

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIMBERLY E. SIMONS, JESSE  
MOFFETT, DANIEL KINSHELLA, AND  
CHRISTINE KINSHELLA,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
DOUG SMITH, DISTRICT JUDGE,  
Respondents,

and

THE STATE OF NEVADA,  
Real Party in Interest.

No. 60098

**FILED**

JUL 25 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. Malone*  
DEPUTY CLERK

ORDER DENYING PETITION

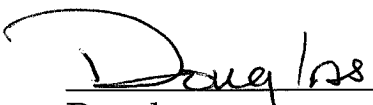
This original petition for a writ of mandamus or prohibition challenges the district court's decision denying petitioner's motion to declare NRS 453A unconstitutional and to dismiss all charges.<sup>1</sup> Two other defendants in the underlying criminal proceeding filed a similar petition, which we denied. Kinshella v. Dist. Ct., No. 59681 (Order Denying Petition, January 12, 2012). We conclude that petitioner's efforts to distinguish that decision lack merit, and we decline to exercise our discretion to consider the petition. See State ex rel. Dep't Transp. v.


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<sup>1</sup>The petition was filed by Kimberly E. Simons. Thereafter, codefendants Jesse Moffett and Daniel and Christine Kinshella filed joinders in the petition. The clerk of this court shall add Moffett and the Kinshellas to the caption in this proceeding consistent with the caption on this order.

Thompson, 99 Nev. 358, 360 n.2, 662 P.2d 1338, 1339 n.2 (1983) (explaining that extraordinary writ petitions are addressed to this court's sound discretion). Our reasons, with one addition related to petitioner's alternative request for a writ of prohibition, are the same as with the prior petition: (1) petitioner has a plain, speedy, and adequate remedy in the ordinary course of law, NRS 34.170 (providing that mandamus generally is not available if petitioner has plain, speedy, and adequate remedy in ordinary course of law); NRS 34.330 (same as to prohibition); (2) the petition does not present circumstances that reveal urgency or a strong necessity for this court's pretrial intervention despite the availability of an effective alternative remedy, see Salaiscooper v. Dist. Ct., 117 Nev. 892, 901-02, 34 P.3d 509, 515-16 (2001); and (3) as to prohibition, there is nothing in the petition to suggest that the district court proceedings are without or in excess of the court's jurisdiction, see NRS 34.320. Accordingly, we

ORDER the petition DENIED.<sup>2</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

<sup>2</sup>We note that similar constitutional challenges are pending in two appeals docketed in this court that challenge district court orders dismissing charges. State v. Schwingdorf, Docket No. 60464; State v. Hamilton, Docket No. 60466. The district court should consider whether to stay the trial in this matter pending resolution of those appeals.

cc: Hon. Doug Smith, District Judge  
Robert M. Draskovich, Chtd.  
David T. Brown  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk