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Counsel for Amici Curiae

IN THE SUPREME COURT OF THE STATE OF NEVADA

VETERANS IN POLITICS INTERNATIONAL, INC., and STEVE W. SANSON,

Appellants,

vs.

MARSHAL S. WILLICK, and WILLICK LAW GROUP,

Respondents,

SUPREME COURT NO.: 72778

DIST. CT. CASE NO.: A-17-750171-C (Dept. 18)

REPLY IN SUPPORT OF MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND NEVADA PRESS ASSOCIATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

(In Support of Neither Party)

1.0 INTRODUCTION

Respondents' Opposition to *Amici Curiae*'s Motion for Leave to file a brief on the limited issue of the proper standard of review is based predominantly on false assertions of fact and irrelevant attempts to smear *Amici*'s counsel.

Respondents claim that Mr. Randazza has been serving as counsel for Appellants for the past year. Furthermore, they take the position that the Court should deny *Amici*'s motion due to a purported failure to attach the proposed brief. Meanwhile, *Amici* filed the proposed brief at the same time as the motion for leave as a separate document, pursuant to this Court's instructions. The court has yet to process the proposed brief.

2.0 ARGUMENT

While the Nevada Rules of Appellate Procedure do not explicitly contemplate filing replies in support of a motion for leave to file an amicus brief, the Court should allow *Amici* to file one here. Respondents' Opposition is premised almost entirely on the false premise that counsel for *Amici* represented or advised Appellants, and that *Amici*'s proposed brief is just a means of supplementing Appellants' briefing. It is also based on the false premise that *Amici* never filed the proposed amicus brief. Since Respondents misrepresent *Amici*'s prior relationship to this case and seek sanctions against *Amici* based upon their misrepresentations, *Amici* should be allowed to respond to these numerous allegations.

2.1 Mr. Randazza Has Never Represented Appellants and Has Made No False Statements to this Court

Appellants, Respondents, and other defendants (not party to this appeal) sought Mr. Randazza's expertise in this case when it was before the district court.[2] Appellant Steve Sanson initially contacted Mr. Randazza in January 2017 and consulted with him about the possibility of Mr. Randazza serving as defense counsel. (*See* Declaration of Marc J. Randazza ["Randazza Decl."], attached as **Exhibit 1**, at ¶ 4.) During that conversation, Mr. Randazza discussed representation terms, but declined to accept any confidential information, because he had not yet been retained. (*See id*. at ¶ 5.) Mr. Sanson did not retain Mr. Randazza. (*See id*. at ¶ 6.)

Respondents then attempted to retain Mr. Randazza on January 24, 2017. (*See id*. at ¶ 7.) Mr. Randazza responded to Respondents' inquiry on January 25, 2017 stating that there was a potential conflict because he had spoken to Appellant Sanson. (*See id*. at ¶ 8.)

Mr. Randazza then spoke with Mr. Sanson's counsel about this potential conflict, and she informed Mr. Randazza that she felt the initial consultation created a conflict of interest. (*See id*. at ¶ 9.) Although Mr. Randazza did not feel that any

[2] Given the fact that literally *everyone* in this case sought the undersigned's assistance in this case, it seems appropriate that the undersigned would serve as counsel for *Amici Curiae*, and it would seem bizarre for any party to object.

conflict existed, he demurred to Mr. Sanson's counsel's position and informed Respondents that he had a conflict of interest, but at no point said that he had been retained by Appellant. (*See id*. at ¶ 10.)

Following this non-engagement, Alex Ghibaudo contacted Mr. Randazza about reviewing Special Motions to Dismiss under NRS 41.660 ("Anti-SLAPP Motions") for additional defendants in the lower-court litigation. (*See id*. at ¶ 11.) As these were co-defendants, there would be no potential conflict with Sanson. However, these conversations with Ghibaudo never advanced past the point of Ghibaudo asking Randazza if he would be willing to do so. (*See id*.)

Despite these preliminary conversations, Mr. Randazza was never retained by any party to perform any work at all. (*See id*. at ¶ 12.) On March 27, 2018, Mr. Randazza sent a letter to Appellants' counsel recounting these events and making it clear that he had never at any point been retained to perform any work in connection with the case. (*See id*. at *Exhibit A*.)

Mr. Randazza did not, at any point in this case, perform any work for any party in this matter, nor was he ever retained to do so. (*See id*. at ¶ 14.) The communications Mr. Ghibaudo sent to Appellants or Respondents regarding Mr. Randazza's alleged involvement in this case may have been Ghibaudo's position at the time, but Ghibaudo's statements should not be imputed to Mr. Randazza. Any claims that Mr. Randazza at any point represented Appellants

or assisted Appellants in any manner are incorrect and contradicted by documentary evidence.[4] (*See id*. at ¶ 15.) It is also important to note that in the email Respondents attach to their Opposition, Mr. Ghibaudo only states that he is representing "Heidi Hanusa, Sanson, Corporation, Johnny Spicer, Don Woolbright, Karen Steelmon, Chritini Ortiz, and Law Office of Louis Schneider, LLC." Mr. Randazza never spoke with any of these parties, and none of these parties are part of this appeal. Respondents should know this. Therefore, Mr. Ghibaudo's email fails to support Respondents' position – in fact, it refutes it.

Furthermore, Mr. Randazza did not "collude" with Appellants' counsel Anat Levy in connection with the proposed *Amici* brief, either. Respondents make this unfounded accusation with no evidence. The fact is that Ms. Levy contacted Mr. Randazza after Respondents filed their Answering Brief asking what he believed the applicable standard of review to be. (*See id*. at ¶ 16.) Obviously, since Mr. Randazza was heavily involved in the 2013 and 2015 versions of the Anti-SLAPP law and has published extensively on it, this was a reasonable call. When Levy explained the Respondents' view that the standard of review was abuse of

[4] It is unclear whether Mr. Ghibaudo was simply optimistic about retaining Mr. Randazza's services or was using an intimidation tactic in his email of February 17, 2017, but his statement in that email that Mr. Randazza "has agreed to assist in the preparation, filing, and argument concerning the Special Motion to Dismiss" is inconsistent with the facts. (*See id*. at ¶ 15.) To be clear, this is not an accusation that Mr. Gibaudo was dishonest – optimism is not dishonesty.

discretion, Mr. Randazza informed *Amici* that Respondents were arguing for an incorrect standard of review in Anti-SLAPP cases, and *Amici* decided to intervene to ensure that the Court did not establish erroneous legal precedent. (*See id*. at ¶ 17.) Should the Court adopt the standard Respondents argue for, it would affect *Amici's* legal interests, to say nothing for all Nevadans who have come to rely upon the Anti-SLAPP statute as a bulwark against SLAPP suits. *See, generally,* Proposed Brief of *Amici Curiae*.

There is thus nothing false about *Amici*'s motion for leave to file their brief. Mr. Randazza has never, at any point in this litigation, worked for or been retained by any party to this case. The vast majority of the Opposition is thus based on a false premise.

Respondents' further attempt to impugn Mr. Randazza's credibility by citing to, and misrepresenting the contents of, an order in *Purple Innovations, LLC v. Honest Reviews, LLC* (U.S. District Court for the District of Utah, Case No. 2:17-cv-00138)) is unavailing. The order attached to Respondents' Opposition awards sanctions based on the **defendants**' allegedly false statements. It only imposes sanctions on the defendants, not their counsel. It also at no point states that Mr. Randazza made any false statements to the court. To claim otherwise is to make exactly the sort of false statements Respondents complain of. Moreover, that court's granting of a preliminary injunction based on allegedly false statements by

the defendants is currently being appealed. *See* Appeal No. 17-4144 (10th Cir.). Nevertheless, even if that case said what Respondents falsely claim it says, that has no bearing upon this case.

2.2 *Amici* Filed the Proposed Brief Per the Court's Instructions

Respondents also argue that *Amici*'s motion should be denied because it does not attach the proposed brief. This appears to be the result of some confusion with the process of filing the proposed brief. Counsel for *Amici* filed the proposed brief within one minute of filing the motion for leave. (*See* Declaration of Trey Rothell ["Rothell Decl.], attached as **Exhibit 2**, at *Exhibit A*.) Counsel for *Amici* filed the proposed brief as a separate document, rather than an attachment to the motion for leave, because they were advised in a prior matter that the motion for leave and proposed brief should be filed as two separate documents. *Amici* filed an amicus brief with this Court in *The Las Vegas Review-Journal v. The Eighth Judicial Dist. Ct. of the State of Nevada*, No. 75073 on February 15, 2018. (*See* Motion for Leave to File Amicus Brief, attached as **Exhibit 3**.) The Court granted it the same day. (*See* Order Granting Motion for Leave, attached as **Exhibit 4**.) In that matter, *Amici*'s counsel first attempted to file the proposed brief as an attachment to the motion for leave, only for the Court to reject the filing with instructions to file them as separate documents. (*See* Rothell Decl. at *Exhibit B*.) Wanting to avoid the same filing rejection, counsel for *Amici* filed the motion for leave and proposed brief in

this matter as separate documents. It does not appear, however, that the Court has processed the proposed brief, which is why the proposed brief does not yet appear on the docket despite having been filed on February 22, 2018.

Amici should not be punished for complying with the instructions of this Court in filing the motion for leave and proposed amicus brief. To rectify any possible harm caused by the Court not yet processing the proposed amicus brief, that brief is attached to this Reply as **Exhibit 5**. This Brief explains why the proper standard of review in Anti-SLAPP cases is *de novo review*.

3.0 CONCLUSION

For the foregoing reasons, the Court should grant *Amici*'s motion for leave to file their proposed brief and should not impose any sanctions.

Dated March 6, 2018.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza (NV Bar No. 12265)
4035 S. El Capitan Way
Las Vegas, Nevada 89147

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. Proc. 25(b) and NEFR 9(f), I hereby certify that on this date I electronically filed the foregoing document with the Clerk of the Nevada Supreme Court by using the NEVADA ELECTRONIC FILING RULES ("Eflex"). Participants in this case who are registered with Eflex as users will be served by the Eflex system as follows:

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Dated: March 6, 2018

/s/ Marc J. Randazza
Marc J. Randazza

EXHIBIT 1

Declaration of
Marc J. Randazza

RANDAZZA | LEGAL GROUP

IN THE SUPREME COURT OF THE STATE OF NEVADA

VETERANS IN POLITICS INTERNATIONAL, INC., and STEVE W. SANSON, Appellants, vs. MARSHAL S. WILLICK, and WILLICK LAW GROUP, Respondents,	**SUPREME COURT NO.: 72778** **DIST. CT. CASE NO.: A-17-750171-C (Dept. 18)**

DECLARATION OF MARC J. RANDAZZA IN SUPPORT OF REPLY IN SUPPORT OF MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND NEVADA PRESS ASSOCIATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

(In Support of Neither Party)

I, MARC J. RANDAZZA, declare:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty. I have firsthand knowledge of the facts set forth herein, and if called as a witness could and would testify competently thereto.

2. I am an attorney licensed in Nevada, California, Arizona, Florida, and Massachusetts.

3. I am the managing partner of Randazza Legal Group, PLLC ("RLG"), and I am counsel of record for *Amici Curiae*, The Reporters Committee for Freedom of the Press and Nevada Press Association (collectively, "*Amici*") in this matter.

4. Appellant Steve Sanson initially contacted me in January 2017 regarding this matter, and I met with him about the possibility of serving as his defense counsel.

5. During that conversation, I discussed representation terms, but declined to accept any confidential information or to discuss any specifics, as I had not yet been retained.

6. Mr. Sanson did not retain me or anyone else at RLG.

7. After my initial conversation with Mr. Sanson, Respondents contacted me on January 24, 2017 regarding representation of them in this matter.

8. I advised Respondents on January 25, 2017 that there was a potential conflict and that I may not be able to represent them.

9. After giving this response to Respondents, I spoke with Mr. Sanson's counsel about this potential conflict, and she informed me that she felt the initial consultation with him created a conflict that precluded me from representing Respondents.

10. I did not agree with this conclusion, but decided to demur to Mr. Sanson's counsel's position so as to avoid even the appearance of any impropriety.

11. Following this non-engagement, Alex Ghibaudo contacted me about reviewing Special Motions to Dismiss under NRS 41.660 ("Anti-SLAPP Motions") for additional defendants in the district court case. As these were co-defendants, there would be no potential conflict with Sanson if I were to represent them. However, these conversations with Ghibaudo never advanced to actual representation nor sharing of any resources.

12. Despite these preliminary conversations, however, I was never retained by Appellants or Mr. Ghibaudo to perform any work in relation to the Anti-SLAPP Motion.

13. On March 27, 2018, I sent a letter to Appellants' counsel recounting these events and making it clear that neither I nor anyone at RLG had ever at any point been retained to perform any work in connection with the case. A true and correct copy of this letter is attached to this Declaration as *Exhibit A*.

14. At no subsequent point in this case did I or anyone at RLG perform any work for any of the parties in this matter, nor were I or RLG ever retained to do so.

15. Any statement by Alex Ghibaudo that I had at any point been retained to represent or assist Appellants in any capacity in this matter is incorrect and contradicted by documentary evidence, but I do not take the position that it is dishonest.

16. After Respondents filed their Answering Brief in this matter, Anat Levy contacted me and asked me what I believed to be the applicable standard of review was for the denial of a Special Motion to Dismiss under NRS 41.660.

17. Upon learning that Respondents were arguing for the incorrect "abuse of discretion" standard of review in this matter, I informed *Amici* that this case had the potential to create erroneous Anti-SLAPP law that would harm *Amici*'s interests (to say nothing for the interests of all Nevadans). *Amici* then asked me to prepare and file an amicus brief arguing for the correct standard of review.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed on: March 6, 2018.

/s/ Marc J. Randazza
Marc J. Randazza

EXHIBIT A

Letter dated March 27, 2017

RANDAZZA
LEGAL GROUP

Marc J. Randazza, JD, MAMC, LLM
Licensed in AZ, CA, FL, MA, NV

27 March 2017

Via Email Only

Alex Ghibaudo	Anat Levy, Esq.	Maggie McLetchie
<alex@alexglaw.com>	<alevy96@aol.com>	<maggie@nvlitigation.com>

Re: Abrams v. Sanson | A-17-749318-C | Representation

This letter is to clarify the status of my involvement in this case – which given the present situation, I think should be *none at all.* I have never been retained, and I am not willing to be retained given the current situation.

Mr. Sanson initially consulted with me about serving as defense counsel on his case. Mr. Sanson later declined our services. However, it is his position (communicated through counsel) that this meeting was sufficient to create a conflict as to being involved in the case in any capacity that could be deemed to be adverse to him. I have not challenged that position. Whether I could challenge it or not is of no importance to me. If he believes that there is a conflict, I decline to engage in that analysis.

All of the other defendants in the case retained Mr. Ghibaudo. Mr. Ghibaudo then contacted me asking if I would be willing to assist him by reviewing and revising his motions. In exchange for doing so he would compensate me with a portion of what he earned. However, he never formalized this engagement. To be honest, I did not anticipate this being much, if anything. My willingness to assist was solely motivated by a spirit of collegiality and wishing to be helpful to my colleagues.

I understood that the potential engagement, at most, would be that I would be serving as a "contract attorney" reviewing Mr. Ghibaudo's brief. I did not ever understand it to mean that I would have the privilege of serving as attorney of record in the matter, nor would I be directly engaged by the clients.

I have never been presented with any kind of engagement letter. I have not even been introduced to the clients. At no point has anyone retained me. Having not heard from Mr. Ghibaudo, I presumed that he (like Mr. Sanson) determined that upon reflection, he did not need my assistance.

The next communication that I received was an email this morning (from Mr. Sanson) that there was some kind of concern about Mr. Ghibaudo's performance. In fact, that email used the word "malpractice." I do not know why I was copied on it or referenced in it. Whether Mr. Ghibaudo is meeting deadlines or not is not within my zone of influence, nor within my zone of responsibility. I understood my involvement would simply be reviewing Mr. Ghibaudo's work and editing it. I did not understand my responsibility would include anything close to policing his deadlines, managing his calendar, serving as his paralegal, or anything beyond acting as a second set of eyes on his briefing.

I am not attorney of record for any party on this case. Further, I am not immersed in the case. I always understood my involvement was to be informal and between myself and

RANDAZZA
LEGAL GROUP

Mr. Ghibaudo. To receive an email accusing Mr. Ghibaudo of malpractice puts me in a position that I do not want to be in. If one party is accusing the attorney for other parties of malpractice, that is simply a degree of inter-party conflict that I want to steer clear of. If I have been copied on it, that puts me in an even worse situation – as it has become apparent (through this and other communications) that everyone is looking to me for a degree of involvement that I never agreed to – and if this is the kind of infighting taking place, that I want no part of.

Further, let me make it clear that this is not simply a matter of my degree of discomfort with what appears to be a brewing "circular firing squad." The rules of professional conduct **compel me** to step back from this case entirely.[1]

As I mentioned before, Mr. Sanson consulted with me sufficiently to conflict me out of any positions that would be adversarial to him in this matter. Mr. Sanson now has a clear and present conflict with Mr. Ghibaudo. Given that, I must decline any further involvement in this case, whatsoever, and distance myself from any semblance of participation – even informally. To the extent I agreed to assist Mr. Ghibaudo, I was never formally retained, and I withdraw the offer. Given that I have never been provided with so much as a draft to review, this should prove to be of no consequence to anyone.

I wish to make it clear that even if Mr. Sanson were to withdraw this accusation against Mr. Ghibaudo, I would still not come anywhere near this case. Once the "M word" is unleashed in a matter, I have no desire to be a part of the matter whatsoever.[2]

Sincerely,

Marc J. Randazza

[1] Strictly speaking, I do not think the rules **require** it. [redacted]. Accordingly, to the extent I sense even the whiff of a conflict issue, I wish to stay so far away from the boundary that I can not even see it from where I am standing. [redacted], I simply will not even take the risk of the mere thought of coming close to a violation. I understand that this creates quite a limit on many parties to seek counsel of their choice, and it unfortunately deprives some of my colleagues of the privilege of seeking my assistance in an important free speech matter. But, I prefer to preserve my license rather than walk unwittingly into a professional conduct trap.

[2] Please do not take this as any kind of an endorsement of Mr. Sanson's accusation against Mr. Ghibaudo. I take no position on that, either for or against the accusation.

EXHIBIT 2

Declaration of
Trey A. Rothell

RANDAZZA | LEGAL GROUP

IN THE SUPREME COURT OF THE STATE OF NEVADA

VETERANS IN POLITICS INTERNATIONAL, INC., and STEVE W. SANSON, Appellants, vs. MARSHAL S. WILLICK, and WILLICK LAW GROUP, Respondents,	**SUPREME COURT NO.: 72778** **DIST. CT. CASE NO.: A-17-750171-C (Dept. 18)**

DECLARATION OF TREY ROTHELL IN SUPPORT OF REPLY IN SUPPORT OF MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND NEVADA PRESS ASSOCIATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

(In Support of Neither Party)

I, TREY ROTHELL, declare:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty. I have firsthand knowledge of the facts set forth herein, and if called as a witness could and would testify competently thereto.

2. I am a paralegal at Randazza Legal Group, PLLC ("RLG").

3. I personally filed *Amici*'s proposed amicus brief and motion for leave to file amicus brief in this matter on February 22, 2018 at 5:07 p.m. and 5:06 p.m. Pacific Time, respectively. A true and correct copy of a screenshot of these filing confirmations is attached to this Declaration as *Exhibit A*.

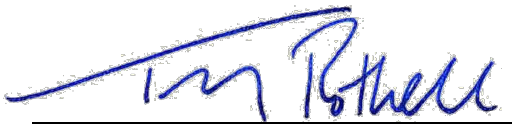
4. I personally filed a motion for leave and proposed amicus brief for *Amici* in *The Las Vegas Review-Journal v. The Eighth Judicial Dist. Ct. of the State of Nevada*, No. 75073 on February 15, 2018.

5. When I attempted to file both the motion for leave and proposed brief as a single document in that matter, the Court rejected the filing and instructed me to file them as separate documents. A true and correct copy of this rejection notice is attached as *Exhibit B* to this Declaration.

6. Upon filing the motion for leave and proposed brief as separate documents, the Court immediately accepted and processed both documents.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed on: March 6, 2018.



Trey Rothell

EXHIBIT A

NV Supreme Court Filing Status

The Supreme Court of Nevada ELECTRONIC FILING

Filing Status

The status for each filing can be viewed for 60 days from the date of submission. After 60 days, the filing status information will be deleted; however, all filed documents will remain accessible from your My Cases listing.

Marc J. Randazza Filings

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	Filing ID	Docket Number	▼Date Submitted	Document Category	Status
☐	⊟ 443424	72778	Feb 22 2018 05:07 p.m.	Brief	Awaiting Approval
	Brief [Proposed] Brief of Amici Curiae The Reporters Committee for Freedom of the Press and The Nevada Press Association				
☐	⊟ 443422	72778	Feb 22 2018 05:06 p.m.	Motion	Accepted
	Motion Motion of the Reporters Committee for Freedom of the Press and Nevada Press Association for Leave to File Amici Curiae Brief in Support of Petitioners				

Number of Filings: 2

EXHIBIT B

Rejection Notice

RANDAZZA
LEGAL GROUP

Trey Rothell <tar@randazza.com>

Rejection of Electronic Document. No. 75073.

efiling@nvcourts.nv.gov <efiling@nvcourts.nv.gov> Thu, Feb 15, 2018 at 8:19 AM
To: ecf@randazza.com

Docket Number:	75073
Case Category:	Original Proceeding
Submitted by:	Marc J. Randazza
Date Submitted:	Feb 14 2018 04:58 p.m.
Date Rejected:	Feb 15 2018 08:19 a.m.
Note from Clerk:	Please re-submit as separate documents. The motion should be submitted in one submission and the proposed brief should be submitted in one submission. A total of two submissions. Thank you.
Document Category:	Motion
Document Title:	Motion of the Reporters Committee for Freedom of the Press and the Nevada Press Association for Leave to File Amici Curiae Brief in Support of Petitioners
Filing Status:	**Rejected**

This notice was automatically generated by the electronic filing system. Do not respond to this email. If you have any questions, contact the Nevada Supreme Court Clerk's office at 775-684-1600 or 702-486-9300.

EXHIBIT 3

Motion for Leave

Marc J. Randazza (NV Bar No. 12265)
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Counsel for Amici Curiae

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAS VEGAS REVIEW-JOURNAL; and THE ASSOCIATED PRESS;

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; and

THE HONORABLE RICHARD SCOTTI, DISTRICT JUDGE;

Respondent,

VERONICA HARTFIELD, A NEVADA RESIDENT AND THE ESTATE OF CHARLESTON HARTFIELD and OFFICE OF THE CLARK COUNTY CORONER/MEDICAL EXAMINER;

Real Parties in Interest.

SUPREME COURT NO.: 75073

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT FOR CLARK COUNTY, NEVADA,

CASE NO.: A-18-768781-C

Hon. Richard F. Scotti

MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND THE NEVADA PRESS ASSOCIATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF PETITIONERS

Pursuant to Nevada Rule of Appellate Procedure 29, the Reporters Committee for Freedom of the Press and the Nevada Press Association (collectively, the "*amici*") respectfully move for leave to file the attached brief of *amici curiae* in support of Petitioners.[1]

Amici are media organizations that represent the interests of journalists and freedom of the press, as set forth below. *Amici* submit the attached brief to aid the Court in reviewing the gag order issued by the district court in this case. This brief will assist the Court by providing *amici's* expertise on the First Amendment's protections for the press and the public and offering the news media's perspective on the significant constitutional and statutory issues involved here.

The issue presented in this case—whether a district court may bar two news organizations from reporting information gleaned from records obtained through a Nevada Public Records Act ("NPRA") request and require them to return or destroy

[1] In accordance with Nev. R. App. Proc. 29(a), *amici* have attempted to obtain written consent of counsel to the filing of their proposed *amici* brief. Counsel for the Las Vegas Review Journal and Associated Press has consented to the filing of the proposed *amici* brief. Counsel for the Office of the Clark County Coroner/Medical Examiner has consented to the filing of the proposed *amici* brief via email. Counsel for Veronica Hartfield and the Estate of Charleston Hartfield do not consent. Counsel for the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, and the Honorable Richard Scotti, District Judge stated in a letter sent via email: "Because Judge Scotti is not a real party in interest to [this] proceeding, he is not taking a position on whether the Reporters Committee should be allowed to file an amicus brief."

such records—is of particular concern to journalists as prior restraints are an extreme remedy that effectively freezes their ability to do their jobs. The proposed *amici* brief aims to assist the Court by explaining the significant news value in reporting on anonymized autopsy reports and the dangerous nature of this gag order, which erroneously elevates purported privacy concerns over long-established First Amendment protections. The brief also focuses on the implications of the gag order for journalists and other members of the public who request records under the NPRA. Given the importance of these issues, the Court should grant proposed *amici* leave to file the attached *amici* brief.

A description of *amici* follows:

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970, when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today it provides *pro bono* legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

. . .

. . .

. . .

The Nevada Press Association is the formal trade organization for the newspaper industry in Nevada. It is a voluntary nonprofit association that represents 6 daily and 37 nondaily newspapers in Nevada, as well as 4 online news services.

Dated February 15, 2018.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza (NV Bar No. 12265)
4035 S. El Capitan Way
Las Vegas, Nevada 89147

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. Proc. 25(b) and NEFR 9(f), I hereby certify that on this date I electronically filed the foregoing document with the Clerk of the Nevada Supreme Court by using the NEVADA ELECTRONIC FILING RULES ("Eflex"). Participants in this case who are registered with Eflex as users will be served by the Eflex system as follows:

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Honorable Judge Richard F. Scotti
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Las Vegas, NV 89134
Counsel for Veronica Hartfield and the Estate of Charleston Hartfield

Dated: February 15, 2018

/s/ Marc J. Randazza
Marc J. Randazza

EXHIBIT 4

Order Granting Motion for Leave

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAS VEGAS REVIEW-JOURNAL; AND THE ASSOCIATED PRESS,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE RICHARD SCOTTI, DISTRICT JUDGE,
Respondents,
and
VERONICA HARTFIELD, A NEVADA RESIDENT; ESTATE OF CHARLESTON HARTFIELD; AND CLARK COUNTY OFFICE OF THE CORONER/MEDICAL EXAMINER,
Real Parties in Interest.

No. 75073

FILED

FEB 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING MOTION FOR LEAVE TO FILE AMICUS BRIEF

Cause appearing, the motion filed by the Reporters Committee for Freedom of the Press and the Nevada Press Association for leave to file a brief as amici curiae in support of petitioners, is granted. NRAP 29. The clerk of this court is directed to file the amicus brief received on February 15, 2018. Real parties in interest shall have until 4:00 p.m. on Friday, February 16, 2018, within which to file a response to the amicus brief.[1] No extensions of time will be granted.

[1] Any response shall be subject to the page/type-volume limitations applicable to reply briefs. *See* NRAP 32(a)(7)(A). We suspend the provisions of NRAP 25(a)(2)(B)(ii), (iii), and (iv), which provide that a document is timely filed if, on or before its due date, it is mailed to this court, dispatched for delivery by a third party commercial carrier, or deposited in the Supreme

18-06305

It is so ORDERED.

Pickering, J.

cc: Hon. Richard Scotti, District Judge
McLetchie Shell LLC
Sgro & Roger
David J. Roger
Clark County District Attorney/Civil Division
Randazza Legal Group, PLLC

Court drop box. *See* NRAP 2. Accordingly, all documents shall be filed personally or by facsimile or electronic transmission with the clerk of this court in Carson City.

EXHIBIT 5

Proposed Brief of *Amici Curiae*

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IN THE SUPREME COURT OF THE STATE OF NEVADA

VETERANS IN POLITICS INTERNATIONAL, INC. AND STEVE W. SANSON, Appellants, vs. MARSHAL S. WILLICK AND WILLICK LAW GROUP, Respondents,	**SUPREME COURT NO.: 72778** **DIST. CT. CASE NO.: A-17-750171-C (Dept. 18)**

[PROPOSED] BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND THE NEVADA PRESS ASSOCIATION

(In Support of Neither Party)

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.

1. The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

2. The Nevada Press Association is a non-profit organization.

3. No law firm or lawyer has appeared for the *amici* below; the only law firm and lawyer appearing for *amici* in this case is:

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Dated: February 22, 2018

/s/ Marc J. Randazza
Marc J. Randazza

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INTEREST OF AMICI CURIAE

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970, when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today it provides *pro bono* legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

The Nevada Press Association is the formal trade organization for the newspaper industry in Nevada. It is a voluntary nonprofit association that represents 6 daily and 37 non-daily newspapers in Nevada, as well as 4 online news services.

Amici's members rely on the robust protections afforded by the First Amendment to the United States Constitution to function. Nevada's Anti-SLAPP statute, NRS 41.635 *et seq*., is one of the nation's finest examples of a firm commitment to freedom of speech. It protects *Amici's* members from numerous frivolous lawsuits over quality news gathering and reporting.

As organizations that advocate on behalf of journalists and news organizations, *amici* are particularly interested in ensuring that Nevada's Anti-SLAPP statute is interpreted correctly and provides the greatest degree of protection

possible to its members. Respondent's responding brief argues for application of an incorrect standard of reviewing denial of a special motion to dismiss under the Anti-SLAPP statute which, if adopted by the Court, would largely neuter the Anti-SLAPP statute's ability to safeguard against meritless suits designed to chill protected speech. As required by Nevada Rule of Appellate Procedure 29(a), *amici* have filed a motion for leave of court to file this *amici curiae* brief.

SUMMARY OF THE ARGUMENT

Amici do not take any position on the relative merits of the parties' claims or whether the district court committed error in denying Appellants' Anti-SLAPP motion. Rather, this brief is filed solely to respond to Respondent's argument that the proper standard in reviewing denial of an Anti-SLAPP motion is for abuse of discretion. This argument is incorrect.

This argument is based entirely on this Court's decision in *Shapiro v. Welt*, 389 P.3d 262 (Nev. 2017). While this Court did apply an abuse of discretion standard in that case, it did so because the *Shapiro* case dealt with a prior version of the Anti-SLAPP statute that required a plaintiff to provide "clear and convincing evidence" of a probability of prevailing on its claims.

This prior standard differed from the summary judgment-like evidentiary standard that existed prior to the 2013 amendment to the statute, and the current version of the statute also contains a summary judgment-like "prima face evidence"

standard. Thus, under the current version of the Anti-SLAPP statute, this Court should review the district court's denial of Appellants' Anti-SLAPP motion *de novo*.

ARGUMENT

1.0 THE CASES RESPONDENT CITES FOR AN ABUSE OF DISCRETION STANDARD RELY ON A PRIOR VERSION OF THE ANTI-SLAPP STATUTE AND ARE INAPPOSITE

Respondents' argument that denial of an Anti-SLAPP motion is reviewed for abuse of discretion is based on two decisions from this Court: *Shapiro v. Welt*, 389 P.3d 262 (Nev. 2017) and *SPG Artist Media, LLC v. Primesites, Inc.*, 2017 Nev. Unpub. LEXIS 152 (Nev. Feb. 28, 2017). These cases do not support Respondents' argument, however, as *Shapiro* dealt with a prior, and materially different, version of the statute, and *Primesites* simply followed the holding in *Shapiro* with no further analysis.

It is critical for the Court to keep in mind that Nevada's Anti-SLAPP statute underwent significant revisions in 2013 and 2015. Prior to 2013, the Anti-SLAPP statute specified that a court was to "[t]reat [a special motion to dismiss] as a motion for summary judgment." NRS 41.660(3)(a) (1997). This was the basis for this Court reviewing denial of an Anti-SLAPP motion *de novo*. *See John v. Douglas County Sch. Dist.*, 125 Nev. 746, 753 (2009).

The Nevada legislature then amended NRS 41.660 in 2013, deleting this summary judgment language and instead providing that if the moving party meets its initial burden under the first prong of the statute, the nonmoving party must "establish[] by clear and convincing evidence a probability of prevailing on the claim." NRS 41.660(3)(b) (2013). This change from a summary judgment standard to a "clear and convincing evidence" standard is the exact reason why this Court in *Shapiro* changed the standard of review to abuse of discretion. It found that "[a]fter 2013, however, with the plaintiffs [sic] burden increased to clear and convincing evidence, this court will provide greater deference to the lower court's findings of fact and therefore will review for an abuse of discretion."[1] *Shapiro*, 389 P.3d at 266. The subsequent decision in *Primesites* simply cited to *Shapiro* for the proper standard of review, without any analysis. *See Primesites*, 2017 Nev. Unpub. LEXIS 152 at *1.[2]

In 2015, in light of a decision from the Supreme Court of Washington that struck down the Washington Anti-SLAPP statute due its imposition of a "clear and convincing evidence" standard, the Nevada legislature again amended its Anti-

[1] Though the Court decided *Shapiro* after the 2015 revisions to the Anti-SLAPP statute, the Anti-SLAPP motion at issue in that case was brought under the 2013 version of the statute and was thus analyzed under the earlier version.

[2] Even if *Primesites* had provided a discussion of why an abuse of discretion standard was appropriate, it is an unpublished opinion that this Court is free to disregard. *See* NRAP 36(c)(3).

SLAPP statute. This time it removed the "clear and convincing evidence" language and replaced it with a requirement that a nonmoving party "demonstrate[] with prima facie evidence a probability of prevailing on the claim." NRS 41.660(3)(b). This essentially returned the standard to the pre-2013 standard. And the standard of review along with it.

This Court in *Shapiro* used an abuse of discretion standard of review solely in response to the 2013 version of the statute imposing a "clear and convincing evidence" requirement for parties opposing an Anti-SLAPP motion. That evidentiary burden no longer exists in the current version of the statute, and no party has argued that the 2013 version of the Anti-SLAPP statute applies here. For these reasons, this Court's holdings in *Shapiro* and *Primesites* as to the applicable standard of review are inapposite and should be disregarded. The Court should look to its earlier precedents, as well as the plethora of California case law on this subject, and determine that the denial (or grant) of an Anti-SLAPP motion under the current version of the statute is reviewed *de novo*.

2.0 UNDER THE CURRENT STATUTE'S EVIDENTIARY BURDEN, THIS COURT SHOULD REVIEW A DISTRICT COURT'S DENIAL OF AN ANTI-SLAPP MOTION DE NOVO

Due to a relative dearth of case law applying Nevada's Anti-SLAPP statute, Nevada courts look to case law applying California's Anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16, which shares many similarities with Nevada's law. *See*

John, 125 Nev. at 756 (stating that "we consider California case law because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute"); *see also Shapiro*, 389 P.3d at 268 (same). In fact, the current version of the statute explicitly provides that a nonmoving party's burden in opposing an Anti-SLAPP motion is identical to the burden under California law:

> When a plaintiff must demonstrate a probability of success of prevailing on a claim pursuant to NRS 41.660, the Legislature intends that in determining whether the plaintiff "has demonstrated with prima facie evidence a probability of prevailing on the claim" the plaintiff must meet the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuits Against Public Participation law as of the effective date of this act.

NRS 41.665(2).

Since a non-movant's burden in opposing an Anti-SLAPP motion is exactly the same in Nevada as in California, it makes sense for this Court to apply the same standard of review as a California appellate court. It is well-established that, under California law, the grant or denial of an Anti-SLAPP motion is reviewed *de novo*. *See Chodos v. Cole*, 210 Cal. App. 4th 692, 698 (2012) (stating that "[w]e review de novo the trial court's order granting an anti-SLAPP motion"); *see also Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.*, 122 Cal. App. 4th 1049, 1056 (2004) (stating an appellate court "will independently determine whether a cause of action is based upon activity protected under the [Anti-SLAPP] statute, and if so, whether the plaintiff has established a reasonable probability of

prevailing"); *and see Governor Gray Davis Com. v. American Taxpayers Alliance*, 102 Cal. App. 4th 449, 456 (2002) (same).

The reason that the Court in *Shapiro* changed the standard of review from *de novo* to abuse of discretion the statute's move from a summary judgment-like evidentiary burden to a heightened burden. But the current version of the statute has gone back to the summary judgment-like standard. In fact, the evidentiary burden under California law in opposing an Anti-SLAPP motion has regularly been described as akin to a summary judgment motion. *See Hall v. Time Warner, Inc.*, 153 Cal. App. 4th 1337, 1346 (2007) (stating that, in deciding Anti-SLAPP motion, "[t]he court cannot weigh the evidence, but must determine whether the evidence is sufficient to support a judgment in the plaintiff's favor as a matter of law, **as on a motion for summary judgment**") (emphasis added); *see also Kyle v. Carmon*, 71 Cal. App. 4th 901, 907 (1999) (stating that "[t]he burden on the plaintiff is similar to the standard used in determining motions for nonsuit, directed verdict, or summary judgment"); *and see Seelig v. Infinity Broadcasting Corp.*, 97 Cal. App. 4th 798, 809 (2002) (same).

Nevada courts use the same standards as California's in deciding whether a plaintiff has satisfied its burden in opposing an Anti-SLAPP motion, and California courts have repeatedly referred to this standard as equivalent to a summary judgment motion. There is thus no reason for the Court to use an abuse of discretion

standard in reviewing the denial of an Anti-SLAPP motion. It should instead use the *de novo* applied by California courts, and by this Court prior to the change in a plaintiff's evidentiary burden (which has since reverted to the same standard that existed prior to the 2013 amendment to the statute).

CONCLUSION

For the foregoing reasons, the Court should explicitly define the proper standard of review in reviewing the grant or denial of a special motion to dismiss under NRS 41.660 as *de novo*.

Dated February 22, 2018.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Amicus Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Amicus Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I further certify that this Amicus Brief complies with formatting requirements of NRAP 32(a)(4) and with the type-face requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this Amicus Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman. Finally, I certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) as it contains 1,733 words.

Dated: February 22, 2018

/s/ Marc J. Randazza
Marc J. Randazza

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. Proc. 25(b) and NEFR 9(f), I hereby certify that on this date I electronically filed the foregoing document with the Clerk of the Nevada Supreme Court by using the NEVADA ELECTRONIC FILING RULES ("Eflex"). Participants in this case who are registered with Eflex as users will be served by the Eflex system as follows:

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