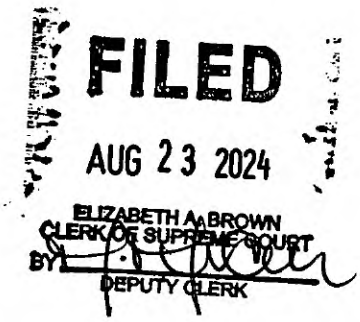
IN THE SUPREME COURT OF THE STATE OF NEVADA

GREATER LAS VEGAS SHORT TERM RENTAL ASSOCIATION, A NONPROFIT NEVADA CORPORATION; AND JACQUELINE FLORES, PRESIDENT AND DIRECTOR,
Appellants/Cross-Respondents,
vs.
CLARK COUNTY; CLARK COUNTY BOARD OF COMMISSIONERS, A SUBDIVISION OF THE STATE OF NEVADA; AND THE STATE OF NEVADA,
Respondents/Cross-Appellants.

No. 86264




*ORDER OF REVERSAL AND REMAND*

This is an appeal and cross-appeal from a district court order granting in part a request for a preliminary injunction.[1] Eighth Judicial District Court, Clark County; Jessica K. Peterson, Judge.

In 2021, the Nevada Legislature passed a law requiring respondent/cross-appellant Clark County to repeal a longstanding ban on short-term rentals in its unincorporated areas and to implement regulations allowing for short-term rentals to operate. NRS 244.35351-244.35359. Respondent/cross-appellant Clark County Board of Commissioners (collectively, Clark County) subsequently adopted Chapter 7.100 of the Clark County Code in June 2022, which permitted short-term

[1]The Honorable Patricia Lee, Justice, voluntarily recused herself from participation in this matter.

rentals, albeit subject to a stringent regulatory and licensing scheme. Appellant/cross-respondent the Greater Las Vegas Short Term Rental Association—an organization composed of unincorporated Clark County residents interested in operating short-term rentals—and its President and Director, appellant/cross-respondent Jacqueline Flores (collectively, GLVSTRA), sued Clark County and moved for a preliminary injunction, alleging that certain regulations under Chapter 7.100, and several corresponding provisions within NRS 244.35351 through NRS 244.35359, violated the United States and Nevada Constitutions pursuant to numerous doctrines of constitutional law.

In February 2023, the district court granted in part a preliminary injunction in favor of GLVSTRA, finding 11 provisions within Clark County Code Chapter 7.100 to be unconstitutionally vague or overbroad, but allowed all other provisions at issue to stand. In April 2023, Clark County amended 9 of the 11 county code provisions that the district court enjoined.

Both parties now appeal from the district court order granting in part the preliminary injunction. GLVSTRA argues that the district court abused its discretion in declining to grant a preliminary injunction in full. Clark County argues that the district court erred in finding that GLVSTRA had standing to bring suit.[2] We agree with Clark County that GLVSTRA lacked standing to sue. Furthermore, the district court erred in concluding that GLVSTRA's claims satisfied the "public-importance exception" to the general standing requirement. *Schwartz v. Lopez*, 132 Nev. 732, 743, 382

[2]Clark County additionally argues that the two enjoined provisions it did not amend—Clark County Code sections 7.100.230(b) and 7.100.230(d)(1)(I)—are not unconstitutionally vague or overbroad.

P.3d 886, 894 (2016). Accordingly, we reverse the order granting in part a preliminary injunction in favor of GLVSTRA, and remand for the district court to dismiss the case.

*GLVSTRA lacks standing to sue*

"In an appeal from a preliminary injunction, this court reviews questions of law de novo." *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015). "Standing presents a question of law." *Nat'l Ass'n of Mut. Ins. Cos. (NAMIC) v. State, Div. of Bus. & Indus.*, 139 Nev., Adv. Op. 3, 524 P.3d 470, 476 (2023). Thus, this court "review[s] whether a party has standing de novo." *Nev. Pol'y Rsch. Inst., Inc. v. Cannizzaro*, 138 Nev. 259, 261, 507 P.3d 1203, 1207 (2022).

"[T]o have standing to challenge an unconstitutional act, a plaintiff generally must suffer a *personal injury* traceable to that act 'and not merely a general interest that is common to all members of the public.'" *Id.* at 262, 507 P.3d at 1207 (emphasis added) (quoting *Schwartz*, 132 Nev. at 743, 382 P.3d at 894). But this case specifically involves a matter of *organizational* standing. This is because GLVSTRA brought the suit *on behalf of* its 700 members who are prospective short-term lessors in Clark County. On this subject, we recently explained that

> an association has standing to sue on behalf of its members if it can establish that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."

*NAMIC*, 139 Nev., Adv. Op. 3, 524 P.3d at 478 (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

We turn to the first requirement of organizational standing: that GLVSTRA's members would otherwise have standing to sue in their own right. Essentially, this requirement asks us to determine whether GLVSTRA members have "suffer[ed] a personal injury traceable to" Chapter 7.100 and NRS 244.35351 through NRS 244.35359. *Cannizzaro*, 138 Nev. at 262, 507 P.3d at 1207. GLVSTRA argues that this requirement is met because Flores, who serves as GLVSTRA's President and Director and is a party to this litigation, filed two affidavits attesting to personal injury she and other members will suffer as a result of Chapter 7.100's regulations. Clark County responds that Flores's affidavits do not establish an actual injury, and instead speculate about potential future injury.

Flores's first affidavit, filed August 1, 2022, initially states that GLVSTRA's individual members have "expressed . . . *interest*[ ]" to Flores in operating short-term rentals in Clark County. (Emphasis added.) Specifically, the members have told Flores that "they *would* find joy and satisfaction," as well as "meaningful cultural and social interaction," in using their homes as rental properties. (Emphasis added.) Flores also speaks to her own individual interest as "a homeowner in unincorporated Clark County." She "*intend*[s] to submit" a short-term rental application to Clark County, but due to the "unclear and confusing" language in Chapter 7.100, Flores is "intimidated to do so." Applying for a license would require Flores "to consent to the waiver of . . . rights in [her] own home." (Emphasis added.) "*If* [she] obtain[s] a license from Clark County," Flores "will be required to endure an ongoing threat of unfair liability, economic exposure, and intrusion of privacy for using [her] home, interacting with others, and earning income." (Emphasis added.) And "[*i*]*f* [Flores is] denied a license by [Clark] County, [she] will be deprived of the ability to provide for [her]

future economic stability and to use [her] property to its fullest potential." (Emphasis added.)[3]

Here, we find it helpful to look to the federal doctrine as to what constitutes an injury for standing purposes. While this court is "not strictly bound to federal constitutional standing requirements," Nevada law "generally requires the same showing of injury-in-fact, redressability, and causation that federal cases require for Article III standing." *NAMIC*, 139 Nev., Adv. Op. 3, 524 P.3d at 476. The United States Supreme Court explained in *Lujan v. Defenders of Wildlife* that an "injury in fact" is "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." 504 U.S. 555, 560 (1992) (citations and internal quotation marks omitted). The Court held that the plaintiff environmental organizations had not shown an injury in fact because, in part, their members' profession of an "inten[t]" to go visit endangered species was "simply not enough." *Id.* at 564 (alteration in original). "Such 'some day' intentions," the Court explained, "without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the 'actual or imminent' injury that our cases require." *Id.*

The injuries alleged in Flores's first affidavit run into similar problems as those described in *Lujan*. The GLVSTRA members and Flores herself attest to an interest and intent to legally operate short-term rentals. The GLVSTRA members' interest is the same as the some day plans

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[3]We note that Flores's second affidavit, filed December 1, 2022, largely pertains to *counterclaims* filed by Clark County and does not contain any information helpful in determining GLVSTRA's standing to bring its own constitutional claims.

addressed in *Lujan*: neither GLVSTRA nor Flores provide additional explanatory information about who the members are and what concrete steps they have taken toward acting on their interest in operating a short-term rental. Flores's intent argument *seems* less hypothetical than that of the GLVSTRA members—she at least implies that *she* plans to apply for a short-term rental license "when the application period opens." But it is still insufficient for standing purposes. Namely, without more, Flores has not demonstrated an *imminent* injury. After all, Flores's alleged injuries heavily hinge upon uncertain future occurrences: *if* Flores actually applies, and *if* Flores is then granted or denied a license. And just like the GLVSTRA members, without a more detailed description of the concrete steps that Flores has taken to act upon her intent, we have only a vague idea of the extent to which Chapter 7.100's regulations would cause actual injury.[4] Thus, like *Lujan*, "inten[t]" alone is "simply not enough" to establish an injury in fact. 504 U.S. at 564.

We also note that GLVSTRA's failure to establish injury hinders the organization from meeting Article III's redressability requirement. *See id.* at 561 (explaining that "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision" (internal quotation marks omitted)). Redressability is especially crucial in the context of a preliminary injunction because a movant must

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[4]For the same reasons, we struggle to see how GLVSTRA would satisfy the causation requirement for Article III standing. *See Lujan*, 504 U.S. at 560 (explaining that "there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant'" (omission and alteration in original) (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41-42 (1976)).

show "it will suffer irreparable harm" in order for the injunction to issue. *Excellence Cmty. Mgmt.*, 131 Nev. at 351, 351 P.3d at 722. Here, GLVSTRA cannot show that it will suffer irreparable harm when its members have not even applied for short-term rental licenses and, thus, are not governed by any of Chapter 7.100's regulations.

In sum, we conclude that GLVSTRA does not have standing to sue because it has not sufficiently shown that "its members would otherwise have standing to sue in their own right." *NAMIC*, 139 Nev., Adv. Op. 3, 524 P.3d at 478 (internal quotation marks omitted). And as discussed below, the district court incorrectly determined that the public-importance exception nonetheless conferred GLVSTRA with standing.

*The district court erroneously concluded that GLVSTRA satisfies the public-importance exception*

Nevada's public-importance exception to the general standing requirement

> applies only when the plaintiff demonstrates that (1) the case presents "an issue of significant public importance," (2) the case involves "a challenge to a legislative expenditure or appropriation on the basis that it violates a specific provision of the Nevada Constitution," and (3) the plaintiff is an "appropriate" party to bring the action.

*Cannizzaro*, 138 Nev. at 262, 507 P.3d at 1207 (quoting *Schwartz*, 132 Nev. at 743, 382 P.3d at 894-95). In *Cannizzaro*, this court "expand[ed] the public-importance exception['s]" second prong to include cases in which "the plaintiff seeks to enforce a public official's compliance with a public duty pursuant to the *separation-of-powers clause*." *Id.* at 263, 507 P.3d at 1208 (emphasis added).

Here, the district court concluded that the public-importance exception conferred standing upon GLVSTRA, reasoning that "[e]ven

though this case does not involve a separation of powers issue like [*Cannizzaro*], the facts of this case and the legal precedent cited in [*Cannizzaro*] leads the Court to believe that the Supreme Court of Nevada would expand the public importance exception to provide standing in this case." The district court erred in reaching this conclusion. District courts are bound to follow controlling legal precedent as set forth by appellate courts, not prognosticate about future changes to the law that appellate courts might make. *See Eulitt ex rel. Eulitt v. Maine, Dep't of Educ.*, 386 F.3d 344, 349 (1st Cir. 2004) ("Until a court of appeals revokes a binding precedent, a district court within the circuit is hard put to ignore that precedent unless it has unmistakably been cast into disrepute by supervening authority."), *abrogated on other grounds by Carson ex rel. O.C. v. Makin*, 596 U.S. 767 (2022).

In this respect, we see no indication that the public-importance exception applies under these facts. The *Cannizzaro* exception does not apply because this is not a separation-of-powers case. And GLVSTRA's claims do not satisfy the second prong of *Schwartz* because there is no "legislative expenditure or appropriation" at issue. 132 Nev. at 743, 382 P.3d at 894. Neither NRS 244.35351 through NRS 244.35359, nor Chapter 7.100, "set[ ] aside" any "sum of money" for the purpose of legalizing short-term rental properties in unincorporated Clark County. *Id.* at 753, 382 P.3d at 900 (defining "appropriation" (internal quotation marks omitted)).

We conclude that the district court erred in finding that GLVSTRA could satisfy the general standing requirements. We further conclude that the district court erred in finding that GLVSTRA had standing under the public-importance exception. Consequently, we

ultimately conclude that GLVSTRA was not entitled to a preliminary injunction and its complaint must be dismissed.[5] Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to enter an order dismissing this case.

Cadish, C.J.

Stiglich, J.

Pickering, J.

Herndon, J.

Parraguirre, J.

Bell, J.

cc: Hon. Jessica K. Peterson, District Judge
Hutchison & Steffen, LLC/Las Vegas
Hutchison & Steffen, LLC/Reno
Attorney General/Carson City
Clark County District Attorney
Clark County District Attorney/Civil Division
Eighth District Court Clerk

[5]Because we reverse based on standing, we do not reach GLVSTRA's arguments that partial denial of the preliminary injunction was improper on constitutional grounds. Nor do we reach Clark County's argument regarding Clark County Code sections 7.100.230(b) and 7.100.230(d)(1)(I), although we do note that these two sections are no longer enjoined based upon our reversal of the preliminary injunction.