

IN THE SUPREME COURT OF THE STATE OF NEVADA

HONORABLE JUDGE CATHERINE  
RAMSEY, NORTH LAS VEGAS  
MUNICIPAL JUDGE,

SUPREME COURT NO.: ~~68394~~

Petitioner,

Electronically Filed  
Jul 15 2015 04:22 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

vs.

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

**FILED**

JUL 27 2015

Respondents.

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

**RESPONDENTS BETTY HAMILTON, MICHAEL WILLIAM MORENO,  
AND BOB BORGERSEN'S OPPOSITION TO EMERGENCY MOTION  
UNDER NRAP 27(e) ACTION NECESSARY ON OR BEFORE JULY 22,  
2015**

**MOTION FOR STAY PURSUANT TO NRAP 8**

**Respectfully Submitted by:**

GENTILE CRISTALLI MILLER  
ARMENI & SAVARESE  
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Attorneys for Respondents  
Betty Hamilton, Michael William Moreno,  
and Bob Borgersen

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**  
3 **INTRODUCTION**

4 The District Court properly denied Petitioner's motion for stay and this  
5 Court should do the same. Petitioner cannot meet her burden of establishing that  
6 she is entitled to a stay pursuant to NRAP 8, as the balance of equities clearly  
7 weigh heavily in Respondents' favor. Accordingly, Respondents oppose  
8 Petitioner's Motion for Stay Pursuant to NRAP 8 ("Motion for Stay") and submit  
9 that is should be denied.  
10

11  
12 **II.**  
13 **STATEMENT OF FACTS<sup>1</sup>**

14 On June 1, 2015, Clark County Registrar of Voters, Joseph Gloria  
15 ("Gloria"), prepared and signed a Certificate of Results of Signature Examination,  
16 Recall of Judge Catherine Ramsey. Pursuant to Nevada Revised Statute  
17 293.1277(2), Gloria conducted a random sample of five hundred (500) signatures  
18 and determined that four hundred twenty (420) signatures were valid. From the  
19 random sampling, he further verified the total number of valid signatures at two  
20 thousand two hundred eighty two (2,282) signatures, in excess of the one thousand  
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23

24 <sup>1</sup> Respondents respectfully submit Judge Johnson's Decision & Order herewith as Exhibit A and  
25 provide the instant Statement of Facts from the findings stated therein.  
26 As of the date of filing of Respondents' Opposition, Petitioner had still not served opposing  
27 counsel with her Writ Petition or her subsequent Emergency Motion. Respondents further  
28 respectfully assert that Petitioner's failure to submit a complete NRAP 27(e) Certificate with her  
Emergency Motion, inclusive of an explanation of why she has not yet served opposing counsel  
with her Emergency Motion, as required by NRAP 27(e)(3)(c), constitutes an independent  
ground to summarily deny said Emergency Motion. See NRAP 27(e)(1).

1 nine hundred eighty four (1,984) signatures required to qualify. On June 2, 2015,  
2 the Office of the Nevada Secretary of State issued a Notice of Qualified Petition,  
3 deemed the recall petition qualified, and noticed all interested parties.  
4

5 On June 4, 2015, Petitioner filed her Emergency Petition for Injunction,  
6 improperly citing NRS 295.105(4) as the basis for her request to enjoin the recall  
7 effort on constitutional grounds and demand a hearing within three (3) days. The  
8 Honorable Eric Johnson set the matter for hearing on June 18, 2015. Prior to the  
9 hearing in Case No. A-15-719406-P, on June 9, 2015, Petitioner filed her  
10 Complaint Pursuant to NRS 306.040 Challenging the Legal Sufficiency of the  
11 Petition to Recall Judge Catherine Ramsey (“Complaint”) alleging the same  
12 constitutional argument contained in the Emergency Petition for Injunction, and  
13 other causes of action relating to the sufficiency of the petition for recall.  
14  
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16

17 At the June 18, 2015 hearing, Judge Johnson heard argument regarding the  
18 constitutional challenge and Respondent’s Motion to Consolidate on Order  
19 Shortening Time, Request for Expedited Hearing Pursuant to NRS 306.040(5)  
20 (“Motion to Consolidate”). At a subsequent hearing on June 29, 2015, Judge  
21 Johnson found, as to Petitioner’s constitutional challenge, that Article 2, Section 9  
22 of the Nevada Constitution allows the recall of judges. Thereafter, Judge Johnson  
23 conducted an evidentiary hearing on the remaining causes of action. At the  
24 conclusion of the testimony, Judge Johnson indicated he would like further  
25 clarification regarding allegations made by Petitioner’s representative, and  
26  
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28

1 continued the hearing until July 2, 2015. At the conclusion of the argument, Judge  
2 Johnson issued oral findings denying the Complaint and Emergency Petition for  
3 Injunction. He further denied Petitioner's oral motion to stay the special election  
4 pending appeal. In his Decision & Order entered July 6, 2015, Judge Johnson  
5 ordered the North Las Vegas City Clerk to issue a call for a special election not  
6 sooner than ten (10) days, nor more than twenty (20) days after the date of the  
7 Order, as required by NRS 306.040, to determine whether the people will recall  
8 Petitioner.  
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10

11  
12 As of the date of this filing, pursuant to statute and Judge Johnson's  
13 Decision & Order, the North Las Vegas City Clerk must call the special election no  
14 later than July 27, 2015.  
15

16  
17 **III.**  
**ARGUMENT**

18 **A. Petitioners are Not Entitled to a Stay Pursuant to NRAP 8.**

19 Petitioners cannot demonstrate they are entitled to the relief they seek. This  
20 Court has articulated a four-part test governing the issuance of a stay. The Court  
21 considers (1) whether the object of the petition will be defeated if the stay is  
22 denied; (2) whether petitioner will suffer irreparable or serious injury if the stay is  
23 denied; (3) whether respondent will suffer irreparable or serious injury if a stay is  
24 granted; and (4) whether petitioner is likely to prevail on the merits of the appeal.  
25  
26 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004)  
27  
28

1 (citing NRAP 8(c)). Any one of the NRAP 8(c) factors does not carry more weight  
2 than the others. *Id.* When weighing these factors, the equities do not favor any  
3 further delay of the election to recall Petitioner.  
4

5 **1. The Object of the Petition Will Not Be Defeated if the Stay is Denied.**

6 This Court may only entertain a Writ Petition when Petitioner has no other  
7 plain, speedy and adequate remedy at law. *Columbia/HCA Healthcare Corp. v.*  
8 *Dist. Ct.*, 113 Nev. 521, 525, 936 P.2d 844, 846-47 (1997). As Petitioner has yet to  
9 exercise her appeal rights, she is not entitled to the extraordinary relief she now  
10 seeks. A denial of the Petition does not foreclose Petitioner's appellate remedies.  
11 Accordingly, the object of the Petition will not necessarily be defeated if the stay is  
12 denied.  
13  
14

15 Moreover, Petitioner suggests that absent an emergency stay, the recall  
16 effort against her will move forward, and thus the object of the Petition will be  
17 defeated. If this Court were to deny the stay pending the outcome of the Petition,  
18 pursuant to NRAP 3A, Petitioner may seek to stop the recall by filing an appeal of  
19 the final judgment of the District Court. NRAP 3A(b)(1). And, just as she sought  
20 to expedite these proceedings with an emergency motion, the same mechanism is  
21 available to Petitioner on appeal pursuant to NRAP 27(e).  
22  
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24

25 **2. Petitioner Will Not Suffer Irreparable or Serious Injury if the Stay is**  
26 **Denied.**

27 Contrary to Petitioner's assertion, if the stay is denied, she will not suffer  
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1 irreparable or serious injury. Petitioner will be subject only to a recall election, the  
2 outcome of which is not assured. And pursuant to Advisory Opinion JE15-011,  
3 issued by the Nevada Standing Committee on Judicial Ethics, Petitioner may  
4 campaign against the recall and accept campaign donations in support of her effort.  
5

6 Further, if, as Petitioner contends, the majority of voters in North Las Vegas  
7 are satisfied with her performance as a municipal court judge, they will indicate  
8 their approval at the ballot box and Petitioner will retain her seat. Indeed, as  
9 Petitioner points out, no Nevada judge has ever been recalled, a clear indication  
10 that Nevada voters are prudent in exercising their right to recall. As the approval  
11 of the recall petition does not equate to the ultimate recall of Petitioner, she will  
12 not suffer irreparable or serious harm if the stay is denied.  
13  
14

### 15 **3. Respondents Will Suffer Harm and Prejudice if a Stay is Entered.**

16 Petitioners speciously argue that Respondents will not be harmed or  
17 prejudiced by the entry of a stay. To the contrary, a stay would again intrude on  
18 the people's prerogative to proceed with a recall election within the thirty (30) day  
19 timeframe established within Article 2, Section 9 of the Nevada Constitution.  
20 Indeed, to that end, NRS 306.040 provides that upon the conclusion of a hearing  
21 challenging the legal sufficiency of a petition, if the court determines that the  
22 petition is sufficient, it "shall order the officer with whom the petition is filed to  
23 issue a call for a special election." NRS 306.040(6). The clear policy driving  
24 these accelerated timelines is intended to afford the people the opportunity to  
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26  
27  
28

1 proceed to a recall election without delay.

2 Further, without regard for the stated reasons for the recall, which directly  
3 address Petitioner's substandard performance of her judicial duties, Petitioner  
4 suggests Respondents should simply wait until the next election to attempt to  
5 remove her. To do so however would completely disenfranchise Respondents and  
6 negate the citizen's right to recall a public officer during a term of office. The  
7 people have spoken and they should not be made to weather an elected official  
8 who does not serve their interests, at significant taxpayer expense. Respondents  
9 have cleared the very high bar to secure qualification of the recall petition, and  
10 judicial review of its sufficiency. The District Court has ordered the North Las  
11 Vegas City Clerk to call the election in accordance with statute. That call should  
12 be answered and the election commenced.

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16  
17 **4. Petitioner Will Not Prevail on the Merits of Her Writ.**

18 While Petitioner may not need to present a "probability of success" on her  
19 Writ Petition to obtain a stay, she is required to put forth a "substantial case on the  
20 merits." *Hansen v. Eighth Judicial Dist. Court ex re. County of Clark*, 116 Nev.  
21 650, 659, 6 P.3d 982, 987 (2000). Petitioner's burden is not met where a party  
22 advances arguments contrary to well-established law. *Id.* at 658, 6 P.3d at 987.  
23  
24

25 Petitioner's primary argument to enjoin Respondents' qualifying recall effort  
26 from going forward is that Article 2, Section 9 of the Nevada Constitution, which  
27 sets forth the recall process for public officers, does not apply to judges. As Judge  
28

1 Johnson correctly determined, this is a blatant misstatement of law, belied by every  
2 available legal authority including this Court, the Nevada Standing Committee on  
3 Judicial Ethics, and over 100 years of Nevada history.  
4

5 While this Court has not had the opportunity to consider whether a judge is a  
6 public officer subject to recall, it has recognized that “[u]nder the Nevada  
7 Constitution, a judge can be removed from office only by the voters (recall), by the  
8 Legislature, or, as of 1976, by the Nevada Commission on Judicial Discipline.”  
9 *Halverson v. Hardcastle*, 123 Nev. 245, 266, 163 P.3d 428, 443 (2007). Likewise,  
10 in its most recent decision concerning recall petitions, this Court started its opinion  
11 with the unequivocal statement that Article 2, Section 9 of the Nevada Constitution  
12 subjects every public officer in Nevada to recall by special election upon the filing  
13 of a qualifying recall petition. *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235  
14 P.3d 605, 607 (2010) (emphasis added).  
15  
16  
17

18 Similarly, the Standing Committee on Judicial Ethics recognized judicial  
19 recall in an opinion requested by Petitioner shortly before she commenced the  
20 instant litigation in the District Court. Advisory Opinion JE15-011 states,  
21 “[s]itting judges are subject to recall petition and election just as they are subject to  
22 regular elections.” JE15-011 (5-14-2015).  
23  
24

25 Further, the origins of Nevada’s judicial recall history is set forth in specific  
26 detail in Attorney General Opinion 87-7. In it, then-Nevada Attorney General  
27 Brian McKay, reached the definitive conclusion that a district court judge is a  
28

1 “public officer” within the context of Article 2, Section 9 of the Nevada  
2 Constitution and subject to recall by the registered voters of the district in which  
3 elected. AGO 87-7 (3-27-1987). In so finding, the Attorney General covered a  
4 lengthy history of the progressive movement and its anti-judiciary sentiment before  
5 pointing to the adoption of the constitutional amendment allowing for recall of “all  
6 public officers” despite heavy opposition from both the American and Nevada Bar  
7 Associations. *Id.* (citing Secretary of State (William D. Swackhamer), *Political*  
8 *History of Nevada*, (Carson City; State Printing Office, 1986) at 262).  
9  
10

11  
12 Petitioner’s secondary and even less compelling argument is that her due  
13 process rights were violated by (1) the Clark County Department of Elections’  
14 refusal to allow Petitioner’s representatives to witness the verification process; and  
15 (2) the timing of the evidentiary hearing. Both of these arguments however, are  
16 wholly belied by the record, which includes the testimony of no fewer than seven  
17 witnesses over two days. Indeed, with respect to the verification process,  
18 Petitioner’s representatives were permitted to observe, and did so on June 1, 2015.  
19  
20 Their inability to witness the entirety of the process however was a result of their  
21 own lack of diligence in seeking to do so. Further, Petitioner had ample notice her  
22 Complaint would be heard the last week of June. Prior to consolidation of the  
23 cases, the Honorable Kenneth C. Cory set the hearing in Case No. A-15-719651-C  
24 on June 30, 2015. Judge Johnson’s June 29, 2015 setting merely advanced the date  
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28 one day.

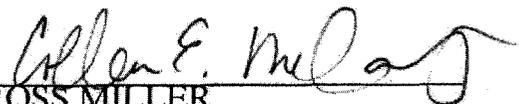
1 Equally meritless are Petitioner's arguments regarding the numbering of the  
2 recall petition and the presence of North Las Vegas City Attorney Sandra Douglas  
3 Morgan ("Morgan") during the testimony of North Las Vegas City Clerk Barbara  
4 Andolina. As Judge Johnson concluded, NRS 306.030(1) requires the "pages of  
5 the petition with the signatures and of any copy must be consecutively numbered."  
6 Here, Petitioner numbered each petition booklet consecutively, pages one (1)  
7 through (4), in compliance with the statute. Further, the specious arguments  
8 regarding Morgan are not only irrelevant to the sufficiency of the recall petition,  
9 they are also little more than Petitioners' final attempt to flesh out a political  
10 conspiracy theory that simply has no substance.  
11  
12  
13

14  
15 **IV.**  
16 **CONCLUSION**

17 Based on the foregoing, Respondents respectfully request this Honorable  
18 Court deny Petitioner's Motion for Stay Pursuant to NRAP 8.

19 DATED this 15<sup>th</sup> day of July, 2015.

20  
21 GENTILE CRISTALLI MILLER  
22 ARMENI & SAVARESE

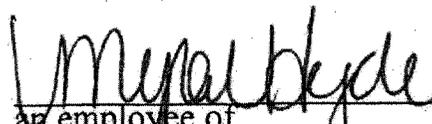
23   
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Betty Hamilton, Michael William  
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1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of Gentile Cristalli Miller Armeni &  
3 Savarese, hereby certifies that on the 15 day of July, 2015, she served a copy of  
4 the **RESPONDENTS MICHAEL BETTY HAMILTON, MICHAEL**  
5 **WILLIAM MORENO, AND BOB BORGERSEN'S OPPOSITION TO**  
6 **EMERGENCY MOTION UNDER NRAP 27(e) ACTION NECESSARY ON**  
7 **OR BEFORE JULY 22, 2015**, by Electronic Service with the Nevada Supreme  
8 Court in accordance with the Master Service List, and by placing said copy in an  
9 envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said  
10 envelope addressed to:

11 Craig A. Mueller, Esq.  
12 Mueller, Hinds & Associates  
13 600 S. Eighth Street  
14 Las Vegas, Nevada 89101  
15 [cmueller@muellerhinds.com](mailto:cmueller@muellerhinds.com)  
16 Attorney for Honorable Catherine Ramsey  
17 North Las Vegas Municipal Court Judge

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23 Attorney for Sandra Douglass Morgan  
24 North Las Vegas City Attorney

25  
26  
27  
28  
  
an employee of  
Gentile Cristalli Miller Armeni &  
Savarese

# EXHIBIT A

# EXHIBIT A

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 HONORABLE CATHERINE RAMSEY  
5 NORTH LAS VEGAS MUNICIPAL JUDGE,

6 Petitioner/Plaintiff,

7 vs.

8 THE CITY OF NORTH LAS VEGAS AND  
9 BARBARA A. ANDOLINA CITY CLERK OF  
10 NORTH LAS VEGAS, BETTY HAMILTON,  
11 MICHAEL WILLIAM MORENO, AND BOB  
12 BORGENSEN, INDIVIDUALLY AND AS  
13 MEMBERS OF "REMOVE RAMSEY NOW",

14 Respondents/Defendants.

Case No. A-15-719406-P

Dept. No. XX

Consolidated with:  
A-15-719651-C

DECISION & ORDER

15 **DECISION & ORDER**

16 THIS MATTER came before the Court for oral argument on Petitioner/Plaintiff's  
17 Emergency Petition for Injunction, A-15-719406-P, on June 18, 2015. On June 23, 2015, the Court  
18 consolidated this action with Petitioner/Plaintiff's Complaint, A-15-719651-C. The Court held a  
19 hearing on both matters on June 29, 2015 and July 2, 2015. Appearing on behalf of  
20 Petitioner/Plaintiff HONORABLE CATHERINE RAMSEY NORTH LAS VEGAS MUNICIPAL  
21 JUDGE was CRAIG A. MUELLER, ESQ., of the law firm of MUELLER, HINDS &  
22 ASSOCIATES; appearing on behalf of Respondents/Defendants BETTY HAMILTON, MICHAEL  
23 WILLIAM MORENO and BOB BORGENSEN was DOMINIC P. GENTILE, ESQ., ROSS J.  
24 MILLER, ESQ. and COLLEEN E. MCCARTY, ESQ., of the law firm of GENTILE, CRISTALLI,  
MILLER, ARMENI & SAVARESE; and appearing on behalf of Respondents/Defendants the CITY  
OF NORTH LAS VEGAS and BARBARA ANDOLINA was RICHARD C. GORDON, ESQ.,

1 PATRICK E. BYRNE, ESQ., and DANIEL IVIE, ESQ., of the law firm of SNELL & WILMER.

2 This Court having considered all related pleadings, documents, and the arguments of counsel, makes  
3 the following findings of facts and conclusions of law.

4 I. EMERGENCY PETITION FOR INJUNCTION AND FIRST CAUSE OF ACTION

5 A. Resolution of Procedural Issues With Petition for Injunction

6 As the Court noted at the first hearing in this matter on June 18, 2015, Petitioner/Plaintiff  
7 [hereinafter Plaintiff] filed her Emergency Petition for Injunction under NRS 295.105(4) and NRS  
8 33.010. However, NRS 295.105 does not concern petitions for recall, but rather, those for ballot  
9 questions or referendums for municipalities. Consequently, NRS 295.105 does not provide a basis  
10 for Plaintiff to seek her requested injunctive relief. The proper statutory provision under which  
11 Plaintiff should have sought relief was NRS 306.040 which specifically concerns recall petitions.  
12 Additionally, under Nevada Rules of Civil Procedure [NRCP] Rule 3 “[a] civil action is commenced  
13 by filing a Complaint with the court.” NRS 33.010, which provides for the Court to grant injunctive  
14 relief, states that an injunction may be granted in certain instances after the Plaintiff has filed a  
15 Complaint or the parties have otherwise initiated litigation. Indeed, both NRS 306.040, addressing  
16 recall petitions, and NRS 295.105, concerning city ballot initiatives, speak in terms of the  
17 challenging party filing a complaint to bring the matter before the court. At the hearing, the Court  
18 questioned whether Plaintiff had properly proceeded in this matter in that she had not filed a  
19 Complaint to initiate litigation, or set out a proper basis for relief under NRS 295.105. She had only  
20 filed an Emergency Petition for Injunction, which under NRS 33.010 requires the separate initiation  
21 of litigation by Complaint.

22 At the hearing, Plaintiff’s counsel suggested that Judge Ramsey’s filing of the single petition  
23 for injunction without filing a separate Complaint asserting a cause of action was intentional as  
24 counsel did not see the reason or need to file two documents when one would be sufficient if it

1 provided all the necessary allegations and demands to satisfy the purposes of the NRCP. Plaintiff  
2 asked the Court to construe the "Petition for Injunction" as both a Complaint initiating litigation and  
3 a separate motion for injunctive relief although not labeled as such. Plaintiff further argued that  
4 while the statutory basis for her action may be incorrect, her petition for injunction sets forth a  
5 sufficient statement of facts and law to allege a violation of her Nevada Constitutional rights as a  
6 judge and state her desired injunctive relief, meeting the requirements of NRCP 8(a). NRCP 8(a)  
7 requires, "[a] pleading which sets forth a claim for relief, whether an original claim...shall contain  
8 (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a  
9 demand for judgment for the relief the pleader seeks."

10 Although at the hearing held on June 18, 2015, Respondents/Defendants [hereinafter  
11 Defendants] in the instant matter also questioned Plaintiff's procedural approach, they expressed  
12 they were willing to allow the Court to construe Judge Ramsey's filing in a manner which would  
13 allow this Court to rule on the underlying constitutional issue of whether a judge could be recalled  
14 under the Nevada Constitution. Defendants, however, expressed concern that Plaintiff had also filed  
15 a separate Complaint under NRS Chapter 306. Plaintiff in her first cause of action of the Complaint  
16 effectively realleged her contention that the Nevada Constitution does not permit her recall.  
17 Defendants expressed concern if the Court did not consolidate the two actions under NRCP 42(a),  
18 Plaintiff would possibly seek "two bites of the apple" on the constitutional question before different  
19 courts. Plaintiff's counsel would not commit to this Court to treat a decision on the constitutional  
20 issue as determinative of the issue in Plaintiff's separate action.

21 Consequently, to effectuate the interests of the parties and expedite the orderly progression of  
22 this litigation, the Court will treat Plaintiff's Emergency Petition for Injunction as a Complaint  
23 alleging a violation of the Nevada Constitution as its cause of action and demanding declarative  
24 relief. The Court will also treat the petition as a motion for injunction under NRS 33.010. Because

1 of the similarity of issues, the Court previously ordered the consolidation of A-15-719406-P and A-  
2 15-719651-C. This Court is acting appropriately in this instance in view of the parties' assertions of  
3 either no procedural errors or waiver of any procedural errors, and in view of NRCP 8's underlying  
4 purpose to ensure that the documents filed to initiate litigation give fair notice of the basis of the  
5 claim and relief being sought. The parties all clearly indicated they understood the constitutional  
6 basis of Plaintiff's claim and the declarative relief sought.

7 B. Article 2, Section 9 of the Nevada Constitution Allows the Recall of Judges

8 Plaintiff contends as a judge, she is not subject to the recall provisions of Article 2, Section 9  
9 of the Nevada Constitution and she may only be removed from the bench pursuant to Article 6,  
10 Section 21, providing for the Nevada Commission for Judicial Discipline. To answer this question,  
11 the Court must first determine whether at the time the legislature and Nevada voters approved  
12 Article 2, Section 9 in 1912, they understood the term "[e]very public officer" as used in the article  
13 to include judges. If so, then the Court next must determine whether the legislature and Nevada  
14 voters understood their passage of Article 6, Section 21 in 1976, creating the Judicial Disciplinary  
15 Commission, as repealing Nevada citizens' right to recall as to judges.

16 The Nevada Constitution Article 2, Section 9, sets out Nevadans' right to recall public officials.

17 It provides in relevant part:

18 Recall of public officers: Procedure and limitations. Every public officer in the State of  
19 Nevada is subject, as herein provided, to recall from office by the registered voters of the  
20 state, or of the county, district, or municipality which he represents. For this purpose, not  
21 less than twenty-five percent (25%) of the number who actually voted in the state or in the  
22 county, district, or municipality which he represents, at the election in which he was  
elected, shall file their petition, in the manner herein provided, demanding his recall by the  
people. They shall set forth in said petition, in not exceeding two hundred (200) words, the  
reasons why said recall is demanded.

23 This provision of the Nevada Constitution was added by amendment in 1912, as part of a section of  
24 the Constitution entitled "Suffrage." This indicates that at the time of its adoption, the legislature

1 and voting citizens perceived the amendment to further define Nevada citizens' rights as voters  
2 generally. The legislature in drafting the amendment did not set out an exclusive list of included  
3 offices or descriptions of positions. Instead, the legislature passed and Nevada citizens approved an  
4 amendment which broadly provides for "[e]very public officer" to be subject to recall. The term  
5 "public officer" is not expressly defined in the Nevada Constitution. In determining whether a judge  
6 is a "public officer" within Article 2, Section 9, this Court is mindful of the basic interpretive  
7 principal that the Nevada Constitution should be construed in its ordinary sense unless some  
8 apparent absurdity or unmistakable interest of its framers forbids such construction. *State ex rel.*  
9 *Lewis v. Doron*, 5 Nev. 399, 411 (1870). Consequently, where the language in the Nevada  
10 Constitution is plain and not ambiguous, it should be read in those plain and unambiguous terms.  
11 *State ex rel. Summerfield v. Clarke*, 21 Nev. 333, 337, 31 P. 545 (1982). These principles were  
12 recently reaffirmed by the Supreme Court in the context of interpreting Article 2, Section 9, in  
13 *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235 P.3d 605, 608 (2010), explaining "we, like the  
14 United States Supreme Court, 'are guided by the principle that "[t]he Constitution was written to be  
15 understood by the voters; its words and phrases were used in their normal and ordinary as  
16 distinguished from technical meaning.'" [quoting *District of Columbia v. Heller*, 554 U.S. 570  
17 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)]. Consequently, the Court must  
18 first consider whether "public officer," in the normal and ordinary sense of the term, includes a  
19 judge.

20 In this regard, this Court believes an average voter would normally and ordinarily perceive  
21 the term "[e]very public officer" to include all officials exercising some level public authority,  
22 inclusive of all executive, legislative and judicial officials. The Court finds support for its  
23 perception of the normal and ordinary meaning of "every public official" from a variety of sources.  
24 For example, Merriam-Webster OnLine, whose hardcover dictionary the Nevada Supreme Court

1 referenced in *Strickland v. Waymire* to assist in determining the ordinary meaning of “number” and  
2 “actually,” 126 Nev. Adv. Op. 25, 235 P.3d at 609 (quoting *Webster’s New Universal Unabridged*  
3 *Dictionary* (2d ed. 1996)), defines “public officer” as “a person who has been legally elected or  
4 appointed to office and who exercises governmental functions.” *Merriam-Webster OnLine*, “Public  
5 Officer,” (June 28, 2015) [www.merriam-webster.com/dictionary/public%20officer](http://www.merriam-webster.com/dictionary/public%20officer). Judges are  
6 officials who are elected or appoint to office and exercise certain governmental functions. Another  
7 example, the Nevada Supreme Court in its opinion in *Nevada Judges Association v. Lau*, 112 Nev.  
8 51, 60, 910 P.2d 898, 904 (1996), indicated that its members generally understood the term “all  
9 public officials” to typically include judicial officers. In discussing the original language of the  
10 proposed amendment setting term limits for state and local public officials, the high Court  
11 referenced how the initiative’s language lumped together “all public officials—whether legislative,  
12 executive or judicial.” *Id.* In its advisory opinion last month, the members of the State of Nevada  
13 Standing Committee On Judicial Ethics, while not specifically dealing with the definition of “public  
14 officer” under Article 2, Section 9, clearly indicated that they read the term’s general meaning to  
15 include judges, commenting “under Article 2, Section 9, “sitting judges are subject to recall petition  
16 and election just as they are subject to regular elections.” *Advisory Opinion JE15-011* (May 14,  
17 2015). Even the legislative history Plaintiff quotes in reference to the Judicial Disciplinary  
18 Commission supports the view that ordinary voters or legislators understand the term “every public  
19 officer” to include judicial officers. In the Nevada State Legislature Background Paper 81-8  
20 JUDICIAL DISCIPLINE, which Plaintiff states was intended to inform members of the legislature  
21 as to issues relating to judicial discipline, the writer notes: “Because of the shortcomings of  
22 impeachment, recall and legislative address, the judicial discipline commission was develop to  
23 handle judicial misconduct.” The reference in the quote to shortcomings with recall demonstrates  
24 that the writer for the background paper understood the Article 2, Section 9’s reference to “every

1 public officer” to include judicial officers. Defendants note other sources which also clearly  
2 understand the term “every public officer” as used in the Nevada Constitutions recall provisions to  
3 include judicial officers. James J. Alfani, Steven Lubet, Jeffrey M. Shaman, Charles G. Geyh,  
4 *Judicial Conduct and Ethics* 14.06 (5<sup>th</sup> ed. 2013); National Center for State Courts, *Removal of*  
5 *Judges*, (June 28, 2015)  
6 [www.judicialselection.us/judicial\\_selection/methods/removal\\_of\\_judges.cfm?state=](http://www.judicialselection.us/judicial_selection/methods/removal_of_judges.cfm?state=). While the  
7 Nevada Supreme Court, Ethics Committee, and other sources noted above were not being  
8 specifically asked to define public officer or officials in their decisions or writings, their use of the  
9 term in the manners they did, reinforces this Court’s general view that the normal and ordinary  
10 understanding of the term “[e]very public official” in Article 9, Section 2, includes judicial officers.

11 The Nevada Supreme Court has not had the opportunity to consider the question whether a  
12 judge is a public officer subject to recall. However, the high Court, just three years after the recall  
13 amendment in 1915 had the opportunity to generally consider what government positions should be  
14 considered “civil office of profit” as included in Article 4, Section 8 of the Nevada Constitution. In  
15 *State ex rel. Kendall v. Cole*, 38 Nev. 215, 148 P. 551 (1915), the Nevada Supreme Court discussed  
16 at length the concept of a “public office,” listing and approving a number of prior court cases from  
17 different jurisdictions discussing the attributes of a public office as opposed to public employment or  
18 private office. These approved factors included:

19 (1) whether the holder of the office is entrusted with some portion of the sovereign  
20 authority of the state; (2) whether his duties involve the continuous exercise, as part of  
21 the regular and permanent administration of the government, of a public power, trust or  
22 duty; (3) whether his compensation, period of employment and the details of his duties  
are set forth in statute or in the constitution; (4) whether he must take the oath of public  
office pursuant to Nev. Const. art. 15, sec. 2; and (5) whether he must keep a record of  
his official acts.

23 1987 Nev. Op. Atty. Gen. No. 7 (March 27, 1987)(citing *Kendall*, 38 Nev. at 231-232).

24 All of these attributes can be found in the position of a judge. Judges take an oath of office, their

1 compensation, terms of office, jurisdiction and general duties are set by law, they exercise some  
2 portion of the sovereign authority of the state, exercise a public power and trust, and keep records of  
3 their official acts.

4 Plaintiff argues only executive and legislative officers are subject to recall. The fact the  
5 constitutional provision for recall lies in Article 2 of the Nevada Constitution, concerning citizens'  
6 suffrage rights, and not in Articles 4 and 5 concerning legislative and executive branches appears to  
7 belie that suggestion. She also points to NRS 281A.160, a provision of NRS Chapter 281A, which  
8 concerns Ethics in Government and contains certain provisions generally applicable to public  
9 officers. NRS 281A.160 defines public officers to exclude judicial officers. She argues that through  
10 this statute the legislature demonstrated the term "public officer" does not include judicial officers.  
11 However, the legislature frequently uses general terms in its statutes and then provides specific  
12 definitions of the term applicable to that statute only. Indeed, in NRS 281A.030, the statute  
13 expressly states the definitions in NRS 281A.035 through NRS 281A.170 are for the words and  
14 terms "[a]s used in this chapter," relating to *Ethics in Government* and not broadly to all statutes and  
15 the Constitution. As Defendants point out, the *Ethics in Government* statute logically excludes  
16 judges because the ethical requirements for judges are set out in the Nevada Code of Judicial  
17 Conduct and discipline is administered through the Nevada Commission on Judicial Discipline and  
18 Nevada Supreme Court. Consequently, the legislature simply excluded judicial officers from the  
19 public officers whose ethical requirements are defined in NRS Chapter 281A. What is significant,  
20 however, is the legislature in excluding judicial officers as "public officials" under NRS Chapter  
21 281A, must have believed the general understanding of the term public officer would include  
22 judicial officers; otherwise, there would have been no reason to specifically exclude them in the  
23 statute.

24 Because it finds the constitutional language is clear on its face and not ambiguous and

1 susceptible to two or more reasonable interpretations, this Court has no need to look and consider  
2 anything beyond the language of Article 2, Section 9. *Strickland v. Waymire*, 126 Nev. Adv. Op. 25,  
3 235 P.3d at 608. However, this Court also finds persuasive the Attorney General's 1987 opinion's  
4 detailed analysis of the historical and legislative background concerning the passage of the recall  
5 amendment in 1912. This history strongly indicates the amendment was part of the Progressive  
6 movement at that time which involved, in part, an anti-judicial sentiment. 1987 Nev. Op. Atty. Gen.  
7 No. 7 (March 27, 1987) (citing *Fossey, Meiners v. Bering Strait School District and the Recall of*  
8 *Public Officers: A Proposal for Legislative Reform*, 2 Alaska L. Rev. 41, 42 (1985); Moser,  
9 *Populism A Wisconsin Heritage: Its Effect on Judicial Accountability in the State*, 66 Marquette L.  
10 Rev. 1, 36 (1982); J. Hurst, *The Growth of American Law*, 360 (1950). Of particular interest to the  
11 Court are three other western states at that same approximate time passed recall amendments with  
12 very similar language to Nevada's, allowing for the recall of public officers without any limitation.  
13 As the Nevada Attorney General pointed out, "[u]nlike Nevada, in Arizona, Colorado, and Oregon,  
14 their recall provisions have been subjected to judicial scrutiny. In all three of the states, the courts  
15 have held that judges are public officers subject to recall pursuant to their constitution. *Abbey v.*  
16 *Green*, 235 P. 150 (Ariz. 1925); *Marians v. People ex rel. Hines*, 169 P. 155 (Colo. 1917); *State ex*  
17 *rel. Clark v. Harris*, 144 P. 109 (Ore. 1914)." 1987 Nev. Op. Atty. Gen. No. 7 (March 27, 1987).  
18 The Court also notes the authorities the Attorney General cites which discuss how the Nevada Bar  
19 Association, following the lead of the American Bar Association, formally opposed the passage of  
20 the recall amendment in 1912 because it permitted the recall of judicial officers. *Id.* (citing the  
21 *Carson City Appeal*, July 26, 1912, at 4, col. 3). Despite the opposition of the Nevada Bar  
22 Association and the American Bar Association, Nevada voters overwhelmingly approved amending  
23 the constitution to allow the recall of "[e]very public officer." *Id.* (citing Secretary of State (William  
24 D. Swackhamer), *Political History of Nevada*, (Carson City: State Printing Office, 1986) at 262).

1 Considering the plain and unambiguous language of Article 2, Section 9, as well as the relevant  
2 history surrounding the passage of the recall amendment in 1912, the Court finds the term “[e]very  
3 public officer” used in the article includes judges and the article permits voters to recall a judge.

4 The Court now turns to Plaintiff’s contention that the legislature and voters in approving  
5 Article 6, Section 21, in 1976, creating the Nevada Commission on Judicial Discipline, either  
6 intended to limit the removal of judges to proceeding brought under the auspices of the Commission,  
7 or otherwise enacted a constitutional amendment inconsistent with Article 2, Section 9 and,  
8 consequently, superseding it. *Rea v. City of Reno*, 76 Nev. 483, 357 P.2d 585, 587 (1960) (if  
9 provisions of the Constitution are inconsistent with each other, the provision adopted later is  
10 controlling).

11 Plaintiff initially contends Article 6, Section 21 of the Nevada Constitution, providing for  
12 judicial discipline, was intended by the legislature and voters through its drafting and passage to be  
13 the sole mechanism for removal of judges. However, neither the language of the amendment nor the  
14 ballot explanation provided at the time of its passage in 1976 express that Nevada’s voters are giving  
15 up their right to recall their judges by approval of the amendment. The legislature could have easily  
16 made such provisions in the amendment’s language to modify Article 2, Section 9, if that was its  
17 intent. If the legislature and voters in 1976 intended by the passage of Article 6, Section 21 to  
18 eliminate the right to recall judges under Article 2, Section 9, this Court “would expect a direct state  
19 and express language to that effect.” *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235 P.3d at 611  
20 (2010) (citing 3 Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* 58:3,  
21 at 114-15 (7<sup>th</sup> ed. 2008). Nowhere in the ballot explanation does it suggest, much less clearly state,  
22 that voters in approving the amendment are modifying Article 2, Section 9, and surrendering their  
23 right to recall judges. Nevada Secretary of State, *Constitutional Amendments to be Voted Upon in*  
24 *State of Nevada at General Election, November 2, 1976*, at 16-17 (1976).

1           The amendment creating the judicial disciplinary commission is not inconsistent with the  
2 constitutional provisions providing for recall of public officers. Article 6, Section 21, like  
3 impeachment as provided in Article 7, Section 2, provides for discipline of judges for misdemeanor  
4 or malfeasance while in office. Article 2, Section 9, in providing voters the right to recall a public  
5 officer, does not require any allegation of misfeasance, nonfeasance or malfeasance. All that is  
6 demanded is the voters seeking recall of an official state a reason. "The merit of that reason as  
7 grounds for removal is for the electorate to determine...." *Batchelor v. Eighth Judicial Dist. Court*,  
8 81 Nev. 629, 633, 408 P.2d 239, 632 (1965). Consequently, recall provides a separate basis  
9 independent of the disciplinary function of the judicial disciplinary commission to remove a judge.  
10 As the Nevada Attorney General in his 1987 advisory opinion pointed out:

11           we are of the opinion that Nev. Const. art. 6, sec. 21 is not applicable to our analysis of  
12 whether a district judge is a public officer subject to recall, since the provisions of art.  
13 2, sec. 9 and art. 6, sec. 21 are not inconsistent. *See Rea v. City of Reno*, 76 Nev. 483,  
14 488, 357 P.2d 585 (1960). In contrast to a disciplinary action, there need not exist a  
good reason for recall of a public officer, nor is there a requirement that cause be  
shown. The merit of the recall petition is for the people to decide. *Batchelor v. Eighth  
Judicial District Court*, 81 Nev. 629, 408 P.2d 239 (1965).

15 1987 Nev. Op. Atty. Gen. No. 7 (March 27, 1987).

16           Plaintiff argues that NRS 1.440(1) clearly demonstrates that the legislature has interpreted  
17 the amendment creating the Nevada Commission on Judicial Discipline to eliminate the voters' right  
18 to recall judges. This section reads: "The Commission has exclusive jurisdiction over the public  
19 censure, removal, involuntary retirement and other discipline of judges which is coextensive with its  
20 jurisdiction over justices of the Supreme Court and must be exercised in the same manner and under  
21 the same rules." In *Halverson v. Hardcastle*, 123 Nev. 245, 263, 163 P.3d 428, 441 (2007) the  
22 Nevada Supreme Court stated "[u]nder the Nevada Constitution, the judicial discipline commission  
23 exercises exclusive jurisdiction over the formal discipline of judges which may include censure,  
24 removal, and retirement." NRS 1.440 only provides for the Commission to have exclusive

1 jurisdiction over the "discipline" of judges. Likewise, in *Halverson*, the Supreme Court stated only  
2 the judicial discipline commission has exclusive jurisdiction over the "formal discipline" of judges,  
3 which could amount to removal of the judge from his or her position. The voters' right to recall  
4 extends to virtually any reason a sufficient number of voters believes would justify removal of a  
5 public official. Consequently, recall is not definitively a form of "discipline". Consequently, as  
6 noted above, Article 6, Section 21 and NRS 1.440 are not inconsistent with the right to recall in  
7 Article 2, Section 9, and neither limits the voters' right to recall judges. Moreover, the Nevada  
8 Supreme Court in *Halverson* seemed to recognize that the Commission does not possess the sole  
9 authority or means to remove a judge. In stating "[u]nder the Nevada Constitution, the Judicial  
10 Discipline Commission exercises exclusive jurisdiction over the formal discipline of judges," the  
11 Supreme Court provided a lengthy citation to Article 6, Section 21, and court cases discussing the  
12 concept of exclusive jurisdiction, but then at the end of the citation added: "*But see Nev. Const. art.*  
13 *2, § 9; id. art. 7, § 2; NRS 3.092 (providing for the voluntary retirement of district court judges for*  
14 *permanent physical or mental incapacitation from performing the duties of office, regardless of*  
15 *age)."* *Id.* at n. 37.

16 Plaintiff argues public policy considerations support finding that judges should not be subject  
17 to recall and put at risk of being influenced by public opinion and electoral pressures. Whether  
18 judges should be subject to election and, consequently, subject to removal by voters is a debate  
19 various states have answered in different ways. Nevada voters have, on more than one occasion,  
20 considered and rejected constitutional amendments providing for the initial appointment of judges  
21 with subsequent retention votes by the electorate. Nevada citizens plainly want the right to elect  
22 their judges and their history also strongly suggests they want be able to recall them. The Court  
23 finds no reason to doubt the wisdom of Nevada citizens having the right to recall their judges.  
24 Nevada citizens have not abused this privilege and this State's history demonstrates they appreciate

1 the significance of this responsibility. As Plaintiff notes, in Nevada's 150-year history, voters have  
2 never recalled a judge. Rather than demonstrate that judges should not be subject to recall, this fact  
3 demonstrates Nevada voters are prudent and considerate in exercising their right to recall and not  
4 subject to political whims and frivolous causes. Indeed, the approval of the recall petition in this  
5 matter does not mean that Plaintiff will ultimately be recalled. Voters will be asked to consider the  
6 reasons for recalling Plaintiff and decide whether the reasons are sufficient to recall her. Voters can  
7 reject or accept those reasons as they, in their insight, believe is right. This is their right under the  
8 Nevada Constitution and this Court sees no basis to alter that because of fears of frivolous political  
9 winds, fears for which there are no factual basis. As the Supreme Court stated in *Batchelor*:

10 'All political power is inherent in the people. Government is instituted for the  
11 protection, security and benefit of the people; and they have the right to alter or reform  
12 the same whenever the public good may require it.' Nevada Constitution, Art 1, § 2.. In  
13 theory, a public officer need not fear recall if the reason given therefor is frivolous. In  
14 such case the required number of signatures on the petition to force an election should  
15 not be obtained and, if perchance, the required number of signatures is obtained, an  
16 intelligent, informed electorate reading the reason printed on the ballot as required, will  
17 not vote to recall him. Our governmental scheme dignifies the people; a treasured  
18 heritage, indeed. The provision for recall is but one example. We shall not intrude upon  
19 the people's prerogative.

20 The Court denies and dismisses Plaintiff's Petition/Complaint seeking a declaratory  
21 judgment that judicial officers are not subject to recall pursuant to Article 2, Section 9 of the Nevada  
22 Constitution, and it finds judges are public officers subject to recall under the provision of that  
23 section. Consequently, the Court denies Plaintiff's Petition/Motion for injunction to stop the recall  
24 petition of Judge Ramsey. Further, the Court dismisses Plaintiff's first cause of action of her  
Complaint which contends she is not subject to recall under NRS 306.020 because the term "public  
official" does not include judges. The Court finds NRS 306.020 was passed to aid in implementing  
the voters' right to recall pursuant to Article 2, Section 9, and the term "[e]very public official" used  
in NRS 306.020 does include judges as subject to recall.

1           II. SECOND AND THIRD CAUSES OF ACTION

2           Plaintiff in her Second Cause of Action makes the following assertions: 1) 2,549 signers of  
3 the petitions failed to provide their addresses as required by NRS 306.020(3)(a); 2) 102 signers of  
4 the petitions failed to include a date it was signed as required by NRS 306.020(3)(a)<sup>1</sup>; 3) over 295  
5 signatures on the petitions are duplicative and should not be counted under NRS 306.020(3)(a); and  
6 4) the petitions include over 295 instances where one person signed for multiple persons in a  
7 household and those signatures should not be counted under NRS 306.020(3)(a). In Plaintiff's Third  
8 Cause of Action, she asserts the words "Recall Petition" are not in 10 pt bold type above at least 40  
9 of the signatures on the petitions.

10           A. Substantial Compliance with the Recall Petition Statutes

11           At the hearing on this matter on June 29, 2015, Plaintiff did not provide any listing or  
12 tabulation of specific signatures she challenged for any of the alleged inadequacies noted above.  
13 The Court found its own review of the petitions it was the rare exception when a signature was not  
14 accompanied by a signer's address. The Court inquired of Plaintiff's counsel how Judge Ramsey  
15 determined 2,549 of the signers of the petition failed to include their address. Plaintiff's counsel in  
16 response explained that generally the signers' addresses did not include their zip codes and Plaintiff  
17 treated such addresses as incomplete. This Court finds a signer's failure to include a zip code did  
18 not invalidate his or her address. The statute only requires the address of the signer and does not  
19 specifically require the providing of a zip code. A zip code is a postal code used by the U.S. Postal  
20 Service to enhance its ability to quickly route mail to the areas where they should be delivered.  
21 Even if a letter does not include a zip code, the U.S. Postal Service will deliver the mail to the  
22 address on the letter. The statute's purpose in requiring an address is to assist the Election

23 \_\_\_\_\_  
24 <sup>1</sup> Plaintiff incorrectly cites NRS 306.020(3)(d)]. However, that section concerns the inclusion on the petition of the date  
the notice of intent to recall is filed. NRS 306.020(3)(a) concerns the requirement that the signer include the date he or  
she signs the petition.

1 Department in identifying the person who signed the petition and determining if he or she was a  
2 registered voter in the proper district. This purpose is accomplished by a signer providing his or her  
3 street address and no need exists for the signer to include a zip code. Plaintiff at the hearing  
4 introduced no other evidence or made any other argument concerning the failure of signers to  
5 provide their addresses. The Court finds Plaintiff's challenge to the petitions is not substantiated.

6 Likewise, at the hearing, the Court asked Plaintiff's counsel to explain his challenge that 40  
7 signatures did not have the words "Recall Petition" in 10 pt bold type immediately above them.  
8 Counsel explained Plaintiff had found a number of signatures where the signers had signed in the  
9 space designated for "Print Your Name" and then printed their names in the space designated for  
10 signature. Counsel argued, because the words "Recall Petition" were printed on the petition form at  
11 the top of each space on the form designated for signature and the space for "Print Your Name" was  
12 located on the form above the space for signature, when a signer signed in the "Print Your Name"  
13 space, the words "Recall Petition" were not immediately above his or her signature.

14 Plaintiff called Mark Preusch, a private investigator she hired to review the petitions in this  
15 matter. Mr. Preusch testified he had reviewed the petitions and found 117 instances where the signer  
16 had failed to include the date he or she signed the petition and 124 occasions where the signer had  
17 dated the petition in the wrong location. Defendants in turn called Monica Eisenman who was a  
18 supervisor of the verification of random sample signatures. She testified that in verifying a signature  
19 where a date was not included, the Clark County Election Department employees would look at  
20 surrounding signatures and the date or dates they were signed to determine the approximate missing  
21 date.

22 In *Cleland v. Eighth Judicial District Court*, 92 Nev. 454, 552 P.2d 488, 489-90 (1976), a  
23 public official subject to a recall petition challenged the petition, claiming it did not strictly adhere to  
24 the requirements of NRS Chapter 306. The Nevada Supreme Court noted it had previously held that

1 "recall statutes should be liberally construed with a view toward promoting the purpose for which  
2 they are enacted." *Id.* The high Court concluded: "We find the rule of substantial compliance best  
3 furthers this purpose and is apposite to the determination of sufficiency and validity of petitions here  
4 involved." *Id.* The Nevada Supreme Court has subsequently reaffirmed this standard in *Nevadans*  
5 *for Nevada v. Beers*, 122 Nev. 930, 142 P.3d 339 (2006), where the Court stated a substantial  
6 compliance standard is generally applied to statutory requirements, and in *Las Vegas Convention*  
7 *and Visitor Authority v. Miller*, 124 Nev. 669, 191 P.3d 1138, 1146-47 (2008), where the Court  
8 again held it looked for substantial compliance with a statutory requirement in the election context,  
9 stating "a substantial compliance standard accords proper deference to the people's initiative power."

10 Plaintiff introduced no testimony or other evidence identifying the signatures on the petitions  
11 which were above, rather than immediately below, the words "Recall Petition." Regardless, this  
12 Court finds those individuals who signed the petitions and who inadvertently placed their signatures  
13 in the box for "Print Your Name," and, consequently, immediately above the words "Recall  
14 Petition" in 10 pt bold print were in substantial compliance with statutory requirements. The  
15 purpose of the requirement is to ensure the individual signing the petition understands his or her  
16 signature is being placed on a recall petition. The words "Recall Petition" are in large print at the  
17 top of every page of the petition and are repeated in every signature box on the page. As noted  
18 above, the words are just below the signature of a person who signs in the "Print Your Name" space.  
19 Consequently, the Court has little doubt the signers did understand they were signing a recall  
20 petition.

21 This Court also finds that Election Department employees acted properly when they used  
22 surrounding signatures with dates on the petition to determine the date of signing for a person who  
23 signed without including a date. NRS 306.011(3) provides after giving notice of intent to circulate a  
24 petition for recall, those leading the recall effort have 90 days to collect the necessary number of

1 signatures. This window of time to obtain signatures “serves to notify elected officials of the  
2 relevant time periods involved and discourages frivolous and harassing petitions.” *Citizens for*  
3 *Honest & Responsible Government v. Heller*, 116 Nev. 939, 11 P.3d 121, 127 (2000). This statutory  
4 provision and its underlying purpose are met when Election Department officials through reasonable  
5 and reliable means can determine the approximate date a voter has signed a petition and if the voter  
6 signed within the 90 day period for collecting signatures. The Court finds a petition signer who  
7 inadvertently fails to date his or her signature substantially complies with the statute and its purpose  
8 when it can be reasonably determine the approximate date of signing.

9 **B. Sufficiency and Accuracy of Random Sample Verification**

10 While Plaintiff did not specifically challenge in her complaint the adequacy of the random  
11 sample process to statistically determine the number of valid signatures gathered in the petition, she  
12 did make several assertions in her Complaint that the random sample process failed to statistically  
13 identify large numbers of invalid signatures. At the hearing, Plaintiff’s counsel directly challenged  
14 the adequacy of the random sample process to accurately determine the number of valid signatures  
15 and requested a verification of all signatures on the petitions.

16 NRS 306.035(2) and NRS 293.1276-293.1279 allows the Election Department to use a  
17 statistical sampling procedure to determine the number of valid signatures on a petition and the  
18 Nevada Secretary of State may certify a recall election on the basis of such a sampling. The  
19 Election Department is required to pull an entirely random selection of 500 signatures or 5 percent  
20 of all signatures, whichever is larger, for verification. Both Ms. Eisenman and Registrar of Voters  
21 Joseph Gloria testified this random selection is done through use of a computer program which  
22 ensures the consideration of each signature on the petition for selection to the random sample. The  
23 Nevada Supreme Court has found the use of the random sample procedure to be accurate and  
24 constitutional as it “clearly creates a more efficient, less costly and less time-consuming process....”

1 that "aids in the operation" of the recall right." *Citizens for Honest & Responsible Government v.*  
2 *Heller*, 116 Nev. 939, 11 P.3d at 128 (quoting Nev. Const. Art. 2, Sec. 9). In *Citizens for Honest &*  
3 *Responsible Government*, the high Court commented the process appears to be accurate. The Court  
4 noted the case involved the verification of two petitions, the first of which the Secretary of State had  
5 ordered be fully verified. In looking at the random sample statistical determination of invalid  
6 signatures against the actual full verification of the petition, the Court found the statistical sampling  
7 was accurate to within 0.25 percent of the actual number of verified signatures. The Court noted,  
8 "[t]his small discrepancy is indicative of the sampling procedure's reliability and rebuts any  
9 insinuation that an individual's vote might be overlooked by the procedure." *Id.* In the instant  
10 matter, the Clark County Election Department drew 500 signatures for the sample because of the  
11 low number of signatures on the petitions. This number represented approximately 18 percent of all  
12 signatures, much higher than the 5 percent required for petitions with a larger number of signatures.  
13 Consequently, as Mr. Gloria explained in his testimony, the size of the sample insured greater  
14 accuracy than in a case with only a 5 percent sampling. This Court, in considering Plaintiff's  
15 challenges to the accuracy of the random sampling in this case finds Judge Ramsey has failed to  
16 present evidence showing the sample failed to accurately determine the statistical occurrence of  
17 invalid signatures.

18 Plaintiff asserts that a large number of duplicate signatures are on the petitions beyond the  
19 statistical number picked up in the random sampling. Plaintiff claims at least 174 people signed the  
20 petitions two or more times, resulting in about 184 duplicate signatures being invalid. The only  
21 evidence Plaintiff submitted as to the number of duplicate signatures was the testimony of Mr.  
22 Preusch, who counsel represented had made no report concerning his review of the petitions and was  
23 only going to reference his notes from the review. In response to Plaintiff's counsel's question on  
24 re-direct "did you find or did you locate somebody—individuals who had signed multiple times, the

1 same signature on the—or different petitions?”, Mr. Preusch answered “Yeah, there were 356  
2 names.” On further questioning by the Court concerning his answer about duplicate signature, the  
3 witness stated “So 356 people that had signed the petition had also signed one of the other petitions  
4 as well.” The Court then asked “Again, you didn’t keep any list or notations as to which ones you  
5 found?” The witness responded “No.” Counsel for Defendant City of North Las Vegas asked a  
6 follow-up question: “I’m still not clear with respect to the 356. Was it witness’ testimony that then  
7 there’s approximately 180 examples where there’s duplicates and that comes up to the 356 number,  
8 or are we suggesting that there are actually – how many would you say, of the 356, would actually  
9 need to be removed is what I’m....” The witness responded, “Jeez, you know, I couldn’t answer  
10 that. We’d really have to go through each one again and come up with that tabulation.”

11 Subsequently after the June 29, 2015 hearing, the Court determined it would like further  
12 information from Mr. Preusch as to how he calculated the numbers he gave in his testimony. The  
13 Court, on the morning of July 1, 2015, had his staff contact Plaintiff’s counsel to have Mr. Preusch  
14 available to participate in the July 2, 2015, hearing, either in person or by telephone and to bring all  
15 materials and notes he relied upon in his review of the petitions. On July 2, 2015, at 1:00 p.m.,  
16 Plaintiff’s counsel represented his office had been unable to make any contact with Mr. Preusch in  
17 the approximate 27 hours since the Court had requested his participation. However, Plaintiff’s  
18 counsel produced four sets of tabulations he represented the witness had relied upon in making his  
19 determinations of signature challenges for his testimony. Counsel stated that friends of the Plaintiff  
20 had actually reviewed the petitions and made the lists and Mr. Preusch had been asked to review the  
21 lists against the petitions to ensure they were accurate. Counsel did not disclose the detailed lists  
22 Mr. Preusch purportedly used to conduct his investigation prior to witness’ testimony, despite being  
23 asked on Monday if the witness had done any report as to how he compiled his tabulations or  
24 identified the challenged signatures. Counsel simply stated the witness did not prepare a report, but

1 made no mention of the four tabulation lists. Mr. Preusch in his testimony made no mention of  
2 being given the tabulation lists or using them in his review of the petitions, testifying he was  
3 "requested to do a comprehensive review of all of the signatures, the petitions. . . ." Despite being  
4 asked on at least three occasions if he did any tabulation or had anything which would identify the  
5 signatures about which he was challenging, Mr. Preusch at no time mentioned the tabulation lists  
6 that according to Plaintiff's counsel had been provided to him to check against the petitions.  
7 Plaintiff's counsel provided the Court with copies of the four tabulation lists but never offered them  
8 into evidence.

9 In response to Mr. Preusch's testimony concerning duplicate signatures, Defendant  
10 Committee Members offered the testimony of Ms. Lauren Paglina. Ms. Paglina testified she was a  
11 Summer Law Clerk at Defendants' counsel's law firm and had started reviewing the petition  
12 signatures to determine possible duplicates. She explained she did this by entering the names from  
13 the petitions into a database alphabetically to identify possible duplicate signatures to compare. She  
14 testified she had been able to go through approximately 1,100 signatures before the hearing and had  
15 identified 16 duplicate signatures.

16 While neither party's witnesses offered any tabulation identifying the duplicate signatures  
17 that they had identified for the Court to consider as part of the evidence on this issue, this Court  
18 finds the testimony of Ms. Paglina more credible in terms of evaluating the signatures for duplicates.  
19 Ms. Paglina was able to explain the process she used to identify possible duplicate signatures which  
20 reasonably included entering the signatures from the petitions in a database alphabetically to identify  
21 signatures to compare and determine if they appeared duplicative. This contrasts to Mr. Preusch's  
22 testimony in which he had difficulty articulating how he went about making his tabulations. The  
23 Court is also troubled by what it finds as Mr. Preusch's questionable candor in failing to mention he  
24 was provided with tabulation lists others had compiled for him to use to look and compare specific

1 signatures to challenge. Additionally, Ms. Paglina's statistical tabulation of 16 duplicates in  
2 approximately 1,100 signatures, 1.4 percent, is consistent with the statistical occurrence of  
3 duplicates in the random sample of 1.4 percent.

4 Finally, even accepting Plaintiff's contention that the random sample resulted in a significant  
5 statistically deviation from the actual number of duplicates in all the petitions, the removal of the  
6 signatures Plaintiff challenges would not bring the petition below the number needed for recall.  
7 Plaintiff challenges 184 signatures as duplicate of other signatures in the petitions. Removing from  
8 this number, 38 signatures that the random sample already identified and subtracted from the total  
9 number of signatures (1.4% of 2717 is 38), and removing the remaining 146 challenged signature  
10 from the 2,282 signatures the random sample validated results in 2,136 remaining. Consequently,  
11 the Court finds that Plaintiff's challenge to the accuracy of the random sample based on her  
12 contention of additional duplicate signatures does not undermine the use of the random sample in  
13 this case.

14 Plaintiff in her Complaint contends the petitions contain 295 signatures signed by other  
15 members of a household and should not be counted. However, Mr. Preusch testified that while he  
16 observed occasions where he saw signatures which he believed were possibly signed by only one  
17 member of a household, he did not "recall" how many time he saw such occurrences. He admitted  
18 he did not document that number and just remembered seeing that "at least one or a couple times."  
19 Plaintiff's counsel did provide as one of the four tabulations given to the Court on July 2, 2015, a  
20 compilation represented to identify signatures signed by other members of a household. However,  
21 Plaintiff did not seek to authenticate or admit the tabulation. Left with Mr. Preusch's testimony that  
22 he noticed this occurring one or two times in the petitions, the Court finds no evidentiary basis for  
23 Plaintiff's contention the random sample in this matter failed to accurately determine the statistical  
24 occurrence of signatures signed by other members of a household.

1 Plaintiff did not raise in her Complaint the issue whether the random sample failed to  
2 accurately determine the statistical occurrence of signatures by people who were not registered to  
3 vote. At the hearing, Mr. Preusch testified 292 people who had signed the petition were not on the  
4 list of registered voters for the 2011 General Election. On cross-examination, Mr. Preusch when  
5 asked if he made any tabulation of the names of signers who were not registered to vote, stated, "No,  
6 I did not." And when asked if he had anything with him right now to "show the Court where the  
7 names came from," Mr. Preusch answered, "I do not." Plaintiff's counsel on July 2, 2015, gave the  
8 Court a tabulation he identified as having been made by Plaintiff's friends which indicated 295  
9 signatures were from "Persons Not on Voter List -From June 7, 2011 NLV General Election."  
10 Neither Mr. Preusch, nor Plaintiff's counsel expressed or defined what they meant by "not registered  
11 voters" or "Persons Not on Voter List - From June 7, 2011 NLV General Election." Significantly,  
12 the Clark County Election Department in its review of the random sample excluded 57 signatures for  
13 having not voted in the 2011 General Election, having an address change, being in the wrong district  
14 or district invalid and not being registered. These categories would seem to be encompassed in the  
15 general scope of "Persons Not on Voter List." The number of 295 names Plaintiff challenges  
16 constitutes 10.9 percent of the total signatures. The 57 names the Election Department invalidated  
17 from the random sample due to registration problems constitute 11.4 percent of the random sample  
18 of 500. Plaintiff fails to establish any basis to believe the random sample failed to accurately  
19 determine the statistical occurrence of signatures that should be excluded for registration and voting  
20 problems.

21 During the hearing, Plaintiff's counsel questioned Mr. Gloria, Ms. Eisenman and Ms. Paglina  
22 about specific instances of what counsel perceived as possible duplicate signatures as well as other  
23 possible invalid signatures which were not part of the random sample and several instances where  
24 counsel believed certain signatures should not have included in the sample. The Court finds these

1 limited number of instances as unpersuasive in that such incidents should statistically be picked up  
2 and excluded through the statistical determination of valid signatures in the random sample.  
3 Plaintiff's counsel also questioned Mr. Gloria about why certain information on the Election  
4 Department's random sample detail list did not match certain information on the petitions. Mr.  
5 Gloria explained the detail list was essentially an internal document used to assist Election  
6 Department officials in the validation of the signatures in the sample. Mr. Gloria gave a number of  
7 explanations for these variations which the Court finds reasonable and does not undermine the  
8 integrity of the verification process.

9 C. Plaintiff's Representatives Allowed to Witness Verification

10 Although not raised as a cause of action in her Complaint, Plaintiff at the hearing on June 29,  
11 2015, elicited testimony suggesting the Election Department may have provided incorrect  
12 information as to when the verification of signatures was going to occur, and, consequently,  
13 effectively precluded Plaintiff or her representative from watching the verification process. NRS  
14 293.1277(8) provides the public official who is the subject of the recall must be allowed to witness  
15 the verification process. On June 29, 2015, Johnny Jackson testified for the Plaintiff. He stated he  
16 was a supporter of the Plaintiff and was present on Thursday, May 28, 2015, when the Committee  
17 seeking the judge's recall presented their petitions at the City of North Las Vegas Clerk's Office.  
18 He spoke to a woman in the City Clerk's Office that day and was told the petitions were going to be  
19 transported to the Clark County Registrar of Voters that afternoon or the next day. On cross-  
20 examination, Mr. Jackson stated he knew the petitions were being taken to the Registrar for  
21 verification and that it was an expedited process. Mr. Jackson stated that on Friday, May 29, 2015,  
22 after discussing the situation with the Plaintiff, he went to the Election Department at approximately  
23 2:00 p.m. and eventually spoke to Mr. Gloria. Mr. Jackson alleged he asked about the verification  
24 process and Mr. Gloria told him that the Election Department followed the NRS. According to Mr.

1 Jackson, he asked for a copy of the petition and to witness the verification. Mr. Gloria told him to  
2 put his request in writing and stated the verification would start in one or two days. Mr. Jackson  
3 said he subsequently sent an email to Mr. Gloria requesting a copy and to witness the verification.  
4 He also testified he sent an email to the Plaintiff documenting what happened on May 29, 2015,  
5 including that he had been told by Mr. Gloria the verification process would start in one or two days.  
6 Mr. Jackson testified that on Monday, June 1, 2015, Plaintiff forwarded him an email she had  
7 received from the City of North Las Vegas Clerk stating the verification process would begin at 9:30  
8 a.m. Mr. Jackson said he arrived about 9:20 a.m. On arriving, he perceived the process had actually  
9 started before he arrived. He said he was allowed to witness the process, but felt the Election  
10 Department employees were not randomly selecting signatures but were looking for certain  
11 signatures which he alleged as coming from areas of North Las Vegas which favored her opponent  
12 in the last election. He explained he had expected the employees would be given instructions such  
13 as verify signature 7 on every fourth petition and then go through the stack of petitions again and  
14 look at the one above or below that. After the June 29, 2015 hearing, the Court requested Mr.  
15 Jackson appear at the continuation of the hearing on July 2, 2015, and to bring the emails he had  
16 referenced in his testimony. On July 2, 2015, Mr. Jackson produced the emails showing he had  
17 forwarded an email to Mr. Gloria at approximately 3:13 p.m. on May 29, 2015, requesting the  
18 petition copy and to witness the verification process. He also sent an email at approximately 3:58  
19 p.m. to Plaintiff indicating he went to the County Offices at 1:15 p.m. and was told the verification  
20 process had started. Mr. Jackson in his email indicated he complained why the Plaintiff was not told  
21 the verification process would start that day and he was put in telephone contact with Mr. Gloria.  
22 Mr. Gloria told him they had started the verification of signatures and Mr. Jackson asked Mr. Gloria  
23 for a petition copy. He also asked if they were going to verify every signature on the petitions to  
24 which Mr. Gloria said that the Department follows the NRS. According to Mr. Jackson in his email,

1 Mr. Gloria said he did not do anything over the phone and requested an email as to what Mr.  
2 Jackson wanted. Mr. Gloria also told Mr. Jackson the verification process would be done by  
3 Monday. Significantly, Mr. Jackson made no mention in his email that Mr. Gloria had told him the  
4 verification process would begin in "one or two days."

5 Mr. Gloria testified he did speak with Mr. Jackson by telephone on May 29, 2015. Mr.  
6 Gloria indicated that he remembered telling Mr. Jackson to put in writing his requests for a petition  
7 copy and to view the verification process. Mr. Gloria expressed he would not have denied a  
8 representative from viewing the verification. Mr. Gloria stated the first part of the verification  
9 process started at 8:50 a.m. on May 29, 2015 and ended by approximately 1:50 p.m. that day.

10 Ms. Andolina testified by phone on July 2, 2015, explaining that on Thursday, May 28, 2015,  
11 she sent a letter by express mail and by email to Plaintiff, stating the recall petition had been  
12 presented and was being sent to the Election Department to start the raw count which needed to be  
13 completed within four business days. She received no response back from the Plaintiff. Ms.  
14 Andolina testified on June 29, 2015 that, on Monday, June 1, 2015, at 5:55 a.m., she sent the  
15 Plaintiff another email, stating the verification process would start at 9:30 a.m. that morning.

16 Ms. Eisenman testified on June 29, 2015 that she believed the second half of the verification  
17 process started Monday at 9:30 a.m., but possibly 9:00 a.m. She remembered Mr. Jackson showing  
18 up five to ten minutes after the process started.

19 Plaintiff also called Dan Burdish as a witness on July 2, 2015. Mr. Burdish said he was  
20 assisting Plaintiff and her counsel on Friday, May 29, 2015, and overheard Plaintiff state her  
21 representatives had been denied the opportunity to view the verification. Mr. Burdish said he called  
22 Mr. Gloria about 4:30 p.m. and said he understood Plaintiff's representatives had been denied the  
23 opportunity to review the verification. He testified Mr. Gloria said he was unaware of anyone being  
24 denied the chance to view the verification. Mr. Burdish offered to come down that day to view the

1 process, but Mr. Gloria said that it had concluded for the day. On Monday, Mr. Burdish received a  
2 call that the verification process was going to begin about 9:00 or 9:30 a.m. He stated he went to the  
3 Election Department, arriving five or ten minutes late. He said the Election Department employees  
4 cooperated with him viewing the process and he testified to no irregularities.

5 Mr. Gloria and Ms. Andolina testified they never sent specific notice to Plaintiff as to when  
6 the verification process was going to start on Friday, May 29, 2015. Ms. Andolina did send Plaintiff  
7 notice by email of the starting time for the verification process on Monday, June 1, 2015.

8 NRS 293.1277(8), which provides that the public office subject to recall must be allowed to  
9 witness the verification process, does not provide for any prior specific notice to the public official  
10 giving a date and time when the process will occur. Nevada Administrative Code 306.023 does  
11 require the "filing officer with whom a public officer to be recalled filed his or her declaration of  
12 candidacy shall notify that public officer, in writing, within 2 days after a petition to recall a public  
13 officer is filed . . . ." Ms. Barbara Andolina, City of North Las Vegas Clerk, testified she followed  
14 the Code the day the petition was filed on Thursday, May 28, 2015, both by express mail and by  
15 email. Going beyond what is required by the Code, Ms. Andolina also noted in her letter the petition  
16 was being forwarded to the Registrar of Voters to begin the raw count process which needed to be  
17 done in four working days. She testified that she did not hear further from Plaintiff.

18 Plaintiff was aware of the petition filing on Thursday, May 28, 2015, as Mr. Jackson, one of  
19 her representatives, was present at the City of North Las Vegas Clerk's office when it was filed. Ms.  
20 Andolina also sent an email to Plaintiff with the notice required by NAC 306.023 later that same  
21 day. Plaintiff obviously was receiving Ms. Andolina's emails as she forwarded Ms. Andolina's June  
22 1, 2015 email with the start of the Monday verification time to Mr. Jackson. Plaintiff presented no  
23 evidence she in any way inquired directly or through a representative about the verification process  
24 until approximately 1:15 p.m. the next day, Friday, May 29, 2015, when Mr. Jackson went to the

1 County offices. By then, the raw count and the verification had been ongoing since 8:50 a.m. Mr.  
2 Jackson subsequently spoke by telephone with Mr. Gloria. This would have been approximately the  
3 time according to Mr. Gloria when the Election Department was completing the first part of the  
4 verification process at about 1:50 p.m.

5 The Court will not read into NRS 293.1277 a specific notice provision. The statute only  
6 provides that the public official subject to recall be allowed to view the verification process and  
7 makes no provision for notice or working with the public official to arrange a date and time for the  
8 official or his or her representative to be present. In this instance, Plaintiff was aware on Thursday,  
9 May 28, 2015, that the petition was filed and the process for verifying the Petition would commence  
10 quickly. Plaintiff and her representatives took no step to reach out and determine how the Registrar  
11 would specifically move forward on the process until 1:15 p.m. on Friday, May 29, 2015. Plaintiff's  
12 representatives were allowed to view the process on Monday. There is some issue as to whether the  
13 Election Department started on the verification before the 9:30 a.m. start time provided in Ms.  
14 Andolina's email to Plaintiff as Mr. Jackson contends that he got there about 9:20 a.m. and the  
15 process had started. However, the Court does not find any evidence to suggest the Election  
16 Department sought to mislead Plaintiff as to the start time of verification. The Court also finds the  
17 Election Department starting five to ten minutes before Mr. Jackson got there and possibly before  
18 the scheduled start time, did not materially hamper Mr. Jackson's or Mr. Burdish's abilities to  
19 meaningfully observe the verification process. Plaintiff does not suggest any specific prejudice  
20 resulting from these missed few minutes. Both Mr. Gloria and Ms. Eisenman testified that the  
21 verification process on Monday was essentially a repeat of the verification process on Friday as an  
22 audit to insure the accuracy of the process. Mr. Burdish testified that the Department employees  
23 were cooperative in allowing Plaintiff's representatives to view the verification. The Court finds  
24 that to the extent Plaintiff was prejudiced by her lack of due diligence in learning the Election

1 Department's verification plans and by the speed the Election Department started the verification on  
2 May 29, 2015, this prejudice was largely eliminated by the Election Department's essentially  
3 repeating the process from May 29, 2015 on June 1, 2015 as an audit to ensure accuracy.

4 However, this Court notes, with the time and speed the City Clerk's office and Registrar of  
5 Voters can now move through the verification process, presumably with new computer and other  
6 technology, a procedure or policy at the Election Department to email or telephone a public official  
7 or recall committee members prior to initiating the verification process and informing the official  
8 and members when the process will start would potentially avoid this issue in the future. The Court  
9 can foresee a situation where the process could be completed so quickly an official might not get any  
10 notice of its specific occurrence until it was over. *See* NRS 293.1277(5) (discussing verification if a  
11 county clerk sets up a process allowing citizens to vote by computer). If an official has the right to  
12 observe, but the process begins and ends so quickly that the official, even while exercising some  
13 level of diligence, has insufficient notice of the process to actually observe, the Court questions  
14 whether the official truly is allowed to observe as required under the statute. In this instance,  
15 however, the Court does not believe the facts present such a circumstance requiring the  
16 consideration of the issue.

### 17 III. FOURTH CAUSE OF ACTION

18 Plaintiff in her fourth cause of action alleges the petitions are insufficient as they are not in  
19 identical form and are not sequentially numbered as required by NRS 306.030(1). Plaintiff never  
20 stated or presented evidence at the hearing as to what she meant by the petitions not being in  
21 identical form. NRS 306.030(1) provides in pertinent part: "The petition may consist of any number  
22 of copies which are identical in form with the original, except for the name of the county and the  
23 signatures and addresses of the residences of the signers. The pages of the petition with the  
24 signatures and of any copy must be consecutively numbered." The Court finds the petitions

1 submitted were in identical form except for the signatures and addresses of the residences of the  
2 signers.

3 Plaintiff contends the petitions fail to meet the statute's numbering requirement as the  
4 petitions as presented to the City Clerk were not sequentially numbered as a whole. Defendant  
5 Committee Members argue the statute only requires that the pages of each petition circulated by an  
6 individual for signatures need to be sequentially numbered. They point out that the pages of each  
7 circulated petition which was submitted with the other petitions together as a group to the clerk were  
8 numbered 1 to 4.

9 Mr. Gloria stated that the Election Department considered the numbering system of the  
10 petitions submitted in this case to meet the terms of the statute. Mr. Gloria explained that it would  
11 be impossible in many instances, such as recalls of state officials or state ballot initiatives, to  
12 circulate a single petition with consecutively numbered pages and obtain the necessary number of  
13 signatures. The statute allows for separate petitions to be circulated and to be then presented as a  
14 group. If each separate petition is sequentially numbered, then it meets the requirement of the  
15 statute.

16 The Court finds the Registrar of Voter's interpretation of NRS 306.030(1) to be a fair reading  
17 of the statute. NRS 306.030(1) plainly allows a petition to consist of multiple copies of the petition  
18 if they are all in identical form. The statute requires the "pages of the petition with the signatures  
19 and of any copy must be consecutively numbered." The Court reads this as requiring the pages of  
20 each copy of the petition to be consecutively numbered. The Court finds this reading to meet the  
21 objectives of the statute to ensure someone does not add additional pages to a petition copy  
22 disseminated and verified by a specific circulator.

23 IV. FIFTH CAUSE OF ACTION

24 Plaintiff challenges six petitions (30, 50, 87, 117, 123 and 147) which she contends have

1 irregularities in the verifications done by circulators before notaries. On one petition, the notary  
2 printed her name and signed as notarizing, but failed to include her notary stamp, on one the notary  
3 failed to print her name on the line where she was to print her name and just placed her notary stamp  
4 and signed as notarizing, and on four petitions the circulator or notary had failed to write "Clark" in  
5 the space for county name above the notarization. Mr. Gloria testified that the Election Department  
6 would consider the petitions where the notary forgot to print his or her name and the name of  
7 "Clark" county as being in substantial compliance with the statute requirement that the circulator  
8 verify the petitions before a notary. He explained the Election Department had enough information  
9 to conclude that the notarizations were authentic. As to the petition missing a notary stamp, Mr.  
10 Gloria testified the Election Department would undertake research to determine if the person  
11 identified as the notary was an actual notary at the time the petition was notarized. On examination  
12 by Defendant Committee Members' counsel, Mr. Gloria identified another petition signed by the  
13 same notary which included a notary stamp. The Court finds these six petitions were in substantial  
14 compliance with the statute and should be counted.

15 The cases Plaintiff cites in support of her cause of action, *Fiannaca v. Gill*, 78 Nev. 337, 372  
16 P.2d 683 (1962) and *Lundberg v. Koonts*, 82 Nev. 360, 365, 418 P.2d 808 (1966), are inapplicable to  
17 the facts presented here. These cases applied an earlier version of NRS 306.030 which provided that  
18 every copy of a petition "shall be verified by at least one of the signers thereof." The Court in those  
19 cases was asked to determine the sufficiency of petitions if the circulators who verified the petition  
20 were not also one of the signers. NRS 306.030 has been amended to eliminate the requirement a  
21 circulator verifying a petition also be a signer on the petition verified.

#### 22 V. SIXTH CAUSE OF ACTION

23 In her Sixth Cause of Action, Plaintiff asserts under NRS 293.1278, the recall petition should  
24 have failed to qualify because the percentage of verified signatures from the random sample of 500

1 signatures was only 84 percent. Plaintiff contends NRS 293.1278 provides for a petition to be valid  
2 the percentage of valid signatures from the random sample must be 90 percent or greater. Plaintiff  
3 thoroughly misreads the statute as to what the 90 percent figure in the statute references and what  
4 the statute requires.

5 NRS 293.1278(1) provides in pertinent part: "If the certificates received by the Secretary of  
6 State from all the county clerks establish that the number of valid signatures is less than 90 percent  
7 of the required number of registered voters, the petition shall be deemed to have failed to qualify,  
8 and the Secretary of State shall immediately so notify the petitioners and the county clerks." This  
9 statute is referring to the number of valid signatures after the random sample has been reviewed, the  
10 statistical number of valid signatures determined and that percentage of valid signatures applied to  
11 the total number of signatures obtained. In this case, the random sample determined that 84 percent  
12 of the signatures were valid. This percentage was then applied to the total of 2,717 signatures  
13 submitted to determine the petition contained 2,282, 115 percent of the number needed.

#### 14 VI. SEVENTH CAUSE OF ACTION

15 Plaintiff in her seventh cause of action challenges the receipt the City of North Las Vegas  
16 Clerk gave to the Committee members submitting the petition. NRS 293.12758(1) provides:

17 1. The county clerk shall issue a receipt to any person who submits a petition for  
18 the verification of signatures or a petition, declaration of or acceptance of candidacy.

19 The receipt must state:

- 20 (a) The number of documents submitted;
- 21 (b) The number of pages of each document; and
- 22 (c) The number of signatures which the person declares are on the petition.

23 Plaintiff argues that the receipt provided to the committee members only said "Approximately  
24 2,700" and did not give the exact number which Plaintiff contends the clerk "must" do. However,

1 the statute clearly states that the clerk is to include on the receipt the number of signatures that the  
2 person submitting the petition declares are on the petition. Ms. Andolina testified the Committee  
3 members presenting the petition told her there was approximately 2,700 signatures on the petition.  
4 Consequently, the Court finds this complies with the statute and the use by committee members of  
5 an approximate number did not undermine any purpose of the statute to ensure the integrity of the  
6 recall process.

7 VII. EIGHTH CAUSE OF ACTION

8 Plaintiff in her last cause of action contends that the "Remove Ramsey Now" Committee has  
9 accepted contributions above the amount it is allowed to accept pursuant to Article 2, Section 10 of  
10 the Nevada Constitution and NRS 294A.100. Article 2, Section 10 limits contributions by any  
11 "artificial or natural person" to "the campaign of any person for election to any office . . . to \$5,000  
12 for the primary and \$5,000 for the general election. NRS 294A.100 provides that a person shall not  
13 make or commit to make a contribution to a candidate for any office . . . in an amount which exceeds  
14 \$5,000 for the primary election . . . and \$5,000 for the general election . . ." NRS 294A.005 defines  
15 a candidate as a person who "files a declaration of candidacy," "files an acceptance of candidacy,"  
16 "whose name appears on an official ballot at any election" or "received contributions in excess of  
17 \$100."

18 Neither side raised or argued this issue at the hearing. The Court finds a committee for recall  
19 is not a person for election to an office under Article 2, Section 10, or an candidate for office under  
20 NRS 294A.100. The Court agrees with Defendant Committee Members' contention that a  
21 committee for recall, pursuant to NRS 294A.006, is "an organization that (1) receives any  
22 contributions, makes any contributions to candidates or persons or makes any expenditures that are  
23 designed to affect the recall of a public officer; or (2) files a notice of intent to circulate the petition  
24 for recall. Consequently, the Remove Ramsey Now Committee is not limited in the contributions it

1 receives by either Article 2, Section 10 or NRS 294A.006.

2 **ORDER**

3 Accordingly, based upon the above findings and good cause appearing, IT IS HEREBY  
4 ORDERED:

- 5 1. Petitioner/Plaintiff's Complaint seeking declaratory relief declaring that judges may not  
6 be recalled under Article 2, Section 9 of the Nevada Constitution is DENIED;  
7 2. Petitioner/Plaintiff's Emergency Motion for Injunction is DENIED;  
8 3. Petitioner/Plaintiff separate Complaint challenging the Recall Petition is DENIED.

9 IT IS FURTHER ORDERED that not sooner than 10 days, nor more than 20 days after the  
10 date of this order, the City of North Las Vegas Clerk shall issue a call for a special election in the  
11 jurisdiction in which Petitioner/Plaintiff was elected to determine whether the people will recall  
12 Petitioner/Plaintiff as a Municipal Court Judge.

13 DATED this 6 day of July, 2015.

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ERIC JOHNSON  
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing via E-Service as follows:

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HONORABLE CATHERINE RAMSEY  
NORTH LAS VEGAS MUNICIPAL JUDGE

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**IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK**

DEMARIO EDWARD REED,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 67822**  
District Court Case No. C265189

**NOTICE OF TRANSFER TO COURT OF APPEALS**

TO: Hon. Jennifer P. Togliatti, District Judge  
Demario Edward Reed  
Clark County District Attorney \ Steven S. Owens, Chief Deputy District Attorney  
Attorney General/Carson City \ Adam Paul Laxalt, Attorney General  
Steven D. Grierson, Eighth District Court Clerk

Pursuant to NRAP 17(b), the Supreme Court has decided to transfer this matter to the Court of Appeals. Accordingly, any filings in this matter from this date forward shall be entitled "In the Court of Appeals of the State of Nevada." NRAP 17(e).

DATE: July 27, 2015

Tracie Lindeman, Clerk of Court

By: Amanda Ingersoll  
Chief Deputy Clerk

Notification List :

Electronic

Clark County District Attorney \ Steven S. Owens, Chief Deputy District Attorney  
Attorney General/Carson City \ Adam Paul Laxalt, Attorney General

Paper

Hon. Jennifer P. Togliatti, District Judge  
Demario Edward Reed  
Steven D. Grierson, Eighth District Court Clerk