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### Summary of O'Connor v. Mallory, 128 Nev. Adv. Op. No. 41

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## ELECTIONS – TERM LIMITS

### **Summary**

A defendant appealed a district court's denial of the defendant's petition to set aside the election of the Churchill County District Attorney (DA) to his fourth consecutive term, arguing that his election unconstitutionally violated term limits for state officers.

### **Disposition/Outcome**

The Supreme Court of Nevada affirmed the district court's judgment that found the DA's election valid because district attorneys are "county officers," and therefore not subject to term limits under the "state office" portion of Article 15, Section 3(2) of the Nevada Constitution, which limits term limits of state officers to no more than twelve years.

### **Factual and Procedural History**

The issue before the Court arose from Arthur E. Mallory's fourth consecutive election as the Churchill County DA. John O'Connor, a registered voter within Churchill County, brought a petition to set aside Mallory's victory under two statutes. The two statutes were NRS.407(1), which allows a registered voter in the proper region to challenge the election of any candidate, and NRS 293(2)(b), which allows a voter to challenge an election when "a person who has been declared elected to an office was not at the time of election eligible to that office."<sup>2</sup> Also, he argued that Article 15, Section 3(2) of the Nevada Constitution limits district attorneys' duration of service to a maximum of twelve years.<sup>3</sup> The district court, however, denied this petition and agreed with Mallory that Nevada's term limits do not apply to district attorneys.

### **Discussion**

Justice Saitta wrote for the Court sitting en banc. The Court first noted that in issues of statutory application, it starts its analysis with the statute's plain language.<sup>4</sup> It noted that Nevada's Constitution states that individuals elected to a "state office" or "local governing body" may only serve for twelve years unless the Constitution provides otherwise.<sup>5</sup> However, the Constitution also grants the Legislature the power to authorize "county officers," including district attorneys.<sup>6</sup> Because of this clear distinction, the Court concluded that the office of

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<sup>1</sup> By Colin Seale

<sup>2</sup> NEV. REV. STAT. 293.407(1) (1981); NEV. REV. STAT. 293.410(2)(b) (1977).

<sup>3</sup> Nev. Const. art. XV, § 3, cl. 2.

<sup>4</sup> See *Sec. of State v. Burk*, 124 Nev. 579, 590, 188 P.3d 1112, 1119-20 (2008).

<sup>5</sup> Nev. Const. art. XV, § 3, cl. 2.

<sup>6</sup> Nev. Const. art. IV, § 32. ("The Legislature shall have the power to increase diminish, consolidate or abolish the following county officers: County Clerks, County Recorders, Auditors, Sheriffs, District Attorneys and Public Administrators.")

district attorney cannot be a "state office" and is not subject to term limits under the "state office" provision of the Nevada Constitution. Thus, the Court affirmed the district court's denial of O'Connor's reelection challenge. .

### **Conclusion**

District attorneys are "county officers," and therefore not subject to the Nevada Constitution's twelve year term limit for state officers.