

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.,
VIRGILCRISTOBAL, HUNTER
ALEXIS DOOLEY AND JACOB
VERNON HARD,

Respondents.

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Case No.: 89958

**MOTION OF AMERICAN CIVIL LIBERTIES UNION OF NEVADA FOR
LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF
AFFIRMANCE AND RESPONDENT’S OPENING BRIEF**

Pursuant to NRAP 29(a) of the Nevada Rules of Appellate Procedure, the American Civil Liberties Union of Nevada (hereinafter “ACLU of Nevada”) hereby move for leave to file a brief as amicus curiae in support of Respondents. NRAP 29(a) authorizes an amicus curiae to file a brief “by leave of court granted on motion.” The ACLU of Nevada seeks a granting of this motion to properly file amicus curiae brief as required by NRAP 29(a). The proposed brief of amicus curiae is attached to this motion.

ARGUMENT

A motion for leave to file an amicus brief must include “(1) the movant’s interest and (2) the reasons why an amicus brief is desirable.” NRAP 29(c).

I. Amicus curiae’s interest in submitting the brief

The ACLU of Nevada is a nonprofit, nonpartisan organization that defends the fundamental rights provided and protected by the United States and Nevada Constitutions. It has been the nation’s guardian of civil liberties for over 100 years. In its role as an advocate for Nevadans’ constitutional rights, the ACLU of Nevada regularly raises claims under our state’s constitution and applicable judicial precedent in cases filed in both federal and state court.

The ACLU of Nevada has interest in this case related to the organization’s broader mission to defend and protect the civil rights and liberties of Nevadan’s against government overreach. From the present case, the ACLU of Nevada has an interest in protecting Nevada victims’ rights from being misused by the government to undermine the civil liberties of other Nevadans. The ACLU of Nevada has also historically advocated for strong pre-trial protections for people accused in criminal proceedings, and the City of Henderson’s appeal threatens the statutory rights of defendants across Nevada to have their bail hearings in a timely fashion.

II. Desirability of the amicus brief

“There are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as amicus must merely make a showing that his participation is useful or otherwise desirable to the court.” *California v. U.S. Dep’t of Interior*, 381 F. Supp. 3d 1153, 1163-64 (N. Cal. 2019), citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982).

As the United States Court of Appeals for the Ninth Circuit has observed, law enforcement agencies do not represent the victim’s interests while carrying out their primary, prosecutorial function. *Lanuza v. Love*, 899 F.3d 1019, 1032 (9th Cir. 2018). By comparison, amicus curiae directly represents victims, including victims that have been victimized by the government, and is in a better position to explain the full range of interests that victims have, not just those that align with the government’s agenda. By using victim’s rights to strike down statutes, municipalities actively diminish the rights of victim’s whilst claiming to serve victim’s interests.

The proposed amicus brief is useful in multiple ways. First, it establishes against the broader framework of constitutional law that only victims, not governments, can assert their rights under Article 1, Section 8A of the Nevada Constitution. Second, it provides a broader context to the concern that governments are weaponizing victims’ rights to serve their own interests, providing specific examples both here in Nevada and across the country. Third, it explains that since

the City of Henderson has broad discretion in what cases to prosecute and many options in ensuring victims' constitutional rights are protected, the municipality is needlessly manufacturing a conflict between victims' rights and defendants' rights.

Accordingly, amicus requests that the Court grant its motion to file an amicus brief in support of Respondents.

DATED this 12th day of November, 2025.

Respectfully submitted:

**AMERICAN CIVIL LIBERTIES
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/s/ Christopher M. Peterson.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12th day of November 2025. Electronic Service of the foregoing document shall be made in accordance with the Master Service List.

/s/ Suzanne Lara
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An employee of ACLU of Nevada

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NEVADA IN SUPPORT OF AFFIRMANCE AND RESPONDENTS'
OPENING BRIEF**

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NRAP 26.1 DISCLOSURE

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

American Civil Liberties Union of Nevada Foundation, Inc., is a domestic nonprofit, non-stock corporation. It has no parent corporations, and no publicly held corporations have an ownership interest in it. This amicus curiae is represented by Christopher Peterson.

No other law firms have appeared for the amicus in this case or are expected to appear for the amicus in this Court.

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STATEMENT OF INTEREST

The American Civil Liberties Union (ACLU) of Nevada is a state affiliate of the national ACLU, a nonprofit, nonpartisan organization that has been the nation's guardian of liberty for over 100 years. The ACLU works to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU has interest in the present matter where both victim's and defendant's rights are implicated due to a municipal expansion of power.

No other party or a party's counsel authored the brief in whole or in part; and no other person—other than the amicus curiae, its members, or its counsel—contributed money or other consideration intended to fund preparing or submitting the brief.

The ACLU has authority to file this brief pursuant to NRAP 29(a)(2), which authorizes amici to file briefs after receiving leave from the Court. The ACLU has filed the required motion.

ARGUMENT

Multiple municipalities and local governments, including the City of Henderson, the City of North Las Vegas, and district attorney offices for thirteen different counties including Clark and Washoe, have filed briefs in this matter claiming that the state statute giving people accused of criminal offenses and detained in pretrial detention the right to a prompt custody hearing within 48 hours of arrest prevents victims from receiving notice about and attending those hearings. Appellant's Amended Opening Brief at 18, 20, 22-23, 27-29, 34, 50; [hereinafter Appellant's Am. Opening Br.]; Brief for Douglas County District Attorney's Office et al. as Amici Curiae Supporting Appellant at 4, 11-13 [hereinafter Br. for County Dist. Att'y Offices]; Brief for City of North Las Vegas Supporting Appellant at 3-4, 7-8 [hereinafter Br. for City of North Las Vegas]. These prosecutors theorize that victims have other priorities after a crime occurs, or that victims may want to attend but municipal employees cannot contact them in a timely manner. Appellant's Am. Opening Br. at 23; Br. for City of North Las Vegas at 3; Br. for County Dist. Att'y Offices at 4, 7, 12. Yet despite the City of Henderson filing 6,328 criminal cases during the 2024 fiscal year and government amici as a whole filing over 100,000 cases over that same time period, none of the amici municipalities or district attorney offices identify a single, real victim who complained that their rights as a victim were violated due to NRS 178.4849. *See* Supreme Court of Nevada, *Annual Report*

of the Nevada Judiciary – Fiscal Year 2024 Appendix Tables at 2 (last viewed November 12, 2025), available at https://nvcourts.gov/__data/assets/pdf_file/0028/46189/2024_Annual_Report_Appendix.pdf (128,172 criminal cases filed in Nevada courts statewide during the 2024 fiscal year, including 113,877 filed in justice and district courts within the jurisdiction of amici Washoe County and Clark County, and 6,328 filed within the City of Henderson’s jurisdiction).

The City of Henderson and government amici’s claims that Henderson has the authority to assert victim’s rights to render NRS 178.4849 unconstitutional are unavailing for three reasons. First, Article 1, Section 8A protects victims from the government as much, if not more, from criminal defendants; the plain language of the provision makes clear that only victims have standing to assert rights provided by Article 1, Section 8A, and those rights are meant to be asserted against the government, not to undermine the rights of other Nevadans. Second, the City of Henderson should not have the authority to assert victim’s rights without the actual consent of a victim as governments here in Nevada and across this country have repeatedly weaponized victims’ rights to serve government interests, even using Marsy’s Law provisions against the very victims that the laws were meant to protect. Finally, the City of Henderson has manufactured a conflict between victim and defendant rights; considering that the municipality has full discretion over its criminal caseload and Article 1, Section 8A does not limit government entities in

how they fulfill their obligations to victims, Henderson must not be allowed to foist responsibility for its failure to properly manage its resources onto criminal defendants across this state.

I. Article 1, Section 8A is meant to be exercised by victims against governments, not for governments to weaponize against criminal defendants.

Constitutional rights are traditionally exercised by private actors against the government, not other private actors. *See, e.g., S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 410 (Nev. 2001) (observing in the context of the First Amendment that “[t]he abridgment [of a constitutional right] then must involve some form of government action.”); *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984) (finding the Fourth Amendment inapplicable to private individuals not acting on behalf of the government). The rights in Article 1, Section 8A are no different. The provision expressly authorizes for a private right of action “to compel a public officer or employee to carry out any duty required by [Article 1, Section 8A]”; it does not provide for a similar cause of action against private actors. Nev. Const. art. 1, § 8A(4). Furthermore, and as noted in Respondent’s brief, the provision also expressly gives victims standing to exercise the rights provided; nothing in Article 1 Section 8A gives similar standing to anyone else, including the government. Nev. Const. art. 1, § 8A(2).

Legislative history reaffirms that the rights in Article 1, Section 8A impose obligations on the government but are not meant to conflict with the rights of criminal defendants. Advocates in favor of the provision testified that “[v]ictims' rights are not about diminishing defendants' rights” and observed that “[w]hile there can be tensions between legitimate interests of victims and defendants, a criminal justice system that is based on human rights standards can safeguard the rights of both while advancing justice and the rule of law.” Hearing on S.J. Res. 17 Before the S. Comm. on Judiciary, 2015 Leg., 78th Sess. 16-17 (Nev. 2015) (statement of Meg Garvin, Exec. Dir. of the National Crime Victim Law Institute), <https://archive.leg.state.nv.us/Session/78th2015/Minutes/Assembly/LOE/Final/1078.pdf> [hereinafter S.J. Res. 17, 2015 Hearing]. Advocates also noted that defendants and victims often have shared interests in transparency and expedient resolutions in criminal matters. S.J Res. 17, 2015 Hearing, Nev. 78th Leg. at 19-20; Hearing on S.J. Res. 17 Before the S. Comm. on Judiciary, 2017 Leg., 79th Sess. 16 (Nev. 2017) (statement of Meg Garvin, Exec. Dir. of the National Crime Victim Law Institute) <https://archive.leg.state.nv.us/Session/79th2017/Minutes/Senate/JUD/Final/229.pdf>.

Henderson now seeks to do precisely what these advocates disavowed, manufacturing a conflict between victims and defendants where none exists. If a real victim, rather than Henderson’s imaginary complainant, makes a request pursuant to

Article 1, Section 8A(1)(g), for reasonable notice or pursuant to Article 1, Section 8A(1)(h), to be heard at a bail hearing and that request is denied due to NRS 178.4849, then there may be a legitimate issue that would need to be addressed by this Court. As is, this Court must not entertain Henderson's charade and should discourage the City, and future litigants, from claiming to serve victims when actually litigating in service of itself.

II. Governments in Nevada and across the country have weaponized victims' rights to serve their own, rather than victims', interests.

Government entities should not be authorized to assert rights provided to victims under Article 1, Section 8A because the government will necessarily abuse this power to serve its own interest. This concern is not theoretical. Henderson is not alone in its efforts to weaponize victims' rights to serve government ends and diminish the rights of people in litigation against the government. This trend towards co-option is most apparent in the context of transparency and government accountability.

There are multiple reported instances of government agencies asserting laws, like Article 1, Section 8A, meant to protect vulnerable people, to withhold records documenting government misconduct, especially when police are accused of excessive force. In Louisiana, the Jefferson Parish Sheriff's Office exploited a statute protecting the privacy of juveniles to withhold records from an incident where

its officers shot an unarmed 14 year-old. Matt Agorist, *Body Cam Shows Cop Shoot Defenseless 14yo Boy in Back, Lying Facedown On the Ground- Lawsuit,* The Free Thought Project (last accessed September 14, 2025) <https://thefreethoughtproject.com/police-brutality-cop-watch/body-camera-boy-facedown-ground-shot>. A North Dakota police department used its state's Marsy's Law to hide an officer's name from the media after a deadly shooting. James MacPherson, *'Officer in shooting invokes victim's law to withhold name,'* AP News (last visited September 14, 2025) <https://apnews.com/general-news-861bf1e42dbf473e9029e77a36932685>. Florida police officers repeatedly asserted their state's Marsy's Law to avoid disclosing records related to deadly force incidents when media organizations requested names of officers when investigating incidents that happened within days of the murder of George Floyd. *City of Tallahassee v. Florida Police Benevolent Ass'n, Inc.*, 375 So. 3d 178, 181 (Fla. 2023); Jeff Burlew & Karl Eppers, *'Secret Police' or a right to anonymity? Florida Supreme Court decide future of Marsy's Law*, Tallahassee Democrat (last visited July 31, 2025) <https://www.tallahassee.com/story/news/2022/12/06/marsys-law-florida-case-pits-tallahassee-vs-tpd-supreme-court/8065479001/>. And this trend of government misappropriation of private rights has come to Nevada. In another matter pending before this Court, the Sparks Police Department refused to disclose records related to an investigation into sexual impropriety by a Reno Police

Department officer, asserting the victim's right to privacy against the very person who was the victim of the officer's misconduct. Brief for American Civil Liberties Union of Nevada and UNLV Survivor Representation & Advocacy Clinic as Amici Curiae Supporting Appellant, *City of Sparks v. Bluth*, No. 90244 (Nev. October 20, 2025). Fortunately, other courts have resisted this weaponization of victim's rights. For example, the Florida Supreme Court ruled the Tallahassee's police department could not use victim's rights to withhold the officers' names. *City of Tallahassee*, 375 So. 3d at 189.

While this matter is not directly about transparency, finding for the City would necessarily empower government entities to continue misappropriating victim's rights. The Court must not encourage this behavior and clarify that only victims have standing to assert rights under Article 1, Section 8A.

III. A prosecutor's office cannot blame criminal defendants when it fails to satisfy its obligations to both defendants and victims because the office has failed to properly manage its resources.

A prosecutor office's unfettered discretion over its caseload places them in an ideal position for meeting their duties to victims pursuant to Article 1, Section 8A. Where a prosecutor has identified probable cause, "the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutors] discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978). This Court has likewise recognized that prosecutors are vested with

“immense discretion in deciding whether to prosecute.” *Salaiscooper v. Eighth Jud. Dist. Court*, 117 Nev. 892, 903 (2001). Prosecutors also have broad discretion over dismissing a case once they have chosen to press charges. They can voluntarily dismiss a complaint without prejudice (1) before a preliminary hearing in felony or gross misdemeanor cases, or (2) dismiss it before trial in misdemeanor cases. NRS 174.085(5)(a); NRS 174.085(5)(b). Even after an indictment has occurred, the prosecuting attorney can voluntarily dismiss an indictment without prejudice before the actual arrest or incarceration of the defendant. NRS 174.085(7). If the defendant was arrested or incarcerated, the prosecuting attorney can still voluntarily dismiss the indictment without prejudice upon showing good cause to the court. NRS 174.085(7).

Because of their broad discretion, prosecutors are empowered to control their caseload and make strategic decisions about the types of cases they want to prioritize. If the City wants to put victims of crime at the forefront, they can choose to prioritize cases with victims instead of victimless crimes such as camping, trespassing, use or possession of drug paraphernalia, and failure to comply with local park use ordinances, which are charges the City brought against Respondents Armendarez, Delosrios Jr., and Hardy in the underlying matter of this case.

Victims are entitled to notice about court proceedings that impact them; after all, without notice, it is difficult to exercise any other right. But if the City of

Henderson and other municipalities actually wanted to provide notice to victims, they have many options at their disposal, including posting clear information about victims' rights on their website, providing guides on how a victim may track court proceedings in Henderson's online docket, or even having law enforcement officers hand out cards to victims explaining their constitutional rights as prosecutors in other states do. *See* Cal. Nevada County Super. Ct. R. 7.09.4 (allowing prosecutors to submit Certificate of Compliance with Marsy's Law); *See* Cal Pen Code § 679.026 (Marsy Rights card to be dispersed by law enforcement and informative webpage on Marsy's law). It does not appear that the City has tried any of these cost-effective methods, relying entirely on phone calls made by city attorney staff after a case is filed but before a bail hearing is held. Appellant's Am. Opening Br. 2, 4, 18. If the City prefers to limit itself to phone calls, that's the City's choice, but it must dedicate enough resources to that method to satisfy its obligations both to victims and to criminal defendants.

CONCLUSION

Henderson's mistaken conception that Marsy's law conflicts with defendant's rights was expressly rejected by proponents of the law and remains unfounded. Marsy's law should remain actionable solely by victims, not by municipalities. Furthermore, the exceptional discretion granted to prosecutor offices empowers

prosecutors to control their case load, allowing them to properly manage time and resources not only to comply with Marsy's law, but also to focus their case load on victim-based crimes. Likewise, if the City of Henderson truly wanted to uphold Marsy's law, they would employ a number of tactics used by other jurisdictions to inform victims of their rights. This baseless claim should be again struck down for what it truly is- a municipality power grab by appropriating victim's rights. This Court should affirm the lower court decision to prevent the future misappropriation of victim's rights by municipalities.

DATED this 12th day of November 2025.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this amici 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 the requirement of Rule 28(e), which requires that every assertion in the brief regarding matters in the record be supported by a reference to the page and volume number, if any, of the 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.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14 point Times New Roman.

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Finally, I hereby certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 2,327 words.

DATED this 12th day of November, 2025.

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