

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO: 68450

HONORABLE JUDGE CATHERINE RAMSEY, NORTH LAS VEGAS
MUNICIPAL JUDGE,

Appellant,

vs.

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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 ANSWERING BRIEF TO AMICUS CURIAE
BRIEF OF THE NEVADA JUDGES OF LIMITED JURISDICTION**

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)

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

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I.

SUMMARY OF THE ARGUMENT

Pursuant to this Court’s Order of August 25, 2015, granting the motion filed by the Nevada Judges of Limited Jurisdiction (“NJLJ”) seeking leave to file a brief of amicus curiae, Respondents Betty Hamilton, Michael William Moreno, and Bob Borgersen (collectively “Recall Respondents”), hereby oppose the Amicus Curiae Brief of the Nevada Judges of Limited Jurisdiction (In Support of Appellant’s Opening Brief) (“Amicus Brief”).

Notwithstanding NJLJ’s stated support of Appellant Judge Catherine Ramsey’s (“Judge Ramsey”) constitutional analysis with respect to judges, NJLJ argues primarily that public policy considerations justify the end of the removal of judges by recall. This position however ignores the very public it purports to consider. Nevada voters have rejected on multiple occasions the option of having judges appointed, even to their initial term. As discussed more fully below, Nevada voters want the right to elect their judges, and history clearly shows Nevada voters want the right to recall their judges as well.

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II.

ARGUMENT

A. Recall Pursuant to Article 2, Section 9 of the Nevada Constitution Is Neither Inconsistent With Nor Was It Repealed By the Judicial Discipline Provisions of Article 6, Section 21.

In justification of its request to file the instant Amicus Brief, the NJLJ first argues that constitutional provisions concerning judges may conflict and need to be harmonized. However, far from being conflicting provisions of the Nevada Constitution, Article 2, Section 9 and Article 6, Section 21, offer two distinct mechanisms for the removal of judicial officers. Indeed, Article 2, Section 9, affords the longstanding right “inherent in the people” to remove any public officer for any reason, “whenever the public good may require it.” *See Batchelor v. Eighth Judicial Dist. Court*, 81 Nev. 629, 633, 408 P.2d 239, 241 (1965). By contrast, Article 6, Section 21 provides for the discipline of judges under very limited circumstances, and only for very specific conduct. *See, e.g.*, NRS 1.4653.

NJLJ disregards the lack of inconsistency, however, and instead attempts to argue, by implication if not expressly, that both the Nevada Legislature and Nevada voters intended for Article 6, Section 21 to supersede Article 2, Section 9, and thereby eliminate the right to recall. This assertion, however, must be disregarded by the Court where neither the language of the amendment, nor the ballot explanation provided at the time of its passage in 1976 state that Nevada

voters were giving up the right to recall judges by their approval. (*See* Real Parties in Interest Joint Appendix to Answering Brief (“Joint Appendix”) at RA, Vol. IV, 882-886, already on file herein). Absent this express language, Question 8 must be read as the voters read it, adding a new Section 21 to Article 6 of the Constitution, which provided for “the establishment of a Commission on Judicial Discipline which would be empowered to censure, retire, or remove justices or judges...,” and not as a multi-purpose measure to also repeal the right of the electorate to recall judicial officers. *Id.*; *see, generally*, Article 19, Section 3 of the Nevada Constitution (“each ... initiative petition shall include the full text of the measure proposed”).

Also unpersuasive in its proposed support for NJLJ’s argument that Article 6, Section 21 superseded Article 2, Section 9, is the assertion that the express language of Article 6, Section 21, specifically carves out impeachment as the only alternative mechanism for the removal of judges. On the contrary, prior to the passage of the judicial discipline provisions of Article 6, Section 21, the Nevada Constitution provided for three (3) options for the removal of judges: (i) recall, pursuant to Article 2, Section 9; (ii) impeachment, pursuant to Article 7, Section 2; and (iii) legislative resolution, pursuant to Article 7, Section 3. According to NJLJ’s argument, then, the failure to mention legislative resolution in addition to impeachment in Article 6, Section 21 necessarily means the legislature also

superseded its own removal authority short of impeachment. This logic does not stand, and Nevada law as of today still provides four (4) methods for the removal of judges from office.

Finally, tucked away for some reason in its last footnote, NJLJ also seeks to rely on the language of NRS 1.440(1) for the argument that disciplinary removal pursuant to Article 6, Section 21 replaces removal by recall of the voters. The statutory definition of removal in this context, however, is set forth in NRS 1.4292, which states:

“Removal” means a decision issued by the Commission to require a judge to permanently leave his or her judicial office for conduct described in NRS 1.4653.”

Thus, “removal” pursuant to NRS 1.440(1) is limited to decisions by the Commission to discipline judges for specific conduct within its constitutional and statutory framework. It in no way addresses removal by the people, via recall, for any reason.

B. Both Nevada History and Recent Activity at the Polls Evidence Nevada Voters’ Clear Desire to Preserve Their Ability to Recall Judicial Officers.

The remaining part of NJLJ’s Amicus Brief argues that public policy considerations, namely the protection of judicial independence, should trump the right of the people to recall judges for any reason. While the merits of electing judicial officers remains the subject of heated debate, particularly amongst

members of the bar, Nevada voters have remained steadfast in their support of an elected judiciary. On more than one occasion, the most recent of which occurred in 2010, Nevada voters handily rejected a constitutional amendment providing for the initial appointment of judges by the governor, with subsequent retention votes by the electorate. The measure, State Question No. 1,¹ failed by more than one hundred thousand (100,000) votes, a clear signal that the majority of Nevadans want the right to elect their judges.

And, as reflected by more than one hundred years of Nevada history, Nevada voters want the right to recall their judges. The leading treatise on judicial conduct recognizes Nevada as one of only six states to have adopted a judicial recall process. In its section titled “Judicial Recall,” the treatise *Judicial Conduct and Ethics* identifies Wisconsin and the five western states of Oregon, California, Colorado, Arizona and Nevada as having joined the movement for judicial recall in the progressive era of the early twentieth century. James J. Alfini, Steven Lubet, Jeffrey M. Shaman, Charles Gardner Geyh, *Judicial Conduct and Ethics* §14.06 (5th ed. 2013) (Fn. 71, citing Article 2, Section 9 of the Nevada Constitution). Judicial recall is said to have emerged during the progressive era to give progressive reformers the opportunity to oust judges who attempted to thwart the

¹ According to the Nevada Secretary of State’s Statewide Ballot Results 2010, 57.74% of Nevada voters rejected State Question No. 1, <http://www.nvsos.gov/SilverState2010Gen/Ballots.aspx>.

progressive legislative agenda, which espoused the philosophy that voters should have the power to bypass or countermand elected officials. *Id.* And, the authors recognize its use in the modern era to “chasten the judge” even where the recall attempt fails, referencing specifically a recall attempt against then-Nevada Supreme Court Chief Justice Deborah Agosti, following her ruling that the legislature could ignore the requirement that tax increases be passed by a two-thirds majority, and Agosti later declining to run for re-election. *Id.* (citing Martha Bellisle, *Group Plans Effort to Recall 6 Justices*, Reno Gazette-Journal, July 19, 2003).

It is worth noting however, that while Nevada voters protect their right to be heard at the ballot box, they have not once abused the right to recall. Indeed, in the State’s one hundred-fifty (150) year history, voters have never recalled a judge. Rather than demonstrate, as the NJLJ suggests, that judges should not be subject to recall lest they abandon their judicial independence in favor of frivolous popular will, this fact instead clearly shows Nevada voters are prudent in exercising their right to recall. Nevada law requires a recall petition to set forth the reasons why recall is demanded. NRS 306.020(3). As this Court stated in *Batchelor*:

‘All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it.’ Nevada Constitution, Art. 1, § 2. In theory, a public officer need not fear recall if the reason given therefor is frivolous. In such case the required number of signatures on the petition to force an

election should not be obtained and, if perchance, the required number of signatures is obtained, an intelligent, informed electorate reading the reason printed on the ballot as required, will not vote to recall him. Our governmental scheme dignifies the people; a treasured heritage, indeed. The provision for recall is but one example. We shall not intrude upon the people's prerogative.

Batchelor v. Eighth Judicial Dist. Court, In & For Clark Cnty., Dep't No. 4, 81 Nev. at 633.

C. Recall Is Not An Obstacle To Judicial Independence and Indeed, Provides the Only Immediate Means By Which the Public May Address Judge Ramsey's Serious Improprieties.

To the extent the NJLJ argues that recall compromises the ability of the judiciary to resolve cases or controversies free of the influence of outside pressures, it must be clarified that the recall effort at issue against Judge Ramsey is not the result of an unpopular legal decision. Contrary to the NJLJ's overarching argument, Judge Ramsey is not a jurist who, as a result of her duty to fairly and impartially interpret the law, now faces criticism such that public policy demands her protection. To the contrary, the misconduct that prompted the recall effort is hardly specific to judicial functions. Rather, it speaks to the expectations voters have of all public officials to honor the public trust and prudently spend taxpayer dollars.

The reasons why the recall is demanded, and for which Recall Respondents have no other remedy, are stated in the Recall Petition as follows:

North Las Vegas Municipal Court Judge Catherine Ramsey deserves to be recalled from her office, because she has abused the public's

trust and tarnished the integrity of the judicial system. Her conduct has been harmful to city staff, attorneys and members of the public and has cost taxpayers an excessive amount of money. As a result, the Las Vegas Review Journal has called for her recall twice in the last year. Four complaints have been filed against her for workplace misconduct that have cost taxpayers more than \$120,000 since she has been in office. She improperly converted \$12,000 in North Las Vegas City funds for a personal lawsuit. She failed to show up for work 68 times out of 196 work days costing North Las Vegas taxpayers \$94,000. There is a pending ethics complaint that asserts that she has mistreated staff, attorneys and people who have entered her courtroom. Finally, she regularly reduced the charges in criminal cases costing taxpayers thousands of dollars. We urge her recall from office.

(See Joint Appendix at RA, Vol. I, 0103, already on file herein).

Indeed, Recall Respondents, and the more than two thousand seven hundred (2,700) North Las Vegas voters who signed the petition, want and deserve elected officials who show up for work regularly, spend public dollars properly, and treat everyone with respect. Further, it appears this type of misconduct does not have any reasonable or timely remedy through the Nevada Commission on Judicial Discipline, as a formal complaint raising many of these issues, and others specifically related to her conduct on the bench, has been pending before it since May of 2014 with no action. Indeed, recall exists for circumstances exactly such as this, where it benefits the people to seek to remove officials who have failed in their public trust. Judge Ramsey is hardly a scorned jurist legitimately doing her job, she is a self-serving elected official and the right of the people to proceed with her recall

election be respected and allowed.

III.

CONCLUSION

Based on the foregoing, Recall Respondents respectfully assert to this Honorable Court that nothing in the NJLJ's Amicus Brief warrants consideration in support of granting the instant appeal and that Appellant Judge Catherine Ramsey's appeal be denied in its entirety.

DATED this 9th day of September, 2015.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this answering brief to the Amicus Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This answering brief has been prepared in a proportionally spaced typeface using Microsoft Word, Times New Roman style, and a 14 font size.

I further certify that this answering brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is either:


Proportionally spaced, has a typeface of 14 points or more, and contains 2031 words, and does not exceed the 30 page limit.

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

may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 9th day of September, 2015.

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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 September 9, 2015, I caused to be served a true and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF TO AMICUS CURIAE BRIEF OF THE NEVADA JUDGES OF LIMITED JURISDICTION**, by the method indicated:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **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.
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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.

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