IN THE SUPREME COURT
OF THE STATE OF NEVADA

Supreme Court Case No.
District Court Case No. CV22-02015

JOHN DOE
Petitioner,

v.

THE SECOND JUDICIAL DISTRICT COURT, STATE OF NEVADA, WASHOE COUNTY, and THE HONROABLE DAVID A. HARDY, DISTRICT COURT JUDGE, DEPT. 15
Respondents,

And

HILLARY SCHIEVE, VAUGHN HARTUNG, DAVID MCNEELY, and 5 ALPHA INDUSTRIES, LLC.
Real Parties of Interest

PETITIONER JOHN DOE'S PETITION FOR WRIT OF PROHIBITION

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NRAP 26.1 DISCLOSURE

While NRAP 26.1 requires every attorney for a nongovernmental party to file a statement upon filing a petition, NRAP 26.1(a) provides, however, that a pseudonymous litigant's disclosure statement "will be kept under seal."

John Doe is proceeding pseudonymously in this matter. Contemporaneously with this Petition, he is moving this Court for leave to file his NRAP 26.1 disclosure statement under seal. A copy of John Doe's proposed NRAP 26.1 disclosure has been submitted to this Court via U.S. mail.

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ROUTING STATEMENT

This writ is presumptively assigned to the Court of Appeals because it is a pretrial writ proceeding challenging a discovery order. *See* NRAP 17(b)(14).

Nevertheless, this Petition concerns matters raising as a principal issue a question of state or federal constitutional interpretation, making it appropriate for the Supreme Court to retain jurisdiction under NRAP 17(d)(2)(C).

Specifically, Petitioner John Doe asserts that he has a First Amendment right to anonymously engage in political conduct, and information pertaining to his identity in response to a subpoena is therefore privileged. The District Court's order affirming the Discovery Commissioner's Recommendations in this case seeks to invade this privilege, and this Court must issue a Writ of Prohibition to recognize this privilege and to protect John Doe's First Amendment right to engage in anonymous political activity. [PA0236.]

I. RELIEF SOUGHT and ISSUES PRESENTED

A concerned citizen lawfully and anonymously hired a private investigator to surveil elected officials and investigate allegations of corruption. The elected officials discovered this surveillance and filed a lawsuit against both the investigator and the citizen. The First Amendment protects anonymous political conduct like lawfully hiring a private investigator to surveil elected officials. Did the District Court err when it ordered the investigator to disclose the identity of the citizen, thus overruling the citizen's claim of First Amendment privilege?

In a previous petition for writ of prohibition, this Court declined to entertain Petitioner John Doe's First Amendment arguments because "the district court has yet to hear and decide Doe's arguments on the merits." [PA0138.] The District Court has erroneously decided that John Doe has no First Amendment privilege and that John Doe's identity must be disclosed.

Petitioner John Doe thus respectfully requests that the Court issue a writ of prohibition directing the District Court (1) to vacate its order compelling disclosure of John Doe's identity and (2) to comply

with further instructions protecting John Doe's identity during discovery and trial.

II. STATEMENT OF FACTS

A. The Investigation of Potential Corruption

1. Petitioner and Defendant John Doe is a resident of Washoe County who is concerned with potential corruption and malfeasance in local government. [PA0084, ¶ 4.]

2. At the time of the events giving rise to this litigation Real Parties in Interest Hillary Schieve and Vaughn Hartung were elected officials: Schieve is the current Mayor of the City of Reno and, until March 14, 2023, Hartung was a Commissioner with the Washoe County Board of Commissioners.

3. On or about March 13, 2022, John Doe received what he believed to be credible allegations regarding alleged improper conduct by Mayor Schieve, including alleged bribery and other serious allegations. [PA0084, ¶ 5.]

4. On or about that same day, John Doe received credible allegations about then-Commissioner Hartung pertaining to alleged

misconduct involving Washoe County employees, along with other serious allegations. [PA0084, ¶ 6.]

5. John Doe's interest in investigating alleged malfeasance by Reno-area elected officials is not unfounded. In March 2023, for example, the Nevada Commission on Ethics found after an investigation that Reno City Councilman Devon Reese should have abstain from voting on contract negotiations with two bargaining groups that had a business relationship with his employer. [1] Just a month prior to that, the Commission fined former Reno City Councilwoman Neoma Jardon $3,000.00 after she violated the one-year cooling offer period.[2] And before that, the Commission investigated (and ultimately dismissed) allegations that City Councilwoman Bonnie Weber broke state ethics laws while attending private lunches—paid for

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[1] https://ethics.nv.gov/uploadedFiles/ethicsnvgov/content/Opinions/3.15.23_PNL%20DET_22-104C%20(Reese).pdf (last accessed on September 2, 2024). John Doe requests that the Court take judicial notice of the Ethics Committee's opinion pursuant to NRS 47.130.

[2] https://nvethics.pdi.online/cm/pubdocs/Stipulated%20Agreement/2023/2/44771_In%20re%20Jardon,%20Stipulated%20Agrmnt%20No.%2022-098C%20(2023).pdf (last accessed on September 2, 2024). John Doe requests that the Court take judicial notice of the Ethics Committee's opinion pursuant to NRS 47.130.

by developers with active projects in the North Valley—while they were being considered by the council.[3]

6. John Doe thus had (and has) a well-founded interest in anonymously investigating possible malfeasance and getting that information out to the general public so they can make informed decisions about the people they elect to public office.

7. Doe himself has no experience as an investigator, nor is he licensed by Nevada or any other jurisdiction as an investigator. [PA0084, ¶ 7.]

8. In light of the serious nature of the allegations against Schieve and Hartung, and because Doe wanted to avoid any potential defamation or libel claims if those allegations turned out to be untrue, Doe legally retained the services of 5 Alpha Industries, a State-licensed private investigation firm owned by licensed private investigator David McNeely, to investigate the allegations against Schieve and Hartung. [PA0084, ¶ 8-9.]

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[3] https://ethics.nv.gov/uploadedFiles/ethicsnvgov/content/News/StipulatedDeferralAgreement_20-010%20(Weber).pdf (last accessed on September 2, 2024). John Doe requests that the Court take judicial notice of the Ethics Committee's opinion pursuant to NRS 47.130.

9. When Doe hired the Investigator Defendants to investigate the allegations against Schieve and Hartung, Mr. McNeely assured him that his identity would remain confidential. [PA0084, ¶ 10.]

10. Absent this guarantee of confidentiality, John Doe would not have hired the Investigator Defendants. [PA0084, ¶ 11.]

11. John Doe did not authorize the Investigator Defendants to track anyone and has never had access to the tracking information the Investigator Defendants obtained. [PA0084-85, ¶ 12-13.]

B. Procedural Background

12. The procedural history of this case is somewhat tortured.

13. On or about December 15, 2022, Respondent Hillary Schieve filed a complaint alleging eight claims for relief against all Defendants: (1) invasion of privacy-intrusion upon seclusion; (2) invasion of privacy-public disclosure of private facts; (3) violation of NRS ch. 200-anti-doxxing; (4) negligence; (5) trespass; (6) civil conspiracy; (7) aiding and abetting; and (8) declaratory relief. [PA 0001.]

14. Prior to service of process, the District Court granted Schieve's ex parte motion for leave to issue subpoenas to Investigator

Defendants seeking to disclose the identity of the individual or entity that hired the Investigator Defendants (the "Subpoenas"). [PA 0028.]

15. Specifically, the Subpoenas sought the following:

> Produce documents, including but not limited to engagement agreements, contracts, invoices, or payments, sufficient to identify each and every individual or entity that hired David McNeely and/or 5 Alpha Industries, LLC to conduct surveillance upon Hillary Schieve, to track Hillary Schieve 's location, or to take any other action with respect to Hillary Schieve.

[PA0014; PA0023.]

16. In response to Investigator Defendants' objections to the Subpoenas, Schieve filed a Motion to Compel asserting that, "the scope of the Subpoena is purposefully limited to obtain only the information required to add a necessary party in this case." [PA0035:13-15.]

17. On February 2, 2023, Schieve amended the Complaint to add Vaughn Hartung as a plaintiff. [PA0043.]

18. On May 4, 2023, the District Court ordered Investigator Defendants to disclose Doe's identity by May 12, 2023. [PA0058.]

19. On May 5, 2023, one day after the May 4, 2023 order, John Doe answered the amended complaint. [PA0064.]

20. In addition to answering the amended complaint, John Doe also filed a motion for summary judgment on May 5, 2023. [PA0068.]

21. On May 10, 2023, John Doe filed a renewed motion for stay, citing the First Amendment issues raised in this dispute, which the District Court denied that very day, asserting that the renewed motion was moot because of a stipulation between the parties so that Investigator Defendants could seek writ relief from this Court. [PA0091.] Put differently, the District Court did not address John Doe's constitutional arguments. *Id.*

22. On May 12, 2023, Investigator Defendants filed a Petition for Writ of Prohibition with this Court, seeking to protect disclosure of John Doe's identity as a trade secret under NRS 49.325 and NRS 600A.070 and invoking an investigator-client privilege. [PA0094; *See* Supreme Court Case No. 86559.]

23. This Court permitted John Doe to join in the Investigator Defendants' petition to assert his constitutional claims, ultimately denying both petitions on April 15, 2024. [PA0138.] In its denial of John Doe's petition, the Court declined "to consider John Doe's arguments, as the district court has yet to hear and decide Doe's arguments on the merits." *Id.*

24. On April 18, 2024, John Doe renewed his Motion for Protective Order with the District Court. [PA0140.]

25. The Investigator Defendants opposed. [PA0159.]

26. John Doe replied. [PA0175.]

27. The District Court referred the matter to the Discovery Commissioner, and on June 25, 2024, the Discovery Commissioner denied John Doe's Motion and ordered Investigator Defendants to disclose his identity (the "Recommendations"). [PA0184.]

28. John Doe objected to the Discovery Commissioner's Recommendations. [PA 0211-218.]

29. Schieve and Hartung responded. [PA0219.]

30. On August 2, 2024, the District Court affirmed the Recommendations, acknowledging the constitutional issues John Doe had raised (the "Affirmation"). [PA0236.]

31. The instant Petition followed.

III. STATEMENT OF REASONS WHY WRIT SHOULD ISSUE

A. WRIT RELIEF IS WARRANTED

While "discovery issues are traditionally subject to the district court's discretion and unreviewable by a writ petition, this court will

intervene when the district court issues an order requiring disclosure of privileged information." *Canarelli v. Eighth Judicial Dist. Court in & for Cnty. of Clark*, 136 Nev. 247, 250, 464 P.3d 114, 119 (2020) (internal citations and quotations omitted). Writ relief is thus appropriate to prevent disclosure of privileged information because "once information is produced, any privilege applicable to that information cannot be restored." *Valley Health Sys., LLC v. Eighth Judicial Dist. Court of State ex rel. Cnty. of Clark*, 127 Nev. 167, 169, 252 P.3d 676, 677 (2011)

Here, writ relief is appropriate. As detailed below, John Doe has a First Amendment right to anonymously retain the services of a private investigator to investigate elected officials. John Doe's identity is therefore privileged, and disclosure of that information would profoundly and irreparably damage his First Amendment rights. *Cf. DeGregory v. Att'y Gen. of State of N. H.*, 383 U.S. 825, 828 (1966) (applying First Amendment privilege to "the views expressed and ideas advocated" at political party meetings); *Perry v. Schwarzenegger*, 591 F.3d 1147, 1162 (9th Cir. 2010) (applying the First Amendment privilege to internal campaign communications because of the "self-evident conclusion that important First Amendment interests are

implicated by the plaintiffs' discovery request"); *cf. Diaz v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 88, 99, 993 P.2d 50, 57 (2000) (the "policy rationale behind [the reporter's] privilege is to enhance the newsgathering process and to foster the free flow of information encouraged by the First Amendment to the U.S. Constitution").

Requiring Investigator Defendants to comply with the Subpoenas and identifying John Doe would obliterate John Doe's First Amendment right to anonymously engage in political activity. John Doe therefore has an undeniable interest in ensuring that his First Amendment rights are protected.

If his identity is disclosed and his First Amendment rights obliterated pursuant to the Discovery Commissioner's Recommendations and the District Court's Affirmance, Doe has no "plain, speedy and adequate remedy in the ordinary course of law" to restore his anonymity. Writ relief is thus appropriate.

B. STANDARD OF REVIEW

"Whether certain speech or activity is protected under the First Amendment is a question of law for the court." *Navratil v. City of Racine*, 101 F.4th 511, 519 (7th Cir. 2024); *see also*, *Zahavi v. State*, 131

Nev. 51, 61, 343 P.3d 595, 602 (2015). Questions of law, like issues of constitutionality, are reviewed de novo. *See Zahavi*, 131 Nev. at 61, 343 P.3d at 602.

Here, because the issue in this case is whether John Doe enjoys a First Amendment privilege against disclosure of his identity, the Court should engage in a de novo review and afford no deference to the Discovery Commissioner's Recommendations and the District Court's Affirmance. For the reasons detailed below, the Court should issue a Writ of Prohibition.

C. THE *PERRY*-TEST PRIVILEGE APPLIES

A claim of First Amendment privilege is subject to a two-part framework under *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010).[4] First, the party asserting the privilege must demonstrate a

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[4] Typically, courts have considered the First Amendment privilege in the context of either an associational freedom claim, *see, e.g.*, *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449 (1958), or in cases regarding efforts to obtain confidential sources from a journalist. *See, e.g.*, *Newton v. Nat'l Broad. Co.*, 109 F.R.D. 522 (D. Nev. 1985). But the two-part framework explored in those cases applies with equal force here. John Doe urges the Court to adopt the test here.

"prima facie showing of arguable first amendment infringement." *Id.* at 1160 (quotations omitted).

Next, if the proponent makes this showing, "the evidentiary burden shifts to the plaintiffs to demonstrate a sufficient need for the discovery to counterbalance that infringement." *Id.* at 1164.

Importantly, "the party seeking the discovery must show that the information sought is ***highly relevant*** to the claims or defenses in the litigation." *Id.* at 1161 (emphasis added). The request must be narrowly tailored to avoid unnecessary interference with protected activities, and the information must be otherwise unavailable." In addition, the proponent of the discovery must demonstrate the proponent is using "the least restrictive means of obtaining the desired information." *Id.* (internal citation and quotations omitted).

For the reasons detailed below, John Doe meets Part 1 of the *Perry*-test, and Schieve and Hartung cannot meet Part 2 of the *Perry*-test.

1. *Perry*-Test Part 1: The Subpoenas Infringe on John Doe's First Amendment Right to Engage in Anonymous Political Activity.

The first question under the *Perry*-test is whether the Subpoenas infringe upon John Doe's First Amendment right to engage in anonymous political activity. The answer is a resounding yes.

Anonymous participation in political discourse is a venerable and important American tradition that predates even the ratification of the First Amendment.

> Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.... Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes.

Talley v. California, 362 U.S. 60, 64–65 (1960).

The United States Supreme Court has repeatedly affirmed that the First Amendment protects anonymous political activity. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) (holding that an Ohio statute prohibiting anonymous campaign literature violated First Amendment); *Hynes v. Mayor and Council of Borough of Oradell*, 425 U.S. 610, 624-25 (1976) (Brennan, J., concurring in part) ("It can hardly be denied that an ordinance requiring the door-to-door

campaigner to identify himself discourages free speech."); *Talley v. California*, 362 U.S. 60 (1960); *N.A.A.C.P. v. Alabama ex rel Patterson*, 357 U.S. 449, 462 (1958) ("[C]ompelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action").

Like other forms of political activity, hiring an investigator to investigate allegations of misconduct by public officials is conduct that is entitled to protection of the First Amendment. *See Tichinin v. City of Morgan Hill*, 99 Cal. Rptr. 3d 661, 678 (2009).

This case bears many similarities with *Tichinin*. In that case, Tichinin, a local attorney, hired a private investigator to look into a rumor circulating in Morgan Hill that the city manager and the city attorney were having an affair. *Tichinin*, 117 Cal.App.4th at 1056.

During the course of the investigation, the city manager discovered that he was under surveillance. *Id.* at 1058. The city determined that Tichinin had been involved in the surveillance. *Id.* at 1059. The city council adopted a resolution condemning Tichinin. *Id.* at 1060.

Tichinin filed a Section 1983 lawsuit against the city council alleging violations of his right to petition and right to free speech, and the city council responded with an anti-SLAPP motion, which the court below granted. *Id.*; *see also id.* at 1064, n.6 (discussing Tichinin's claims).

A threshold question the *Tichinin* appellate court considered on appeal was whether hiring a private investigator and investigating the rumored inappropriate relationship between the two city officials were protected under Tichinin's First Amendment rights of petition and free speech. *Id.* The *Tichinin* Court holding that the conduct of hiring a private investigator was entitled to constitutional protection both as a matter of the right to petition and of the right to free speech. *Id.*

On the issue of the right to petition, the *Tichinin* Court concluded, "[W]e consider it obvious that restricting, enjoining, or penalizing prelitigation investigation could substantially interfere with and thus burden the effective exercise of one's right to petition." *Id.* at 1069.

On the issue of the right to free speech, the *Tichinin* Court also concluded that Tichinin's conduct of hiring a private investigator "can also be considered protected under the right of free speech." *Id.* at 1074;

see also id. at 1074-77 (compiling state and federal cases that "illustrate that the right of free speech protects…lawful efforts to gather evidence and information about public officials concerning alleged improper or unlawful conduct").

The factual parallels between *Tichinin* and the instant case are undeniable. As in *Tichinin*, John Doe hired the Investigator Defendants to investigate what he believed to be credible allegations of misconduct. Like *Tichinin*, John Doe had a protectable, First Amendment interest in discovering whether there was any factual support for the allegations of misconduct and hired a licensed investigator to ferret out whether those allegations had any merit as a necessary preliminary step to exercising his rights to speak and/or petition.

Put simply, John Doe meets the first part of the *Perry*-test. He unequivocally enjoys the protections of the First Amendment to anonymous political activity, which activity includes hiring a private investigator to investigate elected officials. The Subpoenas in this case seek to obliterate that right to anonymous political conduct. As such, John Doe has made a *prima facie* showing of arguable first amendment infringement to satisfy the first prong of *Perry*.

2. <u>Perry Test Part 2</u>: No Sufficient Need for John Doe's Identity That Justifies Infringement on His First Amendment Rights.

Because John Doe has made a *prima facie* showing that the subpoenas infringe on his rights under the First Amendment, the next question is whether Schieve and Hartung can demonstrate a sufficient need—under the heightened relevance standard—to counterbalance that infringement. *Perry*, 591 F.3d at 1164. The answer to that question is a resounding no. Moreover, the subpoenas are not necessary to achieve Schieve and Hartung's goal of bringing John Doe into the litigation because that has now occurred.

Once the proponent makes a *prima facie* showing of infringement, courts apply "a balancing test…essentially requiring both a heightened degree of relevance to the subject matter of the suit and a showing by the party seeking discovery that it has made reasonable, unsuccessful attempts to obtain the information elsewhere." *Wilkinson v. F.B.I.*, 111 F.R.D. 432, 436 (C.D. Cal. 1986); *accord Mi Familia Vota v. Hobbs*, 343 F.R.D. 71, 83 (D. Ariz. 2022).

Schieve and Hartung cannot satisfy the second prong of the Perry-test because John Doe's identity is not relevant to any of the claims or

defenses at issue. Moreover, because John Doe is now a party in the district court case, the Subpoenas are moot.

First, at this early stage in the litigation, information regarding John Doe's identity is not relevant to any of the claims, much less "highly relevant" as is required by *Perry*. Schieve and Hartung have made no showing of the relevance of his identity.

And importantly, the subpoenas ***were never intended to discover evidence relevant to Schieve and Hartung's claims***. Rather, the entire purpose of the subpoenas was to "add a necessary party in this case," John Doe. [PA0035:13-15.] Accordingly, Schieve and Hartung's own representations demonstrate John Doe's identity is not actually relevant to any of the claims and defenses, much less "highly relevant" such that there would be a compelling justification for infringing on John Doe's First Amendment rights.

Second, Schieve and Hartung got what they wanted, and it did not require infringing on John Doe's First Amendment rights. John Doe has answered and appeared in the district court case and is represented by counsel. [PA0064.] He is now a part of the litigation. Discovery regarding John Doe's legal identity now serves no real purpose at all—

except to interfere with John Doe's right to anonymously engage in political activity.

In sum, John Doe meets Part 1 of the *Perry*-test. He has demonstrated that hiring a private investigator to anonymously investigate elected officials is protected under the First Amendment. When the burden shifts to Schieve and Hartung, he has shown that Schieve and Hartung can provide no sufficient need to justify infringing on John Doe's First Amendment Rights. Thus, Schieve and Hartung cannot meet Part 2 of the Perry-test. In conclusion, the Court should issue the Writ and vacate the District Court's Affirmance.

C. IN THE ALTERNATIVE, THE *HIGHFIELDS* TEST PRESERVES JOHN DOE'S ANONYMITY

As discussed in detail above, John Doe's political activity and interest in remaining anonymous while engaging in such activity are rooted in the First Amendment. As such, discovery aimed at uncovering his identity impermissibly infringes on his constitutional right to anonymous political activity. To the extent the Court believes that the two-part framework discussed in *Perry* above applies solely to associational freedom claims, the Court should apply the two-part test created by the court in *Highfields Capital Mgmt., LP v. Doe*, 385

F.Supp.2d 969 (N.D. Cal. 2005) and adopted by the United States District Court for the District of Nevada in *Fodor v. Doe*, 2011 WL 1629572 (D. Nev. Apr. 27, 2011).

In H*ighfields*, an investment fund management firm obtained a subpoena requiring the host of an internet message board to reveal the identity of an anonymous defendant who had posted parodic messages critical of the firm. *Id.* at 972. The anonymous defendant moved to quash the subpoena. *Id.*

In granting the motion to quash, the court emphasized the First Amendment interests and policies raised by the defendant "are of considerable potential significance. Indeed, they are rooted in the First Amendment to the Constitution of the United States." *Id.* at 974.

The court continued, "What defendant seeks to protect through his motion to quash is the right to express most effectively and anonymously, without fear of expensive adverse consequences, his views about matters in which many other members of the public are interested." *Id.* at 974-75. The *Highfields* court also found that enforcing a subpoena to unmask an anonymous defendant "poses a real

threat to chill protected comment on matters of interest to the public." *Id.* at 980.

Under *Highfields*, a plaintiff must first establish "that there is a real evidentiary basis for believing that the defendant has engaged in wrongful conduct that has caused real harm to the interests of the plaintiff that the laws the plaintiff has invoked were intended to protect." *Highfields*, 385 F.Supp.2d at 975.

That evidence "must, if unrebutted, tend to support a finding of *each* fact that is essential to a given cause of action. The court may not enforce a subpoena if, under plaintiff's showing, any *essential* fact or finding lacks the requisite evidentiary support." *Id.* at 976 (emphases in original).

If the plaintiff satisfies the first prong of the *Highfields* test, the court must then "assess and compare the magnitude of the harms that would be caused to the competing interests by a ruling in favor of plaintiff and a ruling in favor of defendant." *Id.*; *accord Fodor v. Doe*, 2011 WL 1629572 at *3-4.

1. Schieve and Hartung Fail Prong 1 of *Highfields*.

Schieve and Hartung here cannot get past the first prong of the Highfields Test for all the reasons set forth in John Doe's Motion for Summary Judgment, which is incorporated in this Motion by reference. [PA0068.] Put simply, Plaintiffs have no evidence that John Doe acted tortiously.

2. Schieve and Hartung Fail Prong 2 of *Highfields*.

As discussed above, assuming Schieve and Hartung could produce competent evidence addressing all the inferences of fact they would need to prove to prevail on their claims, the Court must next weigh the harms that John Doe would suffer against the harms Schieve and Hartung would suffer. Even if Schieve and Hartung could adduce evidence to "support a finding of *each* fact that is essential to a given cause of action," *Highfields*, 385 F.Supp.2d at 976, the constitutional harm John Doe would suffer if the Subpoenas were enforced heavily outweighs any harms Schieve and Hartung might experience.

In fact, Schieve and Hartung suffer no harm by permitting John Doe to proceed pseudonymously because John Doe's identity is not

relevant to Plaintiffs' causes of actions. By contrast, disclosure irreparably harms John Doe. This is true for two obvious reasons.

First, as discussed above, the entire objective of the Subpoenas is now moot because John Doe has appeared and answered. The disclosure is a waste of judicial resources and an unnecessary invasion of rights, given that disclosing his identity does not further any legitimate litigation goal Thus, John Doe's continued anonymity does not harm Schieve and Hartung in the slightest.

Second, and most critically, John Doe's First Amendment interest in anonymously engaging in political activity would be irreparably harmed were Plaintiffs to use legal process to obtain his identity.

Courts have repeatedly held that civil subpoenas seeking information regarding anonymous individuals raise First Amendment concerns. As referenced above, in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958), the Supreme Court held that a discovery order requiring the NAACP to disclose its membership list interfered with the First Amendment's freedom of assembly. Similarly, in *NLRB v. Midland Daily News*, 151 F.3d 472, 475 (6th Cir.1998), the Sixth Circuit declined on First Amendment grounds to enforce a subpoena duces

tecum issued by the National Labor Relations Board seeking to require a newspaper publisher to disclose the identity of an anonymous advertiser. And in the *Highfields* matter itself, the court ultimately granted the anonymous Doe defendant's motion to quash because "enforcing a subpoena in this kind of setting poses a real threat to chill protected comment on matters of interest to the public." *Highfields*, 385 F.Supp.2d at 980.

Similarly here, enforcing the subpoenas would have a profound chilling effect on protected First Amendment activity. Were the Court to force the disclosure of John Doe's identity, it would effectively chill John Doe and any other similarly situated individual who has an interest in investigating and informing the public about the actions of the people they voted into office.

IV. CONCLUSION

John Doe enjoys the right to engage in anonymous political conduct. Regardless of whether the Court assesses this matter through the lens of the test set out in *Perry v. Schwarzenegger* or the test in *Highfields Capital Management, LP v. Doe*, the legal outcome must be the same: the Court must issue an order protecting John Doe's identity

from discovery. Anything less would chill and irreparably damage John Doe's right to anonymously engage in political conduct.

DATED this 5th of September 2024.

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VERIFICATION

1. I, the undersigned, declare as follows:

2. I am the Petitioner John Doe in this proceeding.

3. I verify that I have read the foregoing Petition for Writ of Prohibition and that the same is true to my own knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED: September 5, 2024

/s/ John Doe
John Doe, Petitioner

CERTIFICATE OF COMPLIANCE

I hereby certify that this 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 the Petition has been prepared in a proportionally space typeface (14-point Century Schoolbook font).

I further certify that this brief complies with the page– or type–volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is 4486 words pursuant to NRAP 21(d).

Finally, 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 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, 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 5th of September 2024.

/s/ Jeffrey F. Barr

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CERTIFICATE OF SERVICE

On this 5th day of September 2024 **PETITIONER JOHN DOE'S PETITION FOR WRIT OF PROHIBITION** was filed electronically with the Clerk of the Nevada Supreme Court, and a copy of the Petition was served to the persons shown below via e-mail and US Mail.

Petitioner's Appendix will be served pursuant to NRAP 30(f).

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