

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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***Supreme Court Case No. 75073***

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*Petitioners*

v.

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 AND THE ESTATE OF  
CHARLESTON HARFIELD and OFFICE OF THE CLARK COUNTY  
CORONER/MEDICAL EXAMINER

*Real Parties in Interest.*

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**ANSWER TO PETITION FOR WRIT OF PROHIBITION OR IN THE  
ALTERNATIVE MANDAMUS PURSUANT TO NRAP 21 AND 27(e)**

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## **I. ISSUE PRESENTED AND RELIEF SOUGHT**

The issue presented is whether Petitioners may violate Real Parties In Interest Veronica Hartfield and the Estate of Charleston Hartfield's fundamental right to privacy even though Petitioners have claimed no legitimate public interest in exploiting Mr. Hartfield's murder by obtaining, disseminating, and/or publishing the private, confidential, redacted autopsy report of Mr. Hartfield, a Las Vegas victim of the largest mass shooting on American soil.

The district court lawfully ordered Petitioners be restrained from having continued access to Mr. Hartfield's redacted autopsy report, in part because Petitioners failed to demonstrate any actual basis for how Mr. Hartfield's redacted autopsy report served any public interest. (III PA 356-363).

## **II. INTRODUCTION**

Real Parties in Interest Veronica Hartfield and the Estate of Charleston Hartfield (hereinafter "Veronica") obtained proper relief before the district court, which ordered that Petitioners destroy or return Veronica's husband's redacted autopsy report to the Coroner's office. (III PA 356-363).

Initially, Petitioners obtained a court order from a different district court giving it permission to obtain autopsy reports of the victims of the Las Vegas, October 1, 2017, mass shooting from the Coroner's office. Petitioners did so without

ever notifying Veronica that it planned to obtain, disseminate, and/or publish, her murdered husband's autopsy report. (II PA 301-303). Veronica would not have consented to Petitioners' access to her husband's autopsy report; Veronica would have attended the initial hearing to assert her interests had she been noticed of said hearing. (II PA 301-303).

Despite multiple opportunities, both orally and in the briefs, Petitioners could not demonstrate any legitimate basis for how its possession, dissemination, or publication of Mr. Hartfield's redacted autopsy report would serve any public interest. Because mandated disclosure of said report violates Veronica's fundamental right to privacy, the district court in the instant action ordered Petitioners return or destroy Mr. Hartfield's redacted autopsy report. (III PA 356-363).

Although the issue before this Court is based upon a unique set of circumstances, all of which impact Veronica's fundamental right to privacy, Petitioners utilize what appears to be a "cookie-cutter" argument that "it is the media" in support of its belief that it should be allowed to further exploit Mr. Hartfield's murder without providing any rational basis for how this is in the public interest. (III PA 356-363). By way of example, Petitioners cite to cases that do not have any bearing on the factual circumstances of this case. In its Introduction, Petitioners cite to *Goldblum v. Nat'l Broad. Corp.*, 584 F.2d 904 (9th Cir. 1978). In



*Goldblum*, an unsavory individual was upset that NBC was making a movie about his criminal acts and sought to enjoin the broadcast, the grounds upon which were unclear in the complaint. *Goldblum v. Nat'l Broad. Corp.*, 584 F.2d 904, 905 (9th Cir. 1978). These circumstances have no application to the case at issue before this Court.

Petitioners also cite to in *Carroll v. Princess Anne*, 393 U.S. 175, 181 (1968), which is a case about white supremacists holding rallies near the courthouse steps, and the county trying to take ex-parte steps to stop the rallies. *Carroll v. Princess Anne*, 393 U.S. 175, 181 (1968). The United States Supreme Court noted that no steps were taken to notice the supremacists or communicate with them, although this was expressly contemplated under Maryland procedure. *Id.* at 177. The United States Supreme Court found that there was no reason the county officials did not notify the supremacists; the supremacists were present, they were served with the injunction, and under these circumstances there was no justification for the ex parte character of the proceedings in the area of First Amendment rights. *Id.* at 183 (emphasis added). Interestingly, the United States Supreme Court stated:

**We need not here decide that it is impossible for circumstances to arise in which the issuance of an ex parte restraining order for a minimum period could be justified...**[i]n the present case, it is clear that the failure to give notice, formal or informal, and to provide an opportunity for an adversary proceeding...is incompatible with the First Amendment. Because we reverse the judgment below on this basis, **we need not and do not decide whether the facts in this case provided a constitutionally permissible basis for temporarily**

**enjoining** the holding of the August 7 rally.

*Id.* at 353 (emphasis added). Here, Veronica is also arguing there is a constitutionally permissible basis for injunctive relief, which implicates her fundamental right to privacy.

Another useful case cited by Petitioners in its Introduction that supports Veronica's position is *Hunt v. National Broadcasting Co.*, 872 F.2d 289, 293 (9th Cir. 1989), where a criminal defendant sought to enjoin broadcast and distribution of a docudrama portraying him as planning and committing two murders. *Hunt*, 872 F.2d 289 (9th Cir. 1989). The district court refused to issue a preliminary injunction, and he appealed the decision. *Id.*

The Ninth Circuit held:

**Review of an order granting or denying a preliminary injunction is much more limited than review of an order granting or denying a permanent injunction.** *Zepeda v. United States Immigration & Naturalization Service*, 753 F.2d 719, 724 (9th Cir. 1983) (*Zepeda*). **A district court has discretion to grant or deny a motion for preliminary injunction, and we will reverse only if that discretion has been abused.** *Caribbean Marine Services Co. v. Baldrige*, 844 F.2d 668, 673 (9th Cir. 1988) (*Caribbean Marine*); *Zepeda*, 753 F.2d at 724; *Sports Form Inc. v. United Press International, Inc.*, 686 F.2d 750, 752 (9th Cir. 1982) (*Sports Form*).

*Hunt*, 872 F.2d at 292 (emphasis added). As stated in *Hunt*, the district court has the discretion to grant the motion for preliminary injunction and reversal is only warranted if there has been an abuse of discretion.

The *Hunt* court continued:

**In reviewing the district court judge's application of a preliminary test to the substantive legal area and the facts before him, we will not reverse the district court's order simply because we would have reached a different result. To determine whether there has been an abuse of discretion, we "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment....The [reviewing] court is not empowered to substitute its judgment for that of the [district court]."**

*Hunt*, 872 F.2d at 292; citing *Zepeda*, 753 F.2d at 725, quoting *Sports Form*, 686 F.2d at 752 (emphasis added).

Based on the case law cited in Petitioners' Introduction, it is clear that should facts exist providing a constitutionally permissible basis for temporary injunctive relief, then injunctive relief may be considered, and that a district court has discretion to grant a motion for preliminary injunction, which can only be reversed for abuse of discretion. Because no abuse of discretion has occurred here, it follows that the writ cannot issue.

### **III. STATEMENT OF FACTS**

#### **A. Background of Veronica and Charleston Hartfield**

Veronica met her husband when she was 14 years old. They were high school sweethearts. (II PA 301-303). He served in the military and completed a tour in Iraq; she went to college and became a registered nurse. (II PA 301-303). They married in 2002 in California. (II PA 301-303). After his 4.5 years of active duty service, he

joined the National Guard, and was still affiliated with the National Guard until his death. (II PA 301-303).

Veronica and her husband have two beautiful children together, a son who is 15 years old, and a daughter who is 9 years old. (II PA301-303). Her husband's murder has been devastating to the family, especially their children. (II PA 301-303).

Veronica is employed with St. Rose Delima Campus. (II PA 301-303). At the time of her husband's death, he was employed with Las Vegas Metropolitan Police Department (LVMPD), and had been employed there since 2006. (II PA 301-303).

Veronica has worked very hard to shield, as much as possible, the children from exposure to her husband's murder, as possible. (II PA301-303). (II PA 301-303). Her son's classmate(s) have already seen information pertaining to the murder on the internet and a photo was put up of her husband and the shootings that occurred on October 1, 2017. (II PA 301-303).

On October 1, 2017, Veronica's husband and Veronica were attending a country music festival with friends when they heard a noise that sounded like firecrackers or fireworks going off. (II PA 301-303). Veronica's husband, a LVMPD officer, and having been active military, was immediately hypervigilant and told Veronica to put her phone away. (II PA 301-303). He said the sound was not fireworks or firecrackers, and began directing people in order to assist with the chaos and the rush of people that was beginning to surround them. (II PA 301-303).

They heard what sounded like rapid fire and Veronica noticed her husband looked up. (II PA 301-303). He stopped as many people as possible and directed them to get down. (II PA 301-303). He placed Veronica on the ground underneath him. (II PA 301-303).

During those moments, Veronica heard her husband say he had been hit. (II PA 301-303).

When the first rounds of fire finished, everyone got up except her husband. (II PA 301-303). Veronica told him they had to get up and go and he did not respond. (II PA 301-303). Veronica tried to pull her husband out of the scene with her friend. (II PA 301-303).

Veronica called 911. (II PA 301-303).

More rounds were fired. (II PA 301-303).

Veronica's friend, who was laying next to her, was also shot in the back. (II PA 301-303).

When the firing ceased again, Veronica rolled her husband over. (II PA 301-303). She could see blood from coming from his mouth and she tried to find a point of impact. (II PA 301-303). She could not see or feel anything, but it was very dark. (II PA 301-303).

Veronica has not been able to return to work since the shootings. (II PA 301-303). She has been seeing a therapist once a week for the trauma from this event. (II

PA 301-303). She cannot talk about what happened to her husband and her family without crying. (II PA 301-303).

After the shooting, a list of the victims came out with their names, birthdates, and sex. (II PA 301-303, 308-313). From that point on, more identifying information of the victims was released through the media. (II PA 301-303, 315-316).

Veronica never knew that there was an issue with autopsy reports being released. (II PA 301-303). No one ever provided any notice to Veronica that her husband's autopsy report could be released. (II PA 301-303). Veronica was never informed that the coroner's office was subject to a lawsuit about autopsy reports being released. (II PA 301-303). She assumed this was private information. (II PA 301-303).

A friend of Veronica's mentioned something to her about autopsy reports being released. (II PA 301-303). Even with redacted information, it would still be easy to ascertain Veronica's husband from the autopsy reports. (II PA 301-303, 308-313, 315-316).

Veronica is trying to protect her children and her husband's reputation so that he has dignity, even in death. (II PA 301-303). No one has asked Veronica how she feels about her husband's autopsy being produced to the public. (II PA 301-303). No one has asked Veronica how she feels about the private information about the investigation done on his body, and the reports that stem therefrom. (II PA 301-303).

Veronica's children are growing up in the age of technology and they also deserve privacy regarding their father's personal matters. (II PA 301-303). As such, she is requesting that the information contained in her husband's autopsy report remain private and confidential. (II PA 301-303). Redacting his name or other personal information does not make it acceptable to release this information to the general public. (II PA 301-303).

#### **B. Private, Confidential Information That is Contained in Autopsy Reports**

When the coroner's office is notified of a death and the circumstances fall under the jurisdiction of the coroner's office, information is gathered from the scene and persons, such as witnesses, law enforcement officers, and family members. (II PA 318-323). The investigation often entails obtaining medical records or health information of the decedent and most often, an autopsy is conducted. (II PA 318-323).

In conducting an autopsy, the medical examiners perform an external and internal exam of the body. (II PA 318-323). They review investigative findings, medical records, and health history. (II PA 318-323). They examine organs, and histology samples. (II PA 318-323).

The content of the autopsy report includes an analysis as to the medical/health status or condition of the exterior parts of the body. (II PA 318-323). The findings related to the internal examination are also included, which may include

radiographic findings, detailed descriptions of medical evaluations as to the condition of organs and functions which may include the neck (i.e. thyroid, cricoid, prevertebral tissue and muscles); cardiovascular system (i.e. aorta, coronary arteries, heart), respiratory system (i.e. trachea, major bronchi, pulmonary vessels, lungs), hepatobiliary system (i.e. liver), hemolymphatic system (i.e. spleen), gastrointestinal system (i.e. esophagus, stomach, appendix, intestines), genitourinary system (i.e. renal and genitalia), endocrine system, (i.e. thyroid and adrenal glands), central nervous system, (i.e. brain). (II PA 318-323).

The fluids, tissue and organ samples retained and submitted for testing are included in the autopsy report along with the type of tests ordered. (II PA 318-323). Test results and microscopic examinations are also included. (II PA 318-323). References to specific medical records, specific medical or health information and personal characteristics may be included in the autopsy report. (II PA 318-323). This could include sexual orientation, types of diseases such as venereal, HIV, liver, cancer, mental illness, drug or alcohol addiction or overdoses. (II PA 318-323).

This information might not be publicly known, or desired by the decedent or its family to be public, and its dissemination may result in unwanted social stigmas or embarrassment to a family. (II PA 318-323).



### **C. Circumstances Giving Rise to the TRO/Preliminary Injunction**

Petitioners never offered to provide a copy of the redacted autopsy report of Mr. Hartfield to Veronica or her counsel, despite being on notice that Veronica took issue with the Petitioners having obtained a copy of the same. (II PA 260-261, ¶ 12 (declaration of Margaret A. McLetchie)). Contrary to Petitioners' assertions, the redacted report at issue could not be provided to the district court by Veronica's counsel because Veronica's counsel has never been given a copy of it. (II PA 260-261, ¶ 12 (declaration of Margaret A. McLetchie)). Petitioners claim that it has "no way of discerning which report pertains to Mr. Hartfield, and requiring that it be returned will actually identify" Mr. Hartfield; Petitioners are fully aware that the district court found this argument unpersuasive and provided multiple remedies to address Petitioners' complaints. (III PA 356-363).

Petitioners argue that "no written order has been entered" and even complain that the "lack of written order only compounds the constitutional issues." (*See* Petition, page 5). This is disingenuous; it is Petitioners who chose to file the Petition the same day as the district court's ruling. (*See* Petition). As such, there was no opportunity for a written order prior to the Petition being filed. However, a written order has been filed since the filing of Petitioners' Petition. (III PA 356-363).

## **IV. PROCEDURAL HISTORY**

### **A. The Temporary Restraining Order**

When Veronica learned that Mr. Hartfield's autopsy report was going to be released, she hired counsel, who immediately contacted counsel for Petitioners. (II PA 284-285).

During that conversation, counsel for Petitioners gave Veronica's counsel the distinct impression that he should simply advise Veronica that she should not move forward. (II PA 284-285). Veronica's counsel advised her at that time, that despite this conversation, Veronica's counsel would likely be proceeding to pursue some form of injunctive relief on behalf of Veronica. (II PA 284-285).

That conversation was memorialized in an email Veronica's counsel sent to Petitioners' counsel on February 2, 2018:

When we spoke about this issue, prior to filing, you are correct that you told me about some of the re[d]actions that had occurred. I devised you then, that I likely would move forward on some sort of injunctive relief despite that information. Immediately after it was filed, because you, during our prior conversation, advised that you represented the review journal and associated press, we contacted you to alert you. We left you a detailed message. You did not respond to that telephone message. I am returning to the office as we speak, and will make certain that if you do not already have the pleadings, you will have them shortly.

(II PA 284-285, 305-306).

Petitioners' counsel also contacted undersigned counsel after pleadings were filed that Veronica's counsel alluded to in the prior (February 2) conversation. (II

PA 284-285). Petitioners' counsel told Veronica's counsel that notwithstanding what she put her in her email about not recalling anything about Veronica's counsel mentioning Veronica's counsel's pursuit of injunctive relieve that she "was very busy that day" and may have forgotten about what was specifically discussed. (II PA 284-285).

On February 2, 2018, after the district court issued the Temporary Restraining Order, Petitioners' counsel immediately filed an Opposition to the Temporary Restraining Order, and a Counter-motion to dissolve the Temporary Restraining Order. (II PA 220-281).

Veronica's counsel filed a Reply to the Opposition to the Temporary Restraining Order, and an Opposition to the Counter-motion to Dissolve the Temporary Restraining Order. (II PA 282-323). The Office of the Clark County Coroner (the "Coroner"), by and through counsel, filed a Response in Non-Opposition. (PA 024-219).

These matters were originally set to be heard on Monday, February 12, 2018; however, because Petitioners' counsel requested this matter be heard on order shortening time, the district court heard all issues on Friday, February 9, 2018. (III PA 356-363).

**B. The District Court's Denial of Petitioners' Request for Relief and Granting of Injunctive Relief to Veronica**

**1. The Coroner's Position With Respect to Autopsy Reports**

On February 7, 2018, the Coroner filed a Response in Non-Opposition, which attached its Response to Petition and Opening Brief in Support of Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus Access to Autopsy Reports of 1 October Deaths (the "Response"), and which addressed several key points relevant to the case at bar. (PA 024-219).

The practice of the Coroner's office is to release Autopsy Reports, upon request, to the legal next of kin, an administrator of an estate, law enforcement officers, and pursuant to a subpoena. (PA 034). The Coroner's procedure is not to release the Autopsy Reports to the general public, and to limit the release to private individuals. (PA 034-035). This determination is based on the Attorney General Opinion 82-2, which opines that the Autopsy Report is a public record but is not open to public dissemination. (PA 034-035). This Opinion is based upon public policy and laws protecting the release of certain information relating to a person's body, mostly medical and health information, which is contained in an autopsy report. (PA 035). Additionally, the Attorney General Opinion applies a balancing test, which weighs privacy interests against the right to public access, which was also adopted by the Nevada Supreme Court. (PA 035).

The Coroner noted that books are records kept by government entities are public “unless otherwise declared by law to be confidential.” NRS 239.010. Because this statute neither specifically includes or excludes these records from public purview, a balancing test is required. (PA 024-219).

The Nevada Supreme Court has clearly stated that the purpose of the Nevada Public Records Act is to ensure accountability of the government to the public by facilitating public access to “vital information” about governmental activities. *See DR Partners v. Bd. Of Cnty Comm’rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (Nev. 2000). Again, where there is no statute that provides an absolute privilege against disclosure, a balancing test must be conducted. *Id.* (references to citations omitted).

Based on the arguments presented by the parties, and this information provided by the Coroner, the district court issued its findings of fact and order.

## **2. The District Court’s Findings of Fact and Order**

On February 9, 2018, the district court found that Veronica has a fundamental right to privacy and that courts have authority to restrict media’s reporting and access to certain, specific records if the documents implicate a clear privacy interest, and the reporting party cannot demonstrate a legitimate basis for dissemination and/or publication of the information at issue. (III PA 356-363).

The district court cited several cases and concluded that a balancing test was necessary to determine the respective rights of the parties. (III PA 356-363).

The district court acknowledged that Veronica's has a fundamental right to privacy and invasion of that right constitutes serious and irreparable harm. (III PA 356-363). The district court was mindful, in issuing its order, of the competing fundamental rights-a fundamental right to privacy and a fundamental right under the first amendment to speech. (III PA 356-363).

The district court found, in issuing its order, that the case at bar was different from the case brought in A-17-764842-W, Department XVI, prior to this action because the court was dealing with a personal privacy interest (a fundamental right), instead of government interests. (III PA 356-363).

Most tellingly, the district court made the following findings, as related to Petitioners' inability to articulate what general public interest existed in Petitioners' continued access to Mr. Hartfield's redacted autopsy report:

THE COURT FURTHER FINDS that Defendants have failed to assert any legitimate basis for why the public would need to have access to the redacted Hartfield autopsy report;

THE COURT FURTHER FINDS that there is a strong public policy that individuals are entitled to protection from intrusion into their medical records and medical history that is supported in part by the Coroner's counsel who came forward and explained the principles of the Coroner's office in exercising some degree of control over the dissemination of the autopsy records;

THE COURT FURTHER FINDS that the Court must also be sensitive to the grief that the victims and the victim's family are suffering from;

THE COURT FURTHER FINDS that Defendants have failed to demonstrate that the redacted autopsy report of Mr. Hartfield has any significant relationship to the manner in which the government operates to warrant dissemination and/or publication;

THE COURT FURTHER FINDS that Defendants have failed to demonstrate that the redacted autopsy report of Mr. Hartfield has any significant relationship to the need to keep the government accountable to warrant dissemination and/or publication;

THE COURT FURTHER FINDS that Defendants have failed to demonstrate that the redacted autopsy report of Mr. Hartfield has any significant relationship to the need for the government to be transparent to determine whether governmental officials are acting responsibly or with efficiency, to warrant dissemination and/or publication;

THE COURT FURTHER FINDS that Defendants have failed to demonstrate, in this case, irreparable harm or immediate or recognizable harm to Defendants if the redacted autopsy report of Mr. Hartfield remains protected;

THE COURT FURTHER FINDS that the disclosure of Mr. Hartfield's redacted autopsy report is not one involving a legitimate public concern.

(III PA 356-363).

As the district court found that there was no less restrictive action available and the order was narrowly tailored to return only Mr. Hartfield's redacted autopsy report, it ordered Petitioners to return the document to the Coroner's office or destroy

all documents in its possession and re-request the documents, minus Mr. Hartfield's redacted autopsy report. (III PA 356-363).

In regard to Petitioners' arguments for why this course of action was improper, the district court found Petitioners' arguments unpersuasive, and addressed those arguments in its order. (III PA 356-363). The district court specifically limited its ruling to the redacted autopsy report of Mr. Hartfield and no other reports and further ordered the press could report on information gleaned separate and apart from information gleaned from Mr. Hartfield's autopsy report. (III PA 356-363).

After Petitioners complained of being treated unfairly because of the district court's order, the district court responded:

[I]t is not dealing with the issue of what entities the Coroner's office released the autopsy report to, concerning Mr. Hartfield; the Court only has jurisdiction over the Las Vegas Review Journal and the Associated Press regarding the issues in the case at bar. As such, the Court can only determine whether the arguments the Las Vegas Review Journal and/or the Associated Press has made in support of continued possession, dissemination and/or publication of the redacted autopsy report of Mr. Hartfield warrants continued possession, dissemination, and/or publication of the redacted autopsy report of Mr. Hartfield and this Court has concluded that Defendants have failed to meet that burden.

(III PA 356-363).



Based on the findings of fact, the Court ordered as follows:

IT IS HEREBY ORDERED that Defendants' Counter-motion and Opposition is denied;

IT IS FURTHER ORDERED that Plaintiff's request for injunctive relief as to the autopsy report of Charleston Hartfield is granted, as: 1) Plaintiffs enjoy a reasonable likelihood of success on the merits; 2) Plaintiffs are likely to suffer irreparable harm if the injunctive relief is not granted; 3) the balance of equities tips in Plaintiffs' favor; and 4) an injunction is in the public interest;

IT IS FURTHER ORDERED that the Las Vegas Review Journal and the Associated Press are hereby restrained and barred from disclosing, disseminating, publishing, or sharing the redacted autopsy report of Mr. Hartfield, or any information of Mr. Hartfield therein;

IT IS FURTHER ORDERED that the Las Vegas Review Journal and the Associated Press must destroy any and all autopsy records relating to the October 1 event, as it pertains to Mr. Hartfield; alternatively, the Las Vegas Review Journal and A.P. may collect and return all copies of such records; in the event the Las Vegas Review Journal and/or the Associated Press is uncertain as to which records relate to Mr. Hartfield, then they must allow a representative of the Coroner's office and Petitioner's Counsel to review such records at the offices of the Las Vegas Review Journal, and/or the Associated Press to ascertain the records, among all the other autopsy records, to be returned and/or destroyed.

IT IS FURTHER ORDERED that the Coroner's office must send letters to any and all entities, media outlets, and other individuals, to whom Mr. Hartfield's redacted autopsy records were produced or disseminated reflecting this Court's order, except to the extent that the redacted

Hartfield autopsy report may be disseminated to the Plaintiff in this case.

(III PA 356-363).

Here, Petitioners are seeking emergency relief. However, because Petitioners cannot demonstrate any abuse of discretion occurred, the writ cannot issue.

## **V. JURISDICTION AND WHY THE WRIT CANNOT ISSUE**

The law reserves extraordinary writ relief for situations where there is not a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.330; *See also Bradley v Eighth Judicial District Court*, 405 P.3d 668 (Nev. 2017). Even where a writ is deemed appropriate, it is an extraordinary remedy, and it is within this Court's sound discretion to determine whether it will be issued. *Poulos v Eighth Judicial Dist. Court.*, 98 Nev. 453, 455, 652 P.2d 1177,1178 (Nev. 1982). In deciding whether to exercise that discretion, the Court will generally consider "whether judicial economy and judicial administration militate for or against issuing the writ, including whether an important issue of law needs clarification and public policy is served by invocation of its original jurisdiction. *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 267 P.3d 777,778-80 (Nev. 2011). Moreover, a Writ will not issue if the petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170. This Court has held that the right to appeal is generally an adequate legal remedy precluding writ relief, a remedy certainly present and available to the complaining Media Parties. *Pan v Eighth*

*Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (Nev. 2004).

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from office, trust or station (NRS 34.160) or to control an arbitrary or capricious exercise of discretion. NRS. 35.160; *See Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (Nev. 1981). Mandamus will not lie to control discretionary action, unless that discretion is manifestly abused or is exercised arbitrarily or capriciously. *See State v. Eighth Judicial Dist. Court* (Romano), 120 Nev. 613, 618, 97 P.3d 594 (Nev. 2004); *Borger v. Eighth Judicial Dist. Court*, 120 Nev. 1021, 1025, 102 P.3d 600 (Nev. 2004); *Hantges v. City of Henderson*, 121 Nev. 319, 324, 113 P.3d 848 (Nev. 2005).

There has been no abuse of discretion, and certainly no action taken by the district court warranting emergency intervention by this Court. To the contrary, the district court made a decision, well within its discretion, between two competing Constitutional interests. The Petitioners simply do not agree with the decision rendered.

While not specifically mentioned in the Constitution, the right to privacy is indeed a fundamental right guaranteed by the constitution and is in fact, a right older than the Bill of Rights. *Griswold v Connecticut*, 381 U.S. 479, 85 S. Ct 1678 14 L.E.2d 510 (1965). To allege that the district court acted arbitrarily, capriciously, and in excess of its authority in protecting Veronica's rights by issuing its order

ignores the very function that injunctive relief exists to serve – to protect a party from irreparable harm for which compensatory damage is an inadequate remedy.

*Excellence Cmty. Mgmt. v Gillmore*, 351 P.3d 720 (Nev. 2015).

## VI. LEGAL ARGUMENT

### A. There was no Abuse of Discretion by the District Court, Nor did the District Court Act Arbitrarily and Capriciously in Rendering its Decision

In *Hunt*, the Ninth Circuit held:

**Review of an order granting or denying a preliminary injunction is much more limited than review of an order granting or denying a permanent injunction. *Zepeda v. United States Immigration & Naturalization Service*, 753 F.2d 719, 724 (9th Cir. 1983) (*Zepeda*). A district court has discretion to grant or deny a motion for preliminary injunction, and we will reverse only if that discretion has been abused. *Caribbean Marine Services Co. v. Baldrige*, 844 F.2d 668, 673 (9th Cir. 1988) (*Caribbean Marine*); *Zepeda*, 753 F.2d at 724; *Sports Form Inc. v. United Press International, Inc.*, 686 F.2d 750, 752 (9th Cir. 1982) (*Sports Form*).**

*Hunt*, 872 F.2d at 292 (emphasis added).

The *Hunt* court continued:

**In reviewing the district court judge’s application of a preliminary test to the substantive legal area and the facts before him, we will not reverse the district court’s order simply because we would have reached a different result. To determine whether there has been an abuse of discretion, we “must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment....The [reviewing] court is not empowered to substitute its judgment for that of the [district court].”**

*Hunt*, 872 F.2d at 292; citing *Zepeda*, 753 F.2d at 725, quoting *Sports Form*, 686

F.2d at 752 (emphasis added).

The United States Supreme Court has never held that all injunctions are impermissible. *DVD Copy Control Association, Inc. v. Bunner*, 75 P.3d 1, 17 (Cal. 2003), citing *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 390, 93 S. Ct. 2553, 37 L.Ed. 2d 669 (1973).

The United States Supreme Court has “neither defined prior restraint, nor explained precisely why injunctions fit within a definition of prior restraint.” In *Bunner*, the court determined that the preliminary injunction was not an invalid prior restraint under the First Amendment. *Id.* at 19. In doing so, it distinguished *Proctor & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219 (6th Cir. 1996), a case cited by Petitioners in its Petition, noting that “**Proctor & Gamble is less than helpful because the Sixth Circuit Court of Appeals apparently assumed the order was a prior restraint and offered no analysis to support its assumption.**” *Bunner*, 75 P.3d at 19 (emphasis added). Likewise, Petitioners have failed to articulate in this case: (1) how this district court order is an invalid prior restraint; (2) the irreparable harm faced by returning the redacted autopsy report of Mr. Hartfield; and most importantly, (3) any basis for how the redacted autopsy report of Mr. Hartfield serves public interest. (III PA 356-363). For these reasons, the writ should not issue.

1. **The Court Considered Sufficient Evidence in Rendering Its Decision**

As set forth in the Statement of Facts, it is clear how invasive the autopsy procedure and accompanying report is; autopsy records are largely composed of medical and health information. (II PA 318-323). It is recognized that this information is treated confidential by federal law, pursuant to the Health Insurance Portability and Accountability Act of 1996, as well as state law under NRS Chapter 629. (II PA 318-323).

Additionally, other information that may be contained in autopsy reports, i.e. communicable diseases (NRS 441A.220) or whether someone was born out of wedlock is also declared confidential by law (NRS 440.170). (II PA 318-323).

What is glaringly missing from Petitioners' argument about the district court's failure to consider evidence is Petitioners' failure to provide any evidence and/or even articulate any legitimate basis for why Mr. Hartfield's redacted autopsy report would serve any public interest. The district court specifically found in its court order that, "Defendants have failed to assert any legitimate basis for why the public would need to have access to the redacted Hartfield autopsy report." (III PA3 56-363). In its court order, the district court found that, "there is a strong public policy that individuals are entitled to protection from intrusion into their medical records and medical history that is supported in part by the Coroner's counsel who came forward

and explained the principles of the Coroner's office in exercising some degree of control over the dissemination of the autopsy records." (III PA 356-363).

Thus, the fact that the redacted autopsy report of Mr. Hartfield (which is actually in Petitioners' possession) was not produced to the district court, does not render the district court's decision an abuse of discretion because it considered many other factors regarding autopsy reports, and further considered Petitioners' complete failure to explain how Mr. Hartfield's redacted autopsy report served any public interest. (III PA 356-363).

### **2-3. The Court Applied Proper Analysis in Competing Fundamental Rights**

In its court order, the district court acknowledged the cases cited by the parties, and the competing fundamental rights at play. (III PA 356-363). The district court understood both Veronica's fundamental right to privacy and the irreparable harm she would suffer from Petitioners' continued access, dissemination, and/or publication of Mr. Hartfield's redacted autopsy report. (III PA 356-363). The district court also recognized Petitioners' fundamental right under the first amendment to speech. (III PA 356-363). In conducting a balancing test, the district court found compelling the fact that Petitioners did not articulate a single legitimate basis for how its possession, dissemination and/or publication of Mr. Hartfield's redacted autopsy report served the general public. (III PA 356-363). The district court also found that because Petitioners failed to demonstrate any significant relationship

between the redacted report and: (1) the manner in which the government operates to warrant dissemination and/or publication; (2) the need to keep the government accountable to warrant dissemination and/or publication; and/or (3) the need for the government to be transparent to determine whether governmental officials are acting responsibly or with efficiency, to warrant dissemination and/or publication; it was not inclined to find in favor of Petitioners. (III PA 356-363). Additionally, Petitioners failed to demonstrate, “in this case, irreparable harm or immediate or recognizable harm to Defendants if the redacted autopsy report of Mr. Hartfield remains protected.” (III PA 356-363).

Thus, it is clear that the district court did consider the competing fundamental rights at issue. However, because Petitioners had no basis upon which to support its argument, Petitioners were not successful in its efforts.

4. **The Court Did Not “Ignore That No Irreparable Harm Was at Hand” for Veronica and Petitioners’ Statement Regarding the Same is Misleading, At Best**

The district court found that the anguish suffered by Plaintiffs by having the autopsy report of Mr. Hartfield disseminated and/or published is significant, and that the invasion of Veronica’s privacy right, which is a fundamental right, constitutes serious and irreparable harm. (III PA 356-363). It also found that the anguish, similarly articulated in *Katz* being suffered by Veronica supports the view that there is a privacy interest, which is a fundamental, protected interest of a very serious



nature, that the Court must consider. (III PA 356-363). As such, this issue was considered.

5-6. **Petitioners' Allegations Have No Merit**

During the hearing, the district court continued to attempt to render its decision and counsel for Petitioners kept interrupting the district court with a “kitchen sink” approach as to why Petitioners disagreed with the district court’s decision. The argument that it was “not fair” that only Petitioners be restrained was one such argument. Other arguments included, but were not limited to: 1) Petitioners did not know which report was Mr. Hartfield’s; and 2) that the material had already been disseminated to Petitioners’ employees and there was no way to get it back.

In attempting to address all the red herrings brought forth by Petitioners, the district court stated that it did not have jurisdiction over anyone other than Petitioners and Real Party in Interest Office of the Clark County Coroner. Specifically, the district court found:

It is not dealing with the issue of what entities the Coroner’s office released the autopsy report to, concerning Mr. Hartfield; the Court only has jurisdiction over the Las Vegas Review Journal and the Associated Press regarding the issues in the case at bar. As such, the Court can only determine whether the arguments the Las Vegas Review Journal and/or the Associated Press has made in support of continued possession, dissemination and/or publication of the redacted autopsy report of Mr. Hartfield warrants continued possession, dissemination, and/or publication of the redacted autopsy report of Mr. Hartfield and this Court has concluded that Defendants have failed to meet that burden.

(III PA 356-363).

Additionally, in its order, the district court found that Petitioners were free to report on information gleaned separate and apart from information gleaned from Mr. Hartfield's redacted autopsy report. (III PA 356-363).

Regarding Petitioners' other arguments, the district court found "unpersuasive Defendants' argument that it does not know which autopsy report to return, as Defendants may either: 1) return all autopsy reports to be destroyed by the Coroner, and request the Coroner to re-send a new set of reports without Mr. Hartfield's report contained therein; or 2) a representative from the Coroner's office can review the records that the Las Vegas Review Journal and/or Associated Press has and that record can be destroyed." (III PA 356-363).

The district court further found "unpersuasive Defendants' argument that it is impossible to retrieve the redacted autopsy report of Mr. Hartfield from the reporters that it has disseminated the report to, as any reporter who has received the redacted autopsy report of Mr. Hartfield is an employee of the Las Vegas Review Journal and/or Associated Press." (III PA 356-363).

The district court went so far as to order, "The Coroner's office must send letters to any and all entities, media outlets, and other individuals, to whom Mr. Hartfield's redacted autopsy records were produced or disseminated reflecting this

Court's order, except to the extent that the redacted Hartfield autopsy report may be disseminated to the Plaintiff in this case." (III PA 356-363).

Thus, the district court took all action it could take that fell under its jurisdiction, to address the concerns of Petitioners as related to its order.

7. **Petitioners Demonstrated No Legitimate Basis For How an "Exception" Was Created**

As addressed above, the district court properly conducted a balancing test between two competing fundamental interests. (III PA 356-363). Unfortunately for Petitioners, it could not articulate a single legitimate reason how possessing, disseminating, and/or publishing the redacted autopsy report of Mr. Hartfield would serve any public interest and the district court made findings consistent with the fact Petitioners could not demonstrate any need for the redacted autopsy report of Mr. Hartfield, nor would Petitioners be irreparably harmed if ordered to return and/or destroy it. (III PA 356-363).

Petitioners cannot merely assert that it disagrees with the district court in order to obtain relief. Rather, Petitioners must prove that the district court abused its discretion in conducting such a balancing test. Because Petitioners cannot meet the burden of demonstrating abuse of discretion, Petitioners' argument fails.

8. **Petitioners Have Provided No Support For its Allegation that the District Court Conflated the Law**

Aside from this blanket allegation made on page of the Petition, Petitioners have provided no actual support for this claim. As such, the argument fails and should not be considered by this Court.

9. **Petitioners' Argument that the Relief Ordered Is Not Effective Has No Merit**

Petitioners argue that the relief obtained by Veronica is ineffective and that Veronica's claims are moot. However, these assertions have been denied by Veronica, and the district court did not find Petitioners' arguments persuasive. (III PA 356-363). In the case at bar, Veronica signed an affidavit, affirming the following facts: (1) She is trying to protect my children and her husband's reputation so that he has dignity, even in death; (2) Her children are growing up in the age of technology and they deserve privacy regarding her husband's personal matters; (3) Redacting Veronica's husband's name or other personal information does not make it acceptable to release this information to the general public; (4) Even with redacted information, it would still be easy to ascertain Veronica's husband from the autopsy reports, and she does not want the autopsy reports in the hands of the general public.

Even more importantly, the district court found that the anguish suffered by Veronica by having her husband's report disseminated and/or published was an invasion of her fundamental right to privacy, constituting serious and irreparable harm. (III PA 356-363). Moreover, the district court found that releasing Mr.

Hartfield's redacted autopsy report would be a dissemination of highly intimate and utterly invasive information of a person's life and this is in connection with a horrific event. (III PA 356-363).

It is callous of Petitioners to claim that no reporting has jeopardized the privacy of Veronica when she has signed an affidavit attesting to the opposite. (II PA 301-303). Veronica's fundamental right to privacy has been violated and as such, she wants the redacted autopsy report of her husband out of the hands of Petitioners. (II PA 301-303, III PA 356-363). This relief is warranted considering Petitioners cannot articulate a single reason why its possession, dissemination, and/or publication of the same would in any way benefit the general public. (III PA 356-363).

10. **The District Court Properly Distinguished the Current Action From The Action Heard in the District Court, Department XVI**

In the case at bar, the district court's order states that, "the matter before the Court is different from the case brought in A-17-764842-W, Department XVI, prior to this action because this Court is dealing with a personal privacy interest, which is a fundamental right, instead of government interests." (III PA 356-363). Additionally, the district court's order states that, "this case is substantively different from the case heard in A-17-764842-W, Department XVI; as such, this Court finds that releasing Mr. Hartfield's redacted autopsy report would be a dissemination of

highly intimate and utterly invasive information of a person's life and this is in connection with a horrific event.” (III PA 356-363).

Thus, Petitioners' argument that the district court did not address the “conflicting orders” is inaccurate, and the writ should not issue. (PA III 356-363).

## **B. Ample Case Law Supports the District Court's Order**

The right to privacy is a fundamental right guaranteed by the Constitution and in fact, is a right older than the Bill of Rights. *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L.Ed.2d 510 (1965).

Family members of decedents have a privacy right in records regarding their deceased relatives. *Katz v. National Archives & Records Admin.*, 862 F.Supp. 476 (D.D.C. 1994). In *Katz*, the court held:

[T]he Kennedy family has a clear privacy interest in preventing the disclosure of both the x-rays and the optical photographs taken during President Kennedy's autopsy...However, there can be no mistaking that the Kennedy family has been traumatized by the prior publication of the unauthorized records and that further release of the autopsy materials will cause additional anguish...

...The Court finds that allowing access to the autopsy photographs would constitute a clearly unwarranted invasion of the Kennedy family's privacy.

*Katz*, 862 F.Supp. at 485-86. *See also Badhwar v. United States Dep't of Air Force*, 829 F.2d 182, 185-86 (D.C. Cir. 1987) (families of deceased aircraft pilots have a privacy interest in autopsy reports); *New York Times Co. v. NASA*, 782 F.Supp. 628

(D.D.C. 1991) (reporter's request to obtain disclosure of tape-recorded voice communications aboard the Challenger space shuttle on date of accident killing seven astronauts denied as unwarranted invasion of the personal privacy of the astronaut's families).

In *Cowles Publ'g Co. v. State Patrol*, 109 Wash.2d 712, 748 P.2d 597 (Wash. 1988), the court identified the nature of facts protected by the right of privacy, stating:

Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, **there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest.**

*Cowles Publ'g Co.*, 109 Wash.2d at 721, 748 P.2d 597 (quoting Restatement (Second) of Torts sec. 652D, at 386 (1977)). See also *Seattle Firefighters Union Local No. 27 v. Hollister*, 48 Wash. App. 129, 135 737 P.2d 1302 (Wash. App. 1987) (emphasis added).

The *Reid* court utilized the *Cowles* decision in its holding that the family of the decedent had a privacy right to autopsy reports, given the confidential nature of

autopsy reports, and that by displaying autopsy photographs, a matter private to the lives of the Plaintiffs was given publicity by the County. *Reid v. Pierce County*, 961 P.2d 333 (Wash. 1998).

Nevada case law is clear that a balancing test must occur. *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (Nev. 1990) and *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011).

Veronica's family is already grieving and dissemination of the autopsy reports and records would only cause more irreparable harm. (II PA 301-303). The Nevada Supreme Court has recognized that an individual's privacy is an important interest. *See Reno Newspapers v. Haley*, 126 Nev. 211, 234 P.3d 922 (Nev. 2010). Similarly, in *Certain Interested Individuals, John Does I-V, Who are Employees of McDonnell Douglas Corp. v. Pulitzer Pub. Co.*, 895 F.2d 460 (8th Cir. 1990), the Eighth Circuit Court of Appeals stated, "We agree with the district court that what is required is a careful balancing of the public's interest in access against the individual's privacy interests, and we commend the district court for its efforts to protect and accommodate the conflicting interests in access and privacy." *Certain Interested Individuals, John Does I-V, Who are Employees of McDonnell Douglas Corp. v. Pulitzer Pub. Co.*, 895 F.2d 460, 464 (8th Cir. 1990).

Because Veronica's interest of nondisclosure outweighs any public interest in obtaining this information, the writ should not issue. More importantly, Petitioners



have utterly failed to present any viable explanation for how the redacted autopsy report of Mr. Hartfield serves any public interest. Indeed, the district court's order states that, "Defendants have failed to assert any legitimate basis for why the public would need to have access to the redacted Hartfield autopsy report." (III PA 356-363). The district court order acknowledges that, "there is a strong public policy that individuals are entitled to protection from intrusion into their medical records and medical history that is supported in part by the Coroner's counsel who came forward and explained the principles of the Coroner's office in exercising some degree of control over the dissemination of the autopsy records." (III PA 356-363).

Petitioners, and the district court, cited to *Johanson*, which states that a "gag order" may be entered when: (1) the activity restrained poses a serious and imminent threat to protected competing interest, i.e., the fundamental right to privacy; (2) the order is narrowly drawn; and (3) less restrictive alternatives are not available. *See Johanson v. Eighth Judicial District Ct.*, 124 Nev. 245, 182 P.3d 94 (Nev. 2008). In the case at bar, the district court made findings of fact that the order contemplated only the return of Mr. Hartfield's redacted report, and that less restrictive alternatives were not available. (III PA 356-363).

Contrary to Petitioners' assertions, there is a serious and imminent threat to a protected competing interest, which is Veronica's fundamental right to privacy. The district court made findings that serious and imminent harm existed. (III PA 356-

363). The district court also made findings that the right to privacy was implicated with redacted autopsy reports, and case law cited both in Veronica's pleadings and the district court's order supports these findings. (III PA 356-363).

**C. Petitioners' case law does not support petitions' assertion a writ should issue, given the facts of this case.**

The case law cited by Petitioners does not support the issuance of a writ under the facts presented to this court for review. Indeed, the holdings of the cases cited are extremely narrow, and: 1) deal with government interests rather than individual privacy rights; 2) constitute some type of waiver argument combined with information obtained from legitimate public sources; and/or 3) describe circumstances that are not analogous to the case at bar.

Petitioners' reliance on *Gambale v. Deutsche Bank AG*, 377 F.3d 133 (2d 2004) is distinguishable from the case at bar. In *Gambale*, the court held that the employer was entitled to confidentiality as to the dollar amount of settlement; however, the issue was that the amount had already been published and was permanently on the "highly accessible" databases of Westlaw and Lexis and had been prominently disseminated elsewhere. *Gambale*, 377 F.3d at 144. In contrast, in the case at bar, the district court offered a solution where Petitioners could return the redacted autopsy report of Mr. Hartfield so that it was no longer disseminated and/or published. (III PA 356-363). Moreover, because the only parties Petitioners claim it disseminated the report to were its own employees, it is a much different situation

from attempting to retract a document off the internet, legal data bases and other forums for publication. *Gambale*, 377 F.3d at 144.

Petitioners' reliance on *Cox Broadcasting Corp. v. Cohn*, 420 U.S.469 (1975), is misplaced. In *Cox*, the father of a deceased rape victim filed suit for invasion of privacy because the appellant had reported the name of the rape victim, whose name appeared on the indictments that were part of public records, available for inspection. *Cox*, 420 U.S. 469 (1975). The United States Supreme Court found that there was no contention the victim's name was obtained in an improper fashion or that it was not an official court document open to public inspection. *Id.* at 496. The United States Supreme Court stated that, under these circumstances, the State of Georgia could not make the broadcast the basis of civil liability. *Id.* at 497.

In the case at bar, Veronica has alleged the redacted autopsy report was obtained in an improper fashion; namely, that she was never placed on notice that any party intended on obtaining her husband's autopsy records. (II PA 301-303). Moreover, this is not a case where the father of the rape victim attempted to prevent continued dissemination of his daughter's name to the general public and attempted to obtain civil damages for ever having said her name in the first place on television, even though her name was found on public records regarding the rape. As such, Veronica respectfully contends that this case is not applicable to the situation the parties face here. In the case at bar, Petitioners had to obtain a court order, without

notice to Veronica who is arguably a proper party to be noticed, in order to obtain her husband's private, autopsy records. Also, in the case at bar, Veronica is not suing Petitioners for having purportedly reported on her husband's murder; she is merely requesting that the report be returned to the Coroner's office so that it is not disseminated and/or published in the future. (III PA 356-363). The number of tattoos Mr. Hartfield may have had, medical conditions suffered from, childhood ailments etched upon his body, etc., has absolutely no bearing on what happened in Las Vegas on October 1, 2017, and Petitioners cannot explain why Mr. Hartfield's medical information and history would be relevant to anyone except his family. (III PA 356-363).

Similarly, Petitioners' reliance on *Oklahoma Publishing Co. v. District Court In and For Oklahoma County*, 430 U.S. 308 (1977) is misleading. In *Oklahoma Publishing Co.*, although juvenile hearings were closed, members of the press were present at a juvenile hearing, with full knowledge of the presiding judge, prosecution, and defense counsel. *Oklahoma Publishing Co., Oklahoma Publishing Co.*, 430 U.S. 308, 311 (1977). No objection was made to the presence of the press, either in the courtroom or to photographing the juvenile as he left. *Id.* Because there was no evidence that Petitioner acquired the juvenile's name and picture unlawfully or even without implicit approval, and the name and picture of the juvenile were "publicly revealed," the United States Supreme Court held that, under these

circumstances, any order to enjoin newspapers from publishing the name or picture of the defendant, was in violation of the First and Fourteenth Amendments. *Id.* at 312.

Again, in the case at bar, Veronica never consented to having her husband's private information made public. (II PA 301-303). She was not even notified of Petitioners' intent to obtain her husband's confidential, private autopsy records, even though Petitioners had knowledge that she was an interested party. (II PA 301-303). Further, unlike the situation described in *Oklahoma Publishing Co.*, Veronica is asserting an individual fundamental right to privacy to keep these confidential records private.

Next, Petitioners cite to *Smith v. Daily Mail Publishing Co.* in support of its brief. In *Smith*, two newspapers found the identity of a minor defendant through eye-witnesses and reported on the same. *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979). An indictment was returned against the respondents for violating a state code that names of minors would not be published without court order. *Id.* at 98, 100. The sole interest advanced by the State was that it sought to protect the anonymity of the juvenile offender. *Id.* at 104 (emphasis added).

In *Smith*, the United States Supreme Court held that "the magnitude of the State's interest in the statute is not sufficient to justify application of a criminal penalty to respondents." *Id.* at 105. Moreover, the statute's approach did not satisfy

constitutional requirements because the statute did not restrict electronic media or any form of publication except “newspapers.” *Id.* In fact, three radio stations had also announced the identity of the minor defendant without repercussion; as such, even if the statute served “a state interest of the highest order, it [did] not accomplish its stated purpose.” *Id.*

In *Smith*, the United States Supreme Court was careful in stating its holding was narrow. *Id.* at 105. It stated that there was no issue here of privacy or prejudicial pretrial publicity; at issue was only the power of a state to punish the truthful publication of an alleged minor delinquent’s name, lawfully obtained by a newspaper. *Id.* at 105-106. Because the asserted state interest could not justify the statute’s imposition of criminal sanctions on this type of publication, the judgment of the Virginia court of appeals was affirmed. *Id.* at 106.

In the case at bar, Veronica did not consent to have her husband’s autopsy report produced. (II PA 301-303). Veronica is asserting an individual fundamental right; which is her fundamental right of privacy. (III PA 356-363). The case at bar is not about the State asserting an interest. As the *Smith* court acknowledged its holding was extremely narrow and only for the limited purposes stated above, Veronica respectfully contends that the *Smith* case is not applicable to the case at bar.

The final case discussed at length by Petitioners in support of its Petition is *The Florida Star v. B.J.F.*, 491 U.S. 524 (1989). In *B.J.F.*, a rape victim brought suit against a newspaper for publishing her name, which the newspaper acquired from a publicly released report. *Id.* The United States Supreme Court was again careful to limit its holding. It stated that if a newspaper lawfully obtained truthful information about a matter of public significance, then state officials could not constitutionally punish the publication of such information. *Id.* at 533.

Specifically, the United States Supreme Court held:

**Our holding today is limited.** We do not hold that truthful publication is automatically constitutionally protected, or that there is no zone of personal privacy within which the State may protect the individual from intrusion by the press, or even that a State may never punish publication of the name of a victim of a sexual offense. **We hold only that where a newspaper published truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order, and that no such interest is satisfactorily served by imposing liability under § 794.03 to appellant under the facts of this case.**

*Id.* at 541 (emphasis added).

Veronica respectfully contends that these cases are not relevant to the cases at bar. The standard by which this Court is to determine whether a writ should issue is whether the district court abused its discretion. Veronica's assertion is that it did not. The district court acknowledged that Petitioners enjoyed a fundamental right under the First Amendment to free speech, yet also recognized Veronica's fundamental right to privacy. (III PA 356-363). In acknowledging both fundamental rights, the

district court determined that a balancing test was required, utilizing both Nevada case law and case law from other jurisdictions. (III PA 356-363). A key factor in the district court's determination to grant injunctive relief was not only the fundamental right of privacy to which Veronica was entitled, nor the imminent harm the district court recognized she suffered, but the very fact that Petitioners could not explain to the district court a single legitimate basis for which public interest was implicated in dissemination and/or publication of Mr. Hartfield's redacted report. (III PA 356-363). Thus, in balancing the interests of the parties, and recognizing the imminent harm suffered by Veronica, versus no harm suffered by Petitioners, the district court granted Veronica the injunctive relief requested. (III PA 356-363). The fact that Petitioners do not agree with the decision does not render it meaningless.

It is not enough for the Petitioners to puff their chests and claim that media enjoys an unbridled, unrestrained First Amendment right to publish whatever materials it wants. In handling sensitive information of the victims of the worst mass shooting on American soil, it would behoove Petitioners to at least attempt to articulate some legitimate rationale or justification for why it should handle such sensitive material. However, without any type of explanation for how an individual's redacted autopsy report would serve the public interest, it defies logic to assume that it should be given to Petitioners, "just because" it is the media. (III PA 356-363). Petitioners had its chance to argue why it should possess, disseminate and/or publish



Mr. Hartfield's redacted autopsy report but was unable to articulate any legitimate basis for such possession, dissemination and/or publication; as such, there was no error in the district court's decision and it follows that it is not appropriate for a writ to issue.

**D. Petitioners Cannot Demonstrate Immediate, Irreversible, and Irreparable Harm**

Petitioners do not present any legitimate basis for how publishing the redacted autopsy report of Mr. Hartfield will "report[] on the performance of []public agencies. (See Petition, page 16). As such, Petitioners fail to articulate how "every minute the district court's order remains in place is another minute of harm suffered by the Media Parties and the public." *Id.* In fact, this single sentence is the only sentence argued in support of "irreparable harm" that articulates any basis for why Petitioners have the "right" to possess, disseminate, and/or publish the redacted Hartfield report.

First, Petitioners argued in front of the district court that it could not return the redacted autopsy report of Mr. Hartfield because it "didn't know which one it was" and in response, the district court ordered that Petitioners either destroy all reports and re-request them, minus Mr. Hartfield's report, or have the Coroner's office identify the correct report and return it to them. (III PA 356-363).

Petitioners' argument in its Petition, detailing the irreparable harm it will

allegedly suffer does not make sense. Petitioners argue that returning the redacted autopsy report of Mr. Hartfield to the Coroner's office would "cause immediate, irrevocable, and irreversible harm of revealing potentially privileged information, such as reporters' notes that the Media Parties have a duty to protect." (*See* Petition, page 16).

First, it is unclear how Petitioners know it has "privileged" notes on the redacted report of Mr. Hartfield when it claims it does not even know which report the redacted report of Mr. Hartfield is. Unless Petitioners can verify that it has "privileged" notes on every single report in its possession, this argument is disingenuous. Second, even if every report did have "privileged" notes, which has not been confirmed as the case, Petitioners could choose to: 1) destroy all the reports and re-request them; or 2) redact the privileged notes from the reports and return them; or 3) follow the district court's alternative option and have the Coroner's office identify which report the redacted autopsy report of Mr. Hartfield is, and return it to them (after Petitioners redact the same). (III PA 356-363). Then, no irreparable harm exists.

Simply put, Petitioners do not want to return the redacted autopsy report of Mr. Hartfield. Thus, Petitioners have created a series of red herrings in an effort to avoid return. However, it is obvious that there are a multitude of ways in which the redacted autopsy report of Mr. Hartfield could be taken out of the hands of

Petitioners and as such, Petitioners' argument that irreparable harm exists, falls flat on its face.

Next, the argument that Petitioners face irreparable harm because it faces contempt if violates the district court's "gag order" is without merit for the reasons set forth above.

Finally, it defies logic to state that "by contrast, the real parties in interest do not face immediate or irreparable harm" and this is clearly an argument the district court disagreed with. (III PA 356-363). The record amply demonstrates that immediate and irreparable harm would be suffered and it was on this basis that the district court made its ruling. (III PA 356-363).

## VII. CONCLUSION

Based on the foregoing reasons, the writ should not issue.

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify 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 brief has been prepared in a proportionally spaced typeface using Office Word in size 14 font in double spaced Times New Roman.

I further certify I have read this brief and that it complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and 12,034 words.

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Finally, I hereby certify to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand 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.

Dated this 14<sup>th</sup> day of February, 2018.

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**CERTIFICATE OF SERVICE**

I certify and affirm that I am an employee of Sgro & Roger and that on this 14<sup>th</sup> day of February, 2018 the **ANSWER TO PETITION FOR WRIT OF PROHIBITION OR IN THE ALTERNATIVE MANDAMUS PURSUANT TO NRAP 21 AND 27(e)** was served by First Class United States Mail, postage fully prepaid to the following:

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