

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Appellant,

vs.

LAS VEGAS REVIEW JOURNAL,

Respondent.

Electronically Filed
Aug 21 2018 07:57 a.m.
Elizabeth A. Brown
Supreme Court Case No. 74604
Clerk of Supreme Court

District Court Case No. A-17-
758501-W

**MOTION OF THE REPORTERS COMMITTEE FOR THE FREEDOM OF
THE PRESS AND 11 MEDIA ORGANIZATIONS FOR LEAVE TO FILE
AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT**

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I. Introduction

The Reporters Committee for the Freedom of the Press (“Reporters Committee”) and 11 media organizations (collectively, “*amici*”) respectfully move for leave to file the attached brief of *amicus curiae* in support of Respondent *Las Vegas Review-Journal*, pursuant to Nevada Rule of Appellate Procedure 29.

In accordance with Nevada Rule of Appellate Procedure 29(a), *amici* informed both Plaintiff’s and Defendant’s counsel of its intent to file the proposed *amicus* brief and sought their written consent to the filing of the proposed *amicus* brief. Counsel for the Las Vegas Review Journal consents. Counsel for the Clark County Office of the Coroner/Medical Examiner declined to consent unless provided an opportunity to review the proposed *amicus* brief first, to which *amici* declined.

Amici submit the attached brief (Exhibit A) to aid the Court in reviewing the order granting the *Las Vegas Review-Journal*’s Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus granted by the district court in this case.

II. Interest of Amici

Amici have a strong interest in ensuring that the Nevada Public Records Act (“NPR”) is interpreted in a manner consistent with its purpose, “to foster principles of democracy by allowing the public access to information about government activities.” *Reno Newspapers, Inc. v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924

(2010). The news media sheds “more light on the public and business affairs of the nation than any other instrumentality of publicity”—a vital role given that “informed public opinion is the most potent of all restraints upon misgovernment[.]” *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936). Journalists frequently use public records laws such as the NPRA to fulfil this essential function.

This case concerns access to autopsy reports under the NPRA. Reporters often seek access to autopsy reports in order to inform the public about the deaths of newsworthy individuals, public health crises, and other important topics. In this case, the *Las Vegas Review-Journal* seeks access to autopsy reports to examine patterns of fatal abuse or neglect of children. As press freedom advocates, *amici* emphasize that the NPRA grants the press access to these records, which journalists need to fully and accurately report on matters of public concern.

III. Assistance of Amici to the Court

The proposed *amicus* brief will aid the Court by providing *amici*’s expertise regarding the importance of access to public records to journalists and the public. Access enhances journalists’ ability to report the news and convey vital information about government conduct to the public. The proposed *amicus* brief will explain the significant news value in reporting on autopsy reports and provide insight into how access to autopsy reports have enabled the press to illuminate government conduct and other newsworthy information in analogous circumstances.

In short, *amici* will “fulfill[] the classic role of amicus curiae by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). Because *amici*’s “participation is useful to or otherwise desirable to the court,” *People’s Legislature v. Miller*, No. 2:12-CV-00272-MMD, 2012 WL 3536767, at *5, n.5 (D. Nev. Aug. 15, 2012) (quoting *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990)), the Court should grant this Motion.

IV. Identification of Amicus

The Reporters Committee 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, its attorneys provide *pro bono* legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

With some 500 members, American Society of News Editors (“ASNE”) is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers

and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The Associated Press Media Editors is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information.

Association of Alternative Newsmedia (“AAN”) is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

The E.W. Scripps Company serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24 markets, including KTNV-TV, Channel 13, in Las Vegas, Nevada. Scripps also owns 33 radio stations in eight markets, as well as local and national digital journalism and

information businesses, including mobile video news service Newsy and weather app developer WeatherSphere. Scripps owns and operates an award-winning investigative reporting newsroom in Washington, D.C. and serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, the Coalition resists excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

Gannett Co., Inc. is a leading news and information company which publishes USA TODAY and more than 100 local media properties, including the Reno Gazette-Journal. Each month more than 110 unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category.

KVVU Broadcasting Corporation owns and operates KVVU-TV (Fox) in Las Vegas, Nevada.

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 four online news services.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

tronc, Inc. is one of the country’s leading media companies. The company’s leading daily newspapers include the Chicago Tribune, New York Daily News, The Baltimore Sun, Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call and Daily Press. Popular news and information websites,

including www.chicagotribune.com, complement tronc's publishing properties and extend the company's nationwide audience.

V. Conclusion

For the foregoing reasons, the *amici* respectfully request that the Court grant this motion for leave and accept the submitted *amicus curiae* brief in support of Respondent *Las Vegas Review-Journal* for filing.

Dated: August 20, 2018

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on August 20, 2018 a true and correct copy of the foregoing **MOTION OF THE REPORTERS COMMITTEE FOR THE FREEDOM OF THE PRESS AND 11 MEDIA ORGANIZATIONS FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT** was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system.

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An Employee of McDonald Carano LLP

EXHIBIT A

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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 Justices 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. American Society of News Editors is a private, non-stock corporation that has no parent.

3. The Associated Press Media Editors has no parent corporation and does not issue any stock.

4. Association of Alternative Newsmedia has no parent corporation and does not issue any stock.

5. The E.W. Scripps Company is a publicly traded company with no parent company. No individual stockholder owns more than 10% of its stock.

6. First Amendment Coalition is a nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

7. Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company holds 10% or more of its stock.

8. KVVU Broadcasting Corporation is a wholly owned subsidiary of Meredith Corporation.

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

10. Radio Television Digital News Association is a nonprofit organization that has no parent company and issues no stock.

11. Society of Professional Journalists is a non-stock corporation with no parent company.

12. Tronc, Inc. is a publicly held corporation. Merrick Venture Management Holdings, LLC, California Capital Equity, LLC, and PRIMECAP Management Company each own 10 percent or more of tronc, Inc.'s stock.

13. No law firm or lawyer has appeared for the *amici* below; the only law firms and lawyers appearing for *amici* in this case are:

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As organizations that advocate on behalf of journalists and news organizations, *amici* are concerned that the arguments of Appellant Clark County Office of the Coroner/Medical Examiner (“Coroner’s Office”), if adopted, would restrict access to records that allow journalists to report on matters of great public importance, including the health and safety of vulnerable children. *Amici* write to emphasize the need for continued public access to autopsy reports, including those of juveniles, and to urge this Court to uphold the district court’s decision maintaining Nevada’s history of access to such records.

SUMMARY OF THE ARGUMENT

This case concerns a request by the *Las Vegas Review-Journal* (the “*Review-Journal*”) for juvenile autopsy reports from the Coroner’s Office under the Nevada Public Records Act (the “NPRA” or the “Act”). The *Review-Journal* sought access to these autopsy reports in order to assess “how child deaths are handled, which implicates important child welfare and public policy interests.” 1 JA 8, ¶ 37. The Eighth Judicial District Court ordered the Coroner’s Office to produce to the *Review-Journal* all juvenile autopsy reports compiled between 2012 through April 13, 2017. 2 JA 441, ¶ 59. The Coroner’s Office now appeals that decision, reiterating the arguments it made unsuccessfully below. *See* 1 JA 196–224; Appellant’s Opening Br. (filed June 4, 2018).

Amici agree with the *Review-Journal* that the NPRA requires public access to the autopsy records the newspaper seeks, and that such access serves the public interest. Access to similar records has formed the basis of important journalism that has informed public discussion of issues ranging from child welfare to public corruption to occupational health. Because restrictions on public access to autopsy reports would stifle these types of important public discussions, contrary to the purposes of the NPRA, the district court's order should be affirmed.

ARGUMENT

I. Public access to autopsy reports serves the purposes of the NPRA and enhances trust in the Office of the Coroner/Medical Examiner.

“The Legislature has declared that the purpose of the NPRA is to further the democratic ideal of an accountable government by ensuring that public records are broadly accessible.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877–878, 266 P.3d 623, 626 (2011). To achieve this purpose, the Act mandates that “all public records generated by government entities are public information and are subject to public inspection unless otherwise declared to be confidential.” *Reno Newspapers, Inc. v. Sheriff*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010). The Coroner's Office is a tax-payer funded entity, *see* Clark County Code §§ 2.12.020, .250 (establishing the Coroner's Office and setting responsibilities of the medical examiner), and the public has a strong interest in ensuring it is functioning properly. *See Campus Commc'ns, Inc. v. Earnhardt*, 821 So. 2d 388, 401 (Fla. Dist. Ct. App. 2002) (“[T]he

public obviously has a great interest in making certain its government, the medical examiner in the instant case, carries out its duties in a responsible fashion.”). As the *Review-Journal* notes, the NPRA is aligned with a large body of case law holding that autopsy reports are not exempt from disclosure under other state’s public records laws. *See* Resp’t’s Answering Br. 45–48 (filed Aug. 13, 2018).

Access to autopsy reports also fosters public confidence in the work of county coroners and medical examiners. The public often depends on these offices to provide answers when someone dies of unnatural causes. *See People v. Dungo*, 55 Cal. 4th 608, 621, 286 P.3d 442, 450 (2012), *as modified on denial of reh’g* (Dec. 12, 2012) (noting that “an autopsy report may satisfy the public’s interest in knowing the cause of death, particularly when (as here) the death was reported in the local media”). Access to autopsy reports themselves, rather than just to a coroner-provided list of causes of death, helps the public inspect and understand the basis for the coroner’s findings.

II. Public access to autopsy reports allows for news reporting related to the health and safety of children.

There is significant news value in reporting on autopsy results, particularly when the deceased individuals are vulnerable children who have had contact with a state child welfare system. Reporting based on autopsy reports can increase the public’s understanding of childhood abuse, and enhance the public’s ability to assess the efficacy of government efforts to protect children from harm. In some instances,

news reports that have relied on juvenile autopsy reports to expose flaws in the child welfare system have resulted in changes to public policies intended to prevent future deaths of children.

Recent news stories from Colorado and Texas illustrate the value of public access to juvenile autopsy reports. For example, *The Denver Post* and television station KUSA analyzed autopsy reports and other public records and found that over a six-year period more than 40 percent of the Colorado children who died due to family abuse or neglect “had families or caregivers known to child protection workers who could have saved them.” Jennifer Brown, Christopher N. Osher, & Jordan Steffen, *Failed to Death: Abused Children’s Cries for Help were Ignored*, *Denver Post*, Nov. 10, 2012, <https://dpo.st/2LmoRhX>. The news outlets found that instead of removing children from dangerous homes, overburdened caseworkers conducted incomplete or inadequate investigations or failed to open investigations in response to allegations of abuse. *Id.* The reporting prompted outcry from state legislators, and Colorado’s governor ultimately sought \$20 million to address problems in the state’s child welfare system. Christopher N. Osher, Jordan Steffen & Jennifer Brown, *Colorado Announces Sweeping Reforms to Child Welfare System*, *Denver Post*, Feb. 6, 2013, <https://perma.cc/DN9F-SAGX>.

In Texas, the *Fort Worth Star-Telegram* reviewed the autopsies conducted on two children after the children, who shared a caretaker, died more than two years

apart in a strikingly similar manner. Deanna Boyd, *Could the Death of One Abused Child Have Saved the Life of Another*, Fort Worth Star-Telegram, May 31, 2017, <https://perma.cc/DZ5U-BV8R>. The paper's analysis, which drew on the expertise of outside forensic pathologists who reviewed the autopsy reports, convinced local authorities to re-examine their findings. *Id.*

III. Public access to autopsy reports have informed the public about official misconduct, occupational health, and government fraud.

Information from autopsy reports can be essential in providing the public with a way to test a medical examiner's findings against the accounts of public officials, including the police, in newsworthy deaths. In some cases, autopsy reports—and reporting based on them—have shown that official accounts released to the public were not accurate. *See Autopsy Photos Are Often Used to Refute Official Conclusions*, News Media & The Law, Spring 2001, <https://perma.cc/ZP99-LZXC> (listing a dozen examples in which autopsy reports exposed inaccuracies in official accounts of deaths, from prisoners to an airline passenger).

For example, after a Chicago police officer shot and killed 17-year-old Laquan McDonald in 2014, an autopsy report obtained by a journalist through a public records request called the official story of McDonald's death into question. Jamie Kalven, *Sixteen Shots: Chicago Police Have Told Their Version of How 17-year-old Black Teen Laquan McDonald Died. The Autopsy Tells a Different Story*, Slate, Feb. 10, 2015, <https://perma.cc/Y5CA-388S>. Police told the public that McDonald died

of a gunshot wound to the chest after he lunged at an officer with a knife. *Id.* The autopsy report, however, showed that McDonald was shot numerous times by police from different angles. *Id.* The information reflected in McDonald's autopsy sparked an important national debate about the case. James Warren, *How the Media Blew Reporting the Chicago Cop's Shooting of a Teen*, Poynter, Nov. 25, 2015, <https://perma.cc/47VL-9P2A>.

In another case, journalists at the *Orlando Sentinel* raised questions about NASCAR's explanation for the death of famed racecar driver Dale Earnhardt, based on a review of autopsy records. Robyn Suriano, *Experts Agree on Skull Injury but Not Cause*, *Orlando Sentinel*, Aug. 22, 2001, <https://perma.cc/4397-26SR>. The paper sought the records under the Florida Public Records Act, including photographs, to clear up "the obvious disparity between what NASCAR says and what the medical examiner says" with regard to whether a piece of safety equipment called a head and neck support might have saved Earnhardt's life during a serious crash. Maya Bell, *Court Fight for Autopsy Photos Sparks Outrage*, *Orlando Sentinel*, Mar. 4, 2001, <https://perma.cc/VN5F-NYY4>. An expert who conducted an independent study of autopsy photos secured by the newspaper "concluded that Earnhardt died because of violent head movement and that the possible failure of the seat belt had no effect." Ed Hinton, *Dayton 500/A Big Year for Safety/NASCAR Embraces Head-Neck Restraints, Research*, *Orlando Sentinel*, Feb. 16, 2002,

<https://perma.cc/LQL8-PUQZ>. After extensive reports on Earnhardt's death and another similar fatal racecar crash, "NASCAR required the last few holdout drivers to wear a head-and-neck restraint system" and devoted more resources to safety research. *Id.*

Finally, reporting based on autopsy records can shed light on questionable practices at medical examiners' and coroners' offices. A *Los Angeles Times* reporter reviewed autopsy reports and other public records that showed that a local coroner's office was removing the corneas of large numbers of deceased individuals without seeking the permission of family members. Ralph Frammolino, *Harvest of Corneas at Morgue Questioned*, L.A. Times, Nov. 2, 1997, <https://perma.cc/RWB7-KW4A>. A California state law provided a loophole, where "coroners [we]re allowed to remove corneas in cases targeted for autopsy if there [we]re no known objections from the next of kin." *Id.* The Los Angeles County coroner's office sold sets of corneas for between \$215 and \$335 to an eye bank, which then resold them at a 1,400 percent markup. Henry Weinstein, *Families Keep Cornea Rights, Court Decides*, L.A. Times, Apr. 18, 2002, <https://perma.cc/DPQ4-7NZU>. After the *Los Angeles Times* published its article, the California legislature changed the law to require coroners to get permission from relatives before removing eye tissue for transplants. *Id.*

Taken together, these news articles illustrate that the public interest is served by continued public access to autopsy reports.

CONCLUSION

For the reasons set forth in the *Review-Journal's* brief and herein, this Court should affirm the district court's order requiring the Coroner's Office to release the autopsy reports requested by the *Review-Journal*.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface 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.

2. I further certify that this brief complies with the page- or type- volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is 12 pages which, pursuant to NRAP 29(e), is no more than one-half the maximum length authorized by NRAP for a party's brief.

3. Finally, I hereby certify that I have read this appellate 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 brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 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 understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 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 was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system.

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