142 Nev., Advance Opinion 71

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON,
Appellant,
vs.
BERNARDO ARMENDAREZ; JACOB ALEXANDER NAVARRO-REYES; NAYIB WATSON; LOUIS ANTHONY DELOSRIOS, JR.; VIRGIL CRISTOBAL; HUNTER ALEXIS DOOLEY; AND JACOB VERNON HARDY,
Respondents.

No. 89958

Appeal from a district court order granting a petition for a writ of mandamus or prohibition that challenged a municipal court order declaring NRS 178.4849 unconstitutional. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Affirmed.

Nicholas Vaskov, City Attorney, Marc M. Schifalacqua, Senior Assistant City Attorney, and Samuel G. Bateman, Assistant City Attorney, Henderson, for Appellant.

Maningo Law and Yasmin Khayyami and Lance A. Maningo, Las Vegas, for Respondents.

Jeffry M. Dorocak, City Attorney, and Carlene M. Helbert, Assistant City Attorney, Las Vegas, for Amicus Curiae City of Las Vegas.

Andy Moore, City Attorney, and Deep Goswami, Chief City Attorney—Criminal, North Las Vegas, for Amicus Curiae City of North Las Vegas.

Mark B. Jackson, District Attorney, and Matthew S. Johnson, Deputy District Attorney, Douglas County; Christopher J. Hicks, District Attorney, Washoe County; Steven B. Wolfson, District Attorney, Clark County; Garrit S. Pruyt, District Attorney, Carson City; Stephen B. Rye, District Attorney, Lyon County; Bryan T. Kunzi, District Attorney, Nye County; Tyler J. Ingram, District Attorney, Elko County; Bryce Shields, District Attorney, Pershing County; Melissa A. Brown, District Attorney, White Pine County; Kenneth H. Tedford, District Attorney, Mineral County; William E. Schaeffer, District Attorney, Lander County; Anne M. Langer, District Attorney, Storey County; Kevin L. Pasquale, District Attorney, Humboldt County,
for Amici Curiae Douglas County District Attorney's Office, Washoe County District Attorney's Office, Clark County District Attorney's Office, Carson City District Attorney's Office, Lyon County District Attorney's Office, Nye County District Attorney's Office, Elko County District Attorney's Office, Pershing County District Attorney's Office, White Pine County District Attorney's Office, Mineral County District Attorney's Office, Lander County District Attorney's Office, Storey County District Attorney's Office, and Humboldt County District Attorney's Office.

Nancy M. Lemcke, Public Defender, William M. Waters, Chief Deputy Public Defender, Clark County; Virginia Eichacker, Special Public Defender, Clark County; Evelyn Grosenick, Public Defender, Washoe County; and Katheryn Hickman, Alternate Public Defender, Washoe County,
for Amici Curiae Clark County Public Defender, Clark County Special Public Defender, Washoe County Public Defender, and Washoe County Alternate Public Defender.

Randolph M. Fiedler, Shelly Richter, and Hannah D. Nelson, Las Vegas,
for Amicus Curiae Nevada Attorneys for Criminal Justice.

Christopher M. Peterson, North Las Vegas,
for Amicus Curiae American Civil Liberties Union of Nevada.

BEFORE THE SUPREME COURT, EN BANC.

OPINION

By the Court, CADISH, J.:

This appeal arises from several consolidated misdemeanor cases originating in the Henderson Municipal Court, all addressing the Henderson City Attorney's challenge to NRS 178.4849(1)'s requirement that pretrial release hearings take place within 48 hours of the accused's arrest. Although the City sought to challenge the statute under Marsy's Law and the separation-of-powers clause of the Nevada Constitution, the threshold issue is whether the City has standing to pursue those constitutional claims.

The municipal court declared NRS 178.4849 unconstitutional under Marsy's Law and separation-of-powers principles, but the district court granted respondents' petition for writ relief, concluding that the City lacked standing to challenge the statute and, alternatively, that NRS 178.4849 is constitutional. The City appeals, arguing that it has both direct and third-party standing because NRS 178.4849's 48-hour deadline impairs prosecutors' ability to investigate and prepare for pretrial release hearings and, for the same reasons, that the statute is unconstitutional.

We conclude that the City has not established standing. The record does not demonstrate a concrete injury to the City's prosecutorial interest that is fairly traceable to NRS 178.4849 or likely to be redressed by the relief sought. Absent such an injury, the City has not established the requirements for either direct or third-party standing, and the public-importance exception to such standing requirements does not apply because the City does not seek to compel a public official to perform a public duty. We therefore do not reach the merits of the City's constitutional challenges but affirm the district court's decision on standing grounds.

FACTS AND PROCEDURAL HISTORY

Before the legislature enacted A.B. 424 in 2021, NRS 171.178 governed the timing of a defendant's initial court appearance after an arrest and required that the accused appear before a magistrate within 72 hours, excluding nonjudicial days. NRS 171.178(3). A.B. 424 amended NRS Chapter 178 to require courts to hold a pretrial release hearing "*within 48 hours after a person has been taken into custody*" to determine the person's custody status. NRS 178.4849(1) (emphasis added); A.B. 424, 81st Leg. (Nev. 2021). A subsequent 2023 amendment authorized courts to continue pretrial release hearings, also known as bail hearings, at the request of either party "for good cause shown" or upon stipulation of the parties. NRS 178.4849(2); S.B. 235, 82d Leg. (Nev. 2023).

This case arises from five misdemeanor prosecutions in the Henderson Municipal Court in which the Henderson City Attorney's Office contended that NRS 178.4849(1)'s 48-hour deadline for pretrial release hearings impaired its ability to satisfy its burden at those hearings. In each case, the defendant was arrested early Saturday or Sunday morning and brought before the municipal court for a bail hearing within 24 hours. The City of Henderson moved to consolidate the five cases and sought a declaration that NRS 178.4849 is unconstitutional under Marsy's Law and the separation-of-powers doctrine. *See* Nev. Const. art. 1, § 8A (entitling crime victims to various rights to participate and have their voices heard in the criminal process), art. 3, § 1 (establishing the mandatory separation-of-government powers). The municipal court consolidated the cases, concluded the City had both direct standing to challenge the statute and third-party standing to assert victims' rights under Marsy's Law, and declared the statute unconstitutional. The municipal court determined that the City had direct standing because NRS 178.4849 "impedes the ability of the prosecutor to establish clear and

convincing evidence required for the imposition of bail during pretrial release hearings." It further concluded that the City had third-party standing based on the close relationship between prosecutors and victims and because the City is best positioned to protect victims' constitutional rights.

Next, the municipal court held that NRS 178.4849 violates Marsy's Law because the 48-hour deadline allegedly prevents prosecutors and the court from obtaining the information necessary to protect victims' constitutional rights. It also concluded that the statute violates the separation-of-powers doctrine because it conflicts with this court's order in ADKT 539 (Order Adopting Statewide Use of the Nevada Pretrial Risk Assessment, March 21, 2019), which requires use of Nevada Pretrial Risk Assessments at bail hearings, and with *Valdez-Jimenez*'s instruction that courts consider each defendant's individual circumstances when evaluating pretrial release. *See Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 164, 460 P.3d 976, 986 (2020). The municipal court thereafter canceled several bail hearings for the following Thursday and Saturday and rescheduled them for a later date, including those for two of the respondents named in this appeal.[1]

Respondents petitioned the district court for a writ of mandamus or prohibition. As relevant here, the district court concluded that the City lacked both direct and third-party standing because it failed to establish a concrete, traceable injury and because victims were not hindered from protecting their own interests. The court further concluded that NRS 178.4849 does not violate Marsy's Law or the separation-of-powers doctrine and, alternatively, that the Henderson Municipal Court lacked jurisdiction to

[1]The cases of those two respondents, Hunter Alexis Dooley and Jacob Vernon Hardy, were consolidated with the other five respondents' cases in the district court.

declare NRS 178.4849 unconstitutional. The court therefore granted respondents' petition. The City appeals.

DISCUSSION

The City of Henderson lacks standing to challenge the constitutionality of NRS 178.4849

We review whether a party has standing de novo. *Nev. Pol'y Rsch. Inst., Inc. v. Cannizzaro* (*NPRI*), 138 Nev. 259, 261, 507 P.3d 1203, 1207 (2022). The City asserts that NRS 178.4849's 48-hour deadline for bail hearings injures prosecutors by impairing their ability to meet their burden at those hearings and to protect victims' rights under Marsy's Law. Respondents argue that any such injury is not traceable to NRS 178.4849 and that the City lacks standing to assert victims' rights. We agree with respondents that the City lacks standing in this case.

Though the Nevada Constitution lacks the "case or controversy" requirement stated in Article III of the United States Constitution, "as a prudential matter and because of the justiciability requirements the separation-of-powers imposes on the Nevada judiciary, our caselaw generally requires the same showing of injury-in-fact, redressability, and causation that federal cases require for Article III standing." *Planned Parenthood Mar Monte, Inc. v. State ex rel. Off. of Nev. Att'y Gen.*, 142 Nev., Adv. Op. 40, 590 P.3d 481, 486 (2026) (quoting *Nat'l Ass'n of Mut. Ins. Cos. v. State, Dep't of Bus. & Indus.*, 139 Nev. 18, 22, 524 P.3d 470, 476 (2023)). Standing ensures that a party has a sufficient personal stake to vigorously and effectively litigate the case. *NPRI*, 138 Nev. at 261-62, 507 P.3d at 1207. To establish standing, the party challenging the constitutionality of a statute must show a concrete, personal injury that is traceable to the allegedly unconstitutional law and not merely a generalized grievance "that is common to all members of the public." *Id.* at 262, 507 P.3d at 1207 (quoting *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d

886, 894 (2016)). The alleged injury "must present an existing controversy" rather than "the prospect of a future problem." *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

We first address the City's contention that NRS 178.4849 injures prosecutors by shortening the time available to gather evidence necessary to show that monetary bail or other conditions of release are warranted. To be sure, prosecutors bear the burden of proving by clear-and-convincing evidence that monetary bail or other conditions of release are necessary to ensure the defendant's appearance or protect the community or victims. *Valdez-Jimenez*, 136 Nev. at 166, 460 P.3d at 987; NRS 178.4851(2). In making that determination, courts consider the factors set forth in NRS 178.4853, including the nature of the offense, the defendant's criminal history and community ties, danger posed to victims, and the likelihood the defendant will engage in further criminal activity.

Marsy's Law separately guarantees victims numerous rights during criminal proceedings, including the right to have their safety and their family's safety considered in setting bail and release conditions and, upon request, to receive notice of and be heard at public proceedings. Nev. Const. art. 1, § 8A(1)(c), (g), (h). Prosecutors play an important role in facilitating those rights, but Marsy's Law grants standing to enforce them only to victims and expressly provides that it "does not alter the powers, duties or responsibilities of a prosecuting attorney." *Id.* § 8A(2).

We acknowledge that NRS 178.4849 compresses the time available to prepare for bail hearings. But standing requires more than showing that a statute makes the prosecutor's job more difficult; it requires a concrete injury fairly traceable to the statute. *NPRI*, 138 Nev. at 262, 507 P.3d at 1207. Although the statute shortens the time available to gather evidence, review

the pretrial risk assessment, and seek victim input, the record does not show that it prevented prosecutors from carrying out those responsibilities. To the contrary, respondents' cases and the City's own 2023 data show that the City's prosecutors routinely fulfilled those obligations at pretrial release hearings, seeking and obtaining monetary bail and no-contact orders to protect victims when appropriate.

The City's examples likewise fail to establish a concrete injury. In respondent Jacob Alexander Navarro-Reyes's case, prosecutors successfully contacted the victim before the hearing, obtained monetary bail, and were granted a no-contact order with the victim, yet Navarro-Reyes assaulted the victim again four months later. Considering the City prevailed in securing monetary bail and a no-contact order, that subsequent assault was not caused by NRS 178.4849's 48-hour hearing requirement. In respondent Virgil Cristobal's case, the prosecutor unsuccessfully attempted to contact the victim before the bail hearing and later learned additional information about Cristobal's criminal history from another county, but the record reflects no injury resulting from the municipal court's pretrial release decision.

The City likewise fails to articulate how NRS 178.4849 materially changed its prosecutorial practices, rendering its alleged injury speculative. *Cf. Crane v. Johnson*, 783 F.3d 244, 254 (5th Cir. 2015) (holding that immigration agents lacked standing to challenge a policy where they failed to "allege[ ] with any specificity *how their practices will change in a substantial way*" under the policy's directive (emphasis added)). Nor has the City shown that, due to NRS 178.4849's 48-hour deadline, it cannot comply with this court's order in ADKT 539 requiring that courts use pretrial risk assessments to better inform pretrial release decisions. The City had access to such risk assessments before the pretrial release hearing in 86.5% of Henderson

Municipal Court cases in 2023. As to the remaining cases, the City identifies no instance in which the absence of a pretrial risk assessment affected the court's release decision. Although a pretrial risk assessment was unavailable for three respondents' hearings, the City has not shown that its absence altered the outcome of those bail hearings. In respondents Bernardo Armendarez's and Louis Anthony Delosrios, Jr.'s cases, the municipal court relied on arrest reports, criminal history information, and past failures to appear in setting monetary bail accordingly; and in Navarro-Reyes's case, the City identifies no information in the risk assessment that would have changed the court's decision to release him on bail with the condition of no contact with the victim.

A plain reading of NRS 178.4849 also undermines the City's assertion that the statute itself caused its alleged injury. The statute provides a means of redress, authorizing the court to continue the pretrial release hearing at either party's request upon a showing of good cause. NRS 178.4849(2). Thus, where additional time is necessary to obtain victim input or await completion of a pretrial risk assessment, the statute itself provides a mechanism for relief.

The City argues that requiring it to request a continuance is itself unconstitutional under *Valdez-Jimenez* because constitutional rights cannot be conditioned on a showing of good cause. But *Valdez-Jimenez* addressed a materially different question. There, the "good cause" requirement in NRS 178.4851(1) burdened a criminal defendant's constitutional right to pretrial release under reasonable conditions. 136 Nev. at 167, 460 P.3d at 987-88. The City has not shown that NRS 178.4849(2) similarly conditions or impairs constitutional rights on which its standing theory depends. Rather, NRS 178.4849(2) permits courts to grant additional time for pretrial release hearings when good cause exists, which may potentially include when the City

cannot contact the victim or the pretrial risk assessment has not yet been completed. Though the Henderson Municipal Court denied several of the City's requests for continuances in respondents' cases, those rulings do not establish that NRS 178.4849 itself caused the City's alleged injury. Nor has the City shown that any denial resulted in a concrete, particularized injury.

Even assuming the City suffered a legally cognizable injury, it cannot establish causation or redressability. *Morency v. State, Dep't of Educ.*, 137 Nev. 622, 625, 496 P.3d 584, 588 (2021) (explaining that standing requires an injury "fairly traced to the allegedly unconstitutional statute and which would be redressed by invalidating the statute" (internal quotation marks omitted)). As discussed above, the statute authorizes continuances for good cause. NRS 178.4849(2). And even after an initial pretrial release determination, the court may consider the defendant's custody status upon motion. *See* NRCrP 5(3). These existing procedures therefore undermine the City's contention that NRS 178.4849 caused its alleged injury. Moreover, the City acknowledged at oral argument that its difficulties arise from staffing limitations and the Henderson Municipal Court's practice of holding weekend bail hearings shortly after arrest, rather than later within the 48-hour period permitted by NRS 178.4849(1). The municipal court, however, controls the scheduling of its calendar and the administration of its pretrial release hearings. *See Dornbach v. Tenth Jud. Dist. Ct.*, 130 Nev. 305, 312, 324 P.3d 369, 373-74 (2014) (recognizing the judiciary's inherent authority to manage its docket). Because the City's asserted injury arises from those operational decisions rather than the statutory 48-hour deadline itself, it is not fairly traceable to NRS 178.4849. Nor has the City shown that invalidating NRS 178.4849 would redress its alleged injury. The City does not claim—and certainly does not show—that prosecutors were more successful in contacting

victims or preventing victim harm or pretrial flight under the prior statutory framework, when bail hearings occurred within 72 hours. *See* NRS 171.178. Thus, there is no basis to believe that the City's asserted prosecutorial injury would be redressed by declaring NRS 178.4849 unconstitutional.

Lacking direct standing, the City alternatively asserts third-party standing to vindicate victims' rights under Marsy's Law. But third-party standing still requires the litigant to establish a concrete, particularized injury of its own. *Georgia v. McCollum*, 505 U.S. 42, 55 (1992) (explaining that third-party standing requires that (1) *the litigant suffered a concrete injury*, (2) the litigant has a close relationship with the injured third party, and (3) the injured party is hindered in their ability to protect their own interests). Because the City has not shown that it suffered a concrete personal injury fairly traceable to NRS 178.4849, it lacks third-party standing to assert victims' rights in this case.

We do not decide whether, or under what circumstances, a prosecutor may have standing to assert victims' rights under Marsy's Law or other legal authorities. It is sufficient to conclude that, on this record, the City has not established the threshold injury necessary to invoke either direct or third-party standing. We recognize that prosecutors have important responsibilities to protect victims' interests while representing the State in criminal proceedings. *Commonwealth v. Bing Sial Liang*, 747 N.E.2d 112, 115 (Mass. 2001) (observing that before the rise of victim advocacy groups, "[p]erformance of these functions had traditionally fallen to the prosecutors themselves"); *State v. Casey*, 44 P.3d 756, 764 (Utah 2002) ("In light of the fact that prosecutors must defend and uphold the State's interest in procuring justice, they have an obligation to ensure that the constitutional rights of crime victims are honored and protected."); American Bar Association, *Criminal*

Justice Standards for the Prosecution Function, Pt. 1, Standard 3-1.2(b) (4th ed. 2017) https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecution-function ("The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants."). But regardless of the nature of that relationship, a prosecutor invoking third-party standing must first establish a concrete injury of its own. Because the City has failed to do so here, we need not address the remaining elements of third-party standing.

The public-importance exception does not confer standing on the City

The City alternatively contends that it has standing under the public-importance exception because it raises a separation-of-powers challenge under the Nevada Constitution. Although Nevada recognizes a limited exception to the personal-injury requirement in certain cases involving constitutional challenges, that exception extends to separation-of-powers claims only when the plaintiff seeks to compel "a public official's compliance with a public duty" and "the issue is likely to recur" and "requires judicial resolution for future guidance." *NPRI*, 138 Nev. at 263-64, 507 P.3d at 1208; *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894-95 (2016).

That exception does not apply here. The City does not seek to compel a public official to perform a constitutional public duty. Rather, it seeks a declaration that NRS 178.4849 is unconstitutional in criminal proceedings involving private defendants. Neither does the City seek to challenge the conduct of a public official in the manner contemplated by *NPRI*, where the plaintiff sought to enforce the separation-of-powers clause against legislators who simultaneously held executive branch employment and who were named as defendants in the case. 138 Nev. at 260, 263-64, 507 P.3d at 1206, 1208.

The public-importance doctrine thus does not confer standing on the City. And because we conclude that the City lacks standing, we do not address whether NRS 178.4849 contravenes Marsy's Law or the Nevada Constitution's separation-of-powers clause. Likewise, we do not address respondents' claim that the Henderson Municipal Court lacked jurisdiction to declare NRS 178.4849 unconstitutional. Accordingly, we affirm the district court's order granting respondents' petition for a writ of mandamus or prohibition.

CONCLUSION

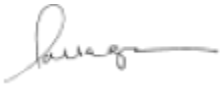
The City of Henderson fails to show a concrete, particularized injury traceable to NRS 178.4849's requirement that pretrial release hearings occur within 48 hours of the accused's arrest. Though NRS 178.4849 shortened the time in which prosecutors must establish by clear-and-convincing evidence that bail or other pretrial release conditions are necessary, the City met that burden in the five respondents' cases where the municipal court held bail hearings in compliance with NRS 178.4849. Moreover, the record does not show any alleged injury resulted from the statute other than staffing shortages and weekend scheduling issues with the Henderson Municipal Court. Nor has the City shown that declaring NRS 178.4849 unconstitutional would redress its alleged injury, as it does not claim that prosecutors were more successful in contacting victims before NRS 178.4849's enactment, when NRS 171.178 governed pretrial release hearings. Because the City has not established injury, causation, or redressability, it lacks standing. Having failed to show a concrete injury, it also necessarily lacks third-party standing to assert victims' rights under Marsy's Law. Finally, the public-importance exception for

separation-of-powers challenges does not apply because the City does not seek to compel a public official to perform a public duty. We therefore affirm.



Cadish, J.

We concur:



Parraguirre, J.



Bell, J.



Stiglich, J.



Lee, J.

HERNDON, C.J., with whom PICKERING, J., agrees, dissenting:

I disagree with my colleagues' conclusion that the City of Henderson does not have standing to challenge NRS 178.4849. Standing is a cornerstone of justiciability and determines whether a party has sufficient interest in a case or controversy to invoke judicial scrutiny. In its appeal, the City argues that it has both direct standing because the statute's 48-hour deadline impairs prosecutors' ability to prepare for and conduct pretrial release hearings, as well as third-party standing to assert victims' rights under Marsy's Law. I believe the City is correct on both points.

"A prosecutor has the obligation to guard the rights of the accused as well as to enforce the rights of the public." *State v. James*, 520 N.W.2d 399, 405 (Minn. 1994) (internal quotations omitted). Because the majority gives too little weight to a prosecutor's responsibility and the potential harm caused by 48-hour bail hearings that occur absent critical information, I respectfully dissent.

Direct standing

To demonstrate direct standing to bring a constitutional challenge, a party must demonstrate actual injury, causation, and redressability. *Nat'l Ass'n of Mut. Ins. Cos. v. State, Dep't of Bus. & Indus.*, 139 Nev. 18, 22, 524 P.3d 470, 476 (2023). The injury must involve "an invasion of a legally protected interest" that is "concrete and particularized," as well as "actual or imminent," rather than "conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted). The majority concludes the City has not demonstrated the actual injury required for standing.

Prosectors represent the government in criminal proceedings and broadly serve the community. In the context of bail hearings, the prosecution bears the burden to prove that bail is necessary to ensure a defendant's future

presence or protect the community. *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 166, 460 P.3d 976, 987 (2020). NRS 178.4849 directly affects how prosecutors manage their obligations at bail hearings. The shortened timeline may prevent prosecutors from obtaining the Nevada Pretrial Risk Assessment (NPRA), as required by this court's order in ADKT 539 (Order Adopting Statewide Use of the Nevada Pretrial Risk Assessment, March 21, 2019), and ensuring the court makes an informed bail determination to protect the victim and the public. The majority is quick to point out that the risk assessments were available in 86.5% of Henderson cases. Majority op. at 8-9. Of course, that means that prosecutors did not have an NPRA at 13.5% of bail hearings before the Henderson Municipal Court. Likewise, the compressed timeline means prosecutors will have to conduct bail hearings without sufficient victim input in some cases, leaving them with incomplete information to safeguard the community. This is concrete harm caused by NRS 178.4849.

It cannot be that harm occurs only when a released person hurts someone while free on bail. Rather, the harm first occurs when prosecutors cannot fully discharge their duty to the public, thereby putting members of the public at risk. *See, e.g.*, *In re Segal*, 617 A.2d 238, 244 (N.J. 1992) ("If [the prosecutor] fails or refuses to act, the law is voiceless and powerless. It is paralyzed." (internal quotations omitted)); *State ex rel. Skinner v. Dostert*, 278 S.E.2d 624, 631 (W. Va. 1981) ("[T]he public has rights as well as the accused, and one of the first of these is that of redressing or punishing their wrongs." (internal quotations omitted)); *Sprinkle v. State*, 368 So. 2d 554, 561 (Ala. Crim. App. 1978) ("The prosecuting attorney owes a duty to exercise his full powers in furtherance of society's valid and strong interest in enforcement of criminal laws . . . ."); *Ambles v. State*, 383 S.E.2d 555, 556 (Ga. 1989) ("The

state has both the duty and the right to protect the security of its citizens by prosecuting crime."). NRS 178.4849's requirement that prosecutors perform their bail hearing responsibilities in a compressed timeline satisfies direct standing. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024) ("Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements."). And the injury to the City's ability to protect specific victims and the public at large is directly traceable to the burden of complying with NRS 178.4849.

The majority also determines the City cannot establish causation or redressability since the prosecutor can request a continuance of the bail hearing upon a showing of good cause and has the ability to seek reconsideration of a bail determination. Majority op. at 9-10. Indeed, the City requested continuances for various reasons (e.g., because the prosecutor could not contact the victim or the NPRA had not been completed) in the individual cases that were consolidated into this appeal. All the requested continuances were denied by the court. Moreover, in one of the cases, the later obtained NPRA categorized the defendant who was released on bail as "high risk."

Further, relying on the ability to request a continuance elides the fact that alternative relief may be an important consideration when evaluating the *merits* of the City's arguments, but it does not deprive the City of standing. *Pennington v. Taylor*, 776 F. Supp. 3d 1118, 1145 (M.D. Ala. 2025) (citing *FEC v. Cruz*, 596 U.S. 289, 298 (2022)). Nor can a statute change constitutional standing requirements. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). Thus, the good-cause requirement cannot deprive the City of standing. With the proper duties of the prosecutor in mind, I believe the City met direct standing requirements in its challenge to NRS 178.4849.

Third-party standing

Having found no injury, the majority declines to further address third-party standing. *See Georgia v. McCollum*, 505 U.S. 42, 55 (1992) (explaining third-party standing requires a party to show (1) they suffered a concrete injury, (2) they have a close relation to the third party, and (3) the third party is hindered in the ability to protect their own interest). As described above, I believe that the City has suffered a concrete injury from the enforcement of NRS 178.4849. I also believe the City satisfies the remaining elements for third-party standing.

As for the close relationship with victims, prosecutors undoubtedly have responsibilities to victims during criminal proceedings. Although victims are not named parties in a criminal complaint, the prosecutor has an ethical obligation to ensure that the constitutional rights of all individuals are protected in a criminal prosecution. Victims of crime generally do not have their own attorneys, but they do have a constitutional right "[t]o be treated with fairness and respect for [their] privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal . . . justice process." Nev. Const. art. 1, § 8A(1)(a). Victims are not victimized just during a crime. Particularly in domestic violence situations, victims potentially must alter how they live. I believe the majority's position ignores the impact on victims caused from knowing their victimizer has been released from custody—without having the victim's voice heard.

The majority discounts this responsibility in the context of Marsy's Law because of its reference to not altering the responsibilities of the prosecutor. Majority op. at 7 (citing Nev. Const. art. 1, § 8A(2)). But the prosecutor's responsibility to victims existed before the adoption of Marsy's Law. *See* Jonathan Barth, *Criminal Prosecution in American History: Private*

or Public?, 67 S.D. L. Rev. 119, 138 (2022) (discussing how early public prosecutors prosecuted cases on behalf of the victim).

Here, the compression of time forces the prosecutor to make critical decisions without the benefit of important reports and information. This lack of this information could impact the safety of the victims and the members of the community. It also violates the prosecutor's duty to protect the victim and make confident, informed decisions. Thus, I believe the City satisfies the close relationship prong of third-party standing.

Regarding the third prong (hindrance to the third party's ability to protect their interest), while victims can pursue their rights under Marsy's Law to be heard during a criminal proceeding, Nev. Const. art. 1, § 8A(1)(h), they are not parties to the underlying criminal case, *id.* § 8A(2); *United States v. Aguirre-Gonzalez*, 597 F.3d 46, 53 (1st Cir. 2010). Due to NRS 178.4849, a victim has only 48 hours to, among other things, learn about an arrest; learn, through prosecutors, about court proceedings; and make arrangements, if even possible, to be present in court in order to vindicate their right under Marsy's Law to be heard at the bail hearing. This time, especially for victims of violent crime, is stressful and traumatic. *See* Chris R. Brewin, Bernice Andrews & Suzanna Rose, *Diagnostic Overlap Between Acute Stress Disorder and PTSD in Victims of Violent Crime*, 160(4) Am. J. Psychiatry 783, 783 (2003) (discussing the presence of PTSD and acute stress disorder in victims of violent crime). NRS 178.4849, as a result, interferes with the victim's right to be heard on the bail determination. In my opinion, this is enough of a hindrance to vindicating victims' rights to allow a prosecutor to assert those rights on behalf of crime victims. *Cf. Singleton v. Wulff*, 428 U.S. 106, 117-18 (1976) (allowing a doctor to assert third-party standing on behalf of their patients when a patient's claim would be mooted before they could file claim). So, the City has

established that there is a hindrance to victims vindicating their rights under Marsy's Law. Thus, the City has established third-party standing to challenge NRS 178.4849 on behalf of crime victims.

To be sure, "[t]he government's interest in preventing crime by arrestees is both legitimate and compelling." *United States v. Salerno*, 481 U.S. 739, 749 (1987). At the end of the day, the prosecutor's goal is to ensure that "justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). NRS 178.4849 directly impacts prosecutors' ability to protect public safety and victims' interests. In my view, the majority does not give sufficient weight to the important functions of prosecutors and the role they play in vindicating the rights of victims.

The majority does not reach the merits because it concludes the City lacks standing to be heard. I disagree and would reach and resolve the City's challenge on the merits.



Herndon, C.J.

I concur:



Pickering, J.