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9 SCENIC NEVADA, INC.

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11 IN AND FOR THE COUNTY OF WASHOE

12 SCENIC NEVADA, INC.,

13 Petitioner,

Case No. CV17-00361

14 vs.

Dept. 9

15 CITY OF RENO, a political subdivision
16 of the State of Nevada, and the CITY
17 COUNCIL thereof,

18 Respondent.

19 _____ /
20 **SCENIC NEVADA’S OPPOSITION TO LAMAR CENTRAL OUTDOOR, LLC’S**
21 **MOTION TO INTERVENE**

22 It is neither necessary nor appropriate for Lamar Central Outdoor, LLC (“Lamar”)
23 to become a party to this proceeding, and it is therefore respectfully requested that
24 Lamar’s motion to intervene under NRCP 24(a) or (b) be denied.

25 **I**

26 **BACKGROUND**

27 Scenic Nevada’s petition challenges the February 8, 2017 resolution of the City
28 Council to allow banked receipts issued prior to October 24, 2012 to be used to construct

1 new billboards within Reno’s city limits. The petition is a legal challenge to the
2 Council’s resolution, based on the decision in *Scenic Nevada, Inc. v. City of Reno*, 373
3 P.3d 873 (Nev. 2016). The City is defending its resolution, and pursuant to the March 8,
4 2017 Order for Briefing Schedule, Scenic Nevada and the City have fully briefed the
5 issues.

6 Lamar moves to intervene on the grounds that on January 7, 2016, it purchased
7 from Clear Channel Outdoor 61 banked receipts issued prior to October 24, 2012, and
8 that it allegedly must intervene to protect its interest in those banked receipts.

9
10 **II**
DISCUSSION

11 NRS 12.130 states that “any person . . . who has an interest in the matter in
12 litigation, in the success of either of the parties, or an interest against both” may intervene
13 in an action as provided by the Nevada Rules of Civil Procedure.

14 NRCPC 24 governs two kinds of intervention: intervention of right and permissive
15 intervention.

16 **A. Lamar Should Not Be Allowed to Intervene As of Right**

17 NRCPC 24(a) governs intervention of right, where “the applicant claims an interest
18 relating to the [subject] property . . . and the applicant is so situated that the disposition of
19 the action may as a practical matter impair or impede the applicant's ability to protect that
20 interest, *unless the applicant's interest is adequately protected by existing parties.*”

21 (emphasis added). Under the rule itself, therefore, intervention of right should not be
22 granted if Lamar’s interest is adequately protected by the City of Reno. The City of Reno
23 already has filed its answering brief in this case, raising a host of procedural defenses to
24 Scenic Nevada’s petition.

25 Borrowing directly from the language of the rule, Nevada case law holds that an
26 applicant for intervention of right must show “(1) that it has a sufficient interest in the
27 litigation's subject matter, (2) that it could suffer an impairment of its ability to protect
28 that interest if it does not intervene, (3) *that its interest is not adequately represented by*

1 *existing parties*, and (4) that its application is timely.” *Am. Home Assur. Co. v. Eighth*
2 *Judicial Dist. Court*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006). (emphasis
3 added). *Id.* at 1238, 147 P.3d at 1126. “Determining whether an applicant has met these
4 four requirements is within the district court's discretion.” *Id.*

5 Scenic Nevada respectfully submits that the District Court should deny Lamar’s
6 application for intervention of right because Lamar is unable to satisfy the third prong,
7 that is, that its interest is not adequately represented by existing parties. The on-point
8 case is *Hairr v. First Judicial Dist. Court*, 368 P.3d 1198 (Nev. 2016), in which
9 intervention was denied because the applicant’s interests were adequately represented by
10 the State of Nevada. *Hairr* arose out of the passage of SB 302, which permitted parents
11 to obtain vouchers from the state for their children to attend private school. A group of
12 parents challenged the constitutionality of SB 302, and the State of Nevada defended.
13 Other parents who wanted the vouchers for their children sought to intervene to assist the
14 court to focus “the effect of the challenged law on its real beneficiaries, the parents and
15 children.” The parent who brought the action opposed the motion to intervene; the state
16 did not.

17 The instant case and *Hairr* are highly similar. Here, like *Hairr*, a party is
18 challenging the constitutionality of a law, the government is defending, and a party who
19 claims an interest in the subject matter wants to intervene. Also like *Hairr*, the party
20 who brought the action is opposing the motion to intervene, and the government is not.

21 In *Hairr*, the court held that “[t]he most important factor in determining the
22 adequacy of representation is how the interest compares with the interests of existing
23 parties [and] when an applicant for intervention and an existing party have the same
24 ultimate objective, a presumption of adequacy of representation arises.” *Id.* at 1201. In
25 addition, the court held in *Hairr* that “there is an ‘assumption of adequacy when the
26 government is acting on behalf of a constituency it represents,’ and ‘[i]n the absence of a
27 “very compelling showing to the contrary,” it will be presumed that a state adequately
28 represents its citizens when the applicant shares the same interest.” *Id.* The court also

1 cited to its prior holding in *Lundberg v. Koontz*, 82 Nev. 360, 362-63, 418 P.2d 808, 809
2 (1966) (denying a motion to intervene of right on the basis that the interests of the
3 intervenor applicants were adequately represented by the State because the single issue
4 raised was an issue of law on which the applicants and the State sought the same
5 outcome). *Hairr*, at 1201.

6 Without question, the City of Reno and Lamar have the same ultimate objective.
7 They want Scenic Nevada’s petition for writ of mandate to be denied, and, as a corollary,
8 for the City Council’s resolution of February 8, 2017 to be upheld. There is a
9 presumption of adequate representation in that the City of Reno is acting on behalf of a
10 constituency it represents. This presumption controls in the absence of a compelling
11 showing to the contrary, and Lamar has made no such compelling showing, as required
12 by *Hairr*.

13 The court also pointed out in *Hairr* that the proposed intervenors did not identify
14 any conflicting interest or point to any arguments that the government was refusing to
15 make in support of SB 302’s constitutionality. *Hairr*, at 1202. “To the contrary, the
16 State has shown its willingness to fully defend the bill, including through appeal.” *Id.* In
17 this respect as well, *Hairr* is on-point with respect to the instant case. Clearly, there is no
18 conflicting interest between the City and Lamar. The City of Reno has aligned itself in
19 favor of the interests of the billboard companies ever since the passage of the citizens’
20 ballot initiative of 2000. *See, e.g., Scenic Nevada’s Petition for Writ of Mandate*, ¶¶ 16-
21 17, 21, 37-39.

22 Additionally, any arguments that Lamar wishes to make can be made by the City
23 of Reno. In fact, the City of Reno’s response to Scenic Nevada’s petition for mandamus
24 raises nearly identical arguments as those in the proposed response of Lamar, namely,
25 that Scenic Nevada is using the wrong procedural remedy, and the action is barred by the
26 statute of limitations and laches. The City has in fact raised more arguments in its brief
27 than those proposed by Lamar’s brief. And even though the City’s and Lamar’s
28

1 responses to the petition for mandate are slightly different, “use of different legal
2 arguments and strategies is not per se inadequate representation.” *Hairr*, at 1202.

3 Accordingly, in light of the holding in *Hairr* and the similarity of *Hairr* to the
4 instant case, Scenic Nevada respectfully requests that the motion to intervene of right be
5 denied.

6 **B. Lamar’s Motion for Permissive Intervention Should Be Denied**

7 Permissive intervention may be granted under NRCP 24(b) when “an applicant's
8 claim or defense and the main action have a question of law or fact in common. In
9 exercising its discretion the court shall consider whether the intervention will unduly
10 delay or prejudice the adjudication of the rights of the original parties.”

11 In *Hairr*, the district court denied permissive intervention based on the potential
12 for delay and increased costs, “which it determined would come with no measurable
13 benefit to the court's ability to determine the legal and factual issues in the case.” *Hairr*,
14 at 1202. In addition, the district court found that the parties moving to intervene violated
15 NRCP 24(c)'s procedural requirements “and instead filed numerous documents, including
16 an opposition to plaintiffs' preliminary injunction motion, a filing in support of the State's
17 motion to dismiss, and notices to substitute and associate counsel even though they were
18 not parties and had no legal basis to do so.” *Id.*

19 As the court pointed out in *Hairr*, “[a] district court's ruling on permissive
20 intervention is subject to ‘particularly deferential’ review. *Hairr*, at 1202. “Permissive
21 intervention ‘is wholly discretionary with the [district] court. . . and even though there is
22 a common question of law or fact, or the requirements of Rule 24(b) are otherwise
23 satisfied, the court may refuse to allow intervention.”” *Id.*, citing 7C Charles Alan Wright
24 et al., *Federal Practice and Procedure* § 1913 (3d ed. 2007).

25 The district court in *Hairr* denied permissive intervention, and on review, the
26 Supreme Court affirmed, stating: “The district court properly considered the potential for
27 delay and increased costs to the parties, as required by NRCP 24(b)(2), and although
28 petitioners argue that the district court merely mentioned generalized concerns in this

1 regard, this is precisely the type of fact-based judgment determination entitled to
2 particular deference by a reviewing court. Thus, petitioners have not demonstrated that
3 the district court clearly abused its discretion in denying permissive intervention on this
4 score.” *Hairr*, at 1202.

5 Very similar to the circumstances in *Hairr*, Lamar proposes to increase costs of
6 this action to the parties, and to cause delay, “with no measurable benefit to the court's
7 ability to determine the legal and factual issues in the case.” Like the litigants who
8 sought to intervene in *Hairr*, Lamar already has filed motions to intervene and motions to
9 consolidate. The costs already have increased simply by having to respond Lamar’s
10 motions, let alone the additional cost that will be incurred in filing a reply to Lamar’s
11 proposed response to Scenic Nevada’s petition. In addition to increased costs, the
12 addition of more parties and the time to respond to another set of briefs causes delay.
13 These additional costs and delay have no corresponding benefit, because the Court is able
14 to determine the factual and legal issues in the case based on the brief filed by the City.
15 As an addition circumstance, Scenic Nevada, a non-profit, volunteer organization, is not
16 in a position to carry the additional load of more parties, more briefs, and more litigation,
17 but even if it was a for-profit corporation, there is no benefit accruing to the court or the
18 parties that would justify requiring Scenic Nevada to bear this additional cost and delay.

19 Again, because of the similarity of the facts and holding in *Hairr* to the instant
20 case, Scenic Nevada respectfully requests that Lamar’s motion for permissive
21 intervention be denied.

22 **C. As An Alternative to the Motion to Intervene, Lamar’s Proposed**
23 **Response May Be Considered as an Amicus Brief**

24 In *Hairr*, the district court invited the putative intervenors to file an amicus curiae
25 brief as an adequate alternative to permissive intervention. *Hairr*, at 1203. Lamar
26 already has prepared a proposed brief, which is attached to its motion to intervene. If this
27 were filed as an amicus curiae brief, Scenic Nevada would not have to respond and the
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1 hearing on the petition for writ of mandate could be scheduled between Scenic Nevada
2 and the City Attorney's office without further delay.

3 **III**

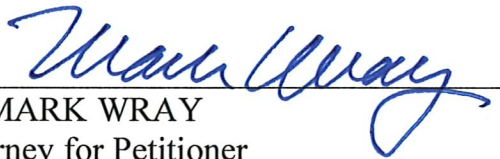
4 **CONCLUSION**

5 For the foregoing reasons, it is respectfully requested that Lamar's motion to
6 intervene be denied and that the Court award all other appropriate relief.

7 *The undersigned certifies that the foregoing document does not contain the Social*
8 *Security number of any person.*

9
10 DATED: April 17, 2017

LAW OFFICES OF MARK WRAY

11
12 By 
13 MARK WRAY
14 Attorney for Petitioner
15 SCENIC NEVADA, INC.
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