

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

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Case No.: 74604 Sep 14 2018 09:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial
District Court, the Honorable
Jim Crockett Presiding

**OPPOSITION TO 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**

AND

OPPOSITION TO MOTION TO ASSOCIATE COUNSEL

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I. INTRODUCTION

Appellant, Clark County Office of the Coroner/Medical Examiner (“the Coroner”), opposes the amici curiae motion for leave to file its proposed amici brief based upon the following reasons: (A) the proposed amici brief is largely duplicative of the arguments already presented in LVRJ’s answering brief; (B) the proposed amici brief cannot raise new issues for the first time on appeal; and (C) the amici’s version of “public opinion” is not “public policy” in Nevada. The Coroner also opposes the motion to associate counsel since *pro hac vice* counsel for amici will not be necessary if the Court does not allow the proposed amici brief to be filed. Alternatively, if the Court allows the proposed amici brief to be filed, the Court should grant leave for an additional 3,000 words in the Coroner’s reply brief.

II. LEGAL ARGUMENT

A. THE PROPOSED AMICI BRIEF IS LARGELY DUPLICATIVE OF THE ARGUMENTS ALREADY PRESENTED IN LVRJ’S ANSWERING BRIEF.

The proposed amici brief is largely duplicative of the arguments already presented in LVRJ’s answering brief. The proposed amici brief offers many of the same cases already cited in LVRJ’s answering brief, and in some instances simply repeats the same arguments: “As the *Review-Journal* notes....” Amici Br. at 7. The Seventh Circuit Court of Appeals’ opinion *Ryan v. Commodity Futures*

Trading Commission, 125 F.3d 1062 (7th Cir. 1997) is often cited by this Court in determining whether to allow a proposed amicus brief to be filed. In *Ryan*, the Seventh Circuit observed, “The vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants’ briefs, in effect merely extending the length of the litigant’s brief. Such amicus briefs should not be allowed. They are an abuse.” *Id.* at 1063. The proposed amici brief is no different than this observation. The proposed amici brief simply aligns itself with LVRJ, as similarly-situated news organizations. Just because amici are interested in this case does not mean that they need to file a brief that largely duplicates the arguments already presented by LVRJ. In other words, amici, as news organizations, do not provide a “unique perspective.” *See, e.g., In re Halo Wireless, Inc.*, 684 F.3d 581, 595–596 (5th Cir. 2012) (denying motion for leave to file as amicus curiae because while potential amicus “may have a ‘unique perspective’ . . . its brief . . . contains no information or arguments that the Appellees did not already provide to the Court.”). Therefore, the Court should deny the amici curiae motion for leave to file its proposed amici brief.

B. THE PROPOSED AMICI BRIEF CANNOT RAISE NEW ISSUES FOR THE FIRST TIME ON APPEAL.

The proposed amici brief cannot raise new issues for the first time on appeal. *See Wyoming Farm Bureau Federation v. Babbitt*, 199 F.3d 1224, 1230 n.2 (10th

Cir. 2000). The balance of the proposed amici brief improperly attempts to raise new issues. For example, amici refer this Court to several hyperlinks of its own news stories, which were never presented in the District Court. Amici Br. 8–11. However, since LVRJ cannot raise new issues for the first time on appeal, amici also cannot. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52–53, 623 P.2d 981, 983–984 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”). Additionally, the proposed amici brief would have the effect of presenting new factual issues in the record, which this Court has specifically prohibited. *See Carson Ready Mix, Inc. v. First Nat’l Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (“We cannot consider matters not properly appearing in the record on appeal.”). Therefore, since the proposed amici brief attempts to raise new issues for the first time on appeal, this Court should deny the motion for leave.

C. THE AMICI’S VERSION OF “PUBLIC OPINION” IS NOT “PUBLIC POLICY” IN NEVADA.

The amici’s version of “public opinion” is not “public policy” in Nevada. Interestingly, the amici brief notes that the Coroner already provides a decedent’s cause of death, but not the entire autopsy report to the public, as outlined in NRS 259.045. Amici Br. 7. Instead of abiding by what the Nevada Legislature

has dictated in the statutory language, amici offer their own version of “public opinion” in news stories outlining what the public in other jurisdictions purportedly wants for Nevada. Yet, amici do not cite any authorities that actually constitute “public policy.” *See Cable v. EICON*, 122 Nev. 120, 124–25, 127 P.3d 528, 531 (2006). Instead, amici suggest that their desire to invade a decedent’s privacy and obtain personal information somehow benefits the “public.” Yet, amici’s proffered “public opinion” simply does not amount to “public policy,” particularly because none of amici’s biased sources are from Nevada. Therefore, the Court should deny the amici motion for leave.

D. ALTERNATIVELY, IF THE COURT ALLOWS THE PROPOSED AMICI BRIEF TO BE FILED, THE COURT SHOULD GRANT LEAVE FOR AN ADDITIONAL 3,000 WORDS IN THE CORONER’S REPLY BRIEF.

Alternatively, if the Court allows the proposed amici brief to be filed, the Court should grant leave for an additional 3,000 words in the Coroner’s reply brief. According to NRAP 32(a)(7), the Coroner’s reply brief is limited to 7,000 words. However, if the Court allows the proposed amici brief to be filed, the Coroner will be required to respond to both LVRJ’s answering brief and the amici brief. As such, the Court should extend the word-count limit of the Coroner’s reply brief by 3,000 words to a total of 10,000 words if the Coroner is required to respond to the amici brief.

III. CONCLUSION

In summary, the Court should deny the amici curiae motion for leave to file its proposed amici brief since it is largely duplicative of LVRJ's answering brief, improperly attempts to raise new issues for the first time on appeal, and improperly offers its own version of "public opinion" instead of Nevada "public policy." Alternatively, if the Court allows the proposed amici brief to be filed, the Court should grant leave for the Coroner's reply brief to include an additional 3,000 words.

Dated this 13th day of September, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSITION TO 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 AND OPPOSITION TO MOTION TO ASSOCIATE COUNSEL** was filed electronically with the Nevada Supreme Court on the 13th day of September, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
Kristen Gallagher, Esq.

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing