IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID GARVEY, M.D., an individual.

Petitioner,

vs.

THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA ex rel. THE COUNTY OF ELKO, AND THE HONORABLE KRISTIN N. HILL,

Respondent,

and

DIANE SCHWARTZ, individually and as Special Administrator of the Estate of DOUGLAS R. SCHWARTZ, deceased,

Real Party In Interest.

Supreme Court No. 83533

District Court No. CV-C-17-439

REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS

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REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS

I. Introduction

The answer to the petition for writ of mandamus kicks up much dust in a desperate attempt to obfuscate the issue presented in the petition for writ of mandamus. The issue as stated in the petition is as follows:

> In a professional negligence action against an emergency medicine physician may the doctor's motion for partial summary judgment to limit the damages pursuant to Nevada's "trauma cap" statute, NRS 41.503, be properly denied, where the District Court relied on anecdotal accounts by lay witnesses to support a finding of a genuine issue of material fact as to whether the decedent suffered a traumatic injury after he was struck by a vehicle as he crossed the street, instead of the factors in the statutory definition of what constitutes a traumatic injury for the purposes of applying the trauma cap statute?

One need not look further than the District Court's order denying Dr. David Garvey's motion for partial summary judgment to realize that the District Court erred by failing to apply the proper standard in determining that there were genuine issues of material fact as to whether the decedent suffered a traumatic injury, as required by NRS 41.503. Instead of applying "the standardized criteria for triage in the field" as mandated by the statute, the District Court relied on anecdotal observations by lay persons and other immaterial facts. Respectfully, the decedent incurred a traumatic injury regardless of his jovial "demeanor" and regardless of whether the ambulance had its lights and sirens on when transporting him to the

emergency room of the hospital in rural Elko.

The District Court's ruling undermines the strong public policy behind NRS 41.503 which is to protect emergency room doctors from expansive liability for making critical day-to-day decisions. This lawsuit seeks to second-guess—and with the benefit of hindsight—the critical decisions emergency room doctors make on a daily basis. The present lawsuit sends the wrong message to emergency room doctors who not only face unwarranted liability, but are also forced to pay skyrocketing medical malpractice insurance premiums, thereby encouraging the mass exodus of qualified doctors and the closing of trauma centers across the state. In this case, Dr. Garvey should not be penalized for making the decision to intubate a patient so that he could be transferred via air ambulance to a trauma center where he could receive life-saving specialized care.

This Court should grant Dr. Garvey's petition for a writ of mandamus.

II. The District Court Employed the Wrong Standard When It Ruled There Was a Genuine Issue of Material Fact Concerning Whether the Decedent's Sustained a Traumatic Injury.

The Answer to the petition for writ of mandamus essentially skips over the initial question of whether the decedent had a traumatic injury and ignores Dr. Garvey's argument that the District Court focused on anecdotal accounts rather than applying the proper standard required by the trauma cap statute. While there can be no doubt the decedent sustained a traumatic injury, the District Court found otherwise. As discussed below, the court applied the wrong legal criteria. NRS

41.503(b)(4) defines "traumatic injury" as "any acute injury which, *according to standardized criteria for triage in the field*, involves a significant risk of death or the precipitation of complications or disabilities." (emphasis added). Likewise, NRS 450B.105 provides that "'Trauma' means any acute injury which, according to standardized criteria for triage in the field, involves a significant risk of death or the precipitation of complications or disabilities."

It is undisputed that this action arose from a pedestrian versus vehicle accident where the decedent was struck by a moving car. He was thrown up onto the vehicle before landing on the pavement. [See, Petition p. 8; Answer p. 2; Petitioner's Appendix, Volume 3, page 143.] The very mechanism behind the decedent's injuries, a pedestrian versus vehicle accident—not to mention multiple broken ribs, and a partially collapsed lung (pneumothorax)—supports a finding of traumatic injury. While the District Court acknowledged that the facts of the accident were undisputed, it failed to follow the proper legal standard when it ruled there is a genuine issue of material fact as to whether the decedent incurred a traumatic injury.

The Emergency Severity Index, the most widely used triage scale system in the United States and the one employed to triage the decedent, provides five separate levels or categories. See https://www.ena.org/docs/default-source/education-document-library/triage/esi-implementation-handbook-2020.pdf?sfvrsn=fdc327df_4 at pp. 1-30. The levels range from most severely

injured requiring immediate emergency intervention (ESI Level 1), to high risk (ESI Level 2), to less acute (ESI Levels 3-5). *Ibid*. McHugh, Tanabe, McCleland, Khan, *More Patients Triaged Using ESI Than Any Other Triage Acuity System in the United States*, Academic Emergency Medicine 19 (1), 106-109 (2012).

Here, the decedent was properly identified as an ESI 2 level patient, meaning that the patient is at a high risk of deterioration or has signs of a time critical problem. According to the ESI, outward signs of stability do not control classification. Trauma can involve nonobvious high risk injuries. As the ESI explains: "Any mechanism of injury associated with a high risk of injury should be categorized as ESI Level 2." See https://www.ena.org/docs/default-source/education-document-library/triage/esi-implementation-handbook-2020.pdf?sfvrsn=fdc327df_4 at p. 21.

Notably, the ESI 2 guidelines provide that a pedestrian struck by a vehicle is at a "high risk of orthopedic injury." *Id*. at p. 20. Thus, regardless of the decedent's outward demeanor, the very mechanism or way in which he was injured, a pedestrian versus vehicle accident, automatically makes him a patient with high risk traumatic injuries. Therefore, it is undisputed the decedent incurred traumatic injury pursuant to the "standardized criteria for triage in the field," under the trauma cap statute. NRS 41.503(4)(b). The anecdotal facts raised in the answer are therefore not material. The court erroneously relied on such facts to defeat the partial summary judgment motion here.

In any event, the undisputed facts support the conclusion that the decedent sustained a traumatic injury. It was undisputed that he was struck by a moving car with such force that he was thrown up onto the hood and the roof of the car before falling to the ground. The decedent's jovial demeanor is irrelevant. It is a matter of common sense that outward appearances can be deceiving (to say the least). Plaintiff's damages must be limited by the trauma cap statute. NRS 41.503.

Dr. Garvey submits that, pedestrian versus vehicle accident, is sufficient to find that he sustained traumatic injury as a matter of law. At a minimum, this Court is urged to remand the matter to the District Court to reconsider its ruling under the correct legal standard.

Even assuming arguendo that the mechanism of the decedent's injury itself is not sufficient, an examination of the undisputed material facts still compels a finding that the decedent certainly suffered traumatic injury. First, Plaintiff herself conceded that the decedent sustained traumatic injury when he was hit by a car as he crossed the street. [PA, Vol. 6, pp. 433, 439.] Second, it is undisputed that the decedent had multiple fractured ribs and a partially collapsed lung (pneumothorax) after he got hit by a moving car as he was walking in Elko. [Writ p. 8; Answer pp. 2-3.] Third, Plaintiff's Answer brief admits the decedent's blood oxygenation percentage levels dropped from when he first arrived at the hospital to the time he had undergone testing. [Answer pp. 3-4.] They continued to deteriorate even after the decedent undisputedly was given multiple liters of supplemental oxygen.

[Petitioner's Appendix, Volume 6, pages 464, 466.] Fourth, as Plaintiff's expert Dr. Womack acknowledged, the radiology report indicated that the decedent had fluid in two areas of the abdomen. [*Id.*, Volume 6, page 465.] Fifth, the decedent exhibited signs of possible pulmonary contusion and possible subdural brain bleed. [*Id.*] Sixth, it is further undisputed that he was in a a rural hospital with no trauma surgeon and no pulmonologist, which Dr. Garvey believed had no other specialists with the training and expertise to treat multi-trauma patients such as the decedent. [*Id.*, Volume 3, pages 120-121, Volume 4, page 158 See Volume 5, pages 198-199.] Finally, Plaintiff's expert, Dr. Womack, admitted that the decedent needed a chest tube in order to prevent the risk of the pneumothorax from increasing in size during the air flight to the higher level trauma center. [Petitioner's Appendix, Volume 6, page 475.]

In her Answer to the Brief of Amicus Curiae, Plaintiff contends that anatomy and physiology are indispensable considerations irrespective of the mechanism of injury. However, the undisputed material facts establish that the decedent had incurred a traumatic injury, even when considering anatomy and physiology, as well as the mechanism of injury. It is also telling that the trauma cap statute does not expressly define the precise field triage standard to be employed for determining if a person has suffered traumatic injury.

Still, Plaintiff asserts in her Answer to the Brief of Amicus Curiae that, under NAC 450B.798 and NAC 450B.814, that the patient's physiology, anatomy

and mechanism are mandatory factors that must all be present to determine whether a traumatic injury has occurred. Plaintiff misconstrues these regulations. NAC 450B.798 and NAC 450B.814 are entirely consistent with the notion that in an auto versus pedestrian accident the mechanism of injury is paramount. The use of the conjunctive word "and" only means that anatomy and physiology must be considered, not that they must be present in every case.

Regardless, the court here focused on lay observations—the decedent's demeanor (that he was joking in the ambulance)—which are not relevant medical criteria under any standard. [Petitioner's Appendix, Volume 13, page 1139.]

Plaintiff's undue reliance on the decedent's vital signs and whether he was "stable" is also erroneous. Regardless of his vital signs, the undisputed evidence demonstrates that the decedent was at a high risk of deterioration. He clearly met the statutory standard for traumatic injury. He had suffered an acute injury and there was a significant risk of death. At the very least, there was a risk of precipitation of complications or disabilities. NRS 41.503(b)(4). The definition of traumatic injury is written in the disjunctive using the word "or." A traumatic injury exists if there is a "significant risk of death **or** the precipitation of complications or disabilities." *Id.* The word "or" makes it necessary to read "precipitation of complications or disabilities" as a disjunctive. *Dezzani v. Kern & Assocs., Ltd.*, 412 P.3d 56, 60 (Nev. 2018).

In sum, contrary to the District Court's finding, there are no disputed issues of material fact regarding the conclusion that the decedent suffered a traumatic injury when he was hit by a car, thrown upon the hood and onto the roof before falling to the ground. This case squarely falls within the purview of the trauma cap statute. NRS 41.503.

III. The Undisputed Material Facts Establish That No Exception to the Trauma Cap Statute Applies.

A. The Decedent Was Never Stabilized And Capable of Receiving Medical Treatment As a Nonemergency Patient.

Plaintiff also focuses on the exception to the trauma cap statute for any act or omission in rendering care or assistance "after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient." NRS 41.503(2)(a). The undisputed material facts, however, also establish that the decedent's status was not stabilized to the point that he could no longer be treated as a "nonemergency patient." See NRS 41.503(1) and 41.503(2).

The language of the statutory exception requires a patient: 1) to be stable; and 2) *capable of receiving nonemergency care*. NRS 41.503(1). Plaintiff ignores the second element—specifically, the fact that the patient never reached the status of being a nonemergency patient. The record is clear that the decedent was an emergency patient and remained an emergency patient from the moment he first arrived at the hospital until when he died. It is undisputed that the decedent had multiple rib fractures and a partially collapsed lung, fluid in the brain and in the

abdomen. His blood oxygenation levels were dropping even though he received supplemental oxygen. [Petitioner's Appendix, Volume 11, Page 905, Volume 12, Pages 1023, 1030.] His respiratory status was unstable and deteriorating over a more than a two-hour time period and then more rapidly over a fourteen-minute time period due to the multiple chest and abdominal trauma that he sustained. [Petitioner's Appendix, Volume 9, pp. 791-792.] Plaintiff's expert Dr. Womack admits that placement of a chest tube was necessary to guard against the enlargement of the pneumothorax due to changes in atmospheric pressure during an air flight.

Moreover, Nev. Admin. Code § 450B.105 defines "emergency care" broadly to mean "basic, intermediate or advanced medical care given to a patient in an emergency." Nev. Admin. Code § 450B.100 also broadly defines "emergency," inter alia, to include "[a]n accident." The fact that the decedent had to be transported by air ambulance speaks for itself.

B. Dr. Garvey's Conduct Does Not Rise To The Level Of Gross Negligence.

1. Plaintiff Did Not Allege That Dr. Garvey's Conduct Was Grossly Negligent.

The record is undisputed that despite having had several opportunities over the course of years to do so, Plaintiff failed to allege in her operative complaint that Dr. Garvey had acted with gross negligence, or reckless, willful or wanton conduct. This by itself is sufficient to establish a lack of triable issues of material fact. The operative complaint gives no hint of any allegations of gross negligence,

or of reckless, willful or wanton conduct. [Petitioner's Appendix, Volume 2, pages 62-76.] With respect to Dr. Garvey, it merely alleges he was negligent in his care and treatment of the decedent.

The issues raised on summary judgment are necessarily framed by the operative complaint. One cannot amend the complaint in order to create a triable issue of material fact to defeat summary judgment. To do so would allow the plaintiff to turn the well-established summary judgment law on its head. *Wood v. Safeway, Inc*. 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). Plaintiff should not be rewarded for engaging in gamesmanship by way of a blatant attempt to undermine the law.

Notably, the District Court properly rejected Plaintiff's attempt to amend her complaint after Dr. Garvey filed his motion. As such, the other purportedly disputed facts littered within Plaintiff's answer brief should not be considered.

Plaintiff complains in her Answer Brief that Dr. Garvey did not raise the trauma cap statute as an affirmative defense in his answer. (Answer, p. 24.) But Dr. Garvey was not required to plead it as an affirmative defense. The statutory cap functions as an *automatic limitation* of the damages where, as here, the decedent incurred traumatic injury. Cf. *Clark County Sch. Dist. v. Richardson Constr., Inc*., 123 Nev. 382, 390, 168 P.3d 87, 92.

In any event, Plaintiff waived any pleading deficiency in Dr. Garvey's answer to the complaint by failing to raise the argument below. It is fundamental

that a party may not raise issues or defenses that were not raised in the court below. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court ... is deemed to have been waived and will not be considered on appeal.").

Even so, the failure to timely assert an affirmative defense operates as a waiver only if the opposing party was not given reasonable notice and an opportunity to respond. *Williams v. Cottonwood Cove Dev. Co.*, 96 Nev. 857, 860, 619 P.2d 1219, 1221. Clearly, Plaintiff had reasonable notice and fully addressed this defense in her opposition to the motion for partial summary judgment.

2. The Undisputed Facts Do Not Support A Claim Of Gross Negligence.

In *Hart v. Kline*, 61 Nev. 96, 116 P.2d 672 (1941), this Court defined gross negligence as follows:

> Gross negligence is substantially and appreciably higher in magnitude and more culpable than ordinary negligence. *Gross negligence is equivalent to the failure to exercise even a slight degree of care. It is materially more want of care than constitutes simple inadvertence.* It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty, and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. [emphasis added].

None of the facts in this case rise to the level of gross negligence. Plaintiff's

assertion that the multiple attempts to intubate the decedent constituted gross negligence is not even supported by the declaration of her own expert, Dr. Womack, who opined that intubation was ordinary, not gross negligence. [Petitioner's Appendix, Volume 6, pages 475-481.] According to Dr. Womack, the belated attempt to perform a cricothyrotomy was gross negligence (which is an inadmissible legal conclusion). [*Id*. at pages 481-482.] Presumably, had Dr. Womack concluded that multiple intubation attempts constituted gross negligence, he would have plainly stated this in his report. The facts concerning multiple intubation attempts are therefore immaterial and they are not relevant to preclude summary judgment. *Wood v. Safeway, Inc*. 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

IV. The Plaintiff's Argument That the District Court Properly Exercised Its Discretion in Denying the Motions to Strike the Declarations Filed in Support of Her Opposition Must Be Rejected Because the Court Exercised No Discretion Whatsoever.

The premise of Plaintiff's argument that there should be no mandamus review of the order denying Dr. Garvey's motions to strike the declarations filed in support of Plaintiff's opposition to the motion for partial summary judgment is flawed. Plaintiff misses the point of Dr. Garvey's argument. The District Court exercised no discretion when it denied the motions to strike. It merely denied them as moot because it had denied the motion for partial summary judgment without considering the declarations. There can be no proper exercise of discretion when

no discretion was exercised whatsoever. "A court's failure to exercise discretion (when available) is error." *Massey v. Sunrise Hospital*, 102 Nev. 367, 371 (Nev. 1986). Thus, none of the authorities cited in the answer to the petition for writ of mandamus is applicable and they should all be disregarded.

Dr. Womack's declaration should be stricken in any event. It is replete with legal conclusions and lacks evidentiary foundation. [Petitioner's Appendix, Volume 6, pages 481-485.] Expert witness testimony that amounts to a legal conclusion is not admissible because it does not help the trier of fact "understand the evidence" or "determine a fact in issue."" *Pundyk v. State*, 467 P.3d 605, 608 (Nev. 2020). As noted above, the evidence does not rise to the level of gross negligence. Gross negligence "is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care." *Cornella v. Churchill Cnty.*, 132 Nev. 587, 594, 377 P.3d 97, 108 (Nev. 2016). "Gross negligence is substantially higher in magnitude than ordinary negligence. Gross negligence is manifested by the absence of even slight diligence or want of even scant care, or a heedless and palpable violation of legal duty respecting rights of others." *Batt v. State*, 111 Nev. 1127, 1132 fn. 5, 901 P.2d, 664, 666 (Nev. 1995). A party is grossly or wantonly negligent if he acts or fails to act when he knows or has reason to know facts which could lead a reasonable person to realize that his conduct not only creates unreasonably risk of bodily harm to others but also involves high probability that substantial harm will result. *Id.*

Here, Plaintiff's evidence concerning decisions to intubate the decedent and perform a cricothyrotomy fails to rise to the level of gross negligence, much less "reckless, willful and wanton conduct." NRS 41.504(4)(a). Dr. Garvey did not know or should not have known when he cared for the decedent that his decisions "would be likely to result in injury so as to affect the life or health of" the decedent. *Id*. Thus, even if Dr. Womack's declaration is considered, it fails to support the argument that the gross negligence or reckless, willful and wanton conduct exception to the trauma cap statute applies here.

A. The Court is Urged to Provide Much Needed Clarification Regarding the Trauma Cap Statute, a Law Supported by Critical Health and Welfare Public Policy Considerations.

The Answer to the petition admits that mandamus relief is available "to clarify an important issue of law in service of 'public policy of sound judicial economy and administration. [Citation.]" [Answer p. 10.] The petition presents a novel issue of importance to the citizens of the Nevada, first responder emergency medicine doctors, the bench, litigants and attorneys. At issue is the interpretation of the trauma cap statute.

As explained in the writ petition and in the brief of amici, without the protection of the trauma cap statute, judgments in medical negligence cases would become over inflated, and medical malpractice insurance premiums would skyrocket. Doctors would have no choice but to do what they did before the Legislature enacted the trauma cap statute—move out of Nevada to practice

medicine elsewhere. The end result will be a dramatic reduction in the access to emergency health care to the obvious detriment of all people in the State of Nevada.

Plaintiff's secondary argument that mandamus is reserved for situations where there is no adequate sufficiently speedy remedy available at law should also be rejected. Dr. Garvey has no adequate remedy by ordinary appeal. Specifically, he has no immediate right to appeal the District Court's order denying the motion for partial summary judgment and denying the motion to strike the declarations. While an appeal generally constitutes an adequate and speedy remedy precluding writ relief, this Court has discretion to intervene "under circumstances of urgency or strong necessity, or *when an important issue of law needs clarification* and sound judicial economy and administration favor the granting of the petition." *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39 (Nev. 2008); *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (noting the court can consider a petition for a writ of mandamus when important public interests are involved or when unsettled legal issues are presented).

Further, the orders at issue herein significantly impact the course of this litigation. See, *Lund v. Eighth Judicial District Court*, 127 Nev. 358, 363, 255 P.3d 280 (2011). If the potential amount of damages is capped at $50,000, it will dramatically improve the chances of resolution. The time to resolve this pivotal issue is now, not months from now after both sides are forced to spend substantial

sums to prepare the case for trial, to try the case and to litigate an appeal after the trial. The specter of an unnecessary lengthy and complex trial followed by an onerous appeal, is exactly the reason to grant mandamus relief.

Finally, Plaintiff further contends that mandamus relief is improper if there are disputed material facts. [Answer pp. 10-11.] As explained above, and in the writ petition, the material facts are undisputed. Plaintiff fails to cite a single specific case or statute as support for her argument. She merely cites cases standing for the general legal proposition inapplicable to this case where the material facts are undisputed. Thus, none of the cases cited is persuasive, much less controlling. They should not be followed. See, *State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 662 P.3d 677 (2017); *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). Writ relief is appropriate here. *Lowe Enters. Residential Partners, L.P. v. Eighth Jud. Dist. Court*, 118 Nev. 92, 40 P.3d 405 (2002); *Lund v. Eighth Jud. Dist. Ct.*, 127 Nev. 358, 255 P.3d 280 (2011).

V. Conclusion.

With her answer, Plaintiff makes numerous arguments, none of which can detract from the conclusion that the trauma cap statute applies to limit her damages as a matter of law. Mandamus relief should be granted. Dr. Garvey ought not be second-guessed for making a prudent decision to transfer the decedent to a facility where he would receive more specialized care for his traumatic injuries. Relief is

also warranted in order to clarify the trauma cap statute and reaffirm the sound public policy in support of the statute. The critical right of access to emergency medical care must be preserved.

DATED this 17th day of February, 2022

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DECLARATION OF VERIFICATION IN SUPPORT OF REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Alissa N. Bestick, Esq., being first duly sworn, deposes and states the following:

1. I am an attorney duly licensed to practice in all courts of the State of Nevada, and am an associate with Lewis Brisbois Bisgaard & Smith LLP, attorneys of record for petitioner herein. I have read the foregoing reply and know its contents. The facts alleged in the reply are true of my own knowledge and I make this Affidavit pursuant to NRAP 21(a)(5).

2. To the best of my knowledge, information and belief, the reply is not frivolous or interposed for an improper purpose.

3. I also certify that this brief conforms to NRAP 32(c)(2). The brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style required by NRAP 32(a)(6), as the brief includes double spaced, Times New Roman typeface at 14 point. The brief also complies with NRAP 21(d) in that it contains 4,076, less than the maximum of 7,000 words (calculated using the Word Count feature within Microsoft Word).

4. All documents contained in Petitioner's Appendix, filed September 23, 2021, are true and correct copies of the pleadings and documents they are represented to be in the Petitioner's Index and as cited herein.

5. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relief is to be found.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

DATED this 17th day of February, 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or imposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. A pages P. 28(e), which requires every assertion in the brief regarding matters in the record be supported by reference to the page or transcript or appendix where the matter relied upon is found. In addition, I certify that this brief satisfied Nev. R. A pages P. 32 with an approximate word count of 4,076. In addition, I certify that this brief complies with the typeface and type style requirements of Rule 32(a)(4)-(6), using 14 font and Times New Roman style and complies with the page limitations. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirement of the Nevada Rules of Appellate Procedure.

DATED this 17th day of February, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2022, a true and correct copy of this completed REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

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