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

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS INDENTURE TRUSTEE
FOR AMERICAN HOME MORTGAGE
INVESTMENT TRUST 2006-1,

Case No.: CV11-00584

Dept. No.: 7

Petitioner,

vs.

JOHN D. TRUEX, an individual,

Respondents.

ORDER

Petitioner, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS INDENTURE TRUSTEE FOR AMERICAN HOME MORTGAGE INVESTMENT TRUST 2006-1 (“Petitioner”) filed a *Notice of Case Involving Constitutional Questions* in the above encaptioned case requesting that this Court certify the constitutional question raised in the Supplemental Briefing in this case to the Attorney General’s office.

Legal Standards

If a party questions the constitutionality of an Act of the Legislature in a proceeding in which the state or its agency, officer, or employee is not a party in an official capacity, the questioning party shall give written notice to the clerk of the Supreme Court immediately upon the filing of the docketing statement or as soon as the question is raised in the court. The clerk shall then certify that fact to the Attorney General. NRAP 44. NRAP Rule 1(a) instructs that the Nevada Rules of Appellate Procedure govern procedure in the Supreme Court of Nevada.

1 Nevada Rule of Civil Procedure. Rule 19(a) Persons to Be Joined if Feasible. A person
2 who is subject to service of process and whose joinder will not deprive the court of jurisdiction
3 over the subject matter of the action shall be joined as a party in the action if (1) in the person's
4 absence complete relief cannot be accorded among those already parties, or (2) the person claims
5 an interest relating to the subject of the action and is so situated that the disposition of the action
6 in the person's absence may (i) as a practical matter impair or impede the person's ability to
7 protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of
8 incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed
9 interest. If the person has not been so joined, the court shall order that the person be made a
10 party. If the person should join as a plaintiff but refuses to do so, the person may be made a
11 defendant, or, in a proper case, an involuntary plaintiff.

12 **Discussion**

13 This Court finds that notices pursuant to NRAP 44 are not applicable within District
14 Court proceedings. However, this Court agrees with Petitioner's underlying idea that this case
15 raises substantial constitutional issues that impacts the Foreclosure Mediation Program as a
16 whole and that the State should be provided the opportunity to weigh in. If this Court were to
17 ultimately agree with Petitioner's argument, it would effectively shut down the Foreclosure
18 Mediation Program, at least temporarily, and call into question the validity of prior mediations.
19 It would impair the State's interest in performing a Legislative mandate, would impede the
20 Legislature's intentions in enacting NRS 107.086 and could lead to liability by the State without
21 providing the State the ability to defend itself if it is found that the Administrator of the
22 Foreclosure Mediation Program has acted unconstitutionally and wrongfully prevented financial
23 institutions from exercising their statutory rights under NRS 107.080. *See, University of Nevada*
24 *v. Tarkanian, 95 Nev. 389 (1979).* The absence of the Administrator of the Foreclosure
25 Mediation Program and the State of Nevada could render any decision by this Court on these
26 constitutional issues void. *See, Provident Bank v. Patterson, 390 U.S. 102 (1968); Schwob v.*
27 *Hemsath, 98 Nev. 293 (1982).*

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CERTIFICATE OF SERVICE

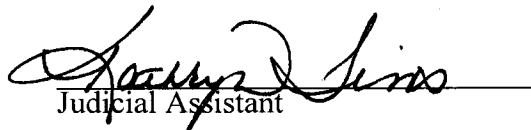
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Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 30 day of June, 2011, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Michael Brooks, Esq. for Deutsche Bank National Trust Company;

Wayne Pressel, Esq. for John Truex;

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


Judicial Assistant