

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON,

Appellant,

vs.

BERNARDO ARMENDAREZ, JACOB
ALEXANDER NAVARRO-REYES,
NAYIB WATSON, LOUIS ANTHONY
DELOSRIOS, JR., VIRGIL CRISTOBAL,
HUNTER ALEXIS DOOLEY, AND
JACOB VERNON HARDY,

Respondents.

No. 89958

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RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

I hereby certify that the following are the persons and entities 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:

1. Lance A. Maningo, Henderson Public Defender and Maningo Law
2. Yasmin Khayyami, Henderson Public Defender and Maningo Law

/s/ Lance A. Maningo _____
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TABLE OF CONTENTS

TABLE OF AUTHORITIESiv
JURISDICTIONAL STATEMENTvii
ROUTING STATEMENTvii
ISSUES PRESENTED FOR REVIEWvii
STATEMENT OF THE CASE1
STATEMENT OF THE FACTS5
 Nayib Watson6
 Virgil Cristobal7
 Jacob Navarro-Reyes8
 Bernardo Armendarez.....9
 Louis Delosrios10
 Hunter Dooley11
 Jacob Hardy12
SUMMARY OF THE ARGUMENT13
ARGUMENT16
 I. Appellant Cannot Raise New Arguments on Appeal16
 II. Justiciability19
 a. The City does not have standing to challenge the
 constitutionality of NRS 178.4849.....19
 i. The City did not suffer a concrete and particularized
 injury.....20
 ii. The “injury” is not traceable to NRS 178.4849.....25
 b. The City does not have third party standing to challenge the
 constitutionality of NRS 178.4849.....27
 i. Close relationship with the third party.....28
 ii. Hindrance to the third party’s ability to protect its own
 interests.....29
 c. The Henderson Municipal Court did not have jurisdiction to
 declare NRS 178.4849 unconstitutional.....30
 III. The Merits.....35
 a. NRS 178.4849 is constitutionally sound as it does not violate
 Nevada Constitution art. 1, § 8A, or “Marsy’s Law.”.....36
 b. Self-Executing Jurisprudence.....37
 i. Marsy’s Law is not expressly self-executing.....42
 ii. Marsy’s Law needs additional legislation to give it
 force.....44
 iii. The plain language of Marsy’s Law does not require
 personal pretrial input.....46

IV.	Separation of Powers.....	48
a.	Nature of Legislative Powers.....	50
b.	Nature of Judicial Powers.....	51
V.	NRS 178.4849 Offers a Built in Remedy.....	53
VI.	The City’s Concerns can be Addressed with More Budgeting and More Efficient Systems.....	54
	CONCLUSION	56
	CERTIFICATE OF COMPLIANCE	57

TABLE OF AUTHORITIES

Cases

<u>Alper v. Clark County</u> , 93 Nev. 569, 572, 571 P.2d 810, 811 (1977).....	41
<u>Ashokan v. State, Dept. of Ins.</u> , 109 Nev. 662 (1993).....	vii
<u>Banegas v. State Indus. Ins. Sys.</u> , 117 Nev. 222, 225, 19 P.3d 245, 247 (2001).....	46
<u>Blackjack Bonding v. City of Las Vegas Municipal Court</u> , 116 Nev. 1213, 1220, 14 P.3d 1275, 1280 (2000).....	31-32, 49, 51
<u>Butler v. State</u> , 120 Nev. 879, 892, 102 P.3d 71, 81 (2004).....	46
<u>City of Las Vegas v. Eighth Jud. Dist. Ct.</u> , 122 Nev. 1041, 1045, 146 P.3d 240, 243 (2006).....	32
<u>City of North Las Vegas ex rel. Arndt v. Daines</u> , 1976, 550 P.2d 399, 92 Nev. 292.....	51
<u>City of Sparks v. Sparks Mun. Ct.</u> , 129 Nev. 348, 363, 302 P.3d 1118, 1128 (2013).....	49
<u>Colorado v. New Mexico</u> , 467 U.S. 310 (1984).....	22
<u>Deja Vu Showgirls of Las Vegas, LLC v. Nev. Dep't of Taxation</u> , 130 Nev. 719, 727, 334 P.3d 392, 398 (2014).....	16, 35
<u>Del Papa v. Steffen</u> , 112 Nev. 369, 377, 915 P.2d 245, 250 (1996).....	50-51.
<u>Flamingo Paradise Gaming, LLC v. Chanos</u> , 125 Nev. 502, 513, 217 P.3d 546, 553–54 (2009).....	16
<u>Floyd v. Dep't of Corr.</u> , 139 Nev. Adv. Op. 37, 536 P.3d 445, 446 (2023).	50-51.
<u>Galloway v. Truesdell</u> , 83 Nev. 13, 31, 422 P.2d 237, 249 (1967).....	49, 52
<u>Georgia v. McCollum</u> , 505 U.S. 42, 55 (1992).....	27
<u>Halverson v. Hardcastle</u> , 123 Nev. 245, 261, 163 P.3d 428, 439–40 (2007).....	32
<u>Home Warranty Adm'r of Nev., Inc. v. State, Dep t of Bus. & Indus.</u> , 137 Nev. 43, 45, 481 P.3d 1242, 1246 (2021).....	46
<u>Karcher Firestopping v. Meadow Valley Contractors, Inc.</u> , 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009).	46

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).....20-21

Mack v. Williams, 138 Nev. Adv. Op. 86, 522 P.3d 434, 441
(2022).....41-42

McKay v. City of Las Vegas, 106 Nev. 203, 208, 789 P.2d 584, 587
(1990).....31-32

Morency v State Dep’t of Education, 137 Nev. 622, 496 (2021).....20

N. Lake Tahoe Fire v. Washoe Cnty. Comm’rs, 129 Nev. 682, 687, 310 P.3d
583, 587 (2013).....48

Nevada Policy Research Institute, Inc. v. Cannizzaro, 138 Nev. Adv. Op. 28,
507 P.3d 1203, 1207 (2022).....19, 25

Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983
(1981).....16

Pac. Live Stock Co. v. Ellison Ranching Co., 46 Nev. 351, 213 P. 700, 701
(1923).....52

Patterson v. Las Vegas Municipal Court, 139 Nev. Adv. Op. 35, 535 P.3d
657, 660 (2023).....30

People v. Dehle, 166 Cal. App. 4th 1380, 1381, 83 Cal. Rptr. 3d 461, 463
(2008).....27-28

People v. Gross, 238 Cal. App. 4th 1313, 1318, 190 Cal. Rptr. 3d 472, 476
(2015).....43

People v. Ryan, 203 Cal. App. 3d 189, 194, 249 Cal. Rptr. 750, 753 (Cal.
App. 1st Dist. 1988).....43

Powers v. Ohio 499 U.S. 400,414 (1991).....27

Salaiscooper v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 117 Nev.
892, 900, 34 P.3d 509, 515 (2001).....31-32

Schilling v. Wisconsin Crime Victims’ Rights Board, 2005 WI 17, ¶1, 278
Wis. 2d 216, 220, 692 N.W.2d 623, 624.....43

Schwartz v. Lopez, 132 Nev. 732, 745 (2016).....16, 19-20, 35

Serrano v. State, 83 Nev. 324, 325, 429 P.2d 831, 831 (1967).....23

Sewall v. Eighth Judicial Dist. Court, 481 P.3d 1249, 1250 (Nev. 2021)....22

Sheriff v. Burdg, 118 Nev. 853, 857, 59 P.3d 484, 486 (2002).....16

Silvar v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 122 Nev. 289,
292, 129 P.3d 682, 684 (2006).....16

State v. Dickerson, 33 Nev. 540, 113 P. 105, 105 (1910).....50

State v. Grooms, No. W2019-01324-CCA-R10-CD, 2020 Tenn. Crim. App.
LEXIS 755, at 1 (Crim. App. Nov. 25, 2020).....28

United States v. Salerno, 481 U.S. 739, 756 (1987).....21-22

Valdez-Jimenez v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark, 136 Nev.
155, 460 P.3d 976 (2020).1,17-18, 21-24

Wilson v. Koontz, 76 Nev. 33, 39, 348 P.2d 231, 233 (1960).....39-42, 44

<u>Williams v. State</u> , 118 Nev. 536, 542 (2002).....	35
<u>Wren v. Dixon</u> , 40 Nev. 702, 187, 161 P. 722, 726 (1916).....	39

Statutes and Ordinances

NRS 2.090.....	vii
NRS 5.050.....	31, 33
NRS 171.178.....	17-18
NRS 178.4849.....	viii, 1-5, 12-15, 17-20, 25, 27, 30, 33-38, 45-46, 48, 53-56.
NRS 178.2853.....	24
NRS 266.552.....	15
Las Vegas Municipal Code (LVMC) 6.35.100.....	32

Rules

NRAP 17(a)(11).....	xi
NRAP 17(a)(12).....	xi
NRAP 17(d)(2)(A).....	viii
NRAP 17(d)(2)(B).....	viii
NRAP 17(d)(2)(D).....	viii

Constitutions

Fla. Const. art. I, § 16.....	42
Nev. Const. art. 1, § 8A	viii, 2, 14, 27, 29-30, 36-38, 42, 45-47
Nev. Const. art. 19, § 3	40, 44
Nev. Const. art. 6, § 1.....	30
Nev. Const. art. 6, § 6.....	50, 52
Nev. Const. art. III §1(1).....	vii, 48, 50, 52
Nev. Const. art. 19, § 3.....	40, 44
Wis. Const. art. I, s. 9m.....	43

Other Authorities

Nev. Sup. Ct. Order ADKT 0539.....	2, 47, 52
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CITY OF HENDERSON,

No. 89958

Appellant,

vs.

BERNARDO ARMENDAREZ, JACOB
ALEXANDER NAVARRO-REYES,
NAYIB WATSON, LOUIS ANTHONY
DELOSRIOS, JR., VIRGIL CRISTOBAL,
HUNTER ALEXIS DOOLEY, AND
JACOB VERNON HARDY,

Respondents.

RESPONDENT’S ANSWERING BRIEF

JURISDICTIONAL STATEMENT

Pursuant to NRS 2.090(2), the Nevada Supreme Court has jurisdiction to hear an appeal of an order granting or denying a writ of mandamus, so long as the order constitutes a final judgment. See Ashokan v. State, Dept. of Ins., 109 Nev. 662 (1993).

ROUTING STATEMENT

Respondents request that this matter be retained by the Nevada Supreme Court because it raises questions of first impression related to Nev. Const. art. 1, § 8A, involves the validity of a statute and court rule, and is a matter of exceptional public importance. See NRAP 17(d)(2)(A), (B), (D). Appellant’s routing statement erroneously asserts that this case is retained by

this Court under NRAP 17(a)(11) & (12); because this case does not present juvenile certification or inconsistency between the Nevada Court of Appeals and the Nevada Supreme Court. Compare Ans. Br. at vii with NRAP 17(a)(11) & (12).

ISSUES PRESENTED FOR REVIEW

- I. Whether the City has standing to challenge the constitutionality of NRS 178.4849.
- II. Whether the City has third party standing to challenge the constitutionality of NRS 178.4849.
- III. Whether the Henderson Municipal Court had jurisdiction to declare NRS 178.4849 Unconstitutional.
- IV. Whether NRS 178.4849 violates Nevada Constitution Art. 1, § 8A, or “Marsy’s Law.”
- V. Whether NRS 178.4849 violates Nevada Constitution Art. III §1(1) (Separation of Powers).
- VI. Whether NRS 178.4849 offers a built-in remedy.
- VII. Whether the City’s concerns can be addressed with better systems.

STATEMENT OF THE CASE

In 2021, the Nevada Legislature passed Assembly Bill 424 which requires courts to conduct pretrial release hearings within 48 hours of a person being taken into custody. This was codified as NRS 178.4849. NRS 178.4849 allows courts to hold pretrial release hearings in open court, or by means of remote communication (telephone or videoconferencing) to determine a person's custody status. NRS 178.4849 further permits the court to continue a pretrial release hearing if good cause is shown.

The purpose of a pretrial release hearing is to determine the custody status of the accused within a constitutionally reasonable time, as required by Valdez-Jimenez v. Eighth Jud. Dist. Ct., 136 Nev. 155, 460 P.3d 976 (2020). To comply with NRS 178.4849, the Henderson Municipal Court added calendars to address pretrial release hearings on Thursday, Saturday, and Sunday afternoons (only when the Court would be closed the following Monday for a holiday).

On August 28, 2023, the Henderson City Attorney's Office ("the City") filed a Motion to Declare NRS 178.4849 Unconstitutional ("Motion" or the "City's Motion"). AA053-AA100. The City offered two main arguments in support of its position. First, the City argued that NRS 178.4849 violates Article 1, § 8A of the Nevada Constitution – Marsy's

Law. AA056. Second, the City argued that NRS 178.4849 violates Separation of Powers by undercutting Nevada Supreme Court Order ADKT 0539. AA056. The City filed its Motion into the misdemeanor cases of three separate defendants¹ after each defendant's bail hearings were already conducted in accordance with NRS 178.4849. AA053. On August 28, 2023, the City filed a Motion to Consolidate the cases together and this motion was granted. AA101- AA106.

On September 5, 2023, the City filed an Amended Motion to Consolidate, requesting two new defendants be added to its Motion – Louis Delosrios Jr. and Bernardo Armendarez and that motion was granted. AA107-AA112. On September 19, 2023, the City filed a Supplement to its Motion. AA113-AA157.

None of these motions asserted that the victims in their respective cases had requested to exercise their rights under Nev. Const. art. 1, § 8A(1)(f), (g), or (h), nor have any of these victims sought to assert these rights since.

The defendants opposed. AA158-AA202. The City replied. AA203-AA256. By the time the municipal court heard argument on the motions,

¹ The three initial defendants named in the Motion included Jacob Alexander Navarro-Reyes, Virgil Ohuafu Cristobal, and Nayib Watson. AA053.

four out of the five named defendants were already sentenced.²

The Honorable Judge Rodney Burr issued his Findings of Fact and Conclusions of Law on February 15, 2024, granting the City’s Motion and declaring NRS 178.4849 unconstitutional. AA205-AA215; AA268.

Pursuant to that order, the Henderson Municipal Court canceled the additional pretrial release hearings taking place on Thursdays and Saturdays. Specifically, on Thursday, February 22, 2024, at 3:03 p.m., an email was sent with all documents relevant to the pretrial release hearings for all arrestees; as would be customary. Seven minutes later – at 3:10 p.m. – the Assistant Court Administrator sent an email stating the following: “Effective immediately, Henderson Municipal Court’s Pretrial Release Hearing calendars (generally held on Thursday and Saturday afternoons) are vacated.” RA208. Attached to the email was a copy of the Findings of Fact and Conclusions of Law. As a result of the court canceling the pretrial release hearings, there were two defendants who did not receive a timely bail hearing as required by NRS 178.4849 – Hunter Alexis Dooley and Jacob Vernon Hardy.

On February 26, 2024, defendants filed a timely Notice of Appeal,

² Specifically, Armendarez was sentenced on September 5, 2023, Navarro-Reyes was sentenced on January 24, 2024, Watson was sentenced on February 12, 2024, and Delosrios was sentenced on February 13, 2024.

taking the matter to District Court. AA258-AA260. On the same day, Respondents Dooley and Hardy filed an Emergency Writ of Mandamus in District Court. AA216-AA225. On February 27, 2024, Respondents filed a Motion to Stay in Henderson Municipal Court urging the Henderson Municipal Court to stay its ruling, reinstate the canceled bail hearings, and comply with NRS 178.4849. AA226-AA232. On February 28, 2024, Judge Burr heard arguments, granted the stay, and agreed to reinstate the canceled pretrial detention hearings while the case was up on appeal. AA237-AA257. As the stay was granted, Undersigned Counsel withdrew the Emergency Writ of Mandamus in District Court. AA287.

In the appeal, the City moved to dismiss. The Honorable Judge Michelle Leavitt granted the motion and advised that this challenge be brought by Writ of Mandamus.

Respondents filed a Writ of Mandamus/Prohibition in the Eighth Judicial District Court on July 2, 2024. On August 15, 2024, the City filed a Motion to Strike Petitioners Dooley and Hardy from the Petition for Writ of Mandamus/Prohibition. Respondents filed an Opposition on August 27, 2024. The Honorable Judge Joe Hardy denied the City's Motion.

The American Civil Liberties Union of Nevada ("ACLU"), Nevada Attorneys for Criminal Justice ("NACJ"), and the Clark County Public

Defender’s Office (“CCPD”) filed a Motion for Leave to File Brief of Amicus Curiae in Support of Petitioners (Respondents) on August 7, 2024. The City filed an Opposition to the Motion for Leave on August 15, 2024. The ACLU, NACJ, and CCPD filed a Reply on August 22, 2024. The City filed its Answer to the Writ on September 4, 2024. The Court granted the Motion for Leave to File Brief of Amicus Curiae in Support of Petitioners on September 10, 2024. Oral arguments on the Writ were heard on November 21, 2024. Judge Hardy granted the Writ of Mandamus/Prohibition, and an Order was filed January 8, 2025, with his findings. AA557-AA561.

The City filed its Notice of Appeal to the Nevada Supreme Court on January 13, 2025, and filed its Amended Opening Brief on May 23, 2025. This Answer follows.

STATEMENT OF THE FACTS

In the City’s original Motion to Declare NRS 178.4849 Unconstitutional filed in the Henderson Municipal Court, the City separated Respondents into “Marsy’s Law Defendants” and “Separation of Powers Defendants.” This action also includes defendants that were harmed as a result of their pretrial custody hearing being canceled by the Henderson Municipal Court relying on Judge Burr’s Findings of Fact and Conclusions of Law. Each defendant-respondent was arrested by the Henderson Police

Department, booked into the Henderson Detention Center, and had their respective bail hearing scheduled for the same day as their arrest. Each defendant-respondent is discussed in turn.

Marsy's Law Defendants

Nayib Watson ("Watson") and Virgil Cristobal ("Cristobal") were listed as Marsy's Law Defendants.

Nayib Watson - 23CR004795 & 23CR004796

Watson was arrested on Saturday, August 26, 2023. AA374. He was charged with two (2) misdemeanor counts of Battery Domestic Violence. During his pretrial release hearing, the City stated that due to the timing of the arrest, it did not have a phone number for the alleged victim nor was their phone number in the police system. AA379. Nevertheless, the City, acting on behalf of the alleged victim, asked for a no contact order with the alleged victim but did not expressly ask for monetary bail to be set. AA379. Defense did not object to the request for a no contact order. AA379.

In response to the parties arguments, the Henderson Municipal Court set monetary bail for Count 1 in the amount of \$3,000 and granted an own recognizance release for Count 2. AA380. The City's request for a no contact order was granted. AA380. Watson posted bail on August 26, 2023. AA386. Later, Watson pled no contest to one count of Battery Domestic

Violence on February 12, 2024, and was sentenced. AA392. His conviction was stayed pending a dismissal if he completed agreed upon conditions. AA393. Therefore, his case was dismissed on March 4, 2025, because he successfully completed all the court-ordered requirements.

Virgil Cristobal - 23CR004789

On Saturday, August 26, 2023, Cristobal was arrested. AA354. Cristobal was charged with one (1) count of Battery Domestic Violence. In its Motion, the City stated that it attempted to contact the alleged victim but was unable to do so. AA358. During the pretrial custody hearing, the City stated, “we did try to give the victim a call a couple of times and got disconnected on both times.” AA358. The City proceeded to ask the Court to issue a no contact order “out of an abundance of caution.” AA358. The Defense stated that there was “absolutely no opposition to the no contact order” and informed the Court that Cristobal had an available place to stay that does not involve the alleged victim. AA359. It was also brought to the attention of the Court that Cristobal had a low-risk score on the Nevada Pretrial Risk Assessment. AA358.

The Court released Cristobal on his own recognizance and a no contact order was issued. AA359. Almost a year later, Cristobal pled no contest to the charge on June 3, 2024. AA372. His adjudication was stayed,

pending a dropdown to a misdemeanor Battery if he successfully completed his agreed upon conditions. He received an Honorable Discharge, and his charge was amended to a lower offense on June 12, 2025.

Separation of Powers Defendants

Jacob Navarro-Reyes (“Navarro-Reyes”), Bernardo Armendarez (“Armendarez”), and Louis Delosrios Jr. (“Delosrios”) were listed as Separation of Powers Defendants.

Jacob Navarro-Reyes - 23CR004785 & 23CR004787

Navarro-Reyes was arrested on Saturday, August 26, 2023. He was charged with one (1) count of Battery Domestic Violence and one (1) count Resisting a Public Officer. During his pretrial custody hearing, the City asked for a continuance because a Pretrial Risk Assessment (“NPRA”) had not yet been completed. AA323. The City stated that if the Court would like to proceed with the hearing, the City could make representations regarding NAVARRO-REYES’ criminal background. AA323. The Henderson Municipal Court did not find the City’s request to constitute “good cause” for a continuance and proceeded with the hearing. AA323.

Even without the NPRA, the City had access to both Navarro-Reyes’ criminal history and his past failures to appear via his SCOPE report. AA323. The City read excerpts from his SCOPE onto the record. AA323.

The City also highlighted the alleged facts of his case. AA324. Further, the City stated it did contact the alleged victim and she was not requesting a no contact order.³ AA324. Thus the City requested monetary bail. AA324.

Even without the NPRA, the Court set monetary bail on both counts and issued a no contact order with the alleged victim (against her wishes). AA326. Navarro-Reyes posted bail on August 26, 2023. Five months later on January 24, 2024, he pled no contest to Battery Domestic Violence and was sentenced.

Bernardo Armendarez - 23CR004966 & 23CR004970

Armendarez was arrested on Saturday, September 2, 2023. AA396. He was charged with one (1) count of Camping where Prohibited and one (1) count of Possession of Substance which May Not be Introduced into Interstate Commerce. At the bail hearing on September 2, 2023, an NPRA was not completed. The Court, *sua sponte*, continued the matter to the following day so one could be completed.

At the continued hearing the next day, the City asked to continue again as the NPRA had still not been completed. AA401. The Defense opposed the continuance as the hearing was already continued once for the

³ After Defense Counsel made her argument requesting Navarro-Reyes be released on his own recognizance, the City asked for a no contact order with the victim, despite representing earlier that the victim did not want the no contact order. AA325.

same reason. AA401. The Court did not find “good cause” to continue the hearing and elected to move forward. AA402.

The City read Armendarez’s SCOPE entries, which included both Nevada and out-of-state criminal history. AA402-403. Further, the SCOPE included information regarding ARMENDAREZ’s past failures to appear. AA402-403. Despite the lack of the NPRA (which was the basis for the City’s oral motion to continue), the City got exactly what it asked for. The Court set standard bail on both counts and ordered that Armendarez have no further arrests or criminal citations as a condition of release if he posts bail. AA403.

Armendarez pled no contest to ITS on September 5, 2023, and was sentenced to ten (10) days in the Henderson Detention Center. AA410. He had served his sentence prior to the Henderson Municipal Court hearing arguments on the Motion.

Louis Delosrios Jr. - 23CR004988

Delosrios was arrested on Sunday, September 3, 2023. AA415. He was charged with Failure to Comply with Local Park Use Ordinance/Regulations. AA419. DELOSRIOS refused to attend his bail hearing. AA420. The City requested to continue as an NPRA had not been

completed. AA420. The City notes in its Opening Brief⁴ that an NPRA was completed on September 3, 2023, but it was unavailable to the parties.

The Defense opposed the request to continue. AA420. The Court did not find “good cause” to continue the hearing and denied the City’s request ruling that bail must be set. AA421. The City made arguments about his criminal history and his past failures to appear, relying on his SCOPE. AA421-422. The City requested that monetary standard bail be set with an added condition of no arrests or criminal citations if Delosrios was released. AA421.

Without the NPRA, the Court set bail *higher* than the City requested – it set cash only monetary bail with the condition of no arrests or criminal citations if Delosrios was released. AA423.

According to the Docket, Delosrios was later released on his own recognizance on September 5, 2023. He pled no contest to the charge on February 13, 2024 and was sentenced.

Respondents that had No Pretrial Release Hearings on February 22, 2024.

Hunter Dooley - 24CR001322

On February 22, 2024, Hunter Dooley was arrested shortly after 5:30 a.m. A NPRA was completed, and Dooley scored a 4, placing him at a low

⁴ Page 46.

risk to reoffend.

Jacob Hardy - 24CR001326

On February 22, 2024, Hardy was arrested for one (1) count of Trespass, Not Amounting to Burglary and one (1) count of Use/Possess Drug Paraphernalia. He was arrested shortly after 9:30 a.m. An NRPA was completed. Hardy scored an 8 – a moderate risk. That score was overridden to be a high risk; only because Hardy is transient.

Dooley and Hardy were set to appear before Judge Burr for their respective pretrial release hearings at 3:30 pm on Thursday, February 22, 2024. At 3:02 p.m. on February 22, 2024, Counsel received an email with all the documents relevant to the pretrial release hearings for Dooley and Hardy as would be customary. At 3:09 p.m., the Assistant Court Administrator sent an email stating: “Effective immediately, Henderson Municipal Court’s Pretrial Release Hearing calendars (generally held on Thursday and Saturday afternoons) are vacated.” RA208. Attached to the email was the Findings of Fact and Conclusions of Law issued by Judge Burr on February 15, 2024, declaring the statute unconstitutional.

Dooley and Hardy did not have pretrial release hearings within 48 hours of their respective arrests – in direct defiance of NRS 178.4849. Upon information and belief, the court never heard bail arguments as to either of

them. Dooley and Hardy were not seen by a judge until February 26, 2024, at 1:30 p.m. – approximately 4 days after they were arrested. At their Initial Arraignments on February 26, 2024, both pled and were sentenced. Both Dooley and Hardy’s rights to a pretrial release hearing were violated as the Henderson Municipal Court did not abide by the 48-time period as required by NRS 178.4849, relying on Judge Burr’s Findings of Fact and Conclusions and Law. As a result, they were unlawfully detained longer than deemed reasonable and suffered irreparable harm.

SUMMARY OF THE ARGUMENT

The district court’s decision should be affirmed as the court properly held that NRS 178.4849 is constitutionally sound and that the City’s issues with NRS 178.4849 are largely, if not entirely, staffing and management issues versus constitutional issues. AA559. The district court held that the City did not meet its burden to demonstrate that NRS 178.4849 is unconstitutional, it did not have standing or third party standing to challenge the constitutionality of NRS 178.4849, and the Henderson Municipal Court did not have the authority to declare NRS 178.4849 unconstitutional. AA558-559. What is clear is that the City failed to satisfy justiciability requirements.

With respect to the merits, the district court properly held NRS

178.4849 does not violate the Nevada Constitution (Marsy's Law), nor does it violate Separation of Powers. AA558-559. Specifically, NRS 178.4849 does not violate Marsy's Law as Marsy's Law is not self-executing because it requires subsequent legislation to be enforced. AA559. While Marsy's Law requires that an alleged victim's safety be considered at a pretrial detention hearing, the plain language of Marsy's Law does not explicitly state *how* that needs to happen. It does not place a duty on the City (or anyone else) to contact alleged victims in its actual text. It is possible that the alleged victim's safety can be considered through means other than direct contact, such as review of police reports, 911 calls, witness statements, or other information available. Further, if Marsy's Law did require direct contact with alleged victims, NRS 178.4849's 48-hour timeframe does not make that impossible, so the statute would not be unconstitutional on its face.

Further, NRS 178.4849 does not undercut Supreme Court Order ADKT 0539 as the 48-hour timeline does not make it impossible to complete an NPRA prior to an arrestees' pretrial custody hearing. According to the City's own calculations, NPRAs are completed most of the

time⁵.

The “harm” the City alleges appears to be self-created. With additional staff, budgeting, and better processes, the City’s concerns would be addressed. Other courts, specifically the Las Vegas Justice Court and North Las Vegas Justice Court are complying with NRS 178.4849. When NRS 178.4849 was codified, the legislature had a plan in place. Specifically, there was a budget to pay judges and others for additional bail hearings.

Municipal courts and City attorneys have parallel jurisdiction to justice courts and District Attorneys. NRS 266.550. If Henderson Municipal Court and their City Attorney’s Office cannot comply with constitutional pretrial custody hearings as they are too burdensome, then they should leave criminal prosecution to appropriately resourced justice courts, which are fully capable of handling these hearings. The district court correctly noted that the City’s concerns are largely, if not entirely, staffing and management issues. AA559. Just because compliance with a law is burdensome does not mean that the law is unconstitutional. The City has not met its burden that NRS 178.4849 is unconstitutional.

⁵ According to the City’s own calculations, a **NPRA is completed 81% of the time**. (City alleges it did not have Pretrial Risk Assessment 19% of the time from January 1, 2023, to July 1, 2023). AA95.

ARGUMENT

Constitutional challenges are reviewed de novo. Silvar v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional. Sheriff v. Burd, 118 Nev. 853, 857, 59 P.3d 484, 486 (2002). “When making a facial challenge to a statute, the challenger generally bears the burden of demonstrating that there is no set of circumstances under which the statute would be valid.” Schwartz v. Lopez, 132 Nev. 732, 745 (2016) (quoting Deja Vu Showgirls of Las Vegas, LLC v. Nev. Dep't of Taxation, 130 Nev. 719, 727, 334 P.3d 392, 398 (2014)).⁶

I. APPELLANT CANNOT RAISE NEW ARGUMENTS ON APPEAL

A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). The City intertwines several new arguments in the appeal that were

⁶ The City cites Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 513, 217 P.3d 546, 553–54 (2009) for the proposition that “a statute need not be unconstitutional in all applications to, nonetheless, still be unconstitutional.” Ans. Br. at 11. But Flamingo Paradise Gaming is a void-for-vagueness challenge. It did not purport to supply a rule for general constitutional interpretation. 125 Nev. at 512–13, 217 P.3d at 553–54.

not addressed in the lower courts throughout its Opening Brief. This is improper and these arguments should not be considered.

Specifically, the argument that the judiciary, not the legislature, has the duty to interpret the constitution and that the legislature may not fundamentally alter this Court's promptness interpretation is a novel argument that was not presented to the lower courts. In its motions before the lower court, the City argued that the Nevada Legislature distorted the promptness requirement of Valdez-Jimenez when enacting NRS 178.4849, but there has been no argument below that the Legislature unconstitutionally redefined this Court's determination of what constitutes reasonable time.

Further, addressing the merits, this argument makes no sense. This Court, in Valdez-Jimenez, held that a person accused of a crime is entitled to a prompt individualized hearing on his or her custody status after arrest. 136 Nev. 163-64, 460 P.3d at 985-86. This Court noted that usually happens at the defendant's initial appearance or arraignment. Id. Valdez-Jimenez did not define what specific time period is deemed reasonable.

Before NRS 178.4849, Nevada courts followed NRS 171.178, which requires that an arrested person be seen by a magistrate without unnecessary delay. NRS 171.178 provides that if an arrested person is not brought before a magistrate within 72 hours, excluding nonjudicial days, the prosecutor will

have an opportunity to explain the circumstances leading to the delay and the court may release the arrested person if the magistrate determines that the person was not brought before a master straight without unnecessary delay. NRS 171.178 does not state that 72 hours excluding judicial holidays is “reasonable,” but that any amount of time more than 72 hours is unreasonable.

In this novel argument, the City is stating that the legislature does not have the authority to redefine the Court’s determination of what constitutes a reasonable time. Essentially the argument is that the legislature is violating the separation of powers and trying to micromanage the courts. However, in the lower court, the City’s suggested relief was to find NRS 178.4849 unconstitutional and have NRS 171.178 govern. NRS 171.178 was also enacted by the legislature and it also defines what time is reasonable/not reasonable. By virtue of its argument, both statutes would be violating the separation of powers under that premise. Further, while Valdez-Jimenez stated that a prompt hearing usually happens at the defendant's initial appearance or arraignment, the Court did not specifically provide a time that it finds reasonable, so the legislature did not create law contrary to the findings of this Court.

II. JUSTICIABILITY

The City cannot pass justiciability hurdles as it does not have standing or third party standing to challenge NRS 178.4849. Further, even if this Court finds that the City did have some form of standing, the Henderson Municipal Court did not have jurisdiction to decide the constitutionality of NRS 178.4847. As the City cannot overcome the justiciability threshold, this Honorable Court should deny its appeal.

a. The City does not have standing to challenge the constitutionality of NRS 178.4849.

"The question of standing concerns whether the party seeking relief has a sufficient interest in the litigation,' so as to 'ensure the litigant will vigorously and effectively present his or her case against an adverse party.'" Nevada Policy Research Institute, Inc. v. Cannizzaro, 138 Nev. Adv. Op. 28, 507 P.3d 1203, 1207 (2022) (quoting Schwartz v. Lopez, 132 Nev. 732, 742, 382 P.3d 886, 894 (2016)). "[T]o have standing to challenge an unconstitutional act, a plaintiff generally must suffer a personal injury traceable to that act 'and not merely a general interest that is common to all members of the public.'" Id. (quoting Schwartz, 132 Nev. at 743, 382 P.3d at 894).

The City is not the proper party to bring this constitutional challenge as it lacks standing. The City has not personally suffered a concrete and

particularized injury that is traceable to the allegedly unlawful actions of NRS 178.4849, and the City cannot prove that “injury” is redressable by a favorable judicial decision. While the City argues that the prosecutor is the obvious party to challenge the constitutionality of NRS 178.4849, the plain language of Marsy’s Law expressly grants standing to victims only.⁷ The district court properly found that the City did not have standing to bring this challenge as it did not show it suffered a concrete and particularized injury, nor did it prove traceability. AA558.

i. The City did not suffer a concrete and particularized injury.

To challenge a constitutional statute, a plaintiff must generally suffer an injury that is caused by the act and is not just a general interest that is common to all members of the public.” Schwartz v. Lopez, 132 Nev. 732, 742, 382 P.3d 886, 894 (2016).

A litigant must have personally suffered an injury that can be fairly traced to the allegedly unconstitutional statute, and which would be redressed by invalidating the statute. Morency v State Dep’t of Education, 137 Nev. 622, 496 (2021). A plaintiff must have suffered “an invasion of a legally protected interest” that meets two additional criteria: (1) it is “concrete and particularized”; and (2) it is “actual or imminent,” as opposed

⁷ See City’s Opening Brief, page 40.

to “conjectural or hypothetical.” Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).⁸

In this case, the City has failed to articulate a harm. Its position appears to be that meeting its burden of proof at pretrial detention hearings and complying with procedural rules is a harm. This is wrong: courts, by design, implement and enforce procedure between parties. Moreover, the City’s theory is undergirded by a false assumption: that pretrial release of a defendant is a harm to the City. “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” United States v. Salerno, 481 U.S. 739, 756 (1987).

Specifically, the City argues it is being denied the ability to meet its burden of proof under Valdez-Jimenez when it does not have all the information from the alleged victim or information regarding the defendant’s background. If the prosecutor decides pretrial release is not appropriate, pursuant to Valdez-Jimenez, they have the burden of proving by clear and convincing evidence that no less restrictive alternative than bail will satisfy the State’s interests in ensuring the defendant's presence and the community's safety. Valdez-Jimenez, at 166. “Clear and convincing evidence” is one of the lowest standards to meet. According to the United

⁸ Federal cases governing federal standing are not binding on questions of standing under Nevada law, but these cases are helpful persuasive authority.

States Supreme Court in Colorado v. New Mexico, 467 U.S. 310 (1984), "clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue. "The quantum of proof necessary to establish the presumption of guilt for purposes of defeating a bail request is considerably greater than that required to establish the probable cause necessary to hold a person answerable for an offense, but less than what is required at trial to prove guilt beyond a reasonable doubt." Sewall v. Eighth Judicial Dist. Court, 481 P.3d 1249, 1250 (Nev. 2021).

Typically, a pretrial release decision is a matter within the sound discretion of the trial court. Valdez-Jimenez, at 161. Pursuant to the Nevada Constitution, individuals who are accused of committing non-capital, non-first-degree-murder offenses, have a right to bail in a reasonable amount. Id. The amount of bail that is reasonable will depend on the circumstances of the individual. Id. However, because the right of an individual to reasonable bail before trial is a fundamental one, see Salerno, 481 U.S. at 750, 107 S.Ct. 2095 (describing "the individual's strong interest in liberty" as "fundamental"), bail must not be in an amount greater than necessary to serve the State's interests. Id.

The court considers a plethora of factors in considering bail outside of the City's arguments. Valdez-Jimenez provides a guideline for factors the court should consider.

In order to determine whether bail is necessary, the district court should consider first whether, given the individual circumstances of the defendant, including his or her character and ties to the community, his or her criminal history, and the nature of and potential sentence for the alleged offenses, release on personal recognizance or subject to nonmonetary conditions would be sufficient to reasonably ensure the purposes of bail are met. See NRS 178.4853 (setting forth factors for the district court to consider in determining what pretrial release conditions should be imposed). If so, then no bail should be set, as any amount of bail would be excessive. But if, after a consideration of all of the relevant factors, the court finds that no combination of nonmonetary conditions would be sufficient to reasonably ensure the defendant's appearance or the safety of the community, then the court must determine the amount of bail that is necessary. For this determination, the court must take into consideration the defendant's financial resources as well as the other factors relevant to the purposes of bail.⁹

“Bail decisions should be determined, as any other important fact is determined, by sound evidential principles or rules, which means upon competent evidence complying with such rules of evidence as have general judicial sanction. Serrano v. State, 83 Nev. 324, 325, 429 P.2d 831, 831 (1967).

⁹ Valdez-Jimenez, at 164–65, 986.

The City's argument implies that the Henderson Municipal Court is releasing the majority of defendants on their own recognizance because the City Attorney is consistently unable to meet its low burden of proof due to lack of contact with the alleged victim or lack of a NPRA. That is clearly a false premise. In fact, the majority of the time, the Henderson Municipal Court is setting monetary bail on these misdemeanors that the defendants cannot afford to pay, effectively acting as a de facto detention order in contravention to the holding in Valdez-Jimenez. Despite the lack of victim contact that the City alleges, in Henderson Municipal Court, monetary bail seems to be the rule, not the exception.

When making bail determinations, the court is not limited to the NPRA or the alleged victim's preferences. The court considers numerous factors including the bail factors enumerated in NRS 178.4853 in addition to the defendant's financial resources. Prosecutors have access to police reports and other information before making bail requests. The City is vastly at an advantage compared to the Defense at bail hearings as the City has access to discovery and the defendant's SCOPE.¹⁰ A SCOPE contains criminal history and history of failures to appear. Thus, the City is able to make representations regarding the defendant's danger to the community and ties

¹⁰ SCOPEs depict a person's past arrests and convictions.

to the community – the two main factors the court considers in determining a bail setting – by relying on the defendant’s SCOPE. The City often reads defendants’ SCOPE entries directly onto the record. Whether the City has contact with the victim or not, the City is able to request a no contact order with the named victim if it deems necessary based on all the other information (police reports, body worn camera, etc.) before it. The Defense almost never objects to no contact orders with victims, and the Court almost always grants such requests. In sum, the City has not suffered a concrete and particularized injury.

ii. The “injury” is not traceable to NRS 178.4849.

The plaintiff’s injury must be “traceable” to the conduct that is the subject of the lawsuit. Nevada Policy Research Inst., Inc. v. Cannizzaro, 138 Nev. 259, 262, 507 P.3d 1203, 1207 (2022). NRS 178.4849’s 48-hour timeline is not directly causing the alleged injury/harm to the City. Other Nevada courts comply with the statute. The real issue is that the City or Henderson Municipal Court has not hired sufficient staff to effectively prepare for pretrial custody hearings.

That the “injury” is not traceable to the conduct at issue here is evidenced by the fact that declaring NRS 178.4849 unconstitutional would not solve anything. Even if the City has additional time to contact alleged

victims, some will never be reached. Some alleged victims do not want to participate in court proceedings at all. Even if bail hearings were required within 72 hours, excluding weekends and holidays as the City requests, the “injury” the City claims will continue to occur.

In the City’s Opening Brief, the City states that it was able to contact the alleged victims in two cases “within a reasonable timeframe after the hearing” and “by the next hearing” although it is not clear when exactly contact was made.¹¹ An arrestee should not continue being detained without a bail determination based on the off chance that an alleged victim may become available to speak with the City at a later time. This causes significant irreparable harm to the accused. Also, while obvious as we are dealing with municipal court, these arrestees can only be charged with misdemeanors. Someone who is presumed innocent should not lose their liberty without an individualized hearing within a reasonable timeframe.

The City’s suggested solution is that presumed innocent individuals remain in custody longer than the legislature deemed reasonable – through no fault of their own – before an opportunity to address their bail. Prolonged

¹¹ City’s Opening Brief, page 45. The City is referring to the two “Marsy’s Law” Defendants – Watson and Cristobal. Both Watson and Cristobal were given out of custody offers and later honorably discharged. Watson’s case was ultimately dismissed, and Cristobal received an amended charge at the end of his case.

custody determinations can cause grave consequences such as the loss of employment, loved ones, animals, and/or housing. Declaring NRS 178.4849 unconstitutional does not provide redress.

b. The City does not have third party standing to challenge the constitutionality of NRS 178.4849.

The City argues that if it does not have direct standing, it has third party standing to challenge the constitutionality of NRS 178.4849 on behalf of victims by relying on a federal theory of standing. See generally Rotunda & Nowak, 1 Treatise on Constitutional Law § 2.13(f). Thus, the City argues that standing under the state constitution can be established for a third party where the litigant can demonstrate that (1) it has suffered a concrete injury, (2) it has a close relationship with victims, and (3) there is a hindrance to victims' ability to protect their own interests. Georgia v. McCollum, 505 U.S. 42, 55 (1992) (citing Powers v. Ohio 499 U.S. 400,414 (1991)). Undersigned could not locate a case adopting third-party standing under the Nevada Constitution.

Setting aside whether this federal theory applies to this state issue, third party standing is explicitly foreclosed under Marsy's Law, which provides standing only to victims: "A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case." Nev. Const. art. 1, § 8A (2). As discussed above, the City has not shown it has

suffered a concrete injury. The other two prongs required to establish third party standing will be addressed below.

i. Close relationship with the third party.

The City alleges it has a close relationship with victims and therefore is the proper party to bring this claim on their behalf. “The prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim.” ABA Standard 3-1.3. The City represents the interests of the City as a whole. State v. Grooms, No. W2019-01324-CCA-R10-CD, 2020 Tenn. Crim. App. LEXIS 755, at 1 (Crim. App. Nov. 25, 2020) (finding the prosecutor is not an advocate for the victim of a crime or the witnesses for the State but is instead the representative of the sovereign state of Tennessee charged with safeguarding and advocating the rights of the people).

In a California case, People v. Dehle, 166 Cal. App. 4th 1380, 1381, 83 Cal. Rptr. 3d 461, 463 (2008), the court found that the nature of the impartiality required of the public prosecutor follows from the prosecutor's role as representative of the People as a body, rather than as individuals. "The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. Id. That body of "The People" includes the defendant and his family and those who care about him." Id. Thus, the

district attorney is expected to exercise his or her discretionary functions in the interests of the People at large, and not under the influence or control of an interested individual. Id.

There appears to be an inherent conflict as the City represents all people of the City, which includes defendants. The City does not represent victims, and the City's interest is not always the same as a crime victim's—indeed, the disconnect of interests is the very reason a victim bill of rights was necessary. In situations where the victim does not want to proceed with a case, a prosecutor has an independent obligation to determine whether to pursue the case anyway, against the wishes of the victim. Most importantly, Marsy's Law provides express standing to victims to assert their own rights. Nowhere in its language does it provide authority to prosecutors to bring claims on behalf of victims.

ii. Hindrance to the third party's ability to protect its own interests.

Marsy's Law is clear and unambiguous. The plain language of Marsy's Law only explicitly provides standing to victims to assert claims. "A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case." The court shall promptly rule on a victim's request." Nev. Const. § 8A (2). The appropriate party to bring a claim is a victim that has suffered a concrete injury, not the City. Clearly,

pursuant to the plain language of Marsy's Law, the intention of the legislature is that victims have standing to assert their own rights. Third party standing becomes unnecessary as victims can bring claims on behalf of themselves, and they are not prohibited from doing so.

The City has not alleged that a single victim tried to bring a claim and was turned away by the Court. The City could not point to one instance where a victim tried to exercise his/her right and was unable to do so. As victims are not hindered from bringing such claims and Marsy's Law grants them standing to do so, the City does not have a third party standing. Nor has the City shown that after the 48-hour period, any of the victims in any of these cases requested to invoke any rights under Nev. Const. art. 1, §8A.

Accordingly, the district court properly found that the City did not show a close relationship to the third party or a hinderance on the third party to protect its own interests. AA559.

c. The Henderson Municipal Court did not have jurisdiction to declare NRS 178.4849 unconstitutional.

The Nevada Constitution art. 6, § 1 provides:

The Judicial power of this State shall be vested in a court system, comprising a Supreme Court, District Courts, and Justices of the Peace. The Legislature may also establish, as part of the system, Courts for municipal purposes only in incorporated cities and towns.

In addition to the power to establish municipal courts, the Legislature has the authority to define the jurisdiction of municipal courts. Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 1220, 14 P.3d 1275, 1280 (2000). NRS 5.050 defines the limits of the jurisdiction of municipal courts. NRS 5.050 (2) states in relevant part that municipal courts have jurisdiction of all misdemeanors committed in violation of the ordinances of their respective cities. NRS 5.050 does not expressly give municipal courts jurisdiction of misdemeanors committed in violation of state statutes.¹²

In McKay v. City of Las Vegas, 106 Nev. 203, 208, 789 P.2d 584, 587 (1990), this Court held that municipal judges have no power to declare a state statute unconstitutional. Salaiscooper v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 117 Nev. 892, 900, 34 P.3d 509, 515 (2001), narrowed McKay by clarifying that justice courts had “express authority” to consider constitutional issues. 117 Nev. 892, 900–01, 34 P.3d 509, 514–15 (2001)

¹² Counsel is not aware of any other statute or constitutional provision that gives municipal courts jurisdiction over misdemeanors defined under the Nevada Revised Statutes. See NRS 5.050(2) (granting jurisdiction of all misdemeanors “committed in violation of ordinances of their respective cities”); see also Patterson v. Las Vegas Municipal Court, 139 Nev. Adv. Op. 35, 535 P.3d 657, 660 (2023) (delineating between justice court and municipal court jurisdiction, “the more specific statute” governs).

(citing NRS 4.370(3) & NRS 189.210). Notably, none of the examples listed in Salaiscooper involved declaring a state statute unconstitutional. Id.

Each governmental branch also has certain inherent powers, by virtue of its sheer existence and as a coequal branch of government, to carry out its basic functions. Halverson v. Hardcastle, 123 Nev. 245, 261, 163 P.3d 428, 439–40 (2007). This authority is “broader and more fundamental than the inherent power conferred by separation of powers.” Blackjack Bonding, 116 Nev. at 1218, 14 P.3d at 1279. City of Sparks v. Sparks Mun. Ct., 129 Nev. 348, 363, 302 P.3d 1118, 1128 (2013).

In City of Las Vegas v. Eighth Jud. Dist. Ct., 122 Nev. 1041, 1045, 146 P.3d 240, 243 (2006) this Court considered whether a municipal court has jurisdiction to determine the constitutionality of a misdemeanor ordinance in a criminal proceeding. In that case, the issue was whether a city ordinance, Las Vegas Municipal Code (LVMC) 6.35.100(I),¹³ was constitutional. The Court held that the ordinance was a misdemeanor over which city's municipal courts had original jurisdiction, and therefore, while hearing dancers' case on the violation of the ordinance, the municipal court also had jurisdiction to consider the constitutionality of the ordinance. Id. at 1048, 146 P.3d at 245. But the logic of this opinion does not encompass a

¹³ This City Ordinance prohibits certain physical contact between dancers and patrons in erotic dance establishment.

municipal court's authority to determine the constitutionality of the Nevada Revised Statutes.

It appears clear from the plain language of NRS 5.050 (2) that municipal courts have jurisdiction of all misdemeanors committed in violation of the ordinances of their respective cities. Here, the City does not seek to challenge the constitutionality of a Henderson City ordinance, but a state law. If the legislature – who has the power to create municipal courts and define their jurisdiction – intended for municipal courts to have jurisdiction to decide the constitutionality of a state statute, it should have been expressly included in the plain language of NRS 5.050. It was not.¹⁴

Further, even if this Honorable Court determines that municipal courts do have the authority to declare the constitutionality of a misdemeanor state law, the City completely disregards the fact that NRS 178.4849 is not a misdemeanor or an ordinance – it a procedural statute that affects those charged with misdemeanors, gross misdemeanors, and felonies. It governs

¹⁴ Indeed, the Nevada Revised Statutes provide another contextual clue suggesting that Justice Courts may declare a state statute unconstitutional, but that municipal courts may not. Under NRS 4.235, if a provision of the Nevada Constitution or Nevada Revised Statutes is declared unconstitutional by a justice court, the prevailing party must provide a copy of the ruling to the Attorney General. No similar provision applies to municipal courts, suggesting that the Nevada Revised Statutes do not contemplate that municipal courts could declare a provision of the Nevada Constitution or the Nevada Revised statutes unconstitutional.

timing of pretrial custody hearings. There is no legal authority granting municipal courts jurisdiction over procedural rules that affect arrestees all over Nevada. Allowing this would affect those charged with gross misdemeanors and felonies – which the municipal court has no jurisdiction – in addition to individuals outside the city limits. This is clearly outside of the Henderson Municipal Court’s jurisdiction and would be an overreach of power.

Expanding the jurisdiction of municipal courts is improper and leads to a slippery slope. Municipal courts’ decisions are not binding on other courts. If a municipal court declares a state law unconstitutional, but the higher courts continue following the state law, this would allow municipal courts to effectively create their own substantive procedural rules. This creates injustice throughout the state as arrestees would be disadvantaged based on where they live and whether their case is prosecuted in justice court or municipal court. Accordingly, the municipal court acted either in excess of jurisdiction or manifestly abused its discretion by finding NRS 178.4849 facially unconstitutional.

This Honorable Court should deny the City’s request as the City cannot meet justiciability requirements. If the Court finds that the City did have some form of standing and the Henderson Municipal Court did have

the authority to decide the constitutionality of NRS 178.4849, the merits are addressed below.

III. THE MERITS

The gist of the City’s argument is that NRS 178.4849 violates Article 1, § 8A of the Nevada Constitution (“Marsy’s Law”) as the City has difficulty contacting alleged victims within the “rushed” 48-hour timeline. In addition, the City argues that NRS 178.4849 is unconstitutional as it violates Separation of Powers by undercutting Nevada Supreme Court Order ADKT 0539 as NPRAs cannot be prepared in the 48-hour time period prescribed by statute.

It is extremely difficult for a party seeking to invalidate a statute based upon unconstitutionality. “All statutes are presumed constitutional and the party attacking the statute has the burden of establishing that the statute is invalid.” Williams v. State, 118 Nev. 536, 542 (2002). As the City is making a facial challenge to NRS 178.4849, it bears the burden of showing that there is no set of circumstances under which the statute is valid. Schwartz v. Lopez, 132 Nev. 732, 745 (2016) (quoting Deja Vu Showgirls of Las Vegas, LLC v. Nev. Dep’t of Taxation, 130 Nev. 719, 727, 334 P.3d 392, 398 (2014)).

Here, the City has not met this high burden as it failed to show that there is no set of circumstances where NRS 178.4849 is valid. The City has not shown that the law is unconstitutional in every application. Moreover, the district court properly found that NRS 178.4849 is constitutionally sound and that the City did not meet its burden. This Court should affirm the District Court's Order.

a. NRS 178.4849 is constitutionally sound as it does not violate Nevada Constitution art. 1, § 8A, or “Marsy’s Law.”

In relevant parts, Nevada Constitution art. 1, § 8A (1), or “Marsy’s Law” states:

1. Each person who is the victim of a crime is entitled to the following rights:

...

(c) To have the safety of the victim and the victim’s family considered as a factor in fixing the amount of bail and release conditions for the defendant.

...

(f) To reasonably confer with the prosecuting agency, **upon request**, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, **upon request**, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, **upon request**, at any public proceeding, including any delinquency proceeding, in any

court involving release or sentencing, and at any parole proceeding.

Marsy's Law explicitly provides standing to victims. Specifically, Marsy's Law reads, "[a] victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case." Nev. Const. art. 1, § 8A(2). It also goes on to say that defendants do not have standing to assert the rights of his or her victim. Nev. Const. art. 1, § 8A(2). Marsy's Law does not provide prosecutors with standing to assert the rights of victims in its text. Marsy's Law defines "victim" as "any person directly and proximately harmed by the commission of a criminal offense under any law of this State." Nev. Const. art. 1, § 8A(7).

Nothing about NRS 178.4849's 48-hour timeline directly violates any section of Marsy's Law or makes it invalid under every set of circumstances. The City argues that the rushed timeline inhibits it from speaking with alleged victims. Making something more burdensome or difficult is not the standard for finding a law unconstitutional on its face. The standard is that there is no situation in which the law is constitutional. That is not the case here. According to the City's own estimates, alleged victims are being

contacted 49% of the time¹⁵. Even assuming personal contact with an alleged victim is required by Marsy's Law, NRS 178.4849 would still be constitutionally sound on its face, and the analysis should end here.

NRS 178.4849 does not violate Nev. Const. art. 1 § 8A(1)(c) because courts can consider an alleged victim's safety without direct input from the alleged victim. Courts can consider the alleged facts of the case, arguments from the parties with respect to danger to the community and the defendant's ties to the community, any evidence or reports available, witness statements, the defendant's financial situation, and more. Direct contact with the alleged victim is not required by Marsy's Law's language.

NRS 178.4849 does not violate Nev. Const. Art 1 §§ 8A(1)(f), (g), or (h) as these sections require proactive steps by the alleged victim (i.e., making request). Specifically, each provision states "upon request" so each of these rights only activate upon the alleged victim's request.

Additionally, it is important to note that the City can seek a continuance of the pretrial custody hearing if it deems necessary and appropriate. If the City believes that the court improperly denied its request, it should appeal that determination, not seek to undo NRS 178.4849.

¹⁵ See City's Opening Brief, page 18.

b. Self-Executing Jurisprudence

A self-executing law is one where no further action is required to make that law – or constitutional provision – enforceable. Wren v. Dixon, 40 Nev. 702, 187, 161 P. 722, 726 (1916). A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced.” Id. at 195-196¹⁶. A provision or statute is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.” Id.

Beginning in 1916, the Nevada Supreme Court defined self-executing. “In discussing our constitution, we have characterized its prohibitory provisions as self-executing, thus needing no further legislation to put [them] in force.” Wren at 161.

In 1960, the Nevada Supreme Court in Wilson v. Koontz found that Nev. Const. art. 19, § 3 (providing for initiative and referendum) is self-executing. 76 Nev. 33, 39, 348 P.2d 231, 233 (1960). The Court noted “[a] constitutional provision is said to be self-executing if it enacts a sufficient rule by means of which the right given may be enjoyed and protected.” Id. The Court further noted that “the language used, as well as the object to be

¹⁶ See also Wilson v. Koontz, 76 Nev. 33, 39, 348 P.2d 231, 233 (1960)

accomplished, is to be looked into in ascertaining the intention of the provision.” Id. at 234. The Court provided an analysis of whether a provision is self-executing:

The question in every case is whether the language of a constitutional provision is addressed to the courts or the Legislature. Does it indicate that it is intended as a present enactment, complete in itself as definitive legislation, or does it contemplate subsequent legislation to carry it into effect? This is to be determined from a consideration both of the language used and the intrinsic nature of the provision itself. If the nature and extent of the right conferred and of the liability imposed are fixed by the provision itself, so that they can be determined by the examination and construction of its own terms, and there is no language used indicating that the subject is referred to the Legislature for action, then the provision should be construed as self-executing.’

Id.

The Court applied this analysis to Nev. Const. art. 19, § 3 and found that it is self-executing based on the last sentence of the provision expressly saying its self-executing¹⁷ and the fact that it is specific in its requirements. Id. at 233. Specifically, the Court noted that the provision was specific with respect to the requirements necessary to effectuate the change or changes desired. Id. The Court further noted that the section provides the number of signatures required on any petition, who may sign the petition, what the petition shall contain, where and when the petition must be filed, and the

¹⁷ Nev. Const. art. 19, § 3.

detailed disposition of the same after its filing. Id. Additional legislation was not necessary to give the provision force. Id.

In Alper v. Clark County, this Court evaluated the Takings Clause of the Nevada constitution and emphasized that constitutional provisions, as prohibitions on the state and federal government, are self-executing. 93 Nev. 569, 572, 571 P.2d 810, 811 (1977).

This Court reiterated self-execution for prohibition in Mack v. Williams, 138 Nev. Adv. Op. 86, 522 P.3d 434, 441 (2022). There, Sonjia Mack went to High Desert State Prison to visit an inmate. Id. at 439. She was strip-searched. Id. No contraband was found yet corrections officers continued interrogating Ms. Mack and refused to allow her visitation. Id. Shortly after, she received a letter indefinitely suspending her visiting privileges, requiring her to obtain written permission from the warden or the Director of the Nevada Department of Corrections. Id. Mack sued in federal court for violation of her civil rights. Id. She alleged violations of her procedural due process rights as well as infringement of her right against unreasonable search and seizure. Id. On certification from the Federal District Court, this Court held that the prohibition against unreasonable search and seizures was a self-executing provision of the state constitution and so provided a private right of action. Id. at 442. Thus, Mack was

entitled to sue in light of the injury she suffered by the violation of her rights. Id. at 452. Further, this Court noted that when the statute or provision is prohibitory in nature, there should always be implied right of action:

...although the Nevada Constitution does not address enforcement of individual rights, it also does not foreclose an implied right of action for monetary damages based on violations of those rights.

Id. at 447.

i. Marsy’s Law is not expressly self-executing.

Many state constitutional provisions include clear self-executing language in its text. For example, Ohio’s constitution provides “[a]ll provisions of this section shall be self-executing and severable, and shall supersede all conflicting state laws.”¹⁸ Florida’s constitution states “[t]he granting of the rights enumerated in this section to victims may not be construed to deny or impair any other rights possessed by victims. The provisions of this section apply throughout criminal and juvenile justice processes, are self-executing, and do not require implementing legislation.”¹⁹ The language of Nevada Constitution art. 1, § 8A, or “Marsy’s Law” does not explicitly state that it is self-executing.

¹⁸ Oh. Const. art. I, § 10a(e)

¹⁹ Fla. Const. art. I, § 16

When not stated expressly, other state courts have found that Marsy’s Law provisions are not self-executing. In People v. Ryan, the California Court of Appeals found that the provision of Proposition Eight (Marsy’s Law) providing for direct payment of restitution to the victim was not self-executing and requires action by the Legislature. 203 Cal. App. 3d 189, 194, 249 Cal. Rptr. 750, 753 (Cal. App. 1st Dist. 1988). In People v. Gross, the California Court of Appeals found that the constitutional provision for victim restitution was not self-executing because the Legislature has enacted implementing legislation. 238 Cal. App. 4th 1313, 1318, 190 Cal. Rptr. 3d 472, 476 (2015).

In Schilling v. Wisconsin Crime Victims’ Rights Board,²⁰ the Wisconsin Supreme Court held that the requirement in Wis. Const. art. I, s. 9m, to treat crime victims with “fairness, dignity, and respect for their privacy,” was a statement of purpose that described the policies to be promoted by the State and did not provide an enforceable, self-executing right. Instead, the amendment was a policy regarding the treatment of crime victims and a guide for courts to use when interpreting the state’s constitutional and statutory provisions concerning the rights of victims.²¹ Here, not only does Nevada Constitution art. 1, § 8A, or “Marsy’s Law” not

²⁰ 2005 WI 59, 280 Wis. 2d 1, 695 N.W.2d 138

²¹ 2005 WI 17, ¶1, 278 Wis. 2d 216, 220, 692 N.W.2d 623, 624.

explicitly state that it is self-executing, but it does not specify how certain things need to be done, or who needs to do them.

ii. Marsy's Law needs additional legislation to give it force.

Unlike Nev. Const. art. 19, § 3, which was analyzed in Wilson v. Koontz²², Marsy's Law is not self-executing. First, Nev. Const. art. 19, § 3 includes language that the provision is self-executing. There is no such language in Marsy's Law. Further, unlike Nev. Const. art. 19, § 3, Marsy's Law is not explicit in its requirements. Specifically, the Court in Wilson v. Koontz noted that the provision was specific with respect to the requirements necessary to effectuate the change or changes desired and that section provides the number of signatures required on any petition, who may sign the petition, what the petition shall contain, where and when the petition must be filed, and the detailed disposition of the same after its filing. See Supra. That is not the case with Marsy's Law. While Marsy's Law clearly requires that the safety of the alleged victim and the alleged victim's family be considered as a factor in fixing the amount of bail and release conditions for the defendant, it is silent on **how** that needs to happen, making Marsy's Law not self-executing.

²² 76 Nev. 33, 39, 348 P.2d 231, 233 (1960).

First, the express language of Marsy's Law does not impose a duty on the City (or anyone else) to contact alleged victims before a bail hearing. Further, Marsy's Law is silent as to whether alleged victims need to be contacted at all. It does not dictate whether alleged victims need to be contacted, how they need to be contacted, or who needs to contact them. Marsy's Law requires safety consideration but does not provide a framework for how the alleged victim's safety be considered at pretrial custody hearings. It is possible that an alleged victim's safety could be considered through police reports, witness statements, 911 calls, or other information available at the time of the hearing. Therefore, pursuant to the plain language of Marsy's Law, there is no duty imposed on the City to reach out to alleged victims, nor is there a requirement that the City speak to alleged victims before pretrial hearings.

Further, the 48-hour timeline prescribed in NRS 178.4849 does not prevent the alleged victim's safety from being considered at pretrial detention hearings as 1) the City can ask for a no contact order in an abundance of caution if necessary (and they often do); and 2) the alleged victim's safety can be considered through available information and discovery such as police reports, statements to police, 911 calls, voluntary written statements, the defendant's SCOPE, and body worn camera.

iii. The plain language of Marsy’s Law does not require personal pretrial input.

“It is well established that when the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it.” Banegas v. State Indus. Ins. Sys., 117 Nev. 222, 225, 19 P.3d 245, 247 (2001). The plain meaning of a statute is generally “ascertained by examining the context and language of the statute as a whole.” Karcher Firestopping v. Meadow Valley Contractors, Inc., 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009). In giving effect to a statute's plain meaning, statutes "must be construed as a whole." Butler v. State, 120 Nev. 879, 892, 102 P.3d 71, 81 (2004). We also "interpret a statute or regulation by its plain meaning unless the statute or regulation is ambiguous, or the plain meaning would provide an absurd result. Home Warranty Adm'r of Nev., Inc. v. State, Dep t of Bus. & Indus., 137 Nev. 43, 45, 481 P.3d 1242, 1246 (2021) (internal citation and quotation marks omitted).

The City conflates various sections of Marsy’s Law to support its quest to declare NRS 178.4849 unconstitutional. But Marsy’s Law considers the various stages of a criminal proceeding. A criminal case has three phases: 1) the pretrial phase, 2) the trial/plea phase, and 3) the post-conviction phase. Sections (b) and (c) of Marsy’s Law cover the pretrial phase. Sections (f), (g), (h), and (k) touch on both trial/plea phase and post-

conviction phase. Section (n) is limited to the post-conviction phase. When contrasting the pretrial sections with the trial/plea and post-conviction phases, there is an obvious difference. The latter sections reflect that a case has been filed and is being pursued by the prosecuting agency. Sections (b) and (c) reflect that a police report exists, has been reviewed for probable cause but has not yet been charged as a complaint has not been sworn.

In light of the differing procedural postures of cases at various stages, the Legislature has permitted an alleged victim to protect his/her privacy by requiring him/her to request involvement at latter stages. In the early stages – the pretrial phase – factors related to the safety of the victim are not in the hands of the alleged victims but rather, the prosecuting agency. However, Marsy’s Law does not mandate that the prosecuting agency talk with the alleged victim – it just requires that the safety of the victim and victim’s family considered as a factor in fixing the amount of bail and release conditions of the defendant. Marsy’s Law does not dictate how this must be done. The City does not need to speak with the alleged victim to accomplish this. The City has access to police reports, witness statements, 911 calls, and body worn camera. Upon review of all the materials, the City can make arguments that consider the safety of the alleged victim.

IV. SEPARATION OF POWERS

The district court properly found that NRS 178.4849 does not undercut ADKT 0539 or violate the Separation of Powers. AA559. The City argues that NRS 178.4849 violates the Separation of Powers Doctrine contained in Nev. Const. art. 3, §1(1) by undercutting Nev. Sup. Ct. Order ADKT 0539. Specifically, the City argues that Nev. Sup. Ct. Order ADKT 0539 requires all Nevada courts to use an NPRA when determining a defendant's custody status. The City argued that NRS 178.4849's rushed 48-hour timeframe hinders completion of the NPRA prior to every hearing, despite NPRAs being completed the majority of the time.

Nevada's Constitution provides for three coequal branches of government and expressly prohibits each branch of government from exercising powers belonging to another branch of government. Nev. Const. art. 3, § 1. The state Constitution specifically delineates the power belonging to each branch of government in the state; the legislative branch enacts laws, the executive branch is tasked with carrying out and enforcing those laws, and judicial branch has authority to hear and determine justiciable controversies. N. Lake Tahoe Fire v. Washoe Cnty. Comm'rs, 129 Nev. 682, 687, 310 P.3d 583, 587 (2013). Courts must maintain the constitutional supremacy of the doctrine of separation of powers; legislature may not

confer nor impose non-judicial powers upon judges or courts, and courts must not encroach upon prerogatives of other branches of government nor assume nor exercise any powers or functions that must be classified as non-judicial. Const. art. 3, § 1. Galloway v. Truesdell, 83 Nev. 13, 31, 422 P.2d 237, 249 (1967).

Within the inherent ministerial functions of each branch of government, the powers of the branches sometimes appear to overlap; to the extent that any duplication of authority can be traced back to the individual branch's essential functions and basic source of power, the overlapping may be valid, but it is essential to the balance of powers that each branch is careful not to impinge on the authority of the other two branches, even in a small and seemingly harmless manner. City of Sparks v. Sparks Mun. Court, 129 Nev. 348, 363, 302 P.3d 1118, 1129 (2013).

In addition to the constitutionally expressed powers and functions of each Department, i.e., the Legislative, the Executive, and the Judicial Departments, each possesses inherent and incidental powers that are properly termed ministerial and that are methods of implementation to accomplish or put into effect the basic function of each Department. Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 1220, 14 P.3d 1275, 1280 (2000).

“Ministerial functions” are inherent and incidental powers of the legislative, executive and judicial departments and are methods of implementation to accomplish or put into effect basic function of each department. Const. art. 3, § 1. Galloway, at 21. The Legislature may grant administrative or ministerial powers or functions to courts and judges, but these powers or functions must be reasonably incidental to fulfillment of judicial duties. Const. art. 3, § 1; art. 6, § 6. Id. at 24.

a. Nature of Legislative Powers

Under constitutional separation of powers, the legislature has exclusive authority to define crimes and penalties. Floyd v. Department of Corrections, 139 Nev. Adv. Op. 37, 536 P.3d 445, 448 (2023). “Legislative power” is the power of law-making representative bodies to frame and enact laws, and to amend or repeal them; this power is indeed very broad. Del Papa v. Steffen, 112 Nev. 369, 377, 915 P.2d 245, 250 (1996). The Legislature has sole authority to enact and repeal statutes, and its power in such respect is supreme in all matters of government where not prohibited by constitutional limitations, state or federal. State v. Dickerson, 33 Nev. 540, 113 P. 105, 105 (1910).

The legislature does not violate constitutional separation of powers if it makes the application or operation of a statute complete within itself

dependent upon the existence of certain facts or conditions, the ascertainment of which is left to an administrative agency; in other words, if the legislature vests the agency with mere fact-finding authority, the legislature has not delegated its lawmaking authority. Floyd v. Dep't of Corr., 139 Nev. Adv. Op. 37, 536 P.3d 445, 446 (2023).

b. Nature of Judicial Powers

“Judicial power” is authority to hear and determine justiciable controversies, including authority to enforce any valid judgment, decree or order. Const. art. 3, § 1. Del Papa v. Steffen, 112 Nev. 369, 377, 915 P.2d 245, 250 (1996). Inherent judicial powers stem from two sources: the separation of powers doctrine and the power inherent in a court by virtue of its sheer existence. Blackjack Bonding, 116 Nev. at 1218, 14 P.3d at 1279. Without inherent powers to perform its duties, the judiciary would become a subordinate branch of government, which is contrary to the central tenet of separation of powers. Id. The power inherent in a court by virtue of its sheer existence is broader and more fundamental than the inherent power conferred by separation of powers. Id.

The judiciary, as a coequal branch of government, has the inherent power to protect itself and to administer its affairs. Const. art. 3, § 1. City of North Las Vegas ex rel. Arndt v. Daines, 1976, 550 P.2d 399, 92 Nev.

292. It was the intent of the Constitution to give only judicial power to the courts. Const. art. 3, § 1; art. 6, § 6. Galloway, 83 Nev. at 27, 422 P.2d at 247. A district court has authority to declare an act of the Legislature unconstitutional. Pac. Live Stock Co. v. Ellison Ranching Co., 46 Nev. 351, 213 P. 700, 701 (1923).

The requirement enacted by the legislature that pretrial release hearings be held within 48 hours after a person is taken into custody to determine custody status does not undercut Nev. Sup. Ct. Order ADKT 0539. The Nevada Supreme Court, in Nev. Sup. Ct. Order ADKT 0539, determined that statewide implementation of the NPRA is warranted as it will assist judges in assessing whether a defendant is likely to show up for court and whether the defendant will be a danger to the community if released. Further, the Supreme Court found that implementation of Pretrial Risk Assessments will promote uniformity in how pretrial release decisions are made across the state, and it will ensure that pretrial release decisions are based on the risk posed by the defendant and not by whether the defendant can afford to pay bail.²³

NPRAs are one of the many factors a court considers in setting bail. The purpose of Nev. Sup. Ct. Order ADKT 0539 is to assist the court in

²³ Nev. Sup. Ct. Order ADKT 0539.

making bail determinations by providing them with data. The intention is not that the court rely solely on the NPRA when considering bail, but rather that the Assessment aids the court in making bail determinations. The 48-hour bail hearing requirement in NRS 178.4849 does not directly interfere with Nev. Sup. Ct. Order ADKT 0539 as nothing in its language makes it impossible to complete an NPRA within the 48-hour timeline. In fact, according to the City's own calculations in its Motion, the City has had a Pretrial Risk Assessment provided to them **81% of the time**. AA95. So despite the nearly impossible time constraint the City argues that NRS 178.4849 creates, NPRAs are completed prior to custody hearings the majority of the time. Further, while the City makes it apparent that compliance with NRS 178.4849 is financially burdensome, the obvious solution is that the City or court employee additional personnel to ensure that NPRA's are completed before bail hearings. Just because it is burdensome, does not make it unconstitutional.

V. NRS 178.4849 OFFERS A BUILT IN REMEDY

NRS 178.4849 includes a built-in remedy. It allows the court to continue a pretrial release hearing if good cause is shown. If the City desires to speak to an alleged victim before the detention hearing or is unable to complete an NPRA before a detention hearing, the City can ask for a

continuance based on good cause. This was carefully considered by the legislature when enacting NRS 178.4849. Specifically, on March 24, 2023, in the Senate Committee on Judiciary, the following was said:

SENATOR ROCHELLE NGUYEN:

I appreciate you including the amendments even if they were not friendly. I have a question about the section in the NDAA amendment that attempts to include good cause when there is insufficient time to contact the victim of crime pursuant to Marsy's Law. Is that already included in the ability to ask for that continuance?

SENATOR MELANIE SCHEIBLE:

Yes, that is included. It is the purpose of having a judge be able to rule on good cause because every case is different. Depending on the timing of the arrest, the timing of the pretrial release hearing and the relationship with the victim, it could be good cause for the district attorney to move for continuance based on not having had the ability to discuss the case with the victim.

Clearly, the legislature took into consideration that every case is different and that there should be a mechanism to continue the pretrial release hearings if there is good cause. NRS 178.4849 has a built-in exception that allows the City to ask for and the municipal court to grant a continuance on a case-by-case basis when good cause is shown.

VI. THE CITY'S CONCERNS CAN BE ADDRESSED WITH MORE BUDGETING AND MORE EFFICIENT SYSTEMS.

The real issue here is simple – the Henderson City Attorney's Office and the Henderson Municipal Court do not want to comply with NRS

178.4849 because it is expensive and burdensome. When NRS 178.4849 went into effect, the court had to make adjustments. It had to create additional calendars to comply with the statute. This comes with a financial cost as attorneys, judges, and staff must be compensated to handle the additional hearings. According to the City's Opening Brief, additional staff and security had to be employed to comply with the 48-hour timeline²⁴. Inconvenience has never been the basis to declare a law unconstitutional. Municipal courts and city attorneys are created by the Legislature. If they cannot comply with the law because it is too burdensome, then they should stop handling criminal matters and allow justice courts and district attorneys (who are better equipped) to handle these proceedings. The municipal courts, just like all other courts, need to follow the law. NRS 178.4849 is constitutionally sound.

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²⁴ It is unclear why additional security had to be hired as the City states that the court is closed to the public on weekends. Also, the hearings happen via video, so no one is required to go to the courthouse in person, reducing cost.

CONCLUSION

Based on the aforementioned, Respondents respectfully request that this Honorable Court deny the City's request and affirm the District Court's Order holding that NRS 178.4849 is constitutional.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this 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 brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 size font.

2. I further certify that this 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:

Proportionately spaced, has a typeface of 14 points or more and contains 14,000 words or less; or does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate 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 21st of October, 2025.

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