IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEOLIS TRANSIT SERVICES, LLC,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE RICHARD SCOTTI, DEPT. II,

Respondents,

SHAY TOTH,

Real Party in Interest.

Case No. 81637-COA

AMICUS CURIAE BRIEF OF THE NEVADA JUSTICE ASSOCIATION
(In Support of Real Party in Interest Shay Toth)

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NRAP 26.1 CORPORATE DISCLOSURE STATEMENT

The undersigned counsel certifies that the following are persons and entities as described in NRAP 26.l(a) and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

The Nevada Justice Association ("NJA"), an amicus curiae, is a non-profit organization of independent lawyers in the State of Nevada. The amicus curiae is represented in this matter by Micah Echols of Claggett & Sykes Law Firm and A. J. Sharp of Sharp Law Center.

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NJA and its counsel did not appear in the District Court in this matter. NJA submits this brief along with its Motion for Leave, pursuant to an Order of the Court of Appeals.

Dated this 7th day of January 2021.

/s/ Micah S. Echols

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AMICUS INTEREST AND AUTHORITY TO FILE

NJA is a non-profit organization of independent lawyers in the State of Nevada that represents consumers and shares the common goal of improving the civil justice system. NJA seeks to ensure that access to the courts by Nevadans is not diminished. NJA also works to advance the science of jurisprudence, to promote the administration of justice for the public good, and to uphold the honor and dignity of the legal profession.

NJA files this brief with an accompanying motion pursuant to NRAP 29(c). Through this proposed brief, NJA seeks to provide this Court with the broader context of work-product protection with respect to Plaintiff's discovery requests and Defendant's resistance to those requests. Amicus intervention is appropriate where "the amicus has unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide." *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997); *see also Miller-Wohl Co. v. Comm'r of Labor & Indus*., 694 F.2d 203, 204 (9th Cir. 1982) (indicating that the classic role of an amicus curiae is to assist in cases of general public interest and to supplement the efforts of counsel by drawing the Court's attention to law that may have escaped consideration).

Thus, amici curiae are regularly allowed to appear when they seek to inform the deciding court regarding the limits of discovery and the privileges and

protections available (or unavailable) to a party in resisting disclosure requirements or discovery requests. *See, e.g., Bradford v. Eighth Judicial Dist. Court of State* ex rel. *Cty. of Clark*, Order Denying Petition, Dkt. No. 58238, 128 Nev. 884, 381 P.3d 595 (2012) (unpublished) (considering amicus curiae arguments regarding tensions between work-product protections and opposing party's right to discovery); *see also Ballard v. Eighth Judicial Dist. Court of State In & For Cty. of Clark*, 106 Nev. 83, 84, 787 P.2d 406, 407 (1990) (acknowledging efforts of NJA — then called Nevada Trial Lawyers Association — as amicus curiae in present "conflicting authorities from other jurisdictions" regarding work product doctrine).

This Petition involves the boundaries of work-product protection, and Defendant seeks to expand that protection exponentially by obviating this Court's decision in *Wynn Resorts, Ltd. v. Eighth Judicial District Court*, 133 Nev. 369, 399 P.3d 334 (2017).

The essentially limitless work-product protection asserted by Defendant would dramatically shift the balance Nevada law seeks between one party's right to discovery and the opposing party's privileges and protections. Accordingly, NJA has respectfully requested leave to appear as amicus curiae in this matter.

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Defendant attempts to invoke the protection of NRCP 26(b)(3) for its surveillance videos based on the repeated assertion that, because Plaintiff retained an attorney and later filed a lawsuit, it supposedly follows that by definition the videos were created "in anticipation of litigation." *Petition*, 19-21.

However, Defendant's argument — in addition to precluding discovery of videos in this matter that are clearly not protected under NRCP 26(b)(3) — would also exponentially enlarge the protections available to a defendant under litigation privilege or the "work-product doctrine."

Ironically, in seeking this wholesale expansion of this facially narrow protection, Defendant purports to rely on the very Nevada Supreme Court case that dramatically narrowed its scope by clearly defining the key phrase "anticipation of litigation." *Petition*, 18-25. However, instead of applying that case's "because of" test, Defendant simply asserts that, because an attorney was hired and a lawsuit was filed, anything Defendant did subsequent to those events was by definition "in anticipation of litigation." *Petition*, 19-21.

Of course, that is not even remotely how the Nevada Supreme Court defined that key phrase in NRCP 26(b)(3), and application of the ***actual*** law makes clear that Defendant's videos cannot be afforded protection under that Rule.

A. TO SHOW THAT THE VIDEOS WERE PROTECTED UNDER NRCP 26(b)(3), DEFENDANT BORE THE BURDEN TO SHOW THAT THE VIDEOS ***WOULD NOT EXIST*** "BUT FOR" THAT PROSPECT OF LITIGATION.

> The Nevada Rules of Civil Procedure provide in relevant part:
>
> Ordinarily, a party may not discover documents and tangible things that are prepared *in anticipation of litigation* or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:
>
> (i) they are otherwise discoverable under Rule 26(b)(1); and
>
> (ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

See Nev. R. Civ. P. 26(b)(3) (emphasis added).

Defendant acknowledges the "anticipation of litigation" requirement, but attempts to argue that a document (or video) created after the claimant has hired an attorney, asserted a claim for damages, and/or filed a lawsuit is *by definition* created "in anticipation of litigation" and is therefore protected under NRCP 26(b)(3). *Petition*, 19-21.

In fact, if a lawsuit has been filed, Defendant asserts, "[i]t should not even have to be argued that the [video was] prepared 'in anticipation of litigation or for trial,' pursuant to NRCP 26(b)(3)." *Id.* at 19. Likewise, "[i]f a letter from an attorney directing all communications to go through his office is not a sufficient basis to be

'anticipating' litigation, then it would be hard to imagine anything that would." *Id.* at 20.

However, Defendant's assertions here inexplicably ignore the very Nevada Supreme Court case Defendant cites for the definition of "anticipation of litigation." As Defendant notes (and then ignores), the Nevada Supreme Court has adopted the "because of" test for evaluating "anticipation of litigation" and thus extending NRCP 26(b)(3) protection to any document. *Petition*, 13-15 (citing *Wynn Resorts, Ltd. v. Eighth Judicial District Court*, 133 Nev. 369, 399 P.3d 334 (2017)).

Contrary to Defendant's assertions regarding "anticipation of litigation," the <u>*correct*</u> application of the *Wynn Resorts* test unambiguously <u>*defeats*</u> Defendant's argument that the videos in this matter are protected pursuant to NRCP 26(b)(3).

The *Wynn Resorts* court held:

> The anticipation of litigation must be the *sine qua non* for the creation of the document—"but for the prospect of that litigation," the document would not exist. [ ] However, "a document ... does not lose protection under this formulation merely because it is created in order to assist with a business decision." [ ] "Conversely ... [this rule] withholds protection from documents that are prepared in the ordinary course of business or that would have been created in essentially similar form irrespective of the litigation." [ ]
>
> In determining whether the "because of" test is met, we join other jurisdictions in adopting a "totality of the circumstances" standard. [ ] [ ] [T]he Ninth Circuit Court of Appeals stated that
>
> > [t]he "because of" standard does not consider whether litigation was a primary or secondary motive behind the

> creation of a document. Rather, it considers the totality of the circumstances and affords protection when it can fairly be said that the "document was created because of anticipated litigation, and would not have been created in substantially similar form but for the prospect of that litigation[.]" [ ]

Wynn Resorts, Ltd., 133 Nev. at 384-85, 399 P.3d at 348 (internal citations omitted).

Oddly, despite accurately quoting this portion of *Wynn Resorts* — and even despite expressing that Defendant is "thankful[ ]" that *Wynn Resorts* *defined* the "anticipation of litigation" requirement of NRCP 26(b)(3) — Defendant then inexplicably *disregards* that test in arguing that the videos were created in "anticipation of litigation." *Petition*, 13-15.

Instead, Defendant simply asserts its own bases for concluding that the videos were created in "anticipation of litigation" — essentially, Defendant argues that that "fact" is self-evident:

> As to the first two videos, the key event that triggers the protection of Petitioner's work product occurred on July 5, 2017 - four short days after the accident. On July 5, 2017, Plaintiff's counsel of record sent Petitioner a Letter of Representation advising Petitioner of his representation and directing all correspondence to be sent to his attention. (App. at 086.) *If a letter from an attorney directing all communications to go through his office is not a sufficient basis to be "anticipating" litigation, then it would be hard to imagine anything that would*.
>
> and
>
> *It should not even have to be argued that the third video and report were prepared "in anticipation of litigation or for trial," pursuant to*

> *NRCP 26(b)(3)*. They were generated at the direction of defense counsel a month into litigation. *Petitioner need show nothing more than this chronology of leadings to prove conclusively that these materials are absolutely protected . . . pursuant to NRCP 26(b)(3)'s plain language*.

Petition, 19-20 (emphases added).

These two passages, of course, simply parrot the "anticipation of litigation" language of NRCP 26(b)(3) — without in any way considering the *test* explicitly adopted in *Wynn Resorts* for determining whether the videos actually meet that requirement. *Wynn Resorts, Ltd.*, 133 Nev. at 384-85, 399 P.3d at 348.

Nothing in Defendant's analysis addresses whether the videos "would not [or would] exist" "but for the prospect of that litigation," or whether the videos "would not [or would] have been created in substantially similar form but for the prospect of that litigation." *Wynn Resorts, Ltd.*, 133 Nev. at 384-85, 399 P.3d at 348; *cf. Petition*, 19-20.

Instead, Defendant simply asserts that, because Plaintiff hired an attorney and later filed a lawsuit, the videos are protected under NRCP 26(b)(3). *Petition*, 19-20. Those assertions are incorrect as a matter of law.

The glaring flaw in Defendant's argument is explicitly stated by Defendant itself:

> The plain language of NRCP 26(b)(3) states that materials prepared by both attorneys and insurers qualifies for the work-product privilege. All three videos and both reports were generated well *after the Letter of*

> *Representation was received, and Petitioner was reasonably anticipating litigation*. The language of the Rule is directed precisely at situations like this, and Petitioner was justified in believing that its investigation efforts would be protected from disclosure unless and until it decided to use said materials at trial.

Petition, 21 (emphasis added).

Defendant thus invokes the logical fallacy of *post hoc ergo propter hoc* — "occurring after, and therefore caused by." *See* BLACK'S LAW DICTIONARY 1317 (11th ed. 2019). Because the videos were created after Plaintiff hired an attorney (and, in the last instance, after litigation had commenced), Defendant asserts, the videos by definition were created when Defendant "was reasonably anticipating litigation." *Petition*, 19-21.

However, these circumstances described by Defendant come nowhere close to satisfying the phrase "anticipation of litigation" *as defined by the Nevada Supreme Court* in *Wynn Resorts*. As the *Wynn Resorts* "because of" test (which Defendant itself recites and then ignores) makes clear, in order to obtain the protection of NRCP 26(b)(3) for these videos, Defendant must show that the videos "would not exist" "but for the prospect of that litigation," or that the videos "would not have been created in substantially similar form but for the prospect of that litigation." *Wynn Resorts, Ltd.*, 133 Nev. at 384-85, 399 P.3d at 348.

It is *not* sufficient for Defendant to show simply that the videos were created after Defendant believed Plaintiff's claims were headed to litigation (or even after

litigation had started) — rather, Defendant must show that, had it *not* believed that, Defendant *would not have created the videos*. *Id.*

Defendant fails to make (or even attempt) that showing, instead simply ignoring *Wynn Resorts* in favor of Defendant's own interpretation of the phrase "anticipation of litigation." *Petition*, 19-21. Of course, it is the Nevada Supreme Court's interpretation of that phrase — not Defendant's — that constitutes Nevada law and was binding on the District Court.

Defendant asserts that "[a]ll of this makes it all the more puzzling how the District Court could review the exact same record and the same Rule and come to the conclusion that these surveillance videos were not protected from disclosure." *Petition*, 23.

However, there is nothing at all "puzzling" about the District Court's conclusion. That Court reviewed the record, the Rule — *and binding Nevada Supreme Court precedent*, which defines the key phrase contained in that Rule. *Wynn Resorts, Ltd.*, 133 Nev. at 384-85 (defining "anticipation of litigation" using the "because of" test).

It is hornbook Nevada law that the party asserting a protection or privilege has the burden of showing that the material is in fact protected. *Canarelli v. Eighth Judicial District Court*, 464 P.3d 114, 120 (Nev. 2020) (citing *Ralls v. United States*, 52 F.3d 223, 225 (9th Cir. 1995)). Thus, Defendant had the burden of showing that,

but for the prospect of litigation, the videos would not exist (or at least would not have been created in substantially similar form). *Wynn Resorts, Ltd.*, 133 Nev. at 384-85, 399 P.3d at 348.

In the District Court, as here, Defendant made no attempt to satisfy this burden, instead simply asserting that, because Plaintiff had submitted a substantial claim, hired an attorney, and filed a lawsuit, the videos were self-evidently created in "anticipation of litigation" and, therefore, were supposedly protected under NRCP 26(b)(3). *Petitioner's Appendix*, 12-14.

That assertion is wrong as a matter of law. *Wynn Resorts, Ltd.*, 133 Nev. at 384-85, 399 P.3d at 348. It was a relatively simple matter for the District Court to find that Defendant had failed to meet its burden, and on that basis to order production of the videos. *Petitioner's Appendix*, 175-76.

B. DEFENDANT'S EXPLANATION OF WHEN *SUB ROSA* SURVEILLANCE IS UNDERTAKEN DEFEATS DEFENDANT'S OWN CLAIM OF PROTECTION UNDER NRCP 26(b)(3).

As explained above, protection under NRCP 26(b)(3) exists only when the document (or video) would not exist "but for" the prospect of litigation. *Wynn Resorts, Ltd.*, 133 Nev. at 384, 399 P.3d at 348. In fact, the *Wynn Resorts* court noted a necessary implication of its adoption of this "because of" test — that NRCP 26(b)(3) "*withholds protection from documents* . . . that would have been created in

essentially similar form <u>*irrespective of the litigation*</u>." *Wynn Resorts, Ltd.*, 133 Nev. at 384, 399 P.3d at 348 (quoting *In re Grand Jury Subpoena (Mark Torf/Torf Envtl. Mgmt.)*, 357 F.3d 900, 908 (9th Cir. 2004)) (emphases added).

Thus, in order to bring the videos under the protection of NRCP 26(b)(3), Defendant would have to show that the creation of the videos was "because of" the prospect of litigation. *Id.* at 384-85, 399 P.3d at 348. If, on the other hand, Defendant would have created the videos "in essentially the same form irrespective of the litigation[,]" then that Rule "withholds protection[.]" *Id.* at 384, 399 P.3d at 348.

Defendant's own explanation of its rationale for creating the videos clearly demonstrates that litigation considerations played <u>*no role*</u> in the decision. While Defendant asserts that the proffered rationale would apply only in the context of litigation, that assertion contradicts the rationale itself.

> Surveillance is only conducted on plaintiffs or potential plaintiffs in litigation who are claiming damages substantial enough to justify the expense of verifying their claims through surveillance. The need for surveillance was solely based on the fact that an attorney had contacted Petitioner on July 5, 2017 and then subsequently informed Petitioner's insurer that massive damages would be claimed related to this case. Any insurance adjuster in the country would take these signs as an indication that litigation was on the horizon.

Petition, 23-24.

Defendant limits this class of persons subject to surveillance to "plaintiffs or potential plaintiffs in litigation who are claiming enough damages substantial enough to justify the expense of verifying their claims through surveillance." *Id.* However, ***all*** claimants by definition are either "plaintiffs or potential plaintiffs in litigation," so that phrase cannot distinguish between those who are deemed worthy of surveillance and those who are not.

Instead, the vital demarcation Defendant proffers between the surveilled and the non-surveilled is the ***amount of their damages claims***. *Id.* Simply put, Defendant will surveil ***any*** claimant ("plaintiff or potential plaintiff") whose damages claims create enough exposure to justify the expense of that surveillance. *Id.*

Thus, Defendant created the videos of Plaintiff, not because Plaintiff was thought to be heading toward litigation or because Plaintiff was in litigation, but because Plaintiff ***claimed a large amount of damages***. *Id.* That is, because Plaintiff claimed nearly $300,000 in medical expenses, Defendant surveilled her. *Id.*

According to Defendant's own explanation, had the "totality of the circumstances" been otherwise identical but Plaintiff claimed only $1,000 in medical expenses, Defendant would ***not*** have surveilled her — even if Plaintiff were thought to be intent upon suing, or ***even if she actually sued***. *Id.* That low damages claim would not be "substantial enough to justify the expense of verifying [Plaintiff's] claims through surveillance." *Id*. at 23.

Defendant even goes so far as to admit that

> [t]he nature of the document [video] is that it is solely used to impeach claims of serious injury raised by Plaintiff, and the factual situation is that Plaintiff's counsel had alleged six-figure special damages prior to the initiation of the surveillance. If this does not satisfy the "because of" test, then no document would.

Id. at 25.

While Defendant's explanation has the damages claim coming from counsel instead of from Plaintiff herself, the same rationale holds true if Plaintiff herself "alleged six-figure special damages[.]" *Id.* Again, it is the ***amount of the damages claim*** that drives surveillance, not the prospect *vel non* of litigation: Change the amount of damages, Defendant's decision on surveillance ***changes***; change the ***person submitting the claim*** from attorney to Plaintiff, while keeping the damages the same, Defendant's decision on surveillance ***stays the same***. *Id.*

A person claiming $1,000 is ***not*** worth surveilling, whether represented by counsel or involved in litigation or not. A person claiming $274,199.33 ***is*** worth surveilling — again, without reference to an attorney or to the prospect of litigation. Thus, these videos present a textbook example of when NRCP 26(b)(3) "withholds protection" — when the videos "would have been created in essentially similar form irrespective of the litigation." *Wynn Resorts, Ltd.*, 133 Nev. at 384, 399 P.3d at 348.

Because Defendant's decision to surveil Plaintiff was driven by the ***amount of her claim***, rather than by the prospect of litigation — and because that decision

would have been the same if Plaintiff claimed $274,199.33 but had hired no attorney and filed no lawsuit — the creation of the videos was not "in anticipation of litigation" as the Nevada Supreme Court has defined that term. *Id.* at 384-85, 399 P.3d at 348.[1]

Defendant appears to recognize that its own explanation of its surveillance decision defeats its NRCP 26(b)(3) argument, because Defendant then proffers a codicil that crumbles upon even casual scrutiny:

> Surveillance videos are impeachment evidence only, and are generally intended to persuade a third party that the claimed injuries are being exaggerated. While the videos would have some nominal utility in non-litigation contexts, it would be extremely rare to ever pay the substantial cost for surveillance if an insurer was not anticipating needing to use the videos in a litigation context.

Petition, 25.

None of what Defendant asserts here has any basis. Surveillance videos (presuming they contradict the claimant's version of events) may be "impeachment evidence" <u>*once they become evidence in litigation*</u>, but they obviously serve a purpose even if litigation never occurs. While they <u>*may*</u> be used to "persuade a third

[1] Again, the fact that Plaintiff had an attorney and eventually filed a lawsuit cannot satisfy NRCP 26(b)(3) — because the surveillance was done because of the amount of Plaintiff's claim rather than because of those litigation factors. Even the <u>*existence*</u> of litigation does not constitute "anticipation of litigation" under NRCP 26(b)(3) and *Wynn Resorts* — this is the fatal flaw in Defendant's argument.

party" (*e.g.*, a jury), they also may be used to persuade a pre-litigation claimant (and even her attorney) that the claims are excessive. As such, surveillance videos have much more than "nominal utility in non-litigation contexts" — indeed, surveillance videos may persuade a claimant or her attorney to *forego litigation altogether*.

Such potential persuasion (in regard to a six-figure claim, of course) would be well worth the few thousand dollars the videos cost — even if Defendant were *certain* that the claimant would *never* resort to litigation. After all, even if there is no lawsuit, there is still a six-figure claim, and Defendant obviously is eager to resolve claims short of litigation and for as little money as feasible. Defendant even acknowledges that, during the pre-litigation phase of this matter, there were "specific communications between Plaintiff's counsel and [Defendant] during this period regarding damages and settlement[.]" *Petition*, 24.

As noted above, Defendant asserts that "[t]he nature of the document [video] is that it is *solely used to impeach claims of serious injury raised by Plaintiff*, and the factual situation is that Plaintiff's counsel had alleged *six-figure special damages prior to the initiation of the surveillance*." *Id.* at 25 (emphases added).

Tellingly, in this entire explanation of *why* Defendant obtained the surveillance videos of Plaintiff and *what use* Defendant envisioned for them, there is *not even a hint of litigation*. Defendant would seek to "impeach claims of serious injury raised by Plaintiff" even if Plaintiff herself were negotiating her claim with

no attorney and no lawsuit, and the damages alleged would be six figures even without an attorney or a lawsuit. *Id.*

Again, Defendant admits that the force driving the surveillance decision is *not* potential litigation (or even actual litigation), but is instead *the amount of the claim*. This acknowledgement is crucial, since it means that the videos "would have been created in essentially similar form irrespective of the litigation[ ]" — because Defendant's surveillance decision was based *solely* upon the fact that Plaintiff claimed $274,199.33 in medical specials. Therefore, NRCP 26(b)(3) "withholds protection" from the videos. *Wynn Resorts, Ltd.*, 133 Nev. at 384, 399 P.3d at 348.

CONCLUSION

Defendant is not entitled to extraordinary relief, as Defendant fails to make (or even attempt) the fundamental showing required in support of its argument — that the videos are protected under NRCP 26(b)(3). Contrary to Defendant's repeated statements, the possibility (or even the commencement) of litigation does not satisfy NRCP 26(b)(3)'s requirement that the videos be "prepared in anticipation of litigation[.]"

Instead, Defendant bore the burden to show that the videos were created "because of" litigation — *i.e.*, that the videos would not exist "but for" the prospect of litigation. However, Defendant's own explanation of its surveillance philosophy

makes clear that its decisions regarding surveillance are made based on the amount of the claim involved, without respect to litigation.

Nevada law specifically provides that NRCP 26(b)(3) "withholds protection" in such instances — because the videos would have been created in essentially the same form irrespective of litigation, as long as Plaintiff claimed medical expenses of six figures.

Defendant's self-serving attempted re-definition of "anticipation of litigation" directly contradicts Nevada Supreme Court precedent on the topic — and, if permitted, would result in broad expansion of NRCP 26(b)(3) protection for defendants at the expense of the discovery prerogatives of plaintiffs.

This Court should reject Defendant's attempt to change the law, and instead should apply the "because of" test previously defined and, on that basis, deny the extraordinary relief sought.

Dated this 7th day of January 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Amicus Curiae Brief complies with the formatting Requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word VERSION 16.43 (2020) in 14-point font and Times New Roman type.

2. I further certify that this Amicus Curiae Brief complies with the page or type-volume limitations of NRAP 29 and NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 3,4111 words.

3. Finally, I hereby certify that I have read this Amicus Curiae 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)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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 7th day of January 2021.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AMICUS CURIAE BRIEF OF THE NEVADA JUSTICE ASSOCIATION (IN SUPPORT OF REAL PARTY IN INTEREST SHAY TOTH)** was filed electronically with the Supreme Court of Nevada on the 7th day of January 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Cliff W. Marcek
Boyd B. Moss III
Andrew R. Muehlbauer
Sean P. Connell

I further certify that the foregoing document was mailed via U.S. Mail, first-class postage fully prepaid, to the following:

Honorable Richard Scotti, District Judge
Eighth Judicial District Court, Department 2
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Las Vegas, Nevada 89101

/s/ Anna Gresl

Anna Gresl, an employee of
Claggett & Sykes Law Firm