

IN THE SUPREME COURT OF THE STATE OF NEVADA

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KIRSTIN BLAISE LOBATO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

) Case No. 58913

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Mar 19 2012 03:39 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**REPLY TO THE STATE'S OPPOSITION TO MOTION FOR LEAVE  
TO FILE AMICUS CURIAE BRIEF**

COMES NOW, DUSTIN DINGMAN, counsel for the Amicus Curiae, the Justice Institute, and moves this Honorable Court for leave to file this Reply To The State's Opposition To Motion For Leave To Submit Brief As Amicus Curiae. This Reply is made pursuant to and based upon all pleadings and papers on file herein, NRAP Rule 29, and the following Memorandum of Points and Authorities.

Dated this 19th day of March, 2012.

By: 

Dustin Dingman, SBN 7678  
The Law Office of Dustin Dingman  
540 E. St. Louis St.  
Las Vegas, Nevada 89104  
(702) 529-1414  
Attorney For Amicus Curiae



## MEMORANDUM OF POINTS AND AUTHORITIES

The amicus curiae, The Justice Institute (“*Amici*”), respectively submits that this Court grant its Motion For Leave To File Amicus Curiae Brief (“*Motion*”) over the Respondent’s Opposition (“*Opposition*”) for the following reasons.

### A. NRAP 29(c)

The *Opposition* stated the *Motion* omitted: (1) the movant’s interest; and (2) the reasons why an amicus brief is desirable. Then the Respondent (“State”) de facto waived its opposition under NRAP 29(c) by arguing against the *Motion* based on the “movant’s interest” and “the reasons why an amicus brief is desirable.” The State knows that central to Appellant’s opening brief are arguments related to claims of her actual innocence and that her convictions violate her constitutional rights, which the State expresses awareness is an area of special interest to the *Amici*.

The State had a sufficient understanding of the *Amici*’s basis for its *Motion* to vigorously oppose the “movant’s interests” and “why an amicus brief is desirable,” and thus the State was not materially prejudiced by the *Amici*’s omission. Thus the *Amici*’s omission was a harmless procedural error that did not prejudice the State’s rights.

The Brief Of Amicus Curiae The Justice Institute In Support Of Appellant Kirstin Blaise Lobato And Reversal Of The District Court’s Judgment (“*Brief*”) includes a Statement of Interests Of *Amicus Curiae* that stated in part:

The *amicus curiae*, the Justice Institute, promotes awareness of issues related to wrongful convictions in general and specific cases of the possible conviction of an actually innocent person. The Justice Institute is an IRS approved 501(c)(3) non-profit organization...

The Justice Institute operates the website [www.justicedenied.org](http://www.justicedenied.org) founded in 1999 which acts as a resource center and makes information available generally concerning wrongful convictions, and specifically concerning cases of persons with evidence of their actual



innocence seeking post-conviction relief.

And it also stated concisely why “an amicus brief is desirable”:

Consequently, the Justice Institute has a substantial interest in ensuring that courts have correctly interpreted the evidence to convict the guilty and acquit the innocent, and is well-situated to assist this Court in ensuring that post-conviction issues are properly considered under the applicable case law. The Justice Institute’s interest in the judicial system’s proper consideration of post-conviction claims is particularly compelling where a district court’s erroneous rulings have resulted in the continued incarceration of an Appellant the evidence supports is actually innocent. *Id.* at 1.

### **B. The Motion Meets The Ninth Circuit’s Criteria For Being Granted**

The *Opposition* doesn’t cite any Ninth Circuit precedents relevant to the *Motion*.

“An amicus curiae is not a party to litigation.” *Miller-Wohl Co. v. Commissioner*, 694 F.2d 203, 204 (9th Cir.1982) (Amicus curiae “were volunteers.”) In *Hoptowit v. Ray*, 682 F. 2d 1237, 1260 (9th Cir. 1982), an amicus curiae wasn’t a party because it didn’t have control “so that amicus could litigate its views.” See also, *Brown v. Wright*, 137 F.2d 484, 487 (4th Cir. 1943) (“the Administrator would not have been bound by the judgment.”; and *Briggs v. U.S.*, 597 A.2d 370, 373 (D.C. CA 1991) (“Amicus can neither take over the management of the case nor take an appeal therefrom.”)

*Amici* is not a party or litigant in the instant case because an amici is not a party, it is a volunteer, it isn’t bound by the judgment, and it can’t manage the case or appeal the judgment. Consequently, there is no legal basis for the State’s allegation that *Amicus* “has been an active litigant in this case.” *Opposition*, 4.

The *Amici* proffers useful and timely information regarding the Appellant’s opening brief. The *Amici* “is not affiliated with any organization working on



behalf of Kirstin Blaise Lobato.”; it “has not raised or contributed any money toward any defense fund for” the Appellant; and it “has not paid any money to any person, expert, or organization related to an investigation” of the Appellant’s case. See, attached Exhibit 1, nos. 8-13. (hereinafter “*Exhibit 1*”) The *Opposition* erred because the book it references was not authored by the persons cited, but is a compilation of the Appellant’s habeas corpus petition. *Exhibit 1*, 1-3.

*Amici* has “an interest in vindicating federal constitutional rights. There is no rule, however, that amici must be totally disinterested.” *Hoptowit, supra*, at 1260. In the *Amici’s Brief*, “they take a legal position and present legal arguments in support of it, a perfectly permissible role for an amicus.” *Funbus v. California PUC*, 801 F.2d 1120, 1125 (9th Cir.1986) (“amici’s direct interest in the outcome...” wasn’t error.)

Consequently, there is no factual or legal basis for the State’s allegation that *Amicus* “is an adversary party in interest in the litigation.” *Opposition*, 4.

The *Amici* “was not involved in” Appellant’s defense, *Exhibit 1*, and wrote a letter to her direct appeal counsel informing them of news reports about DNA testing. *Exhibit 1*. Consequently, there is no factual or legal basis for the State’s allegations *Amici* “sought to assist Lobato’s defense attorneys,” and *Amici* was “so closely aligned with the Lobato’s defense counsel that the two are indistinguishable. *Opposition*, 3-4.

As it does in cases involving claims of wrongful conviction, the *Amici* independently investigated the Appellant’s case post-conviction. *Exhibit 1*. Investigation of a case by an amicus curiae is permissible, *Briggs, supra*, at 374.

There are three relevant factors for determining if the *Brief* can assist this Court to ensure “that justice may be done.” *Miller-Wohl, supra*, at 204.



First, the Appellant's appeal is "a case of general public interest," *Id.*, that involves claims she is actually innocent, and Appellant's case has attracted local, national and international interest. 10 App. 1982; 6 App. 1295.

Second, the *Brief* "supplement[s] the efforts of counsel," *Id.* Appellant's *pro bono* counsel is representing a post-conviction litigant for the first time. The *Brief* expands on arguments and case law argued in Appellant's opening brief – the length of which is not a consideration under *Miller-Wohl*.

Third, the *Brief* "draw[s] the court's attention to law that escaped consideration." *Id.* The *Brief* raises law not in the Appellant's opening brief. Critical issues of constitutional law will escape this Court's consideration without the *Brief*.

The *Amici* has a special interest in litigants claiming actual innocence, and "An amicus brief should normally be allowed ... when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Community v. Deruyter*, 54 F.Supp.2d 974, 975 (E.D.Wa. 1999).

The *Motion* meets all three *Miller-Wohl* factors for granting the *Motion* and the State is in error that "Amicus ... has no "special interest" or information useful to this Court that can not be competently represented by Lobato's own counsel." *Opposition*, 4.

Exhibits 1 and 2 attached hereto detail the *Opposition* extensively relied on inaccurate and speculative statements regarding the Justice Institute, Michelle Ravell – who was improperly mentioned because she is not affiliated with the Justice Institute – and the Justice Institute's counsel. This Court should take into consideration the State's blatant conveyance of erroneous information intended to



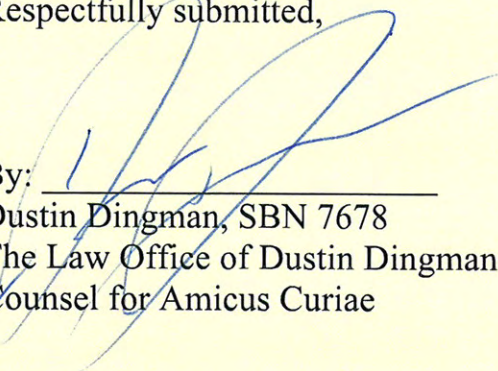
influence this Court's ruling.

**C. Conclusion**

The *Amici* submits that it clearly has an "interest" and "an amicus brief is desirable" in the instant case, which satisfies both substantive requirements of NRAP 29(c). The *Amici* also submits that it exceeds the criteria under Ninth Circuit precedents for this Court to grant its *Motion*.

The Justice Institute therefore respectfully requests that this Court grant its *Motion* and order the filing of its amicus curiae *Brief*.

Respectfully submitted,

By:   
Dustin Dingman, SBN 7678  
The Law Office of Dustin Dingman  
Counsel for Amicus Curiae



**CERTIFICATE OF SERVICE**

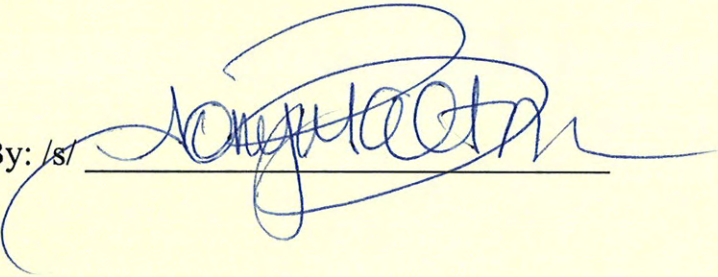
I HEREBY CERTIFY that this document was filed electronically with the Nevada Supreme Court on March 19, 2012. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO  
Nevada Attorney General

TRAVIS BARRICK, ESQ.  
Counsel for Appellant

STEVEN S. OWENS  
Chief Deputy District Attorney

By: /s/



# AFFIDAVIT OF HANS SHERRER

16. Kirstin Blaise Lobato filed a 770-page petition for a writ of habeas corpus in the Eighth District Court, Clark County, Nevada, on May 5, 2010.



17. Kirstin Blaise Lobato's habeas corpus petition is a public document, and her petition is based on her claims of new evidence proving her actual innocence and that her conviction violates her constitutional rights. As a matter of public interest the Justice Institute provided a link on [www.justicedenied.org](http://www.justicedenied.org) for a person to read, download or print Kirstin Blaise Lobato's habeas petition at no charge. For a person wanting a hard copy, a printed version of her petition was made available for the Justice Institute's printing and mailing cost of about \$20.

18. The printed version of Kirstin Blaise Lobato's habeas corpus petition states on its cover: *Kirstin Blaise Lobato vs State of Nevada: Habeas Corpus Petition with Grounds and Exhibits, Compiled* by Hans Sherrer and Michelle Ravell, (underlining added), and it does not state Hans Sherrer is the author and Michelle Ravell is the co-author. (See Exhibit A attached.)

19. Michelle Ravell is not affiliated with the Justice Institute and she has never had any authority to act on behalf of the Justice Institute.

20. Based on publicly available information that included news reports and information on the website of the DNA testing laboratory Bode Technology Group, Hans Sherrer wrote a letter to Kirstin Blaise Lobato's appellate counsel dated January 19, 2009, that specifically stated: "The purpose of this letter is to inform you that there have been several significant advances in DNA testing since Ms. Lobato's conviction in October 2006." (emphasis added) Her appellate counsel did not respond to that letter.

21. It is not unusual for law firms and lawyers who specialize in civil law to be involved in post-conviction issues related to a person claiming innocence and that their conviction violates their constitutional rights.

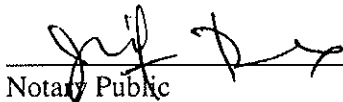
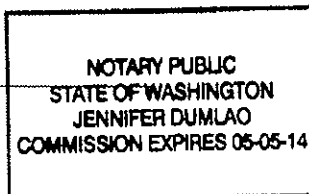
22. Dingman Law Offices, Ltd. is registered according to the Nevada Secretary of State, and when Mr. Dustin Dingman has not answered his business telephone number, 702-529-1414, both during and after business hours, a recorded announcement has stated that Mr. Dingman is not available and for the caller to leave a message, or to send Mr. Dingman a text message or an email. No live person other than Mr. Dingman has ever answered his telephone when Hans Sherrer has called him.

23. The State's "Opposition To Motion For Leave To Submit Brief As Amicus Curiae" -- filed in the Nevada Supreme Court on March 14, 2012 in the case of Kirstin Blaise Lobato vs State Of Nevada, No. 58913 -- contains false statements, unfounded speculation, and/or innuendo regarding the Justice Institute, Hans Sherrer, and other persons named therein.



HANS SHERRER

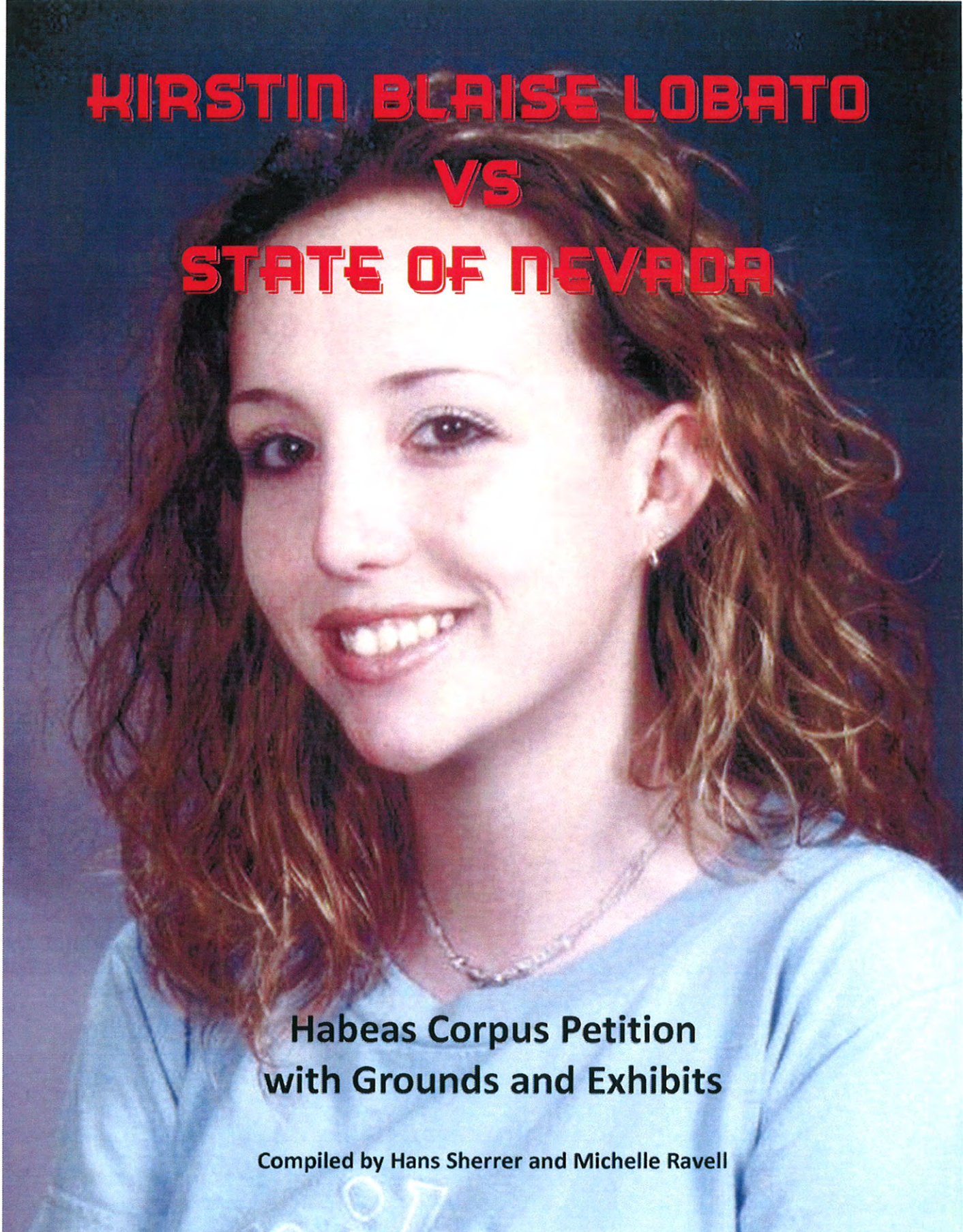
Subscribed And Sworn to before me this 17th day of March, 2012.

  
Notary Public

JENNIFER DUMLAO  
Printed name



# EXHIBIT A

A portrait of a young woman with long, wavy, reddish-brown hair, smiling and looking slightly to the left. She is wearing a light blue t-shirt and a thin chain necklace. The background is a dark, textured blue.

## KIRSTIN BLAISE LOBATO VS STATE OF NEVADA

**Habeas Corpus Petition  
with Grounds and Exhibits**

Compiled by Hans Sherrer and Michelle Ravell



# EXHIBIT 2

## AFFIDAVIT OF MICHELLE RAVELL

State of Nevada )  
                              ) SS:  
County of Clark )

I, MICHELLE RAVELL, first duly sworn, depose and say that the foregoing is true and correct to the best of my knowledge and belief:

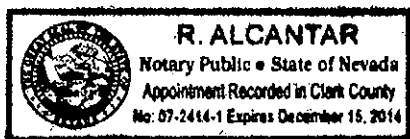
1. I am a bookkeeper who does not have a college-degree or legal education.
2. I did not draft Kirstin Blaise Lobato's post-conviction petition or any motion in her post-conviction proceedings.
3. I did not co-sign Ms. Lobato's post-conviction petition, and page 7 of that petition plainly shows it is signed only by Ms. Lobato. (See attached Exhibit 1.)
4. I did not attempt to make an appearance in court as Ms. Lobato's lawyer.
5. To my knowledge I was not reported to the state bar or considered for criminal charges for the unauthorized practice of law – which I believe based on common sense would have no basis considering the above facts.
6. I did not co-author "Kirstin Blaise Lobato vs State of Nevada: Habeas Corpus Petition with Grounds and Exhibits," which is a compilation of public documents that I assisted to compile.
7. I am not affiliated with the Justice Institute, I have not donated money to the Justice Institute, and I have not received any money from the Justice Institute.

Michelle Ravell  
MICHELLE RAVELL

SUBSCRIBED AND SWORN to before me this 16 day of March, 2012.

Rosa Alcantar  
Notary Public

Rosa Alcantar  
Printed name



Notary Public for CLARK COUNTY  
My Commission expires: 12-15-2014




# EXHIBIT 1

AND POINTS AND AUTHORITIES IN SUPPORT OF THE PETITION


WHEREFORE, Petitioner prays that the court grant Petitioner relief to which he may be entitled in this proceeding; and pursuant to NRS 34.820 moves this Court for an Order to appoint counsel to assist Petitioner in these proceedings.

EXECUTED at FMWCC Prison on 4-29-10, 2008.

  
SIGNATURE  
Kristin Lobato 95558  
PRINT NAME INMATE #

## VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

  
SIGNATURE  
Kristin Lobato 95558  
PRINT NAME INMATE #