

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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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 74604

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

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

Kristen T. Gallagher (NSBN 9561)
McDONALD CARANO LLP
2300 W. Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
kgallagher@mcdonaldcarano.com

Caitlin Vogus
THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1250
Washington, DC 20005
Telephone: (202) 795-9315
(*pro hac vice application* submitted)
cvogus@rcfp.org

Counsel for Amici Curiae in Support of Respondent

SUMMARY OF THE ARGUMENT

The Reporters Committee for Freedom of the Press (“Reporters Committee”) and 11 media organizations (collectively, “*amici*”) reply to Appellant’s opposition to *amici*’s motion for leave to file their proposed *amici* brief, pursuant to Nevada Rule of Appellate Procedure 27. *Amici*’s motion should be granted because (1) *amici*’s arguments are distinct from Respondent’s, (2) there are no new issues introduced by *amici*’s proposed brief, and (3) *amici*’s proposed brief wholly revolves around the Nevada legislature’s “public policy” goals embodied in the Nevada Public Records Act (the “NPRA”).

ARGUMENT

I. *Amici*’s arguments are not duplicative of those made by Respondent.

Contrary to Appellant’s argument, *amici* are fulfilling the classic role of *amici 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. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). *Amici*’s proposed brief underscores the national impact and importance of reporters’ access autopsy reports, a concern that has not been properly expressed or defended in any of the briefs. Although *amici* support Respondent’s position, they are not exclusively duplicating, extending, or relying on any of

Respondent's arguments before this Court, as Appellant claims but does not support with specific citations.

Amici also have “unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012). For decades, the Reporters Committee has provided *pro bono* legal representation and support to reporters and news organizations across the country. As such, it is uniquely positioned to both (1) help inform the Court of the consequences of its decision regarding public access to autopsy records and (2) represent the interests of reporters and news organizations that are implicated by this lawsuit. The remainder of the *amici* include trade organizations, professional associations, and news media organizations that operate in Nevada, who are similarly well positioned to provide the Court with their distinct perspective on the potential impacts of its decision.

In addition, the Reporters Committee files approximately 40 *amicus* briefs each year, which are routinely accepted by state and federal courts across the country, including by this Court. *See, e.g.*, Order Granting Mot. for Leave to File Amicus Br., *Las Vegas Review-Journal v. Eighth Judicial Dist. Ct.*, No. 75073 (Nev. 2018); Order, *Veterans in Politics Int'l Inc. v. Willick*, No. 72778 (Nev. 2018) (inviting *amici* the Reporters Committee and the Nevada Press Association to file *amicus* brief); *see generally Briefs and Comments*, Reporters Committee for

Freedom of the Press, <https://www.rcfp.org/browse-media-law-resources/briefs-comments> (last visited Sept. 21, 2018).

Moreover, Appellant apparently recognizes the differences between *amici*'s and Respondent's briefs, as it claims it requires 3,000 additional words to respond to *amici*'s brief.

II. News articles referenced by *amici* are properly introduced to this Court.

Appellant argues that *amici* are introducing “new issues” before this Court by referencing published news articles that were not discussed below. *See* Opp'n to Mot. for Leave to File *Amici Curiae* Br. 2-3. This is incorrect. *Amici* provide these stories as concrete examples of how autopsy reports have led to a much deeper understanding of government practices across the country. The articles provide the Court with background information and context to better understand the public policy interest in greater accessibility to autopsy reports. Highlighting these interests with sample news stories is not equivalent to presenting a new issue or evidence on appeal, and this Court should disregard Appellant's argument. *See Funbus Sys., Inc. v. State of Cal. Pub. Utilities Comm'n.*, 801 F.2d 1120, 1125 (9th Cir. 1986) (“Similarly, the ICC's assertion that Washington's use of extra-record facts is improper because an amicus may not raise an issue of fact in an appeal is misdirected. Washington does not seek to raise issues of fact, nor does it raise any legal question not urged by the parties themselves.”). However, even if the news

stories are considered “new issues,” this Court can and should take judicial notice of them. Courts can take notice of a fact that is not reasonably in dispute. *See* NRS 47.130(2) (2017). The publication of these news articles can be readily determined, and there is no reasonable dispute that reporters relied on autopsy reports to inform their communities in each of the cited stories. Thus, they are undisputable examples of the news media’s use of autopsy reports to verify a public official’s account of an event, expose questionable practices at corners’ offices, or uncover flawed systems in government agencies. *See* Amici Br. 7-10.

III. Appellant’s distinction between “public policy” and “public opinion” is not grounded in any legal authority.

Appellant argues that *amici*’s “version of ‘public opinion’ is not ‘public policy’ in Nevada.” Opp’n to Mot. for Leave to File *Amici Curiae* Br. 3. *Amici* use the phrase “public opinion” only once, in their Motion for Leave, to explain the news media’s role in ensuring public access to government activities, as recognized by the Supreme Court. *See* Mot. for Leave to file *Amici Curiae* Br. 2 (“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[.]’”) (quoting *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936)). Moreover, the proposed *amici* brief addresses the public policy goals that the Nevada legislature expressed in the NPRA. Appellant’s criticism of the proposed *amici* brief on this basis represents at most a

substantive disagreement on the law and not a procedural justification for rejecting the brief.

Contrary to Appellant's claims, *amici* cite numerous Nevada sources regarding the public policy concerns that animate the NPRA. As explained in the proposed *amici* brief, the Nevada Supreme Court explained that the purpose of the NPRA is to further "the democratic ideal of an accountable government by ensuring that public records are broadly accessible." Amici Br. 6. (citing *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011)). This alludes to the NPRA itself, which states that its purpose is to "foster democratic principles by providing members of the public access to inspect and copy public books and records to the extent permitted by law." See NRS 239.001 (2017); see also Resp't's Answering Br. 3 (filed Aug. 13, 2018). The news stories cited in the proposed *amici* brief illustrate how reporters use autopsy reports to inform the public and hold government officials accountable.

CONCLUSION

For the reasons set forth herein, this Court should grant *amici*'s Motion for Leave to file its proposed *amici curiae* brief.

Dated: September 21, 2018

Respectfully Submitted,

McDONALD CARANO LLP

/s/ Kristen T. Gallagher

Kristen T. Gallagher (NSBN 9561)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
kgallagher@mcdonaldcarano.com

Caitlin Vogus (*pro hac vice application* submitted)
The Reporters Committee For Freedom of the Press
1156 15th St. NW, Suite 1250
Washington, DC 20005
Telephone: (202) 795-9315
cvogus@rcfp.org

Counsel for Amici Curiae in Support of Respondent

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b) and NEFCR 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:

Margaret A. McLetchie
MCLEATCHIE SHELL LLC
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
*Counsel for Respondent Las Vegas Review-Journal
and the Associated Press*

Micah S. Echols
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

Mary-Anne Miller and Laura Rehfeldt
Clark County District Attorney’s Office
500 S. Grand Central Pkwy., Ste. 5075
Las Vegas, NV 89106
*Counsel for Appellant Clark County Office of the
Coroner/Medical Examiner*

Dated: September 21, 2018

/s/ Marianne Carter
An employee of McDonald Carano LLP