

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

NEWS+MEDIA CAPITAL GROUP  
LLC, a Delaware limited liability company;  
and LAS VEGAS REVIEW-JOURNAL,  
INC., a Delaware limited liability  
company,

Appellants/Cross-Respondents

vs.

LAS VEGAS SUN, INC., a Nevada  
corporation,

Respondent/Cross-Appellant.

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Elizabeth A. Brown  
Clerk of Supreme Court  
District Court Case No. 17-259

**APPELLANTS' AND CROSS-RESPONDENTS' OPPOSITION TO  
MOTION TO EXPEDITE APPEAL**

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**NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellant/Cross-Respondents News+Media Capital Group LLC (“News+Media”) and Las Vegas Review-Journal, Inc. (“Review-Journal”) are nongovernmental parties. Review-Journal is a wholly owned subsidiary of News+Media, and News+Media is a wholly owned subsidiary of Orchid Flower LLC. No publicly held corporation owns more than 10% of any of these entities’ stock.

Appellants/Cross-Respondents have been represented throughout this litigation by attorneys at the law firms of Boies Schiller Flexner LLP, Morris Law Group, Kemp Jones, LLP, and Jenner & Block LLP.

DATED this 16th day of April, 2020.

KEMP JONES, LLP

*/s/ J. Randall Jones*

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## **I. Introduction**

This case is not an emergency. It is a business dispute manufactured by the Sun's owner, Brian Greenspun, to harass the Review-Journal into paying exorbitant sums to buy him out of the joint operating arrangement (JOA) between the two newspapers. Before this litigation started, Greenspun offered to end the Sun newspaper if the Review-Journal would pay him millions of dollars and provide space for his own editorial column in the Review-Journal. The Review-Journal agreed to Greenspun's initial demand, but just when it looked like a deal had been reached, Greenspun demanded even more outrageous amounts and threatened to make a nuisance of himself by demanding audits and filing lawsuits unless the Review-Journal agreed to a much higher price. The arbitration at issue in this appeal arose from one of the multiple lawsuits he filed to make good on his threat.

Now, in the throes of a global health crisis, Greenspun is asking this Court to accelerate the briefing schedule and ban any extension requests. There would be no basis to expedite this appeal in normal times—and these are not normal times. The COVID-19 pandemic has virtually the entire country sheltered in their homes, businesses shuttered, people adjusting to remote work amid unprecedented uncertainty, and the Review-Journal doing everything it can just to get the news out to the community. On March 17, this Court postponed all scheduled oral arguments indefinitely due to the crisis. Nobody knows when it will be safe to resume business as usual, or how large the Court's backlog will be when that time comes.

Demanding shortened deadlines during a global pandemic is just another example of Greenspun trying to pressure the Review-Journal into paying him millions for a buyout. This is not even the only case he is trying to speed up. Last week, the Sun moved for an expedited trial and immediate discovery in its overlapping federal lawsuit against the Review-Journal, which the Sun claims will involve 40 depositions and 16 experts. The Sun filed that motion even though the federal court has postponed all jury trials, and most of the Review-Journal's employees and attorneys, like the rest of the country, are trying to do their jobs from home.<sup>1</sup>

Greenspun's claim that the Sun will go out of business if he is not allowed to jump the line is a sham. His declaration never says that the Sun newspaper—a six- to ten-page insert distributed inside the Review-Journal—would go out of business. He simply states that not having the money he claims he is owed “has forced me to make difficult decisions in other business operations to support the Sun.”<sup>2</sup> This is not the same as the imminent failure of the Sun. It is also unremarkable: businesses across the country make difficult decisions all the time, especially so now. If this were the standard for an expedited appeal, the Court's entire civil docket likely would be expedited.

Moreover, the “improper accounting practice” Greenspun claims is unfairly causing him to lose money is just the act of subtracting expenses from revenues when

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<sup>1</sup> United States District Court, District of Nevada, Amended Temporary General Order 2020-03, <https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Amended-General-Order-2020-03-FINAL.pdf>.

<sup>2</sup> Declaration of Brian Greenspun in support of Motion to Expedite Appeal, ¶ 15.

calculating profit for the purpose of determining the Sun's profit share. This calculation is required by the terms of the JOA and mandated by basic accounting principles. Every owner of the Review-Journal since 2005—when the JOA at issue was executed—has performed the accounting the same way, and the Sun had no problem with it until 2014. A basic accounting method the Sun did not object to for nine years is not an urgent problem worthy of the Court's immediate attention in the midst of a global pandemic.

Additionally, the Sun's suggestion that an expedited appeal is necessary to preserve the only alternative to the Review-Journal is baseless. First, there is no evidence the Sun is going out of business. Second, the Sun is hardly Nevadans' only alternative to the Review-Journal. For example, the Sun's own website, LasVegasSun.com, is outside of the JOA and receives no payments from the Review-Journal (and also shares none of its revenues with the Review-Journal). It will provide a platform for Greenspun's editorial viewpoint regardless of what happens with the printed Sun. The Sun also ignores alternatives such as other local news websites, the internet, social media, television news and the radio.

Greenspun is not entitled to a special schedule that prioritizes this dispute over cases that have been pending longer and may even be further delayed due to the pandemic. The Sun's motion should be denied, and briefing should proceed pursuant to the schedule set in the Court's March 31, 2020, order (Dkt. 20-12233) and this Court's normal procedures.

## II. Factual Background

### A. **The JOA between the Review-Journal and the Sun.**

The JOA at issue in this appeal was executed in 2005. The goal was to replace an earlier JOA, which had been entered in 1989 when the Sun was on the verge of collapse.<sup>3</sup> The 2005 JOA converted the Sun into a six- to ten-page insert inside the Review-Journal. The Review-Journal bears all costs of the Sun's business operations, except for the Sun's editorial costs. The Sun receives an annual profit payment tied to the EBITDA of the Review-Journal's print publications.<sup>4</sup>

### B. **Greenspun uses the Sun insert primarily to promote his website.**

Greenspun uses the Sun insert primarily to drive traffic to the Sun's website, LasVegasSun.com, which is owned by his media company, Greenspun Media Group, and is not part of the JOA, meaning Greenspun and the Sun retain all website profits.

The Sun saves breaking news and original local stories for the website; the paper insert runs mostly syndicated content. For example, between March 5 and March 19, 2020, the website ran 66 local stories related to the COVID-19 pandemic, while the Sun filled its printed insert with syndicated stories like "Should Robots have a Face?" and "Holy Aviary Batman" (a tribute to Robin, the Boy Wonder).

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<sup>3</sup> The Newspaper Preservation Act, 15 U.S.C. §1801, et seq. ("NPA"), grants limited antitrust exemptions to allow joint operating arrangements between a failing newspaper and a successful one willing to help it. Nothing in the NPA guarantees that a newspaper will make money or survive just because it is in a JOA.

<sup>4</sup> EBITDA is a measure of profit (that is, revenues minus expenses) before interest, taxes, depreciation and amortization.

**C. Greenspun repeatedly sues the Review-Journal for more money.**

Greenspun has been complaining about the Sun's compensation and suing Review-Journal owners, past and present, for nearly 20 years. The Sun persistently complained about its compensation during 2002-2004, which led to the 2005 JOA and its new compensation structure. In 2013, Greenspun sued the Review-Journal's then-owner, Stephens Media, for alleged antitrust violations.<sup>5</sup> He sued again in 2015, claiming Stephens should be barred from deducting editorial costs when calculating the Review-Journal's EBITDA to determine the Sun's profit share.<sup>6</sup> The Review-Journal had calculated EBITDA the same way for the nine years before Greenspun ever objected. Greenspun settled confidentially with Stephens Media and dropped the case.

**D. Greenspun tries to bully the Review-Journal into paying \$20 million.**

The Review-Journal's current owners acquired the paper at the end of 2015. They purchased the paper knowing and accepting that the Sun was part of it, and they had no intention of buying out Greenspun. But Greenspun demanded a buyout in his first meeting with the Review-Journal's current owners, and he never stopped.

In May 2017, Greenspun offered to end the Sun print newspaper and replace it with an editorial column that he would write once a week, in exchange for the Review-Journal paying him \$5 million. When the Review-Journal agreed to the deal, Greenspun reneged on his offer, stating that he believed the nuisance value he could create was

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<sup>5</sup> See *Greenspun, et al. v. Stephens Media LLC*, 2:13-cv-01494 (D. Nev. Aug. 20, 2013).

<sup>6</sup> See *Las Vegas Sun, Inc. v. DR Partners*, A-15-715008 (Nev. Dist. Ct. Mar. 10, 2015).

worth perhaps \$20 million. The Review-Journal refused to pay, preferring to use its resources to invest in the newspaper. Livid, Greenspun threatened to audit and sue the Review-Journal until it had no choice but to give in and meet his buyout demands.

In April 2018, after months of harassing the Review-Journal with unreasonable audit demands, the Sun filed this lawsuit, alleging, among other things, that the Review-Journal had breached the 2005 JOA by deducting editorial expenses and certain promotional expenses when calculating EBITDA—the same accounting methodology all of the Sun’s owners had used since 2005.

**E. The arbitrator rewrites the JOA to favor the Sun.**

Certain claims in the lawsuit were arbitrated. Rather than follow the JOA’s detailed instructions in Appendix D on how to calculate EBITDA (the parties even included a template), the arbitrator rewrote the 2005 JOA to prohibit the Review-Journal from deducting editorial expenses and certain promotional expenses when calculating EBITDA. The arbitrator’s ruling, which was affirmed with no analysis by the trial court, can require the Review-Journal to pay the Sun an annual profit share *even if the Review-Journal has no profits to share*, and threatens its long-term ability to provide Nevada citizens with quality news and reporting.



**F. Emboldened, the Sun files new lawsuits and asserts new claims.**

After the arbitrator issued his ruling, the Sun filed a complaint in the U.S. District Court alleging that the “breaches” of the JOA were also violations of antitrust law.<sup>7</sup> Abandoning any pretense of concern about free speech or maintaining editorial voices in Nevada, the Sun is asking the federal court to silence the Review-Journal’s voice by forcibly removing the current ownership group.<sup>8</sup> The Sun also amended its state-court complaint to add new claims and attempt to relitigate issues the Sun lost before the arbitrator. Both cases are pending, and both are part of Greenspun’s promised harassment campaign.

**G. The present appeal.**

The Review-Journal filed this appeal on January 28, 2020, and the Sun filed a cross-appeal. The current deadline for the Review-Journal’s brief is June 29, 2020.

**III. There is no Good Cause to Expedite this Appeal.**

Even in normal times, a departure from the standard briefing schedule requires a showing of good cause. NRAP 2. There is no good cause here. The purported basis for the Sun’s motion—that it is supposedly on the verge of shutting down leaving the Review-Journal as Nevadans’ only editorial voice—is baseless for the following reasons.

First, even setting aside the Sun’s lack of any meaningful news content, it is far from being the only editorial voice competing with the Review-Journal. For example,

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<sup>7</sup> *Las Vegas Sun v. Adelson, et al.*, Case No. 2:19-cv-01667-RFP-BNW (D. Nev. Sept. 24, 2019) (Complaint, Dkt. 1).

<sup>8</sup> *Id.* at ¶¶ 127, 137, 147.

there is the Greenspun-controlled Sun website, which is outside the JOA. Greenspun's media company also publishes three other digital publications in Las Vegas, which collectively boast a combined 4 million monthly page views.<sup>9</sup> And these are just platforms for *Greenspun's* editorial voice. Nevadans have a wealth of *other* competing editorial voices at their fingertips, including the Nevada Independent and the Nevada Current, thousands of other internet sites providing news and opinions, social media, local and national broadcast and cable news programs, and broadcast and satellite radio.

Second, even if the Sun's printed insert were somehow the only other source of news available to Nevadans apart from the Review-Journal (which it obviously is not), Greenspun's argument would still be a sham because his motion contains no evidence the Sun is facing any imminent risk of collapse. Greenspun's declaration conspicuously does not say the Sun is facing financial insolvency. He also noticeably does not promise that any money he might receive from the Review-Journal would be invested in the printed Sun insert, as opposed to the Sun website, or his other publications, or his other business ventures, or just put in his own pocket.

Rather, Greenspun—a multi-millionaire with an array of business interests—simply states that he has been “forced” to “make difficult decisions in other business operations to support the Sun[.]”<sup>10</sup> Greenspun Decl., ¶ 15. This is far from saying the

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<sup>9</sup> See <https://gmgvegas.com/digital.html>.

<sup>10</sup> Greenspun's wealth is no secret. The cannabis business he partially owned recently sold for \$290 million. See Las Vegas-based Essence marijuana operation selling for \$290 million, Nov. 13, 2018, avail. at <https://lasvegassun.com/news/2018/nov/13/las-vegas-based-essence-marijuana-operation-sellin/>.

Sun is going out of business.<sup>11</sup> The Sun’s only expense in connection with the printed Sun insert is the newsroom—and the Sun insert does not even have its own newsroom. Its (non-syndicated) content is from the Sun website. Tellingly, Greenspun does not suggest that the Sun website is going out of business. Moreover, it is unremarkable that the Sun, like nearly every other business in the country, is under increased pressure due to the economic shutdown. As the president of the Reno News and Review recently stated: “*Everyone’s in the same boat economically, so I feel very un-special.*”<sup>12</sup> Greenspun is not entitled to special consideration simply because he has had to shift money around.

Third, Greenspun’s purported concern that the Sun insert is necessary to preserve a competing editorial voice is rendered completely hollow by the fact that he was (and presumably still is) willing to abandon the printed Sun if he can shake enough money out of the Review-Journal.

Fourth, Greenspun’s argument presumes that his victory in this appeal is a foregone conclusion, so the only relevant question is how fast he can get his money. But the arbitration award is seriously flawed—this Court has been clear that arbitrators

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<sup>11</sup> None of the cases the Sun cites involved a party trying to expedite an appeal during a pandemic when the Court was closed for argument. Additionally, the *Review-Journal* case was brought under the Nevada Public Records Act and was entitled to priority over other civil matters by statute. N.R.S. 239.011(2). *Las Vegas Review Journal v. Eighth Judicial Dist. Ct.*, No. 75073 (2018). *Wynn* involved a writ petition to halt the production of sensitive information. *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 406 P.3d 963 (Nev. 2017). And in *Las Vegas Discount Golf*, there were affidavits showing concrete, mounting harm to the county and its taxpayers. *Bd. of Cnty. Comm’rs v. Las Vegas Disc. Golf & Tennis*, 110 Nev. 567, 568-69, 875 P.2d 1045, 1046 (1994).

<sup>12</sup> *We were on borrowed time’: Coronavirus could strike final blow to local newspapers*, THE GUARDIAN, U.S. Edition (Mar. 20, 2020), <https://www.theguardian.com/media/2020/mar/20/local-newspapers-coronavirus-economic-impact> (emphasis added).

are not empowered to rewrite parties' contracts. *Coblentz v. Hotel Employees & Rest. Employees Union Welfare Fund*, 112 Nev. 1161, 1169, 925 P.2d 496, 500-01 (1996); *Wichinsky v. Mosa*, 109 Nev. 84, 89, 847 P.2d 727, 730-31 (1993). Here, the arbitrator imposed a new, unreasonable financial arrangement on the parties that was never agreed to and may drain the Review-Journal's resources over the next 20 years. Moreover, the Sun agreed to this procedure for resolving disputes—arbitration, trial court review, then appeal if necessary. The Review-Journal's rights are just as important as the Sun's.

Finally, an expedited appeal could create serious prejudice. Nobody knows what the next few weeks or months will bring. This is not the time to order accelerated briefing and ban extensions in a routine civil matter. Rather, in times like these, “[t]he Court’s discretion includes taking steps that, notwithstanding their impact on the speed of the ultimate determination of the matter, recognize the severity of the public health crisis and the role of courts and litigants in being public citizens during the crisis.” *Lipsev v. Walmart, Inc.*, No. 19 C 7681, 2020 WL 1322850, \*2 (N.D. Ill. Mar. 20, 2020). Or, to paraphrase a court’s recent denial of an expedited TRO hearing in a trademark infringement case: the world is facing a real emergency. Brian Greenspun is not.<sup>13</sup> The Sun’s motion should be denied.

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<sup>13</sup> *Art Ask Agency v. Individuals, Corporations, Limited Liability Companies, Partnerships and Unincorporated Associations Identified on Schedule A Hereto*, 20-cv-1666, 2020 WL 1427085, \*2 (N.D. Ill. Mar. 18, 2020) (“The world is facing a real emergency. Plaintiff is not.”).

DATED this 16th day of April, 2020.

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## CERTIFICATE OF SERVICE

I certify that I am an employee of Kemp Jones, LLP and that on this date, I caused the foregoing APPELLANTS' AND CROSS-RESPONDENTS' OPPOSITION TO MOTION TO EXPEDITE APPEAL to be served by electronically filing the foregoing with the Clerk of the Supreme Court of Nevada by using the court's electronic filing system, which will send notice of electronic filing to the following:

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