

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 REPLY BRIEF

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ARGUMENT

In this constitutional challenge to NRS 178.4849, Appellant does not ask this Court to overrule any portion of Valdez-Jimenez v. Eighth Jud. Dist. Ct., 136 Nev. 155, 460 P.3d 976 (2020). Appellant only requests that this Court uphold and defend its Valdez-Jimenez opinion from legislative overreach, which has directly interfered with the rights and interests of victims, prosecuting agencies, and the judiciary.

In response to this challenge, Respondents, and their Amici Curiae supporters, espouse an overarching premise: not only is NRS 178.4849's timeframe entirely reasonable, but the Legislature has the sole authority to determine when individualized bail hearings, created by this Court's Valdez-Jimenez opinion, should occur. Respondents further assert that Nev. Const., art. I, § 8A (Marsy's Law) is a dead letter in Nevada's Constitution, and regardless of the severity of legislative interference with victims' constitutional rights, the judiciary has no ability to review any offending legislative act. Respondents' arguments should be rejected.

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I. SEPARATION OF POWERS: NRS 178.4849’S TIMEFRAME HAS DEGRADED THIS COURT’S VALDEZ-JIMENEZ OPINION AND ADKT 0539.

A. NRS 178.4849’s strict timeframe is constitutionally flawed.

After this Court issued its Valdez-Jimenez opinion, the Legislature enacted NRS 178.4849 mandating that Nevada’s courts conduct bail hearings within an inflexible narrow timeframe. The Legislature did not have this authority.

“Any legislation undertaking to require judicial action within fixed periods of time is an unconstitutional interference by the legislature with a judicial function.” Lindauer v. Allen, 85 Nev. 430, 434, 456 P.2d 851, 854 (1969) (internal citations omitted). The Lindauer Court, in deciding whether a statute can amend or effectively repeal a rule which expresses an inherent power of court, noted the following:

In Schario v. State, supra, it was stated: ‘Whether or not justice is administered without ‘denial or delay’ is a matter for which the judges are answerable to the people, and not to the General Assembly of Ohio. Manifestly, when a case can be heard and determined by a court must necessarily depend very largely upon the court docket, and quantity of business submitted to the court, the nature, the importance, and the difficulties attending the just and legal solution of matters involved.’

85 Nev. at 434-35, 456 P.2d at 854 (quoting Schario v. State, 105 Ohio St. 535, 138 N.E. 63 (1922)).

“The legislature may, by statute, sanction the exercise of inherent powers by the courts, and the courts may acquiesce in such pronouncements by the legislature,

but when a statute attempts to limit or destroy an inherent power of the courts, that statute must fail.” Lindauer, 85 Nev. at 434, 456 P.2d at 854.

Here, the statute at issue, NRS 178.4849, provides, in pertinent part, as follows: “a court *shall*, within 48 hours after a person has been taken into custody, hold a pretrial release hearing ... to determine the custody status of the person.” NRS 178.4849(1) (emphasis added).

As used in the statute, the word “[s]hall” imposes a duty to act.” NRS 0.025(1)(d); see also Washoe Med. Ctr. v. Dist. Ct., 122 Nev. 1298, 1303, 148 P.3d 790, 793 (2006) (“[S]hall” is mandatory and does not denote judicial discretion.”). The statutory requirement to conduct a bail hearing within forty-eight (48) calendar hours infringes and interferes with the judiciary’s inherent authority.

Amici Curiae highlights NRS 171.196(2), which requires preliminary hearings to be set within 15 days of arraignment in justice court, as an example of the Legislature’s unfettered authority to regulate the timing of judicial hearings. See Amici Curiae Brief of the Clark Public Defender’s Office et al. in Support of Respondents, p. 23. However, a preliminary hearing itself is not a constitutional mandate. Chittenden v. Just. Ct. of Pahrump Twp., 140 Nev. Adv. Op. 5, 544 P.3d 919, 929 (Nev. App. 2024). In contrast, a bail hearing, post-Valdez-Jimenez, is a constitutionally mandated hearing, not a statutory one. Further, Valdez-Jimenez outlined the general timeframe to hold bail hearings, and the Legislature had no right

to second-guess this timing. Also, NRS 171.196 (2) does not require justice courts to hold judicial hearings on nonjudicial days, as NRS 178.4849 certainly commands.

B. Valdez-Jimenez and Johnston.

Both the United States and Nevada Constitutions provide that no person shall be deprived of liberty without due process of law. U.S. Const. amend. XIV, § 1; Nev. Const. art. 1, § 8(2). Additionally, Article 1, sections 6 and 7 of the Nevada Constitution provide “a right to bail in a reasonable amount” to all “who are accused of committing noncapital, non-first-degree-murder offenses.” Valdez-Jimenez, 136 Nev. at 161-62, 460 P.3d at 984.

This Court recently recognized that “pretrial release and detention decisions implicate a liberty interest—conditional pretrial liberty—that is entitled to procedural due process protections.” Johnston v. Eighth Jud. Dist. Ct., 138 Nev. 700, 707, 518 P.3d 94, 101 (2022). The Court acknowledged that this fundamental pretrial liberty interest attaches after arrest.

Once the Court concludes that due process applies, it must determine what process an individual is due. Johnston, 138 Nev. at 707, 518 P.3d at 101. The United States Supreme Court has made clear “that due process is flexible and calls for such procedural protections as the particular situation demands.” Id. at 706-07, 518 P.3d at 101 (quoting Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593 (1972)). And a due process inquiry into a procedure “requires analysis of the governmental and

private interests that are affected.” Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Additionally, this Court has held that “[d]ue-process jurisprudence recognizes a sliding scale that demands more protections the more substantial the intrusion or deprivation of a constitutionally protected right.” Flangas v. Perfekt Mktg., LLC, 138 Nev. 224, 231, 507 P.3d 574, 580 (2022).

The timing of a hearing is often of fundamental importance for due process. Johnston, 138 Nev. at 707, 518 P.3d at 101-02 (citing Goldberg v. Kelly, 397 U.S. 254, 267, 90 S.Ct. 1011 (1970) (“The hearing must be at a meaningful time and in a meaningful manner.”)).

Therefore, in the context of bail, this Court recognized “that an accused is entitled to a *prompt* individualized hearing on his or her custody status after arrest,” which should generally occur at the “*initial appearance,¹ or arraignment.*” Valdez-Jimenez, 136 Nev. at 163-64, 460 P.3d at 985-86 (emphasis added).

C. NRS 178.4849 disrupted the balance.

Pretrial detention decisions undoubtedly require the balancing of interests. County of Riverside v. McLaughlin, 500 U.S. 44, 53, 111 S.Ct. 1667, 1669 (1991). On one hand, a criminal defendant has a strong pretrial liberty interest. Valdez-Jimenez, 136 Nev. at 162, 460 P.3d at 984. On the other hand, a crime victim has the

¹ NRS 171.178 (3) defines the initial appearance timeframe as occurring within seventy-two (72) hours after arrest, excluding nonjudicial days.

right to be reasonably protected from the defendant pending trial, and a court must consider a victim's safety as a factor in fixing the amount of bail and conditions of release. Nev. Const., art. I, § 8A(1)(b)(c). The victim also has the right to confer with the prosecuting agency regarding the case. Nev. Const., art. I, § 8A(1)(f). And, a victim has the right to be notified of, to attend, and to be heard at a defendant's bail hearing. Nev. Const., art. I, § 8A(1)(g)(h). Further, the government has legitimate and compelling interests in preventing pretrial flight and additional crime by arrestees. Valdez-Jimenez, 136 Nev. at 163, 460 P.3d at 985.

The judiciary has always been best positioned to balance competing interests in relation to the nature and timing of important judicial proceedings. See McLaughlin, 500 U.S. at 53, 111 S. Ct. at 1668 (finding a "practical compromise" between the rights of individuals and the realities of law enforcement regarding judicial probable cause determinations).

Based on this Court's interpretation of the Nevada Constitution, Valdez-Jimenez created a new legal framework for adversarial, individualized bail hearings in Nevada, which included a prosecutorial burden of proof. Regarding the timing of these hearings, this Court struck a workable balance between significant competing interests, which was only possible by taking into account the rights and interests of defendants, victims, and the government, as well as the practical operation of Nevada's judicial system. However, by enacting NRS 178.4849's strict timeframe,

the Legislature determined that it was instead the proper branch of government to both interpret the Nevada Constitution and direct the judiciary's day-to-day operations.

“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). And, in the judicial context, “the concept of inherent court power” contemplates that the judiciary “possesses the inherent power to protect itself and administer its affairs.” Clark Cnty. Deputy Marshals Ass’n v. Clark Cnty., ___ P.3d ___, 141 Nev. Adv. Op. 49, *2 (2025) (citing Sun Realty v. Eighth Jud. Dist. Ct., 91 Nev. 774, 776, 542 P.2d 1072, 1073 (1975)). The Legislature had no authority to undermine this Court’s Valdez-Jimenez opinion² regarding the timing of bail hearings, nor did it have the right to essentially decree the work schedule of the entire

² The issue of whether the Legislature undermined this Court’s Valdez-Jimenez opinion, and in doing so, affected the rights of victims and the government is properly before this Court. This very issue was presented to both the municipal court and district court. Specifically, Appellant titled Section IV of its Motion to Declare NRS 178.4849 Unconstitutional, which it filed in Henderson Municipal Court, as follows: “THE NEVADA LEGISLATURE DISTORTED THE ‘PROMPTNESS’ REQUIREMENT WHEN IT ENACTED NRS 178.4849.” AA067. Further, at oral argument on the writ petition in district court, Appellant’s undersigned counsel directly argued that the Legislature changed this Court’s promptness determination in Valdez-Jimenez. AA544. Then, the district court rejected Appellant’s argument and ruled that “the issue of what amount of time is reasonable for a pretrial custody hearing is a question for the legislature” AA559. Appellant challenges this ruling on appeal.

judicial branch. In turn, this legislative overreach has interfered with the rights of victims, defendants, and the government.

Respondents ignore a simple truth regarding NRS 178.4849's condensed timeframe: due to the practical workings of Nevada's lower courts – 48 hours never actually means *48 hours*. In fact, in the Henderson Municipal Court, 64% of bail hearings occur 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.³ AA121.

This timeframe is not adequate to reliably comply with the due process requirements of Valdez-Jimenez, the government's clear and convincing burden of proof, victims' Marsy's Law rights, and ADKT 0539. Statistically, approximately one-third of defendants did not even appear for their bail hearing, and the City Attorney's Office was able to contact less than half of crime victims prior to bail hearings. AA120. Also, the NPRA was unavailable in 13.5% of bail hearings. AA120. These results are not at all surprising based on the everyday realities of the criminal justice system, in relation to NRS 178.4849's artificial, hurried timeframe.

Further, the district court's sweeping order places absolutely no limit on the Legislature's authority to regulate the timing of judicial hearings, by finding that

³ These statistics include bail hearings that occurred on Thursdays, Saturdays, and Sundays (preceding a Monday holiday) in the Henderson Municipal Court between January 1, 2023, and September 3, 2023. AA121.

“the issue of what amount of time is reasonable for a pretrial custody hearing is a question for the legislature ...” AA559. This Court is certainly the final arbiter of whether NRS 178.4849 is reasonable and constitutionally sound.

Overall, this Court properly exercised its authority in Valdez-Jimenez to interpret the bail provisions and due process protections rooted in the Nevada Constitution. The Court recognized the rights of victims, defendants, the government, as well as the practical realities of Nevada’s judicial system, during these constitutional hearings. Ultimately, however, the Legislature recklessly disrupted the delicate balance struck by this Court in Valdez-Jimenez.

D. ADKT 0539.

Under the separation of powers doctrine, the Legislature ““may not enact a procedural statute that conflicts with a pre-existing procedural rule.”” State v. Dist. Ct. (Marshall), 116 Nev. 953, 959, 11 P.3d 1209, 1213 (2000) (quoting State v. Connery, 99 Nev. 342, 345, 661 P.2d 1298, 1300 (1983)). A procedural statute that conflicts with a preexisting procedural rule is of no effect, and ““the rule supersedes the statute and controls,”” id. at 960, 11 P.3d at 1213 (quoting Connery, 99 Nev. at 345, 661 P.2d at 1300), so as not to interfere with the judiciary’s inherent authority to procedurally manage litigation. Borger v. District Court, 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004).

And, “this court has the inherent authority to make procedural rules that remedy systematic unfairness in the way that judicial proceedings are conducted.” State v. Second Jud. Dist. Ct. (Ojeda), 134 Nev. 770, 774, 431 P.3d 47, 51 (2018) (citing Halverson v. Hardcastle, 123 Nev. 245, 261-62, 163 P.3d 428, 440 (2007) (recognizing this Court’s “inherent authority” to make rules necessary “to prevent injustice and to preserve the integrity of the judicial process”)).

This Court indisputably possesses inherent power to prescribe rules and orders necessary or desirable to handle the judicial functioning of the courts. Falling within that power are the provisions in ADKT 0539 requiring the judiciary to consider the pretrial risk assessment in making pretrial bail decisions, as well as the requirement of Valdez-Jiminez that courts promptly make pretrial custody determinations. The power to establish the time within which a pretrial custody hearing should occur is a basic constitutional function of the judicial branch of government over which this Court has inherent authority. The Legislature’s statutory mandate that the judiciary conduct pretrial custody hearings within forty-eight (48) hours infringes and interferes with the judiciary’s inherent authority to procedurally manage litigation.

NRS 178.4849 is procedural because it specifies the time within which the Nevada judiciary must conduct pretrial custody hearings. Accordingly, NRS 178.4849 is unconstitutional because it attempts to abrogate an existing rule of procedure that this court prescribed under its inherent authority to regulate the

judicial process. NRS 178.4849 cannot limit the judiciary's inherent authority to regulate criminal procedure. NRS 178.4849 violates the separation of powers doctrine because it is a procedural statute that conflicts with both ADKT 0539 and this Court's Valdez-Jimenez decision. The Legislature possesses no authority to dictate the time within which these hearings must occur. Therefore, that portion of NRS 178.4849 requiring courts to conduct a pretrial custody hearing within forty-eight (48) hours intrudes into the judicial function.

E. Assembly Bill 424's false premise and ignoring judicial concerns.

In their Answering Brief, Respondents reference a portion of NRS 178.4849's legislative history to presumably demonstrate the law's balanced approach to bail hearings, as well as the protection of victims' rights. Respondent's Answering Brief, p. 54. However, Respondents' citation to NRS 178.4849's legislative history is from the 2023 Legislative Session when NRS 178.4849 was lightly amended, and not the 2021 Legislative Session, when the law was enacted. Thus, a discussion of NRS 178.4849's origin is necessary to provide proper context. This legislative history further demonstrates why the judiciary, not the legislature, is in the best position to balance the many interests involved in Nevada's bail hearings and ensure compliance with the Nevada Constitution.

During the 2019 Legislative Session, the Nevada Legislature adopted S.C.R. 11, which directed the Legislative Commission to appoint a committee to

“thoroughly study issues relating to bail in an effort to address and reform the current bail system.” Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases (Senate Concurrent Resolution No. 11 (2019)), Final Report, January 2021, p. 5 (hereinafter, “Final Report, [page number]”). In January of 2021, the Committee released its Final Report, which memorialized information received by members for the Committee through “formal presentations from interested stakeholders and national experts,” and “public testimony on a broad range of topics involving pretrial detention of defendant in criminal cases.” Id. at 7.

One of the people who provided testimony to the committee was the Honorable Diana Sullivan, Justice of the Peace for the Las Vegas Township Justice Court. As is relevant to the instant appeal, Judge Sullivan explained to the Committee that, in the Las Vegas Justice Court, “*probable cause* review must be done within 48 hours.” Final Report, 13 (emphasis added). If a magistrate finds probable cause, “the arrestee must be brought before a judge within *72 hours of* arrest, exclusive of days when the court is not operating.” Id. (emphasis added). And, while the Las Vegas Justice Court’s Initial Appearance Court many times operates more quickly than required by this timeframe, the “Initial Appearance Court took a great deal of resources which may not be currently available in rural jurisdictions.” Id.

Another presenter to the Committee included Evelyn Grosenick, a Chief Public Defender from the Washoe County Public Defender's Office. Final Report, 23. Although the Final Report notes that Grosenick presented on behalf of the "Washoe County Public Defender's Office," Grosenick nevertheless testified, apparently incorrectly, that "the Las Vegas Justice Courts have Initial Appearance court whereby every detainee is given a hearing within 12 to 24 hours of arrest" Id. at 23-24. Grosenick concluded by arguing that "the state should be required to establish that preventive detention is necessary at a full hearing." Despite Judge Sullivan's testimony, that arrestees in the Las Vegas Justice Court were given a pretrial custody hearing within *seventy-two hours* of a probable cause hearing, Grosenick, the Washoe County Public Defender, argued that detention hearings should occur within "12 to 24 hours of arrest for all arrestees." Final Report, 24.

The Committee also heard from Deputy Public Defender Nancy Lemcke of the Clark County Public Defender's Office. According to Lemcke, 48 hours is likely the constitutional "maximum" amount of time an arrested person should wait before a hearing. Final Report, 31-32. In support, Lemcke claimed that, "the U.S. 5th and 11th Courts of Appeals have held that a custody determination must be made within 48 hours of arrest." Id. at 26. Specifically, Lemcke cited two cases: "O'Donnell [sic] v. Harris County, 892 F.3d 147 (5th Cir. 2018)," and "Walker v. City of Calhoun,

Georgia, 901 F.3d 1245 (11th Cir. 2018).” Id. at 32.⁴ Additionally, Lemcke stated that “while 48 hours is the maximum under these cases, ... a hearing must be given to an offender without the ability to pay [cash bail] within a maximum of 24 hours.” Id.

Even with this misinformation, the Committee could not agree on a reform, and instead made three alternative recommendations regarding potential reforms to Nevada’s pretrial custody hearing process: 1. “legislation requiring a bail hearing with 12 to 24 hours after arrest, or within 48 hours if the state seeks preventative detention measures for individuals who pose a danger to the community” based on Grosenick’s testimony; 2. “mandating a prompt bail hearing within a maximum of 48 hours of arrest, but not later than 24 hours after arrest if bail is offered on a standardized bail schedule,” based on Lemcke’s testimony; or, 3. “permitting local jurisdictions to individually implement procedures which would facilitate prompt bail hearings.” Final Report, 42-43.

Subsequently, Assembly Bill 424 (later codified as NRS 178.4849) was introduced by Senator Dallas Harris, as chairperson of the interim pretrial release study committee, in the Nevada Senate on May 12, 2021. Specifically, Senator Harris, introducing Assembly Bill 424, stated the following:

⁴ Even this reading of these federal circuit cases is questionable. See Mitchell v. Doherty, 37 F.4th 1277 (7th Cir. 2022).

A person's custody status must be determined within 48 hours after they have been jailed.

We originally wanted to replace the bail hearing schedule in the bill with 24-hour release. However, we compromised by making it 48 hours minimum and retaining the hearing schedule.

Forty-eight hours is the maximum limit; I hope courts do not wait until the forty-eighth hour.

Minutes, Senate Committee on Judiciary, May 12, 2021, Testimony of Senator Dallas Harris (Senatorial District No. 11), 81st Session, pp. 15-16.

Concerningly, Senator Harris appears to have decided on a forty-eight- (48) hour maximum for pretrial custody hearings arbitrarily:

Dispensing justice can be inconvenient; granting people's rights is not always easy. I did not use the "reasonable time" language because I had many conversations with people about their definition of what is reasonable. Some public defenders will say 12 hours; judges may tell you it is a week, and I have seen people held up to 11 days. We adopted the middle ground of 48 hours.

Minutes, Senate Committee on Judiciary, May 12, 2021, Testimony of Senator Dallas Harris (Senatorial District No. 11), 81st Session, pp. 15-16.

During that same hearing, Kendra Bertschy, of the Office of the Public Defender, Washoe County, testified in support of the 48 hour maximum. Bertschy stated, that "[t]he County of Riverside v. McLaughlin defined "prompt" as no later

than 48 hours after arrest,” and “Justice Scalia stated 48 hours was extremely generous and asked it to be reduced.”⁵ Id.

The Honorable Stephen Bishop, Justice of the Peace for the Ely Justice Court, and then President of the Nevada Judges of Limited Jurisdiction, testified to the practical and constitutional challenges created by mandating adversarial bail hearings within 48 calendar hours of an arrest. Specifically, Judge Bishop stated:

There are more attorneys in this room than public defenders in the Seventh Judicial District Court Public Defenders’ Office. The few public defenders we have must meet with clients, review case files, prepare for hearings, conduct hearings and perform a conflict test in less than 48 hours. We are setting them up for failure ...

We do not have the staff to carry out the provisions of A.B. 424. Regardless if the hearing is held remotely, someone has to process and distribute the orders and someone must start the recording in the courtroom, so we have a record of the hearing. Staff will have to be there for weekend hearings. We can divide that up across the counties in the District, but each county will have to have its own staff present for its cases.

How do victims entitled to be present under Marsy’s Law attend remote hearings? Half the time, they are indigent or close to it, lack microphones or webcams or do not even have computers. The courtroom must be open, regardless if the meeting is remote. The bailiff and staff must be present.

⁵ Interestingly, it appears as though both the Clark County Public Defender’s Office and the Washoe County Public Defender’s Office have abandoned their previous position, that the Nevada and U.S. Constitutions require an adversarial bail hearing within 48 calendar hours, as this argument does not appear in their amicus brief in this matter.

Minutes, Senate Committee on Judiciary, May 12, 2021, Testimony of Senator Hon. Stephen Bishop, p. 27.

Judge Bishop also disputed the public defender's interpretation of McLaughlin, explaining that the "case was not about an evidentiary adversarial bail hearing with counsel and cross-examination of witnesses. The case was about a 48-hour probable cause determination, which we already do." Id.

The proponents of NRS 178.4849 appeared, mistakenly, to equate the right to a judicial determination of probable cause within 48 hours of arrest with the right to an adversarial bail hearing within the same timeframe. While it is possible for these two important judicial determinations to take place simultaneously, they are distinct matters, as the Court of Appeals for the Seventh Circuit recently explained. Mitchell v. Doherty, 37 F.4th 1277 (7th Cir. 2022).

Citing both Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1974), and McLaughlin, the Seventh Circuit noted that, "[t]he Supreme Court has twice addressed the procedural requirements for probable-cause determinations but never considered the timing of bail hearings." Mitchell, 37 F.4th at 1279. Initially, the Seventh Circuit noted that its own caselaw had "never held that a bail hearing must occur within forty-eight hours after arrest." Id. at 1280. More importantly, however, neither the United States Supreme Court nor any federal circuit court of appeals has ever stated that a bail hearing must be held within 48 hours of arrest. Id.

at 1281. Additionally, the Seventh Circuit, reviewing both the Eleventh Circuit's opinion in Walker v. City of Calhoun, 901 F.3d 1245 (11th Cir. 2018), and the relevant Fifth Circuit holding in ODonnell v. Harris County, 892 F.3d 147 (5th Cir. 2018), further noted that "no other circuit has imposed a forty-eight requirement for bail hearings after arrest." Thus, the Seventh Circuit concluded, "precedent dictates that only a probable-cause determination must be held within forty-eight hours." Id. at 1282.

In reaching this conclusion, the Seventh Circuit acknowledged a complexity of competing issues involved in resolving the required timing of pretrial custody decisions:

States must manage a large volume of bail hearings with limited resources. Requiring hearings to be held on weekends would force governments to raise revenue, expend money, and hire additional personnel. Before releasing someone on bail, a judge must assess a suspect's dangerousness and risk of flight, information that the government might not have readily available. (internal citation omitted). The state has an interest in preventing pretrial flight and potential crime. (internal citation omitted). Between 1990 and 2004, a bench warrant was issued for failure to appear in court for almost one in four felony defendants. Thomas H. Cohen & Brian A. Reaves, Bureau of Justice Statistics, Pretrial Release of Felony Defendants in State Courts 7 (2007). One comprehensive study surveying state-court data determined that "initial pretrial release leads to substantial increases in failing to appear for required court appearances." Will Dobbie, et al., The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, 108 Am. Econ. Rev. 201, 226 (2018). "[P]retrial release increases the probability of failing to appear in court by 15.6 percentage points" Id. at 203. Rushing the initial bail determination, therefore, may endanger later prosecutorial success.

Mitchell, 37 F.4th at 1288.

Ultimately, the Mitchell Court concluded that the Fourth Amendment does not require a bail hearing within 48 hours after arrest.⁶ 37 F.4th at 1289.

Assembly Bill 424 was based on the flawed legal premise that 48 hours is the constitutional maximum to conduct a bail hearing. The Legislature also failed to properly account for victim's rights, governmental interests in bail, and the judiciary's practical operation. This Court should not relinquish its inherent authority to regulate criminal procedures to such flawed and misinformed decision making. The judiciary, not the legislature, is in the best position to decide this important issue.

II. MARSY'S LAW: VICTIMS' RIGHTS MUST BE REASONABLY AVAILABLE AND CANNOT BE DILUTED BY A LEGISLATIVE ACT.

A. Victims have the right to be protected.

Respondents argue that the substantive rights contained in Marsy's Law can only be realized if the victim takes "proactive steps" to "activate" their rights. Respondents' Answering Brief, p. 38. And, according to Respondents, without the

⁶ Notably, Nevada is the *only* Marsy's Law state in the country that requires adversarial bail hearings to occur within 48 calendar hours. AA076-078. Mitchell did list a few other states that choose that hold bail hearings within forty-eight (48) hours after an arrest (Alabama, Alaska, South Carolina, Texas, Colorado). However, these states, unlike Nevada, do not all have (1) Marsy's Law, (2) an elevated prosecutorial burden of proof of clear and convincing evidence, and (3) a mandatory risk assessment within a 48-hour timeframe. Id. at 1289.

victim's proactive assertion of their constitutional rights, their rights remain dormant. Respondents and the district court⁷ misread the text of Marsy's Law.

While the Nevada Constitution allows a crime victim to request notice of court proceedings, to be heard at those court proceedings, and to confer with the prosecuting agency, each of those sections are modified by the term "reasonable." Nev. Const., art. I, § 8A (1)(f), (g), and (h). Simply put, there must be a reasonable amount of time for the victim to assert their rights to attend court, to be heard, and to speak to the prosecuting agency. Otherwise, these rights are illusory.

Further, Respondents fail to recognize that victims have the right to be free from intimidation, harassment and abuse, throughout the criminal process (Nev. Const., art. I, § 8A (1)(a)), the right to reasonably protected from the defendant (Nev. Const., art. I, § 8A (1)(b)), and the right to have their safety and their family's safety considered as a factor in fixing the amount of bail or conditions of release (Nev. Const., art. I, § 8A (1)(c)). None of these provisions require a victim to "activate" their rights. The trial court has a duty to reasonably protect the victim from the defendant pending trial and consider the victim's safety when fixing bail absent "activation." An arrest report detailing probable cause from a singular criminal

⁷ The district court ruled, "[t]he actual language of Marsy's Law is focused upon request of the victim." AA559.

incident or criminal history printout will rarely tell the whole story of what type of protection a victim may need from the defendant.

This Court has also explicitly recognized that Marsy's Law provides victims with clear rights to have their voices heard in Nevada's criminal courts. In 2021, this Court stated, "[c]ritical to our system of criminal justice is the importance of protecting victims' rights during sentencing. The passage of Marsy's Law supports such protection, giving victims a voice during that process." Aparicio v. State, 137 Nev. 616, 621, 496 P.3d 592, 597 (2021). "Activation" is simply not a prerequisite to protection.

B. Marsy's Law is self-executing, but that is not required for this Court to review the constitutionality of NRS 178.4849.

Respondents claim that because Marsy's Law does not state the words "self-executing," it cannot be self-executing at all. Respondents' Answering Brief, p. 42. This is not required. "Even without benefit of such a declaration, constitutional provisions in bills of rights and those merely declaratory of common law are usually considered self-executing." Robb v. Shockoe Slip Found., 228 Va. 678, 681, 324 S.E. 2d 674, 676 (1985).

"A constitutional provision is said to be self-executing if it enacts a sufficient rule by means of which the right given may be enjoyed and protected. The language used, as well as the object to be accomplished, is to be looked into in ascertaining the intention of the provision. Wilson v. Koontz, 76 Nev. 33, 39, 348 P.2d 231, 233-

34 (1960). And, “the question in every case is whether the language of a constitutional provision is addressed to the courts or the Legislature.” Id.

Section 8A clearly satisfies both of these requirements. Marsy’s Law is directly addressed to the courts. Regarding bail specifically, Marsy’s Law requires courts to “have the safety of the victim and the victim’s family considered as a factor in fixing the amount of bail and release conditions.” Nev. Const. art. I, § 8A (1)(c). And although, Section 6 of Marsy’s Law permits the Legislature to enact legislation to “provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section,” it is not reliant on future legislation. The provision’s use of the word “*other*” is a clear indication that the authors understood that Section 8A itself was self-executing and had the ability “to secure to victims of crime the benefits of the rights set forth” therein. “Although the Bill-of-Rights provisions are self-executing, the Legislature is not thereby precluded from enacting legislation to facilitate the exercise of these constitutional privileges and the enforcement of these protective rights.” State v. Bachelder, 403 A.2d 754, 758–59 (Me. 1979). “Any implementing legislation, however, may not in any way impair those rights, as the Legislature also is bound by the organic law of the State.” Id.

Respondents cite Schilling v. Wisconsin Crime Victims’ Rights Board, where the Wisconsin Supreme Court found that the first sentence of Article I, Section 9m

of the Wisconsin Constitution, which provided that “this state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy,” was not self-executing, but rather a statement of purpose. 278 Wis. 2d 216, 222-23, 692 N.W.2d 623, 626 (2005). However, Respondents fail to point out that the provision analyzed in Schilling predates Wisconsin’s adoption of Marsy’s Law. Instead, Schilling dealt with Wisconsin’s earlier Declaration of Rights for Victims of Crime, *not Marsy’s Law*, which the Wisconsin voters adopted in 2020 – 15 years after Schilling was decided. Even had Schilling been addressing Marsy’s Law, the Court’s reasoning would still be inapplicable to Nevada’s Marsy’s Law as in Schilling, the court relied on the structure of Wisconsin’s amendment, noting that the first sentence gave a “broad indication” of policy, while the second provided a list of enforceable rights. Id. at 227. Nevada’s Constitution does not mirror that structure. Rather it begins with the direct statement, “[e]ach person who is the victim of a crime is entitled to the following rights” Nev. Const. art. I, § 8A (1).

Respondents also rely on People v. Ryan, where a California appellate court held that a restitution provision in California’s constitution was not self-executing. 203 Cal. App. 3d 189, 194, 249 Cal. Rptr. 750, 753 (1988). However, like Schilling, this case concerned an earlier version of California’s Victims’ Bill of Rights, enacted in 1982, while Marsy’s Law was not adopted in California as Proposition 9 until 2008. However, even post adoption, California courts have maintained that the

restitution provision is not self-executing. This is to be expected however, because California's version of Marsy's Law was not intended to be self-executing, while Nevada's is. California's Constitution states, "The rights of victims also include broader shared collective rights that are held in common of all People of the State of California, and that *are enforceable through the enactment and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials.*" Cal. Const. art. I, § 28 (emphasis added). Thus, the comparison between the state constitutions of California and Nevada is inappropriate in this instance.

However, in any event, Respondents miss the point. Even if this Court were to find that Marsy's Law is not self-executing – a conclusion Appellant disputes for the reasons stated above – the Court still retains the authority to address whether NRS 178.4849 violates the constitutional rights afforded to victims under Marsy's Law. "[W]here a constitution asserts a certain right, or lays down a certain principle of law or procedure, it speaks for the entire people as their supreme law, and is full authority for all that is done in pursuance of its provisions." Davis v. Burke, 179 U.S. 399, 403, 21 S.Ct. 210, 212, 45 L.Ed. 249 (1900); see Brown v. Gianforte, 404 Mont. 269, 281, 488 P.3d 548, 555 (2021) (holding that even when a constitutional clause is not self-executing, once a legislature has "acted, or 'executed' a provision that implicates an individual's constitutional rights, the Court can determine if the enactment fulfills the Legislature's constitutional responsibility.").

Whether Marsy's Law is self-executing is neither dispositive nor relevant. This Court is fully empowered to decide whether NRS 178.4849 violates Marsy's Law, as "[t]he Nevada Constitution places limitations on legislative action, while it leaves interpretation and enforcement of the Nevada Constitution to the judiciary." Mack v. Williams, 138 Nev. 854, 862, 522 P.3d 434, 444 (2022).

III. GOOD CAUSE: THE CONSIDERATION OF A CONSTITUTIONAL RIGHT CANNOT BE PREDICATED ON A BURDEN OF PROOF.

Respondents argue that NRS 178.4849 contains a "built-in remedy" to continue the bail hearing if there was insufficient time prepare the NPRA or contact the victim: *good cause*. Respondents' Answering Brief, p. 53.

However, Respondents suggested course of action is exactly what Appellant did in these cases. In each of the five (5) cases (Armendarez, Navarro-Reyes, Watson, Delosrios and Cristobal), the prosecutor requested a continuance of the bail hearing predicated on good cause (lack of NPRA or victim contact), the defense attorney opposed the continuance, and the court denied Appellant's requests to continue.

These cases demonstrate that NRS 178.4849's "good cause" requirement to continue a bail hearing is a charade and not a genuine mechanism to comply with constitutional requirements or this Court's orders. A good cause continuance of a judicial hearing should be the exception, not the rule. When it becomes the rule, this

indicates a deeper systemic issue. In each of these cases, NRS 178.4849's discretionary element allowed, and even encouraged, the trial court to disregard this Court's mandate to utilize the NPRA and/or ignore the victim's rights under Marsy's Law in favor of meeting the statute's 48-hour deadline.

Much like NRS 178.4851(1)'s demise in Valdez-Jimenez, NRS 178.4849's good cause requirement places a burden of proof ahead of constitutional considerations, and, therefore, it cannot stand.

IV. APPELLANT HAS STANDING TO CHALLENGE NRS 178.4849.

A prosecutor is not some disinterested third-party in Nevada's bail hearings. The prosecutor is a central party to a criminal action with a strong interest in bail determination and possesses a unique ethical duty to protect the rights of all parties involved. See Valdez-Jimenez, 136 Nev. at 162, 460 P.3d at 985 (finding that the government, represented by the prosecuting attorney, has "compelling interests in bail – that is, to prevent the defendant from being a flight risk or a danger to the community"); State v. Casey, 2002 UT 29, 44 P.3d 756, 764 (2002) (finding that prosecutors have "an obligation to ensure that the constitutional rights of crime victims are honored and protected.")

In this appeal, the City of Henderson is a party litigant. At bail hearings, the prosecutor, representing the City, bears the burden of establishing, by clear and convincing evidence, that bail is necessary to ensure a defendant's appearance at

future court proceedings and/or to protect the safety of the community. Additionally, the prosecutor, as an advocate of the government, has a duty to gather and introduce competent evidence. The prosecutor also has the distinct obligation to ensure that the constitutional rights of both the defendant and victim are honored.

The instant appeal presents a controversy arising from a criminal prosecution. This controversy is not imaginary. Appellant actively prosecuted Respondents for their crimes and was directly subject to NRS 178.4849's arbitrary timeframe. Appellant suffered, and continues to suffer, a direct injury from NRS 178.4849, and does not have "merely 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).

This Court has previously recognized that parties in a criminal action will possess legal standing to challenge a law after the commencement of prosecution, insofar as that law directly affects the parties. See Doe v. Bryan, 102 Nev. 523, 525-26, 728 P.2d 443, 444-45 (1986) (requiring plaintiffs, who sought to have criminal statute declared unconstitutional, to first demonstrate that they were arrested or threatened with prosecution under the statute).

Other state courts have recognized the concept that a criminal prosecutor may constitutionally challenge an adverse law. For example, in Moseley v. Sentence Review Panel, the Georgia Supreme Court held that a district attorney had standing to challenge the constitutionality of a law that interfered with his official duties in

regard to his discretion in issuing plea bargains. 280 Ga. 646, 648, 631 S.E.2d 704, 707 (2006). The Moseley Court recognized that a prosecutor had a unique obligation “to challenge, on constitutional grounds, a statute which allegedly interfered with his authority as a judicial officer.” Id. It further emphasized that the district attorney is “more than an advocate for one party,” and instead holds “additional professional responsibilities as a public prosecutor to make decisions in the public’s interest.” Id.; see also State v. Mems, 281 N.C. 658, 669, 190 S.E.2d 164, 172 (1972) (North Carolina Supreme Court found that a prosecutor may challenge a law regarding lineups and waiver of counsel); Ambles v. State, 259 Ga. 406, 406-07, 383 S.E.2d 555, 556 (1989) (Georgia Supreme Court held that a prosecutor may challenge child testimony competency law because the “state has both the duty and the right to protect the security of its citizens by prosecuting crime”); Copeland v. State, 76 So.2d 137 (Fla. 1954) (Florida Supreme Court found that right of the government prosecutors to challenge the constitutionality of the state’s Child Molester Act).

As a particularly salient example of standing, in Valdez-Jimenez, the defendants/petitioners challenged the constitutionality of an existing procedural statute requiring defendants to show “good cause” to be released from custody on non-monetary conditions. Valdez-Jimenez, 136 at 166, 460 P.3d at 987. This Court agreed with the argument that the procedural statute was invalid and deemed it unconstitutional with no standing analysis at all. It was presumed that the defendant,

a party and litigant to the criminal case, would have standing to address the constitutionality of statutes that apply to his prosecution.

Likewise, Appellant is adversely affected by the forty-eight (48) hour time limit prescribed by NRS 178.4849 because it materially hinders the performance of Appellant's constitutionally and judicially mandated duties. Marsy's Law requires that victims be given the opportunity to confer with the prosecution. Nev. Const. art. 1, § 8A(1)(c). And, a prosecutor could be subject to a negative court ruling for noncompliance with Marsy's Law. Nev. Const., art. I, § 8A (4). Additionally, ADKT 0539 requires prosecutors to utilize the NPRA when making bail recommendations. The compressed timeline imposed by NRS 178.4849 often precludes Appellant from consulting with victims or receiving the NPRA prior to the hearing, thereby rendering Appellant unable to comply with its constitutionally and judicially mandated duties.

NRS 178.4849 inflicts repeated harm to the government's legitimate interests to advocate for the community in bail hearings. This is not conjectural or hypothetical.

In *Cristobal*, the municipal court held a bail hearing approximately twelve (12) hours after the defendant's arrest. AA358. Appellant was unable to contact the victim prior to the bail hearing or verify Cristobal's prior, out-of-state domestic battery conviction. AA358-59. The court granted Cristobal an own recognizance

release. AA359. Appellant later spoke to the victim and also verified that the prior conviction was indeed committed against this same victim. AA126. Appellant was unable to present information regarding Cristobal's prior conviction to the court at the bail hearing, and, consequently, interfered with Appellant's ability to meet the clear and convincing evidence standard.

In *Navarro Reyes*, the court conducted a bail hearing approximately thirteen (13) hours after the defendant's arrest and the NPRA had not yet been completed. AA318, 323. In *Delosrios*, the court held a bail hearing approximately four (4) hours after the defendant's arrest. The NPRA was not available for use by the parties. AA415, 422. Appellant was forced to formulate arguments without benefit of the information contained in the NPRA in either case, which ultimately helps the court determine the risk posed by the defendant to the community. Unfortunately, both Navarro-Reyes and Delosrios committed additional pretrial crime, and Delosrios failed to appear at a future court date. AA330, 428, 434.

Lastly, regarding the Appellant's particularized injury from NRS 178.4849, Appellant received adverse court rulings when the court denied each Appellant's motions to continue in these cases. These court rulings were particular to Appellant and directly linked to NRS 178.4849's timeframe. Appellant's motions to continue would not have been necessary if the bail hearings were held in a reasonable amount

of time. And, this repeated harm would be redressed by invalidating NRS 178.4849 and returning to NRS 171.178's reasonable timeframe for initial appearances.

The district court, however, found that Appellant lacked standing, apparently relying solely on inapposite civil litigation regarding organizational advocacy, such as Bd. of Pharmacy v. Cannabis Equity & Inclusion Cmty. (CEIC), 553 P.3d 440 (Nev. 2024) (unpublished disposition). AA553, 558-59. The district court also found the Appellant lacked third party standing⁸ on behalf of victims. Id. This was error.

Respondents and Amici Curiae attempt to distinguish a standard criminal case from the litany of cases involving private parties or public advocacy organizations challenging state action or legislation in declaratory and injunctive relief actions, such as Nat'l Ass'n of Mut. Ins. Cos. (NAMIC) v. State, Dept. of Bus. & Indus., 139 Nev. 18, 524 P.3d 470, 476 (2023). Brief of Amicus Curiae NACJ of Nevada Support of Respondents, p. 8. However, NAMIC is not analogous to the present case.

In NAMIC, an insurance trade association brought an action for declaratory judgment under NRS 30 and NRS 233B against the Commissioner of Insurance and

⁸ Appellant maintains that it possesses third-party standing to bring this challenge on behalf of crime victims, but for purposes of this Reply Brief will focus on direct standing. In general, though, Respondents' reading of Marsy's Law standing as exclusive to victims is unsupported by the text. While Marsy's Law allows victims to directly assert their rights in court (Nev. Const., art. I, § 8A (2)), it does not preclude others from bringing a constitutional challenge against a law that interferes with victims' rights, specifically government actors who are subject to an adverse court ruling for noncompliance. Nev. Const., art. I, § 8A (4).

the Nevada State Division of Business and Industry to invalidate regulations it deemed harmful to insurers. Id. This Court found the trade association had representational standing under the constitutional test established in Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L.Ed.2d 383 (1977). NAMIC, 139 Nev. at 21, 524 P.3d at 476. This test relied heavily on whether organizational members had standing to sue in their own right. Id.

In contrast to NAMIC, the instant appeal does not involve a civil declaratory relief action and Nevada law does not limit challenges to the constitutionality of criminal statutes to declaratory relief actions. In fact, this Court has recognized that “statutes are often challenged on constitutional grounds in criminal proceedings.” State, Off. of the Att’y Gen. v. Just. Ct. (Escalante), 133 Nev. 78, 80, 392 P.3d 170, 172 (2017). Further, the district court determined that Appellant was not required to challenge NRS 178.4849 via a declaratory relief action and Respondents did not dispute that ruling in their Answering Brief. AA560.

However, Amicus Curiae NACJ confusingly labels Appellant’s challenge of NRS 178.4849 in a criminal proceeding as “unorthodox.” Brief of Amicus Curiae NACJ of Nevada in Support of Respondents, p. 8. But then, NACJ fails to cite a single Nevada Supreme Court case in which a criminal defendant challenged a criminal statute outside of a criminal proceeding. This unsubstantiated claim ignores

the overwhelming history of Nevada's jurisprudence on this subject, which demonstrates that criminal statutes are exclusively challenged within the context of criminal proceedings.

A prosecutor and defendant certainly have legal standing to challenge a law in a criminal proceeding insofar as that law adversely affects either party. This principle is so embedded in Nevada jurisprudence that this Court rarely, if ever, even addresses "standing" in cases involving challenges to the constitutionality of criminal law and procedure statutes. 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, 915 P.2d 889 (1996).

The district court (at least at oral argument), the Respondents, and Amici Curiae attempt to apply civil declaratory relief analysis to criminal proceedings. However, the analysis of standing principles of injury-in-fact, redressability, and causation in these cases relate wholly or in-part to organizational or representational standing, and inapposite statutory frameworks. More importantly, these cases nearly all involve a questionably harmed party or organization attempting to seek declaratory relief.

Appellant clearly has a sufficient interest in challenging NRS 178.4849 and has been directly affected by the statute's inflexible and rushed timeframe. The district court erred by ruling otherwise.

V. THE HENDERSON MUNICIPAL COURT HAD AUTHORITY TO CONSIDER APPELLANT'S CHALLENGE.

Respondents argue that NRS 5.050 does not directly grant municipal courts jurisdiction over crimes committed under the Nevada Revised Statutes, and thus, the Henderson Municipal Court was precluded from considering Appellant's Motion to Declare NRS 178.4849 Unconstitutional. Respondents' Answering Brief, p. 31.

However, the Legislature has indeed granted municipal courts, specifically the Henderson Municipal Court, clear jurisdiction over both state law misdemeanor offenses as well as city ordinance violations. See NRS 268.018 (allowing 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); Henderson City Charter § 2.140 (2) (proving that any misdemeanor by the laws of the State of Nevada shall also be deemed to be a misdemeanor in the City); Henderson Municipal Code § 8.02.010 (stating that the violation of a state law is a misdemeanor in the City). This jurisdictional grant, coupled with the inherent power of the judiciary to defend the

Nevada Constitution, properly allowed the Henderson Municipal Court's consideration of Appellant's motion.⁹

A. Municipal courts, like other courts, have inherent judicial authority to consider the constitutionality of laws.

Nev. Const. art. 6, § 1 allows for the establishment of municipal courts in Nevada, and once established by the Legislature, municipal courts are “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.” City of Sparks v. Sparks Mun. Ct., 129 Nev. 348, 362, 302 P.3d 1118, 1128 (2013). And, “the functions of the municipal court are as truly judicial in character as those of any other court of this state. It is equally important for municipal courts to enjoy judicial freedom and independence. The constitutional umbrella of protection extends to all courts of this state in exercising their judicial

⁹ Respondents reference but misapply Patterson v. Las Vegas Municipal Court, 139 Nev. 318, 320, 535 P.3d 657, 660 (2023), which dealt with a statute that allows a court to award attorney's fees in certain circumstances in criminal cases but specifically limited its application to justice and district courts. No analogous statute exists precluding a municipal court's consideration of a constitutional challenge to a law. Interestingly, in Patterson, Amici Curiae ACLU and NACJ argued that NRS 266.550(1), “explicitly and unambiguously grants municipal courts all the same powers as justice court in the context of a criminal action” Brief of Amici Curiae ACLU of Nevada and NACJ in Support of Petitioner, Patterson v. Las Vegas Mun. Ct., Nevada Supreme Court case number 86108, filed March 9, 2023. Appellant certainly agrees here. Such power would, of course, include determining the constitutionality of state statutes.

functions.” City of N. Las Vegas v. Daines, 92 Nev. 292, 295, 550 P.2d 399, 400 (1976).

Inherent judicial power includes the authority to address constitutional questions that arise in cases properly before the court.¹⁰ The judicial branch’s inherent authority to determine the constitutionality of laws has been recognized in the United States for well over two centuries. Importantly, the concept of judicial review was long ago explained by the U.S. Supreme Court, expounding:

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

Marbury v. Madison, 5 U.S. 137, 177-78, 2 L. Ed. 60 (1803). The Court continued, explaining that “[t]hose then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of

¹⁰ In Nevada, all judicial officers, including municipal court judges, must swear an oath to “... protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding” Nev. Const. art. 15, § 2; NRS 5.020.

maintaining that courts must close their eyes on the constitution, and see only the law.” Id. at 178, 2 L. Ed. 60. Respondents, and their amici curiae supporters, ask this Court to hold that Nevada’s municipal courts must close their eyes to the constitution and see only the law.

The authority to consider and decide constitutional questions in cases for which a court has jurisdiction is an inherent one, not a statutory one. In fact, there is no state law whatsoever which 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 explicitly addressed this issue and stated: “like 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.” City of Las Vegas v. Eighth Jud. Dist. Ct. (Krampe), 122 Nev. 1041, 1047, 146 P.3d 240, 244 (2006) (internal citations omitted).¹¹

Since the Henderson Municipal Court has original jurisdiction to decide misdemeanor criminal cases, it is clear they must also have the inherent jurisdiction

¹¹ In Footnote 14 of their Answering Brief, Respondents claim that NRS 4.235 indicates the Legislature’s clear intent to forbid municipal courts from deciding a constitutional challenge to a state law. Respondents’ Answering Brief, p. 33 n.14. Nothing could be further from the truth. NRS 4.325 merely establishes a reporting mechanism when a state statute has been found unconstitutional by a justice court. It does not prohibit a municipal court from deciding a constitutional challenge to a state law.

to determine questions of constitutionality of the statutes applicable in those cases. The Legislature certainly decided to make NRS 178.4849 applicable to municipal courts, and, thus, a municipal court may consider a challenge to the law's constitutionality. This Court has explained that "when a constitution or statute gives a general power, it also grants by implication every particular power necessary for the exercise of that power." Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1218-19, 14 P.3d 1275, 1279 (2000) (internal citations omitted). The Nevada Constitution and NRS have given municipal courts general power, which grants by implication the particular powers necessary to decide the cases for which they have jurisdiction.

Respondents and Amici Curiae largely rely on McKay as the foundation of their argument that municipal courts lack jurisdiction to declare state statutes unconstitutional. McKay v. City of Las Vegas, 106 Nev. 203, 205, 789 P.2d 584, 585 (1990). However, this Court explicitly overruled McKay in Salaiscooper, stating, "[o]ur decisions in both Dixon and McKay correctly held that a municipal court has no jurisdiction to consider the constitutionality of legislation imposing a tax or an assessment. Neither case, however, should be read for the proposition that municipal or justice courts have no authority whatever to consider issues of constitutional dimension." Salaiscooper v. Eighth Jud. Dist. Ct., 117 Nev. 892, 900, 34 P.3d 509, 515 (2001).

McKay was further eroded by this Court in Krampe, which held that, “like 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.” 122 Nev. at 1047, 146 P.3d at 244. The Krampe court specified that justice and municipal courts have authority to consider constitutional issues, and “Dixon and McKay are limited on their facts to cases involving taxes and assessments, and their holdings are now expressly embodied in NRS 5.050(4).” Krampe, 122 Nev. at 1047 n.11, 146 P.3d at 244 n.11.

Respondents attempt to distinguish NRS 178.4849 from a municipal court’s authority to declare a misdemeanor offense unconstitutional because it is a procedural rather than a penal statute. This distinction is unpersuasive because the basis for a court’s ability to consider constitutional issues arises from its inherent authority to decide constitutional questions arising in a case over which it has jurisdiction.

In fact, this Court has implicitly recognized a municipal court’s authority to consider statewide questions of a constitutional and procedural nature. In Andersen v. Eighth Jud. Dist. Ct., the City charged the defendant with battery constituting domestic violence. 135 Nev. 321, 321-22, 448 P.3d 1120, 1122 (2019). Defendant filed a demand for jury trial in municipal court on constitutional grounds, though this Court had previously determined that the right to a jury trial did not attach to the

offense of misdemeanor domestic battery, which the municipal court denied. Id.; Amezcuca v. Eighth Jud. Dist. Ct., 130 Nev. 45, 51, 319 P.3d 602, 606 (2014). Nonetheless, this Court decided Andersen on the merits. Appropriately, this Court did not find that the Las Vegas Municipal Court lacked authority to address the constitutional issue in the first instance even though it related to state law and Nevada Supreme Court precedent. Similarly, this Court has upheld the municipal court's interpretation of NRS 41.0393, indicating that municipal courts have the authority to interpret and review state statutes. See Patterson, 139 Nev. at 321, 535 P.3d at 660.

These cases support the conclusion that municipal courts possess inherent authority to interpret and decide constitutional issues, including those involving statutory and case law. The parties in a criminal case must be able to address constitutional issues that arise as the case proceeds, and courts have inherent authority to do so.

B. Municipal courts determining constitutionality of state statutes does not problematically impact cases in other jurisdictions.

Respondents argue that recognizing the municipal courts' inherent authority to consider constitutionality of statutes that also apply in felony and gross misdemeanor cases would somehow affect defendants charged with those crimes, including those outside city limits. In the very next paragraph, however, Respondents contradict themselves and acknowledge that municipal court decisions

are not binding on other courts, which they complain could cause disparate results in different jurisdictions. Respondents' Answering Brief , p. 34. However, courts diverge in rulings regularly, and this Court recognized over a century ago that such splits are no basis for preventing a court from exercising their inherent authority to decide the constitutionality of a statute:

Differing courts, in construing and administering any statute, very naturally may entertain very different views, which would result in some confusion until settled by the higher court, **but it could not be said that, because of such possible confusion, the power to construe and administer such statute should not exist. Such a holding would manifestly tie the hands of the courts so as to render them impotent, and to say that they cannot pass upon the constitutionality of a statute would, in a lesser degree only, render them helpless to properly and expeditiously dispose of the business before them.**

Pac. Live Stock Co. v. Ellison Ranching Co., 46 Nev. 351, 213 P. 700, 701 (1923) (emphasis added). Therefore, Respondents' claim that recognizing the municipal courts' inherent authority to consider constitutional questions creates a "slippery slope" is unfounded.

Ultimately, municipal courts have inherent authority to consider constitutional questions, and this Court should reaffirm that the municipal court had the authority

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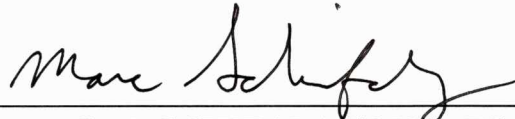
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to decide the Appellant's motion below, since no court should "close their eyes on the constitution, and see only the law." Marbury. 5 U.S. at 178, 2 L. Ed. 60.

CONCLUSION

Appellant respectfully requests that this Court reverse the district court's decision granting the Respondents' Petition for Writ of Mandamus/Prohibition.

DATED this 18 day of December, 2025.



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CERTIFICATE OF COMPLIANCE

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

2. This brief has been prepared in a proportionally spaced typeface using Word 365 in 14-point Times New Roman; This brief does not comply with the page- or type-volume limitations of NRAP 40, 40A, or 40B because it is proportionately spaced, has a typeface of 14 points or more, and contains 9963 words. A Motion for Leave to File Appellant's Reply Brief in Excess of Type-Volume Limitations is being filed concurrently herewith;

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 28(e)(1), if applicable, 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 December, 2025.



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CERTIFICATE OF SERVICE

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

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