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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

BERNARDO ARMENDAREZ et al, Petitioners,

vs.

HENDERSON MUNICIPAL COURT, COUNTY
OF CLARK, THE HON. RODNEY T. BURR,
Respondents,

and

THE STATE OF NEVADA, Real Party in Interest.

Case No.: A-24-896651-W

Department: 15

HEARING NOT REQUESTED

**AMERICAN CIVIL LIBERTIES UNION OF NEVADA, NEVADA ATTORNEYS FOR
CRIMINAL JUSTICE, AND THE CLARK COUNTY PUBLIC DEFENDER'S MOTION
FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS**

The American Civil Liberties Union of Nevada (ACLU), Nevada Attorneys for Criminal
Justice (NACJ), and the Clark County Public Defender's office (CCPD) by and through their

1 attorneys of record, hereby respectfully move this Court for an order granting ACLU, NACJ, and
2 CCPD leave to file brief as amicus curiae in support of the Petition for Writ of Habeas Corpus
3 filed by Petitioners. The proposed brief is attached as an exhibit to this motion.
4

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 The Nevada Supreme Court has previously determined that district courts may grant leave
7 to file amicus curiae briefs. *See Hairr v. First Judicial Dist. Court*, 132 Nev. 180, 188, 368 P.3d
8 1198, 1203 (2016) (upholding district court’s order authorizing an amicus brief in lieu of
9 permissive intervention). As the *Hairr* Court observed, “where he presents no new questions, a
10 third party can contribute usually most effectively and always most expeditiously by a brief *amicus*
11 *curiae*” rather than more invasive forms of participation such as intervention. *Id.* (quotation
12 omitted). Other courts have recognized that under circumstances where “there is no inherent right
13 to file an amicus curiae brief with the Court,” a court may in its discretion “grant leave to appear
14 as *amicus* if the information offered is timely and useful.” *League to Save Lake Tahoe v. Tahoe*
15 *Reg’l Plan. Agency*, No. 3:09-CV-478-RCJ-RAM, 2011 WL 3847185, at *15 (D. Nev. Aug. 30,
16 2011) (ruling on a motion to leave when the local rules of practice did not address when an amicus
17 brief may be filed), vacated and remanded on other grounds, 497 F. App’x 697 (9th Cir. 2012)
18 (quoting *Long v. Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999)). The proposed brief
19 offered by the ACLU, NACJ, CCPD is both timely and useful.

20 Putting aside that the statute struck down by the municipal courts is essential in protecting
21 Nevadans from being held in pretrial detention without cause, the municipal court order at issue
22 (1) empowers municipalities to subject statutes protecting civil liberties to facial challenges by
23 weaponizing constitutional provisions delineating rights explicitly reserved to private citizens to
24 serve the government’s interests and (2) expands municipal court power to strike down statewide
25 laws at a municipality’s behest. The attached proposed brief is helpful in that it provides a systemic
26 perspective on the potential consequences of expanding prosecutorial and municipal power in this
27

1 fashion. It is also useful in providing clarity regarding the standard any party must meet in making
2 a facial constitutional claim, which the ACLU is particularly familiar with.

3 The brief is also timely. The Court has not yet rendered a decision on the petition for writ
4 of mandamus, and the parties' briefing in regard to the petition is ongoing. Furthermore, this
5 motion for leave is filed well before the City of Henderson must respond to the petition.

6
7 DATED this 7th day of August 2024.

8 This document does **not** contain the
9 Social Security number of any person.
10 Pursuant to NRS 53.045, I declare under
11 penalty of perjury that the foregoing is
12 true and correct.

13 /s/ Christopher Peterson
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 7, 2024, I caused a true and correct copy of the foregoing
3 **AMERICAN CIVIL LIBERTIES UNION OF NEVADA, NEVADA ATTORNEYS FOR**
4 **CRIMINAL JUSTICE, AND THE CLARK COUNTY PUBLIC DEFENDER’S MOTION**
5 **FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS**
6 to be electronically filed and served to all parties of record via the Court’s electronic filing system
7 to all parties listed on the e-service master list and via electronic email to any parties who were not
8 listed on the e-service master list.

9 Dated August 7, 2024.

10
11
12 /s/ Christopher Peterson
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EXHIBIT A

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14 **EIGHTH JUDICIAL DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 BERNARDO ARMENDAREZ et al, Petitioners,

17 vs.

18 HENDERSON MUNICIPAL COURT,
19 COUNTY OF CLARK, THE HON. RODNEY
20 T. BURR, Respondents,

21 and

22 THE STATE OF NEVADA, Real Party in
23 Interest.

Case No. A-24-896651-W
Dept. No. 15

**BRIEF OF *AMCUS CURIAE*
AMERICAN CIVIL LIBERTIES
UNION OF NEVADA, NEVADA
ATTORNEYS FOR CRIMINAL
JUSTICE, AND THE CLARK
COUNTY PUBLIC DEFENDER'S
OFFICE IN SUPPORT OF
PETITIONERS' PETITION FOR
WRIT OF MANDAMUS**

1 **STATEMENT OF INTEREST**

2 The American Civil Liberties Union (ACLU) of Nevada is a state affiliate of the national
3 ACLU, a nonprofit, nonpartisan organization that has been the nation’s guardian of liberty for over
4 100 years. The ACLU works to defend and preserve the individual rights and liberties that the
5 Constitution and the laws of the United States guarantee everyone in this country, which frequently
6 entails litigation against Nevadan municipalities. The ACLU has an interest in this matter as it
7 involves a unprecedented expansion of municipal power that undermines the civil liberties of
8 people prosecuted by those municipalities.

9 Nevada Attorneys for Criminal Justice is a state-wide non-profit organization of criminal
10 defense attorneys in Nevada. Nevada Attorneys for Criminal Justice has an interest in this case
11 because its members represent individuals in their pretrial release hearing in courts throughout
12 Nevada, at the municipal court, justice court, district court, and federal court levels.

13 The Clark County Public Defender’s office represent all indigent persons who are arrested
14 in Clark County. Additionally, they provisional represent all persons arrested for alleged crimes
15 within Clark County at the person’s 48-hour hearing, regardless of indigent status. Some of these
16 represented persons have cases in multiple jurisdictions, including in Henderson municipal court.
17 The Clark County Public Defender’s Office has an interest in this case because its concurrent
18 representation of persons who have cases in Henderson Municipal Court will be impacted and
19 limited based on Henderson Municipal Court’s continued violation of NRS 178.4849.

20 **ARGUMENT**

21 Municipal courts are courts whose jurisdiction is limited to “municipal purposes only,”
22 permitted but not mandated by the Nevada Constitution, and authorized at the discretion of the
23 Nevada legislature. Nev. Const. art. 6, § 1; *see* NRS 5.050. Municipal courts have jurisdiction of

1 “civil actions or proceedings,” but only for violations of city ordinances, civil infractions related
2 to traffic violations, and abating nuisances that occur within city limits. NRS 5.050(1); *see* NRS
3 484A.703–NRS 484A.705. They have criminal jurisdiction for misdemeanors that are in “violation
4 of the ordinances of their respective cities.” NRS 5.050(2). Except where the Nevada or U.S.
5 Constitution requires a jury, municipal court proceedings “must be summary and without a jury.”
6 NRS 266.550(1); *see* NRS 5.050(5). Municipal court judges are not required to be licensed
7 attorneys and do not have to pass an examination to “test the competency of the examinee’s
8 knowledge on subject matters related to the duties of” being a judge. *See* NRS 5.020(2); NRS
9 4.010(3).

10 Despite being a municipal court with a strictly limited jurisdiction, the Henderson
11 Municipal Court declared NRS 178.4849 unconstitutional on its face. *See* Ex. C to Pet. at 10.
12 Specifically, the municipal court reasoned that the statute violated Article 3, Section 1, of the
13 Nevada Constitution because the court failed to complete a Nevada Pretrial Risk Assessment in
14 13.5% of cases prior to the pretrial hearing and (2) Article 1, Section 8A because the City Attorney
15 failed to provide actual notice to all victims of initial detention hearings though the Municipal
16 Court made no finding in regards to how many people actually requested notice. *See* [Petition for
17 Writ of Mandamus/Prohibition, Ex. C, Henderson Municipal Court’s Findings of Fact and
18 Conclusions of Law, at 8:17–20, 10:3–9].

19 The Henderson Municipal Courts ruling is an unwarranted expansion of municipal power,
20 granting the City Attorneys unprecedented power to issue facial challenges to Nevada statutes
21 protecting defendants’ civil liberties by weaponizing rights expressly reserved to specifically to
22 individual victims and granting the municipal court the unprecedented authority to strike down
23

1 Nevada statutes at its municipalities request. The Henderson Municipal Court also misapplied the
2 standard for facial constitutional challenges to statutes.

3 **I. Municipal courts lack jurisdiction to declare a state statute unconstitutional.**

4 As stated in Article 6, Section 1, of the Nevada Constitution:

5 The Judicial power of this State shall be vested in a court system,
6 comprising a Supreme Court, District Courts, and Justices of the
7 Peace. *The Legislature may also establish, as part of the system,*
8 *Courts for municipal purposes only in incorporated cities and*
9 *towns.* (emphasis added)

10 In addition to the having the discretion to create municipal courts, the Legislature has the
11 authority to define the jurisdiction of those same courts. *Blackjack Bonding v. City of Las Vegas*
12 *Municipal Court*, 116 Nev. 1213, 1220, 14 P.3d 1275, 1280 (2000). A court which is the creation
13 of statute has only the authority given to it by the statute. *See Kell v. State*, 96 Nev. 791, 792 (1980)
14 (stating that the juvenile court system is a creation of statute, and it possesses only the jurisdiction
15 expressly provided for it in the statute). “It has been repeated by this and other court that nothing
16 is presumed in favor of jurisdiction of courts of limited jurisdiction, and that it must be made to
17 appear affirmatively that such a court has jurisdiction before it can render a valid judgment.” *State*
18 *v. Justice Court of Reno Tp., Washoe County*, 48 Nev. 425 (1925). As this Court noted in *State v.*
19 *Bonner*, 43 Nev. 95 (1919),

20 It is an ancient rule that nothing is presumed in favor of the
21 jurisdiction of courts of limited jurisdiction. That such a court has
22 jurisdiction must affirmatively appear; and, unless it does so appear,
23 judgment by such a court is void for want of jurisdiction. This is not
24 a new question in this state. It was before the court in 1866, and the
25 court then held that such a judgement as is here involved was void,
26 as the court was without jurisdiction.”

27 This concept is sufficiently basic that the *Bonner* Court observed that elaborating on such an
28 ancient principal would be a “waste of time.” *Id.*

1 Currently NRS 5.050 defines the limits of the jurisdiction of municipal courts, stating that
2 municipal courts have jurisdiction of all misdemeanors committed in violation of the ordinances
3 of their respective cities. However, neither the Nevada Constitution nor statute afford municipal
4 courts jurisdiction to declare a state statute facially unconstitutional, especially at the behest of its
5 own municipality. As the Nevada Supreme Court recently made clear, general statutes treating
6 “municipal courts the same as justice courts” and addressing “the powers of municipal courts in
7 general” do not control where a more specific statute allocates authority to justice courts. *See*
8 *Patterson v. Las Vegas Municipal Court*, 139 Nev. Adv. Op. 35, 535 P.3d 657, 660 (2023). While
9 Nevada statutes contemplate that a justice court may hold that the state law might violate the state
10 or federal constitutions, *See* NRS 4.235 (requiring notice to attorney general if justice court
11 declares a statute unconstitutional), no provision grants such authority to municipal courts.
12 *Compare* NRS Title 1, Ch. 4 *with* NRS Title 1, Ch. 5.

13 Below, the City relied on *Salaiscooper v. v. Eighth Jud. Dist. Ct.*, 117 Nev. 892, 34 P.3d
14 509 (2001), to support its argument that the municipal court could declare a state statute
15 unconstitutional. Ex. A to Pet. at 6–7. But *Salaiscooper*, which overruled *In re Dixon*, and *McKay*
16 *v. City of Las Vegas* insofar as they could be read to say “a *justice court* has no power to rule on
17 *any* constitutional question posited in a criminal misdemeanor case,” address different
18 circumstances that those before this court. *Salaiscooper*, 117 Nev. at 901, 34 P.3d at 515 (first
19 emphasis added; second emphasis in original). While *the Salaiscooper* court overruled one reading
20 of *McKay* in favor of individual defendants, it did not overrule *McKay*’s general principle that
21 municipal courts lacked jurisdiction to consider some kinds of constitutional questions. *See*
22 *Salaiscooper*, 117 Nev. at 900, 34 P.3d at 515 (“Out decision [] in . . . *McKay* *correctly* held that
23 a municipal court has no jurisdiction to consider the constitutionality of legislation imposing a tax

1 or an assessment.” (emphasis added)). The city’s other citation, to *City of Las Vegas v. Eighth Jud.*
2 *Dist. Ct.*, 122 Nev. 1041, 146 P.3d 240 (Nev. 2006), is similarly unhelpful because it involved the
3 constitutionality not of a state statute, but of a municipal ordinance. 122 Nev. at 1046–48, 146 P.3d
4 at 244–45; *see also* Ex. A. to Pet. at 6–7.

5 Practically, granting a municipal court the authority to strike down a *municipal ordinance*
6 as unconstitutional falls square within the “municipal purposes only” limitations imposed by the
7 Nevada Constitution. However, striking down a law of general application across the state falls
8 well outside those constitutional bounds imposed on and the statutory authority offered to
9 municipal courts.

10 **II. The municipal court’s findings are inadequate to support its ruling that NRS**
11 **178.4849 violates on its face either Article 1, Section 8A or Article 3, Section 1**
of the Nevada Constitution

12 “A facial challenge is an attack on a statute itself as opposed to a particular application”
13 and are permissible “under a diverse array of constitutional provisions.” *City of Los Angeles v.*
14 *Patel*, 576 U.S. 409, 415 (2015). However, as governmental entities like the City of Henderson
15 frequently point out to the ACLU in other matters, as general principle facial challenges may only
16 succeed if there is “no set of circumstances exists under which the [law] would be valid,” *United*
17 *States v. Salerno*, 481 U.S. 739, 745 (1987), or the law lacks “a plainly legitimate sweep”.¹
18 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008);
19 *accord Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 512–13, 217 P.3d 546, 553–

20
21 ¹ There are exceptions to this general rule. For example, the standard for facial challenges in the
22 First Amendment context are more favorable to plaintiffs. See *Ams. For Prosperity Found. v.*
23 *Bonita*, 594 U.S. 595, 615 (2021) (“In the First Amendment context, however, we have recognized
a second type of facial challenge, whereby a law may be invalidated as overbroad if a substantial
number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate
sweep. (quotation omitted)). However, amici are unaware of any exceptions that apply here.

1 54 (2009). Though it never expressly refers to the City’s argument as a facial challenge, the
2 municipal courts ruling that NRS 178.4849 violates Article 1, Section 8A and Article 3, Section 1
3 is necessarily a finding that the statute violates the relevant constitutional provisions on their face
4 as the municipal court relies on systemic statistics offered by the City rather than the facts specific
5 to the cases before it. *See* [Petition for Writ of Mandamus/Prohibition, Ex. C (making no factual
6 findings specifically linked to the accused)].

7 Though it was required to explain how NRS 178.4849 would be invalid under any
8 circumstance or lacks a plainly legitimate sweep, the municipal court failed to do either. [*Id.*]
9 Additionally, neither the plain language of the relevant provisions nor the municipal courts’ factual
10 findings support the courts’ legal conclusions.

11 **A. NRS 178.4849 does not on its face violate any provision of Marsy’s Law.**

12 In finding that NRS 178.4849 violated Article 1, Section 8A of the Nevada Constitution,
13 the municipal court cites subsections (1)(b), (1)(c), (1)(g), and (1)(h) of the constitutional
14 provision. [*Id.* at 7:26–8:11]. However, none of these subsections preclude a pretrial detention
15 hearing from occurring within 48 hours from arrest. Subsection (b) and (c) are already incorporated
16 into the factors that a court must consider when determining conditions of pretrial release at the
17 hearing and do not require actual contact with an alleged victim or anyone else prior to a detention
18 hearing. *See* NRS 178.4853(8) (“In reviewing the custody status of a person, the court at a
19 minimum shall consider the following factors concerning the person: [. . .] [t]he nature and
20 seriousness of the danger to the alleged victim, any other person or the community that would be
21 posed by the person’s release.”). And NRS 178.4849 does not violate subsections (g) and (h) on
22 their face as the statute makes no reference to, let alone bar, the government providing reasonable
23 notice to victims of a pretrial hearing or the victim being heard at said hearing. While it emphasized

1 language that supported its position in the order, the municipal court also glossed over the term
2 “upon request” regarding victims’ rights to notice and to be heard at public hearings pursuant to
3 subsections (g) and (h), ignoring that these rights expressly remain dormant until a victim
4 affirmatively asserts them. [Petition for Writ of Mandamus/Prohibition, Ex. C, 8:3–11].

5 Particularly concerning is how the municipal court establishes the scope of the rights
6 defined Article 1, Section 8A without the involvement of a single actual victim or allegation by a
7 victim that their rights had been violated. Rather, the court cites to a single, concrete fact to
8 establish a facial violation of Article 1, Section 8A: the City tried but failed to contact 50.6% of
9 alleged victims prior to the pretrial detention hearing. [*Id.* at 8:17 – 20]. In determining that this
10 single fact was relevant and dispositive, the municipal court made a series of assumptions about
11 the scope of a victim’s rights under Article 1, Section 8A. First, the court assumed that victims are
12 be entitled to any notice under Section 8A without an affirmative request. Second, that “reasonable
13 notice” as described under Section 8A required the City to offer personal notice through a phone
14 call rather than notice through publication as has been done in other states. Third, that “reasonable
15 notice” meant that victims were entitled to actual notice instead of good faith attempt at notice;
16 that is, the court focused on the final result (i.e. the victim did not pick up the phone rather than
17 the fact a call was made). These assumptions were not based on an established jurisprudence or
18 the plain language of the constitutional provision at issue, and ignores that the right is predicated
19 upon the victim requesting notice.

20 As the municipal court also fails to explain how the “sweep” of NRS 178.4849 conflicts
21 with the plain language of Article 1, Section 8A, and ignores that the City still provides *actual*
22 notice to half the people it reaches out to even with the constraints imposed by NRS 178.4849, the
23 municipal court’s order finding NRS 178.4849 unconstitutional must be reversed.

1 **B. NRS 178.4849 does not on its face violate Article 3, Section 1, or ADKT**
2 **539, as the municipal court confuses a resource management problem**
3 **with a constitutional crisis.**

4 NRS 178.4849 does not violate Nevada’s separation of powers provision. “[L]egislative
5 encroachment on judicial prerogatives’ is implicated only where the statute ‘interfere[s] with
6 procedure to a point of disruption or attempted abrogation of an existing court rule.’” *Lyft, Inc. v.*
7 *Eighth Jud. Dist. Ct. (Davis)*, 137 Nev. 832, 835, 501 P.3d 994, 999 (2021). Thus, before declaring
8 a state statute unconstitutional under the separation of powers provision, there must be an actual
9 conflict between the statute and the judicial procedure. Setting a timeline for when a bail hearing
10 must be heard is a “function” that properly belongs to the state Legislature as discussed in Article
11 3, Section 1; to suggest otherwise puts the entirety of NRS Chapter 178, which establishes the
12 processes governing criminal proceedings, in violation of Article 3, Section 1, of the Nevada
13 Constitution. As for ADKT 0539, that provision only requires that the court complete a Nevada
14 Pretrial Risk Assessment. NRS 178.4849 does not discuss pretrial risk assessments let alone bar
15 the municipal court from completing them.

16 The municipal court claims that NRS 178.4849 conflicts with ADKT 0539, and so violates
17 Article 3, Section 1, because the municipal court only completes pretrial risk assessments in 82.5%
18 of cases prior to the initial detention hearings. CITE. This finding fails to establish that “no set of
19 circumstances exists” where NRS 178.4849 would be valid or the statute lacks “a plainly legitimate
20 sweep”. Rather, this finding establishes that the City has mismanaged its resources, filing more
21 criminal cases with its municipal court than the court can handle. There are many solutions to this
22 problem, including:
23

1 1. The municipality filing fewer criminal cases including in matters
where the defendant is accused of non-violent, victimless crimes;³

2 2. The municipality to providing its courts with sufficient resources
3 to complete pre-trial risk assessments;

4 3. The Henderson Justice Court completing the pretrial risk
assessments and hearings pursuant to an interlocal agreement, which
5 is permissible under NRS 4.370(5).⁴

6 The municipal court shirks its duty to protect the rights of all parties appearing before it
7 when the court would rather undermine the civil liberties of defendants than demand that the City
8 give it the resources necessary to comply with ADKT 0539. NRS 178.4849 is constitutional and
9 the court's order must be reversed.

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12 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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21 _____
22 ³ Notably the City prosecuted Mr. Armendarez himself for “Camping Where Prohibited” and a
misdemeanor drug offense. [Petition for Writ of Mandamus/Prohibition at 13:15–25].

23 ⁴ “A justice of the peace may conduct a pretrial release hearing: (a) For a person located outside
of the township of the justice of the peace. (b) Pursuant to an interlocal agreement, in a municipal
court.” NRS 4.370(5).

1 **III. Conclusion**

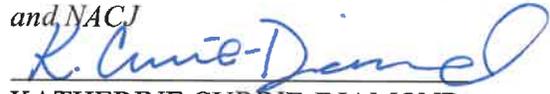
2 Amici curiae respectfully request that this Court grant Petitioner's request for a writ of
3 mandamus/prohibition.

4 Dated this 7th day of August, 2024.

5 s/ Christopher Peterson
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