

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREATER LAS VEGAS SHORT TERM
RENTAL ASSOCIATION, a nonprofit
Nevada corporation; and JACEQUELINE
FLORES, President and Director,

Appellants/Cross-Respondents,

vs.

CLARK COUNTY; CLARK COUNTY
BOARD OF COMMISSIONERS, a
subdivision of the State of Nevada; and the
STATE OF NEVADA,

Respondent/Cross-Appellants.

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Case No.: 86264

**OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS BRIEF OF
GOLDWATER INSTITUTE AND LIBERTY JUSTICE CENTER**

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NRAP 26.1 DISCLOSURE

Counsel for Respondent/Cross-Appellants certifies that there are no persons or entities as described in Rule 26.1(a) of the Nevada Rules of Appellate Procedure that must be disclosed under N.R.A.P. 26.1 as it is a governmental party.

DATED this 20th day of September, 2023.

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ARGUMENT

A. Standard

There is no inherent right to file an amicus curiae brief with the Court. It is left entirely to the discretion of the Court. *Fluor Corporation and Affiliates v. United States*, 35 Fed.Cl. 284, 285 (1996); *Waste Management of Pennsylvania, Inc. v. City of York*, 162 F.R.D. 34, 35 (M.D.Pa.1995). This is true notwithstanding the fact that the parties may have consented, or do not object, *American College of Obstetricians and Gynecologists, Pennsylvania Section, et al. v. Thornburgh*, 699 F.2d 644 (3d Cir.1983), particularly where the applicant's only concern is the manner in which this Court will interpret the law. *Id.*

Chief Judge Posner, of the Seventh Circuit, writes that, “The vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief. Such amicus briefs should not be allowed. They are an abuse. The term ‘amicus curiae’ means friend of the court, not friend of a party.” *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir.1997). “An amicus brief should normally be allowed when a party is not represented competently or is not represented at all....” *Id.* “We are not helped by an amicus curiae 's expression of a ‘strongly held view’ about the weight of the evidence.” *Id.* at 1064.

“The parties before the court should have their dispute resolved without any

unnecessary delay. It would be unacceptable for an amici brief to cause a prolonged delay in the litigation.” *Fluor Corporation, supra*, 35 Fed.Cl. at 286. “A court may grant leave to appear as an amicus if the information offered is ‘timely and useful.’” *Waste Management, supra*, 162 F.R.D. at 36.

Pursuant to Nevada Rules of Appellate Procedure 29(c), a Motion for Leave to File an amicus brief must state (1) the movant’s interest; and (2) the reasons why an amicus brief is desirable.

B. The Goldwater Institute’s Interest is not Proper for an Amicus Brief

The Goldwater Institute’s (“GI”) Interest in this case is to “defend the rights of homeowners to engage in “short term rentals”...” (Motion For Leave To File Amicus Brief, p. 2). In this case, the interests of the GI are identical to the Appellant Greater Las Vegas Short Term Rental Association (GLVSTRA). They are both non-profits that are trying to have this Court find that there is a constitutional right to operate an Airbnb in a residential neighborhood. The arguments of GI and GLVSTRA are substantially similar. By permitting GI to submit an amicus brief, the Court is not getting the legal opinion of “a friend of the court” it is getting a repeated opinion of a friend of GLVSTRA. This amicus brief will act as a page limit extension of the already lengthy brief submitted by GLVSTRA.

GI also has little interest and experience working in Nevada. GI’s Motion does not mention any experience or interest in Nevada. (Motion For Leave To File

Amicus Brief, p. 2-3). Nevada has unique caselaw and its own constitutionally protected property rights. Thus, this lack of any mention of Nevada in GI's statement of interest should be considered.

C. The Goldwater Institute's Brief is Not Desirable

GI's amicus brief is not desirable because (1) it fails to address the issue of standing in this case, which is likely to be the only issue that this Court will need to decide, (2) it will cause delay in the litigation, and (3) it does not provide an opinion based on Nevada law and is duplicative to what GLVSTRA has already submitted.

Clark County's main argument on appeal is whether GLVSTRA had standing to seek an injunction in this case. GI does not address this standing issue and Clark County believes that this Court will not need to reach the merits of the constitutional issues discussed by GI because of lack of standing. Thus, GI's brief will ultimately not be helpful to the Court.

GLVSTRA admits that they have no financial interest in the outcome of this case and are only seeking equitable remedies because GLVSTRA owns no property in Clark County, has never been cited for a short-term rental violation by Clark County, has never been denied a short-term rental business license by Clark County and has no stated intent to own a short-term rental property in the future. Joint Appendix, Vol. 3, 460-461. GLVSTRA initially argued that it had standing in this case under both personal injuries to individual Plaintiff Jaqueline Flores and under

the public-importance standard. JA, Vol. 2, p. 197. However, GLVSTRA never alleged that Plaintiff Jaqueline Flores received a short-term rental fine or was denied a short-term rental business license under the challenged laws. Further, after Clark County filed several counterclaims against Plaintiff Jaqueline Flores personally, GLVSTRA argued that Jaqueline Flores was not in the suit personally and was only suing as president and director of GLVSTRA, even though there is no requirement to name the president of the organization as a party in this case. JA, Vol. 2, p. 426. Ultimately, the District Court held that Jacqueline Flores was not suing Clark County in her personal capacity and only in her capacity as the director of GLVSTRA. JA, Vol. 5, p. 675. Thus, the only standing that GLVSTRA can claim is under the public-importance exception to the general standing requirement.

Clark County argued that GLVSTRA lacked standing under the public-importance exception on multiple grounds, including that the challenged laws do not contain an expenditure or appropriation of tax money. JA, Vol. 3, p. 510-522. During oral argument on GLVSTRA's motion for a preliminary injunction the District Court found the following:

Under the public interest exception, while I understand that there were rulings and case law precedent that were handed down from *Schwartz* regarding the second factor and it needing to be appropriations, right? I understand that. *Cannizzaro* took it a step further and I don't necessarily think as I sit here today that if I were to deny this on standing grounds and dismiss it on standing grounds that the Supreme Court wouldn't come back and say we're going to extend this again.

I think that there is enough here that they would likely extend it again, and what I don't want to see happen because I was in practice when the whole HOA debacle went down and we had 32 different departments that were making different decisions until we got SFR, I don't want to see that happening here where the County starts issuing licenses and then we have individuals who are filing complaints in various different departments when they get fined and one department is saying I find it constitutional and the other department is saying I don't find it constitutional.

JA, Vol. 4, p. 585.

The District Court clearly indicated that she was inclined to find public-interest standing in this case because she believed that this Court would expand the exception to provide standing in this case. The District Court also did this in order to prevent conflicting decisions regarding the laws in District Court and years of piecemeal challenges to the laws. In her final order granting the preliminary injunction, the District Court wrote “Even though this case does not involve a separation of powers issue like Cannizzaro, the facts of this case and the legal precedent cited in Cannizaro leads the Court to believe that the Supreme Court of Nevada would expand the public importance exception to provide standing in this case.” JA, Vol. 5, p. 690. “Therefore, applying Schwartz, Morency, and Cannizzaro to this matter, the Court holds that while Plaintiffs in this case claimed no personal injury, the Plaintiffs have standing under the public importance exception to the general standing requirement.” JA, Vol. 5, p. 690.

The District Court expanded the public-interest standing requirement by eliminating the second prong of its test, which requires that the litigant show that the

law being challenged contains an expenditure or appropriation of tax money. This is a clear error because it is not the District Court's role to guess as to how the Nevada Supreme Court will change the caselaw in the future. Further, under the District Court's proposed change to the public-interest exception, the exception would become the rule and virtually all new laws would first have to be approved by the Courts. This is improper because the courts only have authority to decide cases in controversy where there is an injury in fact. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339-40, 136 S.Ct. 1540, 1548 (2016) (a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical). While expanding standing to individuals without an injury may be a good way to prevent future constitutional violations and to prevent years of complicated and conflicting litigation decisions, expanding standing to this extent goes against this Court's previous decisions.

Clark County believes that this Court was clear that *Cannizzaro* is a very narrow and specific expansion of the public-importance exception, which requires a separation of powers issue or an appropriation of tax money, neither which exist in this case. *Nevada Policy Research Institute, Inc. v. Cannizzaro*, 138 Nev. Adv. Op. 28, 507 P.3d 1203 (2022). A plaintiff may also be denied standing if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit. *Id.* at 1210. Unlike *Cannizzaro*, many individuals are already

more directly affected by the challenged laws and many more will attain standing in the near future. Anytime someone receives a civil penalty under Clark County's short-term rental ordinance or is denied a business license, they can bring almost all of the challenges that are brought in this suit. Further, those individuals will have an actual financial interest in the outcome of the litigation and will have specific facts to demonstrate how the laws were unconstitutionally applied to them and injured them.

Here, GLVSTRA can only argue hypotheticals and claim that the County could apply or interpret its ordinance in a way that violates constitutional rights. GVLSTRA must be able to show that the challenged laws are unconstitutional in every possible interpretation and application, because it does not have specific facts to make an as applied constitutional challenge. Clearly, a facial constitutional argument is much more difficult to win and any other plaintiff with general standing would be in a better place to litigate this case.

For the reasons above, the Supreme Court of Nevada's current precedent dictates that this appeal will be decided on the issue of precedent alone. Unless, this Court intends to drastically expand the public-importance exception, no constitutional issues will need to be decided in this appeal. Thus, it is unlikely that GI's amicus brief will be helpful to the Court.

CONCLUSION

For the foregoing reasons, this Court should deny GI's Motion for Leave to File an Amicus Brief.

DATED this 20th day of September, 2023.

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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 it has been prepared in a proportionally-spaced typeface using Microsoft Word in size 14 font in 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 exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 2,431 words.

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, 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 reference to the page 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

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accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 20th day of September, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the DATED this 20th day of September, 2023, I submitted the foregoing **OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS BRIEF OF GOLDWATER INSTITUTE AND LIBERTY JUSTICE CENTER** for filing via the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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