

FILED

JUL 27 2015

IN THE SUPREME COURT OF THE STATE OF NEVADATRACIE K. LINDEMAN
CLERK OF SUPREME COURTBY S. Young
DEPUTY CLERKNo. ~~68394~~Electronically Filed
Jul 24 2015 12:25 p.m.Tracie K. Lindeman
Clerk of Supreme CourtHONORABLE CATHERINE RAMSEY
NORTH LAS VEGAS MUNICIPAL JUDGE,
Petitioner,

vs.

THE HONORABLE ERIC JOHNSON, DEPARTMENT 20, DISTRICT
COURT JUDGE, EIGHTH JUDICIAL DISTRICT COURT
Respondent,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"
Real Parties in Interest.Eighth Judicial District Court, Clark County
The Honorable Eric Johnson, District Court Judge
District Court Case A-15-719406-P
Consolidated with District Court Case A-15-719651-C**OPPOSITION AND COUNTERMOTION TO STRIKE FALSE AND
MISLEADING ALLEGATIONS IN REAL PARTIES IN INTEREST CITY
OF NORTH LAS VEGAS AND BARBARA ANDOLINA, CITY CLERK'S
LIMITED MOTION TO STRIKE**Craig A. Mueller, Esq.
Nevada Bar #4703
MUELLER, HINDS AND ASSOCIATES
600 S. Eighth Street
Las Vegas, Nevada 89101
(702) 382-1200
Attorneys for Petitioner*Transferred from docket no. 68394
per order filed 7-27-15.*

1

15- 22705

**OPPOSITION AND COUNTERMOTION TO STRIKE FALSE AND
MISLEADING ALLEGATIONS IN REAL PARTIES IN INTEREST CITY
OF NORTH LAS VEGAS AND BARBARA ANDOLINA, CITY CLERK'S
LIMITED MOTION TO STRIKE**

Real Parties in Interest City of North Las Vegas and Barbara Andolina, City Clerk for the City of North Las Vegas, (collectively "City") filed a limited motion to correct information in the Writ. As demonstrated in the motion authored by the City themselves, they are, in fact, the ones attempting to mislead this Court regarding crucial elements in this case, and Petitioner hereby submits the following opposition and countermotion to strike that information from consideration.

I. BRIEF HISTORY

Petitioner asserts a genuine constitutional issue that she is not subject to recall under Article 2 as a public officer and is excluded as a judicial officer from such an attempt. As soon as Petitioner had standing, thus being notified on May 28, 2015 that a Petition to Recall her was filed with the North Las Vegas City Clerk, Petitioner retained counsel that same day, who prepared and filed Emergency Petition for Injunction on June 4, 2015. That constitutional issue was not decided before the requirements of a public officer under NRS 306.040(5) were triggered. Thus, Petitioner also filed a complaint regarding the sufficiency of the petition. Both matters were consolidated. This motion deals with a portion of the challenge to the sufficiency only, if it does apply to her, and such, should only be

given the weight that is due. It should be noted that the City never filed an answer or a responsive pleading in the challenge to the sufficiency case.

Petitioner asserts, among other things, that (1) the recall effort is invalid under Nevada Constitution and Statutes, thus and not applicable, alternatively, (2) City Clerk accepted the petition in violation of NRS 306.030; (3) Selected criteria was used in the verification process and some of the signatories resident addresses, dates, signatures are insufficient and/or did not sign under the words "recall petition" as required under the statutes as a "must"; (4) the petition contains fraudulent names as Signatories signed for other family members, signed the petitions multiple times or were not eligible to sign the petition; (5) the random sample fell below the required 500, is itself insufficient and contained names not submitted by the circulatories; (6) names within the random sample were changed in order to accept them; (7) the invalid petition was altered by the Registrar of Voters in an attempt to make it a valid and consecutively numbered; (8) Notary issues invalidate some of the petitions; (9) Due process as Petitioner's rights were violated by not being permitted to observe the sample selection and notice of the verification process. The alleged verification process on Monday was merely a confirmation data check and reenactment of the Friday verification as confirmed by the Registrar of Voters; and (10) Due process as Petitioner's rights were

violated when she was not permitted time to subpoena witnesses, present evidence, and was limited as to what evidence she was able to present.

This brief reiteration of the constitutional, sufficiency and due process claims above are necessary to provide the Court with the perspective of what portion the City's Motion to Strike is actually addressing. In this instance, the attack is on notice portion of the due process claims.

II. THERE IS NO DISPUTE AS TO EXISTENCE OF A LETTER DATED MAY 28, 2015 REGARDING NOTICE OF THE "RAW COUNT" AND WHEN THAT PROCESS WAS TO BEGIN AND HOW LONG IT WAS TO TAKE.

There is no dispute as to a letter dated May 28, 2015 letter being in the City's disclosure list. The content of that letter, however, appears to now be at issue. Testimony and the letter itself shows the May 28, 2015 letter only gives notice to Judge Ramsey that a petition was submitted to the clerks office for signature verification. Paragraph two of the letter specifically advises Petitioner of that process, and goes on to detail that process as being "delivered to the Clark County Registrar of Voters to begin the Raw Count process." The clerk tells Petitioner that process will be completed within 4 days which is June 3, 2015. The Clerk then tells her she "will keep [you] apprised as the petition process moves forward]. At no time did the Clerk tell Petitioner the process moved forward or would move forward to verification that same day. In fact, it leads Petitioner the next phase would not begin until this process is completed in four working days.

The Clerk does not give Petitioner notice when, where and even if the next step in the verification process will begin or even what that step is. Given the plain language of the letter, it leads her to believe the raw count will be done within four (4) days and she (clerk) will keep her apprised as the petition moves forward, thus keeping her apprised when it will move from one stage, the raw count, to the next stage, receiving notice the raw count was sufficient and able to proceed to verification, and then even the next stage of the actual verification. Both of those were done without notice to Petitioner. The May 28, 2015 letter only gives notice of the "raw count" under NRS 293.1276(1). Due Process rights were violated as no notice of the "verification" under NRS 293.1277(8) which occurred Friday, and was still occurring at the same time, Petitioner's representative was being turned away at 1:00 or 1:15 from viewing the process after asking to witness same. There has still been no letter produced specifically on notice of the date and time of the verification itself, but only alluded to as being the same as the May 28, 2015 letter by the telephonic reexamination of City Clerk Andolina. Petitioner in no way intended to mislead this Court, that the letter existed, but rather is point out a fact that there is no existence of a letter with actual notice of the date and time of the verification being held on Friday or on Monday. Petitioner has a right to witness the verification, not a mere reenactment of the same. No notice was given to Petitioner of the verification.

III. EVIDENCE SHOWS THE MAY 28, 2015 LETTER WITH NOTICE OF THE RAW COUNT WAS DELIVERED TO DOOR BY FEDERAL EXPRESS AFTER VERIFICATION HAD ALREADY BEGUN.

At the time when a Fed-Ex was delivered to her door, Petitioner was not home to receive it. Petitioner was retaining the services of Mueller, Hinds & Associates. They were all in a meeting when Petitioner received a call from a representative who was being denied access to the Friday process. Testimony of Dan Burdish confirmed that Judge Ramsey said something about that her representatives were not allowed to go and watch the verification of the signatures. Mr. Burdish then called the Registrar of Voters himself and asked if they turned away Ramsey Representative and volunteered to observe the count. He further testifies that Mr. Gloria told him it wouldn't do any good, by the time he got down there the it would be over. Testimony of Registrar Gloria later confirmed the verification occurred on Friday, thus showing the verification started before the May 28th letter on raw count was even delivered to the door of Petitioner, who was not yet home to receive it. Even Judge Johnson stated that he understood the Monday process was essentially a repeat of the Friday verification process to make sure that there were no errors. He goes on to further say that essentially the Ramsey representatives were in a position to review what the clerk's office had done in times of verifying the signatures on the random sample. Unfortunately, the statute does not permit substitution of a reenactment of verification to satisfy the

requirement that the public officer who is the subject of a recall petition must also be allowed to witness the verification of the signatures on the petition. NRS 293.1277(8). Petitioner simply had no notice the verification of the signatures had started, and by chance, when her representative was there, he was refused access to witness the verification. When the attorney's office makes a phone call, they realize they violated Petitioner's rights, they scramble, hold another "verification", and gave Petitioner notice on Monday of that same Monday verification. Confirmation of these facts are clear in that Mr. Gloria did not inform Ms. Burdick the verification was going to continue on Monday, or let him know he could be there, but rather on Friday, told him it was about over. Testimony and evidence now shows Monday was not the actual verification, but a mere reenactment. That does not satisfy the statute. There still exists no letter informing Petitioner of date and time of the Monday verification. There is only an email and it was sent mere hours before the verification was to start, and the email is misleading in that it leads one to believe the verification had not yet started, and was to start on Monday, when actually the verification had already been completed and this email notice is only notice of a mere reenactment and not notice of the verification of signatures and process the statute provides as a protection and safe guard for Petitioner. Surely, the 500 sample, inclusion of certain names, notary issues and

other items would all have been questioned if it was being selected in a sample or in violation of statutes had Petitioner or representative been able to be present.

IV. CITY ATTEMPT MISLEADS THE COURT AS TO NOTICE OF ACTUAL SIGNATURE VERIFICATION PROCESS, AND SHOULD BE STRICKEN FROM COURT'S CONSIDERATION.

City's motion on Page 4, line 12, is claiming Ms. Andolina's letter and email "all of which advised Petitioner that the Recall Petition had been received and was being delivered on May 28th to the Clark County Election Department to begin the raw count **and signature verification** process." (emphasis added). This is in error. Petitioner asks the Court to strike any reference that the May 28th communications gave Petitioner notice of the actual verification. It does not. That is false and deliberately written in the Motion to confuse and mislead the Court into thinking the letter and email dated May 28th gave notice of both processes and more importantly, notice of when the verification process was to occur, when it does not. There is no letter notifying Petitioner with the date and time of the verification and no associated fed-ex of a notice regarding same.

V. THE COURT SHOULD NOT BE PURSUADED BY CITY'S CLAIMS THAT PETITIONER INTENTIONALLY MISLED IT ABOUT THE APPENDIX.

City is being disingenuous in its claim that Petitioner attempts to mislead this Court by selectively choosing its appendix exhibits. To the contrary, it is the City that is attempting to mislead this Court as Petitioner is able to show there has

been no letter produced which informed Petitioner the date and time of the Friday verification.

Petitioner did not re-index and reproduce the documents produced by any party in the initial disclosures, nor did it re-index and produce the 636 page petition. This was not a selective omission as City claims. In fact, Petitioner was careful to review and comply with NRAP 30(b) which indicate that all matters not essential to the decision of issues presented by the appeal [in this case, the writ] shall be omitted. Brevity is required; the Court may impose costs upon parties or attorneys who unnecessarily enlarge the appendix. Thus Petitioner did not include any initial document disclosures of any party. This was not a selective omission as City claims, but rather an attempt to adhere to the applicable rules.

Petitioner references that out that of the supplemental information provided by the City, no new letter about notice of the actual time and place of the verification was presented. It was not, and still has not been provided as it does not exist. Petitioner had no notice of the date and time of actual verification of signatures that occurred on Friday.

///

///

VI. NO NOTICE WAS GIVEN CONCERNING THE FRIDAY VERIFICATION PROCESS, AND PETITIONER'S REPRESENTATIVE WAS NOT ALLOWED TO WITNESS IT, EVEN THOUGH HE WAS PRESENT AND REQUESTING TO DO SO.

Judge Johnson limited the persons permitted to testify on July 2nd. Ms. Andolina was not one of them. Ms. Andolina was added and permitted to testify telephonically¹. Her testimony seemed to be centered on newly discovered information but was actually an attempt to lump the notice of verification in with notice of the raw count. There has still been no letter produced with notice of the time and date for the Friday verification. That is the very heart of the due process claim. In fact, the May 28th letter consistently referred to by the City informs Petitioner the raw count process will begin and they have 4 days to complete it. Ms. Andolina says "I will keep you apprised as the petition process moves forward."... Thus, one to expect the next notification to Petitioner will be when it moves forward to verification, not after it is done. Petitioner's representative was turned away on Friday, and there was no opportunity to witness the process as required by statute. The next notification Petitioner received was the June 1st email at 5:47 a.m. advising her the verification was to begin that same day at 9:30, with no opportunity for her to arrange a judge pro-tem or chance to personally attend.

¹ Counsel claim Ms. Morgan's presence during Ms. Andolina's testimony was not improper as the court determined only certain witnesses would be permitted to testify and Ms. Morgan was not one of them. There mere fact that Ms. Andolina was also not on that allowed list, yet permitted to testify, demonstrates any witness is subject to being called as a witness. Hence, the basic reasons for exclusionary rules in the first place. The exclusionary rule was invoked. Ms. Morgan's presence was objected to. Ms. Andolina's testimony and demeanor was much different this time around which suggests the difference was the presence of Ms. Morgan. Further, NRS 50.155 requires that at the request of a party the judge shall order witnesses excluded.


That notice was not sent in a letter, nor was there an associated fed-ex number” associated with same.

VII. CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the Court (1) deny Real Parties in Interest City of North Las Vegas and Barbara Andolina, City Clerk’s Limited Motion to Strike and (2) grant Petitioner’s Countermotion to Strike False and Misleading Allegations in Real Parties in Interest City of North Las Vegas and Barbara Andolina, City Clerk’s Limited Motion to Strike.

DATED this 24 day of July, 2015.

MUELLER, HINDS & ASSOCIATES,
CHTD.

By 
CRAIG A. MUELLER, ESQ.
Nevada Bar No. 4703
STEVEN M. GOLDSTEIN, ESQ.
Nevada Bar No 6318
MUELLER, HINDS &
ASSOCIATES
600 S. Eighth Street
Las Vegas, NV 89101
(702) 940-1234
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action.

On July 24, 2015, I caused to be served a true and correct copy of the foregoing

OPPOSITION AND COUNTERMOTION TO STRIKE FALSE AND

MISLEADING ALLEGATIONS IN REAL PARTIES IN INTEREST CITY

OF NORTH LAS VEGAS AND BARBARA ANDOLINA, CITY CLERK'S

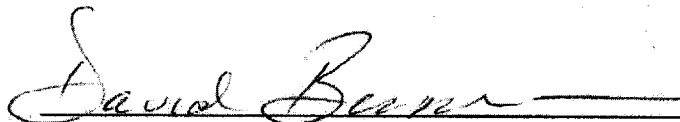
LIMITED MOTION TO STRIKE upon the following method indicated:

☒ **BY EMAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the facsimile number set forth below and/or included on the Court's Service List for the above referenced case.



An employee of
MUELLER, HINDS & ASSOCIATES

SERVICE LIST

Dominic Gentile, Esq.
GENTILE, CRISTALLI, MILLER,
ARMENI & SAVARESE
410 South Rampart Boulevard, Suite 420
Las Vegas, Nevada 89145
dgentile@gentilecristalli.com
Attorney for Respondents:
Bob Borgerson, Betty Hamilton and
Michael William Moreno

Richard C. Gordon, Esq.
SNELL & WILLMER
3883 Howard Hughes Pkwy, #600
Las Vegas, Nevada 89169
702-784-5252
Email: rgordon@swlaw.com
Attorney for Respondents:
City Clerk of North Las Vegas and
Barbara A. Andolina, City Clerk