

1
2 **IN THE SUPREME COURT OF THE**
3 **STATE OF NEVADA**
4

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Elizabeth A. Brown
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5
6 SAM TOLL,

7 Petitioner,

Supreme Court Case No.: 78333

District Court Case No.: 18-trt-00001

8 vs.

9 THE FIRST JUDICIAL COURT FOR
10 THE STATE OF NEVADA, IN AND
11 FOR STOREY COUNTY, AND THE
HONORABLE JUDGE WILSON, JR.,
DISTRICT COURT JUDGE,

12 Respondents,

13 and

14 LANCE GILMAN,

15 Real Party in Interest.
16
17

18 **RESPONDENTS/REAL PARTIES IN INTEREST'S ANSWERING BRIEF**
19

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1 **NRAP 26.1 DISCLOSURE STATEMENT**

2 The undersigned counsel of record certifies that the following are persons and
3 entities as described in NRAP 26.1(a), and must be disclosed. These representations
4 are made in order that the Justices of this court may evaluate possible
5 disqualifications or recusal. The Respondent's Counsel are as follows:

6 Gus W. Flangas, Esq.

7 Jessica K. Peterson, Esq.

8 The Respondent/Real Party in Interest, LANCE GILMAN, is a resident of
9 Storey County, Nevada. Mr. Gilman was and is member of the Board of County
10 Commissioners for Storey County. He is a principal in and the Director of Marketing
11 for the Tahoe Reno Industrial Center ("TRIC"). His company, Lance Gilman
12 Commercial Real Estate Services, is and has been the exclusive broker for TRIC. He
13 is the owner of Cash Processing Services, Inc., dba the World Famous Mustang
14 Ranch.

15 Dated this 6th day of May, 2019.


16
17 
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1 **I.**

2 **JURISDICTIONAL STATEMENT**

3 Petitioner has failed to set forth any Jurisdictional Statement in his Petition.

4 **II.**

5 **ROUTING STATEMENT**

6 Respondent disagrees with Appellant that this appeal should be retained in the
7 Supreme Court. The underlying action involves the District Court's interpretation of
8 a state statute, and involves a pretrial writ proceeding challenging a discovery order.
9 Pursuant to NRAP 17(a)(11), "pretrial writ proceedings challenging discovery orders"
10 are presumptively assigned to the Court of Appeals.

11 Petitioner's citation to NRAP 17(a)(11) is misplaced. It states: "The Supreme
12 Court shall hear and decide the following: Matters raising as a principal issue a
13 question of first impression involving the United States or Nevada Constitutions or
14 common law." As stated, this matter involves the District Court's interpretation of
15 a State Statute, and does not constitutional nor common law issues. Petitioner's
16 reliance on NRAP 17(b)(14) is also misplaced. It states that "cases involving trust
17 and estate matters in which the corpus has a value of less than \$5,430,000," are
18 presumptively assigned to the Court of Appeals, which is inapplicable.

19 **III.**

20 **STATEMENT OF THE ISSUES**

21 A. Does Nevada's News Shield Statute extend the News Media Privilege
22 to alleged reporters, former reporters, or editorial employees of an online blog like
23 the Storeyteller?

24 1. Is there anything contained in NRS 49.275 applicable to online
25 blogs for purposes of asserting the news media privilege?

26 2. Should any law providing for the News Media Privilege for an
27 online blog like the Storeyteller be enacted by the Legislature?

28 3. Is Defendant a reporter for purposes of asserting the News Media

1 Privilege as envisioned in NRS 49.275?

2 4. Did the District Court err in concluding that Defendant was a
3 reporter for a press association for purposes of NRS 49.275?

4 B. Was the Decision of the District Court to allow Plaintiff to conduct
5 limited discovery proper?

6 C. Is Defendant's assertions that Plaintiff admitted that his residence is in
7 washoe county not only an issue of fact, but also improper for a writ?

8 D. Does Defendant's assertion of the News Media Privilege bar his reliance
9 on information from confidential sources and, is it inappropriate Defendant to seek
10 such a ruling in a writ?

11 IV.

12 **STANDARD OF REVIEW**

13 In considering a writ petition, [the] court gives deference to a district court's
14 factual determinations but reviews questions of law de novo. Aspen Fin. Servs., Inc.
15 v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark, 129 Nev. 878, 882, 313
16 P.3d 875, 878 (2013). Construction of a statute is a question of law subject to de
17 novo review. Aspen, 129 Nev. at 882, 313 P.3d at 878. If a statute is clear and
18 unambiguous, [the Court] will apply its plain meaning. Aspen Fin. Servs., Inc., 129
19 Nev. at 882, 313 P.3d at 878.

20 V.

21 **STATEMENT OF THE CASE**

22 **A. NATURE OF CASE AND PROCEDURAL POSTURE.**

23 Petitioner, SAM TOLL (hereinafter "Defendant"), is a blogger who published
24 several false and defamatory comments online about Respondent/Real Party in
25 Interest, LANCE GILMAN (hereinafter "Plaintiff"). Defendant published and
26 publishes his blog solely online under the website address of
27 http://thestoreyteller.online (hereinafter "the Blog or Storeyteller").

28 Because Defendant published the false and defamatory statements about

1 Plaintiff, Plaintiff brought suit for Defamation Per Se, on December 12, 2017.
2 (*Petitioner's Appendix (hereinafter "PA") 931, Vol. 5*). Plaintiff is a County
3 Commissioner for Storey County, Nevada, and an owner and face of the Tahoe Reno
4 Industrial Center, and is therefore a public officer/public figure for purposes of
5 bringing a defamation claim. Plaintiff is also the owner of the World Famous
6 Mustang Ranch, a legal brothel in Storey County. Plaintiff's Complaint contained one
7 cause of action for Defamation and listed several false and defamatory statements
8 made by Defendant about Plaintiff, including that Plaintiff committed perjury, a
9 felony, by lying about his residency in Storey County when he filled out official
10 paperwork in filing for election to the office of County Commissioner.

11 Defendant filed his "Answer to Complaint" on December 28, 2017. (*PA11,*
12 *Vol. 1*). Defendant subsequently filed a Special Motion to Dismiss based on
13 Nevada's Anti-SLAPP statute (*PA21, Vol. 1*), which Plaintiff opposed. (*PA220, Vol.*
14 *2*). On or about April 9, 2018, the Court issued its "Order Granting Anti-SLAPP
15 Special Motion to Dismiss in Part, Allowing Plaintiff Limited Discovery, and Staying
16 Further Proceedings" (hereinafter the "Discovery Order"). (*PA514, Vol. 3*). The
17 District Court in the Discovery Order, ruled the allegations in Plaintiff's Complaint
18 were not actionable with the exception of Defendant's statement that Plaintiff was not
19 a resident of Storey County and committed perjury when he filled out Official
20 Paperwork pertaining to his residency. (*PA 514, Vol. 3*).

21 The Discovery Order allowed Plaintiff to conduct limited discovery to
22 determine whether Defendant knew the statements were false or acted with a high
23 degree of awareness of the probable falsity of the statements or had serious doubts as
24 the publication's truth, and gave Plaintiff until May 25, 2018, to file a supplemental
25 opposition to Defendant's Anti-SLAPP Motion. (*PA551, Vol. 3*).

26 After the District Court issued the Discovery Order, the Deposition of
27 Defendant was scheduled for and conducted on Friday, May 4, 2018, in Virginia City,
28 Nevada. During the course of the Deposition, questions were asked by Plaintiff's

1 counsel about how Defendant arrived at his so-called knowledge about Plaintiff's
2 residency. Instead of answering questions on what measures he took to verify
3 Plaintiff's residency, Defendant insisted he was a journalist and under the advice of
4 his counsel asserted privilege under the News Media Privilege as set forth in NRS
5 49.275. Because Defendant refused to answer the questions presented and asserted
6 the Media Shield privilege, the Deposition became futile and was terminated.
7 Plaintiff also took the Deposition of the County Planner, Austin Osborne.

8 Because of Defendant's refusal to answer pertinent questions, Plaintiff filed
9 "Plaintiff's Motion to Compel; Motion for Sanctions; Motion to Extend the Time
10 Period for Discovery; and in the Alternative, Motion for Partial Summary
11 Judgement," on May 10, 2018. (*PA690, Vol. 4*), which Defendant opposed on May
12 22, 2018. (*PA740, Vol. 4*). Plaintiff filed his "Supplemental Opposition to Anti-
13 SLAPP Motion," on May 24, 2018 (*PA920, Vol. 5*), as ordered by the District Court,
14 and filed his "Reply to Opposition to Motion to Compel," on June 4, 2018. (*PA930,*
15 *Vol. 5*).

16 The District Court set the matter for an Evidentiary Hearing to determine
17 whether Defendant "was a reporter at the time the 'residence and perjury'
18 publications were made;" and "[w]hether the Storey Teller is a newspaper or
19 periodical." (*PA1263, Vol. 7*). The Evidentiary Hearing was originally set for
20 December 20, 2018. At the request of Plaintiff's counsel, the Evidentiary Hearing
21 was reset to February 22, 2019.¹ Unfortunately, it uncharacteristically snowed in Las
22

23 ¹ The Evidentiary Hearing was continued at the request of Plaintiff's counsel, Gus W.
24 Flangas, Esq., because Mr. Flangas's 91 year old father's health was rapidly deteriorating at the time.
25 Defendant's counsel, Luke Busby, Esq., unreasonably objected to the continuance and stated that
26 Mr. Flangas needed to provide evidence of his father's health, and even asked the Court for Mr.
27 Flangas to provide a Declaration as to his father's condition, implying Mr. Flangas was fabricating
28 this to obtain a continuance, and essentially challenged Mr. Flangas's integrity. To make matters
worse, Mr. Busby contacted an attorney in San Francisco to ask about Mr. Flangas, who was
working with Mr. Flangas on an unrelated case in Las Vegas. Apparently, Mr. Busby thought she
was the opposing counsel in the unrelated case. Mr. Flangas submitted his Declaration to the Court
on or around December 17, 2018, and the Court subsequently granted the continuance. Mr.

1 Vegas on the February 21st and all flights going into Reno were cancelled for both the
2 21st and 22nd; so the Evidentiary Hearing was rescheduled again. There were other
3 filings in this matter that are not germane to the issues before the Court.

4 Prior to the rescheduled Evidentiary Hearing, the District Court issued its
5 “Order on Plaintiff’s Motion to Compel, for Sanctions, to Extend Discovery Period,
6 and for Summary Judgment and Order Vacating Hearing” (hereinafter the “Second
7 Discovery Order”). (*PA2480, Vol. 12*). In the Second Discovery Order, the District
8 Court ruled that “[u]pon further review it appears an evidentiary hearing is not
9 necessary as the facts necessary to decide the motion are not contested. The issues for
10 the Court to decide are legal issues.” (*PA2480-2481, Vol. 12*). The District Court
11 noted that the articles at issue were published by Defendant on April 7, April 18, May
12 23, October 16, and December 3, 2017. (*PA2481, Vol. 12*). The District Court
13 further noted that Defendant had become a member of the Nevada Press Association
14 in August, 2017. (*Id.*). The District Court then ruled that Defendant was not reporter
15 for a newspaper or press association before August, 2017, and is not covered by the
16 News Media Privilege as to any source of information obtained or procured prior to
17 August, 2017. (*PA2487, Vol. 12*). The Court ruled that because Defendant was a
18 reporter of a press association since August of 2017, he is covered by the news media
19 privilege as to any source of information obtained or procured during or after August,
20 2017. (*Id.*). The District Court concluded that because Defendant doesn’t print the
21 Storeyteller, the Storeyteller is not a newspaper and therefore, “the News Media
22 Privilege is not available to [Defendant] under the ‘reporter of a newspaper
23 provision” of the media shield statute. (*PA2487, Vol. 12*).

24 The District Court then Ordered that Plaintiff’s Motion to compel is granted as
25 to sources of information procured or obtained by Defendant before August, 2017,
26 and denied as to sources of information procured or obtained by Defendant during

27
28 Flangas’s father passed away several days later on December 23, 2018. Because of Mr. Busby’s
unsavory tactics, Mr. Flangas had to make his father’s health condition a part of the record.

1 and after August, 2017. (*PA2488, Vol. 12*). The District Court further ordered that
2 Defendant “will not be allowed to rely on the privileged information as a defense
3 under *Diaz v. Dist. Ct.*, 116 Nev. 88, 101, 993 P.2d 50 (2000), citing *Las Vegas Sun*,
4 104 Nev. 508, 514, 761 P.2d 849, 853-54 (1988).” (*Id*). The District Court extended
5 the time for discovery to April 12, 2019. (*Id*). The Notice of Entry of Order for the
6 Second Discovery Order was entered on March 11, 2019. (*PA2545, Vol. 12*).

7 Defendant has filed this Petition seeking to have the Court reverse the District
8 Court’s Order compelling Defendant to reveal his confidential news sources, and
9 require the District Court to either dismiss this action or rule on Defendant’s Anti-
10 SLAPP Motion. (*Defendant’s Petition, page 3*).

11 **B. STATEMENT OF FACTS.**

12 **1. The Parties.**

13 Defendant is a communications, public relations, marketing consultant and has
14 a business known as Battle Born Digital Media & Marketing. (*PA609-610, Vol. 3*).
15 His business does social media marketing, printing, direct mail, business cards,
16 banners, billboard and print brokering. (*PA610-611, Vol. 3*). He only does this
17 consulting as a living and has no other sources of income. (*PA613-614, Vol. 3*).

18 As stated, Defendant published and publishes the Storeyteller, which is solely
19 an online blog. (*PA2487, Vol. 12*). Defendant purchased the URL for the
20 Storeyteller in February, 2017, and posted his first Blog shortly thereafter. (*PA615*,
21 *Vol. 3*). According to the “About Section” of the Storeyteller, “the [Storey Teller]
22 was created to provide a source of irritation to the Good Old Boys who operate The
23 Biggest Little County in the World with selfish impunity forever.” (*PA701, Vol. 4*).
24 According to Defendant, he started the Storeyteller Website as a conduit to express
25 support for embattled Sheriff Gerald Antinoro during a failed recall effort of him
26 (*PA223, Vol. 2*), and started it fully expecting to have 13 people read it and then have
27 it fade into the dustbin of irrelevance soon after the recall election. (*Id*). Also, his
28 purpose was to “counter the failed effort of Storey County Commissioner Lance

1 Gilman [Plaintiff], TRIC owner Roger Norman and TRIC Project Manager Kris
2 Thompson to oust our duly elected Sheriff.” (*Id*). The central focus of the
3 Storeyteller Website seems to be ridiculing, insulting and defaming Plaintiff.
4 (*PA931, Vol. 5*).

5 In addition, Defendant was a candidate for public office in Storey County in
6 the 2018 election. He never used any type of other website for his campaign and
7 commented in the Storeyteller about the election.²

8 Plaintiff was and is member of the Board of County Commissioners for Storey
9 County, an elected position, and is a principal in and the Director of Marketing for
10 the Tahoe Reno Industrial Center (hereinafter “TRIC”). (*PA225, Vol. 2*). Plaintiff’s
11 company, Lance Gilman Commercial Real Estate Services, is and has been the
12 exclusive broker for TRIC, a massive 80,000 acre park encompassing a 30,000 acre
13 industrial complex approximately nine miles east of Reno in Storey County, and is
14 the largest industrial park of its kind in the United States. (*Id*). Plaintiff’s decades
15 of good service to Northern Nevada is common knowledge throughout Nevada.
16 (*PA221, Vol. 2*). He brought the Tesla Gigafactory, the Switch Data Storage Campus,
17 Google, Ebay, Jet.com, Blockchains LLC, and many other global companies to Storey
18 County – which just 18 years ago was the poorest County in Nevada. (*Id*). Before
19 that, he brought Lockheed and IGT and many other companies to Reno. (*Id*). His
20 positive impact on the economy of Northern Nevada is huge and will have a massive
21 effect for generations to come, providing jobs and prosperity for tens of thousands of
22 families in this area. (*PA221-222, Vol. 2*). In addition, Plaintiff’s philanthropy is

23
24 ² The Home page of the Storeyteller Website and every other section contained therein,
25 including the “News,” “Editorial,” “Letters to the Editor,” “About the Storey Teller,” and
26 “Community News,” sections, all contain the statement: “Support the Teller and Keep **Fact Based**
27 **News** about Storey County Ad Free.” (Emphasis added). It later sported the statement, “Contribute
28 to The Teller Legal Defense Fund. Amazed and grateful to The Teller Community; we raised 11%
of our goal in the very first day. Thank you for your kind and generous support!” Nowhere in his
campaign financial disclosures does it mention these contributions. See Storey County Election
Website.

1 very well known. Each year he and his businesses deliver and donate over \$100,000
2 in food donations and labor to needy seniors in Storey County and to a school “food
3 in a backpack” program for children from families in need. (PA222, Vol. 2).

4 **2. Defendant’s Defamatory Statements Pertaining to Plaintiff’s**
5 **Residency in Storey County and So-Called Perjury.**

6 As set forth above, Defendant published a series of statements in the
7 Storeyteller, accusing Plaintiff of not living in his actual residence and accusing him
8 of committing perjury about his residence on official documents. (PA9333, Vol. 5).
9 Starting April 7, 2017, Defendant published the following in the Storeyteller:

10 Team Gilman would have never subjected the citizens to the polarizing
11 effect of the recall effort had it not been for **the Washoe County**
12 **resident** who thinks he knows what is best for the taxpayers who
shoulder the tax burden of Don Norman, Lance Gilman and the rest of
the tax escapers at the Center. (Emphasis added).

13 (PA933-PA934, Vol. 5, PA305, Vol. 2). The clear inference is the Plaintiff is not a
14 resident of Storey County.³ Then, on April 18, 2017, Defendant wrote in the
15 Storeyteller:

16 The debacle we emerged from a week ago today is not the kind of thing
17 our county should be making the news with. Sadly, the most equal
18 member of Storey County (**if you believe he actually lives at 5 Wild**
Horse Canyon) cares more about himself than the county he represents.
(Emphasis added).

19 (PA934, Vol. 5, PA318, Vol. 2). The clear inference is the Plaintiff is not a resident
20 of Storey County. On May 20, 2017, Defendant wrote in the Storeyteller:

21 “I want the people of Storey County to know that I am a man of integrity
22 and my word is more valuable than gold. This County has been very,
23 very good to me and I want to deliver on promises I made over and over
24 to the good people of Storey County regarding the cash that would be
25 gushing around here. I want to thank them along with the entire Team
Storey Team for helping Mr. Norman and me becoming the wealthiest
people who do business in Storey County but **don’t actually live here**”
said Mr. Gilman. (Emphasis added).

26 (PA934, Vol. 5, and PA328, Vol. 2). Although Defendant may argue this is satire, the

27
28 ³ In his Deposition, Defendant testified that he was referring to Roger Norman (another
owner of TRI) as the “Washoe County Resident,” in the article. (PA933, Vol. 5).

1 statement's clear inference still remains that Plaintiff is not a resident of Storey
2 County. In his Deposition, Defendant admitted that although the piece was satire, he
3 meant to convey the message that Plaintiff does not live in Storey County. (PA638-
4 641, Vol. 3). Plaintiff never made the statement nor any similar statement as
5 attributed to him. (PA935, Vol. 5). Ultimately, on October 16, 2017, Defendant
6 published the following statements on the Storey Teller Website accusing Plaintiff
7 of perjury:

8 The purpose of this complaint is to **hold accountable County**
9 **Commissioner Gilman** and Planning Commissioner Thompson **for**
10 **committing perjury** when they filed paperwork claiming to live
11 somewhere it is illegal to live. Since they took office illegally and since
12 they don't actually live at Wild Horse Canyon Drive (or anywhere else
13 in the county for that matter) and can't legally reside where they claimed
14 they did, **we conclude and insist they be prosecuted for perjury** and
15 removed from office. (Emphasis added).

16 (PA935, Vol. 5, PA318, Vol. 2). The clear inference again is the Plaintiff is not a
17 resident of Storey County, and not only is he not a resident, he also committed the
18 crime of perjury.

19 **3. Defendant's Assertions on his Efforts to Verify that Plaintiff is not**
20 **a Resident of Storey County and his Efforts to Verify that Plaintiff**
21 **Committed Perjury.**

22 The District Court in the Discovery Order found that Defendant failed to prove
23 Plaintiff "is a resident of Washoe County or that [Plaintiff] is not a resident of Storey
24 County, but [Defendant] did not have to prove either." (PA528, Vol. 3). The District
25 Court then somehow concluded that based upon the evidence Defendant had
26 regarding Plaintiff's residence, Defendant "proved by a preponderance of the
27 evidence that he did not knowingly make a false statement when he published the
28 resident communications." (*Id*).

 Defendant in effort to escape liability for his false statements about Plaintiff's
residency and so-called perjury, asserted that he undertook certain investigatory
efforts to verify Plaintiff's residency. (PA935, Vol. 5). In his self-serving Second
Declaration attached to "Defendant's Reply to Opposition to Anti-SLAPP Special

1 Motion to Dismiss,” Defendant stated he undertook the following efforts:

2 As described below, for each statement I made that Gilman claims is
3 defamatory, I investigated the facts before making the statement:

4 a. My opinion that Gilman does not live in Storey County is a
5 result of my investigation into the matter, including reports from
6 a confidential informant that states that Gilman leaves the
7 Mustang Ranch and heads towards Reno every evening around
8 8:00 pm, the fact that where Gilman claims to live is not zoned
9 for multi-family residences, the fact that the double wide in which
10 Gilman claims to live is right behind a brothel, and that the fact
11 that it just doesn’t make sense that Gilman, one of the richest
12 people in the State, live in a double wide (as defined in a response
13 by the Storey County Assessor to a public records request I made
14 inquiring about the structure) trailer with two bunk mate, Kris
15 Thompson and Jennifer Barnes-Milsap, who I discovered list the
16 same address as their residence in a response to a public records
17 request on registered voting addresses I made with the Storey
18 County Clerk;

12 (*PA935-PA936, Vol. 5*). Defendant’s investigatory efforts included reports from
13 “confidential informant” (pure hearsay); and a response from the County Assessor,
14 which Defendant fails to mention the response he received. Defendant then claims
15 his efforts included verifying the zoning on Plaintiff’s residence, with nothing more
16 asserted about the zoning. It boils down to Defendant being unable to accept that
17 Plaintiff lives where he lives, and nothing more.

18 Despite the dearth of real inquiry by Defendant set forth in his self-serving
19 Second Declaration, the District Court in the Discovery Order based upon
20 Defendant’s own statements of what he undertook in the way of an investigation,
21 stated:

22 Toll testified he investigated the facts before making the
23 statements Gilman alleged are defamatory, and that he believes the
24 contents of his stories were true, including his October 16, 2017
25 communication. In his October 16, 2017 communication, which was
26 made nearly two months before Gilman filed this action, Toll stated:

- 25 (1) he made a public records request to the Storey County
26 Assistant Manager requesting the zoning of the Mustang
27 Ranch compound and that the Assistant County Manager
28 failed to proved the requested information for six months:
- (2) He made a request of the Storey County Clerk before his
first resident communication requesting proof of Gilman’s

1 residence and received a response that Gilman resides at
2 5B Wild Horse Canyon Drive;

- 3 (3) He asked the Storey County Assessor where 5B Wild
4 Horse Canyon was physically located and was informed
5 that Gilman resides in a double wide mobile home located
6 behind the swimming pool at the Mustang Ranch.

7 Again, the statements of the Storey County Clerk and Assessor
8 are not considered here as proof of truth of the matter asserted but only
9 to show what knowledge Toll had when he made the communications.⁴

10 Toll included as part of his October 16, 2007 a letter he sent to the
11 Storey County District Attorney and Nevada Attorney General. In the
12 letter Toll relates that he received information from the Storey County
13 Community Development Department that none of the property on
14 which the Mustang Ranch sits is zoned residential. Toll continued, "in
15 other words neither 5 nor 56 Wild Horse Canyon Drive are legal
16 residences; nobody can legally reside there or claim either addresses as
17 their legal residence." Opp. Ex. 9.

18 Toll also knew, as any informed Northern Nevadan would, that
19 Gilman is a financially successful businessman.

20 Based upon the information he had, Toll did not believe Gilman
21 the -successful-businessman lives in a trailer. Toll stated in his October
22 16, 2017 communication: "Lance Gilman, one of the wealthiest men in
23 Norther Nevada, lives in a mobile home behind the swimming pool with
24 his employee and roommate Kris Thompson."

25 The Court finds Toll did conduct some research on Gilman's
26 residence before he published the resident communications and that the
27 information he received as a result of that research caused him to
28 disbelieve that Gilman lives in a trailer behind the Mustang Ranch pool.

(PA936-937, Vol. 5, PA532-533, Vol. 3). As stated, Defendant failed to provide what
his so-called investigation actually discovered in his Declaration. To the contrary,
he merely made his own assumptions based upon his own self-serving agenda.

.....

.....

⁴ As to what Defendant knew at the time he made the false and defamatory statements about Plaintiff's residency and so-called perjury, is not the complete standard for determining malice. **Recklessness or actual malice may be established through cumulative evidence of negligence, motive, and intent.** Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 722, 57 P.3d 82, 92 (2002). (Emphasis added). Perjury is a felony, and accusing someone of committing a felony is a serious charge. Defendant undertook to accuse Plaintiff of committing perjury on the flimsiest of evidence and effort on his part to verify his claims.

1 **4. Facts Showing Defendant's False Statements Were Made with**
2 **Knowledge that They Were False and/or with Reckless Disregard of**
3 **Whether They Were False or Not.**

4 The District Court in the Discovery Order allowed Plaintiff to conduct limited
5 discovery to determine whether Defendant knew the statements were false or acted
6 with a high degree of awareness of the probable falsity of the statements or had
7 serious doubts as the publication's truth, and gave Plaintiff until May 25, 2018, to file
8 a supplemental opposition to Defendant's Anti-SLAPP Motion. (*PA551, Vol. 3*).

9 The Deposition of Defendant was subsequently scheduled for and conducted
10 on Friday, May 4, 2018, in Virginia City, Nevada. (*PA692, Vol. 4, PA598, Vol. 3*).
11 During the course of the Deposition, Defendant was asked questions on how he
12 arrived at his so-called knowledge about Plaintiff's residency. (*PA692, Vol. 4*).
13 Instead of answering many of the questions, Defendant under the advice of counsel,
14 asserted privilege under the Nevada Media Shield Statute pursuant to NRS 49.275.
15 (*Id*). Because Defendant refused to answer the questions presented and asserted the
16 Media Shield Privilege, the Deposition was terminated and Plaintiff filed a Motion
17 to Compel Defendant's answers.

18 Despite Defendant's failure to answer many of the pertinent questions in his
19 Deposition by hiding with his assertion he is protected by the News Media Privilege,
20 the following facts pertain to Defendant's false statements and his so-called efforts
21 to verify anything before making such harmful statements.⁵

22 1. Defendant made false statements that Plaintiff was not a resident of
23 Storey County. (*PA937, Vol. 5*). He further exacerbated the severity of his false
24 statements by also asserting Plaintiff committed perjury, a felony. (*Id*). Defendant
25 testified in his Deposition that Plaintiff committed perjury. (*Id, PA643, 645, 647, Vol.*
26 3). Defendant testified he was conveying to the public that Plaintiff does not live
27 where he says he lives and therefore committed perjury. (*Id, PA641, Vol. 3*).

28 ⁵ Most if not all of these facts were set forth in the "Plaintiff's Supplemental Opposition to
Defendant's Anti-SLAPP Motion.

1 2. In his October 16, 2017 Blog, the same Blog accusing Plaintiff of
2 committing perjury, Defendant attached:

3 a. a copy of Plaintiff's Driver's License showing Plaintiff lives in Storey
4 County at 5B Wildhorse Canyon Drive. (PA937, PA976, Vol. 5);

5 b. a copy of a Google view showing Plaintiff's residence behind the
6 Mustang Ranch. (PA937, and PA968, Vol. 5);

7 c. a copy of Plaintiff's Statement verifying the address of his roommate,
8 Kris Thompson. (PA938, PA977, Vol. 5); and

9 d. a copy of Mr. Thompson's Certification of Residency. (PA938,
10 PA978, Vol. 5).

11 These all show Defendant had actual knowledge of Plaintiff's residency in
12 Storey County. Even though his own posting contained these items, and even though
13 Plaintiff has made it abundantly clear where he lives, Defendant still tried making it
14 an issue.

15 3. The Home page of the Storeyteller, and other sections contained therein,
16 including the "News," "Editorial," "Letters to the Editor," "About the Storey Teller,"
17 and "Community News," sections, all contain the statement: "Support the Teller and
18 Keep **Fact Based News** about Storey County Ad Free." (Emphasis added). (PA938,
19 Vol. 5). Defendant testified that he holds himself out as fact based news. (*Id*).

20 4. According to Defendant, he started the Storeyteller as a conduit to
21 express support for embattled Sheriff Gerald Antinoro during a failed recall effort of
22 him. (*Id*).

23 5. Also according to Defendant, his purpose was to "counter the failed
24 effort of Storey County Commissioner Lance Gilman [Plaintiff], TRIC owner Roger
25 Norman and TRIC Project Manager Kris Thompson to oust our duly elected Sheriff."
26 (PA938-939).

27 6. Defendant writes in the Storeyteller that "We created The Storey Teller
28 to provide a source of irritation to the Good Old Boys who operate The Biggest Little

1 County in the World with selfish impunity since forever.” (*PA000939*).

2 7. Defendant testified that the Sheriff duly elected, coming up for reelection
3 and was in the midst of a very ugly and divisive recall effort. (*Id*).

4 8. In his writings, Defendant mentions that Plaintiff has a conflict of
5 interest “as he wears hats on both sides of the negotiating table.” (*Id*). Defendant
6 further wrote: “A conflict of interest that places the self-interest of the Marketing
7 Manager and exclusive Real Estate Broker for TRIC above the interests of Storey
8 County Taxpayers, voters, and citizens.” (*Id*). The foregoing would suggest that
9 Defendant has a personal dislike of Plaintiff. Defendant’s personal dislike of
10 Plaintiff is further exemplified in an article Defendant wrote on another blog,
11 although arguably satire, he writes about Plaintiff and his business associates having
12 sex with animals. (*PA939, Vol. 5, PA443-450, Vol. 2*). In his self-serving Affidavit,
13 Defendant writes:

14 . . . I believe that Gilman’s [Plaintiff] conduct as a government official
15 combined with his business interest in our County creates a massive conflict
16 of interest to the detriment of the public good. The articles I have written in
17 the Teller are highly bombastically critical of Gilman because I believe the
facts show that Gilman uses his position as Storey County Commissioner to
enrich himself and his associates, and that Gilman does not even live in Storey
County.

18 (*PA939-940, Vol. 5*). Virtually every single one of Defendant’s published statements
19 in the Storeyteller show Defendant having a deep dislike of Plaintiff.

20 9. Defendant testified that he is a supporter of Sheriff Antinoro (*PA940,*
21 *Vol. 5*). It’s clear from Defendant’s words he is a supporter of the Sheriff Antinoro.
22 Why else would he have started a blog to support him?

23 10. Defendant testified that he is an acquaintance of the Sheriff, socializes
24 with the Sheriff, albeit infrequently, and interacts with the Sheriff around three times
25 a month. (*Id*). Defendant further testified that he can go see the Sheriff anytime he
26 wants at the Sheriff’s office just like any other citizen of Storey County. (*Id*).

27 11. Defendant testified that he does a Podcast with Sheriff Antinoro. (*Id*).

28 12. Defendant testified that he was a “public witness” selected by Sheriff

1 Antinoro to witness the recall signature verification process in the effort to recall
2 Sheriff Antinoro. (*Id*).

3 13. Defendant testified that he is very familiar with the government of Storey
4 County, and familiar with the County Commission. (*Id*). Defendant also testified that
5 he is familiar with the Brothel Board, and testified that it is comprised of the
6 Commissioners and Sheriff. (*PA940-941, Vol. 5*). He further testified that the
7 Sheriff's office regulates the brothels. (*PA941, Vol. 5*). Being very familiar with
8 Storey County government, Defendant should have known how to verify the
9 residence of Plaintiff.

10 14. Knowing that the Sheriff's office regulates the brothels in Storey County,
11 when Defendant was asked about whether he consulted with the Sheriff about
12 Plaintiff's residency, Defendant refused to answer on the grounds of privilege
13 pursuant to the Media Shield Statute [NRS 49.275]. (*Id*). When Defendant was
14 asked about whether he went to the Sheriff's office to verify Plaintiff's residency, he
15 again refused to answer on the grounds of privilege pursuant to the Media Shield
16 Statute. (*Id*). Defendant could have very easily verified Plaintiff's address by either
17 asking the Sheriff or by going to the Sheriff's office. (*Id*). Given that the Sheriff's
18 office extensively regulates brothels, it follows that the Sheriff's office would have
19 accurate information as to the residency of Plaintiff. Plaintiff testified he was aware
20 that Plaintiff listed 5 Wildhorse Canyon on his brothel application as his residence.
21 (*Id*). When asked whether he went to the Sheriff's office and checked Plaintiff's
22 brothel application, Defendant testified that he did, but could not recall whether
23 Plaintiff's application showed number 5. (*Id*). When asked whether he asked the
24 Sheriff about it, he again refused to answer on the grounds of privilege pursuant to
25 the Media Shield Statute. (*Id*). Of particular note, Plaintiff has a CCW permit issued
26 by the Sheriff's office that lists his address as 5 Wildhorse Canyon Drive. (*Id*).

27 15. When asked on what he based his assertion on Plaintiff's lack of
28 residency, Defendant testified that he finds it hard to believe that one of the wealthiest

1 men in Northern Nevada would be residing where he resides and further testified that
2 he was also basing his opinion upon interviews and information that have been given
3 to him by third-party sources. (*PA942, Vol. 5*). When asked who the these third-party
4 sources were, Defendant asserted the News Media Privilege. (*Id*). When asked
5 whether he consulted any official sources, Defendant again asserted the News Media
6 Privilege. (*Id*).

7 16. Defendant in his Second Declaration stated that an informant told him
8 Plaintiff was leaving every day at around 8:00 every evening and going to Reno.
9 (*Id*). When asked about this so-called informant, Defendant refused to answer
10 asserting News Media Privilege. (*Id*).

11 17. When asked about conducting all this investigation, Defendant testified
12 he was not going to provide any source and he didn't have to and was going to invoke
13 the media shield. (*PA942-943, Vol. 5*). When asked whether he consulted any
14 official sources pertaining to Plaintiff's residency, Defendant again refused to answer
15 asserting News Media Privilege. (*PA943, Vol. 5*).

16 18. In further delving into Defendant's so-called investigation, Defendant
17 testified that he has never been to Plaintiff's residence to verify whether he lives there
18 or not, mainly because Defendant cannot get to Plaintiff's residence without buzzing
19 the gate. (*Id*). Defendant also testified he has never seen any other residence where
20 Plaintiff might be living. (*Id*). When asked whether he had ever seen a residence in
21 which Plaintiff lives in Reno, Defendant responded he had seen multiple properties
22 that are owned by Plaintiff located in Washoe County but had never seen a residence
23 of Plaintiff. (*Id*). Defendant was asked the following:

24 Q. You have no idea where Mr. Gilman lives, do you?

25 A. I have a pretty good idea of where he lives, yes.

26 Q. Why don't you give me that pretty good idea and what your
27 basis for it is.

28 A. I interviewed an individual who told me that Mr. Gilman's

1 toys, his cars, his motorcycles, all his fancy clothes, all his cool stuff, is
2 at a place that is not on the Mustang Ranch property.

3 Q. Who's this interview?

4 **MR. BUSBY:** News shield statute. Don't answer that.

5 (*PA943, Vol. 5*). When asked whether he had an address for Plaintiff other than his
6 Storey County address, Defendant was unable to provide one. (*Id*).

7 19. Defendant testified he verified the zoning on the property where Plaintiff
8 lives. (*Id*). As part of his so-called investigation, he testified he filed a public records
9 request for the zoning on Plaintiff's residence with Austin Osborne, the Planning
10 Director for Storey County. (*Id*). Defendant testified that Mr. Osborne told him he
11 was super busy. (*Id*). Defendant testified that he sent a public records request to
12 Gary Hames, a retired fire chief, appointed as community development director. (*Id*).
13 Defendant further testified that it took sixth months for Mr. Osborne to answer him.
14 (*Id*). Mr. Osborne disputes this. (*Id*).

15 20. Mr. Osborne testified that he never discussed zoning with Defendant,
16 and only provided documents. (*PA944-945, Vol. 5*). Mr. Osborne further testified he
17 believes Plaintiff lives at the back of the Mustang Ranch. (*PA945, Vol. 5*). Mr.
18 Osborne further testified that if Defendant has asked him, he would have told him that
19 Plaintiff lived behind the Mustang Ranch. (*Id*). Interestingly, Mr. Osborne testified
20 that Defendant said false things about him as well in his Blog. (*Id*).

21 21. Defendant testified he eventually went to the community development
22 department and asked them what the zoning was and got a printout from the clerk
23 saying the property was zoned agricultural/industrial. (*Id*).

24 22. He testified that the words "agricultural" and "industrial" are self
25 explanatory and you cannot extract, condense, distill, or otherwise torture into
26 suggesting residential use. (*Id*). He then testified that he consulted Ordinances as to
27 what is allowed under agricultural or industrial use and found that single family
28 dwellings are allowed under an agricultural use. (*Id*). He further testified that it is

1 not his place to decide where what and how if the property is on the agricultural side
2 or industrial side. (*Id*). He also testified that the Ordinances suggest that a single
3 family dwelling can exist there. (*Id*).

4 23. In his testimony, Defendant implied that Plaintiff committed perjury and
5 when asked how, he replied that "anyone, with you know, a functioning set of
6 synapses in their brain would question and consider highly unlikely that one of the
7 richest men in Storey – in Northern Nevada is roommates with his girlfriend and his
8 employee in a double-wide trailer." (PA945-946, Vol. 5). He further stated that "It
9 is, it is – let's just say it stretches the imagination." (PA946, Vol. 5).

10 24. When asked about how Plaintiff's living situation was against the
11 zoning, Defendant testified that Plaintiff living with his girlfriend and a roommate
12 made it a multifamily dwelling and thus in conflict with the zoning. (*Id*). He then
13 testified that unless Mr. Thompson and Plaintiff are married, it's not legal for Mr.
14 Thompson to live there with him. (*Id*). Defendant also testified that the way he reads
15 the ordinance, Plaintiff cannot have roommate. (*Id*). According to Defendant's
16 testimony, single family means you can have your kids, girlfriend, boyfriend and the
17 minute that more than one person lives there, it becomes a multi-family dwelling and
18 violates the code. (*Id*).

19 25. Even though Defendant testified that he read the Ordinances, the
20 Ordinances do not say that to which Defendant testified. (*Id*). The applicable
21 Ordinances read as follows:

22 Single-family dwelling. **The term "single-family dwelling" refers to**
23 **a building used to house not more than one family or a group of not**
24 **more than four unrelated persons living together and sharing a**
25 **noncommercial single dwelling unit with common housekeeping**
26 **facilities.** The term includes factory built homes and manufactured
27 homes in compliance with NRS 278, 461, and 489. (Emphasis added).

28 Single-family dwelling, attached. The term "single-family dwelling,
attached" refers to a single-family dwelling intended for occupancy by
one family. This term includes "rowhouses," "townhouses,"
"twinhomes," and "condominiums," but does not include "duplexes,"
"triplexes," "fourplexes," "apartment buildings," "rooming houses," and
other multifamily dwellings.

1 Single-family dwelling, detached. The term "single-family dwelling,
2 detached" refers to a free-standing structure intended for occupancy by
3 one family, and constructed on a separate building lot, that is owned in
fee simple. Each building has a front yard, a rear yard, and two side
yards.

4 Storey County Code, Title 17, Zoning Ordinance, Chapter 17.10 "Definitions." Even
5 the most cursory look would have revealed that the living arrangement of Plaintiff did
6 not violate any zoning laws. Defendant also testified he got the definition of multi-
7 family from the Storey County Ordinance as well. (*PA947, Vol. 5*). The Ordinance
8 reads as follows:

9 Multifamily dwelling. The term "multifamily dwelling" refers to a
10 building designed or used to house multiple families living
independently of each other. The term includes duplexes, triplexes, or
11 fourplexes, but does not include row houses, townhouses, or apartment
hotels. Storey County Code, Title 17, Zoning Ordinance, Chapter 17.10
"Definitions."

12
13 Nothing in the multifamily definition applies to Plaintiff's situation.

14 26. Mr. Osborne testified that you can live with a girlfriend in a residence
15 and it would still remain a single family residence. (*Id*). He further testified that you
16 can live there with a friend as well and it still doesn't change the nature. (*Id*). He
17 further testified that you could have more than one address for a single family
18 attached residence. (*Id*).

19 27. When Defendant was asked whether he consulted anybody to make an
20 opinion as to what's right and what's wrong as to Plaintiff's zoning, he testified that
21 he consulted dozens and dozens of other concerned citizens in the county. (*Id*).
22 When further asked about the names of anyone he consulted, Defendant refused to
23 answer asserting the News Media Privilege. (*Id*).

24 28. When further challenged about his definitions of single family dwellings
25 and multifamily dwellings, Defendant answered as follows:

26 Q. Okay. I'm going to go back to my question, because you,
27 again, weren't responsive to my question. You can say "I don't know"
if you don't know. That's fine. The question is: What did -- where did
28 you come up with your definition -- and I know I've asked and answered
this, but I'm going to ask the follow-on. Where did you come up with

1 your definition of what constitutes a multi-family dwelling? You told
2 me the ordinance. I'm asking you: What does the ordinance say what
3 constitutes a multi-family dwelling?

4 **MR. BUSBY:** Same objection. Go ahead and answer, Mr. Toll.

5 **THE WITNESS:** Technically, in my recollection of ordinance,
6 says that a single-family dwelling is all that is permitted. A multi-family
7 dwellings is not permitted. Using the reasonable man statute that I have
8 inside my brain, a multi-family dwelling is -- could be considered -- you
9 know, obviously we don't live in the day of the nuclear family anymore;
10 however, a family unit consists typically of a -- it's two sets of adults and
11 then any children that may be a result of that union.

12 **BY MR. FLANGAS:**

13 Q. This reasonable man standard, that's your own reasonable man
14 standard; is that correct?

15 A. Based upon the information that has been given to me by
16 people who I have consulted with, as we've described earlier, those
17 people are also reasonable men and women, and they also have come to
18 the same conclusion. So no, it's not just my conclusion, it's the
19 conclusion of the community.

20 (PA947-948, Vol. 5). When asked who the members of the community that have this
21 conclusion, Defendant refused to answer asserting News Media Privilege. (PA948,
22 Vol. 5).

23 VI.

24 SUMMARY OF THE ARGUMENT

25 This case centers on Nevada's News Media Privilege as provided for in NRS
26 49.275. Contrary to Defendant's assertions, there is nothing contained within the four
27 corners of NRS 49.275 extending the News Media Privilege to alleged reporters,
28 former reporters, or editorial employees of an online blog such as the Storeyteller.
This is abundantly clear after applying the rules of statutory construction, noting the
internet has been in existence for many years, noting the Legislature has met every
two years since the internet's inception, and noting the Legislature has never
specifically enacted such legislation pertaining to online publications. The
Legislature's omission about online newspapers from NRS 49.275 is presumed to
have been intentional.

1 As the District Court concluded, any allowance for an online blogger such as
2 Defendant, to assert the News Media Privilege should come from the Legislature.
3 This is especially true considering the News Media Privilege is a statutory creation,
4 the sheer complexity and intensive nature of the issue, and the policy choices and
5 value determinations that need to be made. Given that any law in this regard,
6 revolves around policy choices and value determinations constitutionally committed
7 for resolution to the legislative branches, any law extending the News Media
8 Privilege should therefore be, precluded from judicial review.

9 Even though the District Court designated Defendant a reporter for purposes
10 of NRS 49.275, given Defendant's asserted reasons for his blog, it is clear that he was
11 gathering information for his own selfish purposes, and not for the purpose of
12 gathering, receiving or processing information for communication to the public. In
13 addition, contrary to the District Court, Defendant never became a reporter for
14 purposes of NRS 49.275 when he became a member of the Nevada Press Association.
15 The Nevada Press Association is a non-profit formal trade organization for news
16 publications in the state of Nevada. NRS 49.275 clearly indicates that Defendant
17 would have to be a reporter for and not a member of a press association.

18 The remaining issues raised by Defendant are not proper issues for resolution
19 through a writ for extraordinary relief. Moreover, Defendant never asserted any
20 authority that would allow for such relief. Notwithstanding that a writ is not a proper
21 vehicle, Plaintiff has addressed these issues raised by Defendant.

22 Despite Defendant's assertions, the District Court properly allowed Plaintiff
23 to conduct limited discovery. The District Court correctly concluded that information
24 as to whether Defendant knew the resident statements were false or whether he acted
25 with a high degree of awareness of the probable falsity of the statement or had serious
26 doubts as to the publication's truth, is necessary for Plaintiff to meet or oppose the
27 burden under NRS 41.660(3)(b), and that information is in the possession of
28 Defendant or a third party and is not reasonably available without discovery.

1 Defendant's assertion that Plaintiff admitted his residence was in Washoe
2 County is completely without merit. Defendant is seeking what amounts to be a
3 Motion for Summary Judgment without the formality of allowing the District Court
4 to rule on the matter. Defendant is actually seeking to have the Court rule on a
5 strictly factual matter. Defendant asserts a couple of documents are proof Plaintiff
6 is not a resident of Storey County. Simply because a "tax cap assessment" states that
7 Plaintiff "will occupy a property as his primary residence back in 2008" does not
8 establish where his actual residence or legal domicile was in 2012 when he ran for
9 office. Furthermore, Plaintiff's daughter was living in the property from 2009 - 2015.

10 Lastly, the District Court ordered that Defendant "will not be allowed to rely
11 on the privileged information as a defense" as provided in caselaw. Defendant wants
12 to assert the News Media Privilege and then use disclosed information from an
13 undisclosed confidential source in the defense of his case. There is nothing in the
14 caselaw that allows this and is completely contra to the prevailing caselaw.

15 VII.

16 ARGUMENT

17 A. NRS 49.275, NEVADA'S NEWS SHIELD STATUTE, DOES NOT 18 EXTEND THE NEWS MEDIA PRIVILEGE TO ALLEGED 19 REPORTERS, FORMER REPORTERS, OR EDITORIAL EMPLOYEES OF AN ONLINE BLOG SUCH AS THE STOREYTELLER.

20 The District Court in its Second Discovery Order ruled that the News Media
21 Privilege was not available to Defendant under the "reporter of a newspaper"
22 provision of NRS 49.275. In arriving at its Decision, the District Court concluded
23 that although the Legislature did not define "Newspaper" in NRS 49.275, or
24 anywhere in Chapter 49 of the NRS, it did so elsewhere in other Chapters of the NRS,
25 and those definitions clearly require a newspaper to be printed. The District Court
26 further concluded that whether a blog should be covered by the news media privilege

27

28

1 is a matter for the legislature, and not the courts. In the Second Discovery Order, the
2 District Court stated:

3 Toll publishes his articles on the internet and not in any other
4 format. He does not print his articles. The Legislature did not define
5 "Newspaper" in NRS 49.275 or elsewhere in Chapter 49. The
6 Legislature has defined "newspaper" in several other chapters of the
7 NRS. It appears that under all of the statutory definitions a newspaper
8 must be printed. For example, NRS Chapter 238, which relates to legal
9 notices and advertisements, in 238.020, defines daily, triweekly,
10 semiweekly, weekly and semimonthly newspapers. All of the definitions
11 in NRS 238.020, and apparently throughout the Nevada Revised
12 Statutes, include that a newspaper is printed. The Legislature's definition
13 of "newspaper" in NRS 238.020 is particularly relevant and significant
14 because if a blog is a newspaper, then legal notices "or other written
15 matter whatsoever, required to be published in a newspaper by any law
16 of this State, or by the order of any court of record in this state" (NRS
17 238.010) could be published on a blog.

18 The statutory definitions are consistent with the usual and natural
19 meaning of "newspaper." Webster defined "newspaper" as a paper that
20 is printed and distributed. Webster's Third New International Dictionary
21 1524 (2002). Toll did not offer any definition of "newspaper" that would
22 cover a blog. **Whether a blog should be covered by the news media
23 privilege is a matter for the legislature, not the courts.** (Emphasis
24 added).

25 Toll argued the Nevada Press Association's website includes the
26 Storey Teller as a "specialized publication." That is true. The website
27 also contains information regarding "daily newspapers." That heading
28 includes the Las Vegas Review Journal, the Reno Gazette Journal, the
Elko Daily Free Press, the Nevada Appeal, and Nevada Legal News.
The Court takes judicial notice that all of those publications are printed.
The website also contains information concerning "non-daily
newspapers." The Court is not familiar with the publications listed as
non-daily newspapers. The point is, the Nevada Press Association
recognizes a number of publications as newspapers, but the Storey
Teller is not one of them. Toll submitted an affidavit of Barry Smith,
Executive Director of the Nevada Press Association. Mr. Smith did not
say the Storey Teller is a newspaper. In fact he distinguishes between
daily and weekly news publications on the one hand and online news
services, magazines, and others, on the other hand.

29 The Court concludes that because Toll does not print the Storey
30 Teller the Storey Teller is not a newspaper and, therefore the news
31 media privilege is not available to Toll under the "reporter of a
32 newspaper" provision of NRS 49.275.

33 (PA2483-2485, Vol. 12).

34 Defendant is challenging these conclusions of the District Court by asserting
35 in pure conclusory terms that the Legislature must have intended to include online

1 publications in NRS 49.275.

2 **1. There Is Nothing Contained in NRS 49.275 That Would**
3 **Apply to Online Blogs for Purposes of Asserting the News**
4 **Media Privilege.**

5 Nevada's News Shield Law, NRS 49.275, provides in pertinent part as follows:

6 No reporter, former reporter or editorial employee of any newspaper,
7 periodical or press association or employee of any radio or television
8 station may be required to disclose any published or unpublished
9 information obtained or prepared by such person in such person's
10 professional capacity in gathering, receiving or processing information
11 for communication to the public, or the source of any information
12 procured or obtained by such person, in any legal proceedings, trial or
13 investigation:

- 14 1. Before any court, grand jury, coroner's inquest, jury or any
15 officer thereof.

16 Nevada's news shield statute is one of the most liberal in the country. Diaz v.
17 Eighth Judicial Dist. Court ex rel. County of Clark, 116 Nev. 88, 93-94, 993 P.2d
18 50,54 (2000) citing Leslye deRoos Rood and Ann K. Grossman, *The Case for a*
19 *Federal Journalist's Testimonial Shield Statute*, 18 Hastings Const. L.Q. 779 (1991)
20 (comparing the protection provided by various state news shield statutes) [hereinafter
21 Testimonial Shield Statute]. The statute confers upon journalists an absolute
22 privilege from disclosure of their sources and information in any proceeding).

23 Nevada's news shield statute is not limited to confidential sources, but includes
24 any source. Diaz, 116 Nev. at 101, 993 P.2d at 59. The shield statute covers both
25 published and unpublished information, and includes both the information obtained
26 and the source of the information. Id.

27 The protections from Nevada news shield statute extends protection only to the
28 journalist's news gathering and dissemination activities within the journalist's
professional capacity. See Diaz, 116 Nev. at 101, 993 P.2d at 59. Nevada's news
shield statute provides no protection for information gathered in other capacities. Id.

To invoke the privilege an individual is required to be either a ***reporter, former
reporter or editorial employee of any newspaper, periodical or press association or
employee of any radio or television station.*** See NRS 49.275. (Emphasis Added).

1 In the absence of one of those labels an individual is not entitled to invoke the
2 privilege to protect either the information he obtained or the source of the
3 information. The question becomes whether NRS 49.275 should be construed to
4 allow for the News Media Privilege for reporters, former reporters or editorial
5 employees of blogs such as the Storeyteller.

6 “It is well settled in Nevada that words in a statute should be given their plain
7 meaning unless this violates the spirit of the act.” Diaz, 116 Nev. at 94, 993 P.2d at
8 54 citing McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986).
9 “[N]o part of a statute should be rendered nugatory, nor any language turned to mere
10 surplusage, if such consequences can properly be avoided.” Diaz, 116 Nev. at 94,
11 993 P.2d at 54-55 citing Paramount Ins. v. Rayson & Smitley, 86 Nev. 644, 649, 472
12 P.2d 530, 533 (1970) (alteration in original). Thus, “[w]here a statute is clear on its
13 face, a court may not go beyond the language of the statute in determining the
14 legislature's intent.” Diaz, 116 Nev. at 94-95, 993 P.2d at 55 citing McKay, 102 Nev.
15 at 648, 730 P.2d at 441. “[W]hen the language of a statute is plain and
16 unambiguous,” the courts are not permitted to look beyond the statute itself when
17 determining its meaning. Banegas v. State Indus. Ins. Sys., 117 Nev. 222, 225, 19
18 P.3d 245, 247 (2001). The language of the news shield statute is plain an
19 unambiguous. See Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court of State ex
20 rel. Cty. of Clark, 129 Nev. 878, 884, 313 P.3d 875, 879 (2013) citing Diaz, 116 Nev.
21 at 97, 993 P.2d at 56.

22 Nevada follows the maxim “expressio unius est exclusio alterius,” the
23 expression of one thing is the exclusion of another. State v. Javier C., 128 Nev. 536,
24 541, 289 P.3d 1194, 1197 (2012). See Flores v. Las Vegas-Clark Cty. Library Dist.,
25 134 Nev. Adv. Op. 101, 432 P.3d 173, 177 (2018) citing Galloway v. Truesdell, 83
26 Nev. 13, 26, 422 P.2d 237, 246 (1967) (“The maxim ‘Expressio Unius Est Exclusio
27 Alterius[,]’ the expression of one thing is the exclusion of another, has been
28 repeatedly confirmed in this State.”). Also, see Horizons at Seven Hills v. Ikon

1 Holdings, 132 Nev. Adv. Op. 35, 373 P.3d 66, 71 (2016) citing Dep't of Taxation v.
2 DaimlerChrysler Servs. N. Am., LLC, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005)
3 (“[O]missions of subject matters from statutory provisions are presumed to have been
4 intentional.”).

5 Given that the Court in Aspen has ruled that the language of the news shield
6 statute is plain and unambiguous, this should end the inquiry because there is nothing
7 contained in the four corners of the statute that would provide the News Media
8 Privilege to Defendant’s blog, the Storeyteller. Therefore, the Court should deny
9 Defendant’s Petition on that basis alone. See Xcentric Ventures, L.L.C. v. Borodkin,
10 934 F. Supp. 2d 1125, 1144 (D. Ariz. 2013) (The law lists the individuals who fall
11 within its protection of the news media privilege: “a publisher, editor, reporter, or
12 other person connected with or employed upon a newspaper, magazine, or other
13 periodical publication, or by a press association or wire service”; or “a radio or
14 television news reporter or other person connected with or employed by a radio or
15 television station.” defendant has stated only that she self-publishes material and
16 collaborates on web video presentations. She has not shown that she “is affiliated
17 with any newspaper, magazine, periodical, book, pamphlet, news service, wire
18 service, news or feature syndicate, broadcast station or network, or cable television
19 system).

20 It is interesting to note that in Xcentric Ventures, the Court stated: “The statute
21 requires affiliation with such an organization in order to call upon it for protection,
22 presumably to avoid the uncertainty of the law's application in today's world of blogs,
23 tumblrs, and tweets, where anyone could claim the mantra of a reporter.” Id.

24 Also, as the District Court aptly pointed out, there are other provisions in the
25 NRS that define newspapers, none of which include an online blog in their definition.
26 In addition, the District Court pointed out that Defendant failed to include any
27
28

1 definition of a newspaper that would apply to his blog.⁶ The District Court also aptly
2 concluded that whether a blog should be covered by the News Media Privilege is a
3 matter for the legislature, and not the courts. The Legislature in enacting NRS 49.275
4 has never inserted any type of definition that would pertain to online blogs.⁷ By
5 virtually any estimate, the internet has been around and available to most households
6 since the late 1990s or early 2000s. The Legislature has met every two years since
7 then, and has never enacted any type of specific legislation pertaining to online blogs
8 for purposes of the News Media Privilege set forth in NRS 49.275, even though the
9 Legislature has had ample opportunity. As set forth in the above cited authority,
10 omissions of subject matters from statutory provisions are presumed to have been
11 intentional. In addition, the specific expression of “any newspaper, periodical or
12 press association,” in NRS 49.275, should be construed as the exclusion of online
13 blogs. Clearly, in following the rules of interpreting statutes, there is no provision for
14 online blogs in NRS 49.275; therefore, again, the Court should deny Defendant’s
15 Petition.⁸

16

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19 ⁶ As a factual matter, the District Court pointed out that the Nevada Press Association
20 website contains information regarding “daily newspapers.” That heading includes the Las Vegas
21 Review Journal, the Reno Gazette Journal, the Elko Daily Free Press, the Nevada Appeal, and
22 Nevada Legal News. The Court then took judicial notice that all of those publications are printed.
23 District Court said that “the point is, the Nevada Press Association recognizes a number of
24 publications as newspapers, but the Storey Teller is not one of them.” (*PA2483-2484, Vol. 12*).

25 ⁷ Defendant seems to focus on the word “any” in NRS 49.275, and wants the Court to
26 extrapolate from the word that the Legislature meant to cover to the “maximum extent possible all
27 types of newspapers, periodicals, press associations, and radio and television stations.” (*Defendant’s*
28 *Petition, page 23*). This is at most a stretch unsupported by any viable authority. Moreover, the
Legislature has had ample opportunity to provide for online blogs and has not done so.

⁸ Defendant asserts on page 24 of his Petition that there are “indeed” two Eighth Judicial
District Court cases that have decided the issue contrary to the District Court in this matter. At least
one of the cases involved an online newspaper publication that had previously been in print, and
even though it was now an online publication, it was allowing for paid advertisements and
obituaries.

1 2. **Any Law Providing for the News Media Privilege for an Online Blog**
2 **Such as the Storeyteller Should Be Enacted by the Legislature.**

3 There is no doubt as asserted by Defendant, that the internet is dramatically
4 changing the media landscape. However, there is no bright line for the Court to
5 interpret NRS 49.275, that would provide the News Media Privilege for online
6 bloggers and newspapers, as Defendant is urging the Court. See e.g. Obsidian Fin.
7 Grp., LLC v. Cox, 740 F.3d 1284, 1291 (9th Cir. 2014) (“With the advent of the
8 Internet and the decline of print and broadcast media ... the line between the media
9 and others who wish to comment on political and social issues becomes far more
10 blurred”). It also important to bear in mind that the News Media Privilege is a
11 statutory creation, and not a judicial creation. Because the line is becoming blurred,
12 it makes it harder to define who is actually a journalist and what constitutes a
13 “newspaper, periodical and press association.” As stated, Defendant is urging the
14 Court to adopt Defendant’s own meaning as to what the Legislature intended in
15 enacting NRS 49.275, which is that online bloggers should be afforded the
16 protections of NRS 49.275 without any real limitation. Stating the obvious, it is
17 much more complicated than that. Does the Court extend such privilege protections
18 to anyone who decides to blog? Where is the limitation? Any fool could start
19 blogging and assert the News Media Privilege. Given the complexity, and given that
20 any law in this regard, revolves around policy choices and value determinations
21 constitutionally committed for resolution to the legislative branches, any law
22 extending the News Media Privilege should therefore be, precluded from judicial
23 review.

24 The Nevada Constitution vests the state's legislative power in a Legislature
25 comprised of two bodies, the Senate and Assembly. Nev. Const. art. 4, § 1; Comm'n
26 on Ethics v. Hardy, 125 Nev. 285, 292, 212 P.3d 1098, 1103 (2009). Specifically,
27 Article 4, Section 1 provides that “[t]he Legislative authority of this State shall be
28 vested in a Senate and Assembly which shall be designated ‘The Legislature of the

1 State of Nevada.’ ” Id.

2 Unlike the United States Constitution, which expresses separation of powers
3 through the establishment of the three branches of government, Nevada's Constitution
4 goes one step further; it contains an express provision prohibiting any one branch of
5 government from impinging on the functions of another. Hardy, 125 Nev. at 292, 212
6 P.3d at 1103-04 citing Secretary of State v. Nevada State Legislature, 120 Nev. 456,
7 466, 93 P.3d 746, 753 (2004) (noting that Nevada's separation of powers provision
8 is contained in Article 3, Section 1 of the Nevada Constitution and that separation of
9 powers “works by preventing the accumulation of power in any one branch of
10 government”). Specifically, Article 3, Section 1(1) provides that

11 [t]he powers of the Government of the State of Nevada shall be divided
12 into three separate departments,—the Legislative,—the Executive,—and
13 Judicial; and no persons charged with the exercise of powers properly
14 belonging to one of these departments shall exercise any functions,
appertaining to either of the others, except in the cases expressly
directed or permitted in this constitution.

15 Hardy, 125 Nev. at 292, 212 P.3d at 1104.

16 The Nevada Supreme Court has stated that it has “been especially prudent to
17 keep the powers of the judiciary separate from those of either the legislative or the
18 executive branches. Berkson v. LePome, 126 Nev. 492, 498, 245 P.3d 560, 564–65
19 (2010). The Court further stated: “This separation is fundamentally necessary
20 because “ ‘[w]ere the power of judging joined with the legislative, the life and liberty
21 of the subject would be exposed to arbitrary control, for the judge would be the
22 legislator’ ”). Berkson, 126 Nev. at 499, 245 P.3d at 565.

23 The political question doctrine stems from the separation of powers essential
24 to the American system of government. Nevada's separation of powers doctrine,
25 contained in Article 3, Section 1 of the Nevada Constitution, provides that “no
26 persons charged with the exercise of powers properly belonging to [another branch]
27 shall exercise any functions, appertaining to either of the others.” N. Lake Tahoe Fire
28 v. Washoe Cnty. Comm'rs, 129 Nev. 682, 686, 310 P.3d 583, 586 (2013). This

1 doctrine exists for one very important reason—“to prevent one branch of government
2 from encroaching on the powers of another branch.” N. Lake Tahoe Fire, 129 Nev.
3 at 686, 310 P.3d at 586. “This separation is fundamentally necessary because ‘[w]ere
4 the power of judging joined with the legislative, the life and liberty of the subject
5 would be exposed to arbitrary control, for the judge would be the legislator. . . .’ ”
6 N. Lake Tahoe Fire, 129 Nev. at 686-87, 310 P.3d at 587. “The division of powers
7 is probably the most important single principle of government declaring and
8 guaranteeing the liberties of the people.” N. Lake Tahoe Fire, 129 Nev. at 687, 310
9 P.3d at 587.

10 “In general, the Judiciary has a responsibility to decide cases properly before
11 it, even those it ‘would gladly avoid.’ ” N. Lake Tahoe Fire, 129 Nev. at 687, 310
12 P.3d at 587 citing Zivotofsky ex rel. Zivotofsky v. Clinton, 566 U.S. —, —, 132
13 S.Ct. 1421, 1427 (2012). The political question doctrine, however, provides for a
14 narrow exception limiting justiciability. N. Lake Tahoe Fire, 129 Nev. at 687, 310
15 P.3d at 587 citing Zivotofsky, 566 U.S. at —, 132 S.Ct. at 1427. Under the political
16 question doctrine, controversies are precluded from judicial review when they
17 “revolve around policy choices and value determinations constitutionally committed
18 for resolution to the legislative and executive branches.” N. Lake Tahoe Fire, 129
19 Nev. at 687, 310 P.3d at 587.

20 Defendant in his Petition has only asserted with nothing more than conclusory
21 statements that the Legislature meant to include online newspapers for purposes of
22 asserting the News Media Privilege. Granted, there needs to be some form of law
23 providing for a News Media Privilege for online newspapers and possibly online
24 blogs such as Defendant’s; however, any such law needs to come from the
25 Legislature, and not the Court.

26 Notwithstanding that statutory construction case law does not support
27 Defendant’s position of him asserting the News Media Privilege, notwithstanding that
28 the internet has been around for years and the Legislature has met every two years

1 since the internet's inception and has never specifically enacted legislation pertaining
2 to online publications for asserting the News Media Privilege, notwithstanding that
3 the Legislature's omission about online newspapers from NRS 49.275 is presumed
4 to have been intentional, and notwithstanding that these factors together militate
5 against the Court from interpreting NRS 49.275 to include online blogs such as that
6 of Defendant, there are policy choices and value determinations at issue, which are
7 more appropriate for the Legislature. This is especially true given that the News
8 Media Privilege is a legislative creation. The sheer complexity and intensive nature
9 of the issue in determining who should benefit from the News Media Privilege should
10 be contemplated, debated, and considered by the Legislature. It is abundantly clear
11 that the Legislature should decide the issue. Therefore, the Court should deny
12 Defendant's Petition.

13 **3. Despite the District Court's Conclusion, and Contrary to**
14 **Defendant's Assertions, Defendant Is Not a Reporter for Purposes**
15 **of Asserting the News Media Privilege as Envisioned in NRS 49.275.**

16 NRS 49.275 protects from disclosure "any published or unpublished
17 information obtained or prepared by [a reporter] in [his or her] professional capacity
18 in gathering, receiving or processing information for communication to the public,
19 or the source of any information procured or obtained by [the reporter]." Aspen, 129
20 Nev. at 884, 313 P.3d at 879. The Court in Diaz has emphasized that its decision
21 extends protection only to the journalist's newsgathering and dissemination activities
22 within the journalist's professional capacity. Diaz, 116 Nev. at 101, 993 P.2d at 59.
23 Nevada's news shield statute provides no protection for information gathered in other
24 capacities. Id.

25 In this case, Defendant undertook to start his blog on around February, 2017,
26 the reasons of which according to him, were to provide a source of irritation to the
27 Good Old Boys who operate The Biggest Little County in the World with selfish
28 impunity forever, to provide a conduit to express support for his friend, the embattled
Sheriff Gerald Antinoro during a failed recall effort of him, and to "counter the failed

1 effort of Storey County Commissioner Lance Gilman [Plaintiff], TRIC owner Roger
2 Norman and TRIC Project Manager Kris Thompson to oust our duly elected Sheriff.”
3 Also, according to Defendant, he started his Blog fully expecting to have 13 people
4 read it and then have it fade into the dustbin of irrelevance soon after the recall
5 election. Within months of starting his Blog, Defendant began blogging false and
6 defamatory statements about Plaintiff. At the time, there was nothing to even
7 remotely in existence that would allow Defendant to claim his Blog was a newspaper
8 or periodical. He was just a blogger and nothing more. Given Defendant’s own
9 asserted reasons for his Blog, it is abundantly clear Defendant was gathering
10 information for his own selfish purposes, and not for the purpose of gathering,
11 receiving or processing information for communication to the public. Therefore,
12 Defendant should not be deemed a reporter for purposes of NRS 49.275, at the time
13 he made the false and defamatory statements about Plaintiff.

14 If the Court were to accept the arguments proffered by Defendant in his
15 Petition, anyone could essentially open up a website on the internet, start blogging
16 about anything they want, and saying anything they want, without regard to
17 truthfulness or falsity and without regard to whether their statements were defamatory
18 or not, and then claim the News Media Privilege when taken to task about any of their
19 false and defamatory statements. This is exactly what Defendant did in the instant
20 case at the time he made the false and defamatory statements about Plaintiff.⁹
21 Accepting Defendant’s position would create an absurd result, and would allow
22 anyone who posts online to assert the News Media Privilege. The policy rationale
23 behind this privilege is to enhance the newsgathering process and to foster the free
24 flow of information encouraged by the First Amendment to the U.S. Constitution.
25 Diaz, 116 Nev. at 99, 993 P.2d at 57. This policy was never intended to allow such

26
27 ⁹ Defendant may have improved on his Blog over time; however, at the time he published
28 the false and defamatory statement about Plaintiff, Defendant was just another person with a
computer spewing his false opinions as facts.

1 protections to anyone who merely starts to blog online with impunity.

2 **4. The District Court Erred in Concluding That Defendant Was a**
3 **Reporter for a Press Association For Purposes of NRS 49.275, When**
4 **it Ruled That Defendant Became a Reporter for the Nevada Press**
5 **Association.**

6 The District Court ruled that in August of 2017, Defendant became a reporter
7 for the Nevada Press Association, and was therefore allowed to assert the News
8 Media Privilege for information he gathered from August 2017 going forward.
9 (*PA2485, Vol. 12*). First, Defendant has never been a reporter for the Nevada Press
10 Association, he is and has only been a member. NRS 49.275 states in pertinent part:
11 “**No reporter**, former reporter or editorial employee **of any** newspaper, periodical or
12 **press association** or employee of any radio or television station may be required to
13 disclose any published or unpublished information obtained or prepared by such
14 person in such person's professional capacity” (Emphasis added). The clear
15 import is that Defendant would have to have been a reporter for the Nevada Press
16 Association and not just a member.

17 The Nevada Press Association is a formal trade organization for news
18 publications in the state of Nevada. It is a voluntary non-profit organization that
19 represents daily and weekly news publications in Nevada and the Lake Tahoe region
20 of Northern California, as well as online news services, magazines and others.¹⁰ You
21 can become a member by applying and paying dues.¹¹ There are two types of
22 membership — regular and associate.¹² Regular membership is reserved for
23 newspapers qualified to print public notices, as defined by Nevada Revised Statutes
24

25 ¹⁰ See Nevada Press Association’s Website’s homepage at <https://nevadapress.com/>.

26 ¹¹ See Nevada Press Association’s Website at
27 <https://nevadapress.com/category/about-us/membership/>

28 ¹² Id.

1 238.030 and 238.040.¹³ Everybody else falls under the category of associate
2 member.¹⁴ Defendant is an associate member.

3 On a side note, at the time, Defendant made the false and defamatory
4 statements about Plaintiff, Defendant didn't even qualify for membership in the
5 Nevada Press Association. The Association states that to become a member as online
6 news site, there are guidelines because the Association expects "them [online news
7 sites] to live up to the same standards as print journalists."¹⁵ These guidelines include
8 but are not limited to the following: Publish regularly and consecutively for one year
9 prior to applying, do not have your online news site serve primarily as a platform to
10 promote the interests and/or opinions of a special interest group, individual or cause,
11 and have a Nevada-based office of operation where business or publishing is
12 conducted during regular business hours.¹⁶

13 Defendant didn't even start his blog until around February, 2017. It then begs
14 the question on how he obtained membership in the Nevada Press Association in
15 August of 2017, when he had been operating for less than a year. In addition, as set
16 forth above, Defendant at the time he published the false and defamatory statements
17 about Plaintiff, Defendant was gathering information for his own selfish purposes,
18 and not for the purpose of gathering, receiving or processing information for
19 communication to the public. Lastly, Defendant has no Nevada-based office of
20 operation where business or publishing is conducted during regular business hours.
21 Clearly, Defendant was and is not a reporter for a Press Association as anticipated by
22 NRS 49.275; therefore, Defendant's Petition should be denied.

23

24
25 ¹³ Id.

26 ¹⁴ Id.

27 ¹⁵ Id.

28 ¹⁶ Id.

1 **B. THE DISTRICT COURT PROPERLY ALLOWED PLAINTIFF TO**
2 **CONDUCT LIMITED DISCOVERY.**

3 Defendant in his Writ asserts on page 26, in the subparagraph “B” Heading,
4 that the “Identity of Tolls’s Confidential Sources Are Unnecessary.” Despite the
5 language of the Heading, the clear import of the language in the section merely
6 asserts that the District Court should not have granted Plaintiff the ability to conduct
7 limited discovery. Regardless, this is not a proper issue for a writ for extraordinary
8 relief.

9 A writ of mandamus is available to compel the performance of an act which the
10 law requires as a duty resulting from an office, trust or station, or to control an
11 arbitrary or capricious exercise of discretion. Aspen, 129 Nev. at 88, 313 P.3d at 877;
12 see NRS 34.160. A writ of prohibition may be used to arrest the proceedings of a
13 district court when it has exceeded its jurisdiction. Aspen, 129 Nev. at 88, 313 P.3d
14 at 877. Both mandamus and prohibition are extraordinary remedies that are
15 unavailable when a petitioner has a “plain, speedy, and adequate remedy in the
16 ordinary course of law,” and both are issued at the discretion of this court. Aspen, 129
17 Nev. at 88-89, 313 P.3d at 877-78; see also NRS 34.170; NRS 34.330.

18 In the instant case, Defendant clearly has a “plain, speedy, and adequate
19 remedy in the ordinary course of law and therefore, this writ is unavailable for his
20 particular issue. In his Petition, Defendant fails to set forth any authority whatsoever,
21 that a writ for extraordinary relief is appropriate on this issue. Regardless of the
22 appropriateness of Defendant bringing a writ, Plaintiff still had a right to conduct
23 limited discovery as provided in the Discovery Order.

24 Actual malice is proven when a statement is published with knowledge that it
25 was false or with reckless disregard for its veracity. Pegasus v. Reno Newspapers,
26 Inc., 118 Nev. 706, 722, 57 P.3d 82, 92 (2002). Reckless disregard for the truth may
27 be found when the “defendant entertained serious doubts as to the truth of the
28 statement, but published it anyway.” Id. This test is a subjective one, relying as it

1 does on “what the defendant believed and intended to convey, and not what a
2 reasonable person would have understood the message to be. *Id.* Recklessness or
3 actual malice may be established through cumulative evidence of negligence, motive,
4 and intent. *Pegasus*, 118 Nev. at 722, 57 P.3d at 93.

5 In his “Opposition to the Anti-SLAPP Special Motion to Dismiss Per NRS
6 41.660,” Plaintiff moved to conduct discovery, stating: “Although based upon the
7 foregoing, Defendant’s Motion has no merit whatsoever, if the Court were to ever
8 consider granting Defendant’s Motion, Plaintiff should be able to conduct limited
9 discovery to obtain information necessary to meet or oppose the burden pursuant to
10 NRS 41.660(3)(b).” (*PA262, Vol. 2*). “Upon a showing by a party that information
11 necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is
12 in the possession of another party or a third party and is not reasonably available
13 without discovery, the court shall allow limited discovery for the purpose of
14 ascertaining such information. NRS 41.660(4).” (*Id.*).

15 In the Discovery Order, the District Court ruled:

16 Gilman requested an opportunity to conduct discovery under NRS
17 41.660(4) which requires a court to allow limited discovery upon a
18 showing that information necessary to meet or oppose the burden under
19 NRS 41.660(3)(b) is in the possession of another party or a third party
20 and is not reasonably available without discovery. Gilman failed to
21 make the showing required by NRS 41.660(3)(b) on the issue of actual
22 malice. The Court concludes that here, information as to whether Toll
23 knew the resident statements were false or whether he acted with a high
24 degree of awareness of the probable falsity of the statement or had
25 serious doubts as to the publication's truth, is necessary for Gilman to
meet or oppose the burden under NRS 41.660(3)(b), and that
information is in the possession of Toll or a third party and is not
reasonably available without discovery. Therefore Gilman's request to
conduct discovery is granted. Gilman will be allowed to conduct
discovery limited solely to information as to whether Toll knew the
resident statements were false or whether he acted with a high degree of
awareness of the probable falsity of the statement or had serious doubts
as to the publication's truth.

26 (*PA533-534, Vol. 3*). Defendant has failed to assert one iota of applicable authority
27 that the District Court abused its discretion in allowing limited discovery, especially
28 when Defendant is bringing these assertions in the form of a writ for extraordinary

1 relief. As stated, the District Court correctly concluded that information as to whether
2 Toll knew the resident statements were false or whether he acted with a high degree
3 of awareness of the probable falsity of the statement or had serious doubts as to the
4 publication's truth, is necessary for Gilman to meet or oppose the burden under NRS
5 41.660(3)(b), **and that information is in the possession of Toll or a third party**
6 **and is not reasonably available without discovery.** (Emphasis added). This is the
7 situation in virtually every defamation action involving malice. In virtually, every
8 defamation action involving malice, as in this case, Plaintiff knows the statements are
9 false and defamatory and is therefore, entitled to learn the basis of Defendant's
10 assertions for purposes of proving malice. Thus, the Court should deny Defendant's
11 Writ.¹⁷

12 **C. DEFENDANT'S ASSERTIONS THAT PLAINTIFF ADMITTED THAT**
13 **HIS RESIDENCE IS IN WASHOE COUNTY IS NOT ONLY FALSE,**
14 **BUT ALSO NOT PROPERLY BROUGHT IN A WRIT FOR**
15 **EXTRAORDINARY RELIEF.**

16 Defendant is essentially asking the Court to rule on what amounts to be a
17 Motion for Summary Judgment without the formality of allowing the District Court
18 to rule on the matter. Moreover, Defendant is seeking to have the Court rule on a
19 factual matter. In his Petition, Defendant fails to set forth any authority whatsoever,
20 that a writ for extraordinary relief is appropriate on this issue. Regardless of the
21 appropriateness of Defendant bringing a writ, Defendant's assertions are patently
22 false and misleading.

23 Without going into every facet of this issue, Defendant is asserting a couple of
24 documents as proof that Plaintiff is not a resident of Storey County. (*PA2470,*
25 *PA2476, Vol. 12*). Both documents apply to a house owned by Plaintiff in Washoe

26
27 ¹⁷ To adopt Defendant's tortured assertions, would leave virtually every plaintiff who has a
28 cause of action for defamation involving malice, without any type of remedy. A plaintiff in such a
situation usually only knows of the falsity of the statements and can only surmise how Defendant
came to making such statements.

1 County located at 199 Steptoe Lane.

2 Simply because a "tax cap assessment" states that Plaintiff "will occupy a
3 property as his primary residence back in 2008," does not establish where his actual
4 residence or legal domicile was in 2012, when he ran for office. Furthermore,
5 Plaintiff's daughter was living in the Steptoe property from 2009 - 2015. (PA2499,
6 Vol. 12).

7 Contrary to Defendant's allegations, the evidence establishes that Mr. Gilman's
8 actual residence is in fact the 5 Wildhorse Canyon, Dr. Mr. Gilman lives at the 5
9 WildHorse Canyon with his girlfriend Jennifer Barnes and his two dogs. NRS
10 281.050(c)(4)(5). (Id). His vehicle registration lists this as his address. NRS
11 281.050(c)(8). (Id). His bills and tax return show that this is his address. NRS
12 281.050(c)(10)(13). (Id). His concealed weapons permit shows that this is his
13 address. NRS 281.050(c)(9). (Id). His driver's license shows that this is his address.
14 NRS 281.050(8). (Id). Moreover, Plaintiff is an owner and licensee of a legal brothel
15 subject to intensive regulation by the State of Nevada and Storey County.

16 This is clearly a factual dispute better suited for adjudication by the District
17 Court, and not via a Writ for extraordinary relief before the Nevada Supreme Court.
18 Therefore, the Court should deny Defendant's Petition.

19 **D. DEFENDANT'S ARGUMENTS THAT ASSERTIONS OF THE NEWS**
20 **MEDIA PRIVILEGE DOES NOT BAR DEFENDANT FROM RELYING**
21 **ON INFORMATION FROM CONFIDENTIAL SOURCES IS NOT**
ONLY INAPPROPRIATE FOR A WRIT FOR EXTRAORDINARY
RELIEF, BUT ALSO WITHOUT ANY BASIS IN LAW.

22 In the Second Discovery Order, the District Court ordered that Defendant "will
23 not be allowed to rely on the privileged information as a defense under Diaz v. Dist.
24 Ct., 116 Nev. 88, 101, 993 P.2d 50 (2000), citing Las Vegas Sun, 104 Nev. 508, 514,
25 761 P.2d at 849, 853-54 (1988)." (PA002488, Vol. 12). Defendant is improperly
26 seeking to have the Court rule that he should not be precluded from relying on the
27 disclosed statements of confidential sources as one piece of evidence to support his
28 subjective, good faith belief in the residency communications about Plaintiff. In his

1 Petition, Defendant fails to set forth any authority whatsoever, that a writ for
2 extraordinary relief is appropriate on this issue. Regardless of the appropriateness of
3 Defendant addressing this in a writ, Defendant's assertions are not supported by the
4 law.

5 To begin, it is not only about Defendant's subjective, good faith belief in the
6 residency communications about Plaintiff. There is more to the law. As set forth
7 above, recklessness or actual malice may be established through cumulative evidence
8 of negligence, motive, and intent. Pegasus, 118 Nev. at 722, 57 P.3d at 93.

9 In Diaz, the Court reaffirmed its ruling as it pertains to actions for libel. In
10 particular, the court ruled that once a media litigant has invoked the protection of the
11 news shield statute to resist discovery, Defendant may not later rely on the privileged
12 information as a defense. See Diaz, 116 Nev. At 101, 993 P.2d at 58-59 citing Las
13 Vegas Sun, 104 Nev. at 514, 761 P.2d at 853-854. Moreover, to the extent that a
14 plaintiff in a defamation action is required to prove that a media litigant either knew
15 that the published information was false or acted in reckless disregard of the truth, an
16 assertion of the shield statute may result in discovery sanctions. Diaz, supra at
17 Footnote 6.

18 Nothing in the cited authority allows Defendant to be able to rely on disclosed
19 statements of confidential sources as evidence to support his defense after asserting
20 the News Media Privilege. In other words, Defendant wants to assert the News
21 Media Privilege and then use disclosed information from an undisclosed confidential
22 source. This is utterly ludicrous and as stated, unsupported by the law.

23 Regardless, this an issue better suited for adjudication by the District Court,
24 and not via a Writ for extraordinary relief before the Nevada Supreme Court.
25 Therefore, the Court should deny Defendant's Petition.

26 VIII.

27 CONCLUSION

28 Based upon the foregoing, the Court should deny the Defendant's Petition in

1 its entirety.

2 Respectfully Submitted this 6th day of May, 2019.

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IX.

CERTIFICATE OF COMPLIANCE

I certify that I have read this Answering brief, and to the best of my knowledge information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e) which requires every assertion in the Brief regarding matters in the record to be supported by a reference to the page of the transcript or Appendix where the matter relied on is to be found. The Brief complies with the formatting requirements of NRAP 32 (a)(4) - (6). The Brief also complies with the type-volume limitation of NRAP 32(a)(7) because it is presented in a 14 point Times New Roman font and contains 13,973 words including headings and footnotes as counted by WordPerfectX8- the program used to prepare this Brief.

I understand that 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 6th day of May, 2019.


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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the FLANGAS DALACAS LAW GROUP, and
3 that on this 6th day of May, 2019, the Respondents/Real Parties in Interest's Answering Brief was
4 filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was
5 made in accordance with the Master Service List as follows:

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