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IN THE SUPREME COURT OF THE STATE OF NEVADA

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IN THE MATTER OF THE COMMISSION

OF THE HONORABLE ROBERT W. TEUTON,

Case No. 54238

DISTRICT JUDGE

FILED

AUG 20 2009

TRACIE K. LINDEMAN
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**BRIEF OF AMICUS CURIAE
FAMILY LAW SECTION OF NEVADA STATE BAR**

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1 **AMICUS CURIAE ANSWER TO ORDER TO SHOW CAUSE**
2 **OF**
3 **THE FAMILY LAW SECTION OF THE STATE BAR OF NEVADA**

4
5 The Family Law Section of the State Bar of Nevada ("FLS") submits its Amicus Curiae
6 Answer to Order to Show Cause in accordance with this Court's July 29, 2009, Order.
7

8 **I. PROCEDURAL HISTORY**

9 On April 9, 2009, Robert Lueck filed a *Motion for Leave to File Petition for Writ of Quo*
10 *Warranto and for Other Related Relief* and a *Petition for a Writ of Quo Warranto*, in *Lueck v.*
11 *Teuton*, Docket No. 53596.

12 On April 20, 2009, Respondent, Hon. Robert W. Teuton, filed an *Opposition to Motion to*
13 *File Petition for Writ of Quo Warranto and for Other Related Relief*.

14 On April 23, 2009, Robert Lueck filed a *Motion for Leave to File Reply Points and*
15 *Authorities in Support of Motion for Leave to File Petition for Writ of Quo Warranto and for Other*
16 *Related Relief*. On May 4, 2009, he filed a Supplement to the April 23rd Motion.

17 On May 22, 2009, this Court issued an *Order Granting Motion For Leave To File Reply* and,
18 on July 10, 2009, issued an *Order Directing Supplement*.

19 On July 15, 2009, Robert Lueck filed a *Response to Court Order Directing Supplement*.

20 On July 22, 2009, Respondent, Hon. Robert W. Teuton, filed a *Reply to Movant's*
21 *Supplemental Brief*.

22 On July 29, 2009, this Court issued an *Order to Show Cause* in *In the Matter of the*
23 *Commission of the Honorable Robert W. Teuton, District Judge*, Docket No. 54238, ordering that:

- 24 1. Good cause be shown why Judge Teuton's commission and service in office beyond
25 January 4, 2009 should not be declared invalid under Nevada Constitution Article 6,
26 Section 20(2), and correspondingly,
- 27 2. Good cause be shown why the Nevada Supreme Court should not issue a writ of
28 mandamus directing the Governor to declare Judge Teuton's office vacant under
 NRS 3.080(1).

II. FACTUAL HISTORY

The factual history is being presented in the form of a timeline:

- 1
- 2
- 3 **November 2, 2004:** The Hon. Gerald Hardcastle is re-elected to Department D in the
4 general election.
- 5 **January 11, 2008:** Deadline for judicial candidates to file declarations of candidacy in
6 order to be on the ballot for the primary election.
(NRS 293.177(1)(a))
- 7
- 8 **March 26, 2008:** Judge Hardcastle informs the Governor of his intent to retire.
(Las Vegas Review Journal article dated March 27, 2008)
- 9
- 10 **May 23, 2008:** Commission on Judicial Selection Deadline for submitting
11 applications for the vacancy in Department D.
(Nevada Supreme Court Website)
- 12 **July 1, 2008:** Judge Hardcastle's official date of retirement.
13 (Nevada Supreme Court Website)
- 14 **July 22, 2008:** Nevada Judicial Selection Commission selected three candidates and
15 submitted their names to the Governor.
(Las Vegas Review Journal article dated 8/23/08)
- 16
- 17 **August 12, 2008:** Primary election (NRS 293.175 (1))
- 18 **August 19, 2008:** Last day to make changes to names on the general election ballot.
(NRS 293.165(4))
- 19
- 20 **August 22, 2008:** Governor appoints Robert Teuton.
(Nevada Supreme Court Website)
- 21
- 22 **September 29, 2008:** Judge Teuton commences his judicial service
(Unable to verify; Date listed in briefs)
- 23
- 24 **November 4, 2008:** General Election 2008 (NRS 293.12755)
- 25
- 26
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III. DISCUSSION

Judge Teuton's Commission and Service After January 4, 2009, Should Not Be Declared

Invalid.

Under Article 6, Section 20 of the Nevada Constitution:

1. When a vacancy occurs before the expiration of any term of office in the Supreme Court or among the district judges, the Governor shall appoint a justice or judge from among three nominees selected for such individual vacancy by the Commission on Judicial Selection.
2. The term of office of any justice or judge so appointed expires on the first Monday of January following the next general election.

The vacancy in Department D occurred on July 1, 2008, when Judge Hardcastle retired. On August 22, 2008, in accordance with Nevada Constitution Article 6, Section 20(1), the Governor appointed Robert Teuton to Department D from among three nominees selected by the Commission on Judicial Selection.

According to the plain language of Nevada Constitution Article 6, Section 20(2), the expiration of the term of any judge appointed pursuant to Section 20(1) should be calculated as of the date of the appointment. On the date of the appointment here at issue, however, the deadline to make changes to the ballot for the next general election had already expired, three days earlier (on August 19, 2008), making it *impossible* for the voters to fill the vacancy in Department D via the November 4, 2008, general election.

As a result, this case presents a scenario where there is a discrepancy between the *literal* reading of the phrase "next general election" and the correct interpretation of the phrase in light of

1 the rules set out by this Court for potentially conflicting constitutional provisions, statutory
2 construction generally, and as to appointments and elections specifically.

3
4 Interpreting Article 6, Section 20 in such a way as to vacate Department D after it was
5 impossible for voters to fill the post at the 2008 election sets up a conflict with Article 6, Section 5,
6 which provides in pertinent part:

7
8 After the said first election, there shall be elected at the general election which
9 immediately precedes the expiration of the term of his predecessor, one district judge
10 in each of the respective judicial districts The district judges shall be elected by
11 the qualified electors of their respective districts, and shall hold office for the term
12 of 6 years . . . from and including the first Monday of January, next succeeding their
13 election and qualification

14 In *Nevadans for Nevada v. Beers*, this Court held that “[t]he Nevada Constitution should be
15 read as a whole, so as to give effect to and harmonize each provision.”¹ Absent a practical
16 interpretation of the phrase “next general election,” however, holding the seat vacant as of the 2008
17 election would render the provisions of Section 5 nugatory, because it would not be possible for the
18 voters to elect a judge to Department D “at the general election which immediately precedes the
19 expiration of the term of his predecessor.”

20 Both Constitutional provisions are entitled to equal deference, and in *Nevada Power Co. v.*
21 *Haggerty*,² this Court stated that when possible, the interpretation of a statute or constitutional
22 provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd
23 results.”

24
25
26
27 ¹ *Nevadans for Nevada v. Beers*, 122 Nev. 930, 944, 142 P.3d 339, 348 (2006).

28 ² *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999).

1 This Court is thus compelled by its holding in *Haggerty* and other decisions to explore
2 whether there is an interpretation of the words “next general election” that would not enforce one
3 Constitutional provision by means of frustrating another. The fact that literal enforcement of one
4 Constitutional provision would hinder application of another necessarily creates an ambiguity, and
5 among this Court’s rules for statutory construction are the principles that if a statute is ambiguous,
6 courts should attempt to follow the legislature’s intent, and “no part of a statute should be rendered
7 nugatory, nor any language turned to mere surplusage, if such consequences can properly be
8 avoided.”³

11 The conflicts that would be created by interpreting the phrase “next general election” in such
12 a way that Judge Teuton’s term expired on January 5, 2009, go beyond the two Constitutional
13 sections noted. Such a reading would also conflict with NRS 3.080(2)⁴ and with NRS Chapter 293,⁵
14 because that interpretation would make it impossible to comply with the procedures and deadlines
15 set forth in those statutes.

17 Further, this Court has repeatedly directed that in examining the law, courts are to look to the
18 “context and policy of the law” and construe legislative enactments “so as to avoid absurd results.”⁶

23 ³ *Rodgers v. Rodgers*, 110 Nev. 1370, 887 P.2d 269 (1994).

24 ⁴ “Whenever any vacancy shall occur in the office of district judge the governor shall fill the same
25 by granting a commission, which shall expire at the next general election by the people and upon the
26 qualification of his successor, at which election a district judge shall be chosen for the balance of the
unexpired term.”

27 ⁵ Governing “elections.”

28 ⁶ *Willerton v. Bassham*, 111 Nev. 10, 889 P.2d 823 (1995).

1 Any doubt as to legislative intent must be resolved in favor of what is reasonable, as against what
2 is unreasonable, for that purpose.⁷

3
4 A literal reading of the phrase “next general election” would result in a number of absurdities.
5 First, Judge Teuton (or any candidate/appointee in his position) would be expected to leave some
6 other employment to serve as a judge for a period of some 90 days without any ability to run for that
7 seat in the “next general election.”

8
9 Second, the voters would *still* have no ability to elect a candidate for that department, as no
10 names for that department would be on the ballot, immediately vacating the seat as soon as it is
11 filled.

12
13 Third, taxpayer resources would be thrown away by repeating the very same appointment
14 process again, less than three months after appointment, and before any meaningful review of the
15 appointee’s ability and performance in the position could possibly be made. As a practical matter,
16 can there be any doubt that after the waste of significant amounts of time, effort, and money, exactly
17 the same person would be appointed to exactly the same position?

18
19 Fourth, requiring an appointee to re-submit an application for appointment, and to repeat
20 interviews with the Commission on Judicial Selection, while simultaneously sitting as a judge would
21 be unduly disruptive to the functioning of the court that the appointment was intended to serve.

22
23 Examination of the practical effects of statutory interpretation has long been a hallmark of
24 this Court’s holdings relating to appointments and elections. As early as 1924, this Court stated, in
25 *State ex rel. Bridges v. Jepsen*⁸:

26
27 ⁷ *Steward v. Steward*, 111 Nev. 295, 890 P.2d 777 (1995).

28 ⁸ *State ex rel. Bridges v. Jepsen*, 48 Nev. 64, 227 P. 588 (1924).

1 We appreciate that it is the policy of our government and that it is the theory of the
2 law that election to office be by the people, **when it can conveniently be done**, and
3 that appointments to fill vacancies made to meet the requirements of public business,
4 shall be effective only **until the people may elect**. *State v. Lentz*, 50 Mont. 322, 146
Pac. 936.

5 [Emphasis added]. In this case, as detailed above, the people “may not elect” until 2010; it is
6 impossible to do so any sooner, and the appointment should logically be considered to extend until
7 such time as such an election can be held.

8 *Jepsen* is not the only case stressing the practicality of interpretation of the law of elections
9 and appointments. Nearly seventy years ago, in *Grant and McNamee v. Payne*,⁹ this Court agreed
10 with the opinion of the Iowa Supreme Court in *State ex rel. Halbach v. Claussen*¹⁰ that “the next
11 general election” might not mean the one appearing next on the calendar:
12

13
14 The next general election means the next general election at which, in pursuance of
15 law, a vacancy may legally be filled. Under all of the authorities called to our
16 attention dealing with the subject, it is held that this does not necessarily mean the
17 next ensuing general election, but the election at which the vacancy can be legally
18 filled. *State v. Superior Court*, 140 Wash. 636, 250 P. 66; *State v. Simon*, 20 Or. 365,
26 P. 170; *Sawyer v. Haydon*, 1 Nev. 75; *State v. Jepsen*,. 48 Nev. 64, 227 P. 588;
State v. Minor, 105 Neb. 228, 180 N.W. 84.

19 Under the circumstances of this case, the earliest that “the vacancy can be legally filled” by election
20 is in 2010.

21 There is no apparent reason why the longstanding authority on statutory interpretation should
22 not continue to be recognized and applied. In fact, the Nevada Legislature has adopted exactly the
23

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27 ⁹ *Grant and McNamee v. Payne*, 60 Nev 250, 107 P.2d 307 (1940).

28 ¹⁰ *State ex rel. Halbach v. Claussen*, 250 N.W. 195, 200 (Iowa 1933).

1 reading set out in *Payne*, and has acted to amend the relevant Constitutional provisions consistent
2 with that authority, to ensure this problem does not recur.¹¹

3
4 While, of course, it is not certain that the proposed amendment will in fact be approved at
5 the next election, this Court has traditionally given deference to the Legislature's amendments to
6 provisions that can be seen as seeking to clarify, rather than substantively amend, existing provisions
7 that are arguably ambiguous, going so far as to hold that such technical corrective amendments are
8 to be considered retroactively effective.¹² The portion of the Senate Joint Resolution clarifying that
9 "the next general election" means the next general election over 12 months in the future fits that
10 definition.
11

12 13 14 IV. CONCLUSION

15 Based on the longstanding authority on statutory interpretation, this Court should find that
16 the "next general election" in the instant case is the November, 2010, election. Accordingly, Judge
17 Robert Teuton's commission and service in office beyond January 4, 2009, should not be declared
18 invalid under Nevada Constitution Article 6, Section 20(2), and correspondingly, this Court should
19

20
21 ¹¹ Senate Joint Resolution No. 2 of the 74th Session was approved by substantial majorities in the
22 2009 Legislature. If approved and ratified by the voters at the 2010 General Election, Article 6,
23 Section 20(5) of the Nevada Constitution will be modified to read: "The initial term of office of any
24 justice or judge appointed pursuant to this Section expires on the first Monday of January following
the first general election that is held at least 12 calendar months after the date on which the
appointment was made," effective November 23, 2010.

25 ¹² *Castillo v. State*, 110 Nev. 537, 874 P.2d 1252 (1994), citing *Harrison v. Otis Elevator Co.*, 935
26 F.2d 714, 719 (5th Cir. 1991) (holding that "it is well settled that legislation that is interpretive,
27 procedural, or remedial must be applied retroactively, while substantive amendments are given only
28 prospective application"); *Wash. Nat. Ins. v. Sherwood Assoc.*, 795 P.2d 665, 669 n.9 (Utah Ct. App.
1991) (a "remedial" statute in the context of a retroactivity determination includes a clarification of
prior legislative intent).

1 not issue a writ of mandamus directing the Governor to declare Judge Teuton's office vacant under
2 NRS 3.080(1).
3

4 **DATED** this 18th day of August, 2009.

5
6 By: 

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1 **CERTIFICATE OF MAILING**

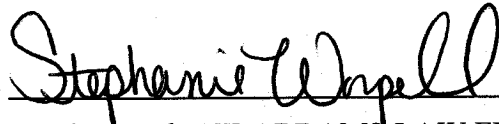
2
3 I hereby certify that I am an employee of THE ABRAMS LAW FIRM, LLC, and on the
4 18th day of August, 2009, I deposited in the United States Mail, postage prepaid, a true and
5 correct copy of the Brief of Amicus Curiae, addressed to:

6 Honorable Jim Gibbons, Governor
7 Grant Sawyer State Office Building
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19 addressed.

20 

21 Employee of THE ABRAMS LAW FIRM, LLC

22 I:\General & Administrative\FLSEC Docs\Teuton\Teuton Amicus Brief.wpd