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7 **IN THE SUPREME COURT OF NEVADA**

8 HOWARD SHAPIRO and JENNA
9 SHAPIRO

10 Appellants/Cross-Respondents

11 v.

12 GLENN WELT, RHODA WELT,
13 LYNN WELT, and MICHELLE
WELT,

14 Respondents/Cross-Appellants

Supreme Ct. No. 67363
Dist. Ct. No. A-14-706566-C

Respondents' Petition for Rehearing

15 HOWARD SHAPIRO and JENNA
16 SHAPIRO

17 Appellants

18 v.

19 GLENN WELT, RHODA WELT,
20 LYNN WELT, and MICHELLE
WELT,

21 Respondents

Supreme Ct. No. 67596
Dist. Ct. No. A-14-706566-C

22 **APPEAL**

23 From the Eighth Judicial District Court, Clark County

24 The Honorable Nancy L. Allf, District Judge

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1 **Attorney's Certificate of Compliance**

2 1. I certify that this brief complies with the formatting requirements of
3 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because it has been prepared in a proportionally
5 spaced typeface using Microsoft Word 2007 in 14 point Times New Roman.

6 2. I further certify that this brief complies with the page- or type-volume
7 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
8 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or
9 more, and contains 732 words.

10 3. Finally, I certify that I have read this petition, and to the best of my
11 knowledge, information, and belief, it is not frivolous or interposed for any
12 improper purpose. I further certify that this petition complies with all applicable
13 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
14 every assertion in the petition regarding matters in the record to be supported by a
15 reference to the page and volume number, if any, of the transcript or appendix
16 where the matter relied on is to be found. I understand that I may be subject to
17 sanctions in the event that the accompanying petition is not in conformity with the
18 requirements of the Nevada Rules of Appellate Procedure.

19 DATED this 6th day of February, 2017.

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1 **Certificate of Service**

2 Pursuant to NRAP 25, on February 6, 2017 **Respondents' Petition for**
3 **Rehearing** was served upon each of the parties to appeal 67363 via electronic
4 service through the Supreme Court of Nevada's electronic filing.

5
6 BY: */s/ Michael P. Lowry*
7 An Employee of WILSON ELSER
8 MOSKOWITZ EDELMAN & DICKER LL
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1 **Argument**

2 **A. The Court overlooked a material question of law.**

3 The Court’s February 2, 2017 decision addressed one of the two bases upon
4 which the Welts argued their statements qualified for protection under Nevada’s
5 anti-SLAPP statutes. Specifically, the Court concluded the district court’s analysis
6 concerning NRS 41.637(4) was incomplete and remanded the case with
7 instructions for further proceedings. The Court also concluded the district court
8 did not adequately analyze whether Nevada’s absolute litigation privilege applied
9 and remanded that portion of the decision for further proceedings.

10 However, the Court’s decision did not address the Welts’ alternative
11 argument that their statements were protected by NRS 41.637(3). The Welts
12 expressly raised this issue to the district court,¹ again in their November 23, 2015
13 answering brief,² and once more at oral argument on December 7, 2016. In
14 examining the Court’s decision, the Welts did not find any reference to the
15 argument, the statute, or a footnote explaining that those arguments not addressed
16 in the decision were summarily rejected.

17 The district court’s order granting the Welts’ motion to dismiss did not
18 expressly address NRS 41.637(3), however, “[t]his court will affirm a district
19 court’s order if the district court reached the correct result, even if for the wrong
20 reason.”³ If the Welts’ alternative argument to apply NRS 41.637(3) is correct,
21 then the district court reached the correct result by granting their motion to dismiss,
22 but for a different reason.

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26 ¹ Welts’ Appendix at 33:19-36:17.

27 ² Brief at 10:4-11:16.

28 ³ *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010).

1 **B. The Welts’ statements are protected by NRS 41.637(3).**

2 Nevada’s anti-SLAPP statutes are invoked when “an action is brought
3 against a person based upon a good faith communication in furtherance of ... the
4 right to free speech in direct connection with an issue of public concern.”⁴ NRS
5 41.637(3) expressly defines that phrase to include a “[w]ritten or oral statement
6 made in direct connection with an issue under consideration by a legislative,
7 executive or judicial body, or any other official proceeding authorized by law.”⁵
8 Here, the Welts’ comments were made in direction connection with an issue under
9 consideration by a New Jersey judicial body: should Howard Shapiro be appointed
10 as Walter Shapiro’s conservator?

11 This Court’s February 2 decision reiterated that California law is persuasive
12 when interpreting Nevada’s anti-SLAPP statutes because these statutes were drawn
13 from California law. In California, anti-SLAPP protection extends to “any written
14 or oral statement or writing made in connection with an issue under consideration
15 or review by a legislative, executive, or judicial body, or any other official
16 proceeding authorized by law.”⁶

17 California has applied its anti-SLAPP definitions broadly to protect speech
18 similar to the Welts’. “Thus, statements, writings and pleadings in connection with
19 civil litigation are covered by the anti-SLAPP statute, and that statute does not
20 require any showing that the litigated matter concerns a matter of public interest.”⁷
21 “[A] statement is ‘in connection with’ litigation ... if it relates to the substantive
22 issues in the litigation and is directed to persons having some interest in the
23 litigation.”⁸ This definition protected a litigation update sent by a homeowner’s

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25 ⁴ NRS 41.660(1).

26 ⁵ NRS 41.637(3).

27 ⁶ Cal Code Civ Proc § 425.16(e)(2) (2014).

28 ⁷ *Neville v. Chudacoff*, 160 Cal. App. 4th 1255, 1261 (2008) (*quoting Rohde v. Wolf*, 154 Cal. App. 4th 28, 35 (2007)).

⁸ *Id.* at 1266.

1 association to inform its members of pending litigation.⁹ It also protected a
2 company's email to a small group of customers concerning court rulings and
3 favorable imposition of sanctions in litigation against the company's competitor.¹⁰

4 Applied to the Welts, their statements were made in direct connection with
5 an issue under consideration by a New Jersey judicial body: should Howard
6 Shapiro be appointed as a conservator over Walter Shapiro? The statements
7 directly concerned whether Howard was suitable for that role. The website also
8 requested information from others with information that might reflect upon
9 Howard's suitability to be Walter's conservator.

10 The Shaprios' complaint was premised entirely upon the Welts' statements
11 "made in direct connection with an issue under consideration by a ... judicial
12 body..."¹¹ As such, these statements were "[g]ood faith communication in
13 furtherance of the right ... to free speech in direct connection with an issue of
14 public concern"¹² and cannot be the basis for this lawsuit.¹³

15 Conclusion

16 Although this Court reversed the district court's order granting the Welts'
17 special motion to dismiss because it did not adequately analyze NRS 41.637(4) and
18 Nevada's near-absolute litigation privilege, the Court's decision did not address the
19 Welts' alternative argument that their statements were protected by NRS
20 41.637(3). If the statements are within NRS 41.637(3)'s definition, then the
21 district court's order should be affirmed as reaching the right result even if for the
22 wrong reason. The Court would then need to address the Welts' cross-appeal.

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25 ⁹ *Healy v. Tuscan Hills Landscape & Recreation Corp.*, 137 Cal.App.4th 1, 5-6
(2006).

26 ¹⁰ *Contemporary Services Corp. v. Staff Pro Inc.*, 152 Cal.App.4th 1043, 1050-
1051, 1055-1056 (2007).

27 ¹¹ NRS 41.637(3).

28 ¹² NRS 41.637.

¹³ NRS 41.650 (2014).

1 DATED this 6th day of February, 2017.

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