

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSS MILLER, IN HIS CAPACITY AS
SECRETARY OF STATE FOR THE
STATE OF NEVADA,

Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CARSON CITY; AND THE HONORABLE
JAMES TODD RUSSELL, DISTRICT
JUDGE,

Respondents,

and

DORA J. GUY, AN INDIVIDUAL;
LEONEL MURRIETA-SERNA, AN
INDIVIDUAL; EDITH LOU BYRD, AN
INDIVIDUAL; SAMANTHA STEELMAN,
AN INDIVIDUAL; KEN KING, AN
INDIVIDUAL; SANCY KING, AN
INDIVIDUAL; ALLEN ROSHOFF, AN
INDIVIDUAL; B. ESTELA MOSER
VADEN, AN INDIVIDUAL; NEVADA
REPUBLICAN PARTY; ALEX GARZA,
AN INDIVIDUAL; AND LEAGUE OF
WOMAN VOTERS OF LAS VEGAS
VALLEY,

Real Parties in Interest.

No. 59322

FILED

NOV 04 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

On October 3, 2011, petitioner filed an emergency petition for
a writ of mandamus, asserting that respondent, the Honorable James

Todd Russell, District Judge, violated NRCP 53 by failing to make certain key legal determinations before referring the underlying matter to a panel of special masters. On October 5, 2011, this court directed real parties in interest to file answers to the writ petition on an expedited basis, with petitioner to file a reply.¹ This court denied petitioner's subsequent motion to stay the special masters' proceedings expressing concern that a delay in the district court could jeopardize the deadlines for the upcoming 2012 election cycle. Thereafter, the special masters conducted public hearings and, on October 14, 2011, filed their redistricting report with the district court. After the special masters' expeditious production of their report, Judge Russell entered a final order approving the special masters' report with minor changes.

We acknowledge that, notwithstanding the filing of the district court's order approving the special masters' report and redistricting plan, petitioner, in his reply brief, requests that this court nevertheless resolve the issues raised in the writ petition. Specifically, petitioner maintains that the district court did not address in its order the legal propriety of the special masters' consideration of "representational fairness." Petitioner also argues that future redistricting cases could benefit from clearer

¹Although this court requested supplemental briefing on a number of constitutional issues, given today's resolution of this writ petition, we do not reach the issues identified in our October 5 supplemental briefing order. See Secretary of State v. Burk, 124 Nev. 579, 588-89, 188 P.3d 1112, 1118-19 (2008) (explaining that this court will not decide constitutional questions unless necessary).

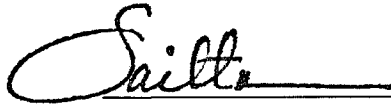
guidelines for the district courts when referring redistricting tasks to special masters under NRCP 53.

While an improper NRCP 53 delegation may warrant this court's intervention by way of extraordinary writ, see, e.g., Russell v. Thompson, 96 Nev. 830, 836, 619 P.2d 537, 540 (1980) (remanding, on appeal, with directions to vacate the district court order appointing the special master), we conclude that the issues raised by petitioner with respect to the referral of redistricting to special masters are best reviewed in the context of a direct appeal, if any, of the district court's final order. See House of Wines, Inc. v. Sumter, 510 A.2d 492, 498 (D.C. 1986) (determining that if a special "master decides a question of law in order to perform his primary duty of finding facts . . . and his conclusion is a correct statement of law, the findings will not be disturbed on appeal," and noting that a special masters' potentially mistaken legal conclusions can be construed as harmless error, if corrected in the district court). Piecemeal consideration of limited redistricting issues would be imprudent given the existence of a final order by the district court and the special timing concerns for the 2012 election.

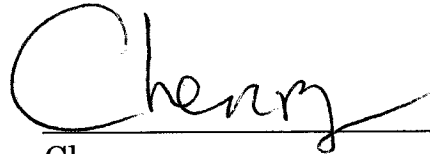
Accordingly, petitioner has an adequate remedy in the form of an appeal from the district court's final judgment that precludes writ relief. See Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004)

(explaining that an appeal is generally an adequate legal remedy precluding writ relief).²

Based on the reasons set forth above, we
ORDER the petition DENIED.³

, C.J.
Saitta

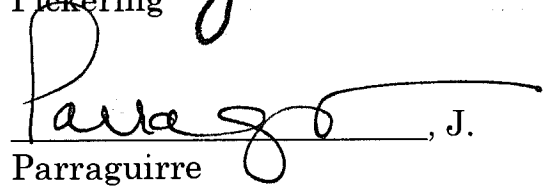
, J.
Douglas

, J.
Cherry

, J.
Gibbons

, J.
Pickering

, J.
Hardesty

, J.
Parraguirre

²A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Writ relief is generally available when there is no plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. The issuance of a writ of mandamus is purely within this court's discretion. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851-52 (1991).

³In light of this order, we vacate the oral argument scheduled for November 14, 2011.

cc: Hon. James Todd Russell, District Judge
Attorney General/Carson City
Koch & Scow, LLC
Hutchison & Steffen, LLC
Jones Vargas/Las Vegas
Perkins Coie, LLC
The Capitol Company
Denise A. Pifer
Carson City Clerk