

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAM TOLL,
Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CARSON CITY; AND
THE HONORABLE JAMES E.
WILSON, DISTRICT JUDGE,
Respondents,

and

LANCE GILMAN,
Real Party in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO.: 78333

District Court Case No.: 18TRT00001

PROPOSED AMICI THE NEVADA PRESS ASSOCIATION,
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,
THE NEWS MEDIA ALLIANCE, THE ONLINE PRESS ASSOCIATION,
THE MEDIA INSTITUTE, THE SOCIETY OF PROFESSIONAL
JOURNALISTS AND REPORTERS WITHOUT BORDERS'
MOTION TO FILE AMICI CURIAE BRIEF/
REQUEST FOR INVITATION TO PARTICIPATE
IN SUPPORT OF PETITIONER

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I. INTRODUCTION

The Nevada Press Association, the Reporters Committee for Freedom of the Press, the News Media Alliance, the Online News Association, the Media Institute, the Society of Professional Journalists, and Reporters Without Borders (“Proposed *Amici*”) respectfully seek court approval¹ to file the attached brief of proposed *amici curiae* in support of Petitioner Sam Toll (the “Proposed *Amici* Brief”).

Proposed *Amici* informed both Petitioner’s and Real Party of Interest’s counsel and sought their written consent to the filing of the Proposed *Amici* Brief. Counsel for Petitioner Sam Toll consents. Counsel for Lance Gilman (the Real Party In Interest) did not respond to emails or phone messages.

Proposed *Amici* submit the attached Proposed *Amici* Brief to aid the Court in reviewing the district court order denying Sam Toll the protection of Nevada’s statutory news privilege, NRS 49.275 (the “Shield Law”) at issue in the Petition he filed on March 18, 2019.

This Motion and the Proposed Brief are being submitted within seven (7) days of the date of the filing of the Petition.

II. INTEREST OF PROPOSED *AMICI*

The Nevada Press Association is the formal trade organization for the

¹ Nevada Rule of Appellate Procedure 21(b)(3) allows *amici* to participate in petition proceedings upon invitation. Nevada Rule of Appellate Procedure 29(a) requires a motion or consent of the parties before an amicus brief can be filed.

newspaper industry in Nevada. It is a voluntary nonprofit association that represents six (6) daily and nineteen (19) nondaily newspapers in Nevada, as well as three (3) online news services. The Associated Press is also a member of the Nevada Press Association.

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

The News Media Alliance is a nonprofit organization representing the interests of online, mobile and print news publishers in the United States and Canada. Alliance members account for nearly 90% of the daily newspaper circulation in the United States, as well as a wide range of online, mobile and non-daily print publications. The Alliance focuses on the major issues that affect today's news publishing industry, including protecting the ability of a free and independent media to provide the public with news and information on matters of public concern.

The Online News Association ("ONA") is the world's largest association of digital journalists. ONA's mission is to inspire innovation and excellence among

journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

The Media Institute, founded in 1979, is a nonprofit foundation specializing in communications policy issues. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

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

Reporters Without Borders has been fighting censorship and supporting and protecting journalists since 1985. Activities are carried out on five continents through its network of over 150 correspondents, its national sections, and its close collaboration with local and regional press freedom groups. Reporters Without

Borders currently has 10 offices and sections worldwide.

Proposed *Amici* have a strong interest in ensuring that Nevada’s Shield Law is properly applied to protect the First Amendment of journalists in Nevada, including those who report online. Further, the Nevada Press Association has a particular interest and particular expertise in a core question raised in the Petition—the proper definition of “newspaper” in the context of the Shield Law.

III. ASSISTANCE OF THE *AMICI* BRIEF TO THE COURT

The Shield Law is vital to journalists’ ability to report the news and convey vital information about government conduct to the public. The proposed *amici* brief will aid the Court by providing *Amici*’s expertise regarding the importance of the Shield Statute as well as how the Court should interpret the persons and entities that are protected by the News Shield. Moreover, the Petition raises legal questions that are novel and pertain to specialized areas of law in which *Amici* have particular knowledge.

Reflecting Proposed *Amicus* the Nevada Press Association’s unique role with regard to the press in Nevada and its expertise, this Court has permitted it to file amicus briefs in other matters, including as one of the amici in *Aspen Financial v. Gentry (Real Party In Interest)*, Case No. 59894, a case that also addressed the scope and importance of the Shield Law.

In short, *amicus* will “fulfill[] the classic role of amicus curiae by assisting in

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

IV. CONCLUSION

For these reasons, Nevada Press Association, the Reporters Committee for Freedom of the Press, the News Media Alliance, the Online News Association, the Media Institute, and the Society of Professional Journalists respectfully request that the Court grant this motion and accept the Proposed *Amici* Brief in support of Petitioner Sam Toll for filing.

DATED this 25th day of March, 2019.

/s/ Margaret A. McLetchie

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CERTIFICATE OF SERVICE

I certify that I am an employee of McLetchie Law and that on this 25th day of March, 2019 the *PROPOSED AMICI MOTION TO FILE AMICI CURIAE BRIEF/REQUEST FOR INVITATION TO PARTICIPATE IN SUPPORT OF PETITIONER* was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the Master Service List as follows:

JOHN L. MARSHALL, SBN 6733
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I hereby further certify that on this 25th day of March a true and correct copy of the *PROPOSED AMICI MOTION TO FILE AMICI CURIAE BRIEF/REQUEST FOR INVITATION TO PARTICIPATE IN SUPPORT OF PETITIONER* will be mailed by depositing the same in the United States mail, first-class postage pre-paid, to the following:

The Honorable James T. Russell
Carson City District Court Clerk's Office
885 East Musser Street, Suite 3031
Carson City, Nevada 89701-3031
First Judicial District Court Judge

/s/ Lacey Ambro

Employee, McLetchie Law