

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON,

Appellant,

v.

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

Respondents.

On Appeal from the Eighth Judicial District Court
for the State of Nevada
Case No. A-24-896651-W

**BRIEF OF *AMICI CURIAE* DOUGLAS, WASHOE, CLARK, LYON,
CARSON CITY, NYE, ELKO, PERSHING, WHITE PINE, MINERAL,
LANDER, HUMBOLDT, AND STOREY COUNTY DISTRICT
ATTORNEY'S OFFICES, IN SUPPORT OF APPELLANT AND REVERSAL**

MARK B. JACKSON
Douglas County District Attorney
Nevada Bar No. 4294
MATTHEW S. JOHNSON
Deputy District Attorney
Nevada Bar No. 12412
Douglas County District Attorney's Office
P.O. Box 218
Minden, Nevada 89423
(775) 782-9800 (phone)
mjohnson@douglas.nv.gov
Amicus Curiae for Appellant

TABLE OF CONTENTS

	Page No.
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii-iv
STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	2
I. THIS COURT SHOULD NOT ALLOW THE LEGISLATURE'S 48-HOUR RULE TO IMPEDE THE JUDICIARY'S ADMINISTRATION OF JUSTICE IN NEVADA AND INFRINGE ON THE CONSTITUTIONAL PROTECTIONS GUARANTEED TO DEFENDANTS AND VICTIMS.....	3
II. THE HENDERSON MUNICIPAL COURT HAD THE POWER TO CONFER STANDING ON THE CITY OF HENDERSON UNDER THE PUBLIC IMPORTANCE EXCEPTION TO THE STANDING REQUIREMENT.....	5
III. THIS COURT SHOULD NOT PERMIT THE NEVADA LEGISLATURE TO LIMIT THE COURT'S INHERENT AUTHORITY TO REGULATE CRIMINAL PROCEDURES IN VIOLATION OF THE DOCTRINE OF SEPARATION OF POWERS UNDER ARTICLE III, § 1 OF THE NEVADA CONSTITUTION.....	7
CERTIFICATE OF COMPLIANCE.....	2

TABLE OF AUTHORITIES

Page No.

CASES

<i>Aparicio v. State</i> , 137 Nev. 616, 621, 496 P.3d 592, 597 (2021).....	12
<i>City of Boerne v. Flores</i> , 521 U.S. 507, 519-20 (1997).....	8
<i>Cooper v. State</i> , 134 Nev. 399, 404, 422 P.3d 722, 727-28 (2018).....	7
<i>Davis v. Ewalefo</i> , 131 Nev. 445, 452, 352 P.3d 1139, 1143 (2015)	12
<i>Goldberg v. Eighth Jud. Dist. Ct.</i> , 93 Nev. 614, 615, 572 P.2d 521, 522 (1977)..	8, 9
<i>Lindauer v. Allen</i> , 85 Nev. 430, 434, 456 P.2d 851, 854 (1969).....	6, 8, 9, 11
<i>Luther v. Borden</i> , 48 U.S. 1, 53 (1849)	4, 13
<i>Mack v. Williams</i> , 138 Nev. 854, 864, 522 P.3d 434, 446 (2022).....	6, 8, 13, 14
<i>Marbury v. Madison</i> , 5 U.S. 137, 177 (1803).....	4
<i>Matter of D.C.</i> , 140 Nev. Adv. Op. 25, 546 P.3d 810, 815 (2024)	12
<i>Nevada Pol’y Rsch. Inst., Inc. v. Cannizzaro</i> , 138 Nev. 259, 263, 507 P.3d 1203, 1208 (2022).....	5, 7
<i>Schwartz v. Lopez</i> , 132 Nev. 732, 743, 382 P.3d 886, 894–95 (2016).....	6
<i>State ex rel. Hance v. Arizona Bd. of Pardons & Paroles</i> , 178 Ariz. 591, 597, 875 P.2d 824, 830 (Ct. App. 1993).....	15
<i>State ex rel. Watson v. Merialdo</i> , 70 Nev. 322, 326, 268 P.2d 922, 924 (1954).....	9
<i>State v. Second Jud. Dist. Ct.</i> , 116 Nev. 953, 961, 11 P.3d 1209, 1214 (2000)....	8, 9
<i>Thomas v. Nevada Yellow Cab Corp.</i> , 130 Nev. 484, 489, 327 P.3d 518, 522 (2014).....	8, 16
<i>United States v. Klein</i> , 80 U.S. 128 (1871).....	4
<i>Valdez-Jimenez v. Eighth Jud. Dist. Ct.</i> , 136 Nev. 155, 162, 460 P.3d 976, 984 (2020).....	1, 3, 6, 10, 13
<i>Volpert v. Papagna</i> , 85 Nev. 437, 439, 456 P.2d 848, 849 (1969)	9
<i>Waite v. Burgess</i> , 69 Nev. 230, 233, 245 P.2d 994, 996 (1952).....	9
<i>Wren v. Dixon</i> , 40 Nev. 170, 187, 161 P. 722, 726 (1916).....	12

STATUTES

NRS 178.4849..... 2, 6, 7, 8, 10, 11, 12, 14, 15, 16
NRS 178.4853.....3
NRS 178.5698.....1
NRS 2.120.....7, 8
NRS 252.020.....1
NRS 252.080.....1
NRS 282.020.....1

RULES

NRAP 28(e)(1).....17
NRAP 29(a).....1
NRAP 29(c)(5).....1
NRAP 3.8.....1
NRAP 32(a)(4)-(7), (9).....17

NEVADA CONSTITUTION

Nev. Const. art. 1, § 81
Nev. Const. art. 1, § 8A1
Nev. Const. art. 1, § 8A(1)(a) 13, 15
Nev. Const. art. 1, § 8A(1)(b)..... 14, 15
Nev. Const. art. 1, § 8A(1)(c) 14, 15
Nev. Const. art. 1, § 8A(1)(f)..... 14, 15
Nev. Const. art. 1, § 8A(1)(g)..... 14, 15
Nev. Const. art. 1, § 8A(1)(h)..... 14, 15
Nev. Const. art. 3, § 1 2, 6, 8, 12

OTHER AUTHORITIES

ABA Standards for Criminal Justice § 3-1.2 (4th ed. 2017)1
Administrative Docket Order (ADKT) 0539..... 1, 6, 9, 10, 11, 12
Assembly Bill 325.....10
Federalist No. 78..... 4, 13

Final Report, Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases, (Jan. 2021)	10, 11
Minutes of the Assembly Committee on Judiciary at 13, 80th Leg. (Nev. May 16, 2019).....	10
Minutes of the Assembly Committee on Judiciary at 7-8, 80th Leg. (Nev. March 21, 2019)	10
Pound, <i>Procedure Under Rules of Court in New Jersey</i> , 66 HARV. L. REV. 28, 44-45 (1952)	4
Wigmore, <i>All Legislative Rules for Judiciary Procedure are Void Constitutionally</i> , 23 ILL. L. REV. 276 (1928).....	4

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY

The Douglas,¹ Washoe, Clark, Lyon, Carson City, Nye, Elko, Pershing, White Pine, Mineral, Lander, Storey, and Humboldt County District Attorney's Offices are each agencies of their respective counties, a political subdivision of the State of Nevada, headed by a District Attorney who is a duly elected officer for the county entrusted with all public prosecutions for the county. *See* NRS 252.020; NRS 252.080. As an agency and officer of a political subdivision of the State of Nevada, Amici may file this brief without a motion for leave. NRAP 29(a). No party or party's counsel authored this brief or funded the preparation of it. NRAP 29(c)(5).

Under the Nevada Constitution, courts must balance a defendant's right to release before trial with whether bail is necessary "to protect the safety of the victim and the community," or "ensure the appearance of the accused at all stages of the proceedings." *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 162, 460 P.3d 976, 984 (2020); *see also* Administrative Docket Order (ADKT) 0539. The Douglas County District Attorney's Office is responsible for participating in all bail hearings in the county and bears the burden of presenting clear and convincing evidence to the court satisfying the requirements in *Valdez-Jimenez* about whether and what amount of bail is appropriate for criminal defendants arrested in Douglas County within the arbitrary 48-hour time constraint imposed by the Nevada Legislature on the East Fork Township and Tahoe Township Justice Courts in Douglas County.

District Attorneys are responsible for protecting and defending the Nevada Constitution, including the constitutional and statutory rights of defendants and victims alike. *See* Nev. Const. art. 1, §§ 8, 8A; NRS 282.020; NRS 178.5698; NRAP

¹ Douglas County is the seventh largest county in Nevada, by population, with an estimated population just under 50,000, which includes part of the Lake Tahoe Basin, a region which sees more than 2 million unique visitors per year, many of whom visit the county as tourists.

3.8; ABA Standards for Criminal Justice § 3-1.2 (4th ed. 2017). District Attorneys play a crucial role in protecting their communities by pursuing justice through fair and ethical criminal prosecutions, advocating for victims, and working with law enforcement and other community partners to promote public safety.

SUMMARY OF THE ARGUMENT

This Court should issue an opinion declaring that the Nevada Legislature cannot infringe on this Court’s exclusive authority to be the final arbiter of what the Nevada Constitution requires. The Legislature usurped that power by limiting this Court’s inherent authority to regulate criminal procedures in violation of the doctrine of separation of powers under Article III, § 1 of the Nevada Constitution. In an advisory mandamus opinion containing no case law and no legal analysis, the state district court for the most populous county in Nevada sanctioned the Legislature’s infringement on this Court’s inherent authority to promulgate court rules and declared that victims’ rights under Article I, § 8A of the Nevada Constitution are unenforceable in Clark County. Such an order should not stand.

ARGUMENT

The time constraint imposed by the Nevada Legislature in enacting the 48-hour rule in NRS 178.4849, unconstitutionally interferes with a judicial function of the municipal and justice courts in the State of Nevada in conducting pretrial bail hearings and prejudices the court, prosecution, defense attorneys, criminal defendants, and victims alike when judges make important bail decisions to protect the rights of the defendant while ensuring the safety of the victim and the community and ensuring that the defendant will return to court.

///

///

I. This Court Should Not Allow the Legislature's 48-hour Rule to Impede the Judiciary's Administration of Justice in Nevada and Infringe on the Constitutional Protections Guaranteed to Defendants and Victims.

In practice, the Legislature's 48-hour rule means prosecutors, defense attorneys, and victims only have a few hours, at most, to prepare for and make arrangements to attend a bail hearing. This is true in Douglas County, even where the East Fork Township Justice Court conducts bail hearings 6 days-a-week, Monday through Saturday. For example, the East Fork Township Justice Court conducts bail hearings for defendants who are in custody on Friday at 9:30 a.m., on Saturday at 10:00 a.m., and on Monday at 10:00 a.m. The deputy district attorney, defense attorney, and court staff working that weekend are normally not notified by the jail about a Friday night/Saturday morning arrest and provided with a pretrial risk assessment until sometime after 7:00 a.m. on Saturday morning. They are not normally notified by the jail about a Sunday night/Monday morning arrest and provided with a pretrial risk assessment until sometime after 7:00 a.m. on Monday morning.

Because of the Nevada Legislature's 48-hour rule, the defense attorney has less than three hours to meet with his or her client, review the probable cause declaration about the alleged offense, investigate what factors under NRS 178.4853 and *Valdez-Jimenez* favor the client, determine whether a pretrial risk assessment, if completed, is accurate, and prepare for the 10:00 a.m. bail hearing. If eight defendants are arrested the previous night, the defense attorney must do this for each client during that same time period. If the defendant is still under the influence of drugs or alcohol, the defense attorney must attempt to obtain this information from an intoxicated client.

Because of the Nevada Legislature's 48-hour rule, the assigned prosecutor working that weekend also has less than three hours to obtain and review a criminal history for the defendant, attempt to contact, confer with, and notify any victims

about the upcoming bail hearing, review the probable cause declaration about the alleged offense, gather clear and convincing evidence satisfying the requirements in *Valdez-Jimenez* about whether and what amount of bail is appropriate, determine whether a pretrial risk assessment, if completed, is thorough and accurate, and prepare for the 10:00 a.m. bail hearing that morning. If eight defendants are arrested, the prosecutor must do this for each defendant during that same time period.

Defense attorneys and prosecutors face similar challenges in justice courts and municipal courts across the state. In practice, this means victims rarely have an opportunity to exercise their constitutional rights at Nevada bail hearings and justice court and municipal judges throughout the state are provided with limited information from which to make a bail determination that has serious consequences for defendants, victims, and the community at large. The judiciary, not the legislature, is in the best position to balance all of these interests and ensure that the requirements of the Nevada Constitution and its own orders are complied with. *See generally*, Pound, *Procedure Under Rules of Court in New Jersey*, 66 HARV. L. REV. 28, 44-45 (1952) (explaining the problems with legislative attempts to manage judicial procedure); Wigmore, *All Legislative Rules for Judiciary Procedure are Void Constitutionally*, 23 ILL. L. REV. 276 (1928) (discussing the legal and policy reasons why the judiciary, not the legislature, should determine rules of procedure). This Court should not allow the Legislature to usurp its authority in violation of the separation of powers and place arbitrary time constraints on justice and municipal courts throughout the state.

“It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803). “[T]he courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the *latter* within the limits assigned to their authority.”

Luther v. Borden, 48 U.S. 1, 53 (1849) (emphasis in original) (quoting Federalist, No. 78, Madison writing). By imposing the 48-hour rule on the courts, the Nevada Legislature “passed the limit which separates the legislative from the judicial power.” *United States v. Klein*, 80 U.S. 128 (1871).

The municipal court judge for the City of Henderson recognized this unconstitutional infringement by the legislature on its judicial function and appropriately identified the valid constitutional issues raised by the City of Henderson in its motion. But in an order containing no citations to case law and no legal analysis, the Eighth Judicial District Court sanctioned Respondents’ argument that the legislature, not the judicial branch, should decide what a reasonable amount of time is for a pretrial bail hearing and be permitted to place arbitrary time constraints on the municipal court. This Court should reverse that decision and issue an opinion making it clear that it will not relinquish its constitutional powers to the legislative branch and allow the Legislature to infringe on the constitutional protections guaranteed to defendants and victims in Nevada.

II. The Henderson Municipal Court Had the Power to Confer Standing on the City of Henderson Under the Public Importance Exception to the Standing Requirement.

Even if this Court denies the City of Henderson direct or third-party standing, *see* Opening Brief at 40-52, the Henderson Municipal Court had the power to confer standing on the City of Henderson under the public importance exception to the standing requirement. The Nevada Supreme Court has recognized the public importance exception to the standing requirement. *Nevada Pol’y Rsch. Inst., Inc. v. Cannizzaro*, 138 Nev. 259, 263, 507 P.3d 1203, 1208 (2022). A person seeking “to enforce a public official’s compliance with a public duty pursuant to the separation-of-powers clause” has standing where “an appropriate party seeks enforcement of that right, the issue is likely to recur, and it requires judicial resolution for future guidance.” *Nevada Pol’y Rsch. Inst., Inc.*, 138 Nev. at 263-64, 507 P.3d at 1208. In

limited circumstances, Nevada courts may exercise their discretion in cases involving separation-of-powers questions, especially where the conduct at issue affects “the liberties of its people.” *Id.* The municipal court concluded in its order that the issue raised by the City of Henderson raised important constitutional issues involving the separation of powers and other constitutional liberties that, if not addressed, “would continue to evade review.” Appellant’s Appendix (AA) 390-400.

“Article 3, section 1 of the Nevada Constitution provides for the division of the powers of government and prohibits persons charged with the exercise of powers properly belonging to one of the three separate departments from exercising any function appertaining to either of the others.” *Lindauer v. Allen*, 85 Nev. 430, 434, 456 P.2d 851, 854 (1969). “Any legislation undertaking to require judicial action within fixed periods of time is an unconstitutional interference by the legislature with a judicial function.” *Id.* It is a matter of great public importance whether the time constraint imposed by the Nevada Legislature in enacting the 48-hour rule in NRS 178.4849, unconstitutionally interferes with a judicial function of the municipal and justice courts in the state of Nevada in conducting pretrial bail hearings. A municipal court judge is a public official who has a duty to “vindicate the rights guaranteed by our Constitution.” *Mack v. Williams*, 138 Nev. 854, 864, 522 P.3d 434, 446 (2022).

The Henderson Municipal Court could rightly conclude that conflicts between judges exercising their judicial function in performing pretrial bail hearings in compliance with ADKT 0539 and *Valdez-Jimenez*, and the legislative branch’s 48-hour rule, were likely to reoccur in the City of Henderson Municipal Court and required guidance for resolution of the hearings in the future.

An appropriate party “mean[s] that there is no one else in a better position who will likely bring an action and that the plaintiff is capable of fully advocating his or her position in court.” *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886,

894–95 (2016). “Appropriateness has three main facets: the plaintiff must not be a sham plaintiff with no true adversity of interest; he or she must be capable of competently advocating his or her position; and he or she may still be denied standing if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit, which ensures that the plaintiff will serve as a true and strong adversary.” *Nevada Pol’y Rsch. Inst., Inc.*, 138 Nev. at 265-66, 507 P.3d at 1210 (internal citations and quotations omitted).

The City of Henderson was not a “sham plaintiff” as it has a direct interest in the administration and outcome of pretrial bail hearings as a party to the proceedings. *Id.* The issue was unlikely to be raised by any other interested party because the conflict arose between the legislative branch and the judicial branch and no member of the legislative branch was likely to question the scope of its own authority and the judicial branch was unlikely to raise the issue *sua sponte* while presiding over an individual pretrial bail hearing. And without notice or the ability to fully or competently advocate his or her position within the few hours that typically elapse between an arrest and a bail hearing, a victim is unlikely to raise this issue or serve as a strong adversary. The traditional role of protecting the rights of victims lies with the prosecutor. The municipal court’s recognition that the City of Henderson had standing to challenge NRS 178.4849 was appropriate under the public importance exception to the standing requirement.

III. This Court Should Not Permit the Nevada Legislature to Limit the Court’s Inherent Authority to Regulate Criminal Procedures in Violation of the Doctrine of Separation of Powers Under Article III, § 1 of the Nevada Constitution.

The 48-hour rule created by the Nevada Legislature unconstitutionally infringes on this Court’s inherent authority to regulate pretrial bail hearings in Nevada, especially where those hearings involve important constitutional rights. This Court possesses “inherent supervisory power to adopt . . . rule[s],” “to ensure

basic fairness and to further the administration of justice.” *Cooper v. State*, 134 Nev. 399, 404, 422 P.3d 722, 727-28 (2018). The Nevada Legislature has also granted broad statutory power to the Court. *See* NRS 2.120. “The Supreme Court may make rules not inconsistent with the Constitution and laws of the State for its own government, the government of the district courts, and the government of the State Bar of Nevada.” NRS 2.120(1). “[T]o the extent that NRS 2.120 countenances and codifies [the] court’s independent power to regulate judicial procedures, it is valid.” *State v. Second Jud. Dist. Ct.*, 116 Nev. 953, 961, 11 P.3d 1209, 1214 (2000). “To the extent that it seeks to curtail that power, it fails.” *Id.* “NRS 2.120 cannot limit this court’s inherent authority to regulate criminal procedures.” *Second Jud. Dist. Ct.*, 116 Nev. at 961, 11 P.3d at 1214. To the extent NRS 178.4849 seeks to limit this Court’s inherent authority regulate pretrial bail hearings, it also fails. *Id.*

Legislative attempts to infringe on the inherent power of the judiciary to promulgate court rules and administrative orders can violate the doctrine of separation of powers under the Nevada Constitution. *See* Nev. Const. art. 3, § 1; *Goldberg v. Eighth Jud. Dist. Ct.*, 93 Nev. 614, 615, 572 P.2d 521, 522 (1977). “Article 3, section 1 of the Nevada Constitution provides for the division of the powers of government and prohibits persons charged with the exercise of powers properly belonging to one of the three separate departments from exercising any function appertaining to either of the others.” *Lindauer*, 85 Nev. at 434, 456 P.2d at 854.

“The Nevada Constitution . . . leaves interpretation and enforcement of [its provisions] to the judiciary.” *Mack*, 138 Nev. at 862, 522 P.3d at 444. It is not the function of the legislature to determine the nature and scope of constitutional rights. *City of Boerne v. Flores*, 521 U.S. 507, 519-20 (1997). “If the Legislature could change the Constitution by ordinary enactment, ‘no longer would the Constitution be superior paramount law, unchangeable by ordinary means.’” *Thomas v. Nevada*

Yellow Cab Corp., 130 Nev. 484, 489, 327 P.3d 518, 522 (2014) (quoting *City of Boerne*, 521 U.S. at 529). “It would be ‘on a level with ordinary legislative acts, and, like other acts, . . . alterable when the legislature shall please to alter it.’” *Id.*

“[I]t is clear that the judiciary, as a coequal branch of government, has inherent powers to administer its affairs, which include rule-making and other incidental powers reasonable and necessary to carry out the duties required for the administration of justice.” *Goldberg*, 93 Nev. at 615-16, 572 P.2d at 522 (internal citations and quotations omitted). “Any infringement by the legislature upon such power is in degradation of our tripartite system of government and strictly prohibited.” *Id.* “[T]o the extent that any legislative regulation in [the area of criminal procedure] contradicts the judiciary’s exercise of its inherent power, the latter prevails.” *Second Jud. Dist. Ct.*, 116 Nev. at 960–61, 11 P.3d at 1213.

“Any legislation undertaking to require judicial action within fixed periods of time is an unconstitutional interference by the legislature with a judicial function.” *Lindauer v. Allen*, 85 Nev. 430, 434, 456 P.2d 851, 854 (1969); *Volpert v. Papagna*, 85 Nev. 437, 439, 456 P.2d 848, 849 (1969); *State ex rel. Watson v. Merialdo*, 70 Nev. 322, 326, 268 P.2d 922, 924 (1954); *Waite v. Burgess*, 69 Nev. 230, 233, 245 P.2d 994, 996 (1952).

This Court exercised its inherent supervisory power in promulgating ADKT 0539 on March 21, 2019, requiring all courts conducting pretrial bail hearings to implement “[t]he Nevada Pretrial Risk Assessment (NPRA) contained in Exhibit A and B” by September 21, 2020. ADKT 0539. ADKT 0539 created “a statewide requirement that all judges utilize a validated risk assessment tool in pretrial decision-making,” which would “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, . . . promote uniformity in how pretrial release decisions are

///

made across the state, and . . . ensure that pretrial release decisions are based on the risk posed by the defendant and whether the defendant can afford bail.” ADKT 0539.

Just before the deadline for implementation of ADKT 0539, this Court issued an opinion on the required procedures for the pretrial bail hearings addressed in ADKT 0539 under the Nevada Constitution. *See Valdez-Jimenez*, 136 Nev. at 163, 460 P.3d at 985. Nothing in this Court’s opinion changed the requirement in ADKT 0539 that Nevada courts consider the NPRA in making a bail determination during a pretrial bail hearing. *Id.* The opinion only requires Courts to make their determination “prompt[ly]” and within a reasonable amount of time after arrest for defendants who remain in custody. *Valdez-Jimenez*, 136 Nev. at 163, 460 P.3d at 985. When read together, these two decisions clearly indicate that a reasonable amount of time under *Valdez-Jimenez* includes the amount of time needed to conduct a NPRA for a defendant following arrest and to consider the rights of defendants and victims under the Nevada Constitution.

More than a year after *Valdez-Jimenez*, and more than two years after ADKT 0539, the Nevada Legislature enacted legislation requiring judicial action within a fixed 48-hour period of time by enacting NRS 178.4849.² This legislation “is an

² The 48-hour rule adopted by the Legislature grew out of Assembly Bill 325, authored by Las Vegas defense attorney Robert Langford and presented to the 2019 Legislative Session. *See Minutes of the Assembly Committee on Judiciary at 7-8, 80th Leg. (Nev. March 21, 2019).* The language was added to a parallel bill, based on a working group for Assembly Bill 325 during the same session. *Minutes of the Assembly Committee on Judiciary at 13, 80th Leg. (Nev. May 16, 2019).* Neither bill passed into law during the 2019 Legislative Session.

Both bills, each containing the 48-hour rule authored by attorney Langford, were presented to a separate committee in the lead up to the 2021 Legislative Session. *See Final Report, Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases, (Jan. 2021).* Attorney Langford and the Washoe County Public Defender’s Office testified before the

unconstitutional interference by the legislature with a judicial function.” *Lindauer*, 85 Nev. at 434, 456 P.2d at 854. It requires judicial action within a fixed 48 hour period of time. *Id.* This legislation creates a direct conflict between the 48-hour rule in NRS 178.4849 and ADKT 0539 where a NPRA cannot be completed before the scheduled bail hearing mandated by the Legislature or where bail hearings go forward before a victim is provided a reasonable opportunity for notice or the reasonable opportunity to assert their rights at the bail hearing as required by the Nevada Constitution. Where *Valdez-Jimenez* created no such conflict, the fixed period of time enacted by the Nevada Legislature unconstitutionally interferes with the ability of Nevada judges to comply with Section 8A of the Nevada Constitution, and with ADKT 0539 and its stated purpose, where a NPRA cannot be completed before the bail hearing.

The City of Henderson was forced to conduct a pretrial bail hearing without the NPRA, over its objection, in cases involving Respondents Jacob Navarro-Reyes, Bernardo Armendarez, and Louis Anthony Delosrios, Jr., and in 13.5% of its total cases during an eight-month timeframe. And it was forced to conduct a pretrial bail hearing without a reasonable opportunity to notify the victim, over its objection, in cases involving Virgil Cristobal, Nayib Watson, and in 49% of its total cases during

committee in favor of a 12 or 24 hour-rule, and in a presentation to the Committee by the Clark County Public Defender’s Office on *Valdez-Jimenez*, the Public Defender’s Office testified that “48 hours is likely the constitutional maximum amount of time an arrested person should wait before a hearing.” *Id.* at 29, 31. Las Vegas Township Justice of the Peace, Diana Sullivan was the only judge that testified before the committee. *Id.* She explained that Las Vegas Township’s “Initial Appearance Court,” where a separate judge holds two sessions per day involving 20 to 40 individuals per session, “took a great deal of resources which many not be currently available in rural jurisdictions.” *Id.* at 13, 34. After several meetings the Committee could not decide whether to define what this Court meant by “reasonable time” in *Valdez-Jimenez* as 24 hours, 48 hours, or leave that determination to the courts. *Id.* at 42. Instead, it decided to wait until the “bill drafting process.” *Id.*

an eight-month timeframe. That means the Henderson Municipal Court never considered the NPRA as required by ADKT 0539, in its effort to comply with the 48-hour rule. For Respondent Navarro-Reyes, charged with domestic violence, the NPRA was never even completed because he was released from custody shortly after the bail hearing, depriving the prosecution from even asking the court to reassess bail or conditions based on the NPRA mandated by this Court. It also means the Henderson Municipal Court never considered the requests of the victims, in its effort to comply with the 48-hour rule. For the victim of Respondent Cristobal, that means she had no opportunity to tell the prosecution or the court before the bail determination that Cristobal had previously been convicted for committing domestic battery against her in California.

The state district court's order fails to address these direct conflicts at all, other than making an unsupported conclusory declaration that "NRS 178.4849 does not violate the Separation of Powers Doctrine, and it does not undercut ADKT 0539," without citing a single Nevada Supreme Court case or the record. This Court "owe[s] no deference 'to findings so conclusory they may mask legal error.'" *Matter of D.C.*, 140 Nev. Adv. Op. 25, 546 P.3d 810, 815 (2024) (quoting *Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d 1139, 1143 (2015)).

But that is not the most serious problem with the district court's order. The district court goes one step further to avoid the separation of powers problem created by the Legislature and declares that victims' rights, enshrined in Article I, § 8A, are unenforceable without a subsequent act of the Legislature. 2 AA 546. This Court should reverse that holding. The Court already concluded four years ago that Article I, section 8A is enforceable in a criminal case, and recognized that, the people affirmed that the importance of protecting victims' rights is "[c]ritical to our system of criminal justice," by passing Marsy's Law. *Aparicio v. State*, 137 Nev. 616, 621,

///

496 P.3d 592, 597 (2021) (en banc). Inaction by the Court, in this case, could be interpreted to suggest otherwise. *Cf. id.*

The Nevada Constitution represents the voice of the people. *Wren v. Dixon*, 40 Nev. 170, 187, 161 P. 722, 726 (1916). “[T]he power of the people is superior to both [the legislature and the judiciary]; and . . . where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former.” Federalist No. 78 (cited in with approval in *Luther v. Borden*, 48 U.S. 1, 53 (1849)).

“Unlike the statutory-rights context, where [this Court] treat[s] legislative intent as the determinative factor in considering whether the judiciary may imply a right of action to enforce statutory rights, in the constitutional-rights context, [this Court] retain[s] the authority—indeed the duty—to vindicate the rights guaranteed by our Constitution.” *Mack v. Williams*, 138 Nev. 854, 865, 522 P.3d 434, 446 (2022) (internal citations and quotations omitted). “[T]he Legislature’s ability to create statutory rights has no bearing on whether the Legislature has the authority to restrict rights codified in the Constitution, let alone whether those rights remain fallow without legislative enactment.” *Id.*

In *Valdez-Jimenez*, this Court concluded that the pretrial bail hearing is intended to protect the rights of victims under the Nevada Constitution to have their safety and the safety of their family considered as a factor in fixing the amount of bail and conditions for the defendant. 136 Nev. at 162, 460 P.3d at 984. The 48-hour rule undermines that purpose and, by extension, the rights of the victims themselves under Section 8A of the Nevada Constitution by mandating that pretrial bail hearings go forward, even where the victim has not had a reasonable opportunity to be informed about the pretrial bail hearing and the victim’s related rights under the Nevada Constitution.

///

A victim is not “treated with fairness,” if they are not provided reasonable notice about when and where a pretrial bail hearing will take place. Nev. Const. art. 1, § 8A(1)(a). The lack of notice about when and where a pretrial bail hearing will take place violates their right to “reasonable notice of *all* public proceedings,” and denies them an opportunity “to be present at all such hearings.” Nev. Const. art. 1, § 8A(1)(g) (emphasis added). If they are denied the notice and an opportunity to be present, they are denied their right to “reasonably heard, upon request,” at the pretrial bail hearing. Nev. Const. art. 1, § 8A(1)(h). Without a reasonable opportunity for notice of when and where the pretrial bail hearing will take place, the victim is denied their right to “reasonably confer with the prosecuting agency,” about their safety as it relates to the prosecutor’s request for bail and conditions of release at the pretrial bail hearing. Nev. Const. art. 1, § 8A(1)(f). If a victim has been denied a reasonable opportunity to consult with the prosecutor or be present at the hearing and be heard by the court, the victim is denied their right to have their safety and the safety of their family fully “considered as a factor in fixing the amount of bail and release conditions for the defendant.” Nev. Const. art. 1, § 8A(1)(c). All of these failures to treat a victim with fairness as required by the Nevada Constitution, and protect their other constitutional rights creates a risk that they might not be “reasonably protected from the defendant or persons acting on behalf of the defendant,” because they played no part in the court’s bail determination at the pretrial hearing. Nev. Const. art. 1, § 8(A)(1)(b). Stated another way, in practice, the 48-hour rule in NRS 178.4849, routinely negates most of a victim’s rights under Section 8A of the Nevada Constitution.

This Court “retain[s] the authority—indeed the duty—to vindicate” these rights of the victim guaranteed by our Constitution. *Mack*, 138 Nev. at 865, 522 P.3d at 446 (internal citations and quotations omitted). The municipal court did precisely that by declaring the 48-hour rule an unconstitutional violation of the

victim's rights under the Nevada Constitution by creating a mechanism that allows victims to be excluded entirely from pretrial bail hearings where their safety and the safety of the community are paramount. Without any citation to case law or legal analysis, the district court struck the municipal court's determination and declared that the Nevada Constitution "does not require personal pretrial input" from the victim because the language of section 8A "is focused upon the *request* of the alleged victim." 2 AA 546 (emphasis added).

The district court clearly disregards much of the language of Section 8A. *Id.* That section does not require the victim to request to be treated with fairness, or request "[t]o be specifically informed" of their rights in Section 8A, or request to be present at a pretrial bail hearing, or request to have their safety and the safety of their family considered, or request to reasonably be protected from the defendant. Nev. Const. art. 1, §§ 8A(1)(a), (b), (c), (g) (q). And without notice, they are denied the opportunity to request to confer with the prosecuting agency, be notified about pretrial bail hearings, or to be reasonably heard at such proceedings. Nev. Const. art. 1, §§ 8A(1)(f), (g), (h). Other jurisdictions have concluded that the omission of such notice can render the proceedings defective. *See State ex rel. Hance v. Arizona Bd. of Pardons & Paroles*, 178 Ariz. 591, 597, 875 P.2d 824, 830 (Ct. App. 1993) ("This victim was never informed of her constitutional right to request notice of and to participate in post-conviction release proceedings. It is this omission that violated her rights and rendered the release proceedings defective.").

This Court should reverse the determination by the district court that Section 8A in Article I of the Nevada Constitution is mere surplusage and declare that the 48-hour rule in NRS 178.4849, violates the separation of powers clause and unconstitutionally denies victims their right to notice about pretrial bail hearings where the court or prosecutors are not given a reasonable amount of time to notify the victim about the time and place of a pretrial bail hearing.

“It is fundamental to our federal, constitutional system of government that a state legislature has not the power to enact any law conflicting with . . . the constitution of its particular State.” *Thomas*, 130 Nev. at 487-88, 327 P.3d at 520-21 (internal citations and quotations omitted). This Court should vacate the 48-hour rule in NRS 178.4849 and return the authority to ensure basic fairness and administer justice in pretrial bail hearings to the judiciary.

DATED this 29th day of May, 2025.

By: /s/ Matthew S. Johnson
Matthew S. Johnson
Deputy District Attorney
Douglas County District Attorney’s Office
Nevada Bar No. 12412
P.O. Box 218
Minden, NV 89423
(775) 782-9800
Amicus Curiae for Appellant

/s/ Mark B. Jackson
MARK B. JACKSON
District Attorney
Douglas County District Attorney’s
Office
Nevada Bar No. 4294

/s/ Christopher J. Hicks
CHRISTOPHER J. HICKS
District Attorney
Washoe County District Attorney’s Office
Nevada Bar No. 7747

/s/ Steven B. Wolfson
STEVEN B. WOLFSON
District Attorney
Clark County District Attorney’s Office
Nevada Bar No. 1565

/s/ Garrit S. Pruyt
GARRIT S. PRUYT
District Attorney
Carson City District Attorney’s Office
Nevada Bar No. 13228

/s/ Stephen B. Rye
STEPHEN B. RYE
District Attorney
Lyon County District Attorney's Office
Nevada Bar No. 5761

/s/ Bryan T. Kunzi
BRYAN T. KUNZI
District Attorney
Nye County District Attorney's Office
Nevada Bar No. 2173

/s/ Tyler J. Ingram
TYLER J. INGRAM
District Attorney
Elko County District Attorney's Office
Nevada Bar No. 11819

/s/ R. Bryce Shields
R. BRYCE SHIELDS
District Attorney
Pershing County District Attorney's Office
Nevada Bar No. 11275

/s/ Melissa A. Brown
MELISSA A. BROWN
District Attorney
White Pine County District Attorney's
Office
Nevada Bar No. 11500

/s/ Kenneth H. Tedford
KENNETH H. TEDFORD, III
District Attorney
Mineral County District Attorney's Office
Nevada Bar No. 14629

/s/ William E. Schaeffer
WILLIAM E. SCHAEFFER
District Attorney
Lander County District Attorney's Office
Nevada Bar No. 2789

/s/ Anne M. Langer
ANNE M. LANGER
District Attorney
Storey County District Attorney's Office
Nevada Bar No. 3345

/s/ Kevin L. Pasquale
KEVIN L. PASQUALE
District Attorney
Humboldt County District Attorney's Office
Nevada Bar No. 768

CERTIFICATE OF COMPLIANCE

I hereby certify, under NRAP 32(a)(9), 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 proportionately spaced typeface using Microsoft Word in 14 point Times New Roman.

I further certify 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) because it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 4,778 words; or

[] Does not exceed ____ pages.

Finally, I hereby certify that I have read this 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 29th day of May, 2025.

By: /s/Matthew S. Johnson

Matthew S. Johnson
Deputy District Attorney
Douglas County District Attorney's Office
Nevada Bar No. 12412
P.O. Box 218
Minden, NV 89423
(775) 782-9800
Amicus Curiae for Appellant

CERTIFICATE OF SERVICE

I hereby certify that this document, **AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT**, was filed electronically with the Nevada Supreme Court on the 29th day of May, 2025. Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Lance Maningo
Yasmin Khayyami

Attorneys for Respondent

and that the same was served via US mail, certified postage prepaid, and addressed as follows:

Lauria Lynch-German
400 S. Fourth Street, Suite 650
Las Vega, NV 89101

Attorney for Respondent

/s/ Matthew S. Johnson

Matthew S. Johnson
Deputy District Attorney