IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 75073

THE LAS VEGAS REVIEW-JOURNAL AND THE ASSOCIATED PRESS

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.

RESPONSE TO [PROPOSED] BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND THE NEVADA PRESS ASSOCIATION-and-MOTION TO STRIKE SECOND SUPPLEMENTAL APPENDIX [VOLUME IV]

ANTHONY P. SGRO, ESQ. #3811
720 S. Seventh Street, 3rd Floor
Las Vegas, NV 89101
Telephone: (702) 384-9800
Facsimile: (702) 665-4120
tsgro@sgroandroger.com

Attorneys for Real Parties In Interest Veronica Hartfield and the Estate of Charleston Hartfield

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RESPONSE TO BRIEF OF AMICI CURIAE

I. THE BRIEF EXCEEDS THE BOUNDARIES OF THE ISSUES PRESENTED

The issue presented to this Court is whether Petitioners can violate Real Parties In Interest Veronica Hartfield and the Estate of Charleston Hartfield's fundamental right to privacy even though Petitioners could not claim any legitimate public interest, either in its briefing or in oral argument, in 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. Petitioners were given numerous opportunities to explain what public interest would be had in its possession, dissemination and/or publication of the specific autopsy report of Mr. Hartfield, which is the issue being litigated here, and Petitioners were unable to articulate any basis for how this report was in the public interest.

In its brief, the Reporters Committee essentially offers to fill in all the blanks left by Petitioners to speculate why "autopsy reports" are public interest. However: 1) this argument was not brought to the district court's attention at the time it made its findings and order; and 2) articulating a basis for why autopsy reports in general, are in the public interest, still does not explain what public interest is served in having this specific autopsy report, which is the report at issue, disseminated and/or published by Petitioners.

In each of the United States Supreme Court cases cited in the briefing, the

United States Supreme Court was careful to limit its holding to the circumstances before it. Although the Reporters Committee argues there is "significant news value" in publishing autopsy results, the Reporters Committee fails to explain how there is any significant news value in publishing Mr. Hartfield's autopsy report. Veronica Hartfield does not have standing to challenge the other 57 autopsy reports collected by Petitioners and the district court was very careful to limit its holding only to Mr. Hartfield's report. (III PA 356-363). Thus, the sweeping generalizations brought forth by the Reporters Committee are not relevant to the case at bar.

By way of example, Veronica, a registered nurse, stated that her husband suffered a gun-shot wound to the head, immediately fell, was non-responsive, and died. (II PA 301-303). As such, the argument of the Reporters Committee that this, in some way, could assist in determining whether Mr. Hartfield did not receive "adequate or timely medical care" would be of no interest to the public, because it is a non-issue. Additionally, it is well known that such information regarding the speed of medical care and whether it would have somehow made a difference, is never contained in an autopsy report.

Similarly, the Reporters Committee argues that "autopsy reports" assist in "scrutiniz[ing] the performance of government officials and learn how to improve public policies and prevent future deaths." (*See* Amici Curiae brief, page 3). However, it fails to explain how the autopsy report of Mr. Hartfield would

accomplish any of these goals. Such an explanation is not proffered because it does not exist. There is simply no connection between information in an autopsy report and prevention of future deaths.

The Reporters Committee argues that "most immediately, this transparency boosts the public's confidence in the work of county medical examiners" (*See* Amici Curiae brief, page 3) but utterly fails to explain how Mr. Hartfield's redacted report would accomplish this task. The Reporters Committee continues by alleging that autopsy reports "satisf[y] the public's interest in knowing the cause of death." *Id.* However, it cannot be disputed that the autopsy report of Mr. Hartfield does not necessarily create this "knowledge" of his death, as Mr. Hartfield died of a gun-shot wound to the head, which has been reported numerous times in the media, and is part of the record in this case. (II PA 301-303, 308-316).

The Reporters' Committee argues that autopsy reports "ensure" that the medical examiner's findings match the account told by public officials; however, no one is disputing here that Mr. Hartfield was killed by a gun-shot wound to the head. (II PA 301-303, 308-316). The Reporters' Committee brings forth irrelevant information that information of reported deaths has been inaccurate, in other newsworthy situations, and autopsy reports have assisted in reporting on such inaccuracies. However, the Reporters' Committee is making no such allegation in this case that there was any discrepancy between what the media reported as the

cause of death of Mr. Hartfield, and the examiner's findings because no inconsistency exists.

The Reporters' Committee appears to generally argue that autopsy reports can provide useful information; however, this is not the issue before the Court. The issue before this Court is whether the district court erred in finding that Petitioners failed to articulate a single legitimate reason why Mr. Hartfield's autopsy report was in the public interest. On that basis, when balancing Petitioners' rights against Real Party in Interest Veronica Hatfield and the Estate's fundamental right to privacy, the court determined injunctive relief was warranted.

Because the Reporters' Committee's argument for why autopsy records are in the public interest exceeds the scope of what was argued by the parties and is irrelevant to why the actual report of Mr. Hartfield is of public interest, these arguments cannot not be considered by this Court.

II. THE FIRST AMENDMENT DOES NOT OUTWEIGH AN INDIVIDUALS FUNDAMENTAL RIGHT TO PRIVACY.

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).

A. *Nebraska Press Ass'n v. Stuart* is Distinguishable From the Case at Bar and as such, the United States Supreme Court was Careful to Limit its Holding to the Facts Before It

The Reporters' Committee cites to *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976) in support of its position; however, *Nebraska Press Ass'n* does not stand for the proposition that the district court's order precluding the possession, dissemination and/or publication of Mr. Hartfield's autopsy report was an abuse of discretion.

In *Nebraska Press Ass'n*, a state trial judge, in anticipation of a murder trial, entered an order that restrained the news media from publishing or broadcasting accounts that it believed would be prejudicial in obtaining an impartial jury. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976). The United States Supreme Court analyzed several factors in determining that this order was invalid. *Id.* at 562. First, it examined the nature and extent of pretrial news coverage. *Id.* Second, it examined whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity. *Id.* Third, it examined how effectively a restraining order would prevent the threatened danger. *Id.* The Court noted that the precise terms of the restraining order were also important. *Id.*

The *Nebraska Press Ass'n* Court noted that there was little in the record to determine whether measures short of the trial court's order would have insured a fair trial. *Id.* at 563. The trial court failed to make express findings that no other measures

would suffice. *Id.* The *Nebraska Press Ass'n* Court was troubled by the fact that there was no finding that alternative measures would not have protected the defendant's rights. *Id.* at 565.

The Court further observed that the events took place in a community of 850 people and stated it was reasonable to assume that even without news accounts being printed or broadcast, rumors would travel by word of mouth. *Id.* at 568. The Court further noted that the order was also an attempt to limit the press from reporting events that transpired in the courtroom and this aspect plainly violated settled principles. *Id.*

The *Nebraska Press Ass'n* Court went on to state that it was not clear that further publicity would distort the views of potential jurors, and could not state that alternatives to a prior restraint on petitioners would not have sufficiently mitigated adverse effects of pretrial publicity. *Id.* at 569. The *Nebraska Press Ass'n* Court could not conclude that the restraining order would have served its intended purpose. *Id.*

The *Nebraska Press Ass'n* Court made clear that **its holding was confined to the record before it**. *Id.* (emphasis added). It reaffirmed, "**the guarantees of freedom of expression are not an absolute prohibition under all circumstances**, but the barriers to prior restraint remain high." *Id.* at 570 (emphasis added).

> [W]ith respect to the order **in this case** prohibiting reporting or commentary on judicial proceedings held in public, the barriers

> have not been overcome; to the extent that this order restrained publication of such material, it is clearly invalid. To the extent that it prohibited publication based on information gained from other sources, we conclude that the heavy burden imposed as a condition to securing a prior restraining was not met and the judgment of the Nebraska Supreme Court is therefore Reversed.

Id. (emphasis added).

In the case at bar, unlike *Nebraska Press Ass'n*, the district court did make specific findings of fact that there were no less restrictive means available. (III PA 356-363). Moreover, in the case at bar, unlike *Nebraska Press Ass'n*, there would be no "community discussion" of what information was contained in Mr. Hartfield's report without the media discussing the content contained therein.

Next, *Nebraska Press Ass'n* is distinguishable because it attempted to restrict reporters from reporting on what transpired in the courtroom; in this case, the district court stated that Petitioners could report on any aspect of Mr. Hartfield's murder or the October 1, 2017, mass shooting so long as the information being reported on was not specifically gleaned from Mr. Hartfield's autopsy report.

Most significantly, as also found in the cases cited by Petitioners, the United States Supreme Court **was careful to limit the holding to the facts before it.** In every case that has been cited, the Court has looked at the specific facts supporting each situation.

In the case at bar, the district court applied a balancing test, examined all the

factors, and determined that Petitioners brought forth no legitimate reason for how the redacted autopsy report of Mr. Hartfield served any public interest. (III PA 356-363). In: 1) conducting the balancing test and balancing the fundamental right to privacy enjoyed by Veronica versus the fundamental right to free speech; 2) acknowledging the fact that Petitioners could not put forth any rational argument as to Mr. Hartfield's specific report; and 3) finding that there were no less restrictive means necessary to protect Veronica's privacy right, the district court ultimately reached its decision that Petitioners should return Mr. Hartfield's autopsy report back to his family. (III PA 356-363). Petitioners can continue to report as much as they want on the mass shooting and/or Mr. Hartfield's murder itself. The only restriction was to not use information gleaned from the autopsy report. (III PA 356-363). Petitioners are not precluded from reporting on any of the other autopsy reports, including the report of the shooter. (III PA 356-363).

B. The Redacted Autopsy Report of Mr. Hartfield Provides No Value to the General Public

The Reporters Committee argues the district court is somehow preventing the public from being "enable[d]...to understand how people died, helping it assess the response of government officials, and informing future plans to prevent loss of life during catastrophic events." (*See* Amici Curiae Brief, p. 8). This argument is extraordinarily disingenuous. How can the redacted autopsy report assist in any of these aforementioned functions? The Brief of Amici Curiae does no more than make

sweeping, cookie-cutter generalizations of the rights of the media, and fails to explain how the report at issue accomplishes any of the functions listed above.

C. Privacy Interests are not Minimal; Individuals Enjoy a Fundamental Right to Privacy

It is misleading for the Reporters' Committee to state that the privacy interests asserted here are minimal. Redacting names, age, race, and toe tag numbers does not anonymize the victims. Petitioners filed a second supplemental appendix on February 15, 2018, which includes information that was not presented to the district court for review, and as such, is improper. Nonetheless, it should be noted that the article contained in the second supplemental appendix contains a list of all 58 victims, their sex, and manner of death. (IV PA 364-382). From this list, there are only seven males who died of a gun-shot wound to the head. It is foolish to state that people could not deduce Mr. Hartfield's identity, from this information available, simply because his name is redacted. Compiled with other information available to the general public about the victims of the mass shooting (such as photographs, physical descriptions, etc.), and the detailed information contained in each autopsy report, delving into the victims' personal lives, Mr. Hartfield's report could be identified if the redacted report was further published. (II PA 301-303, 308-316). Veronica is trying to prevent the continued dissemination and/or publication of her husband's autopsy report to limit what is put out into public purview. The Reporters' Committee has not alleged, and cannot allege, that Mr. Hartfield's redacted autopsy

report has been published in its entirety. As such, there is still time to protect the privacy of Veronica by prohibiting continued dissemination and/or publication of the same.

D. Autopsy Reports are not Automatically Open to Public Disclosure and No Statute Exists Stating that the Public is Entitled to Examine the Same; This Matter Continues to be Litigated Before This Court

This issue is not as cut and dry as the Reporters' Committee insinuates in its Brief. When Petitioners requested the autopsy reports, the Coroner denied access to the same under *Donrey of Nev. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (Nev. 1990), and *Reno Newspapers v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (Nev. 2011), HIPAA, state laws, AB57, and privacy interests. (I PA 025).

After a writ was filed in A764842, the Coroner argued against disclosure based on NRS 239 and Nevada case law, including AB 57/NRS 259.045, *Bradshaw*, HIPAA, state law, and privacy interests. (I PA 025). In a similar case, A758501, these arguments have been made and this is a case currently on appeal before this Court. (I PA 025).

The instant case differs somewhat from the arguments advanced by the Coroner's office in that the Coroner's office has only been able to assert government interest versus the issue present here, which is an individual's fundamental right to privacy.

Indeed, there is no statute either expressly allowing for, or prohibiting access

to autopsy records. Autopsy reports are not automatically considered part of the public record, which is why the Coroner's office did not release them when Petitioners initially requested the same.

On February 7, 2018, the Coroner filed a Response in Non-Opposition to the Hartfield Brief, 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 Coroner's office releases 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 office does not to release the Autopsy Reports to the general public and limits the release of autopsy reports to private individuals. (PA 034-035). The Coroner's office bases this practice on the Attorney General Opinion 82-2, which opines that while autopsy reports are public records, they are not open to public dissemination. (PA 034-035). The Attorney General Opinion 82-2 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 82-2 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). Notably, the district court in this case, also issued a balancing test to determine whether injunctive relief should be granted.

In initially refusing to disclose the autopsy reports to Petitioners, the Coroner's office noted that books are records kept by government entities and 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, again, 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). Where there is no statute that provides an absolute privilege against disclosure, a balancing test must be conducted. *Id.* (references to citations omitted).

In the case at bar, based on the arguments presented by the parties, and the information provided by the Coroner's office regarding the nature of autopsy reports, the confidentiality given to autopsy reports, and the continued battle between the Coroner's office and the media in attempting to obtain these reports, the district court issued its findings of fact and order specific to the autopsy report of Mr. Hartfield. (III PA 356-363).

E. *Cox* is Distinguishable From the Case at Bar

The Reporters' Committee cites to *Cox Broad. Co.*, which is distinguishable from the case at bar. 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). 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, this case is not applicable to the instant situation.

In the case at bar, Petitioners obtained 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 autopsy 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 neither Petitioners or Reporters' Committee has explained why Mr. Hartfield's medical information and history would be relevant to anyone except his family. (III PA 356-363).

F. The District Court did not Improperly Place the Burden on Petitioners

In the case at bar, the district court applied a balancing test. (III PA 356-363). The district court stated that it was dealing with two fundamental interests. (III PA 356-363). The district court found that Veronica had established a fundamental right to privacy, that she was suffering from imminent harm from the dissemination and/or publication of her husband's autopsy report and then, upon balance, the Petitioners could not give any legitimate explanation for how this report would be in the public interest. (III PA 356-363). It was not Petitioners' burden to prove that the report was in the public interest; however, Petitioners could not show any reason at all for how this report was in the public interest and because no legitimate interest was brought forth by Petitioners, the balancing test was in favor of Veronica.

Again, it bears repeating that Petitioners are not precluded from reporting about the mass shooting, from reporting about the victims, from reporting about the other 57 autopsy reports, or from reporting about Mr. Hartfield so long as the information does not stem directly from Mr. Hartfield's redacted autopsy report. The district court's order does not significantly limit the ability of the press to report on the October 1, 2017, Las Vegas shooting nor does it "threaten the liberty of the American people" as claimed by the Reporters' Committee. Petitioners have a powerful right; the right of freedom of speech and freedom of press but it cannot go completely unchecked, and the US Supreme Court has been careful to limit each holding to the facts at issue when considering cases involving free speech, as cited by both Petitioners and the Reporters' Committee in their briefs.

G. The Reporters' Committee has not Furthered Any Additional Argument Worth Consideration as to the Facts of *This* Case

Veronica did not argue that because Petitioners are "in the news business and seek to generate revenue from their reporting" that Petitioners should be precluded from possessing, disseminating, and/or publishing Mr. Hartfield's report, as the Reporters' Committee alleges. Rather, the point Veronica is making is quite simply this:

In this case, Petitioners brought forth no reason whatsoever why Mr. Hartfield's autopsy report was useful to the general public or created public concern. Mr. Hartfield was one of the 58 victims of the deadliest mass shooting on American

soil. That information is available without his autopsy report. He was shot in the head and died as a result thereof. That information is available without his autopsy report and Veronica cannot stop the Petitioners from reporting on those facts, nor has she tried to stop Petitioners from reporting on those facts.

However, if Petitioners cannot articulate a single reason why the specific autopsy report of Mr. Hartfield is of any matter to the general public, Petitioners should not continue to have possession and control over it to disseminate and/or publish it, when all it is doing is invading the fundamental right to privacy of another.

III. THE DISTRICT COURT'S ORDER DOES NOT UNDERMINE THE RIGHT OF PUBLIC ACCESS TO PUBLIC RECORDS.

Nevada's Public Records Act ("NPRA") applies to "all public books and public records of a government entity, the contents of which are not otherwise declared by law to be confidential." *See NRS 239, generally.* While the intent behind the NPRA was to ensure that government documents are available to the public, the drafters were careful to include language that gives deference to confidentiality and requires a balancing of interests before a record is to be disseminated. The NPRA does not provide for unfettered public access to private information, particularly that information specifically protected by both the State and Federal constitution, and was certainly not drafted in contemplation of the individual privacy rights of the surviving victims of the most horrific mass shooting in modern history.

A. Autopsy Reports are Medical Records, and Therefore Confidential and Exempted From Public Dissemination.

To generally classify an autopsy report as a "public record" simply because it was created by a governmental agency ignores the distinguishing characteristics of the record itself. Autopsy reports fall more appropriately in the category of "medical records" as they are comprised almost entirely of Protected Health Information ("PHI"). PHI is defined as individually identifiable health information transmitted or maintained by a covered entity or its business associates in any form or medium and is confidential. *See 45 CFR 160.103; see also the Health Insurance Portability and Accountability Ac of 1996 (HIPAA).* In a recent South Carolina case, an autopsy report was specifically deemed a "medical record" exempt from disclosure under Freedom of Information Act (FOIA), finding while the objective of autopsy was to determine cause of death, the actual examination was comprehensive, as medical information gained from autopsy and indicated in report was not confined to how decedent died, but instead involved thorough and invasive inquiry into decedent's body that revealed extensive medical information, such as presence of any diseases or medications and any evidence of treatments received, regardless of whether that information pertained to cause of death. *Perry v. Bullock*, 409 S.C. 137, 761 S.E.2d 251 (2014)

The NRPA specifically exempts from its definition of a "public record" those records that have been declared confidential by law, which logically includes

medical findings, reduced to written form in a document created by a licensed medical professional. *NRS 49.225*. Thus, if the information itself contained in a "public record" is declared confidential by law, access to such record - whether by express statutory designation or by reasonable implication of the PHI contained within the record - may be properly denied to the public. *NRS 239.010*.

B. Mrs. Hartfield's Right to Privacy Outweighs Relief Afforded By The NRPA.

The Reporters Committee argues that Ms. Hartfield's assertion of her constitutional right to privacy relative to her husband's autopsy report constitutes a "reverse NRPA lawsuit", not permitted under the NPRA. Unfortunate for the Reporters Committee, this assertion is dependent upon Reporters Committee's flawed and conclusory reasoning that the information contained in the autopsy report is in fact "public information". This conclusion bypasses entirely Ms. Hartfield's constitutional right to privacy. Moreover, this erroneous assertion ignores the plain language of the statue entirely the that the NRPA applies only to that information which is "not otherwise declared by law to be confidential". *L.V. Dev Assocs. V Eight Jud. Dist. Ct*, 130 Adv. Op. 37, 325 P. 3d 1259 (2014). Petitioners concur that the NRPA does not provide for a "reverse NRPA lawsuit", but submits it does not expressly prohibit the action either. Furthermore, it is a recognized principle in Nevada that a strong public policy may require relief in the absence of, or contrary

to, an express statute. *County of Clark v. Christensen*, 86 Nev. 616, 618, 472 P.2d 365 (1970). Petitioner further submits the NRPA need not expressly create a separate, private right of action for Ms. Hartfield to assert her constitutional rights to privacy. This notion has been sufficiently covered by the body of United States and Nevada constitutional law that has been created since their respective adoptions. The fictional assertion of the need for a body of law permitting a "reverse NRPA lawsuit" is a red herring entirely conjured by the Reporters Committee to distract and confuse this Court.

MOTION TO STRIKE PETITIONERS' SECOND SUPPLEMENTAL APPENDIX [VOLUME IV]

Petitioners filed a second supplemental appendix on February 15, 2018, containing an article from the Huffington Post dated February 15, 2018. It is improper to add documents to the appendix that were not considered below, nor even existed at the time the district court made its findings and order. As such, the second supplemental appendix should be stricken and/or should not be considered by this Court in rendering its decision.

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CONCLUSION

Based on the foregoing, it is respectfully contended that the writ cannot issue and the second supplemental appendix should be stricken.

Dated this 16th day of February. 2018.

SGRO & ROGER

/s/ Anthony P. Sgro, Esq.
ANTHONY P. SGRO, ESQ. #3811
EUNICE M. BEATTIE, ESQ. #10382
720 S. Seventh Street, 3rd Floor
Las Vegas, NV 89101
Telephone: (702) 384-9800
Facsimile: (702) 665-4120
tsgro@sgroandroger.com
ebeattie@sgroandroger.com
Attorneys for Real Parties In Interest Veronica Hartfield and the Estate of Charleston Hartfield

CERTIFICATE OF COMPLIANCE

I hereby certify this brief complies with the formatting requirements of NRAP 32(a)(7(A)), 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 response and that it complies with the page or type volume limitations of NRAP 32(a)(7)(A) 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 4,834 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 16th day of February, 2018.

/s/ Anthony P. Sgro, Esq.
Anthony P. Sgro, Esq.
Nevada Bar No. 3811
Eunice M. Beattie, Esq.
Nevada Bar No. 10382
SGRO & ROGER
720 South Seventh Street, 3rd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-9800
Facsimile: (702) 665-4120
tsgro@sgroandroger.com
ebeattie@sgroandroger.com
Attorneys for Real Parties in Interest Veronica Hartfield and the Estate of Charleston Hartfield

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. Proc. 25(b) and NEFR 9(f), I hereby certify that on February 16, 2018, 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
MCLETCHIE SHELL LLC
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Counsel for Las Vegas Review-Journal
and the Associated Press

Laura Rehfeldt
Clark County Dist. Attorney's Office
500 S. Grand Central Pkwy., Ste. 5075
Las Vegas, NV 89106
Counsel for Clark County
Office of the Coroner

Marc J. Randazza
Randazza Legal Group, LLC
4035 S. El Capitan Way
Las Vegas, NV 89147

Honorable Judge Richard F. Scotti
Eighth Judicial District Court, Dept. II
200 Lewis Avenue, Eleventh Floor
Las Vegas, NV 89101

/s/Jennifer Jackson
An Employee of Sgro & Roger