

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

2
3 THE NEVADA INDEPENDENT

4
5 Petitioner.

6 vs.

7
8 RICHARD WHITLEY, IN HIS
9 OFFICIAL CAPACITY AS THE
10 DIRECTOR OF THE NEVADA
11 DEPARTMENT OF HEALTH AND
12 HUMAN SERVICES, AND THE
13 STATE OF NEVADA EX REL. THE
14 DEPARTMENT OF HEALTH AND
15 HUMAN SERVICES AND SANOFI-
16 AVENTIS U.S. LLC

17
18 Respondents.

No. 81844

DC No.: A-19-799939-W

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19 **CULINARY WORKERS UNION LOCAL 226's REQUEST FOR LEAVE TO**
20 **FILE BRIEF *AMICUS CURIAE***

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Attorneys for Amicus Curiae Culinary Workers Union Local 226

1 Culinary Workers Union Local 226 respectfully requests leave to submit this
2 brief *amicus curiae*, in support of The Nevada Independent’s appeal. As a participant
3 in the Culinary Health Fund, one of the largest health-benefit consumers in the State,
4 and as a proponent of SB 539, the Culinary has a direct interest in this case’s outcome
5 and SB 539’s proper interpretation. Defendant Department of Health and Human
6 Services (“DHHS”) and Intervenor Sanofi-Laventis USA LLC (“Sanofi”) take
7 positions in this case that threaten to nullify SB 539 and rewrite the law of trade
8 secrecy.

9 STATEMENT OF INTEREST

10 Culinary Workers Union Local 226 is a labor organization representing some
11 60,000 workers in Nevada’s gaming, hospitality, food service, and commercial laundry
12 industries. The Culinary, through its participation in the Culinary Health Fund, is one
13 of the largest healthcare consumers in the state. Culinary Health Fund (“CHF” or the
14 “Fund”) is a multi-employer Taft-Hartley fund that provides medical, dental and vision
15 healthcare benefits to some 125,000 workers and their dependents in Nevada, which
16 makes CHF one of the largest private healthcare-benefit providers in the State.

17 CHF provides medical benefits to over 12,000 Culinary members and retirees
18 diagnosed with diabetes, and many thousands more who are pre-diabetic. Prescription
19 medications for these diabetic participants are a major and increasing cost for CHF
20 and, ultimately, for the unionized employers and workers who contribute to it. The
21 Fund paid over \$37 million for diabetes medications in 2020, up from \$28 million just
22 two years earlier, which was fully one-quarter of the Fund’s total prescription-drug
23 spend. The crisis facing diabetic Culinary members mirrors the crisis faced by
24 diabetics and health-benefit providers nationally.

25 The amount that the Fund and others pay for key diabetes treatments has
26 increased dramatically and often inexplicably in recent years. The average list price
27 for insulin tripled between 2003 and 2013, and by 15-17% annually between 2012-
28

1 2016.¹ Ultimately, all of the Fund’s participants and contributing employers pay for
2 these price increases.

3 There is a growing consensus that the lack of transparency in pharmaceutical-
4 drug pricing is a major factor in the unsustainable rise in prices. This has led to
5 bipartisan federal and state efforts to mandate drug-pricing disclosure. In 2020 alone,
6 legislators in twenty-seven states passed or introduced bills that would require some
7 form of pricing disclosure by drug manufacturers.² Federal lawmakers have introduced
8 a number of bills and regulatory changes designed to make drug pricing more
9 transparent, including the Prescription Drug Price Transparency Act (H.R. 1035) in
10 2019-2020. These laws follow successful state legislation requiring other health-
11 service providers, such as hospitals and insurers, to publish information about their
12 pricing practices.

13 SB 593 promises to open up the black box of insulin drug pricing. Among other
14 things, SB 539 requires diabetes-drug manufacturers to disclose basic information
15 about the pricing of their products to the Nevada Department of Health and Human
16 Services and, ultimately, to the public. The Culinary advocated for SB 539 with the
17 expectation that mandated disclosure of this pricing information would lead to a more
18 transparent market for diabetes medications in Nevada and, ultimately, to lower
19 negotiated drug prices for the Culinary’s members.

20 DHHS’s and Sanofi’s positions in this litigation threaten to close the door that
21 SB 539 pried open. They are based on untenable readings of SB 539, the federal
22 Defend Trade Secrets Act, and Nevada’s Public Records Act. The Culinary submits
23 this brief *amicus curiae* to assist the Court in the proper interpretation of these laws.

24
25 ¹ “Insulin Access and Affordability Working Group: Conclusions and
26 Recommendations,” 41 DIABETES CARE 1299-1300 (2018), available at:
27 <https://care.diabetesjournals.org/content/41/6/1299> (last visited March 2, 2021).

28 ² National Academy for State Health Policy, Legislation Tracker, available at:
<https://nashp.org/rx-legislative-tracker/> (last visited March 2, 2021).

1 Dated: March 2, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that **CULINARY WORKERS UNION LOCAL 226 REQUEST FOR LEAVE TO FILE BRIEF AMICUS CURIAE** was filed electronically with the Nevada Supreme Court on the 2nd day of March, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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