined that
26 there was a sufficient number signed on the petitions, Real Party in Interest CITY
27 OF NORTH LAS VEGAS certified that a recall election could proceed.
28

1 V.

2 Prior to that submission, Petitioner filed an action in the Eighth Judicial
3 District Court in case no. A-15-719406-P challenging the constitutionality of the
4 recall election procedure because Article 6, Section 21 of the Nevada Constitution,
5 enacted by Nevada voters in 1976, vested exclusive jurisdiction in the Commission
6 on Judicial Discipline to discipline judges including removal from judicial office.
7 A copy of the Emergency Petition for Injunction filed June 4, 2015 is attached is
8 incorporated herein as **RAM Vol. I, 1-30**. That case eventually ended up with
9 RESPONDENT ERIC JOHNSON, DISTRICT COURT JUDGE, DEPT. 20,
10 EIGHTH JUDICIAL DISTRICT COURT.
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14

15 VI.

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17 Petitioner alleged in that case as well as in this petition that this 1976
18 amendment to the Nevada Constitution which created the Commission on Judicial
19 Discipline directly conflicts with Article 2, Section 9 of the Nevada Constitution,
20 the recall provision, and further alleges that the latter provision is no longer
21 applicable to judicial officers in the State of Nevada.
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23
24

25 VII.

26 The recall petition was certified by the Nevada Secretary of State and
27 respondent CITY OF NORTH LAS VEGAS. Under the Statute, Petitioner only
28 had 5 days to file a lawsuit challenging the sufficiency of the petition as authorized

1 by NRS 360.040(5). Because the Emergency Injunction had not yet been heard,
2 Petitioner filed an action challenging the sufficiency pursuant to statute. That case
3 was assigned to the HONORABLE KENNETH C. CORY, Judge in Dept. 1 of the
4 Eighth Judicial District Court. A copy of that complaint is attached hereto and
5 incorporated herein as **RAM Vol. I, 42-54**. These cases were recently
6 consolidated to the earliest case. **RAM Vol. I, 97-100**. After the hearing of June
7 18, 2015, the Petitioner filed a Supplemental Brief on June 26, 2015. Attached
8 hereto and incorporated as **RAM Vol. I, 109-134**.

12 VIII.

13
14 The recall effort is a politically based movement affiliated with the Mayor of
15 North Las Vegas. The recall movement is privately funded and hired an expensive
16 campaign political consultant, David Thomas, owner of Policy Communications,
17 and a prominent Las Vegas law firm to represent it in all relevant proceedings.
18 This recall group has refused to disclose who is financing or has contributed to the
19 campaign for the recall election efforts.

23 IX.

24
25 Petitioner alleges and therefore believes that the recall campaign is being
26 promoted for purely partisan political reasons because Petitioner has acted to
27 protect the municipal court judicial branch in the City of North Las Vegas and has
28 discovered improprieties and mismanagement with the city government. In

1 particular, Petitioner alleges as follows:

2 A. That starting in August 13, 2014, the City Attorney was affixing the
3 name of the City Attorney to Failure to Appear warrants issued by the court after
4 that City Attorney had resigned his job and was no longer an employee of the City
5 Attorney's office. Upon discovery of this practice by the City Attorney's office,
6 Petitioner advised that the practice was illegal and could potentially expose the
7 City of North Las Vegas to civil rights claims.
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10

11 B. The Municipal Court had accumulated approximately \$937,278.83 over
12 a period of several months pursuant to the authority granted in NRS 176.059 for
13 the purpose of court improvement projects, particularly for a new computer
14 management system to replace an older, outdated system used by the court. The
15 city government swept up the funds and are using them for general government
16 purposes because of the city's enormous budget shortages and financial crises.
17 Petitioner strenuously objected to the city's actions because of its negative impact
18 on the Municipal court's management.
19
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21
22

23 C. Petitioner is challenging the City of North Las Vegas and is asserting
24 the Municipal Court's power and authority to act as an independent branch of
25 government in accordance with the decision of this court in City of Sparks v.
26 Sparks Municipal Court, 129 Nev. Adv. Rep. 38, 302 P.3d 111(2013) and hired
27 legal counsel with Municipal Court funds to challenge the City of North Las
28

1 Vegas.

2 D. Petitioner is involved in a personnel action with a former employee of
3 the City of North Las Vegas. After petitioner was sued, the City Attorney's civil
4 office, specifically City Attorney Sandra Morgan, refused to represent Petitioner as
5 required by the Municipal Code and Statutes. This is the only civil suit naming
6 Petitioner out of the 90 plus civil suits being handled or managed by the City
7 Attorney.
8
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10

11 E. There are other instances in which Petitioner is properly exercising her
12 judicial powers to protect the Municipal Court.
13

14 G. The Petitioner has not taken excessive absences from her office and has
15 taken only reasonable amounts of time away from her judicial office such as
16 conferences, vacations, illnesses or other normal reasons. Petitioner maintains an
17 active current caseload. There were approximately 3400 Criminal Cases and
18 14950 new Traffic Cases assigned to her Court last year. She holds five different
19 court sessions every day. In custody defendants have trial dates set within 15 days
20 and out of custody defendants have trials set about 30 to 45 days after arraignment.
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23
24

25 X.

26 Article 6, Section 21 provides that municipal court judges are expressly
27 included within the exclusive jurisdiction of the Commission on Judicial
28 Discipline.

1 XI.

2 Under Nevada law, the Nevada Supreme Court has exclusive original
3 jurisdiction to issue all forms of Writs in the proper exercise of its supervisory
4 authority over all courts within the judicial branch of government.
5

6 XII.

7
8 A case or controversy presently exists in that Petitioner is being threatened
9 with a recall election effort by political groups as stated above and that Petitioner
10 believes that the provisions of Article 2, Section 9 no longer apply to judges in the
11 State of Nevada for the legal reasons stated in the attached points and authorities.
12

13 XIII.

14
15 This case directly presents an irreconcilable conflict between two different
16 provisions of the Nevada Constitution. Because of the constitutional stature of the
17 legal issue and its potential impact on all other judges in this state, the issue should
18 be decided with finality and authority by the state's highest court.
19

20 XIV.

21
22 Petitioner was not allowed access to witness the verification process, which
23 is a mandatory "must" under NRS 293.1277(8). On Friday, May 29, 2015, the
24 election department led her representative to believe it would occur in a "couple of
25 days", however, they had already started the verification process that Friday and
26 refused him access to observe when he requested it on Friday. They finally gave
27
28

1 notice to Petitioner at 5:47 a.m. that Monday, that the verification would begin on
2 the same Monday at 9:30 a.m., but had already completed most of the verification
3 when he arrived at 9:15 a.m. As confirmed by Registrar of Voters Gloria, the
4 Monday event was merely a re-enactment of the verification that occurred on
5 Friday when Petitioner's representative was not allowed to witness.
6
7

8 XV.
9

10 Petitioner's due process rights were substantially impinged upon when
11 Respondent Judge Johnson consolidated the cases and set an evidentiary hearing
12 on the Complaint for sufficiency with two business days of notice given to the
13 parties (apparently unaware that the City of North Las Vegas was closed for
14 business on Fridays).
15
16

17 XVI.
18

19 When Petitioner realized that getting her witnesses served with subpoenas
20 would be next to impossible to accomplish given the time constraints, Petitioner
21 moved to continue the proceedings to allow adequate time to subpoena the
22 necessary persons for her matter. RAM Vol. I, 135-138.
23
24

25 XVII.
26

27 Respondent Judge Johnson would not allow for a continuance and also
28 limited the amount of witnesses that could testify. Further, Respondent Judge
Johnson ruled that notaries and circulators of the Recall Petition would not be

1 permitted to testify. Petitioner's ability to bring forth her case was severely
2 impinged upon given the time constraints and witness restrictions place upon her.
3
4 She has been severely prejudiced by the Court's order and again with the Court's
5 unwillingness to continue the evidentiary hearing to allow for service of process on
6 her essential witnesses.
7

8 XVIII.
9

10 Respondent Judge Johnson issued a decision and order which is attached
11 hereto as **RAM Vol. I, 147-180**. Petitioner motion the Court for a stay of these
12 proceedings pending this writ and the Court summarily denied said request. See
13 Court Minutes attached **RAM Vol. I, 145-146**.
14

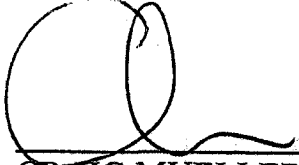
15 XIX.
16

17 The Petitioner has no plain, speedy or adequate remedy at law to protect her
18 interests and therefore desires the court to consider this petition on the merits.
19

20 WHEREFORE, Petitioner prays the court for an Order that the court will
21 exercise its original jurisdiction over the constitutional and legal issues raised in
22 this petition, staying all proceedings in the District Court, staying any recall
23 election proposed by the City of North Las Vegas, directing respondents to file
24 answering briefs, for a declaration that Article 6, Section 21 of the Nevada
25 Constitution supercedes Article 2 Section 9 of the Nevada Constitution as it
26 pertains to elected and appointed judges, for a declaration that Petitioner was
27
28

1 deprived of her due process rights, the petition is invalid, and for the issuance of
2 the appropriate writ or writs providing the appropriate relief to Petitioner.
3

4 Dated this 10th day of July, 2015.


CRAIG MUELLER ESQ.
Nevada Bar No. 004703
Attorney for Petitioner

9 POINTS AND AUTHORITIES

10 THE INTRODUCTION

11
12 The precise question presented by this petition for writ is whether the
13 Commission on Judicial Discipline as created by Article 6, Section 21 of the
14 Nevada Constitution in 1976 as the constitutional body with exclusive jurisdiction
15 to discipline judges including removal from judicial office supercedes or negates
16 the recall provisions of Article 2, Section 9, approved in 1912, as to elected or
17 appointed judges only.
18
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21 Petitioner asserts that the answer is "yes." This assertion is based upon the
22 language of Article 6, Section 21, its legislative history, the enabling legislation
23 passed by the 1977 Nevada Legislature, its legislative history, well established
24 principles of statutory and constitutional interpretation and decisions from
25 appellate courts in other states. The two sections of the Nevada Constitution
26 materially conflict with each other and the conflicts cannot be harmonized. As a
27 matter of law, the older general provision must yield to the authority of the newer,
28

1 more specific provision.

2 This precise question has never been presented to this court until now.

3
4 This is a critical case for the Nevada judiciary. So critical in fact that legal
5 and judicial groups in the State of Nevada are desirous of filing an amicus curiae
6 brief in support of the petitioner if this court accepts the case and if requested or
7 invited to by this court. Lower court judges tend to come from smaller electoral
8 districts and could face recall elections pushed by relatively few voters in their
9 jurisdictions. District Court judges could face recall elections in the rural counties
10 with small populations. The risk of recall impairs judicial independence.

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13
14 Petitioner also contends that the City of North Las Vegas and the Clark
15 County Election Department deprived petitioner of her statutory and procedural
16 due process rights by failing to provide adequate notice of the recall counting and
17 verification process in their "rush to recall" thereby preventing Petitioner from
18 having adequate representation to challenge the recall signature verification
19 process.
20
21
22

23 STANDARD FOR WRIT OF CERTIORARI

24 A. Standard for Writ of Certiorari

25 Article Six, Section Four of the Nevada Constitution states:

26
27 The supreme court shall have appellate jurisdiction in all
28 civil cases arising in district courts, and also on questions
of law alone in all criminal cases in which the offense
charged is within the original jurisdiction of the district
courts. The court shall also have power to issue writs of

1 *mandamus, certiorari, prohibition, quo warranto, and*
2 *habeas corpus* and also all writs necessary or proper to
3 the complete exercise of its appellate jurisdiction. Each
4 of the justices shall have power to issue writs of *habeas*
5 *corpus* to any part of the state, upon petition by, or on
6 behalf of, any person held in actual custody, and may
make such writs returnable, before himself or the
supreme court, or before any district court in the state or
before any judge of said courts.

7 **NRS 34.020. Writ may be granted by Supreme Court and district courts;**
8 ***when writ may issue.*** states:
9

10 **1.** This writ may be granted, on application, by the
11 Supreme Court, a district court, or a judge of the district
12 court. When the writ is issued by the district court or a
13 judge of the district court it shall be made returnable
before the district court.

14 **2.** The writ shall be granted in all cases when an inferior
15 tribunal, board or officer, exercising judicial functions,
16 has exceeded the jurisdiction of such tribunal, board or
17 officer and there is no appeal, nor, in the judgment of the
18 court, any plain, speedy and adequate remedy.

19 **3.** In any case prosecuted for the violation of a statute or
20 municipal ordinance wherein an appeal has been taken
21 from a Justice Court or from a municipal court, and
22 wherein the district court has passed upon the
23 constitutionality or validity of such statute or ordinance,
24 the writ shall be granted by the Supreme Court upon
25 application of the State or municipality or defendant, for
26 the purpose of reviewing the constitutionality or validity
27 of such statute or ordinance, but in no case shall the
28 defendant be tried again for the same offense.

23 "Petition for a writ of certiorari is properly granted when (1) an inferior
24 tribunal has exceeded its jurisdiction; (2) no means of appeal exists; (3) and no
25 plain, speedy, and adequate remedy at law is available. All three of these
26 conditions must exist before a writ may be issued. An analysis of jurisdiction does
27 not involve considering whether the board's decision was correct." Nevada Pub.
28

1 Land Access Coalition, Inc. v. Humboldt County Bd. of County Comm'rs, 111
2 Nev. 749, 895 P.2d 640 (1995). "A writ of certiorari may be granted to review an
3
4 appeal from the justice or municipal court to the district court, where the district
5 court has ruled on the constitutionality or validity of a statute. Zamarripa v. First
6 Judicial Dist. Court, 103 Nev. 638, 747 P.2d 1386 (1987).
7

8 STANDARD FOR PROHIBITION

9
10 NRS 34.320 reads:

11 -The writ of prohibition is the counterpart of the writ of
12 mandate. It arrests the proceedings of any tribunal, corporation,
13 board or person exercising judicial functions, when such proceedings
14 are without or in excess of the jurisdiction of such tribunal,
15 corporation, board or person.

16 A writ of prohibition does not serve to correct errors; its purpose is to
17 prevent courts from transcending the limits of their jurisdiction in the exercise of
18 judicial but not ministerial power. Olsen Family Trust v. District Court, 110 Nev.
19 548, 551, 874 P.2d 778, 780 (1994); Low v. Crown Point Mining Co., 2 Nev. 75
20 (1866). However, "a writ of prohibition must issue when there is an act to be
21 'arrested' which is without or in excess of the jurisdiction of the trial judge."
22
23 Houston Gen. Ins. Co. v. District Court, 94 Nev. 247, 248, 78 P.2d 750, 751
24 (1978); Ham v. Eighth Judicial District Court, 93 Nev. 409, 412, 566 P.2d 420, 422
25 (1977); *See also* Goicoechea v. District Court, 96 Nev. 287, 607 P.2d 1140 (1980);
26 Cunningham v. District Court, 102 Nev. 551, 729 P.2d 1328 (1986).
27
28

1 The object of a writ of prohibition is to restrain inferior courts from acting
2 without authority of law in cases where wrong, damage, and injustice are likely to
3 follow from such action. Olsen Family Trust, 110 Nev. at 552, 874 P.2d at 781;
4 Silver Peaks Mines v. Second Judicial District Court, 33 Nev. 97, 110 P. 503
5 (1910). Petitions for extraordinary writs are addressed to the sound discretion of
6 the court, and may only issue where there is no plain, speedy, and adequate remedy
7 at law. NRS 34.330; Jeep Corp. v. Second Judicial Dist. Court, 98 Nev. 440, 442-
8 443, 652 P.2d 1183, 1185 (1982).

12 STANDARD FOR MANDAMUS

13
14 This Honorable Court may issue a writ of mandamus to enforce the
15 performance of an act which the law enjoins as a duty especially resulting from an
16 office or to compel the admission of a party to the use and enjoyment of a right to
17 which he is entitled and from which he is unlawfully precluded by such inferior
18 tribunal. NRS 34.160.

19
20
21 Mandamus will not lie to control discretionary action unless it is manifestly
22 abused or is exercised arbitrarily or capriciously. Office of the Washoe County DA
23 v. Second Judicial Dist. Court, 5 P.3d 562, 566 (2000). Thus, a writ of mandamus
24 will issue to control a court's arbitrary or capricious exercise of its discretion. *Id.*
25 citing Marshall v. District Court, 118 Nev. 459, 466, 836 P.2d 47, 52 (1992); City
26
27
28

1 of Sparks v. Second Judicial Dist. Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015
2 (1996); Round Hill Gen. Lim. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).
3

4 A writ of mandamus will issue when the petitioner has no plain, speedy and
5 adequate remedy at law. Scrimmer v. Eighth Judicial Dist. Court, 998 P.2d 1190,
6 1193 (2000).
7

8 **THE NEVADA SUPREME COURT HAS PLENARY WRIT**
9 **AUTHORITY AND INHERENT POWERS TO GOVERN THE JUDICIAL**
10 **BRANCH OF GOVERNMENT**

11 The State of Nevada was created by an Act of Congress in 1864 during the
12 Civil War. Nevada residents approved the first Nevada Constitution that year.
13 Article 6 governs the judicial branch of government. Section 1 specified that the
14 judicial system consisted of the supreme court, district courts, justice courts and
15 municipal courts in incorporated cities only and if established by the legislature.
16 Thus, municipal courts were deemed a part of the judicial system from the
17 inception of this state.
18
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22 An early expression of the Supreme Court's considerable power is found in
23 Gibson v. Mason, 5 Nev. 283, 291-2 (1869):
24

25 But another government, that of the state, is formed, which is usually
26 clothed with all the sovereign authority reserved by the people from the
27 grant of powers in the federal constitution. This is accomplished in this as in
28 all the states but one, by means of the constitution adopted by themselves,
whereby all political power is conferred upon three great departments, each
being endowed with and confined to the execution of powers peculiar to
itself.

1 The legislative is vested in two bodies, the senate and assembly; the
2 judicial is conferred upon certain designated courts; and the executive upon
3 the governor. By the law so creating the government, certain rights are
4 generally reserved by the people, and so placed beyond the control of, or
5 infringement by, any of the departments of the state organizations.

6 The government so organized is the repository of all the power
7 reserved by the people from the general government, except such as may be
8 expressly denied to it by the law of its creation, each department being
9 supreme within its respective sphere, the legislature possessing legislative
10 power unlimited except by the federal constitution, and such restrictions as
11 are expressly placed upon it by the fundamental law of the state--the
12 governor having the sole and supreme power of executing the laws, and the
13 courts that of interpreting them.

14 (Emphasis supplied)

15 Lest this be seen as an ancient expression of constitutional power, this court
16 has consistently maintained and asserted its supervisory authority over the judicial
17 branch. Consider this sweeping language from Halverson v. Hardcastle, 123 Nev.
18 245, 260-262 (2007):

19 Under the Nevada Constitution's "separation of powers" clause, "[t]he
20 powers of the Government of the State of Nevada" are divided into three
21 separate departments-legislative, executive, and judicial. Essentially, the
22 legislative power, which is vested in the state Legislature, refers to the broad
23 authority to enact, amend, and repeal laws; the executive power, vested in
24 the Governor, encompasses the responsibility to carry out and enforce those
25 laws (i.e., to administrate); and, under Article 6, the judicial power is vested
26 in the state court system, comprised of the supreme court, district courts, and
27 justices of the peace, carrying with it "the capability or potential capacity to
28 exercise a judicial function . . . to hear and determine justiciable
 controversies."

 These governmental powers are coequal, and no person charged with
the exercise of one department's powers may exercise "any functions" of the
other departments, except when "expressly directed or permitted" under the

1 Constitution. Accordingly, to ensure that each power remains independent
2 from influences by other branches of government, each department
3 possesses inherent power to "administer its own affairs" and "perform its
4 duties," so as not to "become a subordinate branch of government."

5 Inherent power by virtue of the judiciary's sheer existence

6 To ensure that the executive, legislative, and judicial powers are
7 meaningful, the governmental department in which each respective power is
8 vested also has-by virtue of its mere constitutional existence-inherent
9 authority "to accomplish or put into effect," i.e., to carry out, the
10 department's basic functions. The power derived from the departments'
11 "sheer existence is broader and more fundamental than the inherent power
12 conferred by separation of powers," and it exists even when one department,
13 in carrying out its functions, exercises roles more commonly seen in the
14 scope of another department's powers.

15 As has long been recognized, these sources provide the judiciary with
16 inherent authority to administrate its own procedures and to manage its own
17 affairs, meaning that the judiciary may make rules and carry out other
18 incidental powers when "reasonable and necessary" for the administration
19 of justice. For instance, a court has inherent power to protect the dignity and
20 decency of its proceedings and to enforce its decrees, and thus it may issue
21 contempt orders and sanction or dismiss an action for litigation abuses.
22 Further, courts have inherent power to prevent injustice and to preserve the
23 integrity of the judicial process, which power generally has been recognized
24 as encompassing the authority, placed in the highest court in the system, to
25 discipline judges.

26 Subsequent to Halverson, supra, this court continued to exert its supervisory
27 authority over the judicial branch of government. See Lueck v. Teuton, 125 Nev.
28 674, 686 (2009) (removing an appointed District Judge who served past the time
permitted by Nevada Constitution Article 6, Section 20(2)) and Jones v. Nevada
Commission on Judicial Discipline, 130 Nev. Adv. Op. 11, 318 P.2d 1078 (2014)

1 (exercising supervisory power over Commission via extraordinary writs).

2 This petition concerns an issue of vital importance to Nevada's judiciary and
3 to the integrity of the judicial branch of government. In this regard, this petition
4 raises important issues of constitutional law which need clarification.
5 Considerations of sound judicial economy and administration strongly suggest that
6 this court accept and consider this petition on the merits of the constitutional
7 claims. See Int'l Game Tech. Inc. v. Second Judicial District Court, 124 Nev. 193,
8 197-98 (2008).

9 10 11 12 13 **A LITANY OF LEGAL PRINCIPLES SUPPORT THIS PETITION**

14 Judge Ramsey is filing this petition for a writ staying all proceedings and
15 ultimately forbidding a recall election because she should not be forced to go
16 through the time and expense of a recall election that is unconstitutional. This is a
17 question of first impression in Nevada. Judge Ramsey wants to make it a strong
18 impression. First, a historical perspective:

19 20 21 22 **THE EARLY NEVADA HISTORY**

23 For the first several decades in the state's existence, it appears that the only
24 way to remove judges from office was by impeachment by the Legislature or in
25 regularly scheduled elections. The impeachment power was limited to Supreme
26 Court justices and district court judges. See generally Article 7 of the Nevada
27 Constitution.
28

1 In 1912, the voters approved Article 2, Section 9 which reads as follows:

2 Sec. 9. Recall of public officers: Procedure and limitations. Every
3 public officer in the State of Nevada is subject, as herein provided, to recall
4 from office by the registered voters of the state, or of the county, district, or
5 municipality which he represents. For this purpose, not less than twenty-five
6 percent (25%) of the number who actually voted in the state or in the county,
7 district, or municipality which he represents, at the election in which he was
8 elected, shall file their petition, in the manner herein provided, demanding
9 his recall by the people. They shall set forth in said petition, in not exceeding
10 two hundred (200) words, the reasons why said recall is demanded. If he
11 shall offer his resignation, it shall be accepted and take effect on the day it is
12 offered, and the vacancy thereby caused shall be filled in the manner
13 provided by law. If he shall not resign within five (5) days after the petition
14 is filed, a special election shall be ordered to be held within thirty (30) days
15 after the issuance of the call therefor, in the state, or county, district, or
16 municipality electing said officer, to determine whether the people will
17 recall said officer. On the ballot at said election shall be printed verbatim as
18 set forth in the recall petition, the reasons for demanding the recall of said
19 officer, and in not more than two hundred (200) words, the officer's
20 justification of his course in office. He shall continue to perform the duties
21 of his office until the result of said election shall be finally declared. Other
22 candidates for the office may be nominated to be voted for at said special
23 election. The candidate who shall receive highest number of votes at said
24 special election shall be deemed elected for the remainder of the term,
25 whether it be the person against whom the recall petition was filed, or
26 another. The recall petition shall be filed with the officer with whom the
27 petition for nomination to such office shall be filed, and the same officer
28 shall order the special election when it is required. No such petition shall be
circulated or filed against any officer until he has actually held his office six
(6) months, save and except that it may be filed against a senator or
assemblyman in the legislature at any time after ten (10) days from the
beginning of the first session after his election. After one such petition and
special election, no further recall petition shall be filed against the same
officer during the term for which he was elected, unless such further
petitioners shall pay into the public treasury from which the expenses of said
special election have been paid, the whole amount paid out of said public
treasury as expenses for the preceding special election. Such additional
legislation as may aid the operation of this section shall be provided by law.

1
2 The recall empowerment was part of the progressive era legal reforms.
3 These recall provisions were passed in a handful of states and most included judges
4 as officers who could be recalled from office.
5

6 Despite that authorization, it does not appear in Nevada history that any
7 judge was ever removed from office by this process. It proved to be a cumbersome
8 and largely useless process for removing public officials from office.
9

10
11 In 1924, the American Bar Association created its first Code of Judicial
12 Ethics. The next major revision was in 1972 when the ABA created the Model
13 Code of Judicial Conduct. It has been revised a few times since then, most recently
14 in 2010. Nevada created a Code of Judicial Conduct in the 1970s but research
15 history is sparse as to when a code was first adopted here.
16
17

18 The first specific commission for judicial discipline was created in
19 California in 1960. Over the next thirty years, all 50 states created some form of
20 judicial conduct system and approved a Code of Judicial Conduct.
21

22
23 In 1976, Nevada voters approved Article 6, Section 21 which created the
24 Commission on Judicial Discipline. Only some provisions of this section are
25 relevant:
26

27 Sec. 21. Commission on Judicial Discipline; Code of Judicial
28 Conduct.

1. A justice of the Supreme Court, a judge of the court of appeals,
a district judge, a justice of the peace or a municipal judge may, in addition

1 to the provision of Article 7 for impeachment, be censured, retired, removed
2 or otherwise disciplined by the Commission on Judicial Discipline. Pursuant
3 to rules governing appeals adopted by the Supreme Court, a justice or judge
4 may appeal from the action of the Commission to the Supreme Court, which
5 may reverse such action or take any alternative action provided in this
6 subsection.

7

8 5. The Legislature shall establish:

9 (a) In addition to censure, retirement and removal, the other forms
10 of disciplinary action that the Commission may impose;

11 (b) The grounds for censure and other disciplinary action that the
12 Commission may impose, including, but not limited to, violations of the
13 provisions of the Code of Judicial Conduct;

14 (c) The standards for the investigation of matters relating to the
15 fitness of a justice or judge; and

16 (d) The confidentiality or nonconfidentiality, as appropriate, of
17 proceedings before the Commission, except that, in any event, a decision to
18 censure, retire or remove a justice or judge must be made public.

19

20 6. The Supreme Court shall adopt a Code of Judicial Conduct.

21

22 8. No justice or judge may by virtue of this Section be:

23 (a) Removed except for willful misconduct, willful or persistent
24 failure to perform the duties of his office or habitual intemperance; or

25 (b) Retired except for advanced age which interferes with the
26 proper performance of his judicial duties, or for mental or physical disability
27 which prevents the proper performance of his judicial duties and which is
28 likely to be permanent in nature.

(Emphasis supplied in paragraph 1)

The Nevada Constitution is amended only after the Legislature approves the
amendment in two sessions and is then approved by the voters in the next general
election. Section 21 was approved by the 1973 and 1975 Nevada Legislatures and
approved by the voters in 1976.

The primary legislative history originated in the 1973 session but the

1 legislative history from those days is sparse. The legislative proceedings back then
2 were not well documented.

3
4 More illumination comes from the 1977 Nevada Legislature. Since the
5 voters had approved the constitutional amendment in November, 1976, the
6 legislature had to enact enabling legislation. That came in the form of S.B. 453.
7 Again, the documented legislative history is sparse. However, we are fortunate that
8 former Chief Justice E.M. Gunderson submitted a three page memorandum dated
9 April 12, 1977 to the Governor detailing his thoughts on SB 453 and the creation
10 of a code of judicial conduct for Nevada. At the Senate Judiciary Committee
11 hearing on April 13, 1977, Justice Gunderson's memorandum was included as
12 Exhibit B to the committee minutes.

13
14 His commentary is attached as **RAM Vol. I, 129-131**. The most important
15 paragraph is found on page 3:

16
17 The primary purpose of S.B. 453 is to establish that justice and
18 municipal court judges are not subject to redundant disciplinary measures,
19 but instead are governed by the Code of Judicial Conduct prescribed by the
20 Supreme Court, and are to be disciplined or removed from office in
21 accordance with procedures applicable to other judges. In summary, then, it
22 is believed that S.B. 453 represents a sound and practical response to
23 handling the problem posed by Question 6, which imposes on this court the
24 obligation of central control of the entire court system, considered in light of
25 the inadequacies of Question 8.

26
27 (Emphasis added)

28
SB 453 was approved by the State Senate and sent to the Assembly. It was

1 next on the Assembly Judiciary Committee hearing agenda on April 20, 1977. The
2 only legislative history item of note is the testimony of then Judge Richard Minor
3 from Reno. It is attached as **RAM Vol. I, 134** and states in full as follows.
4

5 SB 453: Judge Richard Minor, president of the Nevada Judges
6 Association and judge in Reno, was first to speak on this bill. He stated that
7 for the last two years there has been a committee working on a code of
8 judicial conduct, based on the American Bar Association standards as
9 modified to meet the problems of Nevada. He stated that this was approved
10 by the electorate in 1976. He stated that presently the committee has been
11 applying the rules and does have jurisdiction over the district court and the
12 supreme court. He stated that this bill was prepared at the request of the
13 Nevada Judges Association and would bring courts of limited jurisdiction
14 under this code and under the jurisdiction of the committee on judicial
15 discipline. He stated that they are still working toward a uniform court
16 system and this bill is a step in that direction. He also pointed out that he felt
17 the justice and the municipal courts should be under the code.
18

19 Mrs. Wagner asked Judge Minor if the same procedures were used in
20 both the justice and municipal courts so far as discipline was concerned.
21 Judge Minor stated that it was the same.
22

23 This bill passed and was signed into law. The critical part of that bill for our
24 purposes is NRS 1.440(1):
25

26 1. The Commission has exclusive jurisdiction over the public
27 censure, removal, involuntary retirement and other discipline of judges
28 which is coextensive with its jurisdiction over justices of the Supreme Court
and must be exercised in the same manner and under the same rules.

(Emphasis added)

Thus, it was established in 1976 and 1977 that the Commission on Judicial
Discipline was to be the exclusive means by which a judge could be removed from
the bench with the sole exception of impeachment. That conclusion is buttressed

1 by various principles of legal interpretation.

2 **INTERPRETATION PRINCIPLE 1: A SPECIFIC PROVISION**
3 **WILL PREVAIL OVER A GENERAL PROVISION**

4 In Miller v. Superior Court, 986 P.2d 170, 177 (CA 1999), the California
5 Supreme Court was confronted with a conflict where one provision of the
6 California Constitution conflicted with another section. The court ruled that the
7 specific provision prevailed over the general provision:
8

9
10 To state the matter in other terms, " 'It is well settled . . . that a general
11 provision is controlled by one that is special, the latter being treated as an
12 exception to the former. A specific provision relating to a particular subject
13 will govern in respect to that subject, as against a general provision,
14 although the latter, standing alone, would be broad enough to include the
15 subject to which the more particular provision relates.' " (San Francisco
16 Taxpayers Assn. v. Board of Supervisors (1992) 2 Cal. 4th 571, 577 [7 Cal.
17 Rptr. 2d 245, 828 P.2d 147]; see also Salazar v. Eastin (1995) 9 Cal. 4th 836,
18 857 [39 Cal. Rptr. 2d 21, 890 P.2d 43].) This principle applies whether the
19 specific provision was passed before or after the general enactment. (Warne
20 v. Harkness (1963) 60 Cal. 2d 579, 588 [35 Cal. Rptr. 601, 387 P.2d 377].)
21 CA(3d)(3d)

22 In the present case, even if we were to assume that the people's right
23 to due process of law encompasses a right to obtain and admit evidence, the
24 precise content of that right, and the particular exemptions that apply to it,
25 would be presumably congruent with the specific truth-in-evidence
26 provision found in article I, section 28(d). It is doubtful indeed that the
27 generally worded section 29 impliedly permits what section 28(d) explicitly
28 precludes, i.e., using the prosecutorial need for relevant evidence as a
justification for overriding existing evidentiary privileges and rights of the
press.

Moreover, the rule that the general law is governed by the specific
also applies to the relationship between the shield law itself, article I, section
2(b), and the people's right to due process. The former specifically provides
an absolute immunity from contempt for journalists who refuse to furnish

1 unpublished information. We presume that this specific provision was not
2 altered or partially repealed by the general recognition of the people's right
3 to due process later added to the Constitution.

4 Article 2, Section 9 applies to all public officers whereas Article 6, Section
5 21 is exclusively directed towards judges. Applying this principle of interpretation
6 necessarily excludes the recall election process.
7

8 **INTERPRETATION PRINCIPLE 2: A LATER PROVISION WILL**
9 **PREVAIL OVER AN EARLIER PROVISION**

10 This principle appears in two published opinions. First, we look at Wren v
11 Dixon, 40 Nev. 170, 187-88 (1916):
12

13 Our position here is based upon the doctrine which we find eminently
14 supported by authority, to the effect that in the absence of a saving clause the
15 adoption of a new constitution or the amendment of an old constitution
16 operates to supersede and revoke all previous inconsistent, and
17 irreconcilable constitutional and statutory provisions and rights exercised
18 thereunder, at least so far as their future operation is concerned. (6 R. C. L.)

19 The Supreme Court of the United States, in dealing with the question
20 of the effect of federal constitutional amendments on the existing
21 constitutions and statutes of the several states, speaking through Mr. Justice
22 Harlan, in the case of Neal v. State of Delaware, 103 U.S. 370, 26 L. Ed.
23 567, held, in substance, that the legal effect of the adoption of amendments
24 to the federal constitution and the laws passed for their enforcement was to
25 annul so much of the state constitution as was inconsistent therewith.

26 Second, we look to Rea v. Mayor, 76 Nev. 483, 488 (1960):

27 In the Caton case the court said that in view of the fact that the
28 petition was insufficient to justify the issuance of the writ as prayed for it
would be unnecessary to decide the other points raised. For the same reason
it was unnecessary for the court to decide whether the statute was
unconstitutional under Art. 8, sec. 8. However, Art. 8, sec. 8, in our opinion
is not inconsistent with Art. 19, sec. 3. Even if it were, Art. 19, sec. 3, with a

1 later date of adoption is controlling. Farrar v. Board of Trustees, 150 Tex.
2 572, 243 S.W.2d 688; Plessey v. Industrial Commission, 73 Ariz. 22, 236
3 P.2d 1011; Opinion to the Governor, 78 R.I. 144, 80 A.2d 165.

(Emphasis added)

4 In direct terms, the 1976 provision trumps the 1912 provision.

5
6 **INTERPRETATION PRINCIPLE 3:**
7 **EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS**

8 Look carefully at the language of Section 21. The commission has exclusive
9 jurisdiction over judicial discipline including removal. The sole alternative method
10 of removal is impeachment by the legislature. Constitutional provisions are the
11 most parsed, critiqued and nitpicked legal documents created by drafting experts
12 and legal scholars in the Legislative Counsel Bureau and multiple outside parties
13 and lawyers. Every word and phrase is discussed and haggled over before a final
14 draft is finally agreed upon for submission to the Nevada Legislature.
15
16
17

18 Furthermore, constitutional drafters must consider all existing constitutional
19 provisions when proposing to amend the constitution. The drafters of Section 21
20 were undoubtedly aware of the Article 7 provisions relating to impeachment since
21 it was specifically included in the language of Section 21(1). The recall provisions
22 of Article 2 Section 9 were NOT mentioned and thus we can conclude that those
23 provisions were now EXCLUDED as the methods for discipline of a judge.
24
25
26

27 Other courts have used this principle of interpretation to invalidate older
28 inconsistent constitutional provisions. In State ex rel. O'Connell v. Slavin, 452

1 P.2d 943, 946, (WA 1969), the court stated the principle as follows:

2 For purposes of constitutional interpretation, the express mention of
3 one thing implies the exclusion of another which might logically have been
4 considered at the same time. *Yelle v. Bishop*, 55 Wn.2d 286, 347 P.2d 1081
5 (1959).

6
7 The recall provisions of Article 2, Section 9 had to be considered by the
8 drafters of Article 6, Section 21 since the latter section had to be approved by two
9 legislative sessions (1973 and 1975) before it could be put to a vote of the public in
10 1976.
11

12 This argument could be rephrased as an implied repeal of Article 2, Section
13 9 as applied to judges. The concept of "implied repeal" is well explained by the
14 Supreme Court of Georgia in *Johnston v. Hicks*, 170 S.E.2d 410, 413 (GA 1969):
15
16

17 "An implied repeal is one which takes place when a new law contains
18 certain provisions which are contrary to, but do not expressly repeal, those
19 of a former law . . . Whether it has been so repealed is a question of
20 legislative intent." 82 CJS 477, § 286. A constitutional amendment may
21 amend, modify or repeal a prior constitutional provision. Even though the
22 amendment may not in express terms repeal an existing constitutional
23 provision, if the amendment covers the same subject matter, it will be
24 construed as being a substitute for the existing provision. If the amendment
25 is in irreconcilable conflict with existing provisions of the Constitution, the
26 amendment, being the last expression of the people, its operation cannot be
27 limited or controlled by such existing and contrary provision of the
28 Constitution. *Birdsey v. Wesleyan College*, 211 Ga. 583 (87 SE2d 378);
DeJarnette v. Hospital Authority of Albany, 195 Ga. 189 (23 SE2d 716);
McLucas v. State Bridge Bldg. Authority, 210 Ga. 1 (77 SE2d 531);
McLennan v. Aldridge, 223 Ga. 879 (159 SE2d 682); *Strickland v. Peacock*,
209 Ga. 773 (77 SE2d 14).

This principle of construction applies equally to constitutional provisions.

1 See State ex rel. Josephs v. Douglass, 33 Nev. 82, 95 (1910):

2 Again adverting to the provisions of section 32 of article 4 of the
3 constitution as amended, we find it specially enumerates certain offices
4 which may be consolidated or abolished, increased or diminished, and that
5 all of the offices so named are county offices. We think the maxim
6 "Expressio unius est exclusio alterius," clearly applicable, and that the
7 constitution by specifically designating certain particular offices of a
8 particular class which may be consolidated, etc., intended to exclude from
9 such provisions all other constitutional offices. Broom, in his Legal Maxims,
10 says that no maxim of the law is of more general and uniform application
11 and is never more applicable than in the construction and interpretation of
12 statutes. (19 Cyc. 23.) This maxim is alike applicable to the construction of
13 constitutional provisions. (8 Cyc. 729; Spier v. Baker, 120 Cal. 370, 52 P.
14 659, 41 L. R. A. 196; State v. Clark, 21 Nev. 333, 31 P. 545.)

15 The legislature had to be aware of the other constitutional alternatives. By
16 intentionally including only impeachment, they intentionally excluded the recall
17 process.

18 JUDGES HAVE DIFFERENT ELECTION RULES 19 AND REGULATIONS

20 Nevada has long elected its judges and Nevada's voters have shown no
21 appetite for change by refusing to approve a constitutional change to an
22 appointment system. While Nevada will still elect judges, judicial elections are
23 subject to a wide variety of standards and processes different from elections for
24 legislative and executive branch candidates.

25 Judicial offices are deemed non-partisan by law, NRS 293.195, and judges
26 are provided with a special two week filing period in early January in election
27 years. NRS 293.177(1)(a). Canon 4 and various rules there under of the Nevada
28

1 Code of Judicial Conduct carefully proscribe what a judicial candidate can or
2 cannot do in campaigning for judicial office. Rule 4.2(C) prohibits a judicial
3 candidate from seeking or accepting any campaign contributions if he or she is
4 unopposed. Other rules limit what a judicial candidate may or may not say during
5 a campaign.
6
7

8 The overarching purpose of such rules is to maintain the dignity and
9 appearance of impartiality of judges who must participate in elections. While
10 certain restrictive campaign rules are subject to constitutional free speech
11 limitations, see Republican Party of Minnesota v. White, 536 U.S. 788 (2002), a
12 very recent decision of the U.S. Supreme Court upheld a specific limitation on
13 campaign fund raising by the candidate in the Florida Code of Judicial Conduct in
14 Williams-Yulee v. Florida Bar, ___ U.S. ___, 135 S. Ct. 1656, 191 L.Ed.2d 570
15 (2015). The compelling state interest in judicial impartiality and integrity was
16 enough to withstand a free speech constitutional challenge.
17
18
19
20
21

22 Judges are subject to the Canons of Judicial Conduct and are excluded from
23 the more general code of ethics. See NRS 281A.160 (which substituted in revision
24 for NRS 281.4365, which also defined public officers as not including judges).
25 **RAM Vol. I, 185-186.** While in office, judges are expected to conduct themselves
26 at all times in a manner consistent with the canons and to maintain the dignity and
27 impartiality of the judiciary. See Cannon 1 Nev. Code of Judicial Conduct.
28

A RECALL ELECTION IS AN ATTACK ON JUDICIAL IMPARTIALITY

Judges have to make difficult decisions all the time in cases and may have to make decisions that may be politically unpopular. In nearly every case, some litigant will be unhappy. Some litigants or interest groups may take out their anger by threatening the judge with political retribution. Sometimes, a judge is attacked for other reasons.

We have that exact situation here. Judge Ramsey strives to maintain the integrity and independence of the North Las Vegas Municipal Court. She refuses to cave in to a headstrong, domineering mayor and has opposed the City's taking of the administrative assessment fees specifically designated for a new computer management system for the Municipal Court. It is well known publicly that the City of North Las Vegas has suffered from major fiscal mismanagement and problems for years.

This recall petition is nothing more than an effort to remove the petitioner because she refuses to "play ball" with other political interest groups and cliques in North Las Vegas. Petitioner is doing her job and doing it well, too well for her opponents. The recall petition is nothing more than a shameful crass attack on judicial independence. Judges should not fall prey to the fear of public clamor.

Associate Justice Robert Brown of the Arkansas Supreme Court wrote that a recall election is one of those procedures used to intimidate judges. See Brown,

1 *Perspectives on Judicial Independence: In Honor of Judge Richard Sheppard*
2 *Arnold: From Earl Warren to Wendell Griffen: A Study of Judicial Intimidation*
3 *and Judicial Self-Restraint*, 28 U. Ark. Little Rock L. Rev. 1, 5-6 (2005):
4

5 A variation of the danger inspired by the special retention election is
6 the recall election. A judge issues an unpopular opinion, and recall petitions
7 are then circulated with regard to that judge requiring X number of
8 signatures and calling for a recall election. The judge must then campaign
9 against his or her recall. That is a perfidious system. Why would any judge
10 worth his or her salt want to serve and make the hard decisions that the job
11 requires with the threat of recall constantly hanging over that judge's head?
12 That is precisely what the recall mechanism is designed to do--intimidate
13 judges.

13 We have seen appellate court judges lose retention elections in California
14 and Tennessee in past years because of unpopular decisions. Three former justices
15 of the Iowa Supreme Court lost re-election bids because of their votes for same sex
16 marriage in Iowa years ago. Ironically, their views and legal positions have been
17 vindicated by several other courts since then and resoundingly vindicated by a
18 majority decision of the United States Supreme Court on June 26, 2015 legalizing
19 same sex marriages. Obergefell v. Hodges ____ U.S. ____, 2015 U.S. Lexis 4252.
20
21

22 The members of this court know all too well the potential of hostile public
23 reactions to unpopular legal decisions. We need no reminders of the anger and
24 backlash from Guinn v. Legis. of Nevada, 119 Nev.460 (2003). It was extensive,
25 persistent, vitriolic, and cut short the judicial careers of two former justices of this
26 court.
27
28

1 **JUDICIAL DISCIPLINARY COMMISSIONS ARE A BULWARK**
2 **FOR JUDICIAL INDEPENDENCE AND AGAINST POLITICAL ATTACKS**

3 Recall elections are rare, cumbersome, inefficient and often erratic.
4
5 Impeachment by state legislatures are also rare and ineffective in policing
6 misconduct in the judiciary. The creation of judicial disciplinary commissions
7 in nearly every state when combined with the development of codes of judicial
8 conduct have been far more effective in competently policing the judiciary.
9
10 Moreover, it is a regulatory and policing mechanism within the judicial branch
11 itself, a mechanism which keeps judicial matters exclusively within the judicial
12 branch of government.
13
14

15 Petitioner contends that the 1976 creation of the Commission on Judicial
16 Discipline abrogates the application of the recall provisions of Article 2 Section 9
17 to judges. Cases and articles from other jurisdictions support this exclusivity
18 contention.
19
20

21 Delaware created its own Court on the Judiciary by constitutional
22 amendment in 1969. See Article IV, Section 37 of the Delaware Constitution. A
23 Justice of the Delaware Supreme Court concluded that the amendment resulted in a
24 constitutional transfer of power to the judicial branch to discipline itself. Joseph
25 Walsh, *Judicial Independence: A Delaware Perspective*, 2 Del. L. Rev. 1, 15-16
26 (1999). See also Holland and Gray, *Judicial Discipline: Independent with*
27 *Accountability*, 5 Wid. L. Symp. J. 117, 132 (2000):
28

1 While some theoretical overlapping remains between the impeachment
2 power of a state's legislature and the removal authority of a state judicial
3 conduct organization, the establishment of state judicial conduct
4 organizations represents a shift in branch authority under state constitutions.
5 This constitutional transfer of power within the structure of state
6 constitutions from the legislative branch to self-regulation by the judicial
7 branch has contributed to judicial independence. By simultaneously
8 providing a mechanism for accountability through the receipt and processing
9 of complaints about judicial conduct, state judicial conduct organizations
10 have also enhanced the public trust and confidence in the judiciary.

11 Actual case law on the inter-relationship between recall elections and
12 exclusive jurisdiction of judicial disciplinary bodies appears non-existent. A
13 number of state supreme courts have declared that under their respective state
14 constitutions, they had exclusive original jurisdiction over judicial discipline. See
15 In re Benge, 24 S.3d 822 (LA 2009); and In re Bruno, 101 A.3d 635 (Pa. 2014).
16 Every state and the District of Columbia now has a judicial conduct commission.
17 Alfini, et al *Dealing with Judicial Misconduct in the States: Judicial Independence,*
18 *Accountability, and Reform*, 48 S. Tex. L. Rev. 889 (2007).
19

20
21 Recalling a judge from public office in mid-term is a form of judicial
22 discipline and NRS 1.440(1) vests that authority exclusively in the Commission on
23 Judicial Discipline. See In re Davis, 113 Nev. 1204, 1211 (1997); Halverson v.
24 Hardcastle, 123 Nev. 245, 263 (2007); and Jones v. Nev. Comm. On Judicial
25 Discipline, 130 Nev. Adv. Op. 11, 318 P.3d 1078, 1080 (2014).
26
27
28

**PETITIONER'S DUE PROCESS RIGHTS HAVE BEEN VIOLATED
AND HER STATUTORY RIGHTS WERE TOSSED ASIDE
IF THIS RECALL IS PERMITTED TO PROCEED.**

1 “This Court recognizes that Judges have a protected interest in their judicial
2
3 offices under the Fourteenth Amendment [of the United States Constitution].” The
4 Honorable Steven E. Jones v. Nevada Commission on Judicial Discipline, 130
5 Nev. Adv. Rep. 11, 318 P. 3d 1078 (2014)(citing Mosley v. Nev. Comm’n on
6 Judicial Discipline, 117 Nev. 371, 378, 22 P. 3d 655, 659 (2001)). The Nevada
7
8 Supreme Court in Jones went on to say:
9

10 The Fourteenth Amendment provides that no state shall “deprive any person
11 of life, liberty, or property, without due process of law.” U.S. Const. Amend.
12 XIV Sec. 1; see also Nev. Const. art. 1, sec. 8(5) (“No person shall be
13 deprived of life, liberty, or property, without due process of law.”). Thus,
14 when a judicial office is at stake, due process mandates “a fair trial before a
15 fair tribunal,” Ivey v. Eighth Judicial Dist. Court, 129 Nev. , , 299 P. 3d
16 354, 357 (2013), requiring, at least, notice of the charges and an opportunity
17 to be heard. See Callie v. Bowling, 123 Nev. 181, 183, 160 P. 3d 878, 879
18 (2007).

19 Id. at 1082.

20 Due process is not satisfied even if the statutory procedures are followed if
21 they do not provide adequate due process. See Swartz v. Adams, 93 Nev. 240, 563
22 P.2d 74 (1977).

23 A. *Petitioner’s due process rights were substantially violated throughout the*
24 *signature verification process done at the Clark County Election*
25 *Department.*

26 Petitioner was not allowed access to witness the verification process, which
27 is a mandatory “must” under NRS 293.1277(8). On Friday, May 29, 2015, the
28 election department refused her representative access to observe the verification

1 process, and then by telephone from the lobby, led her representative to believe it
2 would occur in a "couple of days". However, they had already started the
3 verification process that Friday and refused him access to observe as requested on
4 Friday. They finally gave notice by way of email to Petitioner on Monday
5 morning at 5:47 a.m., that the verification would begin on that same Monday at
6 9:30 a.m., but had already completed most of the verification when he arrived at
7 9:15 a.m. As confirmed by testimony of Registrar of Voters Joe Gloria, the
8 Monday event was merely a re-enactment of the verification that occurred on
9 Friday when Petitioner's representative was not allowed to witness.
10
11
12
13

14 *B. Petitioner's due process rights were again substantially violated when*
15 *Judge Johnson set an evidentiary hearing with only 2 business days of*
16 *notice.*

17 Finally, Judge Johnson consolidated the cases and set an evidentiary hearing
18 on the Complaint for sufficiency **with two business days of notice given to the**
19 **parties** (apparently unaware that the City of North Las Vegas was closed for
20 business on Fridays). When Petitioner realized that getting her witnesses served
21 with subpoenas would be next to impossible to accomplish given the time
22 constraints, Petitioner moved to continue the proceedings to allow adequate time to
23 subpoena the necessary persons for her matter. Respondent Judge Johnson would
24 not allow for a continuance and also limited the amount of witnesses that could
25 testify. Further, Respondent Judge Johnson ruled that signatories, notaries and
26
27
28

1 circulators of the Recall Petition would not be permitted to testify. Petitioner's
2 ability to bring forth her case was severely impinged upon given the time
3 constraints and witness restrictions place upon her. She has been severely
4 prejudiced by the Court's order and again with the Court's unwillingness to
5 continue the evidentiary hearing to allow for service of process on her essential
6 witnesses.
7
8

9
10 In further support of this "rush to recall", the City still has not, as of this
11 date, answered the Complaint for Sufficiency. Petitioner requests any introduction
12 of documents, evidence, examination and cross-examination and argument
13 permitted by the City in the sufficiency of the petition matters be stricken.
14
15

16 **THE RECALL PETITION WAS NOT CONSECUTIVELY NUMBERED**
17 **PURSUANT TO NRS 306.030(1) AND CONTAINED FATAL FLAWS AND**
18 **SHOULD HAVE BEEN REJECTED**

19 The Recall Petition was not consecutively numbered in violation of NRS
20 306.030(1). Moreover, the Recall Petition was accepted by the Clerk when it was
21 not consecutively numbered directly in violation of NRS 306.030(1). The North
22 Las Vegas City Clerk testified the Petition Booklets were not numbered when she
23 received them. The County Elections Representative testified their office
24 numbered the front of the Petition Booklets, but not the individual pages. As of
25 this date, the Recall Petition, which consists of 636 pages, is still not consecutively
26 numbered. There are 159 pages numbered 1 through 159 consecutively, and 159
27
28

1 pages each numbered 2, 3, and 4, respectively, with no way to identify which
2 "Booklet" pages 2, 3, and 4 they belong to.
3

4 The Petition itself contained many fatal flaws and was not examined its
5 entirety. These fatalities include, but not limited to, insufficient addresses; the
6 required dates for each person signing, and even their signatures. Some of the
7 petitions as a whole were not properly verified and should have been rejected,
8 while other petitions included duplicates and those who signed impermissibly for
9 others.
10
11

12 The Registrar's office numbered the booklets attempting to validate an
13 otherwise invalid petition, added names that were not submitted by the circulators
14 in the Petition presented to the Clerk's Office, changed names in order to accept
15 them. Further, they only used selected criteria in their verification process, rather
16 than follow all the criteria as outlined by the statutes. As a result, the sample used
17 for verification does not meet the minimum 500 names as identified as a "must"
18 under the statute. Some of the names in the 500 sample were not those being
19 submitted in the Petitions from which the pool could have been drawn from. This
20 makes the sample less than 500 of the names submitted and violates the statute.
21 Thus, the sample used for verification fails. These are only some of many issues
22 with the petition itself and the procedures for identifying validity of the signatures,
23 along with the verification process. All the more reason the observation in the
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1 initial stages of verification and selection is crucial. Safeguards are in place for the
2 integrity of the process and protection for the officer being recalled. Here, they not
3 used and simply discarded in this "rush to recall" effort.
4

5 **THE COURT IMPERMISSABLY PERMITTED THE CITY ATTORNEY**
6 **OF NORTH LAS VEGAS TO SIT IN ON FURTHER TELEPHONIC RE-**
7 **EXAMINATION OF CITY CLERK BARBARA ANDOLINI OVER**
8 **OBJECTION BY COUNSEL**

9 The City introduced a newly "found" letter which was dated May 28, 2015
10 and allegedly sent to Petitioner by mail at her home address. Interestingly, this
11 letter was never referred to or disclosed in the first round of extensive examination
12 of City Clerk Andolini during the June 18, 2015 hearing, thus, making the letter's
13 delivery before verification questionable. Further, there is no returned receipt from
14 Federal Express that it was actually received by Petitioner on Friday, May 29, 2015
15 or even before the following Monday. Additionally, this letter was not disclosed in
16 their original document list (See, RAM Vol. I, 106-108) nor in their latest
17 supplemental list for the July 2, 2015 hearing. See RAM Vol. I, 139-144. Further,
18 the same City Clerk was permitted to participate telephonically, and in the room
19 with her was City Attorney Sandra Douglas Morgan. City Attorney Morgan was
20 identified on a witness list and the exclusionary rule had been invoked each day.
21 Counsel objected to the presence of City Attorney Morgan and the introduction of
22 the document. A letter placed in City mail late Thursday would not have been
23 picked up until Monday, as it is common knowledge the City of North Las Vegas is
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28

1 closed on Fridays. Even had it reached Petitioner, the alleged letter also does not
2 inform one of when and where the verification process would occur. There was no
3 fed-ex number assigned for this letter, nor confirmation of same. This newly
4 discovered letter was not previously produced, nor mentioned at anytime in the
5 previous testimony when asked about notice given to Petitioner. The letter only
6 lets Petitioner know they will begin the "raw count" process pursuant to NRS
7 293.1276, and says "I will keep you apprised as the petition process moves
8 forward". The raw count process under this provision and the four day limit is
9 different than the verification process as mandated in NRS 293.1277. The process
10 apparently moved forward that same day to verification without proper notice or
11 opportunity to attend as promised by the City Clerk.
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17 Despite objection of Counsel, City Attorney Morgan was permitted to
18 participate and remain in the same room with the City Clerk Andolini during her
19 testimony. Counsel was unable to observe if notes were being passed, or what
20 documents were given in advance of the examination and re-examination. City
21 Clerk Andolini was represented by counsel that was at the hearing, and City
22 Attorney Morgan was there simply to intimidate and coerce City Clerk Andolini
23 into saying something favorable for the City of North Las Vegas.
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It was discovered by mere serendipity, after Judge Johnson's decision
determining that now notice to Ramsey was sufficient that City Attorney Morgan,

1 at the same time of this hearing, was circulating her flyer for a fundraiser to be held
2 on July 9, 2015, stating "Elect Sandra Morgan. North Las Vegas Municipal Court
3 Judge, Department One", with the Caption "It's Time to Make a CHANGE!".
4 Interestingly enough, this was received by persons while the hearing was still
5 occurring, and the Judge had not yet ruled that the Recall could go forward.
6
7 Petitioner received this flyer via email at 12:58 p.m. (however, her cell phone was
8 turned off during the hearing. She opened her email and discovered the flyer at
9 5:18 p.m. after the hearing had been concluded.) A copy of the flyer is attached as
10
11
12
13 **RAM Vol. I, 187.**

14 By her actions, City Attorney Morgan, at the time she gave her word to
15 Respondent Judge Johnson, omitted the fact that she was a candidate for Judge
16 Ramsey's position and clearly misled the court about this fact. City Attorney
17 Morgan not only has a vested interest, but now a personal pecuniary interest as
18 well. The mere fact she omitted and/or failed to disclose this material fact is an
19 ethical violation. An attorney has a duty of candor to the Court. In this case, City
20 Attorney Morgan failed to disclose this information. Surely, had Respondent Judge
21 Johnson been aware, he may have questioned the authenticity of the document so
22 newly found and/or sustained Counsel's objection about City Attorney Morgan's
23 presence.
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Further, City Attorney Morgan had the audacity to circulate this flyer to hold

1 a fundraiser before the hearing had concluded, before the Court's ruling, before a
2 written decision was filed, and there still has been no call for a special election
3 issued by the City Clerk.
4

5 Finally, City Attorney Morgan was identified as a witness in the matter and
6 placed on Counsel's witness list prior to the hearing. **RAM Vol. I, 101-105.**
7 Counsel also invoked the exclusionary rule each day. Counsel objected again,
8 when City Attorney Morgan was permitted to sit with another witness while
9 testifying via telephone conference so no one could observe the credibility of the
10 testifying witness, bias, prejudice and intimidation that was occurring. Her mere
11 presence is witness tampering at it's finest.
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16 CONCLUSION

17 The constitutional creation of the Commission on Judicial Discipline in
18 1976, when combined with the creation of a Code of Judicial Conduct, was a
19 tectonic shift for the Nevada Judiciary. For the first time, all judges had a code of
20 conduct to live and work by and, for infractions of that code, the judiciary had its
21 own enforcement branch to address judicial misconduct.
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25 This tectonic shift meant that the judiciary, for the first time in our state's
26 history, was to be the master of its own branch of government. The Commission
27 and the Code of Judicial Conduct have been far more effective than the recall
28 process could ever hope to be in controlling the conduct of the judiciary and

1 removing misbehaving judges. Since its creation, a few judges have been removed
2 from the bench for misconduct and others have incurred lesser penalties.
3

4 Article 6, Section 21 is a comprehensive system designed and intended
5 solely for the judiciary. Section 21(1) specifically recognized legislative
6 impeachment as the only alternative method for removing judges from office. That
7 reflects a conscious drafting decision to exclude recall elections as the other
8 method of involuntary removal. Of course, there is always the risk of removal by
9 the gods of chance in a regularly scheduled election at the end of one's term of
10 office. No constitutional provision can change that.
11

12 This is not a novel argument because the late Justice Gunderson said the
13 same thing in 1977 memorandum: "which imposes on this court the obligation of
14 central control of the entire court system..." That was the central understanding in
15 1976 and 1977.
16

17 For the reasons set forth in this petition, petitioner requests this court to
18 exercise its original writ jurisdiction and supervisory authority over the judicial
19 branch of government, issue a stay order halting all recall election proceedings,
20 and ultimately issue a writ declaring that Article 2, Section 9 of the Nevada
21 Constitution was superseded by Article 6, Section 21 as it pertains to the judiciary
22 only.
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1 Further, Petitioner's statutory and procedural due process rights were
2 trampled upon in the verification of signature process and by Respondent Johnson.
3
4 She was deprived of adequate notice to witness the verification of signatures. The
5 Petition itself contained many fatal flaws and was not examined its entirety. These
6
7 fatalities include, but not limited to, invalid petition, form, and numbering,
8
9 insufficient addresses; petitions lacking dates, signatures, verifications, included
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11 duplicates and those who signed impermissibly for others, names were added that
12
13 were nor submitted, and names were changed. Petitioner was deprived of her
14
15 ability to bring forth her case upon the hurried evidentiary hearing regarding
16
17 sufficiency. She was limited in the scope of who she could call as witnesses.
18
19 Respondent Johnson's actions were arbitrary and capricious and deplorable.

17 Petitioner requests this court also exercise its original writ jurisdiction and
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19 supervisory authority over the judicial branch of government and issue a writ
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21 declaring that Petitioner's due process rights were abused, the petition is invalid,
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1 she was deprived of ability to verify signatures to the recall petition and was
2 denied a fair and adequate evidentiary hearing on sufficiency issue.
3

4 DATED this 10th day of July, 2015.
5

6 MUELLER, HINDS & ASSOCIATES,
7 CHTD.
8

9 By 
10

11 CRAIG A. MUELLER, ESQ.
12 Nevada Bar No. 4703
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VERIFICATION

I, CRAIG A. MUELLER, declare that I am the attorney for the Petitioner in the within action; that I have read the Petition For A Writ Of Mandamus, Certiorari Or Prohibition and know the contents thereof; that the same is true of my knowledge except as to those matters therein stated upon information and belief and as to those matters, I believe them to be true. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further declare that this writ complies with NRAP 28 (e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

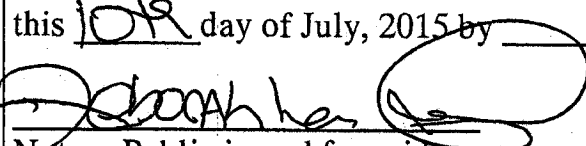
Dated this 10th day of July, 2015.

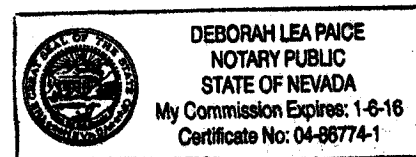

CRAIG A. MUELLER, ESQ.

STATE OF NEVADA)

COUNTY CLARK)

Subscribed and Sworn before me
this 10th day of July, 2015 by _____


Notary Public in and for said
County of Clark
State of Nevada



CERTIFICATE OF MAILING

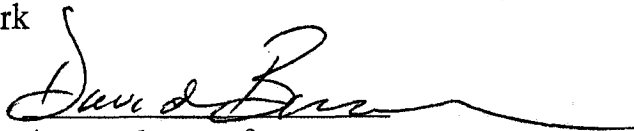
I HEREBY CERTIFY that on the ____ day of July, 2015, I faxed and hereby deposited a true and correct copy of the **PETITION FOR A WRIT OF MANDAMUS, CERTIORARI OR PROHIBITION**, U.S. Mail, postage fully pre-paid addressed to:

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City Clerk of North Las Vegas and
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An employee of
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