

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUL 27 2015

NO.: ~~68394~~

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

HONORABLE JUDGE CATHERINE RAMSEY, NORTH LAS VEGAS  
MUNICIPAL JUDGE,

Petitioner,

vs.

THE HONORABLE ERIC JOHNSON, DEPARTMENT 20, DISTRICT COURT  
JUDGE, EIGHTH JUDICIAL DISTRICT COURT

Respondent,

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,"

Real Parties in Interest.

**RESPONDENTS BETTY HAMILTON, MICHAEL WILLIAM MORENO,  
AND BOB BORGERSEN'S REPLY TO PETITIONER'S RESPONSE TO  
SUPREME COURT ORDER TO SHOW CAUSE**

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)

GENTILE CRISTALLI MILLER  
ARMENI & SAVARESE  
DOMINIC P. GENTILE  
Nevada Bar No. 1923  
ROSS MILLER  
Nevada Bar No. 8190  
COLLEEN E. MCCARTY  
Nevada Bar No. 13186  
410 South Rampart Boulevard, Suite 420  
Las Vegas, Nevada 89145  
Tel: (702) 880-0000  
Attorneys for Betty Hamilton, Michael Moreno, and Bob Borgersen

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

15-22707

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

The Court very clearly asked Petitioner to (1) show cause as to why the Petition for a Writ of Mandamus, Certiorari or Prohibition (the "Petition") should not be summarily denied as Petitioner has a right to appeal the District Court's order; and (2) address whether an appeal affords adequate review of the issues alleged in the petition.<sup>1</sup> The fact that Petitioner wholly failed to address the issues as directed, and instead chose to focus solely on inapposite equity-type arguments, appears to be a concession of the matter in its entirety.

Indeed, since the Court issued its Order, Petitioner filed an appropriate appeal and the transcript is now available. These facts alone militate against any further consideration of this Petition. Further, as this Court has stated in a series of prior decisions, writ relief is an extraordinary remedy generally unavailable, where, as here, the petitioner has a plain, speedy and adequate remedy at law. Pursuant to NRAP 3A(b)(1), (3), the District Court's Order in the instant matter is substantively appealable as an appeal from a final judgment. As such, the Petition is not only unnecessary, it is also improper.

Accordingly, and for all the reasons set forth herein, Real Parties in Interest

---

<sup>1</sup> See July 16, 2015 Order of the Nevada Supreme Court, already on file herein.

Betty Hamilton, Michael William Moreno and Bob Borgersen (collectively “Respondents”), respectfully request the Court summarily dismiss the Petition and immediately lift the stay imposed pending its consideration of this issue.

## II.

### **EXTRAORDINARY RELIEF IS NOT WARRANTED**

Original petitions for writ relief will generally not lie when the challenged district court order is substantively appealable. *See Pan v. Eighth Judicial Dist. Court*, 122 Nev. 222, 224, 88 P.3d 840, 841 (2004). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *Id.* 122 Nev. at 228, 88 P.3d at 844. Petitioner has not met her burden.

As the Court gleaned from its preliminary review of the instant Petition and Appendix, the order being challenged is substantively appealable where it constitutes both a final judgment and order denying injunctive relief. *See* NRAP 3A(b)(1) and (3). Petitioner does not dispute this fact, and, indeed, Petitioner filed a Notice of Appeal on July 21, 2015, which is now pending in related Supreme Court Case No. 68450. On this basis alone, Respondents respectfully request the Court summarily deny instant Petition and lift the stay temporarily entered while the parties responded to the Courts’ order to show cause.

Additional bases to deny the instant Petition and lift the temporary stay are set forth below.

**A. Writ of Mandamus.**

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to control the arbitrary or capricious exercise of discretion. *See* NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). When seeking such extraordinary relief, a petitioner bears the burden of demonstrating that an exercise of the court's discretion to that end is warranted. *See Westpark Owners' Ass'n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 356, 167 P.3d 421, 426 (2007).

Generally, mandamus relief is only available when there is no "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; *Westpark*, 123 Nev. at 356, 167 P.3d at 426. Because an appeal from a final judgment is ordinarily an adequate remedy, *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558, in most cases the court will decline to exercise its discretion to consider mandamus petitions. *Id.* The court may in rare cases exercise its discretion to consider a mandamus petition when "an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition." *Id.*, 124 Nev. 197-98, 179 P.3d at 559.

Petitioner attempts to fit her request for relief into the framework of the above exception by claiming the recall efforts against her involve important constitutional

issues of first impression and have statewide significance. On the contrary, the law is well-settled that elected public officials in Nevada, including judges, are subject to recall. And, Petitioner being the only judge in the State of Nevada facing a recall petition has no broader significance.

The fact that voters in the City of North Las Vegas have sought and been given the opportunity to recall Petitioner does not require clarification of any law or consideration of judicial economy. As no exception to the preclusion of mandamus relief pending appeal is present, Petitioner may only seek relief, if any, through her appeal case.

**B. Writ of Prohibition.**

A writ of prohibition is the proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction. *See* NRS 34.320; *see also Smith v. District Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). In this instance, this circumstance is not present. There is no evidence Judge Johnson's order was in excess of his jurisdiction. In fact, the function of a district court judge is to interpret statutes and command compliance therewith. Here, that is exactly what happened. Judge Johnson interpreted the relevant provisions of NRS Chapter 306, which concerns recall of public officers, and found that Petitioner is subject to recall and Respondents had substantially complied with all relevant recall petition statutes. Judge Johnson further interpreted the provisions of NRS Chapter

293, which concerns election protocols, and found that Respondents' recall effort had been properly qualified.

Even if Petitioner's arguments were meritorious, which they are not, a writ of prohibition would not be an appropriate remedy because Petitioner has not alleged, and, indeed cannot allege, that the district court lacked jurisdiction to enter the order at issue.

**C. Writ of Certiorari.**

A writ of certiorari is available to correct a lower tribunal's judicial action if the tribunal exceeded its jurisdiction and "there is no appeal, nor, in the judgment of the court, any plain speedy and adequate remedy." *See* NRS 34.020(2); *see also Zamarripa v. District Court*, 103 Nev. 638, 640, 747 P2d. 1386, 1387 (1987). As discussed in Sections A and B, *infra*, Petitioner has failed in her Petition to establish that Judge Johnson exceeded his jurisdiction in issuing the order in question, and Petitioner had a right to appeal, which she has now exercised. The authority of this Court to entertain Petitioner's writ of certiorari therefore ceases.

To the extent a writ of certiorari may be available when a district court rules on the constitutionality of a statute, this circumstance is also not present. Judge Johnson was not asked to make a finding as to the constitutionality of the provisions of NRS Chapters 293 and 306, respectively. Judge Johnson discussed provisions of the Nevada Constitution concerning recall and judicial discipline in denying

Petitioner's request that he find that one constitutional provision superseded the other. But a review of Judge Johnson's order reveals that he made no finding as to the constitutionality of any statute. His determination to allow the recall petition to proceed was based on determinations that judges are subject to recall, Respondents substantially complied with all relevant recall petition statutes, and the random sample verification of the recall petition was sufficient and accurate.

Again, even if Petitioner's arguments were meritorious, a writ of certiorari would not be an appropriate remedy because Petitioner has exercised her right to appeal and has not alleged the district court exceeded its jurisdiction or ruled on the constitutionality of any statute.

**III.**  
**PETITIONER'S APPEAL AFFORDS ADEQUATE REVIEW OF THE**  
**ISSUES AND NO FURTHER STAY OF THE PROCEEDINGS IS**  
**WARRANTED**

Nowhere does Petitioner address whether an appeal affords adequate review of the issues alleged in the Petition. Instead, Petitioner merely complains that the normal appeal process is "unduly time consuming,"<sup>2</sup> without offering a specific proposal to expedite the proceedings, as she has done repeatedly throughout this litigation. As Petitioner is aware, Respondents too prefer a speedy resolution of this matter and have no objection to an expedited appellate briefing schedule.

---

<sup>2</sup> See Petition at 10, already on file herein.

Further, upon the Court's consideration of the show cause briefing, the temporary stay imposed for that purpose must be immediately lifted and the election permitted to proceed. Just as the appeal is the appropriate mechanism for review of a district court's order, so too should it be the appropriate forum for any further request to stay the special election.

Article 2, Section 9 of the Nevada Constitution sets forth a thirty (30) day timeframe within which a recall election shall be held. The clear public policy behind this accelerated timeline is to afford the people the right to recall without delay. Respondents have cleared the significant hurdle to obtain qualification of the recall petition, the recall petition has survived a sufficiency challenge in the District Court, and the campaign for and against Petitioner's recall is well underway. Each side should be permitted to proceed, as required by the Nevada Constitution.

Moreover, Petitioner suggests that were she to lose the election, she would then face an "incumbent judge"<sup>3</sup> to reclaim her seat, forgetting that she is now an incumbent judge facing a recall election. And, as she is so fond of repeating, no Nevada judge has ever been recalled in the history of Nevada's statehood. Were she to lose, the appellate process will determine her legal remedy, if any. Were she to prevail, the entirety of the matter before this Court would be moot.

Accordingly, a single judge must not be permitted to disenfranchise the voters

---

<sup>3</sup> See Petition at 10, already on file herein.



of North Las Vegas by obfuscating the constitutionally mandated mechanism for the removal of public officers. The recall election must be permitted to proceed.

IV.  
CONCLUSION

Petitioner has failed to show cause why her Petition should not be summarily denied. She has made no allegation the district court exceeded its jurisdiction. She has conceded and exercised her right to appeal. And, she has failed to show how her appeal will not afford her an adequate review of all issues. For these reasons, as further supported by all of the arguments stated herein, Respondents respectfully assert Petitioner has failed to meet her burden to show her entitlement to writ relief and requests this Court summarily deny the same and release the temporary stay.

DATED this 24 day of July, 2015.

GENTILE CRISTALLI MILLER  
ARMENI & SAVARESE



DOMINIC P. GENTILE

Nevada Bar No. 1923

ROSS MILLER

Nevada Bar No. 8190

COLLEEN E. MCCARTY

Nevada Bar No. 13186

410 South Rampart Boulevard, Suite 420

Las Vegas, Nevada 89145

Tel: (702) 880-0000

Fax: (702) 778-9709

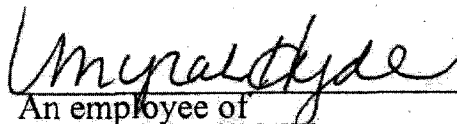
Attorneys for Betty Hamilton, Michael  
Moreno, and Bob Borgersen

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 24, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

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

Richard C. Gordon, Esq.  
Snell & Wilmer  
3883 Howard Hughes Pkwy, #600  
Las Vegas, Nevada 89169  
[rgordon@swlaw.com](mailto:rgordon@swlaw.com)  
Attorney for Sandra Douglass Morgan  
North Las Vegas City Attorney



An employee of  
Gentile Cristalli Miller  
Armeni & Savarese