

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL KOSOR, JR., AN
INDIVIDUAL,

Appellant,

v.

SOUTHERN HIGHLANDS
COMMUNITY ASSOCIATION, A
NEVADA NON-PROFIT
CORPORATION;

Respondent.

Electronically Filed
Sep 02 2025 04:29 PM
Elizabeth A. Brown
Clerk of Supreme Court

DOCKET NO. 89439

RESPONDENT’S OPENING BRIEF

Eighth Judicial Court
Honorable Joanna S. Kishner, District Judge
Civil Case No. A-23-881471-W

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NRAP 26.1 DISCLOSURE

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

Southern Highlands Community Association

No parent or holding corporations are involved.

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JURISDICTIONAL STATEMENT

This court has jurisdiction over Appellant Michael Kosor, Jr. (“Appellant” or “Kosor”) challenge of the district court’s denial of the Appellant’s NRS 41.637(1) anti-SLAPP motion to dismiss that was denied by district court’s September 3, 2024, order. NRS 41.670(4). (9AA2005-2024). This court does not have jurisdiction over Appellant’s appeal to the extent that matters are raised other than the Appellant’s NRS 41.637(1) anti-SLAPP motion to dismiss. *Stark v. Lackey*, 136 Nev. 38, 39 n.1, 458 P.3d 342, 344 n.1 (2020); *Kirsch v. Traber*, 134 Nev. 163, 168, 414 P.3d 818, 822 (2018) (holding that an order denying a motion to dismiss is not appealable); and NRAP 3A(b) (listing appealable orders). Therefore, this court must confine its review of the appeal of the district court’s ruling on the NRS 41.637(1) anti-SLAPP motion to dismiss and must decline to review any other additional ground or any other matter.

Appellant improperly attempts to raise issues adjudicated by prior orders in the case or issues not raised in Appellant’s NRS 41.637(1) anti-SLAPP motion to dismiss heard on August 6, 2024, which include, but are not limited to, the following issues:

- 1) Any assertion of anti-SLAPP claims on grounds other than NRS 41.637(1), including, but not limited to, Appellant’s attempt to argue the application

of NRS 41.637(4) in Appellant’s opening brief, because Appellant represented to the district court and opposing counsel in the hearing on the anti-SLAPP motion to dismiss that its motion was solely based upon NRS 41.637(1), which is reflected by the district court’s order (9AA002011 at 4:19-21)(“During the hearing on the Motion, Kosor's counsel represented and clarified that Kosor's Motion was solely based upon NRS 41.637(1) and Kosor's Motion was not asserting that NRS 41.637(4) applied.”); and the representation of Kosor’s counsel to the district court that the district court carefully clarified and confirmed with Kosor’s counsel in order to make sure the district court properly addressed Kosor’s motion (8AA1874-1876)(“MR. HALL: And I would say, Your Honor, look, we did not argue NRS 41.637[(4)] in the motion. It was referenced in a footnote, and that's all -- THE COURT: But not as part of the argument; right? MR. HALL: - - that's all (indiscernible). It was not. Yeah, we did not argue it, Your Honor. THE COURT: Okay. So I'm focusing on 1? MR. HALL: Yes.” 8AA1874-1876 at 22:25-23:7); *see also* NRPC 3.3.

- 2) Respondent’s *claims* for attorney’s fees and punitive damages, which was heard and dismissed on June 25, 2024 prior to the filing of the anti-SLAPP motion motion (11AA2626-2627) (8AA1808-1817) (9AA2005-2024 at 2010-11).

- 3) The district court's interpretations of NRS 116.31034(9), (10)(a) & (13), finding that Kosor "may stand to gain personal profit or compensation of any kind" from current, existing matters before the Board, because Plaintiff has ongoing litigation with Defendant SHCA and, as a Board member, could influence decisions related to that litigation to benefit him, including voting for or influencing a settlement, waiving fees, or other resolution of the matter in his favor, which would constitute personal profit or compensation as prohibited by NRS 116.31034(10)," which were determined by the district court by order dated April 30, 2024, prior to the anti-SLAPP motion to dismiss. (6AA1300-1306)
- 4) The district court's determination that NRS 116.31034(10) barred Kosor from being a candidate for the Association's Board of Directors, which was determined by the district court by order dated April 30, 2024 prior to the filing of the July 1, 2024 anti-SLAPP motion to dismiss. (6AA1300-1306)

ISSUES FOR REVIEW STATEMENT

Whether an community association election is an electoral/government action for the purposes of an NRS 41.637(1) anti-SLAPP motion to dismiss.

Whether the district court correctly found that the Appellant did not satisfy the first prong of the anti-SLAPP analysis and thereby denied their special motion to dismiss.

Additionally, whether the district court correctly found that, even if Appellant had satisfied the first prong of the anti-SLAPP analysis, the Respondent demonstrated the requisite probability of success under the second prong of the anti-SLAPP analysis and therefore Appellant's special motion to dismiss would be properly denied pursuant to the second prong.

Respondent's Answering Brief contains approximately 13,510 words.

Dated this 2nd day of September, 2025.

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I. STATEMENT OF THE CASE

Appellant Kosor has been filing complaints against Southern Highlands Community Association (“Association” or “Respondent”) with the Nevada Real Estate Division (“NRED”), the district court, and appeals to this Court for many years, including, but not limited to, the two complaints ultimately consolidated in the underlying case in this matter. In December of 2021, Kosor was elected to the homeowner position on Association’s Board of Directors (“Board”). Roughly a year and a half later, on May 16, 2023, in order to avoid prosecution by the NRED because Kosor was serving on the Board in violation of NRS 116.31034(10)(b)(2), Association deemed Kosor’s position on the Board vacant. Roughly half a year later when Kosor’s Board term would have expired and his former seat would be up for election again, Kosor filed suit in November of 2023 (“2023 Case”), the present action, against Association with claims seeking to have Association transition from declarant control for a full homeowner election of the entire board and complaining of the loss of his position on the Board.

The following Nevada law requirements are central to the underlying matter at issue:

- (1) Association’s board’s affirmative fiduciary duty to prohibit ineligible candidates from serving on an association’s board - NRS 116.31034(13): *“If a person is not eligible to be a candidate for or member of the executive board or an officer of the association pursuant to any provision of this chapter, the association: (a) Must not place his or her name on the ballot; and (b) Must prohibit such a person from serving as a member of the executive board or an officer of the association.”* (Emphasis added).
- (2) Board members must not stand to gain profit or compensation of any kind - NRS 116.31034(10)(a)(2): “A person *may not be a candidate for or member of the executive board* or an officer of the association *if*: (2) The

person *stands to gain any personal profit or compensation of any kind from a matter before the executive board* of the association.” (Emphasis added).

- (3) Candidate’s potential conflict of interest disclosure requirement - NRS 116.31034(9)(a): Provides that each candidate for a board “***must: (a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest *that would* result or would *appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected* to serve as a member of the executive board . . . *in writing* to the association with his or her candidacy information. Except as otherwise provided in this subsection, the association shall distribute the disclosures, on behalf of the candidate, to each member of the association with the ballot.*” (Emphasis added).**

Despite being on notice of the issues from the NRED and his litigation with Association still outstanding, Kosor submitted a candidate statement on October 26, 2023, to run as a candidate in Association’s upcoming election. (7AA1502-1506) In the statement, Kosor marked that he did not stand to gain any personal profit or compensation of any kind from a matter before the executive board of the association, marked that he did not have an potential conflicts of interest related to serving on Association’s Board, and did not identify the pending legal actions against Association that he was involved in or any other potential conflicts of interests that Kosor had in serving on the Board. *Id.*

Association sent Kosor a notice on December 21, 2023 that he was not eligible to run for and serve on the Board because he stood to gain personal profit or compensation of any kind from current, existing matters before the Board, due to

Kosor’s ongoing litigation against Association and, as a Board member, his ability to influence decisions related to that litigation to benefit him, including voting for or influencing a settlement, waiving fees, or other resolution of the matter in his favor, which would constitute personal profit or compensation as prohibited by NRS 116.31034(10)(a)(2). (5AA1064-1066) Association’s letter also noted that Kosor was not eligible to run for the Board because he had failed to identify that he had a potential conflict of interest due to failing to identify his pending litigation against Association as well as other potential conflicts as required by NRS 116.31034(9)(a). (5AA1067-1069) The letter invited Kosor to provide a response that would address or resolve the issues, including making the appropriate disclosures. (5AA1064, 5AA1070) Kosor did not provide a response or attempt to resolve the disclosures.

Kosor’s 2023 Case sought to enjoin Association’s upcoming election through a TRO, but the TRO was denied in January of 2024 (2AA291-308). Kosor was supposed to coordinate with the parties for a preliminary injunction hearing in the 2023 Case (1RA232-239), but he did not follow through with a preliminary injunction in the 2023 Case. Rather, Kosor filed another suit (“2024 Case”) seeking to enjoin the same election and allow him to serve on the Board. (2AA284-290) Kosor obtained an *ex parte* TRO in the 2024 Case (3AA643-647) without notifying the district court of the 2023 Case. (Neither the complaint (2AA284-290), nor the TRO and motion for preliminary injunction filed in the 2024 Case (3AA612-642),

nor the appendix of exhibits thereto (2AA309-3AA611) identified to the district court that Kosor’s attempt to enjoin the same election in the 2024 Case had been denied in the 2023 Case). Kosor’s motion for preliminary injunction was denied in the 2024 Case and the TRO was dissolved because “the district court determined that Kosor “may “stand to gain personal profit or compensation of any kind” from current, existing matters before the Board, because [Kosor] has ongoing litigation with [Association] and, as a Board member, could influence decisions related to that litigation to benefit him, including voting for or influencing a settlement, waiving fees, or other resolution of the matter in his favor, which would constitute personal profit or compensation as prohibited by NRS 116.31034(10)” and therefore Kosor failed to demonstrate a likelihood of success on the merits. (6AA1300-1304)

Association submitted its amended answer and compulsory counter-claims in response to Kosor’s claims of improper removal from the Board and improper preclusion from the Board. (8AA1820-1838) Association effectively made three (3) compulsory counter-claims for declaratory relief to provide that Association would not have to allow: (1) Kosor to run for or serve on the Board due to his standing to gain any profit or compensation from matters before the Board as prohibited by NRS 116.31034(10)(a)(2) unless and until Kosor fully and finally resolved all his pending suits against the Association; (2) Kosor to run for candidate for the Board if he did not make the potential conflict of interest disclosures required of candidates by NRS

116.31034(9); and (3) Kosor to serve on the Board, or, in the alternative, the Association be relieved of the requirement to indemnify and defend Kosor while on the Board, due to Kosor's being uninsurable due to his own actions and the requirement for insurance under NRS 116.31034(13), unless and until such time as Kosor becomes reasonably insurable. (8AA1827-1838 at 10:22-12:24; 13:1-15:4; 15:7-17:24; 19:3-15).

Kosor filed an anti-SLAPP motion "solely based upon NRS 41.637(1)" alleging that the Kosor's "filling out and submitting the candidate nomination form to the" Association constitute a "communication" and that Kosor's candidacy form was a "communication aimed at procuring an electoral result, namely his candidacy on the [Association] Board." (9AA002011 at 4:19-21); *see also* (8AA1874-1876).

In opposition to Kosor's motion, Association represented that its "counterclaims were not based upon Kosor's submission of a candidate form, but rather on the grounds that" Association: (1) "is not required to distribute Kosor's candidate form" because Kosor stands to gain profit or compensation from any matter before the Board due to his pending litigation against the Association and therefore his candidacy is prohibited by NRS 116.31034(10)(a)(2) regardless of any statement made by Kosor; and (2) is not required to "allow Kosor to run or serve as a candidate where Kosor's candidate form did not include the disclosures required by NRS 116.31034." (9AA2012 at 5:3-7)

The district court denied Kosor’s anti-SLAPP motion because there was no protected communication; if there was a communication, then it was in bad faith; and Association demonstrated by *prima facie* evidence a probability of prevailing on the claim. (9AA2008-2019)

II. PROCEDURAL POSTURE AND BACKGROUND

Kosor has been pursuing legal actions against Southern Highlands Community Association (“Association” or “Respondent”), Association’s Declarant Southern Highlands Development Corporation (“SHDC” or “Declarant”), through the Nevada Real Estate Division (“NRED”), district court, and appeals, as well as other avenues, for roughly a decade and that background is relevant to the matters at issue in this appeal:

A. 2017 - Kosor files suit against NRED because the government did not agree with Kosor’s complaints against Association that Association should have transitioned from Declarant control, case dismissed and dismissal affirmed

Kosor sued NRED in an attempt to compel NRED to prosecute Association to require declarant transition and for other issues when NRED determined that Kosor’s many intervention affidavit filings against Association lacked merit and did not require action. The district court dismissed Kosor’s case and the Court affirmed the decision. *Kosor v. Nevada Real Est. Div.*, 137 Nev. 931, 487 P.3d 397 (Nev. App. 2021)(Unpublished Disposition).

B. November 24, 2020 - Kosor and McCarley file suit against Association to enjoin election and compel declarant transition

Kosor and Howard McCarley (“McCarley”), filed a lawsuit against Association and the Declarant in Case No. A-20-825485-C (“2020 Case”). They sought a Temporary Restraining Order (“TRO”) and preliminary injunction to enjoin the December 2020 homeowner election and require a declarant transition election¹ occur. The district court denied Kosor’s TRO and litigation continued. As reflected below, this case continued in various iterations through 2025.

C. December 2021 - Kosor elected to a 2-year term on Association Board

D. 2021-2023 Kosor’s Board Service – Kosor breaches his fiduciary duties by attempting to use his Board position to influence the outcome and settlement of his 2020 Case against Association for his own personal profit

While on the Board, Kosor breached his fiduciary duty on multiple occasions by attempting to use his position on the Board to improperly obtain privileged records and documents relevant to his 2020 Case against Association as well as

¹ Declarant transition occurs when a declarant is no longer empowered to appoint directors to a community association board and control of an association is ceded to the unit owners. *See* NRS 116.31032. Transition election occurs when all board positions are filled by persons elected by unit owners. *See id.* The time prior to transition is known as the declarant control period. *See id.* During the declarant control period there are unit owner board positions that are elected by the units’ owners, but the majority of the positions are appointed by the declarant. *See id.*

attempting to influence the outcome and settlement of his litigation. (7AA1661-1662 at 2:6-13; 21-23).

E. September 29, 2022 - Dismissal of Kosor's 2020 Case

Kosor and McCarley chose to abandon their case and filed a motion to dismiss and defendants sought dismissal with prejudice. The court dismissed the claims with prejudice and awarded Association nearly \$70,000 in attorneys' fees & costs.

F. October 20, 2022 - McCarley executes candidate statement while opportunity to appeal 2020 Case pending

McCarley, Kosor's co-plaintiff in the 2020 Case, executed and submitted a candidate form to Association seeking to run in the 2022 Association election, which falsely indicated McCarley did not stand to gain profit or compensation of any kind from a matter before the Board and did not have any potential conflicts of interest. (3AA675-677).

G. November 9, 2022 - Association sends notice of ineligibility to McCarley due to failure to disclose and standing to gain profit or compensation as required by NRS 116.31034; Kosor refuses to recuse himself from decision on notice to McCarley

Association sent McCarley a notice of ineligibility and opportunity to address the ineligibility on the basis that McCarley failed to disclose potential conflicts of interest related to his pending litigation and the fact that he stood to gain profit or compensation of any kind from a matter before the Board in the form of seeking to obtain a waiver fees owed to Association from the outstanding judgment, recovering

fees expended by McCarley from Association, or influencing the pending case or settlement thereof. (3AA679-685) In lieu of recusing himself from the matter due to the inherent conflict of interest involving Kosor's co-plaintiff in active litigation, Kosor objected to Association sending the notice to McCarley. (3AA687-688 at 2:21-23).

H. November 14, 2022 – Disagreement by McCarley with Association's notice and submission of revised candidate statement

In response to the notice, McCarley sent an e-mail disagreeing with his potential to "profit" and providing a limited disclosure of his litigation. (3AA690-694).

I. November 18, 2022 – Association responds to McCarley.

Association responded to McCarley's November 14, 2022, correspondence explaining his continued litigation put him in a position to gain profit or compensation of any kind from a matter before the Board in the form of seeking to obtain a waiver fees owed to Association, recovering fees expended by McCarley from Association, or influencing the pending case or settlement thereof. (4AA793-794).

J. December 4, 2022 – Election without McCarley on the Ballot

K. December 20, 2022 – Association, including Kosor, receives an NRED investigation letter for McCarley Case No. 2022-840 regarding exclusion of McCarley from election

Association, including Kosor, received a letter seeking a response to the allegation, obviously made by McCarley, that Association “improperly excluded me from the current ballot for homeowner director, election scheduled for Dec. 4, 2022. The exclusion is based on a misapplication of the word “profit” and any adverse effect of my election is purely speculative. I would, of course, recuse myself from any discussion or vote concerning my litigation.” (3AA696-698)

L. January 23, 2023 – Association responds to NRED investigation letter for McCarley Case No. 2022-840.

Association responded to NRED investigation letter by explaining the review of McCarley’s candidate form, McCarley’s active litigation against and outstanding judgment owed to Association, McCarley’s failure to disclose potential conflicts of interest required by NRS 116.31034(9), McCarley’s position to gain profit or compensation of any kind from a matter before the Board in the form of seeking to obtain a waiver fees owed to Association, recovering fees expended by McCarley from Association, or influencing the pending case or settlement thereof that prohibits him from running for or serving on the Board as required by NRS 116.31034(10)(a)(2), and the Board’s exclusion of McCarley from the ballot for those reasons as required by NRS 116.31034(13). (3-4AA700-824)

M. January 31, 2023 – NRED closes McCarley Case No. 2022-840 and Kosor on notice of requirements of NRS 116.31034

Based on its determination that “no violation can be substantiated” and “no good cause to move forward with” the matter, NRED closed the investigation against Association for McCarley’s complaint. (4AA826-827) Kosor was thereby effectively on notice of NRED’s position with respect to the requirements of NRS 116.31034.

N. March 1, 2023 - Association, including Kosor, receive an NRED investigation letter for Case No. 2022-858 concerning Kosor.

The letter asked Association to respond to the following allegation: “Complainant has alleged that the executive board has violated NRS 116.31034 by allowing [Kosor] to continue to serve as member of the executive board while he stands to gain personal profit as a litigant in [2020 Case] and [appeal of 2020 Case], both of which he filed against the Association. The alleged personal profit includes but is not limited to the payment of attorney fees by Mr. Kosor ordered by the lower court.” (4AA829-831)

O. April 24, 2023 –Association responds to NRED investigation letter for Case No. 2022-858 concerning Kosor

Association responded to the NRED investigation letter by acknowledging that the Board was required to prohibit Kosor’s from serving on the Board pursuant to NRS 116.31034(10)(a)(2) and NRS 116.31034(13) due to his litigation against

Association as well as requesting an opportunity to resolve the situation. (4AA833-842)

P. April 28, 2023 – NRED notifies Association it must comply with the law prohibiting Kosor’s serving on the Board or be subject to prosecution by the State

NRED notified Association that, with respect to the allegation in Case No. 2022-858, the “Division has obtained sufficient evidence to commence disciplinary action against the executive board by filing a complaint for hearing before the Commission for Common-Interest Communities and Condominium Hotels (the "Commission"). The violations alleged will include, but may not be limited to: NRS 116.31034. *If the Association does not come into compliance with NRS 116.31034 within 30 days from the date of this letter, the Division will initiate a complaint for disciplinary action.*” (3AA672-673)(emphasis added).

Q. May 2, 2023 – Association provides notice of hearing to Kosor, to occur on May 12, 2023, regarding non-compliance with NRS 116.31034(10)(a)

In compliance with NRED’s directive to resolve non-compliance or be prosecuted, Association gave Kosor notice of a hearing to address the issue of non-compliance with NRS 116.31034(10)(a). (4AA844-922)

R. May 12, 2023 –Kosor appears at hearing before Board with attorney, Mr. Inku Nam, Esq

Kosor was represented at the hearing before the Board by Mr. Inku Nam, Esq. (4AA923-926). Notably, Kosor was already represented by Mr. Nam in other

matters between the parties and had Kosor legitimately wished to maintain the status quo (*i.e.*, his position on the Board), Kosor may have sought a TRO to restrain Association from holding the hearing or otherwise complying with NRED's direction to come into compliance with the law.

S. May 16, 2023 – Association sends Kosor determination notice deeming Kosor's position vacant

As required by Nevada law and NRED directive, Association sent Kosor a determination notice that his position on the Board had been deemed vacant in accordance with and as required by NRS 116.31034 and NRED Case No. 2022-858. (4AA923-926). Thereafter, Kosor chose not to file an action to be reinstated to his position before the end, December 2023, of the position's two-year term.

T. May 25, 2023 – Notice of compliance with law to NRED

Association sent a letter to the NRED confirming that Kosor's Board position was deemed vacant and Association was thereby compliant with NRS 116.31034. (4-5AA928-1014)

U. June 8, 2023 – NRED closes Case No. 2022-858 regarding Kosor's serving on Board

Cased closed based on determination that there is "no good cause to move forward with this matter at this time." (5AA1016-1017). Kosor on notice of NRED's position with respect to (1) not being able to serve on or run for the Board

due to potential to profit if he is actively suing the Association; and (2) not being able to run for the Board if he fails to make required conflict of interest disclosures.

V. August 2, 2023 – Kosor withdraws his appeal of 2020 Case

On or about August 2, 2023, Kosor voluntarily withdrew his appeal of the 2020 Case. *Kosor v. S. Highlands Cmty. Ass'n*, 532 P.3d 1246 (Nev. 2023)(Unpublished Disposition).

W. November 13, 2023 – Kosor files his initial complaint in 2023 Case, the matter that is the subject of the present appeal

Kosor files his initial complaint in Case No. A-23-881474-W (“2023 Case” or “present matter”) against Association, Declarant, and three board members.² (1AA1-9) The complaint set forth the same claims for declarant transition that were dismissed in Kosor’s 2020 Case. Additionally, the complaint claimed Quo Warranto Relief related to Kosor’s May 2023 “removal” from the Board, asserting that

² Kosor named Chris Armstrong, Rick Rexius, and Marc Lieberman ("Three Board Members") in the 2023 Case. The district court dismissed with prejudice the action against them and awarded attorney fees. Kosor has separately appealed the dismissal and award in Case No. 90090. Association disputes Kosor's claims in the brief as to the proceedings below involving the Three Board Members, *see, e.g.*, Kosor Brief at 3 n.1, particularly as to Kosor’s actions and the district court's findings below, but defers to the Three Board Members to address the allegations in the separate appeal.

Association “will conduct or has already conducted the election to fill the empty Director seat on the [Association] Board.”” (1AA4-5, 1AA8)

X. November 17, 2023 – Kosor files amended complaint in 2023 Case

The amended 2023 Case complaint continued to set forth the same claims for declarant transition that were dismissed in Kosor’s 2020 Case. (1AA10-17) Amended complaint continued to include discussion of Kosor’s “removal” and averred “[Association] plans to conduct or is already conducting the election to fill the empty Director seat on the [Association] Board.” *See id* at 4:12-25.

Y. November 21, 2023 - In the 2023 Case, Kosor filed a Motion for TRO and Preliminary Injunction seeking to enjoin the Association’s upcoming homeowner election

Kosor filed for a TRO and preliminary injunction on the basis that a full declarant transition election must occur for all director positions. (1RA1-20)

Z. November 29, 2023 - TRO not heard and briefing schedule stipulated

Due to Kosor’s failure to serve defendants, Kosor’s motion for TRO in the 2023 Case was not heard on the original hearing date, but the court allowed the parties to enter into a stipulated briefing schedule and set a hearing on the TRO to be held on January 12, 2024. Pursuant to the stipulated schedule, defendants’

opposition briefs were due on January 4, 2024 and Kosor's reply was due January 9, 2024.

AA. December 12, 2023 - Motion from relief from judgments denied in 2020 Case

Kosor's motion for relief from judgements in the 2020 Case was denied. Kosor then owed Association over \$80,000.

BB. December 21, 2023 - Association sent Kosor notice of ineligibility to serve on the Board and opportunity to cure; Kosor makes no attempt to cure

Association again provided Kosor the April 28, 2023, letter from the NRED (5AA1071-1073), and an explanation that his position had been deemed vacant, that the issues continued to exist because the litigation and funds owed by Kosor remained outstanding, and that he was ineligible to serve for those reasons. (5AA1064-1146 at 1065-1066) The notice further explained that Kosor was also precluded from running due to his failure to make a good faith disclosure of his potential conflicts of interest and went on to identify some of those potential conflicts. (*Id* at 1067-1069) The letter provided an opportunity to present information for the Board's consideration on the matters by or before January 3, 2024 (*Id* at 1064, 1070), but *Kosor never made any attempt, much less a good faith attempt, to correct the deficiencies in his candidate statement or address his candidate issues with the Association despite receiving notice of the same.*

CC. December 28, 2023 – Kosor files a rogue amended TRO in Case No. A-23-881474-W without notice to parties

In addition to the declarant transition arguments, *Kosor's rogue amended motion for TRO and preliminary injunction in the 2023 Case raised the issues with Kosor's ineligibility that Kosor subsequently raised in the 2024 Case.* (1RA21-46)

DD. January 4, 2024 – SHDC files motion to dismiss Kosor's claims related to transition in the 2023 Case based upon claim preclusion and issue preclusion from the 2020 Case, Association joins

SHDC moved to dismiss the transition related claims in Kosor's 2023 Case based upon claim preclusion and issue preclusion from the 2020 Case. (1RA47-125 at 14:10-14). The Association joined. (1RA126-129)

EE. January 12, 2024 – Court denies Kosor's motion for TRO to enjoin Association's homeowner election in the 2023 Case

Kosor's TRO to enjoin Association's election in the 2023 Case was denied by the district court. (2AA291-308) Additionally, the district court declined to hear the additional arguments contained in the rogue amended motion filed by Kosor because it was filed without court approval and consent of the parties. *Id* at fn.1. Thereafter, Kosor was supposed to coordinate with the parties for a preliminary injunction hearing in the matter (1RA232-239), but he did not and instead sent a letter to the parties and district court that he was withdrawing his motion for preliminary injunction in the matter.

FF. January 29, 2024 – Association mails election ballots

In accordance with the denial of Kosor’s TRO in the 2023 Case, the Association mailed the ballots for the homeowner election and set the meeting to open the ballots for February 14, 2024.³ In accordance with NRS 116.31034(9),(10)&(13) and the direction of the NRED with respect to Kosor’s eligibility to serve on the Association’s Board (3AA672-673) , Kosor’s name did not appear on the election ballot.

GG. February 5, 2024, Kosor obtains an *ex parte* TRO through newly filed 2024 Case, without notice of the related case to the district court, enjoining the same election Kosor was unable to enjoin through the 2023 Case

Kosor sought and obtained an *ex parte* TRO on February 5, 2024 in Case No. A-24-886317-C (the “2024 Case”) to enjoin the very same election Kosor sought to enjoin in the 2023 Case. (3AA643-647) As reflected by the absence of language informing the district court of the outstanding 2023 Case in Kosor’s complaint and motion in the 2024 Case, Kosor did not provide notice to the district court, Department XXIX, of Kosor’s denied TRO in the 2023 Case when seeking to enjoin the same election through the 2024 Case. (2AA284-290), (3AA612-642), (2AA309-3AA611)

³ In accordance with NRS 116.31032(3), a third of Association’s Board are elected by units’ owners. In effect, Kosor’s injunction was seeking enjoin qualifying unit owners from running in Association’s unit owners’ election.

HH. February 20, 2024 - Motion to dismiss declarant transition claims granted in 2023 Case as to SHDC and Association, but excluding claims related to Kosor's removal from or serving as a candidate for the Board

All claims related to transition from declarant control against Association and SHDC were granted at the February 20, 2024 hearing. (6AA1253-1266) The Order expressly excluded dismissal of Kosor's claims against Association regarding removal from the Board and ongoing eligibility to serve on the Board. (6AA1260 at 6:2-6).

II. March 7, 2024 - Hearing held on 2024 Case motion for preliminary injunction, motion denied and TRO dissolved

Prior to hearing, Case 2024 was reassigned to Department V and therefore the hearing on the motion for preliminary injunction was heard and denied by Department V and the TRO dissolved.

JJ. April 1, 2024 - 2024 Case consolidated into 2023 Case

On April 1, 2024, the 2024 Case was consolidated into the 2023 Case by stipulation of the parties. (6AA1268-1276)

KK. April 30, 2024 - Order denying preliminary injunction in 2024 Case, post-consolidation, and determining that Kosor may be precluded from serving on the Board due to his standing to gain profit or compensation "of any kind" from "a matter" before Association due to his suits against Association

Now back before Department XXXI having been consolidated into the 2023 Case, the order denying Kosor's motion in the 2024 Case for preliminary injunction

to enjoin Association's election is entered. (6AA1300-1306) The district court determined that the plain language of NRS 116.31034(10)(a)(2) precludes a person "from being a candidate or serving on an executive board if that person stands to gain profit or compensation "of any kind" from "a matter" before the executive board of an association." (6AA1302 at 3:18-27) To that end, the district court determined that Kosor "may "stand to gain personal profit or compensation of any kind" from current, existing matters before the Board, because [Kosor] has ongoing litigation with [Association] and, as a Board member, could influence decisions related to that litigation to benefit him, including voting for or influencing a settlement, waiving fees, or other resolution of the matter in his favor, which would constitute personal profit or compensation as prohibited by NRS 116.31034(10)" and therefore Kosor failed to demonstrate a likelihood of success on the merits. (AA1303 at 4:1-7)

LL. April 30, 2024 - Association files answer and compulsory counter-claims to Kosor's consolidated cases

Association denied Kosor's claims and, in response to Kosor's claims of improper removal from the Board and improper preclusion from the Board, effectively made three (3) compulsory counter-claims for declaratory relief that Association would not have to allow: (1) Kosor to run for or serve on the Board due to his standing to gain any profit or compensation from matters before the Board as prohibited by NRS 116.31034(10)(a)(2) unless and until Kosor fully and finally resolved his pending suits against Association; (2) Kosor to run for a candidate for

the Board if he did not make the potential conflict of interest disclosures required of candidates by NRS 116.31034(9); and (3) Kosor to serve on the Board, or, in the alternative, Association not be required to provide for the indemnification and defense of Kosor, due to Kosor's being uninsurable due to his own actions and the requirement for insurance under NRS 116.3113(1)(d) unless and until such time as Kosor becomes reasonably insurable. (6AA1287-1296 at 10:19-19:2; 20:12-23) Additionally, Association originally made counter-claims for attorney's fees and punitive damages as individual causes of action against Kosor for his claims. (6AA1296-1297 at 19:3-20-8)

MM. May 21, 2024 - Kosor files NRCP 12(b)(5) motion to dismiss Association's counter-claims

Kosor filed a motion to dismiss Association's counter-claims on the grounds that the declaratory relief claims related to NRS 116 lacked allegations of actual damages, that the claim regarding insurability was not justiciable, and that claims for attorney's fees and punitive damages are not valid causes of action. (6AA1307-1314)

NN. June 25, 2024 - Hearing on Kosor's NRCP 12(b)(5) motion to dismiss, granted in part and denied in part

Kosor's motion to dismiss was granted with respect to Association's claims for attorney's fees and punitive damages as they should be pled as forms of relief and not separate causes of action. (11AA2626-2627) Kosor's motion was denied

with respect to the Association's three declaratory relief claims because the district court has the power and authority to declare rights under Nevada law. *Id.*

OO. July 1, 2024 - Kosor files anti-SLAPP motion to dismiss

Kosor's anti-SLAPP motion essentially reiterated Kosor's arguments from Kosor's motions for preliminary injunction and motion to dismiss that had already been adjudicated by the district court and added some citations to anti-SLAPP statutes. *Compare* (6AA1309 at 3:9-21) and (6AA1361-1362 at 2:3-3:4) *with* (6AA1378-1379 at 12:19-13:23); *compare* (3AA630-636 at 19:7-25:6) *with* (6AA1380-1386 at 14:1-20:14); *compare* ((3AA625-629 at 14:1-18:27) *with* (6AA1386-1390 at 20:17-24:3).

PP. July 12, 2024 - Association files opposition to anti-SLAPP motion

QQ. July 18, 2024 - Parties stipulate to filing of order for NRCP 12(b)(5) motion to dismiss, filing of amended complaint pursuant to motion to dismiss, extensions, and hearing date for anti-SLAPP motion

Appearing for the hearing on the anti-SLAPP motion on July 18, 2024, due to the outstanding orders and amended answer & counter-claim that needed to be filed to properly adjudicate the anti-SLAPP motion, the parties stipulated a schedule to file the order and answer, an extension of anti-SLAPP deadlines, a preclusion on additional filings related to the anti-SLAPP motion, and an extension of anti-SLAPP deadlines. (8AA1841-1853).

RR. July 30, 2024 - Association files amended answer and counter-claims
Association filed its amended answer and counter-claims without the claims for punitive damages and attorney's fees (8AA1820-1840) pursuant to the district court's order on the motion to dismiss. (8AA1808-1819)

SS. September 3, 2024 - Order denying Kosor's anti-SLAPP motion

On September 3, 2024, the district court denied Kosor's anti-SLAPP motion because there was no protected communication; if there was a communication, then it was in bad faith; and Association demonstrated by *prima facie* evidence a probability of prevailing on the claim. (9AA2005-2024)

TT. June 18, 2025, the Court denies Kosor's second appeal filed in the 2020 Case against Association

Despite the 2020 case going to judgment and Kosor voluntarily withdrawing his first appeal of the case on August 2, 2023, Kosor thereafter attempted to resurrect the 2020 Case alleging that the district court lacked jurisdiction over the case due to failure to complete alternative dispute resolution under NRS 38.310, which were denied by the district court and denied by the Court due to the requirements of NRS 38.310 being a claims-processing rule. *Kosor v. S. Highlands Cmty. Ass'n*, 141 Nev. Adv. Op. 34, 570 P.3d 160, 168 (2025).

III. INTRODUCTION & SUMMARY ARGUMENT

Association is setting forth here by way of introduction, summary arguments addressing Kosor's Appeal. However, to be thorough, the balance of this Answering Brief addresses all issues raised in Kosor's Brief.

Kosor filed an anti-SLAPP motion "solely based upon NRS 41.637(1)" alleging that Kosor's "filling out and submitting the candidate nomination form to" Association constitutes a "communication" and that Kosor's candidacy form was a "communication aimed at procuring an electoral result, namely his candidacy on the [Association] Board." (9AA2011 at 4:14-24); (8AA1874-1876 at 22:25-23:7); *see also* NRPC 3.3. When questioned as to how filling out the candidate form constituted a "communication" Kosor simply averred that it was, when asked if the form was turned in blank would that be a "communication," Kosor represented "no," but when asked if the form was only filled in with question marks Kosor argued that the form would then be a protected "communication." (8AA1869-72). "NRS 41.637(1) only protects "[c]ommunication that is aimed at procuring any governmental or electoral action, result or outcome," but an HOA or community association is not a government, so it is not an electoral action, result, or outcome as defined in various cases. *See e.g.* Adelson v. Harris, 973 F. Supp. 2d 467 (S.D. N. Y. 2013), Adelson v. Harris, 133 Nev. 512 (2017), Rosen v. Tarkanian, 453 P.3d 1220 (2019); *see also* NRS 293.055 *et.seq.*" (9AA2015-2016) Thus, Kosor's submission of a candidacy

form to Association was not a communication subject to the protections of NRS 41.637(1) and the district court's denial of Kosor's anti-SLAPP motion should be confirmed.

The crux of Kosor's claims in the underlying case, as summarized in his anti-SLAPP Motion, are as follows: "Mr. Kosor sought to run for a Director position in the [Association]. [Association] exceeded its authority in unilaterally declaring Mr. Kosor was ineligible to run based on its claim Mr. Kosor did not make a good faith disclosure of potential conflicts. Yet NRS Chapter 116 does not give [Association] the power to make that subjective determination." (6AA61390); *see generally* Complaint (2AA285-290) Association would summarize the crux of Kosor's claims as seeking a judicial declaration that Kosor does not have to comply with the community association director eligibility requirements of Nevada law that apply to all community association board members, the direction of the Nevada Real Estate Division ("NRED"), or the decision of Association's Board of Directors ("Board"), with respect to Kosor's compliance with the requirements of Nevada law, including, but not limited to NRS 116.31034.

Kosor, having filed a complaint against Association over his eligibility to serve as a candidate for Association's Board, triggered Association's obligation under NRCP 13(a) to file compulsory counter-claims with respect to the issue of

Kosor's eligibility. Association's counter-claims may be summarized as seeking the following declaratory relief:

- 1) NRS 116.31034(10)(a)(2) - Stands to Profit - Declaration affirming that Kosor stands to gain profit or compensation of any kind from a matter before the Board of Association by virtue of his ability to influence his pending legal actions against the Association and that he is precluded pursuant to NRS 116.31034(10)(a)(2) from serving on the Board of Association until Kosor's actions against Association are fully and finally resolved (8AA1831-1834 *at* 13:1-15:4; 1838 *at* 19:3-10);
- 2) NRS 116.31034(9) – Failure to Disclose - Declaration of Kosor's potential conflicts of interest in serving as a director and requiring him to disclose the same in writing with his candidate statement as required for director candidates pursuant to NRS 116.31034(9)&(13) before Association is required to place Kosor's name on a ballot for election to Association's Board (8AA1829-1831 *at* 10:22-12:24; 1838 *at* 19:3-7); and
- 3) NRS 116.3113(1)(d) – Uninsurable - Declaration that either: (a) Kosor is not eligible to serve on the board of directors pursuant to NRS 116.31034(13) due to his being uninsurable as a director where insurance is required to be a director under NRS 116.3113(1)(d) until such time as Kosor becomes reasonably insurable; or (b) waiving the requirement of NRS 116.31037 that Association provide for the indemnification and defense of Kosor until such time as Kosor becomes reasonably insurable. (8AA1829-1831 *at* 15:7-17:24; 1838 *at* 19:3-12)

Notably, none of Association's counter-claims against Kosor relate to Kosor's engaging in a right to petition or free speech in direct connection with an issue of public concern that would be protected by NRS 41.635-41.670; *cf. Patin v. Ton Vinh*

Lee, 134 Nev. 722, 726–27, 429 P.3d 1248, 1251–52 (2018).⁴ Association’s claims do not relate to any protected speech that Kosor has engaged in at all. Rather, as reflected by the above summary of the claims, the claims relate to: (1) Kosor’s standing to profit by the ability to influence his own litigation against Association if he were on the Board in violation of NRS 116.31034(10)(a)(2); (2) Kosor’s failure to speak (i.e., the failure to complete a form, not the content of speech made) by failing to essentially check the box “F” and identifying his potential conflicts of interests in serving on the Board as required by NRS 116.31034(9); and (3) addressing the issue of directors and officer’s (“D&O”) insurance with respect to Kosor’s potential board service due to Association’s inability to obtain D&O coverage, and the compulsory nature of raising the issues in response to Kosor’s claims against Association regarding serving on the Board. As reflected above, Association’s counter-claims simply seek declaratory relief from the court that will relieve Association of any obligation to allow Kosor to serve as a candidate for or member of the Association’s Board unless and until Kosor complies with the legal

⁴ “Providing anti-SLAPP protection to “any act having any connection, however remote, with [any speech]” would not further the anti-SLAPP statute's purpose of “protect[ing] the right of litigants to the utmost freedom of access to the courts without the fear of being harassed subsequently by derivative tort actions.”” (Emphasis added)(Internal citations omitted).

requirements applicable to any community association unit owner seeking to run for and serve on the board of a Nevada community association.

Kosor's argument that the protections of NRS 41.637(1) somehow applies to the matter at issue may be distilled down to the following statement in the conclusion of Kosor's anti-SLAPP motion: "By excluding Mr. Kosor from the ballot, [Association] did not distribute Mr. Kosor's campaign materials – which were critical of [Association] and the Declarant -- to homeowners." (6AA1390 at 24:8-10) However, as reflected above and the letter sent to Kosor regarding his ineligibility (6-7AA1491-1573), Association is not making any claims against Kosor because of statements made by Kosor that are critical of Association, nor is it addressing the content of Kosor's statements other than merely seeking that he comply with Nevada law with respect to disclosing his potential conflicts of interest.

In short, Kosor's exercise of his free speech rights are not at issue in Association's counter-claims. Therefore, Association's counter-claims are not subject to Nevada's anti-SLAPP statutes. *See Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 344–45 (2020)("A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant's exercise of his or her First Amendment free speech rights.' Nevada's anti-SLAPP statutes provide defendants with a procedural mechanism whereby they may file a special motion to dismiss the meritless lawsuit before incurring significant costs of litigation.")(Internal citations omitted).

As noted by Kosor’s counsel during the anti-SLAPP hearing “[Association’s] counterclaims are "akin to affirmative defenses" and are "the inverse of [Kosor's] claims" against [Association]” (9AA2011 at 4:12-13); (8AA1862-1863; 1891-1892), which means that, regardless of dismissal, Kosor would still be litigating the very same issues based upon his own chosen claims. Therefore, *it would not be possible for the Association to “chill” Kosor’s speech rights through the counterclaims such that an anti-SLAPP motion would be appropriate because it was Kosor himself, not the Association, who chose to initiate and incur the costs of litigation over the issues in dispute. Cf. Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 344–45 (2020).

IV. LEGAL STANDARD

Nevada’s anti-Strategic Lawsuits Against Public Participation (“anti-SLAPP”) statute, NRS 41.660, protects a person from civil liability for privileged good faith communications. *See John v. Douglas County School District*, 125 Nev. 746, 749, 219 P.3d 1276, 1279 (2009). Nevada’s anti-SLAPP statute permits a defendant to file a special motion to dismiss when a case is filed against him in order to “chill [his] exercise of his . . . First Amendment free speech rights.” *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013) (citing to *John v. Douglas County School District*); *see also* NRS 41.660(a)(1).

Once a special motion to dismiss pursuant to NRS 41.660(a)(1) is filed, the court must first determine whether the moving party has established, by a preponderance of the evidence, that the subject communications fall within the anti-SLAPP statute's protections, i.e., "that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a)(*aka* the first prong of the anti-SLAPP analysis). If the court determines that the communications are protected by the anti-SLAPP statute, the burden shifts to the plaintiff to demonstrate that he has a "probability of prevailing on the claim." NRS 41.660(3)(c)(*aka* the second prong of the anti-SLAPP analysis).

If a defendant bringing an anti-SLAPP motion to dismiss a claim fails to establish, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern (the first prong), the court need not determine whether the plaintiff has demonstrated with *prima facie* evidence a probability of prevailing on the claim (the second prong). *See* NRS 41.660(3)(a), (b); *Spirtos v. Yemenidjian*, 137 Nev. 711, 499 P.3d 611 (2021).

V. ARGUMENT

In addition to the fact that the protections of NRS 41.636-41.670 do not relate or apply to Association's counter-claims against Kosor as set forth above, Association also opposes the balance of the arguments set forth in Kosor's Brief.

A. Kosor failed to establish, by any evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection of an issue of public concern

Kosor had the burden to establish, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection of an issue of public concern. *See* NRS 41.660(3)(a), (b); *Spirtos v. Yemenidjian*, 137 Nev. 711, 499 P.3d 611 (2021). That "good faith communication" is defined in NRS 41.637 (1) through (4). Kosor, through counsel, represented during his hearing that he is solely invoking subsection 1 of NRS 41.637. (9AA002011); (8AA1874-1876). However, that section would only apply if the HOA election were an "electoral action, result or outcome." Kosor fails to cite any case in support of his premise that statements made in a candidacy form with an HOA are aimed at procuring an "electoral action." Instead Kosor merely makes a feeble attempt at asserting that a defamation case pertaining to an issue of "public interest" in a "public forum" under section 4 of NRS 41.637, *Kosor v. Olympia Companies, LLC*, 136 Nev. 705 (2020), stands for the conclusion that HOA elections are "governmental or electoral actions" under

subsection 1 of NRS 41.637. While Kosor referenced the *Olympia* case, Kosor's anti-SLAPP motion did not invoke subsection 4 of NRS 41.637 but rather Kosor only invoked subsection 1 of NRS 41.637 without any support that it applies.

Adelson v. Harris, 973 F. Supp. 2d 467 (S.D. N. Y. 2013) found that the "electoral action" was a presidential election – i.e., an election for public office, not an HOA election. That case discussed "electors" and the plain meaning of that word. *Id.* The case of *Adelson v. Harris*, 133 Nev. 512 (2017), cited in Kosor's Brief and which referred to *Delucchi v. Songer*, 133 Nev. 290 (2019) does not further define "elector." In fact, it does not appear that there is a single case supporting the premise that an "electoral action" is anything other than something related to election for public office, and not a private, non-profit corporation, HOA election. Another Nevada case, *Rosen v. Tarkanian*, 453 P.3d 1220 (2019), discussed electoral action as "political speech covered by the anti-SLAPP statute" and that involved political advertisements in a race between Jacky Rosen and Danny Tarkanian for public office, and, again, not an HOA election.

Similarly, there do not appear to be any Nevada statutes that more broadly define the term "elector." Nevada recognizes presidential electors (for presidential elections). *See* NRS 298.005 *et seq.*; defines electors under the "Elections" chapter in NRS 293.055 and it discusses the right to vote for public office; and even discusses the right of "electors" to vote for city officials in general elections. There

is nothing in NRS 116 that defines “elector” at all, nor does it appear in the nonprofit corporation code NRS 82, nor does it appear in any of the business association codes, Chapters 75 through 92.

Kosor’s attempt at creating a new legal standard by drawing an inapplicable analogy between the Court’s determination that Kosor’s defamatory comments against Association’s management company in *Kosor v. Olympia Companies, LLC*, 136 Nev. 705, 709 478 P.3d 390, 394 (2020) were about a “quasi-government entity” such that his speech received greater protections under anti-SLAPP statutes into an apparent argument that Association’s board election is now somehow a public election subject to the protections of section 1 of NRS 41.637 is absurd. At a community association a unit’s owner may lose their right to vote in an election because they failed to pull their weeds. *See* NRS 116.31031(1). That does not mean that an owner’s decision not to mow their lawn is a communication subject to the protections of subsection 1 of NRS 41.637 because their failure to mow their lawn resulted in an inability to vote in their upcoming HOA board election.

The absurdity of Kosor’s position is further highlighted by the fact that it would invalidate the extensive candidate restrictions under NRS 116.⁵ If Kosor’s

⁵ Other examples, not an exhaustive list, under NRS 116 candidates must: own a home in the association NRS 116.31034(1); make disclosure of “good standing” NRS 116.31034(9)(b); not be related to or live with other board members NRS 116.31034(10)(a)(1); not manage or be related to the manager of the association

failure to identify his potential conflicts on his candidate form, or simply filling in the form with question marks, would, as argued by Kosor, constitute protected speech under NRS 41.637(1), then no candidate submission requirements for any HOA would ever be enforceable because failure or refusal to comply would be protected speech, nor would any conflict disclosure requirements for any corporate situation. Kosor's position advocates for an improper application of anti-SLAPP protections.

Finally, Kosor failed to provide any evidence, much less a preponderance, to establish his communications were made to procure an "electoral action." Kosor's declaration merely states that he "[i]n the application or on a website disclosed in the application" disclosed what he "considered in good faith to be all potential conflicts of interest" (6AA1394), but Kosor failed to provide evidence to rebut the NRED or Board position on NRS 116.31034(10), to address or refute the potential conflicts he was put on notice he needed to disclose, and failed to rebut or refute the evidence of such conflicts presented by Association. *See e.g.* (6AA1393-4).

NRS 116.31034(10)(a)(2); provide proof of proper ownership affiliation NRS 116.31034(14); not have a contract with an association NRS 116.31187; etc.

B. Statements made by Kosor were plainly not the matter at issue in the Association's counter-claims

Kosor goes on and on *ad nauseum* about the statements Kosor allegedly made on his website with respect to his candidacy in an inappropriate attempt to create an implication that those statements were somehow at issue or in some way relevant in this case or Association's counter-claims. *See e.g.*, Kosor Brief at 15, 18, 29, 36-39, 52-54, 56-57. However, statements made by Kosor on his website, a site controlled by him that he can change at any time, are not the subject of Association's counter-claims, are not related to the candidacy requirements of NRS 116.31034, and are wholly irrelevant to the matter at issue.

NRS 116.31034(9)(a) requires candidates to disclose potential conflicts of interest “***in writing*** to the association with his or her candidacy information,” which an association is then required to “distribute . . . with the ballot or . . . the next regular mailing of the association.” (emphasis added). NRS 116.31034(9)(a) and Association's counter-claim thereon has nothing to do with what is published on a website, including Kosor's website. It is axiomatic that if a candidate does not provide written disclosures with their candidate statement to an association that an association would not be able to distribute such written disclosures, so any disclosures on Kosor's personal website are not relevant to the disclosure requirement of NRS 116.31034(9)(a). Kosor, like all other unit owner candidates running for a community association board position in Nevada, is required to make

a written disclosure of his potential conflicts of interest in his written candidate statement that is to be distributed to an association's membership pursuant to NRS 116.31034(9)(a).

In fact, as explained by Association in the December 21, 2023, letter to Kosor notifying him of his ineligibility and ability to provide additional information, Kosor was informed that he may provide essentially any explanatory detail he wanted to his disclosures:

Please note that it is the failure to disclose a potential conflict of interest as required by NRS 116.31034(9)(a) that mandates an association to preclude a candidate under NRS 116.31034(13). Where an individual makes a good faith effort to disclose a potential conflict of interest by at least identifying the potential conflict (the candidate is not required to refer to the potential conflict in a derogatory or negative manner), then the disclosure obligation will generally be satisfied. For example, the individual may indicate a "potential conflict," identify the potential conflicts, and then state that they do not believe that the matters are actual and/or potential conflicts, which would afford the Members both the opportunity to weigh the conflict and the nominee's perspective of the same.

(6AA1496) Unfortunately, Kosor made no attempt to correct his candidate statement by adding the statutorily required disclosures and instead filed the underlying lawsuit in an apparent attempt to avoid complying with Nevada's disclosure requirements.

Kosor talks about Association's election as an issue of public interest and concern in a public forum in his Brief (*see e.g.* at 36-37), but he represented to the district court that his motion was only under NRS 41.637(1). (9AA002011 at 4:19-

21); (8AA1874-1876); *see also* NRPC 3.3. Therefore, any arguments raised by Kosor related to public interest or concern under NRS 41.637(4) should be ignored by the Court as outside the scope of the appeal. Moreover, Kosor does not reference any good faith communication that is at issue in the Association's counter-claims. In fact, Kosor fails to identify any free speech right whatsoever that was exercised in good faith by Kosor that is the target of Association's counter-claims. Rather, Kosor merely indicates that he has said a lot of things on his website, candidate statement, and elsewhere that are related to the election and/or critical of Association, so what? Kosor fails to demonstrate that Association's counter-claims have somehow been asserted to stop such speech by Kosor, which Kosor could not possibly demonstrate because Association's counter-claims in no way interfere with Kosor's free speech.

In light of the above, the Court need not determine whether the Association has demonstrated with *prima facie* evidence a probability of prevailing on its counter-claims because Kosor has failed to meet his threshold burden of demonstrating, by a preponderance of the evidence, that the counter-claims are based upon a good faith communication of Kosor in furtherance of the right to free speech in direct connection with an issue of public concern. *See* NRS 41.660(3)(a), (b); *Spirtos v. Yemenidjian*, 137 Nev. 711, 499 P.3d 611 (2021).

C. Kosor marks “T” for true on candidate statement, which was patently false and Kosor knew it was false

On his candidate statement, Kosor falsely represented, by marking “T” for true, that he did not have any potential conflicts of interest and, by marking “T” for true, that he did not stand to gain profit or compensation from any matter before the Board. (5AA1075-1079) Kosor knew these representations were false.

Kosor knew he had potential conflicts of interest, which is demonstrated by the content of the balance of his candidate statement disclosures and his alleged website content. As argued in Kosor’s Brief *e.g. at* 15 and attached to his candidate statement (5AA1075-1079), Kosor made a statement of disclosures that, according to the arguments in Kosor’s Brief, constituted a disclosure of potential conflicts of interest. Moreover, as noted above, Kosor’s Brief and anti-SLAPP motion go on and on about the statements and disclosures Kosor allegedly made on his website with respect to his candidacy. (5AA1075-1079). Further, Kosor was placed on notice of the issues with his candidate statement and an opportunity to provide additional information (5AA1064-1146), but he did not provide corrections. Considering this, it is not possible for Kosor to credibly argue that he did not know marking “T”, that he did not have any potential conflicts of interest, was false.

Kosor was aware that he stood to gain profit or compensation of any kind from a matter before the Board. Kosor was provided with: (1) notice of a hearing regarding his standing to gain any profit or compensation of any kind from a matter

before the Board (4AA844-922); (2) a determination of the Board on the issue affirming that Kosor stood to gain any profit or compensation of any kind from a matter before the Board (4AA924-926); (3) a letter from the NRED threatening to prosecute Association for violation of NRS 116.31034 within thirty (30) days due to its permitting Kosor to remain on the Board while he stood to gain personal profit as a litigant in his 2020 Case and Appeal Case# 85621(4AA917-918); (4) a letter from the NRED closing the case for violation of NRS 116.31034 after his position on the Board was deemed vacant (5AA1016-1017); and (5) notice from Association regarding his eligibility to serve on the Board due to standing to gain any profit or compensation of any kind from a matter before the Board (5AA1064-1146) . Thus, while Kosor may have disagreed with the determinations of the Board and NRED, he knew that his indication of “T” for true with respect to having no standing to gain any profit or compensation of any kind from a matter before the Board was false.

Notably, as reflected above, Association provided evidence demonstrating the falsehood of the statements; however, Kosor never declared under penalty of perjury that the potential conflicts did not exist or otherwise controvert Association’s evidence, so Association’s evidence was uncontroverted. (6AA1393-4).

D. The district court decided Kosor’s argument regarding Association’s obligation to demonstrate “actual damages” at the June 24, 2024, hearing on Kosor’s NRC P 12(b)(5) motion to dismiss in favor of Association

Kosor asserts the same arguments in his anti-SLAPP motion and appeal Brief that he made in his unsuccessful motion to dismiss Association’s counter-claims on the grounds that Association did not assert and could not demonstrate “actual damages.” *Compare* (6AA1309) and (6AA1361-1362) *with* (AA001378-1379) and Brief at 20, 54-56. At the June 24, 2024 hearing, the district court denied Kosor’s motion to dismiss on those grounds and affirmed that the district court has the power pursuant to NRS 30.010 to declare rights under Nevada law as requested in the Association’s claims. (8AA1808-1819 *at* 2:16-20)

“The law-of-the-case doctrine “refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases.” *Recontrust Co. v. Zhang*, 130 Nev. 1, 7–8, 317 P.3d 814, 818 (2014). Since the district court previously decided the issue of needing to plead “actual damages” for a declaratory relief claim in this matter, it was inappropriate for Kosor to raise the same issue again in the anti-SLAPP motion and in the current appeal.

E. Association demonstrated with prima facie evidence a probability of prevailing on its NRS 116.31034(9) declaratory relief claim

Kosor asserted the same arguments in his anti-SLAPP motion that Kosor made in his motion for preliminary injunction regarding Kosor's obligation to disclose potential conflicts of interest. *Compare* (3AA630-636 at 19:7-25:6) *with* (6AA1380-1386 at 14:1-20:14). In opposition to the anti-SLAPP motion, the Association incorporated and reiterated its opposition to Kosor's motion for preliminary injunction, (6AA1481-1482), which it sets forth herein to address Kosor's arguments in the Brief.

Under NRS 116.31034(9)(a), each person who is nominated as a candidate for membership on the executive board ***must*** “[m]ake a good faith effort to disclose any financial, business, professional or personal relationship or interest **that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate** if the candidate were to be elected to serve as a member of the executive board.” (emphasis added). The requirement in NRS 116.31034(9)(a) is mandatory – each candidate **must** make a good faith effort to disclose potential conflict.

While a “potential conflict of interest” in the context of NRS 116.31034(9)(a) has not been defined, it is readily apparent that the conflicts at issue with respect to Kosor's candidacy would require disclosure under any interpretation of the section. “[C]onflict-of-interest statutes are based upon “[t]he truism that a person cannot

serve two masters simultaneously”, which is regarded as a “self-evident truth, as trite and impregnable as the law of gravitation....” *People v. Honig*, 48 Cal. App. 4th 289, 313–14, 55 Cal. Rptr. 2d 555, 567 (1996)(internal citations omitted) *see also* *State v. Hathaway*, 55 N.E.3d 634, 639(OH, 2015)(“The term “conflict of interest” involves circumstances in which regard for one duty tends to lead to disregard of another duty.”). “A conflict of interest is a situation which would require an official to serve two masters, presenting a potential, rather than an actuality of wrongdoing.” *Broadmoor Realty Co. v. French Mkt. Corp.*, 496 So. 2d 415, 417 (La. Ct. App. 1986) “An actual conflict of interest is one that is real and substantial, whereas a potential conflict is one that is possible or nascent, but in all probability will arise.” *People v. Stroud*, 356 P.3d 903, 911 (Colo., 2014). “[A] conflict is “actual” when the decision is certain to be to the private pecuniary advantage or disadvantage of the Board member; it is “potential” when the advantage or disadvantage is only a possibility.” *Knutson Towboat Co. v. Oregon Bd. of Mar. Pilots*, 131 Or. App. 364, 374, 885 P.2d 746, 752 (1994). In short, under NRS 116.31034(9)(a) where a candidate has “any financial, business, professional or personal relationship or interest” relating to themselves or someone they represent that might at some point impact their decisions/duties in representing the Association, regardless of whether or not it actually will impact their duties or even occur, the candidate must disclose

such matter or their name may not be placed on the Association's ballot. NRS 116.31034(13).

Association sent written notice to Kosor explaining his ineligibility to serve as a member of Association's Board and also explaining how the defects in his candidate statement may be cured with respect to his failure to disclose. (6-7AA1491-1573) Association provided evidence through documentation and declaration demonstrating the existence of the potential conflicts. (7AA1661-1662)

Kosor, as the moving party bore the burden of establishing through a preponderance of evidence that he had made a good faith communication in furtherance of the anti-SLAPP protections, but any averments in the declaration by Kosor under penalty of perjury that the issues Association indicated he needed to disclose were untrue were conspicuously absent from Kosor's filings. (6AA1393-1395) Association, by declaration of Ms. Sara Gilliam and additional documentation, provided *prima facie* evidence through the testimony of a witness that Kosor's conduct at issue did occur. (7AA1661-1662); *see also* (5AA1175-1176) Kosor was not able to testify that the conduct at issue did not occur without perjuring himself, so Kosor's arguments are meritless and the absence of a declaration by Kosor is telling.

F. The district court decided Kosor’s argument regarding the interpretation of NRS 116.31034(10)(a)(2) as a matter of plain language and Association has demonstrated with prima facie evidence a probability of prevailing on its claim

Kosor asserted the same argument in his anti-SLAPP motion seeking to review legislative history and drawing his own self-serving interpretation of NRS 116.31034(10)(a)(2) that Kosor asserted in his motion for preliminary injunction. *Compare* (3AA625-629 at 14:1-18:27) *with* (6AA1386-1390 at 20:17-24:3). This issue was heard at the March 7, 2024, hearing on Kosor’s motion for preliminary injunction and the district court determined and ordered as follows:

Under NRS 116.31034(10)(a)(2), a person may not serve on an executive board of an association, or even run as a candidate for election to such a board, if that person stands to gain personal profit or compensation of any kind from a matter before the board. When faced with an issue of statutory interpretation, the court “should give effect to the statute’s plain meaning.” *MGM Mirage v. Nevada Ins. Guar. Ass’n*, 125 Nev. 223, 228, 209 P.3d 766, 769 (2009). NRS 116.31034 is plain on its face. Thus, the Court need not consider or analyze the legislative history or intent of the statute at issue. Under the plain language of NRS 116.31034(10), a person is precluded from being a candidate or serving on an executive board if that person stands to gain profit or compensation “of any kind” from “a matter” before the executive board of an association.

(6AA1302 at 3:18-27) “The law-of-the-case doctrine “refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases.” *Recontrust Co. v. Zhang*, 130 Nev. 1, 7–8, 317 P.3d 814, 818 (2014). The district court already decided that NRS

116.31034(10)(a)(2) shall be interpreted in accordance with its plain language in this matter, so it was inappropriate for Kosor to raise the same issue of statutory interpretation again in the anti-SLAPP motion and his current appeal thereon.

Further, with respect to Kosor's standing to gain profit or compensation from any matter before the board as prohibited by NRS 116.31034(10)(a)(2), the district court determined (6AA1300-1306) that:

In this case, [Kosor] may "stand to gain personal profit or compensation of any kind" from current, existing matters before the Board, because [Kosor] has ongoing litigation with Defendant [Association] and, as a Board member, could influence decisions related to that litigation to benefit him, including voting for or influencing a settlement, waiving fees, or other resolution of the matter in his favor, which would constitute personal profit or compensation as prohibited by NRS 116.31034(10).

(6AA1303 at 4:1-6) Therefore, as reflected by the district court's order, Association demonstrated a probability of success on the merits with respect to this issue.

Kosor is essentially arguing that Nevada law, specifically NRS 116.31034, does not apply to him. If Kosor wishes to challenge the constitutionality of NRS 116.31034, then Kosor needed to include the Nevada Attorney General in this matter as required by NRS 30.130.

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G. As determined by the District Court, NRED, and the Board, Kosor stands to gain profit or compensation of any kind from matters before the Board in violation of NRS 116.31034(10)(a)(2) due to his outstanding judgment owed to Association and pending litigation in another matter

Kosor stands to gain profit or compensation of any kind from matters before the Board. Under NRS 116.31034(10)(a)(2), a person *may not serve on an executive board of an association*, or even run as a candidate for election to such a board, *if that person stands to gain personal profit or compensation of any kind from a matter before the board*. Kosor absurdly and incorrectly argues that the statute is ambiguous and therefore the legislative history of NRS 116.31034(10)(a)(2) should be interpreted to demonstrate that the statute only disqualifies those who have a contractual relationship with the Association. Neither of those arguments has merit. The language of NRS 116.31034(10)(a)(2) is not ambiguous, it is straightforward:

A person may not be a candidate for or member of the executive board or an officer of the association if... The person stands to gain any personal profit or compensation of any kind from a matter before the executive board of the association.

When faced with an issue of statutory interpretation, the Court “should give effect to the statute’s plain meaning.” *MGM Mirage v. Nevada Ins. Guar. Ass’n*, 125 Nev. 223, 228, 209 P.3d 766, 769 (2009). Under the plain language of the statute, a person is precluded from being a candidate or serving on an executive

board if that person stands to gain profit or compensation “of any kind” from “a matter” before the executive board of an association. The legislature could have chosen to expressly limit the prohibition in NRS 116.31034(10)(a)(2) to those individuals with a direct contractual relationship with the Association, but it did not. Instead, the legislature chose broader language – profit or compensation of “any kind,” derived from “a matter” before the board, which indicates that Kosor’s limitation of the language to contracts only is absurd and incorrect.

In this case, it is indisputable that Kosor stood to personally gain profit or compensation from current, existing matters before the Board, because Kosor had an on-going litigation against the Association wherein he already owed Association a monetary judgment and the ability to influence that litigation in any manner would be a profit to him. It is axiomatic that such profit to Kosor may include, but is not limited to, obtaining a waiver/reduction of his currently owed judgment, obtaining the return of any funds he has paid, obtaining a favorable settlement, obtaining his attorney’s fees, influencing the Board’s position on his case, or otherwise achieving a benefit from being a decision-maker on both sides of a litigation.

Kosor is not ineligible to serve on the Board based on some hypothetical possibility that he might benefit in some way from some unknown matter before the Board in the future. Kosor is ineligible under NRS 116.31034(10)(a)(2) because he stands to gain or profit from existing matters currently before the Board, which are

pending before the Board due to his decision to sue upon, then appeal, claims against Association. Moreover, Kosor, when on the Board, attempted to use his position to improperly influence and resolve his pending dispute in his favor. (7AA1661-1662)

Kosor's Brief is utterly bereft of any mention, much less any meaningful analysis, of the fact that NRED, after completing an investigation, intended to file a complaint for disciplinary action against the Board for violating NRS 116.31034 by allowing Kosor "to continue to serve as a member of the executive board while he stands to gain personal profit as a litigant in [the 2020 Case and the appeal thereof] both of which he filed against the Association." (4AA917-918). In other words, NRED, the agency charged with "regulating and administering NRS Chap. 116", determined that, under NRS 116.31034(10)(a)(2), Kosor could not serve on the Board because he "stands to gain any personal profit or compensation of any kind from a matter before the executive board of the association." The fact that Kosor is unhappy with NRED's direction is legally irrelevant. Rather, Kosor must establish that NRED's interpretation of NRS 116.31034(10)(a)(2) was unreasonable, which he has not. *See Killebrew, Tr. of Killebrew Revocable Tr., 5TH ADM 1978 v. State ex rel. Donohue*, 139 Nev. Adv. Op. 43, 535 P.3d 1167, 1172 (2023) ("Although this court 'will generally defer to an agency's interpretation of its governing statutes and regulations,' we need only do so if its interpretation is *reasonable*.") (emphasis in original) (citation omitted).

H. Kosor failed to address the first prong of the anti-SLAPP analysis as to Association's uninsurable claim and Association has demonstrated prima facie evidence of a probability of prevailing on its NRS 116.31034(uninsurable) claim

Kosor generally avers that Association will not be able to establish a probability of success on the merits with respect to its uninsurable claim by asserting that it is frivolous and unproven but otherwise fails to address the issue, which is presumably because the anti-SLAPP motion was essentially a reiteration of Kosor's previously denied motions for preliminary injunction and dismissal of counter-claims that did not address the uninsurable issue. Notably, Kosor failed to even address the first prong of the anti-SLAPP analysis with respect to the uninsurable claim, much less demonstrate the burdens required thereunder, so the district court should be affirmed.

As reflected by the Declaration of Ms. Gilliam (7AA1662 at 2:13-21), while on Association's Board, Kosor caused the non-renewal of Association's directors & officers liability coverage through his unauthorized, unlawful unilateral⁶ tender of claims to Association's carrier, which resulted in the non-renewal of coverage for him. Thereafter, due to Kosor's actions, Association was unable to reasonably obtain coverage for Kosor. *See id.* This is uncontroverted evidence supporting

⁶ Pursuant to NAC 116.405(3)(d)(as amended by regulation R129-21), "acting without authority granted by the executive board to a member of the board" may be considered in determining whether a board member breached their fiduciary duty.

Association's claim for relief on this matter, which therefore constitutes *prima facie* evidence of a probability of prevailing on its claim. (9AA1998) Moreover, this is the second prong of analysis, Kosor failed to address the first prong of the anti-SLAPP analysis with respect to the issue of Kosor's being uninsurable.

NRS 116.31034(13) prohibits a person from being a candidate or member of a board if they are not eligible "pursuant to any provision of [NRS 116]." NRS 116.3113(1)(d) requires an association to maintain directors & officers liability insurance for directors to the extent reasonably available and NRS 116.31037 requires associations to indemnify and defend directors. In light of the fact that Kosor, through his own wrongful acts as demonstrated by *prima facie* evidence, caused Association to be unable to insure him, Association has a probability of prevailing on its claim for either (a) precluding Kosor from serving on Association's Board until he becomes reasonably insurable or, (b) in the alternative, waiving the requirement of NRS 116.31037 that Association provide for the indemnification and defense of Kosor until such time as Kosor becomes reasonably insurable.

While Kosor failed to argue that this issue was frivolous at the district court and is therefore precluded from making such an argument on appeal, it is hardly trivial. At some point, Kosor may stop suing Association and may identify his potential conflicts of interest in a candidate statement to run for Association's Board, possibly in a manner established by the district court following resolution of the

matters in dispute, which would mean Kosor would lawfully qualify to serve as a candidate for the Board other than his being uninsurable due to his proliferation of claims. Contrary to the insinuation of Kosor's Brief, there is not a magic insurance fountain that doles out insurance to everyone who wants it despite their litigation history and, as demonstrated by the Association (7AA1661-1662), Kosor is presently uninsurable. Therefore, Association seeks to address the issue of his being uninsurable in a manner that is equitable to the Association's membership who will have to pay to indemnify and defend Kosor's conduct on the Board in the event he is elected in the future.

I. The District Court appropriately applied the gravamen test to avoid an absurd application of Nevada's anti-SLAPP statutes

As found by the district court:

[T]he gravamen of [Association's] counterclaims does not pertain to the issue of Kosor's criticism of the [Association]. Rather, the Court finds that the counterclaims address the statutory requirements set forth in NRS 116.31034 and NRS 116.3113 to run for and serve on a community association's board of directors which must be met, that the gravamen of the counterclaims is the contention that those statutory requirements have not been met, and that the counterclaims seek to require Kosor to comply with those statutory requirements as a condition precedent for [Association's] placement of Kosor's name on an [Association] ballot.

(9AA2012 at 5:15-21) As reflected by Association's Brief and the evidence on file, Association's counter-claims have nothing to do with Kosor's criticism of Association. Kosor's argument that Association's counter-claims are at issue or

subject to anti-SLAPP protection appears to be nothing more than a pretext for an attempt to bootstrap the adverse decision against Kosor in the underlying preliminary injunction into an automatic appeal under the anti-SLAPP statutes.

Contrary to Kosor’s assertion that the gravamen test is disfavored, it is the law in California. *See Martinez v. Metabolife Internat., Inc.*, 113 Cal. App. 4th 181, 188, 6 Cal. Rptr. 3d 494, 499 (2003)(“We conclude it is the *principal thrust* or *gravamen* of the plaintiff’s cause of action that determines whether the anti-SLAPP statute applies, and when the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute.”)(internal citation omitted). This is a logical and reasonable test for avoiding abuses of the anti-SLAPP statute.

Contrary to Kosor’s assertion, *Bonni v. St. Joseph Health Sys.*, 11 Cal. 5th 995, 1007, 491 P.3d 1058, 1067 (2021), does not stand for the proposition that relying on the “gravamen” to evaluate an anti-SLAPP claim has been rejected by California, the opposite is true when the entirety of the case is examined as opposed to Kosor’s misleading quote. *Bonni* was intended to reduce confusion in the anti-SLAPP process and maintained that “the first step of this process, determining whether the plaintiff’s claims arise from protected activity . . . courts are to “consider the elements of the challenged claim and what actions by the defendant supply those

elements and consequently form the basis for liability.” *Id* at 1065–66 (i.e., the gravamen). The issue was the “mechanics of anti-SLAPP review” where Bonni had alleged 19 distinct acts related to one cause of action and sought to preserve the cause of action from anti-SLAPP dismissal based upon the gravamen of the overall cause of action whereas St. Joseph sought anti-SLAPP dismissal of some of the 19 individual acts within the one “mixed” cause of action based upon the gravamen of the specified individual acts being protected. *Id* at 1066. The court then went on to discuss the application of anti-SLAPP principles to “mixed” causes of action. *Id* at 1066-7. Importantly, the court pointed out that the gravamen test is still appropriate:

To be clear, we do not suggest that every court that has continued to label its approach a gravamen test even after Baral has erred. Some courts have invoked the term not in the way Bonni suggests — to determine the essence or gist of a so-called mixed cause of action — but instead to determine whether particular acts alleged within the cause of action supply the elements of a claim . . . or instead are incidental background . . . “The ‘gravamen is defined by the acts on which liability is based, not some philosophical thrust or legal essence of the cause of action’ This approach is consistent with Baral, which reaffirmed that “[a]ssertions that are ‘merely incidental’ or ‘collateral’ are not subject to section 425.16. . . . Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute.”

Id at 1067–68 (Internal citations omitted). The district court, consistent with *Bonni*, accurately determined that the gravamen of Association’s claims had nothing to do with Kosor’s criticisms of Association because the criticisms were not at issue in the

claims or acts upon which the claims were based, but rather the claims focused on seeking compliance with the statutory requirements for placing a candidate's name on an association ballot. (9AA2012) The gravamen test, as applied by the district court, is appropriate to avoid absurd applications of Nevada's anti-SLAPP statutes.

J. Kosor's Brief substantively misrepresents the content of Kosor's Declaration and Candidate Statement

Kosor's Brief repeatedly makes substantive misrepresentations with respect to the content of Kosor's Declaration and Candidate Statement. The following two quotes from the Brief are representative of the misrepresentations that are littered throughout the Brief: "On [the Candidate Statement], Kosor informed [Association] homeowner voters (and the Board) that he was currently engaged in a lawsuit against the [Association], and, if elected, he "would have a conflict of interest with the majority of directors" if issues related to the lawsuit came before the Board. AA0324." Brief at p.15; and "Kosor submitted both a declaration, which stated he made his disclosures "in good faith," AA0610-11, and the signed Form . . ." Brief at p.39. Both of these statements are substantive misrepresentations evident from the face of the documents cited and the flawed content was pointed out to counsel during the hearings in district court.

Contrary to the misrepresentation in the Brief, Kosor did not inform anyone in his candidate statement that he was engaged in a lawsuit against Association and would have a conflict of interest if issues related to his lawsuit against Association

came before the Board. (2AA324). As reflected by Kosor's candidate statement, Kosor stated that he had been in litigation with Mr. Goett and Olympia, that he filed an action to end developer control, that he defended against a frivolous Association action, and that additional action may be needed related "to my ouster by the board if Olympia continues its inappropriate control," but he never stated he was filing suit against Association. (2AA323). As reflected by Kosor's statement of disclosures following his candidate statement, Kosor stated that he had engaged in actions seeking clarification of the legitimacy of the developer appointed board, that he is engaged in addressing Association action related to April 2022 and May 2023 barriers to his fulfilling his duties as a director and should legal action be necessary he would seek reimbursement of attorney's fees, that he would have a conflict of interest with the board if he was on it and it remain as constituted (i.e., developer controlled), but, again, Kosor did not state that he was engaged in a lawsuit against the Association itself and, not having stated he was in a lawsuit against the Association, he did not state that he would have a potential conflict related to the lawsuit that he did not disclose. (2AA324). At hearing the court specifically asked Kosor's counsel to point out on his candidate statement where he "disclosed I have pending litigation against the HOA," but they were unable to do so because, as pointed out by counsel for Association, such a statement simply was not there. (8AA1886-1887 at 33:7-34:24); (8AA1904-1909 at 51:17-55:20).

Contrary to the misrepresentation in the Brief, Kosor did not declare under penalty of perjury that he had submitted his Candidate Disclosure Statement “in good faith.” (3AA610-611). As reflected by Kosor’s declaration cited by Kosor AA0610-11, Kosor merely declared that he submitted his candidate statements, but did not declare that he had done so “in good faith.” *Id.* In the declaration attached to his anti-SLAPP motion (6AA1393-4), Kosor did not declare to have submitted a Candidate Statement in good faith but rather stated “In the application or on a website disclosed in the application I disclosed what I considered in good faith to be all potential conflicts of interest with the [Association].” (Emphasis added). It is troubling that the declaration was prepared in such a manner because, as noted above, information on a website is irrelevant to the matter at issue and the declaration appears to have been used to provide misleading evidence as opposed to getting to the truth of the matter at issue. As pointed out to Kosor’s counsel in the March 7th, 2023 preliminary injunction hearing, Kosor should have submitted a declaration asserting that the factual assertions of Association were not true in order to succeed on his motion, but Kosor would not able to make such a declaration because Association’s factual assertions are true, as reflected by the evidence submitted by Association, and Kosor does not declare otherwise because such a declaration would not be true. (AA1233-4). Kosor, having been placed on notice of this issue in the

preliminary injunction hearing, should have submitted such a factual declaration in support of his anti-SLAPP motion, but, tellingly, he did not.

As noted above, Kosor's Brief extensively and substantially misrepresents the evidence provided by Kosor throughout the Brief, which is misleading and should be disregarded.

VI. CONCLUSION

For the foregoing reasons, Association respectfully requests that this Court affirm the ruling of the district court.

Verification

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

I, Adam H. Clarkson, am an attorney for Respondent herein. I hereby certify that I have read the foregoing Answering Brief, have personal knowledge concerning the matters raised therein, and to the best of my knowledge, information, and belief, the factual matters set forth are as documented in the records of the case and Appendix, and that the arguments herein are not frivolous nor interposed for any improper purpose or delay.

I declare under the penalty of perjury of the laws of Nevada that the foregoing is true and correct.

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Certificate of Compliance

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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14pt Times New Roman Font.

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 does not exceed 14,000 words and contains approximately 13,510 words according to Microsoft.

I hereby certify that I have read this appellate 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 NRAP 28(e)(1), if applicable, which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, 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 accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 2nd day of September, 2025

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Certificate of Service

I hereby certify that on the date indicated below, I served a true and correct copy of RESPONDENT’S ANSWERING BRIEF upon all counsel of record by electronically filing the document using the Nevada Supreme Court’s electronic filing system.

DATED September 2, 2025.

/s/ Ashley Livingston

An Employee of Clarkson McAlonis &
O’Connor, P.C.