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**SUPREME COURT OF NEVADA**

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| VICTORIA SEAMAN, an individual; and CLARK COUNTY REPUBLICAN CENTRAL COMMITTEE, a domestic non-profit corporation,<br><br>Plaintiffs,<br><br>v.<br><br>ROSS MILLER, in his official capacity as Secretary of the State of Nevada; and JOSEPH GLORIA in his official capacity as Clark County Registrar of Voters, and MEGHAN SMITH,<br><br>Defendants. | Supreme Court Case No.: 66719<br><br>District Court Case: A-14-705308-W<br>DEPT NO: 27<br><br>**OPPOSITION TO DEFENDANT MEGHAN SMITH'S EMERGENCY MOTION FOR STAY OF THE JUDGMENT PENDING APPEAL**<br><br>Trial: October 16, 2014<br><br>Time: 1:30 pm |

This matter came on for bench trial on October 16, 2014; Jacob Reynolds appearing on behalf of Plaintiffs Victoria Seaman and the Clark County Republican Central Committee, Edgar Carranza appearing on behalf of Defendant Meghan Smith, Kevin Benson appearing on behalf of Defendant Ross Miller, in his official capacity as Secretary of State of Nevada, and Mary-Anne Miller appearing on behalf of Defendant Joseph Gloria, in his official capacity as Clark County Registrar of Voters.

In denying the Defendant's motion for stay the District Court found: (1) the automatic stay did not apply as the relief was injunctive in nature, and *significantly* (2) that even if the automatic stay provisions did apply, did there was *good cause* to grant relief from the stay in this case. (*See* Appellant's Mot. at Ex. 4.)

Further, and most definitively, although Smith does discuss the four considerations in NRAP 8 for granting a stay, Smith does not discuss the associated burdens with any of those points, but rather just makes the assertion that all of the points weigh in her favor. These assertions ignore relevant standards and ignore the facts presented at trial. In short, even the basic requirements to receive a stay are not met in this instance and the request for stay should be denied.[1]

## 1. Analysis of NRAP 8(c).

### A. NRAP 8(c)(3): whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted.

Smith claims that "Respondents will not be irreparably harmed if the stay is ordered." (Em. Mot. 6:13.) This is not accurate. For the same reasons Smith claims she will be harmed if there is no stay, Plaintiffs' will be irreparably harmed if there is a stay.

If this Court enters a stay on the District Court's Judgment now that early voting has begun, it would essentially vacate the value of all the work performed by Plaintiffs, as well as the Plaintiffs' victory at the trial, because their *only* remedy available to them (*i.e.* the posting of signs at polling locations) would literally be taken away because each day that the signs are not posted is a day where Plaintiffs' victory at trial would have been effectually vacated by the stay.

As such, if this Supreme Court enters a stay it will essentially be replacing its judgment for the considered Judgment of the District Court. Obviously the District Court had several

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[1] Defendant Meghan Smith was apprised of this case from the beginning, and her first counsel, Bradley Shrager, was actually present at the first hearing before the District Court on the Original Complaint, though he chose to sit in the gallery rather than appear. Smith's primary argument in subsequent hearings to expedite the case, was for delay to insure due process. This was the same tactic engaged in successfully in the Andrew Martin case two years ago which resulted in a late judgment of disqualification that could not affect the election.

Now in this case, the District Court granted additional time to Smith to insure due process, the result is that trial was pushed to the absolute last point before early voting as possible. Notably, Smith did not submit any discovery requests or conduct any depositions in the case despite arguing vigorously for delays to allow for fair discovery, which delays were granted. In short, Smith is responsible for creating this current emergency of time, and should now be prepared to bear the brunt of it as it results from granting Smith's request to delay proceedings as much as possible without any true basis for needing the time for discovery, but rather just for delay itself.

months to consider pleadings, multiple motions, several hearings, and conduct trial — the District Court Judge was present to view witnesses, and had time to review the facts and law leading up to trial. After all this, and obtaining victory, the District Court correctly declared, so that public might be on notice, that Smith was ineligible and disqualified for office.

Early voting is currently proceeding and only lasts for a couple of days. The signs declaring the effect of the ruling are posted pursuant to NRS 293.184. If this Supreme Court now grants a stay of the District Court's Decision and Order, and the Judgment, it will be tantamount to vacating the victory Plaintiffs' fought for so hard below – because the remedy (*i.e.* the posting of signs) will be completely denied to Plaintiffs.

If there could be any doubt to the District Court's determination on point, it was found in its decision to deny the Smith's motion below wherein the District Court found that even if the "automatic stay" against execution on a judgment was applicable in this case, there was "good cause" to grant Plaintiff a relief from that stay – *i.e.* granting a stay in this case would in all practicality vacate the value of the judgment granted by the District Court. The District Court's position was entirely justified in the face of such overwhelming evidence that the declaration of ineligibility and disqualification was required.

Consideration 8(c) weighs *heavily* in favor of *not* granting the stay because granting a stay in this case would effectively *vacate* the Judgment obtained by Plaintiffs.

**B. NRAP 8(c)(4): whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.**

Here, Plaintiff notably submits no standard by which its appeal will be measured in light of the facts that were presented to the District Court. However, the facts will show that given the discretion owed to the District Court in this case, after a full trial on the merits, there is no likelihood of success on appeal. Specifically, this Court reviews the findings of the District Court after bench trial for "clear error." *Radaker v. Scott*, 109 Nev. 653, 657, 855 P.2d 1037, 1040 (1993). Accordingly, this Court should *not* grant the stay as it would be futile. The Judgment is clear that the District Court found: "Meghan Smith willfully filed a declaration of

candidacy knowing that the declaration of candidacy or acceptance of candidacy contained a false statement." This finding and Judgment is clearly substantiated by the record at trial.

The following was shown at trial, and support the findings and Judgment, such that the findings, Decision, and Judgment of the District Court such that they *cannot* be considered clear error:[2]

1. March 14, 2014, was the final date for candidates to file their Declaration of Candidacy for Nevada Assembly District candidates. (Tr. Exhibit 8.) February 12, 2014, was the deadline for Nevada Assembly candidates to be actual residents of their district as defined in NRS 281.050.

2. On March 14, 2014, Ms. Meghan Smith filed her Declaration of Candidacy for Assembly District 34, declaring that her "actual, as opposed to constructive, residence in the . . . district . . . area prescribed by law to which the office pertains began on a date at least 30 days immediately preceding the date of the close of filing of declarations of candidacy for this office." (Tr. Exhibit 1.) On the Declaration of Candidacy, Ms. Smith listed her address as 1329 Keifer Ln, Unit 102, ("Keifer Property") which is in Assembly District 34. (Tr. Exhibit 1.) Smith admitted that she did not own, nor did she have the ability to reside in the Keifer Property, until March 7, 2014, when she closed on the Keifer Property.

3. Prior to purchasing the Keifer Property, Smith lived at 3785 Duneville St. ("Duneville Property") which is not in Assembly District 34, but rather in Assembly District 42. (Tr. Exhibit 9.) Smith had established a legal domicile at the Duneville Property for several years. (Tr. Exhibit 2.) On February 8, 2014, Smith changed her address on her voter registration and her license to 1329 Keifer Ln, Unit 102, even though she admittedly did not own the property, and could have cancelled her offer to purchase the Keifer Property at any time prior to March 7, 2014.

4. On February 9, 2014, Smith moved her personal possessions into the home of

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[2]Citations to Trial Exhibits are cited as (Tr. Exhibit __.)

the uncle of a friend (*i.e.* the home of Johnny Hy), but chose to stay in the Suncoast Hotel and Casino for five nights.[3] (Tr. Exhibits 28 & 29.)

5. During this time, the time to establish legal domicile in the district passed. On February 14, 2014, Smith left the Suncoast Hotel and Casino, not to move into Johnny Hy's home, where she left her things, but to go to Los Angeles for a couple of days. *See* Ex. A, Smith Depo., 76:4–78:19 (Smith detailing the timeline of her multiple travels in and out of the district in the days leading up to her purchase of the Keifer property).

6. Smith used the Keifer Property address as her home address on the Suncoast Hotel records. (Tr. Exhibits 28 & N.) Smith admitted that when she left the Suncoast Hotel & Casino she had no intent to return to the Suncoast Hotel & Casino.[4] *See* Ex. A, Smith Depo. at 56:11-16.

7. Still, on February 18, 2014, Smith returned from Los Angeles, once again, not to Johnny Hy's home, but to the Suncoast Hotel and Casino, where she stayed for three nights. (Tr. Exhibits M & N.) On February 21, 2014, Smith left the Suncoast Hotel & Casino and stayed for a couple of days at Johnny Hy's home. *See* Ex. A, Smith Depo. at 23:1-3, 77:4-8. This was the first time Smith slept at Johnny Hy's home, and Smith admitted that she never intended to stay more than a couple of days at Johnny Hy's home. *See* Ex. A, Smith Depo. at 21:1-22:7. Once again Smith used the Keifer Property address on the Suncoast Hotel records. (Tr. Exhibit N.)

8. On approximately February 23, 2014, Smith left Johnny Hy's home to go to Los Angeles again. From Los Angeles Smith flew to Dallas, Texas. After spending four days with

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[3] NRS 268.0195 allows municipalities to define "Hotels, Motels, . . . Vacation trailer parks, campgrounds . . [and] any other establishment that rents rooms or spaces *to temporary or transient guests*" as places of "transient lodging" to allow them to be taxed pursuant to NRS 268.096. (emphasis added).

[4] At trial the Person Most Knowledgeable from Suncoast Hotel and Casino, Ms. Robin Moats, confirmed that Suncoast Hotel: (a) *does not* allow patrons to stay indefinitely, (b) requires special permission from a manager to stay longer than 14 days, (c) patrons *cannot* stay longer than 90 days in the hotel, and will be asked to leave before crossing that threshold, and (d) Suncoast Hotel is defined and taxed as a place of "transient lodging."

her father and brother in Texas, Smith returned to Los Angeles for another couple of days.

9. On approximately March 4, 2014, *i.e.* "two or three days before" Smith closed on her home at 1329 Keifer Ln, Unit 102, Smith finally returned to Las Vegas. *See* Exhibit A, Smith Depo. at 25:20-26:1. On March 7, 2014, Meghan Smith closed on the Keifer property and moved into her home.

10. Smith knew at the time she wilfully filed her Declaration of Candidacy (Tr. Exhibit 1) that the above timeline represented her time spent in and out of the district, leading up to the declaration deadline. *See* Ex. A, Smith Depo., 76:4–78:19 (Smith detailing the timeline of her multiple travels in and out of the district in the days leading up to her purchase of the Keifer property).

11. This is Smith's third run for a Nevada Assembly seat (Tr. Exhibits 26 & 27) and admitted that she was familiar with the 30-day residency requirement from those prior two races. *See* Exhibit A, Smith Depo. at 42:25-43:3.

12. Smith's purchase agreement for the Keifer Property was made on or about January 30, 2014, and suggested a Close of Escrow date for February 21, 2014. (Tr. Exhibit 14.) Smith knew, as she was told by her realtor that the home purchase could potentially take 30 days to close. (Tr. Exhibit 37) (email dated January 31 at 10:56 a.m. from realtor stating: "Your gal called me back, needs 30 days to close. *We might be in trouble.*") (emphasis added).

13. As admitted at trial, Smith was also told by her friend Mark Su, who works in real estate, that it was normal for a transaction to go longer than the contracted date of closing.

14. Smith is well educated, having obtained a degree from Carnegie Mellon, a Master's Degree from Carnegie Mellon University, and is currently a Ph.D. Candidate.

15. Smith also knew, and admitted at trial, in relation to certain in emails, that she was in a hurry to get into the home to meet the residency requirements. Smith's emails reflect an urgency to get into the home around the deadline date for residency (Tr. Exhibit D, SMITH 0051-59) (February 14 & 15 emails identifying the timeline of getting in immediately a "critical condition") which Smith admitted was related to fulfilling the "residence requirements." *See*

Exhibit A, Smith Depo. at 58:25-59:2.

16. Smith also demonstrated a willingness and ability to cancel the purchase of the home once the residency deadline had passed (Tr. Exhibit D, SMITH 0060-65). Smith had the ability to cancel the purchase of the Keifer Property at any time prior to March 7, 2014.

17. All homes and locations Smith stayed at from February 9, 2014, through the time she moved in to the Keifer Property were admittedly temporary abodes, and only ever intended to be temporary. Exhibit A, Smith Depo. at 26:5-17 (Johnny Hy's home); 56:11-16 (Suncoast Hotel - never intended to return).

18. Smith did not actually reside in Assembly District 34 thirty days before the Declaration of Candidacy deadline as a matter of law because her legal domicile never changed from the Duneville Property (in AD 42) prior to purchasing the Keifer Property (in AD 34) on March 7, 2014.

19. Smith's claims at trial that she thought she had complied with the residency requirements, e.g. "because she slept there" was simply not credible given that she actually spent as much time outside of the district leading up to March 7, 2014 as she did inside the district.

In 2002 the Nevada Supreme Court clearly ruled upon what it means to actually reside in an area for purposes of NRS 281.050:

> Legal domicile, also known as legal residence, requires both the fact of living at a place and the intention to remain there; if one leaves a domicile temporarily, one must have the intention to return. **Similarly, if a person temporarily leaves a legal domicile or leaves for a particular purpose, and does not take up a permanent residence somewhere else, then that person's legal domicile has not changed.** In other words, once a legal domicile is fixed, the fact of living elsewhere, the intention to remain in the other residence and the intention to abandon the former domicile must all exist before the legal domicile can change. Actual residence, in contrast, is the place of actual living, of physical presence—it does not require an intent to remain or return. A person may have an actual residence in one place and a legal residence in another, and a person may have several actual residences, but a person may have only one legal residence or domicile.
>
> Similarly, Black's Law Dictionary defines "domicile" as follows: "A person's legal home. **That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has**

> **the intention of returning**.... A person may have more than one residence but only one domicile.... **It is his legal residence, as distinguished from his temporary place of abode....**"
>
> By requiring actual residence as well as legal domicile, NRS 281.050 focuses on the one place where a person is located and intends to remain permanently.

*Williams v. Clark County Dist. Attorney*, 118 Nev. 473, 481–483, 50 P.3d 536, 541–42 (2002) (emphasis added).

The relevant statutes have not been amended substantively since *Williams* was issued and has been the prevailing law of this state regarding residency requirements for elected officials during each of Smith's prior two runs for the Nevada Assembly. Smith is well educated and admitted in her deposition, and at trial, that she was familiar with the residency requirement from her prior two runs for the Nevada Assembly. Ex. A, Smith Depo. at 42:25–43:3.

Notably, Smith's legal domicile prior to moving to the Keifer Property was the Duneville Property which was in Assembly District 42. Smith did not establish a new permanent residence in Assembly District 34 until March 7, 2014, when she purchased the Keifer Property. Smith had no ability to reside in the Keifer Property until March 7, 2014. Smith's attempts to create a paper trail of merely intending to reside at the Keifer Property, likely an attempt to deceive the public and avoid a challenge, is not sufficient to satisfy the public policy of the state which is also given in *Williams*:

> This reading of the statute gives effect to the legislature's intent, to require both physical presence and intent to remain at a residence, and to avoid "sham" residences. It also avoids absurd results: if candidates with more than one residence could simply choose from among them for purposes of actual residence, then they could declare as their primary residence a place where they spend relatively little time and have few community associations. **Such a result would conflict with the public policy behind residency requirements for candidates, which is to ensure that elected officials "reside in the communities or districts that elected them so they [are] 'connected' with their constituents and have 'particular knowledge of their affairs.'"**

*Williams*, 118 Nev. at 486, 50 P.3d at 544 (emphasis added).

The public policy involved in these statutes is not to protect the interest of any individual aspiring politician's ability to move to another political ward, district, or other area prescribed by law to run for office. Quite the opposite, the public policy of the statutes is specifically directed to protect the voters from aspiring politicians who do not share an adequate connection to the designated community to be represented. *See id.*

Given the above facts shown at trial, and the law as described in *Williams* the District Court's entering of Judgment was *not* clearly erroneous in finding that Meghan Smith did not meet the standard of residency under NRS 281.050. The District Court was *not* clearly erroneous in finding that Smith's legal domicile never changed from the Duneville Property until she actually moved in to the Keifer Property.

The District Court was *not* legally erroneous to conclude and adjudge that Meghan Smith acted knowingly and wilfully in filing the false affidavit on March 14, 2014, declaring that she was a resident of Assembly District 34 for 30 days prior to the deadline for declaring candidacy given Smith's educational background, her knowledge of the statute from prior races, her knowledge of her lack of residency in the district, her knowledge of all her travels and temporary stays leading up to her permanent move to Keifer Property, her knowledge that she wanted to move in to the home quickly to meet the residency requirements, and her knowledge that she had threatened to cancel the home purchase after the residency deadline had passed,

Given all this, the consideration in NRAP 8(c)(4) weighs heavily in favor of Plaintiffs and *not* entering a stay as Meghan Smith is *not* likely to prevail on appeal given the factual development at trial below.

**C. NRAP 8(c)(1) & (2).**

While these two points do likely weigh in favor of Smith, points (3) & (4) clearly outweigh them in favor of Plaintiffs, and overwhelmingly so. Moreover, because Smith's success on appeal is unlikely in this case, given the weight of the evidence presented in the District Court which is notably *absent in full* from Smith's emergency request, this Supreme Court should deny the request for failure to truly address the record below.

Attached as Exhibit A is a copy of Smith's deposition which was published at trial. While Smith has not submitted a record of the trial before the District Court for this Court to consider truly whether the findings and Judgment are based on clear error, the attached is submitted to corroborate what was shown at trial, as claimed above. Additional argument can be provided as to why Smith's testimony on certain aspects should not be believed, as it was presented at trial, and why this Court should not overrule, in any way, the Judgment against Smith. This Opposition is submitted on an expedited basis to address the immediate concerns of stay raised by Smith's Emergency Motion.

## 2. Conclusion.

This Court should deny Smith's Emergency Motion for Stay as it would effectively vacate the Plaintiffs' victory at trial and not allow them their justified relief as prescribed by law. There would be no way to repair the harm of granting a stay to the Judgment. Further, this Court should deny Smith's Motion because the findings and Judgment are more than substantially supported by the record such that Defendant Smith is *not* likely to prevail on appeal and therefore the stay would only work unnecessary prejudice against the Plaintiffs. An appeal in this case is futile. This Court should deny the Emergency Motion for Stay on both of these grounds.

Submitted this 20th day of October.

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## CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this _20th day of October, 2014, I caused the document entitled **OPPOSITION TO DEFENDANT MEGHAN SMITH'S EMERGENCY MOTION FOR STAY OF THE JUDGMENT PENDING APPEAL**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via facsimile; and/or
- ☐ through email and the Court's electronic notification system;
- ☐ to be hand-delivered;

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