

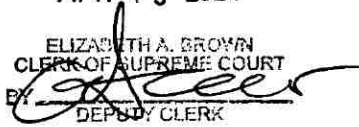
IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA; AND  
NEVADA STATE LEGISLATURE,  
Respondents.

No. 87519

FILED

APR 19 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is a pro se appeal from a district court order granting a motion to dismiss a complaint seeking equitable relief in a civil rights matter. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.<sup>1</sup>

Appellant Brian Kerry O'Keefe sued respondents the State of Nevada and Nevada State Legislature (collectively, the State), seeking an injunction requiring the State to create a procedural mechanism for a person to challenge an allegedly unconstitutional conviction after serving the sentence for that conviction. The district court granted the State's motion to dismiss, finding in relevant part that O'Keefe's claims were barred by the State's legislative and discretionary-function immunity. We review a district court order granting a motion to dismiss de novo. *Buzz*

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<sup>1</sup>Having considered appellant's pro se brief, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. See NRAP 34(f)(3).

*Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

Because O’Keefe’s complaint sought to compel the State to enact specified legislation, an act committed solely to the discretion of the Legislature, we agree that O’Keefe’s claims are barred by legislative and discretionary function immunity. See Nev. Const. art. 4, § 1 (vesting legislative authority in the Nevada Legislature); NRS 41.032 (providing immunity to State agencies “[b]ased upon the exercise or performance or the failure to exercise or perform a discretionary function or duty”); NRS 41.071(1)(h) (providing legislative immunity from judicial proceedings for “actions performed within the sphere of legitimate legislative activity”); *Legislature of Nev. v. Settlemeyer*, 137 Nev. 231, 239-40, 486 P.3d 1276, 1283-284 (2021) (holding that dismissal is proper where the claims are barred by legislative immunity); *Hagblom v. State Dir. of Motor Vehicles*, 93 Nev. 599, 604-05, 571 P.2d 1172, 1175 (1977) (holding that the district court did not err in dismissing claims which “allege[ ] liability premised solely upon acts discretionary and squarely within the protected penumbra of immunity”). Further, because “the plain language of Nevada’s [Constitution] demonstrates a clear, textual” intent that the Legislature has exclusive legislative authority in Nevada, “judicial review is precluded by the political question doctrine.” *Shea v. State*, 138 Nev., Adv. Op. 36, 510 P.3d 148, 155 (2022). Thus, we conclude that the district court did not err by dismissing O’Keefe’s complaint, given that the State’s immunity means that O’Keefe “could prove no set of facts, which, if true, would entitle [him] to relief.” *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672; see also *Kellar v. Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971) (explaining that “a

motion to dismiss is proper” when an affirmative defense “appears from the complaint itself”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.



\_\_\_\_\_, J.  
Herndon



\_\_\_\_\_, J.  
Lee



\_\_\_\_\_, J.  
Bell

cc: Hon. Jim C. Shirley, District Judge  
Brian Kerry O'Keefe  
Attorney General/Carson City  
Attorney General/Las Vegas  
Legislative Counsel Bureau Legal Division  
Clerk of the Court/Court Administrator