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10 **JUSTICE COURT, LAS VEGAS TOWNSHIP**
11 **CLARK COUNTY, NEVADA**

12 State of Nevada,
13 Plaintiff,

14 v.

15 Robert Telles #5641107,
16 Defendant.

Case No.: 22CR039592
Dept. No.: 7

DA Case No.: 202249109C

**REQUEST FOR LEAVE TO
PARTICIPATE IN PROCEEDINGS
AS AMICI CURIAE**

**Hearing Date September 28, 2022
Time: 7:30 am**

17 The Reporters Committee for Freedom of the Press (“Reporters Committee”), along with
18 43 Media Organizations (collectively, the “Amici”), by and through their counsel of record,
19 McDonald Carano LLP, hereby respectfully request leave to file an amicus curiae brief in support
20 of the Las Vegas Review-Journal Inc.’s (“Review-Journal”) Motion for a Protective Order
21 Concerning Privileged Newsgathering Materials (hereinafter the “Motion for Protective Order”).
22 The 43 Media Organizations supporting lead amicus, the Reporters Committee, are: The
23 Associated Press, The Atlantic Monthly Group LLC, Boston Globe Media Partners, LLC,
24 BuzzFeed, California News Publishers Association, The Center for Investigative Reporting (d/b/a
25 Reveal), Committee to Protect Journalists, Criminal Justice Journalists, The E.W. Scripps
26 Company, First Amendment Coalition, First Look Institute, Inc., Forbes Media LLC, Gannett Co.,
27 Inc., The Guardian U.S., Hearst Corporation, Investigative Reporting Workshop at American
28 University, Los Angeles Times Communications LLC, The Media Institute, Media Law Resource
Center, National Newspaper Association, The National Press Club, The National Press Club

1 Journalism Institute, National Press Photographers Association, Nevada Broadcasters
2 Association, Nevada Press Association, The News Leaders Association, News/Media Alliance,
3 Newsday LLC, The NewsGuild – CWA, Open Vallejo, The Philadelphia Inquirer, POLITICO
4 LLC, Pro Publica, Inc., Reuters News & Media Inc., The Seattle Times Company, Slate, Society
5 of Environmental Journalists, Society of Professional Journalists, Student Press Law Center,
6 TIME USA, LLC, Tully Center for Free Speech, VICE Media Group, and The Washington Post.

7 Amici have provided notice to counsel for Plaintiff the State of Nevada, Defendant Robert
8 Telles, and Nonparty the Review-Journal of the Amici’s intent to file a brief, but have not received
9 unanimous agreement in the limited time available. Amici desire to provide the Court with their
10 informed perspective concerning the essential role that state shield laws, like Nevada’s, play in
11 ensuring that the news media can fulfill its constitutionally protected role of informing the public.
12 The following memorandum of points and authorities and statement of intent to participate are
13 submitted in support of Amici’s request. The proposed amicus curiae brief is attached hereto as
14 Exhibit 1 and will be filed separately if the Court permits Amici to participate.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 As members and representatives of the news media, Amici have a substantial interest in
18 the application of Nevada’s shield law, NRS 49.275, to the contents of Review-Journal reporter
19 Jeff German’s seized electronic devices. The proposed amicus brief will aid the Court in resolving
20 the Motion for Protective Order by providing Amici’s perspective—informed by Amici’s broad
21 experience—of the importance of protecting reporter-source communications and the identities of
22 confidential sources. The proposed amicus brief will further explain the potentially drastic
23 ramifications of permitting the offices of the district attorney and public defender to freely review
24 privileged information from Mr. German’s electronic devices, which may place any confidential
25 government sources that Mr. German may have had—including individuals who may work in the
26 offices of the district attorney and public defender—at risk of retaliatory harm, both personal and
27 professional.
28

II. LEGAL STANDARD FOR GRANTING LEAVE TO FILE AN AMICUS BRIEF

Although there are analogous rules and statutes pertaining to amicus briefs, there is no Nevada statute or rule expressly addressing the filing of an amicus brief at the district court or justice court level. Thus, the decision to allow the filing of an amicus brief is within the Court’s discretion. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. Adv. Op. 9, 319 P.3d 606, 616 (2014) (acknowledging “that a district court’s discretion includes ‘[t]he power . . . to determine questions to which no strict rule of law is applicable but which, from their nature, and the circumstances of the case, are controlled by the personal judgment of the court’”) (citation omitted). Here, Amici respectfully submit that their filing of the proposed amicus brief will benefit the Court and the public. Therefore, the Court should exercise its discretion and grant Amici leave to file the proposed amicus brief.

Additionally, this Court may look to NRAP 29 and case law from other courts for guidance as to whether to grant Amici’s request to file their proposed amicus brief in this action. As recognized by Nevada’s federal district court:

The privilege of being heard amicus rests solely within the discretion of the court . . . Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case, and . . . [t]here are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable to the court.

People’s Legislature v. Miller, No. 2:12-CV-00272, 2012 WL 3536767, at *5 n.5 (D. Nev. Aug. 20 15, 2012) (quoting *United States v. State of La.*, 751 F. Supp. 608, 620 (E.D. La. 1990)). Indeed, “[d]istrict courts frequently welcome amicus briefs from nonparties concerning legal issues that have potential ramifications beyond the parties directly involved or if 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.’” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 335 F.Supp.2d. 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)); *see also United States v. Renown Health*, No. 3:12-CV-00295, 2016 WL 6803078, at *2 (D. Nev. Nov. 15, 2016) (“An amicus brief should normally be allowed . . . when the amicus has unique

1 information or perspective that can help the court beyond the help that the lawyers for the parties
2 are able to provide.”) (citing *Cnty. Ass'n for Restoration of Env't (CARE) v. DeRuyter Bros. Dairy*,
3 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999) (internal quotations and citations omitted)). Moreover,
4 “[a] court may grant leave to appear as an amicus if the information offered is ‘timely and useful.’”
5 *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999) (citation omitted).

6 **III. AMICI’S INTEREST AND STATEMENT OF INTENT TO PARTICIPATE**

7 Amici are members of the news media and organizations that advocate on behalf of the
8 First Amendment and newsgathering rights of journalists and news organizations. As such, Amici
9 have a substantial interest in the resolution of the Motion for Protective Order. Journalists
10 regularly communicate with sources to gather news, and they depend on the protections of NRS
11 49.275 and other shield laws to protect these communications, and to give confidential sources
12 confidence that their identities will not be disclosed, even when, as here, the threat of disclosure
13 stems from the murder of a journalist. If courts do not rigorously apply these protections, sources
14 will be less likely to come forward with newsworthy information, stifling the free flow of
15 information to the public.

16 For these reasons, lead amicus, the Reporters Committee, and other news media
17 organizations have appeared as amicus curiae in courts around the country in cases that implicate
18 the reporter’s privilege and state shield laws. *See, e.g.*, Br. of Amicus Curiae the Reporters
19 Committee in Support of Petitioner, *Shriner v. the Superior Court of the State of California, et al.*,
20 Case No. E076320 (Cal. Ct. Appeal) (filed Dec. 23, 2020); Br. of Amicus Curiae the Reporters
21 Committee, *Subpoena Duces Tecum to KIRO TV, Inc., et al.*, Case No. 20-0-616926 (Wash.
22 Superior Ct.) (filed June 29, 2020); Br. of Amici Curiae the Reporters Committee and 19 Media
23 Organizations in Support of Reporter Jamie Kalven’s Mot. to Quash Subpoena, *People v. March*,
24 Case No. 2017-CR-9700 (Ill. Cir. Ct.) (filed Nov. 26, 2018); Br. for Amici Curiae the Reporters
25 Committee and 48 Media Organizations in Support of Non-Party Respondent, *People v. Juarez*,
26 APL-2017-00057 (N.Y.) (filed Oct. 6, 2017); Br. of Amicus Curiae the Reporters Committee in
27 Support of Non-Party Witness John Sepulvado, *United States v. Patrick*, Civil No. 3:16-cr-00051-
28 BR (D. Or.) (filed Feb. 22, 2017).

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Amici’s perspective is likely to be of assistance to the Court in deciding this issue, which is of great importance to the news media, reporters, and to the public at large. There is no prejudice to the Court or the parties in allowing Amici to file an amicus brief in this matter and the filing of such a brief will not delay or otherwise interfere with the judicial process.

IV. CONCLUSION

For the foregoing reasons, Amici respectfully request that the Court use its discretion to grant Amici permission to file an amicus brief in support of the Motion for Protective Order.

DATED: September 27, 2022

McDONALD CARANO LLP

By: /s/ Adam Hosmer-Henner
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CERTIFICATE OF SERVICE

I certify that on September 27, 2022, a true copy of the foregoing **REQUEST FOR LEAVE TO PARTICIPATE IN PROCEEDINGS AS AMICI CURIAE** was filed via the Court's electronic service system and served on all recipients registered for e-service in this case.

/s/ Marianne Carter
An Employee of McDonald Carano LLP

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INDEX OF EXHIBITS

<u>Description</u>	<u>Exhibit No.</u>
Amici Curaiae Brief of Reporters Committee for Freedom of the Press and 43 Media Organizations in Support of Nonparty Las Vegas Review-Journal, Inc.'s Motion for Protective Order	1

EXHIBIT 1

EXHIBIT 1

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10 **JUSTICE COURT, LAS VEGAS TOWNSHIP**
11 **CLARK COUNTY, NEVADA**

12 State of Nevada,

13 Plaintiff,

14 v.

15 Robert Telles #5641107,

16 Defendant.

Case No.: 22CR039592

Dept. No.: 7

DA Case No.: 202249109C

**AMICI CURIAE BRIEF OF THE
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND 43
MEDIA ORGANIZATIONS
IN SUPPORT OF NONPARTY LAS VEGAS
REVIEW-JOURNAL, INC.'S
MOTION FOR PROTECTIVE ORDER**

17 The Reporters Committee for Freedom of the Press (“Reporters Committee”), along with
18 43 Media Organizations (collectively, the “Amici”), by and through their counsel of record,
19 McDonald Carano LLP, hereby respectfully submit the following amicus curiae brief in support
20 of the Las Vegas Review-Journal Inc.’s (“Review-Journal”) Motion for a Protective Order
21 Concerning Privileged Newsgathering Materials (hereinafter the “Motion for Protective Order”).

22 **INTRODUCTION AND INTEREST OF AMICI CURIAE**

23 As part of its investigation into the murder of journalist Jeff German, a career investigative
24 reporter employed by the Review-Journal, Las Vegas law enforcement seized electronic devices
25 belonging to Mr. German (collectively the “Seized Devices”) which Amici understand are likely
26 to contain reporter-source communications and other newsgathering materials belonging to Mr.
27 German and the Review-Journal. *See* Review Journal’s Mot. for Protective Order at 3. Amici
28 further understand that both the Las Vegas district attorney and public defender seek to review the

1 contents of the Seized Devices for any evidence—inculpatory and exculpatory—that may be
2 relevant to its investigation into Mr. German’s murder. *Id.* at 4. The Review-Journal has reason
3 to believe that the Seized Devices contain the identities of many, if not all, of Mr. German’s
4 sources—in local government and otherwise—including sources that may be employed by the
5 district attorney or public defender. *Id.* at 3, 11.

6 Amici are members of the news media and organizations that advocate on behalf of the
7 First Amendment and newsgathering rights of journalists and news organizations. Lead amicus,
8 the Reporters Committee for Freedom of the Press, is an unincorporated nonprofit
9 association. The Reporters Committee was founded by journalists and media lawyers in 1970,
10 when the nation’s press faced an unprecedented wave of government subpoenas forcing reporters
11 to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus
12 curiae support, and other legal resources to protect First Amendment freedoms and the
13 newsgathering rights of journalists. The following forty-three media organizations (“Media
14 Organizations”) support the Reporters Committee and wish to join with the Reporters Committee
15 as amicus curiae and sign on to this brief:

- 16 The Associated Press
- 17 The Atlantic Monthly Group LLC
- 18 Boston Globe Media Partners, LLC
- 19 BuzzFeed
- 20 California News Publishers Association
- 21 The Center for Investigative Reporting (d/b/a Reveal)
- 22 Committee to Protect Journalists
- 23 Criminal Justice Journalists
- 24 The E.W. Scripps Company
- 25 First Amendment Coalition
- 26 First Look Institute, Inc.
- 27 Forbes Media LLC
- 28 Gannett Co., Inc.

- 1 The Guardian U.S.
- 2 Hearst Corporation
- 3 Investigative Reporting Workshop at American University
- 4 Los Angeles Times Communications LLC
- 5 The Media Institute
- 6 Media Law Resource Center
- 7 National Newspaper Association
- 8 The National Press Club
- 9 The National Press Club Journalism Institute
- 10 National Press Photographers Association
- 11 Nevada Broadcasters Association
- 12 The Nevada Press Association
- 13 The News Leaders Association
- 14 News/Media Alliance
- 15 Newsday LLC
- 16 The NewsGuild - CWA
- 17 Open Vallejo
- 18 The Philadelphia Inquirer
- 19 POLITICO LLC
- 20 Pro Publica, Inc.
- 21 Reuters News & Media Inc.
- 22 The Seattle Times Company
- 23 Slate
- 24 Society of Environmental Journalists
- 25 Society of Professional Journalists
- 26 Student Press Law Center
- 27 TIME USA, LLC
- 28 Tully Center for Free Speech

1 VICE Media Group

2 The Washington Post

3 Amici write to underscore the essential role that state shield laws, like Nevada’s, play in
4 ensuring that the news media can fulfill its constitutionally protected role of informing the public.
5 The protections afforded by Nevada’s statutory shield law, NRS 49.275 (the “Shield Law”), are
6 particularly critical in circumstances like these, where Mr. German was allegedly killed in
7 connection with his reporting on allegations of misconduct by Robert Telles and within the Clark
8 County Public Administrator’s Office. Permitting government investigators to freely review
9 privileged information from the Seized Devices threatens to chill vital newsgathering activity and
10 could subject numerous sources, including sources inside government agencies, to retaliation,
11 harassment, and personal harm—precisely the outcomes the Shield Law was enacted to prevent.

12 **ARGUMENT**

13 **I. The Nevada Shield Law protects newsgathering materials, including source**
14 **identities, contained in the Seized Devices.**

15 As the Review-Journal aptly explains, Mot. of Review-Journal at 8–12, the identities of
16 Mr. German’s sources are entitled to protection under the Shield Law, which “confers upon
17 journalists an absolute privilege from disclosure of their sources and information in any
18 proceeding.” *Diaz v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 88, 94 (2000). The
19 Nevada legislature adopted the Shield Law to “enhance the newsgathering process and to foster
20 the free flow of information encouraged by the First Amendment to the U.S. Constitution.” *Id.* at
21 57. In doing so, the legislature recognized that journalists like Mr. German rely on their sources
22 to inform the public of matters of significant interest, including whether government officials are
23 faithfully performing their duties and responsibly exercising their powers.

24 Indeed, during his celebrated four-decade career reporting in Las Vegas, Jeff German
25 relied on numerous sources—both confidential and non-confidential—to investigate and report on
26 stories of significant public interest to Nevadans and to people around the country. *See, e.g.*, Jeff
27 German, *FBI seizes Nevada GOP chief’s cellphone as part of invalid elector probe*, Las Vegas
28 Review-Journal (June 23, 2022), <https://perma.cc/D73Q-WG8E>; Jeff German, *Teacher who*

1 reported strip searches back at work, faces suspension, Las Vegas Review-Journal (April 25,
2 2022), <https://perma.cc/ASS2-MZMY>; JEFF GERMAN, MURDER IN SIN CITY (2001). Significantly,
3 his reporting about Robert Telles and the Clark County Public Administrator’s Office would not
4 have been possible without information gathered from sources who worked in the Administrator’s
5 Office, some of whom sought to remain anonymous. See Jeff German, *County office in turmoil*
6 *with secret video and claims of bullying, hostility*, Las Vegas Review-Journal (May 16, 2022),
7 <https://perma.cc/XH6K-TBUG>; see also Nicholas Bogel-Burroughs & Mike Baker, *A Slain*
8 *Reporter, a City of Sin and a Politician Charged With Murder*, N.Y. Times (Sept. 11, 2022),
9 <https://perma.cc/5HMV-YQ2Y> (“Mr. German met at a table outside of a Starbucks with two new
10 sources. They shared about troubles in the office of the public administrator . . . wondering if Mr.
11 German might be interested in writing an article. Mr. German listened intently, calming their jitters
12 and jotting notes in his notepad.”).

13 A. Reporters rely on confidential communications with sources to report the news.

14 Protecting journalists’ communications with their sources and the identities of their
15 confidential sources is acutely important to a well-functioning, effective press—not least because
16 many sources will disclose newsworthy information *only* if they trust that their communications
17 or identities will be kept confidential. *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981)
18 (“[J]ournalists frequently depend on informants to gather news, and confidentiality is often
19 essential to establishing a relationship with an informant”). Numerous history-altering news
20 reports have relied on confidential sources. These include reporting about the involvement of the
21 Nixon Administration in the Watergate break-in and subsequent cover-up, see Andrew
22 Buncombe, *How Woodward Met Deep Throat*, The Independent (June 3, 2005),
23 <https://perma.cc/Q38Z-JACJ>; the NSA’s use of an illegal wiretapping program to monitor phone
24 calls and e-mails of individuals suspected of involvement in terrorist activities without court
25 review or a warrant, see James Risen & Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without*
26 *Courts*, N.Y. Times (Dec. 16, 2005), <https://perma.cc/5RK3-2V3T>; the U.S. government’s use of
27 harsh “enhanced” interrogation techniques on terrorism suspects, see Scott Shane et al., *Secret*
28 *U.S. Endorsement of Severe Interrogations*, N.Y. Times (Oct. 4, 2007) [Page 5 of 8](https://perma.cc/8DFF-</p></div><div data-bbox=)

1 LEVE; and the private sector’s use of offshore financial havens to launder money and evade taxes,
2 *see* Ferderik Obermaier et al., *About the Panama Papers*, *Suddeutsche Zeitung* (2016),
3 <https://perma.cc/RC9J-2QWZ>.

4 Courts have long recognized that journalists depend on confidential sources to gather
5 news, and that permitting journalists to protect those sources’ identities is, therefore, vital. *See*,
6 *e.g.*, *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) (describing the qualified First Amendment
7 privilege against the compelled disclosure of confidential sources as “a recognition that society’s
8 interest in protecting the integrity of the newsgathering process, and in ensuring the free flow of
9 information to the public, is an interest of sufficient social importance to justify some incidental
10 sacrifice of sources of facts needed in the administration of justice”) (internal quotation marks
11 omitted); *Zerilli*, 656 F.2d at 711; *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000) (“If
12 reporters were routinely required to divulge the identities of their sources, the free flow of
13 newsworthy information would be restrained and the public’s understanding of important issues
14 and events would be hampered in ways inconsistent with a healthy republic.”); *Delaney v.*
15 *Superior Ct.*, 50 Cal. 3d 785, 803 n.13 (1990) (“In most cases, a reporter is able to reveal
16 corruption and malfeasance within government only with the help of an honest employee.”). The
17 ability to foster and maintain relationships with sources is crucial to effective reporting. It allows
18 journalists to better understand the relevant issues, “to see newsmakers in an unguarded setting,”
19 Matt Flegenheimer, *What Does ‘Off the Record’ Really Mean?*, *N.Y. Times* (Aug. 2, 2018),
20 <https://perma.cc/Z5XV-GNHB>, and to correct errors or misunderstandings before a news story is
21 published, Chris Taylor, *What ‘Off the Record’ Means and How to Use It: A Cheat Sheet* (Nov.
22 19, 2014) Mashable, <https://bit.ly/38jXHBe>.

23 B. Permitting review of privileged information on the Seized Devices would chill
24 newsgathering and deprive the public of important information.

25 Denying the Review-Journal’s request for a protective order here would profoundly chill
26 further newsgathering activity and reporter-source communications essential to investigative
27 reporting about possible government and official misconduct—precisely the kind of investigative
28 reporting that allegedly led to the murder of Mr. German. When confidential sources fear that

1 their identities—or other information shared in confidence—may be revealed, they are less willing
2 to speak to reporters, threatening the news media’s ability to engage in the type of newsgathering
3 activity that underpins reporting of critical importance to the public. This chilling effect, which
4 the Shield Law was expressly designed to prevent, is no less powerful here—where government
5 officials seek to review privileged information obtained from a deceased journalist’s devices—
6 than it is when a living journalist is threatened with the compelled disclosure of his or her sources.
7 On the contrary, the dangers of compelled disclosure here loom particularly large. Permitting the
8 offices of the district attorney and public defender to freely review privileged information from
9 the Seized Devices would place any of Mr. German’s confidential government sources—including
10 any individual who may work in the office of the district attorney or public defender—at acute
11 risk of retaliatory harm, both personal and professional. The tragic circumstances of this matter
12 make it clear that such harm is more than a remote possibility. Indeed, failing to protect the
13 privileged information on the Seized Devices would turn Mr. German’s horrific killing into a
14 perverse windfall for anyone in the offices of the district attorney or public defender wishing to
15 identify and root out press-friendly employees.

16 Moreover, this case threatens to set a dangerous precedent that would stymie—and
17 potentially stifle—news reporting on matters of vital public interest in Nevada. If Mr. German’s
18 sources learn that their identities and communications have been freely and fully disclosed to the
19 offices of the district attorney or public defender as a result of his death, these sources, and
20 potential future sources, may refrain from coming forward with truthful information about
21 government misconduct or other significant matters of public concern for fear that their
22 communications may not be protected if a journalist dies suspiciously or suffers other harm that
23 results in a criminal investigation. This would result in a loss of public knowledge about critical
24 issues, chilling the type of vitally important newsgathering to which Mr. German devoted his life
25 and career. This Court should not countenance such a result.

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CONCLUSION

For the foregoing reasons, Amici respectfully urge this Court to grant the Review-Journal’s Motion for a Protective Order Concerning Privileged Newsgathering Materials.

DATED: September 27, 2022

McDONALD CARANO LLP

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