

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA DEPARTMENT  
OF TAXATION; THE HONORABLE KATE  
MARSHALL, IN HER CAPACITY AS  
TREASURER OF THE STATE OF  
NEVADA; AND THE LEGISLATURE OF  
THE STATE OF NEVADA,

Petitioners,

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

THE CITY OF FERNLEY, A NEVADA  
MUNICIPAL CORPORATION,

Real Party in Interest.

No. 62050

**FILED**

JAN 25 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER GRANTING IN PART AND DENYING IN PART  
PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying motions to dismiss in a constitutional law action.

This matter arises from an action brought by real party in interest the City of Fernley challenging the constitutionality of the State's consolidated-tax system, which distributes six statewide taxes to local governments. The City's complaint alleges that this tax system violates certain of its rights under both the federal and state constitutions. Petitioners moved the district court to dismiss the action, and in opposing those motions, the City argued that the motions should be treated as summary judgment motions and requested a continuance under NRCP

56(f) to conduct further discovery. The district court converted petitioners' motions to dismiss to summary judgment motions, denied those motions without prejudice, and granted the City a continuance. This petition followed.

A 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). Whether a petition for extraordinary relief will be considered is purely discretionary with this court. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). This court has held that it may exercise its discretion to consider a petition challenging the denial of a motion to dismiss or for summary judgment where "no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action." Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997); accord Advanced Countertop Design v. Dist. Ct., 115 Nev. 268, 269, 984 P.2d 756, 758 (1999) ("Although [this court] generally decline[s] to consider writ petitions that challenge district court orders denying [such motions] . . . , we may exercise our discretion when no factual disputes exist and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule.").

Actions for violations of federal constitutional rights under 42 U.S.C. § 1983 (1996) are governed by the state's statute of limitations for personal injury actions.<sup>1</sup> Wilson v. Garcia, 471 U.S. 261, 276 (1985).

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<sup>1</sup>Although the City did not expressly plead a § 1983 claim in its complaint, when alleging a federal constitutional violation, a plaintiff does not have a direct cause of action under the United States Constitution, but

*continued on next page...*

Nevada's statute of limitations for personal injury claims is two years. NRS 11.190(4)(e). Neither party disputes that, at the time of the City's incorporation in 2001, the City was aware that absent specific circumstances, its base consolidated-tax distributions would be set by its previous distributions and would remain at that level. See NRS 360.680(2); NRS 360.740; NRS 354.59874. Indeed, at oral argument the City conceded that its federal constitutional claims would be barred unless this court applied an exception to allow it to avoid the expiration of the limitations period, and we find that no such exception applies here. Under these circumstances, the City was required to bring its federal constitutional claims within two years of its incorporation, and its failure to do so renders those claims barred by the statute of limitations. See Wilson, 471 U.S. at 276. Therefore, the district court was obligated under clear legal authority to dismiss the federal constitutional claims and our intervention by way of extraordinary relief is warranted to compel the district court to comply with this requirement. Smith, 113 Nev. at 1345, 950 P.2d at 281. As to the remaining issues raised in the petition, although we make no comment on the merits of these arguments, we

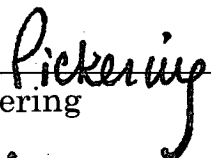
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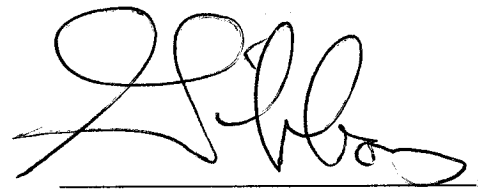
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must plead the claim under 42 U.S.C. § 1983. See Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001) (“[A] litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983.”); Azul-Pacifico, Inc. v. City of Los Angeles, 973 F.2d 704, 705 (9th Cir. 1992) (same). Federal courts have determined that when a plaintiff alleges federal constitutional violations, but fails to plead civil rights claims under § 1983, the court will nevertheless “construe [the plaintiff’s] allegations under the umbrella of § 1983.” Bank of Lake Tahoe v. Bank of America, 318 F.3d 914, 917 (9th Cir. 2003).

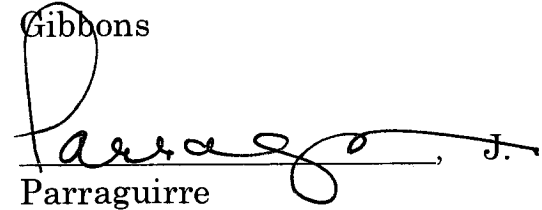
nonetheless decline to exercise our discretion to entertain this writ petition with regard to these issues. Smith, 107 Nev. at 677, 818 P.2d at 851. Accordingly, we

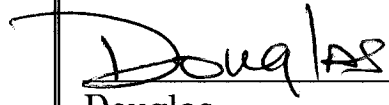
ORDER the petition GRANTED IN PART AND DENIED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate the challenged order to the extent it refused to dismiss or grant summary judgment on the City's federal constitutional claims and to enter an order dismissing those claims.

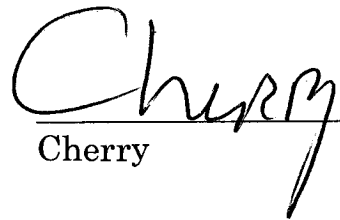
  
\_\_\_\_\_, C.J.  
Pickering

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

  
\_\_\_\_\_, J.  
Hardesty

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

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

  
\_\_\_\_\_, J.  
Cherry

SAITTA, J., concurring in part and dissenting in part:

While I concur with the decision to grant the petition as to the City's federal constitutional claims, I would have granted the balance of the petition and directed the district court to dismiss the City's claims in their entirety.

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. James Todd Russell, District Judge  
Attorney General/Reno  
Attorney General/Carson City  
Legislative Counsel Bureau Legal Division  
Brownstein Hyatt Farber Schreck, LLP/Reno  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
Carson City Clerk