

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.)
_____)

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APPELLANT’S AMENDED OPENING BRIEF

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NRAP 26.1 DISCLOSURE

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

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Corporation: City of Henderson

There are no parent corporations involved in the instant appeal.

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ROUTING STATEMENT

This appeal should be presumptively retained by the Nevada Supreme Court, pursuant to NRAP 17(a)(11) and NRAP 17(a)(12). This appeal will address issues of first impression and public importance regarding the interpretation of Nev. Const. art. I, § 8A (Marsy’s Law), and the Separation of Powers Doctrine in relation to adversarial bail hearings in Nevada.

STATEMENT OF JURISDICTION

This Court has jurisdiction over the instant appeal pursuant to NRS 2.090(2). In a criminal action, the Supreme Court “has jurisdiction to review upon appeal ... an order granting ... mandamus in the case provided for by law.” NRS 2.090(2). Furthermore, appeals from an order of the district court granting a writ are subject to the Nevada Rules of Appellate Procedure. Ashokan v. State, Dep’t of Ins., 109 Nev. 662, 665, 856 P.2d 244, 246 (1993) (citing NRS 34.310). NRAP 3A(b)(1) states that “[a]n appeal may be taken from ... [a] final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” An order of the district court granting a writ of mandamus is a final judgment within the meaning of NRAP 3A(b)(1). See Ashokan, 109 Nev. at 665, 856 P.2d at 246.

This appeal arises from the district court's Order Granting Respondent's Petition for Writ of Mandamus/Prohibition. Appellant's Appendix, pp. AA557 (hereinafter "AA[page number]"). Therefore, both NRS 2.090(2) and NRAP 3A(b)(1) confer upon this Court appellate jurisdiction over the district court's Order granting the writ.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether NRS 178.4849 conflicts with the constitutional requirements regarding the setting of bail as decided by this Court in Valdez-Jimenez v. Eighth Jud. Dist. Ct., 136 Nev. 155, 460 P.3d 976 (2020).
2. Whether NRS 178.4849 violates crime victims' rights contained in Nev. Const. art I, § 8A (Marsy's Law); namely, to be present and heard during bail hearings,¹ confer with the prosecuting attorney before such hearings, be reasonably protected from the defendant, and have victims' safety considered when fixing the amount of bail and conditions of release.
3. Whether Nev. Const. art. I, § 8A (Marsy's Law) is non-self-executing and thus can be violated by a subsequent Act of the Legislature without judicial scrutiny.
4. Whether NRS 178.4849 interferes with Nevada Supreme Court Order ADKT 0539, requiring the production and use of pretrial risk assessment tools, thereby encroaching upon the Separation of Powers Doctrine.
5. Whether NRS 178.4849's good cause requirement creates an unreasonable legal impediment to a court's consideration of constitutional rights.

¹ For purposes of this appeal, the terms "bail hearing," and "pretrial release hearing" will be used interchangeably but have the same meaning.

6. Whether the Henderson City Attorney's Office had legal standing to challenge the constitutionality of NRS 178.4849.
7. Whether the Henderson Municipal Court had the authority to decide the City's constitutional challenge to NRS 178.4849.

STATEMENT OF FACTUAL HISTORY

The Henderson Municipal Court Bail Hearings

1. Jacob Navarro-Reyes

On Saturday, August 26, 2023, at approximately 1:23 a.m., Jacob Navarro-Reyes was arrested and booked into the Henderson Detention Center on one (1) count of Domestic Battery and one (1) count of Resisting a Public Officer. AA318. Navarro-Reyes was scheduled for a bail hearing, pursuant to NRS 178.4849, at 2:30 p.m. that same day in the Henderson Municipal Court.

At the hearing, the prosecutor requested a continuance until the next scheduled bail hearing calendar (afternoon of Monday, August 28, 2023) because the detention center staff had not yet completed a Nevada Pretrial Risk Assessment (“NPRA”). AA410. Navarro-Reyes’ defense counsel objected to continuing the hearing and the court denied the City’s request to continue. AA323.

After argument, the court set standard bail on both counts with a no-contact order with the domestic violence victim. AA326. Later that same day, Navarro-Reyes was released from the Henderson Detention Center at approximately 9:15 p.m. after posting bond. AA348. An NPRA was never completed for Navarro-Reyes.

On December 24, 2023, while pending trial, Navarro-Reyes once again attacked the same victim, his girlfriend, and was arrested for Domestic Battery.

AA330. On December 28, 2023, the municipal court increased Navarro-Reyes' bail, and, again, ordered him to have no contact with the victim. AA351.

On January 24, 2024, Navarro-Reyes pleaded no contest to domestic battery and the municipal court sentenced him accordingly. AA352. The City dismissed the Resisting charge pursuant to negotiations.

2. Virgil Cristobal

On Saturday, August 26, 2023, at approximately 2:12 a.m., Virgil Cristobal was arrested and booked into the Henderson Detention Center on one (1) count of Domestic Battery and his bail hearing was scheduled for 2:30 p.m. that same day. AA354. The City Attorney's Office attempted to contact the victim via telephone prior to the 2:30 p.m. bail hearing but was unsuccessful.

According to his criminal history, Cristobal had a prior 2007 domestic battery conviction from California. However, the prosecutor was unable to determine whether Cristobal's prior conviction involved the same victim. The prosecutor requested a continuance of the bail hearing to the municipal court's next bail hearing calendar, which was scheduled for the afternoon of Monday, August 28, 2023, to allow more time to contact the victim and verify the nature of the prior conviction. Unfortunately, however, the municipal court denied the City's motion to continue. AA358.

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After argument, the court granted Cristobal an own recognizance release with the condition of no contact with the victim. AA359. On Monday, August 28, 2023, at approximately 10:14 a.m., the City Attorney's Office spoke with the named victim.

Appellant subsequently contacted the Alameda County District Attorney's Office, who verified that Cristobal's prior domestic battery conviction had indeed been committed against this exact same victim. AA126.

On June 3, 2024, Cristobal entered a no contest plea to Domestic Battery and was sentenced accordingly. AA372.

3. Nayib Watson

On Saturday, August 26, 2023, at approximately 6:03 a.m., Nayib Watson was arrested and booked into the Henderson Detention Center on two (2) counts of domestic battery. AA374. The municipal court scheduled Watson's bail hearing for 2:30 p.m. that same day. Due to the timing of the arrest, the City Attorney's Office did not have a phone number for the victim, and requested a continuance of the bail hearing until the afternoon calendar on Monday, August 28, 2023. AA379. Once again, defense counsel objected, and the court denied the City's request to continue. AA380.

After argument, the court set standard bail on Count 1 and granted an own recognizance release on Count 2 on the condition that he have no contact with the

victim. AA380. Watson posted a bond that same day and was released at approximately 9:31 p.m. AA386.

On Monday, August 28, 2023, at approximately 10:51 a.m., the City Attorney's Office contacted and spoke with the named victim.

On February 12, 2024, Watson pled no contest to domestic battery and the municipal court sentenced him accordingly. AA392.

4. Bernardo Armendarez

On Saturday, September 2, 2023, at approximately 8:55 a.m., Bernardo Armendarez was arrested and booked into the Henderson Detention Center on one (1) count of Camping Prohibited and one (1) count of Possession of a Substance Which May Not Be Introduced into Interstate Commerce. AA396. The court scheduled Armendarez's bail hearing for 2:30 p.m. that same day. At the time of that hearing, neither the Declaration of Arrest, Incident Report, nor NPRA were available to the court or the parties, so the municipal court continued the matter to the next day. AA408. Armendarez next appeared at the municipal court's bail hearing calendar on Sunday, September 3, 2023, at 2:30 p.m. AA408.

At that hearing, the prosecutor requested a continuance until Tuesday, September 5, 2023, because the detention center staff had still not completed a NPRA. Armendarez's defense counsel objected to the continuance, and the court

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denied the City's request to continue. After argument, the municipal court set standard bail on both counts. AA401.

On September 5, 2023, Armendarez pleaded no contest to both counts in the Criminal Complaint without negotiations and the municipal court sentenced him to a jail term. AA410.

5. Louis Delosrios, Jr.

On Sunday, September 3, 2023, at approximately 10:34 a.m., Louis Delosrios, Jr., was arrested and booked into the Henderson Detention Center on one (1) count of Fail to Comply with Local Park Use Ordinances or Regulations. AA415. Delosrios was scheduled to appear at a bail hearing at 2:30 p.m. that same day – less than four (4) hours from the time of arrest. At that hearing, the prosecutor requested a continuance until Tuesday, September 5, 2023, because the detention center staff had not yet completed the NPRA. AA420. Delosrios' defense counsel objected to continuing the hearing, and the court denied the City's request. After argument, the court set standard bail. AA422.

The City subsequently learned that detention center staff completed Delosrios' NPRA on September 3, 2023, at 2:25 p.m. – approximately five (5) minutes prior to the start of the court's calendar. However, when the case was called on the record, neither the court, the prosecutor, nor the defense counsel had a

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physical copy of the NPRA. According to the NPRA, Delosrios' total risk level score was nine (9), which constitutes a "High Risk." AA427.

On December 6, 2023, Delosrios was cited by the Henderson Police Department with trespassing, which violated his condition of release to remain trouble-free. AA428. On January 4, 2024, the municipal court held an arraignment on this new criminal offense. AA434. Delosrios failed to appear at the arraignment hearing, and the court issued a bench warrant for his arrest. Delosrios was arrested on the warrant on February 12, 2024, entered a no contest plea, and the court sentenced him to a jail term. AA435.

STATEMENT OF PROCEDURAL HISTORY

The City's Motion

On August 28, 2023, the Henderson City Attorney's Office, representing the City of Henderson ("Appellant"), filed a Motion to Declare NRS 178.4849 Unconstitutional in the Henderson Municipal Court in the three (3) criminal cases heard on August 26, 2023: Navarro-Reyes; Cristobal; and, Watson. AA053. Appellant also filed a Motion to Consolidate these cases for purposes of the motion. AA101. Then, on September 5, 2023, the City filed an Amended Motion to Consolidate, which sought to add two (2) additional criminal defendants, Delosrios and Armendarez, to the motion. AA107. The municipal court granted the City's Motion and Amended Motion to Consolidate on September 5, 2023.

Appellant filed a Supplement to its motion on September 19, 2023. AA113. Respondents filed their Opposition on December 11, 2023. AA158. Appellant filed a Reply on January 25, 2024. AA203. On February 7, 2024, the Honorable Rodney T. Burr entertained lengthy oral argument. AA259.

On February 15, 2024, the municipal court issued Findings of Fact, Conclusions of Law and Order, which granted the City's Motion to Declare NRS 178.4849 Unconstitutional. AA259. Since Respondents did not seek a stay of the Municipal Court's decision, the court canceled the weekend bail hearings scheduled for Thursday, February 22, 2024, and Saturday, February 24, 2024.

On February 26, 2024, Hunter Dooley and Jacob Hardy, criminal defendants arrested on February 22, 2024, filed an Emergency Petition for Writ of Mandamus in Eighth Judicial District Court case number A-24-887893-W seeking an order directing the Henderson Municipal Court to resume weekend bail hearings. AA270.

Armendarez, Navarro-Reyes, Watson, Delosrios, and Cristobal also filed a Motion to Stay Judge Burr's ruling in the Municipal Court on February 27, 2024. AA280. The municipal court granted the Motion to Stay pending resolution of the appeal/writ in district court. Dooley and Hardy then voluntarily dismissed their writ petition. AA287.

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On February 27, 2024, Armendarez, Navarro-Reyes, Watson, Delosrios, and Cristobal filed a Notice of Appeal to the Municipal Court’s Findings of Fact, Conclusions of Law and Order. AA312. On May 8, 2024, the Honorable Michelle Leavitt granted the City’s Motion to Dismiss the Appeal for Lack of Appellate Jurisdiction in the Eighth Judicial District Court. AA315.

On July 2, 2024, Armendarez, Navarro-Reyes, Watson, Delosrios, Cristobal, Dooley, and Hardy filed a Petition for Writ of Mandamus/Prohibition in Eighth Judicial District Court case No. A-24-896651-W. AA001. Neither Dooley nor Hardy were parties to any of the litigation in the municipal court regarding the constitutionality of NRS 178.4849.

Appellant filed its Answering Brief on September 4, 2024, AA457, and Respondent filed a Reply on October 29, 2024. AA516. The district court held oral argument on November 21, 2024. AA531.

On January 8, 2025, the Honorable Joseph P. Hardy, Department IX, filed an Order Granting Petitioners’ Writ of Mandamus/Prohibition. AA557. Appellant filed a timely Notice of Appeal on January 13, 2025. Appellant’s timely appeal follows.

SUMMARY OF THE ARGUMENT

By enacting NRS 178.4849, the Legislature unconstitutionally changed this Court’s interpretation of what constitutes a reasonable timeframe within which to conduct a bail hearing after a person’s arrest as determined in Valdez-Jimenez v.

Eighth Jud. Dist. Ct., 136 Nev. 155, 460 P.3d 976 (2020). In doing so, the Legislature degraded the constitutional significance of the Valdez-Jimenez decision and wholly undermined the meaningfulness of Nevada’s bail hearings.

Criminal defendants cannot frequently participate in bail hearings due to the rushed timeframe of the hearings after arrest. Likewise, victims do not have a reasonable opportunity to assert their rights under Marsy’s Law to be notified of, attend, be heard at, have their safety considered at, and speak to the prosecutor before the bail hearing. Moreover, many times, the Nevada Pretrial Risk Assessment (“NPRA”) is not prepared in time for the bail hearing in violation of Nevada Supreme Court Order ADKT 0539. Less time always equates with less information available to Nevada’s courts when making important bail decisions.

Further, the prosecutor’s burden of proof and the community’s interest in preventing pretrial flight and further crime is frustrated due to NRS 178.4849’s unreasonable and arbitrary timeframe. Notably, NRS 178.4849 requires adversarial bail hearings to be held faster than any other state that has adopted Marsy’s Law in the country. Lastly, NRS 178.4849’s good cause requirement creates an unreasonable legal impediment to a court’s consideration of a victim’s constitutional rights.

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For these reasons, the municipal court correctly determined that NRS 178.4849 is unconstitutional, and the district court erred by reversing the municipal court's decision.

ARGUMENT

I. THE JUDICIARY, NOT THE LEGISLATURE, HAS THE DUTY TO INTERPRET THE CONSTITUTION, AND THE LEGISLATURE MAY NOT FUNDAMENTALLY ALTER THIS COURT'S PROMPTNESS INTERPRETATION.

STANDARD OF REVIEW

The constitutionality of a statute is a question of law that this Court reviews de novo. Silvar v. Eighth Jud. Dist. Ct., 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. Id.

However, it is fundamental to our federal, constitutional system of government that a legislature does not possess the power to enact any law which conflicts with the United States Constitution, the laws of Congress, or the constitution of its state. Thomas v. Nevada Yellow Cab Corp., 130 Nev. 484, 487-88, 327 P.3d 518, 520-21 (2014). The Nevada Constitution controls over any conflicting statutory provisions as it is the supreme law of this state. Id.

In this case, Appellant challenges the constitutionality of NRS 178.4849, in which "it is emphatically the province and duty of the judicial branch to say what the law is." Marbury v. Madison, 5 U.S. 137, 177, 2 L.Ed. 60 (1803). If a law adopted

by the Legislature conflicts with the Nevada State Constitution, then the Constitution, as defined by the Court, must govern. Id. at 178. The legislative branch may not mandate the meeting of a burden of proof before a constitutional right may be considered. Valdez-Jimenez, 136 Nev. at 167, 460 P.3d at 988. Whether the challenge is facial or as-applied, the distinction is “not so well defined that it has some automatic effect or that it must always control ... the disposition in every case involving a constitutional challenge.” Citizens United v. Fed. Election Comm’n, 558 U.S. 310, 331, 130 S. Ct. 876, 893 (2010). Regardless, this Court has held that a statute need not be unconstitutional in all applications to, nonetheless, still be unconstitutional. See Flamingo Paradise Gaming, LLC. V. Chanos, 125 Nev. 502, 513, 217 P.3d 546, 554 (2009).

ARGUMENT

In passing NRS 178.4849, which requires bail hearings be conducted within forty-eight (48) hours including non-judicial days instead of seventy-two (72) hours, excluding non-judicial days, the Legislature unconstitutionally redefined this Court’s determination of what constitutes a “reasonable time” within which to conduct a bail hearing after a person’s arrest. Valdez-Jimenez, 136 Nev. at 163-64, 460 P.3d at 985. Consequently, the Legislature, seeking to micromanage the courts, stymied this Court’s constitutionally based ruling, and instigated a separation of powers dispute.

Thereafter, the district court sanctioned this legislative overreach by finding that the Legislature has the *exclusive* authority to determine the timing of Nevada’s bail hearings. The district court held that “the issue of what amount of time is reasonable for a pretrial custody hearing is a question for the [L]egislature” AA559. By requiring that Nevada’s courts conduct bail hearings within forty-eight (48) hours after a person has been taken into custody, inclusive of all non-judicial days, the Legislature and the district court went too far.

It is “a well-established tenet of our legal system ... that **the judiciary is endowed with the duty of constitutional interpretation, not the Legislature.**” Doe Dancer I v. La Fuente, Inc., 137 Nev. 20, 34, 481 P.3d 860, 872-73 (2021) (quoting Nevadans for Nevada v. Beers, 122 Nev. 930, 943 n.20, 142 P.3d 339, 347 n.20 (2006) (emphasis added)). “Nevada courts are the ultimate interpreter of the Nevada Constitution.” Legislature of Nevada v. Settlemeyer, 137 Nev. 231, 234, 486 P.3d 1276, 1280 (2021).

In Valdez-Jimenez, this Court held that under Nev. Const. art. I, §§ 6-7, and substantive due process principles embedded within the Nevada Constitution, a person arrested for a crime is entitled to an individualized hearing on his or her custody status “within a reasonable time” after arrest. 136 Nev. at 163-64, 460 P.3d at 985-86. At this hearing, the person has the right to be represented by counsel, testify, and present evidence. Id. at 166, 460 P.3d at 987. Before imposing bail, a

court must determine the person is either a flight risk or a danger to the community or victim, and the prosecutor must prove by clear and convincing evidence that no less restrictive alternatives will satisfy the community's interest in bail. *Id.* at 162, 166, 460 P.3d at 984, 977.

In addition to the new rights this Court provided to defendants and the new burden it placed on prosecutors, this Court also recognized the existing constitutional rights of crime victims, stating that the Nevada Constitution requires the “consideration of the safety of the victim and the victim’s family in setting bail.” Valdez-Jimenez, 136 Nev. at 162, 460 P.3d at 984 (citing Nev. Const. I, § 8A (1)(c)). Indeed, crime victims have explicit constitutional rights to be notified, to attend, and to be heard regarding their safety at bail hearings, and courts must consider a victim’s safety when fixing bail and conditions of release under Marsy’s Law. Nev. Const. art. I, § 8A (1)(c), (g), and (h). Nevada’s voters approved Marsy’s Law² on November 6, 2018, with sixty-one (61) percent of the vote, after receiving prior

² Marsy’s Law was named after Marsalee (Marsy) Ann Nicolas, a University of California, Santa Barbara student, who was stalked and murdered by her ex-boyfriend. A week after she was murdered, Marsy’s mother was confronted by her daughter’s murderer in a grocery store. The family had no idea that the court had released her killer on bail. This model amendment and the movement to enshrine victim’s rights into state constitutions across the country, including Nevada, began as a means of ensuring that victims and their families had the ability to be informed about bail hearings and to have their voices heard in bail decisions. “About Marsy’s Law,” Marsy’s Law for All, <https://www.marsyslaw.us/about-marsys-law> (last visited March 18, 2025).

approval during the 2015 and 2017 Legislative Sessions. See Senate Joint Resolution No. 17: Laws 2015, p.4073; Laws 2017, p. 4611.

Finally, prior to Valdez-Jimenez, this Court had already made reliance on the NPRA as an integral part of the bail determination process. On March 21, 2019, this Court issued a statewide order requiring all judicial districts in Nevada to use a risk assessment tool when determining a defendant's custody status. Nev. Sup. Ct. Order ADKT 0539. The NPRA provides a tool to help predict a defendant's future harm to the community and flight risk. AA442. To fully effectuate these important procedural and substantive constitutional rights of both defendants and victims, this Court set forth a timeframe for courts to hold bail hearings. As always, the "timing of a hearing ... is often of fundamental importance for due process," and "[t]he hearing must be at a meaningful time and in a meaningful manner." Johnston v. Eighth Jud. Dist. Ct., 138 Nev. 700, 707, 518 P.3d 94, 101 (2022) (quoting Goldberg v. Kelly, 397 U.S. 254, 267, 90 S. Ct. 1011, 1020 (1970)).

This Court determined that a meaningful bail hearing should be held at a defendant's "initial appearance, or arraignment."³ Valdez-Jimenez, 136 Nev. at 163,

³ Though "[t]here is no statutory designation of a specific time within which an arraignment shall be held after the arrest of an accused under an indictment, this court presumes that an arraignment will be conducted within **a reasonable time.**" Valdez-Jimenez, 136 Nev. at 163, 460 P.3d at 985 (citing Tellis v. Sheriff of Clark Cty., 85 Nev. 557, 559-60, 459 P.2d 364, 365 (1969) (emphasis added).

460 P.3d at 985. This timeframe ensured a reasonable amount of time to effectuate victims' and defendants' respective constitutional rights, as well as ample opportunity for the parties to gather and present evidence, to include the prosecution meeting its new, court-created burden of proof regarding bail.

When this Court decided Valdez-Jimenez in 2020, Nevada's courts followed NRS 171.178 regarding the timing of a defendant's initial court appearance after an arrest. NRS 171.178 provides that an accused generally must appear before a magistrate for an initial appearance within seventy-two (72) hours, excluding non-judicial days.⁴ In stating that bail hearings would occur at the initial appearance or arraignment, and because NRS 171.178 was the current law, this Court held that no more than seventy-two (72) hours, exclusive of non-judicial days, is the reasonable time-frame for conducting individualized bail hearings.

Prior to the passage of NRS 178.4849, no law required a bail hearing so quickly. A defendant is entitled to a probable cause review by a magistrate within forty-eight (48) hours, inclusive of non-judicial days. County of Riverside v. McLaughlin, 500 U.S. 44, 57, 111 S.Ct. 1667, 1670 (1991). However, while the Fourth Amendment governs probable cause, it does not compel states to hold bail hearings within forty-eight (48) actual hours. Mitchell v. Doherty, 37 F.4th 1277,

⁴ The Nevada Legislature adopted the seventy-two (72) hour initial appearance framework in 1979. NRS 171.178.

1286-89 (7th Cir. 2022) (holding “no other circuit has imposed a forty-eight-hour requirement for bail hearings after arrest,” and, historically, “nothing suggests that a suspect had a right to bail hearing within forty-eight hours”).

Pretrial detention decisions do require the balancing of interests. McLaughlin, 500 U.S. at 53, 111 S. Ct 1661. The prosecutor, representing the government, has a strong interest in preventing both pretrial flight and potential future crime. Before rendering a bail decision, a judge must assess a defendant’s risk of dangerousness and flight, “information that the government might not have readily available.” Mitchell, 37 F.4th at 1288. As such, rushing the initial bail determination “may endanger later prosecutorial success.” Id.

Notably, this Court has never extended the forty-eight (48) hour probable cause determination fixed in McLaughlin to Nevada’s bail hearings, nor did the Court disavow NRS 171.178’s seventy-two (72) hour timeframe, even when it had the opportunity to do so in Valdez-Jimenez. This Court’s decision was prudent. Valdez-Jimenez requires an adversarial evidentiary hearing, coupled with a prosecutorial burden of proof. To be *meaningful* and fulfill the due process requirements outlined in Valdez-Jimenez, both prosecution and defense must have an appropriate amount of time to gather information. Also, defendants and victims must have a reasonable opportunity to participate in bail hearings. Seventy-two (72) hours, excluding nonjudicial days, ensured a prompt hearing at which both the

defendant and victim had the opportunity to meaningfully participate, and the parties could present crucial information to the court.

The Legislature subsequently ignored this Court's ruling as it sought to micromanage the lower courts' processes. After this Court's Valdez-Jimenez decision, the Legislature in 2021 wholly redefined the timing for bail hearings by ordering all Nevada courts to hold bail hearings and, therefore, initial appearances, within forty-eight (48) hours of arrest, *including* all nonjudicial days. NRS 178.4849.⁵ This legislative act completely changed the delicate balance that this Court struck between protecting the victim's rights, the defendant's rights, the court's obligations, and the interests of the community as represented by the prosecutor at the bail hearing. In doing so, the Legislature all but eliminated the meaningfulness of Nevada's bail hearings.

To highlight how NRS 178.4849 fundamentally transformed this Court's constitutionally based Valdez-Jimenez decision, the Henderson City Attorney's Office compiled data regarding the timeframe of bail hearings after arrest, victim participation, the availability of the NPRA, and the defendant's presence at bail

⁵ NRS 178.4849 states:

- (1) **[A] court shall**, within 48 hours after a person has been taken into custody, hold a pretrial release hearing, in open court or by means of remote communication, to determine the custody status of the person.
 2. The court may continue a pretrial release hearing:
 - (a) At the request of either party or the court and for good cause shown.
- (emphasis added).

hearings between January 1, 2023, approximately six (6) months after the effective date of NRS 178.4849, and September 3, 2023.⁶ This data represents a full eight (8) months of statistical information regarding bail hearings, which occurred in the Henderson Municipal Court on Thursdays, Saturdays, and some Sundays during this timeframe.

Predictably, this data confirmed the negative impact NRS 178.4849 has on these bail hearings: (1) hurried bail hearings after arrest; (2) low victim participation rates; (2) missing NPRA's; and (3) absentee defendants. Here are the numbers.

Approximately **64%** of the bail hearings occurred within twenty-four (24) hours of the arrest, and more than **35%** of the hearings were held less than twelve (12) hours after the arrest. AA121. Appellant, through its Victim Advocate Unit, attempts to contact every victim of crime prior to the bail hearing. However, Appellant was only able to contact approximately **49%** of victims before bail hearings during this eight (8) month timeframe. AA120. Additionally, a NPRA was unavailable in **13.5%** of the bail hearings due to the rushed timeframe within which detention center staff was tasked with completing these assessments. AA120. Also,

⁶ To comply with the edicts of NRS 178.4849, the Henderson Municipal Court added a minimum of two (2) additional criminal calendars every week to conduct bail hearings: (1) Thursdays at 3:30 p.m., and (2) Saturdays at 2:30 p.m. Due to the prohibitive cost of staffing courthouse security on Saturdays (and some Sundays or Mondays), the Henderson Justice Facility is not open to the public on the weekends. The municipal court conducts weekend bail hearings using Cisco's WebEx application, and streams them live on YouTube.com.

Appellant obtained statistics regarding the number of times defendants refused or were otherwise physically unable to attend these bail hearings. Due to the speed at which these hearings occurred following a defendant's arrest, 29.5% of defendants did not appear for their initial bail hearing during this timeframe. AA122.

In Valdez-Jimenez, this Court interpreted various bail provisions and associated due process principles contained within Nevada's Constitution. The Court clearly set forth the timeframe in which courts should hold adversarial bail hearings – "initial appearance or arraignment," occurring within seventy-two (72) hours after the arrest, excluding nonjudicial days.

NRS 178.4849 fundamentally changed this decision, and, in turn, degraded the central constitutional tenet of this Court's Valdez-Jimenez decision: bail hearings should be set in a reasonable timeframe, adequate to provide a high level of due process to protect the rights of the defendant, victim, and community. Under the current framework, a defendant likely has no legitimate opportunity to testify or present substantive evidence at a hearing when brought before the court only a few hours after the arrest. And a victim has little chance to attend and be heard at the proceeding, or even speak to the prosecutor, which may impede the community's interest in bail.

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The Legislature did not have the authority to change this Court's interpretation of what constitutes a reasonable timeframe for individualized bail hearings in which the parties have a right to present evidence and review a NPRA, and the victim has a right to have input. Ultimately, NRS 178.4849 fundamentally transformed this Court's interpretation of the Nevada's Constitution.

II. NRS 178.4849 VIOLATES NEV. CONST., ART. I, § 8A (MARSY'S LAW).

A. Marsy's Law: The Direct, Positive, and Limiting Voice of the People.

The Nevada Constitution represents "the direct, positive, and limiting voice of the people." Wren v. Dixon, 40 Nev. 170, 187, 161 P. 722, 726 (1916).

Marsy's Law, enshrined in Article 1, Section 8A of the Nevada Constitution, is plain and unambiguous. It provides that a crime victim has the right to be notified of, to attend, and to be heard at a public criminal proceeding. Nev. Const., art. I, § 8A, (1)(g)(h). Additionally, a victim has the right to be reasonably protected from the defendant and to have the safety of the victim, and the victim's family, considered as a factor in fixing the amount of bail and conditions of release. Nev. Const., art. I, § 8A, (1)(b)(c). Moreover, Marsy's Law grants a victim the right to confer with the prosecuting agency about their case. Nev. Const., art. I, § 8A, (1)(f).

Although a victim is not a party to a criminal proceeding, a victim may directly assert the rights granted in Marsy's Law in court. Nev. Const., art. I, § 8A(2). And, while a person may not bring an action seeking damages, injunctive,

declaratory, or other legal or equitable relief on behalf of a victim against a public officer or employee, a person may maintain an action to compel a public officer or employee to carry out any duty required by Marsy's Law. Nev. Const., art. I, § 8A(3)-(4).

Notably, Marsy's Law clearly states that it does not alter or diminish the power, duties, or responsibilities of the prosecuting attorney, including the prosecutorial obligations to seek justice and uphold the constitutional rights of everyone involved in a criminal justice proceeding. Nev. Const., art. I, § 8A(2).

B. A Reasonable Opportunity for Victim Participation in Bail Decisions Is Mandatory.

Victims have constitutional rights at bail hearings. And, much like the Fourth Amendment, the cornerstone of a victims' constitutional rights is *reasonableness*.

Reasonableness is the unifying thread that binds and gives meaning to the enumerated rights of this constitutional amendment. Marsy's Law mandates that victims must have a *reasonable* opportunity to be notified, to attend, and to be heard at bail hearings (which are public proceedings). And, victims must be *reasonably* protected from their defendants and have the ability to *reasonably* confer with the prosecuting agency about their case. Nev. Const., art. I, § 8A(1)(b)-(c), (f)-(h).⁷

⁷ Each person who is the victim of a crime is entitled to the following rights:

(b) [t]o be **reasonably protected from the defendant** and persons acting on behalf of the defendant,

Per NRS 171.178, a defendant's initial appearance before a magistrate must occur within seventy-two (72) hours, excluding nonjudicial days. Depending on the timing of the arrest, e.g. weekday or weekend, a defendant would typically be brought before a magistrate within two (2) to four (4) days after an arrest. Now, NRS 178.4849 mandates that courts *shall* hold adversarial bail hearings, not mere first appearance hearings, within forty-eight (48) hours of arrest, including nonjudicial days. This statistically results in bail hearings being held within about one (1) day after an arrest, on average, and sometimes much sooner.

The mandates within NRS 178.4849 consistently fails to provide a *reasonable* opportunity for a victim to be notified, to attend, to be heard, and to confer with the prosecuting attorney prior to a bail hearing. As such, many of these constitutional rights become illusory and obsolete. Appellant's statistics show that over half of victims cannot be reached between a defendant's arrest and bail hearing. AA120.

(c) [t]o 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) [t]o **reasonably confer** with the prosecuting agency, upon request, regarding the case and

(g) [t]o **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, and

(h) [t]o **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. Nev. Const., art. I, § 8A(1) (emphasis added).

Here, the municipal court correctly ruled that “[t]he timeframe in NRS 178.4849 violates Marsy’s Law by denying prosecutors and the court the ability to obtain the information necessary to fully implement the requirements of the Nevada Constitution and ensure that victims can meaningfully participate in pretrial release hearings.” AA266.

The district court then found that the municipal court abused its discretion because Marsy’s Law does not specifically require a victim’s personal input as a condition precedent to a trial court’s bail decision. AA559. The district court disregarded the municipal court’s rationale as well as the plain language of Marsy’s Law: a victim must have a *reasonable* opportunity to effectuate their rights.

When bail hearings are held within a few meager hours after an arrest, the victim, and the victim of a violent crime in particular, understandably has other urgent or practical needs that must be met before even considering attending court or contacting a prosecuting agency, including, *inter alia*: (1) packing his/her belongings to move out of a shared residence; (2) finding a new place to reside; (3) seeking medical evaluation and treatment for physical injuries; (4) getting some sleep after being victimized the prior night; and (5) obtaining a new cellular phone if the defendant broke and/or took the victim’s phone. Since many bail hearings occur within the first few hours after a crime, countless victims simply have no ability or chance to have the court consider their safety.

Specifically, in domestic violence cases, a reasonable amount of time to contact a victim is essential to determine what level of risk the defendant poses to the victim. In Nevada, approximately 43.8% of women experience intimate partner physical violence, intimate partner sexual violence, and/or intimate partner stalking in their lifetimes. S.G. Smith, et al., “The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report,” Centers for Disease Control and Prevention (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

Despite the prevalence of domestic violence, it remains one of the most underreported violent crimes. According to the National Crime Victimization Survey conducted by the U.S. Department of Justice, about 50% of domestic violence goes unreported to law enforcement. Rachel E. Morgan & Jennifer L. Truman, “Criminal Victimization,” United States Bureau of Justice Statistics (Sept. 2020), <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf>; “Data says domestic violence incidents are down, but half of all victims don’t report to police,” USA Facts (Oct. 21, 2021), <https://usafacts.org/articles/data-says-domestic-violence-incidents-are-down-but-half-of-all-victims-dont-report-to-police/>.

As such, contact with domestic violence victims, in particular, prior to a bail hearing is crucial to determine whether the victim has experienced prior violence from the defendant. A criminal history printout will not always be informative

regarding a defendant's threat to the victim, due to the underreporting of intimate partner violence.

The district court's ruling that the opportunity for victim input is needless, prior to a court's bail determination, also disregards NRS 178.4845. Specifically, NRS 178.4845 provides, in pertinent part, as follows:

1. Before a court makes a determination of bail concerning a person, a victim may request that a court issue an order imposing a condition of release prohibiting contact.
2. A court shall consider a request described in subsection 1.

NRS 178.4845(1)-(2).

NRS 178.4845 provides that a victim has the right to directly request that the court issue an order prohibiting the defendant from contacting the victim *before the court makes a bail determination*. A victim must have sufficient opportunity to confer with the prosecuting agency or attend court proceedings to vindicate this statutory right. Otherwise, the right is illusory. Certainly, a bail hearing occurring just a few short hours after the crime is committed can hardly ensure or protect the rights afforded to victims of crime by NRS 178.4845, particularly when the courthouse is closed and the prosecutor cannot immediately reach the victim.

C. Less Than a Day Is Unreasonable.

Holding an important court hearing with less than a day's notice is not reasonable to comply with a victim's constitutional rights. The Maryland Supreme Court recently agreed with this notion.

In Syed v. Lee, the Baltimore City State’s Attorney moved to vacate Adnan Syed’s murder conviction. 488 Md. 537, 552, 322 A.3d 578, 586 (Md. 2024). The prosecutor gave the crime victim’s representative, his brother, less than one (1) business day to attend the hearing to vacate the murder conviction. Lee, 488 Md. at 552, 322 A.3d at 587. The victim’s brother, who lived out-of-state, requested a continuance of the proceeding, which would have allowed him to attend the hearing in person. Id. The trial court denied the request for a continuance and vacated the defendant’s conviction. Id. The victim’s brother appealed that decision, asserting that the trial court had violated his rights as a crime victim’s representative under Maryland’s Constitution and statutory victim protection scheme. Id.

The Maryland Supreme Court, affirming the Maryland Court of Appeals, found that the trial court did not provide the victim’s brother with the rights afforded to a victim or victim’s representative pursuant to the applicable constitutional provisions and Maryland statutes, and, therefore, overturned the lower court’s vacatur decision. Lee, 488 Md. at 552, 322 A.3d at 587. The court held, “we ... agree that Mr. Lee had right to attend the hearing on the motion to vacate in person, and he did not receive sufficient notice of the hearing to reasonably permit him to do so.” Id.

The Maryland Supreme Court’s decision rings true in the instant case – less than a day will not afford victims their rights to attend and be heard at judicial

proceedings. Moreover, NRS 178.4849's timeframe is a nationwide anomaly. Under NRS 178.4849, Nevada moves *more hastily* than any other Marsy's Law state in the country regarding adversarial bail hearings.⁸ AA076. Additionally, federal law does not mandate the same strict timeline that Nevada necessitates, nor does the federal court system hold bail hearings on weekends or legal holidays.⁹ See 18 U.S.C.A. §3142(f).

NRS 178.4849 routinely violates the rights afforded to victims of crime by Marsy's Law. Due to the rushed nature of the bail hearings required by NRS 178.4849, victims will not typically be able to participate in these hearings, either in person or through electronic means, or even to converse with the prosecutor prior to the hearing.

In practice, NRS 178.4849 obstructs crime victims' constitutional rights to be heard and to have their safety considered by the trial court at bail hearings. Consequently, NRS 178.4849 has effectively silenced crime victims at bail hearings

⁸ Respondents never challenged this fact in either the Municipal Court or District Court.

⁹ 18 U.S.C. Section 3142(f) provides that a bail hearing "shall be held immediately upon the persons first appearance before the judicial officer unless that person, or the attorney for the Government" seeks a continuance. A government attorney can seek a continuance for "three days (not including any intermediate Saturday, Sunday, or legal holiday)," and a defense attorney can request a continuance for "five days (not including any intermediate Saturday, Sunday, or legal holiday)." 18 U.S.C. § 3142(f).

by establishing an overly hurried process, which does not provide ample opportunity for crime victims to meaningfully participate. Nevada stands alone in this regard.

The Legislature's mandate that courts *shall* hold adversarial bail hearings so quickly, typically less than a day after the arrest, is per se unreasonable.

D. The Legislature Overstepped Its Constitutional Authority.

Section 6 of Marsy's Law states that the "Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section." Nev. Const., art. I, § 8A(6). Clearly, this section prevents the Legislature from diminishing any right to notice, to attendance, or to be heard at a criminal justice proceeding. Section 6 constrained legislative authority to only enact laws that would help further secure, not degrade, these enumerated rights.

When determining whether Marsy's Law has been violated by a subsequent legislative act, the task is to interpret and apply the constitutional language to effectuate the voters' intent. In interpreting an amendment to Nevada's Constitution, this Court looks to rules of statutory interpretation to determine the intent of both the drafters and the electorate that approved it. Landreth v. Malik, 127 Nev. 175, 180, 251 P.3d 163, 166 (2011); Halverson v. Secretary of State, 124 Nev. 484, 488, 186 P.3d 893, 897 (2008). The Court first examines the provision's language. Landreth, 127 Nev. at 180, 251 P.3d at 166. If plain, the Court looks no further, but if not, "we look to the history, public policy, and reason for the provision." Id. The rights and

underlying public policy concerns contained in Marsy's Law are plain and unambiguous.

In passing NRS 178.4849, the Legislature dramatically and definitively shrank the timeframe in which a victim could assert their rights at bail hearings from seventy-two (72) judicial hours to forty-eight (48) calendar hours. Further, the Legislature failed to enact any other corresponding or compensatory laws that would protect victims' rights to access these hasty bail hearings.

Marsy's Law is enshrined in the Nevada Constitution, and, therefore, it controls. It is not possible for NRS 178.4849, as written, to comply with Article I, Section 8A, as it does not allow enough time for victims to be heard and to give input as to their own safety before a bail decision for the perpetrator of the crimes against them. The Legislature did not have the constitutional authority to weaken, limit, or reduce a victim's opportunity to be notified of, attend, or be heard at a bail hearing.

E. The District Court's Puzzling Conclusion: A Statute That Purportedly Violates the Nevada Constitution Is Not Subject to Judicial Review.

The district court made an astounding ruling: the rights contained in Marsy's Law are mere ornate words in our state Constitution and not legitimate constitutional rights. The district court held, "Marsy's Law is not self-executing. It cannot be self-executing as it requires subsequent legislation to be enforced." AA559. By this logic, the Legislative act can freely violate, undermine, and ignore Marsy's Law without

judicial repercussion. The district court completely misinterpreted this constitutional provision, as well as Appellant's challenge to NRS 178.4849.

First, Marsy's Law contains a built-in enforcement mechanism in Section 4, which states, "[a] person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto." Nev. Const., art. I, § 8A, (4). And, while a person may not bring a lawsuit for money damages or other equitable relief, a person may certainly obtain a court order to compel a public officer or employee to fulfill the rights contained in Marsy's Law. Section 4 provides a clear legal mechanism for direct enforcement of victims' rights. As such, the district court certainly erred in finding that Marsy's Law is inoperable, absent additional legislation.

Second, the district court entirely misconstrued Appellant's challenge to the constitutionality of NRS 178.4849. The district court confounded the issue regarding whether the Legislature overstepped its authority by enacting a law that violated Marsy's Law, i.e., constitutionality, with the issue about whether Marsy's Law provides an implied civil remedy for a purported individual violation, i.e. self-executing.

In their district court writ petition, Respondents relied heavily on Mack v. Williams, for the proposition that Marsy's Law cannot be violated by legislation because the Legislature has not enacted a separate enforcement mechanism. 138

Nev. 854, 522 P.3d 434 (2022). Respectfully, the district court and Respondents misread this Court's Mack decision. In Mack, this Court held that the search-and-seizure provision of the Nevada Constitution contains a private cause of action to enforce its proscription. 138 Nev. at 871, 522 P.3d at 450. The Court characterized the prohibitory provisions of Nevada's constitution as "self-executing," thus "need[ing] no further legislation to put [them] in force." Id. at 858, 522 P.3d at 441; see also Wren v. Dixon, 40 Nev. 170, 194, 161 P. 722, 729 (1916); Alper v. Clark County, 93 Nev. 569, 572, 571 P.2d 810, 811 (1977).

However, the inquiry into whether a constitutional provision is self-executing does not dictate whether a subsequent legislative act violates that constitutional provision, as it does here. The self-executing analysis only determines whether an individual violation of that constitutional provision has an implied cause of action, absent subsequent legislation. But, when a legislature enacts a statute that directly impacts individual constitutional rights, courts can certainly determine whether the legislature exceeded its authority by enacting a statute that violates those rights.

The Montana Supreme Court decided an analogous case. In Columbia Falls Elementary Sch. Dist. No. 6 v. State, the Montana Supreme Court considered a challenge brought by a coalition of schools, education groups, and parents contending that the State acted unconstitutionally in administering and funding Montana's constitutionally mandated public school system. 326 Mont. 304, 307, 109

P.3d 257, 259 (2005). While the Court found this constitutional provision to be non-self-executing, it determined that subsequent legislation is certainly reviewable to determine whether the legislature fulfilled or exceeded its constitutional authority. Id. at 309-10, 109 P.3d at 260-61.

The Court found “provisions that directly implicate rights guaranteed to individuals under our Constitution are in a category of their own.” Columbia Falls, 326 Mont. at 309, 109 P.3d at 206-61. That is, although the provision may be non-self-executing, thus requiring initial legislative action, **the courts, as final interpreters of the Constitution, have the final obligation to guard, enforce, and protect every right granted or secured by the Constitution**” Id. at 309, 109 P.3d at 261 (citations omitted) (emphasis added).

Overall, once a state legislature enacts a statute that directly impacts a constitutional provision, the judiciary may pass judgment on the constitutionality of that statute, regardless of whether that constitutional provision was self-executing or not. The Constitution is the “supreme law of the state,” which “control[s] over any conflicting statutory provisions.” Goldman v. Bryan, 106 Nev. 30, 37, 787 P.2d 372, 377 (1990); Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967) (holding that although the legislature’s law-making authority is considerable, it is not unlimited).

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Legislation which directly impacts constitutional rights is subject to judicial review and may be invalidated if it diminishes or redefines the constitutional right. Marsy's Law provides constitutionally protected rights to crime victims, and once the Legislature enacts a statute that limits those rights, that statute is subject to a constitutional challenge. The district court's decision should not stand.

F. "Good Cause" – NRS 178.4849's Empty Promise.

The district court held that even if NRS 178.4849 mandates bail hearings in an insufficient amount of time to comply with Marsy's Law, it contains a built-in remedy for prosecutors and crime victims – the prosecutor can simply request a continuance predicated on good cause. AA559 (finding that "the good cause exception of NRS 178.4849 provides redress"). However, in the cases forming the basis of this appeal, the prosecutor's requests to continue for good cause were all denied. The fact that NRS 178.4849 allows the district court *discretion* to deny such a motion results in the violation of Marsy's Law.

NRS 178.4849's good cause requirement exposes the statute's fatal flaw – a court's initial consideration of a matter of constitutional importance cannot be predicated on a burden of proof. See Valdez-Jimenez, 136 Nev. at 157, 460 P.3d at 981. And, it certainly cannot be subject to a court's discretionary ruling.

In Valdez-Jimenez, the Court held that the "good cause" showing required in NRS 178.4851(1), before a person could be released without bail, was

unconstitutional. Id. at 157, 460 P.3d at 981. The Court stated that the “good cause” requirement to release a person on nonmonetary conditions undermined a defendant’s constitutional right to non-excessive bail, and excused trial courts from considering less restrictive conditions before determining that bail is necessary. Id. at 166-67, 460 P.3d at 987-88.

Like in Valdez-Jimenez, the good cause requirement of NRS 178.4849 interferes with a victim’s constitutional right to be heard during bail hearings and to have his/her safety considered when fixing bail and conditions of release. If the prosecuting agency has been unable to contact a victim prior to the bail hearing, the prosecutor should not have to demonstrate good cause and be at the mercy of the court’s discretion to obtain a continuance to guarantee a constitutional right. Hence, a statute’s requirement of “good cause” cannot withstand constitutional scrutiny when it functions to undermine a court’s consideration of a constitutional issue. NRS 178.4849 impermissibly allows courts to deny continuances, even when the requests are predicated the victims’ constitutional rights.

The initial consideration of a constitutional right cannot be subject to a court’s discretionary ruling, predicated upon a burden of proof; however, that is exactly what this statute permits.

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III. NRS 178.4849 UNDERMINES AN EXISTING SUPREME COURT ORDER.

NRS 178.4849 violates the Separation of Powers doctrine enshrined in Nev. Const. art. III, § 1(1) by weakening, and sometimes completely ignoring, Nev. Sup. Ct. Order ADKT 0539. On March 21, 2019, this Court issued a statewide order which **requires** all judicial districts in Nevada to use a risk assessment tool when determining a defendant's custody status. Nev. Sup. Ct. Order ADKT 0539; see also NRS 178.4853. The Order stated, in part:

WHEREAS, this court has determined that statewide implementation of the Nevada Pretrial Risk Assessment tool 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, it 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

Nev. Sup. Ct. Order ADKT 0539.

Although this Court's Order requires a NPRA, the rushed timeframe prescribed by NRS 178.4849 inhibits sufficient time to complete the assessment for each case before the bail hearing. Accordingly, the municipal court correctly determined that NRS 178.4849 violates the Separation of Powers doctrine.

Nevada's Separation of Powers doctrine provides that the powers of the government are divided into three separate departments, and no person charged with

the exercise of powers belonging to one of these departments should exercise any function pertaining to either of the other branches. Nev. Const. art. III, § 1(1). It is long settled that the judiciary has the authority to “hear and determine justiciable controversies’ as a coequal power to the Legislature’s broad authority to enact, amend, and repeal legislation.” Berkson v. LePome, 126 Nev. 492, 499, 245 P.3d 560, 565 (2010) (quoting Halverson v. Hardcastle, 123 Nev. 245, 260, 163 P.3d 428, 439 (2007)).

In Lindauer v. Allen, this Court held that “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.” 85 Nev. 430, 434, 456 P.2d 851, 854 (1969) (emphasis added). As such, “[a]ny legislation undertaking to require judicial action within fixed periods of time is an unconstitutional interference by the legislature with a judicial function.” Id. (emphasis added).

More recently, this Court has specifically held that “[t]he judiciary has the power to regulate court procedure, and the Legislature may not enact a procedural statute that would abrogate a preexisting court rule.” Lyft, Inc. v. Eighth Jud. Dist. Ct., 137 Nev. 832, 833, 501 P.3d 994, 997 (2021) (holding that a statute violated separation of powers as it attempted to abrogate NRCP 35, and by doing that, the

Legislature encroached on the inherent power of the judiciary); see also Berkson, 126 Nev. at 499, 245 P.3d at 565 (quoting State v. Second Jud. Dist. Ct. (Marshall), 116 Nev. 953, 959, 11 P.3d 1209, 1212 (2000) (“[T]he judiciary has the inherent power to govern its own procedures”). Therefore, “the legislature may not enact a procedural statute that conflicts with pre-existing procedural rules, without violating the doctrine of separation of powers and such a statute is of no effect.” Id.; see also Heller v. Legislature of Nevada, 120 Nev. 456, 93 P.3d 746 (2004) (explaining the Legislature cannot restrict, impair, or defeat the court exercising its constitutional powers) (citations omitted).

In the context of a conflicting statute and court rule, a separation of powers analysis examines whether the challenged statutory provision is substantive or procedural. Lyft Inc., 137 Nev. at 835, 501 P.3d at 999. A legislative encroachment on judicial prerogatives is implicated only where the statute interferes with procedure to a point of disruption or attempted abrogation of an existing court rule. Whitlock v. Salmon, 104 Nev. 24, 26, 752 P.2d 210, 211 (1988). Before determining whether the statute violates the separation of powers doctrine, it must first be determined whether the statute and the court rule can be harmonized or whether they irreconcilably conflict. Lyft Inc., 137 Nev. at 835, 501 P.3d at 999.

Because NRS 178.4849 regulates the timing of judicial bail hearings, the statute is procedural. Additionally, this statute was enacted after the Nevada

Supreme Court Order requiring the NPRA be used during bail hearings. As mentioned above, this Court entered ADKT 0539 on March 21, 2019, but NRS 178.4849 became effective on July 1, 2022.

Although the NPRA is required by this Court for all bail hearings, the NPRA is often not completed in time due to the short, forty-eight (48) hour timeframe prescribed by NRS 178.4849, between arrest and bail hearing. As proof of this fact, during the additional bail calendars from January 1, 2023, to September 1, 2023, the NPRA was unavailable in 13.5% of the cases. AA120. ADKT 0539 and NRS 178.4849 are clearly not in harmony with each other. Without the NPRA, the hearing must either be continued or argued without the benefit of the tool. As the statute directly interferes with this Court's preexisting Order, the law violates the separation of powers doctrine and is, therefore, unconstitutional.

This Court has made clear through ADKT 0539 that a NPRA is to be used in all cases to promote uniformity in bail decisions by focusing on analytical data that would help predict a defendant's (1) potential danger to the community and (2) risk of failing to appear. However, the district court's decision suggests that a court's utilization of the NPRA in bail decisions is purely optional, despite the fact ADKT 0539 specifically orders that the NPRA "**shall** be adopted for use in all judicial districts in Nevada." (emphasis added). AA531.

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In the cases of Navarro-Reyes, Armendarez, and Delosrios, the municipal court and the parties neither utilized the NPRA, nor possessed the underlying information that constitutes the NPRA. In these cases, the municipal court had no reliable information concerning whether the defendants had verified employment (NPRA Scoring Item 7), a verified local residence (NPRA Scoring Item 8), and a verified telephone (NPRA Scoring Item 10).

Rushed bail decisions have consequences. The aftermath of hastiness, rooted in NRS 178.4849, has materialized in several of the instant cases. The municipal court released Navarro-Reyes on bail and he was subsequently arrested for attacking the same victim. AA330. And, Delosrios was later cited for trespass, but failed to appear for his scheduled arraignment causing the municipal court to issue a bench warrant for his arrest. AA428.

These cases further demonstrate that the good cause requirement of NRS 178.4849, necessary to prove to obtain a continuance of a bail hearing, is not a genuine mechanism to comply with constitutional requirements or this Court's orders. The discretionary element contained within NRS 178.4849 allowed and even encouraged the lower court to disregard this Court's Order requiring the use of the NPRA in favor of meeting the statute's 48-hour deadline. In that way, the Legislature has enacted a statute that undermines a preexisting procedural order and thereby violates the doctrine of separation of powers.

The district court dismissively insinuated that the prosecution was culpable for failing to complete NPRAs in a timely manner and held that Appellant should just simply hire more personnel. AA559. The district court erred in several regards.

First, the preparation of the NPRAs is a judicial function. The executive branch has no control over the judiciary's employment or staffing decisions. See City of Sparks v. Sparks Mun. Ct., 129 Nev. 348, 302 P.3d 1118 (2013). Second, the district court's ruling does not account for situations where external or internal factors do not allow sufficient time for the NPRAs to be completed, regardless of staffing levels. Further, the cramped timeframe may not allow sufficient time to interview a defendant, especially if the defendant is under the influence of drugs or alcohol.

Less time necessarily results in less information, which adversely affects bail decisions. ADKT 0539 is not a mere suggestion, nor does it contain any exception for a court to consistently proceed without the NPRAs. Yet, NRS 178.4849 requires a lower court to choose between following its own branch's order, or the needlessly strict timeframe enacted by the Legislature. Accordingly, the Legislature has undermined a co-equal branch of governments, which is unconstitutional.

IV. THE HENDERSON CITY ATTORNEY'S OFFICE HAD STANDING TO CHALLENGE NRS 178.4849.

A prosecutor is the obvious party to challenge the constitutionality of NRS 178.4849. When a criminal law is violated, the prosecutor serves as the community's representative in court. The community has a strong interest in Nevada's bail laws,

especially when those laws interfere with public safety and the prevention of pretrial flight. Also, the prosecutor has an ethical obligation to ensure that the constitutional rights of all individuals are protected in a criminal prosecution.

The district court apparently based its standing analysis on caselaw concerning challenges by political interest or advocacy groups of official acts and/or authority. The district court failed to recognize that a prosecutor is not the legal equivalent to a third-party interest group seeking to challenge a legislative or administrative body's policy decision. A prosecutor, representing the community, will always be harmed by an unreasonable and unconstitutional bail statute, just as a defendant could be as well.

Here, Appellant not only suffered injury directly due to NRS 178.4849's timeframe, but it was also the logical and proper party to assert the violation of the constitutional rights of those victims excluded from bail hearings.

A. Standing Jurisprudence.

Appellant has standing to challenge the constitutionality of a statute requiring the City to participate in and to meet a burden of proof in a criminal action brought by the City of Henderson. "Standing is a question of law reviewed de novo." Arguello v. Sunset Station, Inc., 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). To have standing, the party seeking relief must have sufficient interest in the litigation. Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, 133 Nev. 247, 250, 396

P.3d 754, 756 (2017). An interest is sufficient if it “ensures the litigant will vigorously and effectively present his or her case against an adverse party.” Id. To challenge an unconstitutional statute, a person must generally suffer an injury that is caused by that act and is not just a general interest that is common to all members of the public. Schwartz v. Lopez, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

Standing disputes almost exclusively arise in civil suits, not in the context of criminal prosecution. This is for good reason. A criminal defendant, or prosecutor, will naturally have standing to challenge the constitutionality of a criminal statute, insofar as the enforcement of the statute adversely affects the parties involved in the prosecution. Nonetheless, the district court relied on standing jurisprudence in the civil context concerning interest groups filing declaratory relief actions and seeking injunctions relating to official acts or authorities to ultimately find that Appellant lacked standing. AA558.

Clearly, the prosecutor is a party to criminal cases. There is no question that NRS 178.4849 forces the court to hold bail hearings in an expedited timeframe with the presence of the prosecutor and imposes a burden of proof on the prosecution.

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The prosecutor has standing to challenge this statute as it directly impacts the prosecution's cases.¹⁰

Constitutional challenges to criminal statutes are frequently raised in criminal proceedings where the statute in question directly affects the criminal case. Standing has never been an issue in these instances. See Rimer v. State, 131 Nev. 307, 351 P.3d 697 (2015); Aguilar-Raygoza v. State, 127 Nev. 349, 255 P.3d 262 (2011); Mangarella v. State, 117 Nev. 130, 17 P.3d 989 (2001); Binegar v. Eighth Jud. Dist. Ct., 112 Nev. 544, 547, 915 P.2d 889, 891 (1996).

B. The Prosecutor Has a Strong Interest in Preventing Pretrial Flight and Further Crime, Especially Against the Same Victim.

A prosecutor's interest in a reasonable bail setting is apparent and even compelled by Nevada's bail statutes. The prosecution, representing the respective sovereign government, has an undisputed interest in preventing pretrial flight and potential crime. Mitchell v. Doherty, 37 F.4th 1277, 1288 (7th Cir. 2022). Clearly, "[t]he government's interest in preventing crime by arrestees is both legitimate and compelling." United States v. Salerno, 481 U.S. 739, 749, 107 S. Ct. 2095, 2103 (1987) (emphasis added). And, "the Government's regulatory interest in community

¹⁰ While the City had direct and third party standing to assert this constitutional challenge, the City also arguably had standing under the public importance doctrine pursuant to Nev. Pol'y Rsch. Inst., Inc. v. Cannizzaro, 138 Nev. 259, 507 P.3d 1203 (2022) to assert a violation of the Separation of Powers clause.

safety can, in appropriate circumstances, outweigh an individual's liberty interest.” Id. at 748, 107 S. Ct. at 2102.

Likewise in Nevada, bail is meant to ensure a defendant's presence at future court dates, and to protect the community from danger, especially danger to the victim and the victim's family. Valdez-Jimenez, 136 Nev. at 162, 460 P.3d at 984. Therefore, for bail to be reasonable “it must relate to one of these two purposes.” Id.

The burden of proving by clear and convincing evidence that bail is necessary to fulfill one of these two express purposes falls solely on the prosecuting attorney. Id. at 166, 400 P.3d at 987. Clear and convincing evidence has been defined as evidence which establishes every factual element to be highly probable or as evidence which must be so clear as to leave no substantial doubt.¹¹ Id.

Whether a defendant remains in custody in appropriate cases, pending trial, rests squarely on the quality of the evidence and arguments presented by the prosecutor at the bail hearing. NRS 178.4849's requirement that a bail hearing must be within the first forty-eight (48) hours after arrest creates a needlessly rushed timetable that interferes with the prosecutor's obligations. The statute's requirement that a continuance may only be discretionarily granted for good cause places the prosecutor's ability to seek an appropriate bail setting at the whim of the court.

¹¹ The Valdez-Jimenez decision was, in part, codified into NRS 178.4851(2).

First and foremost, a victim's safety is of the utmost importance in setting reasonable bail. However, the prosecutor is not omniscient. The prosecutor cannot be expected to know everything regarding a victim's past experiences with the defendant, nor should the prosecutor have to blindly speculate regarding the victim's safety needs. Victim input is not merely helpful in determining bail and conditions of release – it is critical to the court's bail decision and constitutionally required.

Information provided by the victim can, and many times should, affect a court's bail decision. Here, in *Cristobal*, Appellant was unable to contact the victim prior to bail hearing. However, Appellant was able to contact the victim within a reasonable timeframe after the hearing. Appellant also obtained information that Cristobal's prior domestic battery offense involved the same victim. AA126. This information is invaluable to arguments pertaining to bail and directly impacts the victim's safety. Here, this information was not available to Appellant and therefore could not be utilized in arguments made by the prosecutor because of the short timeframe mandated by NRS 178.4849. Unfortunately, this was harmful.

Regarding *Watson*, Appellant was unable to contact the victim prior to the bail hearing but was able to contact the victim by the next hearing date. Again, Appellant was forced to argue the bail hearing without the benefit of the victim's input. Every time Appellant is denied the ability to access information from the victim or regarding the defendant's background, it is being denied the ability to meet its

burden under Valdez-Jimenez, thereby suffering direct injury traceable to NRS 178.4849's timeframe.

Further, Marsy's Law allows *any person*, not just a victim, to bring an action to compel Appellant to carry out any duty required by the constitution or any statute enacted by the Legislature pursuant to it. Nev. Const. art. I, § 8A (4). Accordingly, not only does NRS 178.4849 impede Appellant from achieving its mandated obligations, but the statute also exposes Appellant to potential litigation.

Second, the NPRA may not always be completed by the time of the bail hearing. In fact, as of September 2023, 13.5% of the bail hearings in Henderson Municipal Court were held without a completed NPRA. AA120. The lack of this tool obviously hampers the prosecution's duties because it helps predict whether a defendant will engage in pretrial flight or further crime.

With *Navarro-Reyes*, the NPRA was never completed. In *Delosrios' case*, the NPRA was completed a mere five (5) minutes before the custody hearing and found Delosrios to be a high risk to reoffend, but was unavailable to the parties or court during the bail hearing.

In these cases, Appellant was unable to utilize the tool *mandated* by this Court, which determines the risk that a defendant poses to the community by a numerical score. Both Navarro-Reyes and Delosrios reoffended prior to being

adjudicated on their cases, which certainly frustrated the community's interest in public safety.

C. A Prosecutor's Job Is to Seek Justice in a Criminal Prosecution, Which Means That, at a Minimum, the Prosecutor Must Protect All Individuals' Rights Under the Nevada and U.S. Constitutions.

A prosecutor's primary duty is not to convict, but to see that justice is done.

Williams v. State, 103 Nev. 106, 110, 734 P.2d 700, 703 (1987). The American Bar Association's standard regarding the functions and duties of a prosecutor states:

[T]he prosecutor is an administrator of justice and should seek to protect the innocent and convict the guilty, **consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.**

ABA Standards for Criminal Justice § 3-1.2 (4th ed. 2017) (emphasis added).

Prosecutors are subject to constraints and responsibilities that do not apply to other types of lawyers. While lawyers representing private parties may do everything ethically permissible to zealously advance their clients' interests, "lawyers representing the government in criminal cases serve truth and justice first." United States v. Kojayan, 8 F.3d 1315, 1323 (9th Cir. 1993). The function of a prosecutor is to "vindicate the right of people as expressed in the laws and give those accused of crime a fair trial." Id.

Prosecutors have a duty to ensure that the constitutional and statutory rights of defendants and victims are protected during the criminal process. Since prosecutors must defend and uphold the sovereign's interest in procuring justice,

they have “**an obligation to ensure that the constitutional rights of crime victims are honored and protected.**” State v. Casey, 44 P.3d 756, 764 (Utah 2002) (emphasis added).

Thus, a prosecutor would always have legal standing to challenge a statute that interferes with a prosecutorial duty to ensure that the constitutional rights of all individuals involved in a criminal prosecution are protected. As NRS 178.4849 interferes with victims’ rights under Marsy’s Law, and in turn, undermines a prosecutor’s obligation to ensure that victims’ rights are protected, Appellant has legal standing to bring this challenge.

D. Appellant Has Third Party Standing as the City Is in the Best Position to Assert a Violation of a Victim’s Constitutional Rights Under Marsy’s Law.

The City Attorney’s Office may also assert this challenge on behalf of the crime victims. In Georgia v. McCollum, 505 U.S. 42, 112 S. Ct. 2348 (1992), the United States Supreme Court decided whether a state could bring an equal protection argument on behalf of jurors who were excluded from jury service due to racial discrimination committed by the defense. Id. at 44, 112 S. Ct. at 2351. The Court determined that the prosecution had third-party standing to assert the rights of the excluded jurors. Id. at 56, 112 S. Ct. at 2357.

The Court in McCollum held that, to have third-party standing, three factors must be present: (1) whether the litigant suffered a concrete injury; (2) whether the

hinderance exists in the injured party's ability to protect its own interests. Id. at 55, 112 S. Ct. at 2357.

The Court found that the State met the first factor, whether the litigant suffered a concrete injury, because the practice of excluding jurors on the basis of racial discrimination undermined the judicial process. McCollum, at 55-56, 112 S. Ct. 2357 (quoting Edmonson v. Leesville Concrete Co., 500 U.S. 614, 630, 111 S. Ct. 2077, 2088 (1991) (“Surely, a State suffers a similar injury when the fairness and integrity of its own judicial process is undermined”).

The Court also found the state established the second prong, whether the State had a close relation to the juror, because the state was the representative of all its people. McCollum, 505 U.S. at 56, 112 S. Ct. at 2357 (emphasis added).

As to the third factor, whether a hinderance exists in the jurors' ability to protect their own interests, the Court found that the barriers to a suit by an excluded juror are daunting. McCollum, 505 U.S. at 56, 112 S. Ct. at 2357. (citing Powers, 499 U.S. at 414, 11 S. Ct. at 1372-1373). For example, in Powers, the U.S. Supreme Court found that potential jurors are not parties to the proceedings so they do not have an opportunity to be heard when excluded, that it would be difficult for a potential juror to demonstrate the likelihood of discrimination against him/her and the lack of incentive to “... set in motion the arduous process needed to vindicate his own rights.” Powers, 499 U.S. at 414-15, 11 S. Ct. at 1373.

It is clear Appellant similarly has standing to assert the rights of victims in criminal cases. First, Appellant can establish a concrete injury. Not only does NRS 178.4849 directly cause injury to the prosecution, as discussed supra, but ignoring a victim's right to be heard jeopardizes the integrity of the judicial process, which causes Appellant to suffer a tangible injury as that found in McCollum.

Second, Appellant has a close relationship with victims of crime. Appellant prosecutes defendants accused of committing crimes against victims in the City of Henderson. The prosecution would not be able to effectively perform its job without victims, and victims would not receive justice or resolution without the prosecuting agency. Moreover, Appellant represents all of the citizens who reside within the jurisdiction.

Additionally, the relationship between prosecutors and victims is analogous to the relationship between the state and jurors in Powers. In Powers, the Court found that jurors are not parties to the proceedings, so they do not have an opportunity to be heard when excluded, and it would therefore be difficult for a juror to demonstrate the elements of his/her claim. 499 U.S. at 414-15, 11 S. Ct. at 1373. Here, the victims are not parties to bail proceedings. Most victims are unaware of their constitutional rights to attend and be heard during bail proceedings.

Third, victims are hindered in their ability to assert and protect their own interests to be present and heard at bail hearings because of the unworkable

timeframe mandated by NRS 178.4849. The hearings are held just hours after a crime has occurred, and victims may have other pressing needs that preclude them from participating. By the time a victim has learned of her/his right to be heard at the bail hearing, it is usually too late. Additionally, bringing subsequent litigation imposes an economic burden that many victims cannot afford financially, and victims have little ability to assert their rights after bail decisions have been made without their knowledge.

Lastly, the First Judicial District Court has previously found that the prosecution has legal standing to enforce a Marsy's Law violation in Nevada. State v. Nevada Board of Pardons, 22EW00471B, First Jud. Dist. Ct., December 19, 2022, *6. In 2022, the Nevada Board of Pardons Commissioners included a late item on their agenda that, if approved, would have commuted all death sentences in Nevada. Id. at *1. The Washoe County District Attorney's Office filed an Emergency Writ of Mandamus and/or Prohibition to stop the agenda item from proceeding based in part on Marsy's Law. The district court found that the Washoe County District Attorney's Office had standing in this matter, because of **“their role in advocating for victims and protecting the integrity of criminal convictions, and as well as corresponding sentences.”** Id. at *6. AA441. (emphasis added). The Board of Pardons never challenged the district court's ruling in any Nevada appellate court.

Accordingly, Appellant had standing to bring this motion itself as well as on behalf of crime victims.

E. The Issues Presented Are Not Moot.

In their writ petition, Respondents withdrew any claim that the issues contained in Appellant's municipal court motion were moot. As such, the district court never even addressed the issue of mootness. Nevertheless, out of an abundance of caution, Appellant will briefly address this issue here, since all seven (7) Respondents have already pleaded either guilty or no contest, and the municipal court has sentenced each of the Respondents.

Generally, this Court will decline to hear a moot case. Personhood Nev. v. Bristol, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). However, even where a case is moot, a court "may consider it if it involves a matter of widespread importance that is capable of repetition, yet evading review." Id. at 602, 245 P.3d at 574. The party seeking to overcome mootness must prove "that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important." Bisch v. Las Vegas Metro. Police Dep't, 129 Nev. 328, 334-35, 302 P.3d 1108, 1113 (2013).

In Valdez-Jimenez, both defendants pleaded guilty and were no longer subject to pretrial detention when this Court considered their respective writ petitions. 136 Nev. at 158, 460 P.3d at 981. With regard to the first prong, this Court ultimately

held that bail decisions fall within the exception to the mootness doctrine and may be reviewable regardless of whether the defendant remains in custody, or the case has been adjudicated. Id. The Valdez-Jimenez Court held that, given the time restraints inherent in criminal cases, most bail orders are short in duration and the issues concerning bail and pretrial detention become moot once the case is resolved by dismissal, guilty plea, or trial. Valdez-Jimenez, 136 Nev. at 159, 460 P.3d at 982.

As to the second factor, the Court held that because the constitutional issues concerning the inquiries and findings required for setting bail are relevant in many criminal cases, they will arise in the future. Id. Finally, this Court held that bail decisions are issues of widespread importance, as they affect many arrestees and involve the constitutionality of Nevada's bail system. Valdez-Jimenez, 136 Nev. at 160, 460 P.3d at 983. Because the challenge raised legal questions of first impression and statewide importance that were likely to recur in other cases, this Court decided "to consider the issues on the merits." Id. at 161, 460 P.3d at 983.

Likewise, in the instant appeal, these constitutional issues involve Nevada's bail system and are matters of first impression and statewide importance that will certainly recur in other cases. The 48-hour bail hearing requirement in NRS 178.4849 affects both arrestees and victims *every day* in Nevada, and this challenge would affect the timing of bail hearings moving forward. As such, this appeal should

not be rendered moot simply because the bail hearings have already occurred, or the Respondents have entered pleas.

V. THE HENDERSON MUNICIPAL COURT HAD CLEAR AUTHORITY TO DECIDE APPELLANT'S CONSTITUTIONAL CHALLENGE.

Municipal courts are not second-class citizens in Nevada's judicial system. Here, however, the district court ruled otherwise. Specifically, the district court determined that municipal courts do not possess the authority to rule upon constitutional challenges to state law, and, therefore, the municipal court lacked jurisdiction to even consider Appellant's challenge. AA559. The district court misinterpreted state law, including Henderson's City Charter, and this Court's jurisprudence on the jurisdiction of Nevada's municipal courts.

In addition to vesting judicial power in the courts, the Nevada Constitution distinguishes municipal courts as being statutorily, rather than constitutionally, created. Blackjack Bonding v. City of Las Vegas Mun. Ct., 116 Nev. 1213, 1220, 14 P.3d 1275, 1280 (2000). Nonetheless, this Court reaffirmed that municipal courts, once established, are part of the constitutional judicial system of Nevada, and "enjoy the inherent powers of all constitutionally created courts ..." Id.

Likewise, in City of Sparks, this Court held that "**municipal courts**, as coequal branches of their local governments and a part of the state constitutional judicial system, are protected by the constitutional separation of powers doctrine and

possess inherent judicial powers to the same extent as the other courts of this state.” 129 Nev. at 362, 302 P.3d at 1128 (citations omitted) (emphasis added).

The Henderson Municipal Court has explicit jurisdiction over both misdemeanor state law (Nevada Revised Statutes) and municipal ordinance offenses (Henderson Municipal Code) that occur in Henderson. This is undeniable.

The City of Henderson was incorporated by the Nevada Legislature pursuant to a charter. See Henderson City Charter, Chapter 266, Statutes of Nevada 1971, art. I, § 1.010. Undoubtedly, a city charter *is* a statute. Ex parte Counts, 39 Nev. 61, 153 P. 93, 96 (1915) (referring to Reno’s city charter as a “statute”); Pardini v. City of Reno, 50 Nev. 392, 263 P. 768, 770 (1928) (referring to Virginia City’s charter as a “statute”).

Through this special legislative act, the Nevada Legislature directly authorized and established the Henderson Municipal Court pursuant to its authority under Nev. Const. art. 6, § 1. Henderson City Charter, art. IV, §§ 4.015-030. Further, the charter grants the Henderson Municipal Court jurisdiction over criminal misdemeanor violations of state law. Henderson City Charter § 2.140(2) provides that, “[a]ny offense made a misdemeanor by the laws of the State of Nevada shall also be deemed to be a misdemeanor in the City whenever such offense is committed within the City.” (Emphasis added).

In addition to Henderson’s City Charter, NRS 268.018 explicitly allows a city to establish, as a city misdemeanor offense, any offense that is also a misdemeanor pursuant to the laws of the State of Nevada. In turn, the Henderson City Council enacted Henderson Municipal Code § 8.02.010, which states that the violation of a state law is a city misdemeanor. H.M.C. § 8.02.010; see City of Las Vegas v. Las Vegas Mun. Ct., 110 Nev. 1021, 1023, 879 P.2d 739, 740 (1994) (holding that NRS 5.050 plainly grants the municipal court jurisdiction to entertain criminal actions charging a misdemeanor violation of a temporary protective order). And, NRS 5.050(2) clearly provides that “municipal courts have jurisdiction of all misdemeanors committed in violation of the ordinances of their respective cities.”

The Legislature, by enacting NRS 5.050(2), NRS 268.010, and the Henderson City Charter § 2.140(2), granted the Henderson Municipal Court jurisdiction over all misdemeanor (NRS and HMC) offenses that occur within the City of Henderson. As such, the municipal court would necessarily possess the authority to decide constitutional challenges that arise in those misdemeanor cases, since the “role of the judiciary is, ultimately, to uphold and defend by rule of law the federal and Nevada Constitutions.” Ramsey v. City of North Las Vegas, 133 Nev. 96, 106, 392 P.3d 614, 622 (2017).

In addition to clear statutory authority, this Court has fully settled this area of law and previously ruled that “**municipal courts have jurisdiction to consider the**

constitutionality of misdemeanor laws in proceedings attendant to enforcement of those laws.” City of Las Vegas v. Eighth Jud. Dist. Ct. (Krampe), 122 Nev. 1041, 1046, 146 P.3d 240, 244 (2006) (emphasis added).

Initially, this Court held that neither justice courts nor municipal courts have the jurisdiction to consider constitutional issues. See McKay v. City of Las Vegas, 106 Nev. 203, 789 P.2d 584 (1990); In re Dixon, 40 Nev. 228, 161 P. 737 (1916)). However, this Court later overruled that notion in Salaiscooper v. Eighth Jud. Dist. Ct., 117 Nev. 892, 900, 34 P.3d 509, 515 (2001), and determined that neither McKay nor Dixon should be read to imply that justice courts do not have authority to consider issues of constitutionality.¹² The Nevada Supreme Court later expressly held that Salaiscooper extends to municipal courts. Krampe, 122 Nev. at 1047, 146 P.3d at 244, see also Grace v. Eighth Jud. Dist. Ct., 132 Nev. 511, 519, 375 P.3d 1017, 1022 (2016) (holding that justice courts have the power to suppress illegally obtained evidence because, among other reasons, justice courts have limited inherent authority to do so).

And, in 2021, this Court interpreted Krampe and reaffirmed that **“the Legislature has empowered municipal courts and justice courts ‘with the**

¹² Both Dixon and McKay are wholly limited to their facts involving taxes and assessments. See Salaiscooper, 117 Nev. at 900-01; 34 P.3d at 515; Krampe, 122 Nev. at 1047 n.11, 146 P.3d at 244 n.11.

authority to resolve constitutional questions raised' in proceedings over which they have jurisdiction." Pickens on behalf of State v. La Villa Vegas, Inc., 137 Nev. 951, *1, 485 P.3d 1248 (2021) (unpublished disposition) (emphasis added) (quoting Krampe, 122 Nev. at 1047, 146 P.3d at 244 (2006)).

By granting municipal courts jurisdiction over misdemeanor offenses, the Legislature has necessarily empowered municipal courts with the authority to resolve constitutional questions raised in the context of such proceedings. This precedent coupled with the inherent power of the judiciary to defend the Nevada Constitution, properly allowed the Henderson Municipal Court's consideration of the Appellant's motion.

Notably, there is no state law which directly authorizes Nevada's justice courts, or even district courts, to declare a state law unconstitutional, but certainly justice and district courts hold that authority. This Court has directly addressed this issue and stated:

[L]ike municipal courts, district courts are not expressly granted jurisdiction to consider the constitutionality of a statute. Such power is derived from a district court's authority to try cases over which it has original jurisdiction.

Krampe, 122 Nev. at 1047, 146 P.3d at 244 (2006).

In conclusion, the Henderson Municipal Court has statutory jurisdiction over all misdemeanor offenses that are committed within the jurisdictional boundaries of the City of Henderson. Indisputably, each and every one the Respondents' crimes in

these cases were misdemeanor offenses and occurred in Henderson. NRS 178.4849 mandated a procedure directly affecting each of these criminal cases in the municipal court. Therefore, intrinsically, the municipal court possessed the authority to rule upon this constitutional challenge which arose during the course of these misdemeanor cases.

The district court erred in finding that the municipal court lacked jurisdiction to rule upon the Appellant's constitutional challenge.

CONCLUSION

The City of Henderson respectfully requests that this Court reverse the district court's decision granting the Respondent's Petition for Writ of Mandamus/Prohibition.

DATED this 18 day of June, 2025.



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VERIFICATION

Under penalty of perjury, the undersigned declares that I have read the foregoing Opening Brief and know the contents there; that this Opening Brief is true to the undersigned's own knowledge, except to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.


MARC M. SCHIFALACQUA, ESQ.


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 Word for Office 365 in 14-point Times New Roman.

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 excepted by NRAP 32(a)(7)(C) it is proportionately spaced, has a typeface of 14 points or more, and contains 13,782 words.

3. Finally, I hereby certify that I have read this Answering 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 18 day of June, 2025.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of June, 2025, a true and correct copy of the foregoing APPELLANT'S AMENDED OPENING BRIEF was served via electronic service through the Court's electronic filing system per NEFCR 9 to the following:

Lance Maningo	Brian Kunzi
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and that the same was served via US mail, first class postage prepaid, and addressed as follows:

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