IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAS VEGAS REVIEW-JOURNAL AND THE ASSOCIATED PRESS

Petitioners,

vs.

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

Respondent,

VERONICA HARTFIELD, A NEVADA RESIDENT AND THE ESTATE OF CHARLESTON HARTFIELD and OFFICE OF THE CLARK COUNTY CORONER/MEDICAL EXAMINER,

Real Parties in Interest.

Electronically Filed
Feb 12 2018 10:30 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.:

Dist. Case No.: A-18-768781-C

EMERGENCY PETITION FOR WRIT OF PROHIBITION OR IN THE ALTERNATIVE MANDAMUS PURSUANT TO NRAP 21 AND 27(e)

IMMEDIATE ACTION REQUIRED

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

The Las Vegas Review-Journal submits the following corporate disclosure statement pursuant to Fed. R. App. P. 26.1: (1) The Las Vegas Review-Journal is a Delaware corporation registered in the State of Nevada as a foreign corporation; (2) The Las Vegas Review-Journal does not have any parent company; and (3) no publicly held corporation owns ten percent or more of the Las Vegas Review-Journal's stock.

The Associated Press submits the following corporate disclosure statement pursuant to Fed. R. App. P. 26.1: (1) The Associated Press is not a publicly held corporation; (2) The Associated Press does not have any parent corporation; and (3) The Associated Press has no publicly held stock.

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The law firm whose partners or associates have or are expected to appear for the Las Vegas Review-Journal and the Associated Press is MCLETCHIE SHELL, LLC.

DATED this 12th day of February, 2018.

/s/ Margaret A. McLetchie
Margaret A. McLetchie, Nevada Bar No. 10931
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ROUTING STATEMENT

This case is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(14) because it raises as a principal issue a question of statewide public importance regarding the district court's interpretation of the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* and freedom of the press. This case is also presumptively retained by the Supreme Court pursuant to NRAP 17(13) because it raises a question of first impression regarding the interpretation of Nev. Rev. Stat. § 239.055. Additionally, this matter is not one that would be presumptively assigned to the Court of Appeals under NRAP 17(b).

Additionally, the Supreme Court should hear the case pursuant to NRAP (a)(13) because it raises as the central issue a question of first impression regarding the free speech protections under the Nevada and United States Constitutions.

DATED this 12th day of February, 2018.

/s/ Margaret A. McLetchie

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VERIFICATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

Under penalty of perjury, the undersigned declares:

1. I am a member of the Bar of the State of Nevada and am a partner in the firm McLetchie Shell, LLC. Our firm represents Petitioners the Las Vegas Review-Journal. I make this declaration in support of Petitioners' Emergency Petition for Writ of Prohibition or in the Alternative Mandamus Pursuant to NRAP 21 and 27(e). I am over eighteen years of age, have personal knowledge of the facts set forth herein, and if called as a witness, I could testify competently with respect thereto.

2. I have read the following Emergency Petition and know the contents thereof. Said Emergency Petition is true of my own knowledge, except as to those matters stated on information and belief, and that as to such matters I believe them to be true.

3. On February 9, 2018, immediately after the hearing, I notified Anthony P. Sgro, counsel for real parties in interest Veronica Hartfield and the Estate of Charleston Hartfield, that I would be seeking emergency relief from this Court.

4. In addition, my law partner, Alina M. Shell notified Laura Rehfeldt, counsel for notified counsel for real party in interest the Clark County Coroner's Office, by telephone that I would be seeking emergency relief from the Court. Ms. Shell also emailed Mr. Sgro and Mr. Rehfeldt to provide them notice of this emergency action.

5. Pursuant to NRAP 21(a)(4), I have submitted with this Emergency Petition an appendix containing the portions of the record which are essential to understand the matters set forth in the Emergency Petition.

Respectfully submitted this 12th day of February, 2018.

/s/ Margaret A. McLetchie
MARGARET A. MCLETCHIE
Counsel for the Las Vegas Review-Journal and the Associated Press

POINTS AND AUTHORITIES

I. ISSUES PRESENTED AND RELIEF SOUGHT

The issues presented include whether a court may issue a gag order to prohibit two news media outlets from publishing records lawfully received pursuant to an action initiated pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.*, particularly where other media entities have received the records but are not similarly enjoined. The Petitioners seek immediate dissolution of the preliminary injunction (the "Gag Order").

II. INTRODUCTION

The Las Vegas Review-Journal (the "Review-Journal" or "LVRJ") and the Associated Press (the "AP") (collectively, the "Media Parties") seek an Emergency Writ of Prohibition and/or Mandamus to obtain relief from an unconstitutional order entered by the district court below that operates as an unlawful prior restraint on speech. On January 31, 2018, Eighth Judicial District Court Judge Timothy Williams considered a petition filed by the Media Parties pursuant to the Nevada Public Records Act (the "NPRA") codified in Chapter 239 of the Nevada Revised Statutes. (*The Las Vegas Review-Journal and The Associated Press vs. Clark County Office of the Coroner/ Medical Examiner*, Case No.: A-17-764842-W.) In that case, the court declared certain records public records pursuant to the NPRA, including autopsies of the 1 October victims. At the request of the Review-Journal and the AP,

the autopsies of the 1 October victims were ordered produced with personally-identifying information removed via appropriate redactions. (II PA247, ¶ 60; *see also* II PA242, ¶ 32[1] (the "NPRA Order") ("the Court … finds that the Coroner's Office's concerns regarding privacy are addressed by redacting").) The Petition sought access to autopsy records of Stephen Paddock and redacted versions of the autopsy records of the victims of 1 October. Judge Williams granted the petition (II PA236-251.) On January 31, 2018, the Coroner's Office complied with the portion of the NPRA Order addressing victims' autopsies. In addition to first providing the Hartfield Report to the Media Parties, the County provided the Hartfield Report to other media entities.

On February 2, 2018, Mrs. Hartfield and the Estate of Charleston Hartfield (collectively, the "Hartfield Parties") filed an action (the "Hartfield Action") seeking, *inter alia*, a declaration that the autopsy for Mr. Hartfield (the "Hartfield Autopsy") is not a public record. (I PA008-012) The Hartfield Parties also filed an Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction (on an Order Shortening Time) ("OST") on February 2, 2018 seeking return of the Hartfield Report and a gag order barring the Media Parties from reporting on it. (I PA013-023.) In addition to granting the OST, the court made the

[1] For the Court's ease of reference, citations to Petitioners' Appendix ("PA") cite to both volume and page number(s). Hence, "II PA242" refers to volume 2 of the Petitioners' Appendix at page 242.

TRO "effective immediately." (I PA018.) The court also required that the Order be served by February 2, 2018 and it was not. (I PA018.)

On February 7, 2018, the Media Parties filed a Counter-Motion on an Order Shortening Time (II PA249-281), and it was heard on February 9, 2018. The district court heard arguments and issued a gag order requiring the return of the autopsy report of Mr. Hartfield and barring the Media Parties from publishing or reporting on the Hartfield Report (the "Gag Order").

A gag order is a "procedure … aimed toward prepublication censorship" and is therefore "an inherent threat to expression, one that chills speech." *Goldblum v. Nat'l Broad. Corp.*, 584 F.2d 904, 907 (9th Cir. 1978). It is a prior restraint that carries a "heavy presumption" against its constitutional validity. *Carroll v. Princess Anne*, 393 U.S. 175, 181 (1968); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70. Even when other constitutional rights, such as a criminal defendant's Sixth Amendment rights, are implicated, courts are strictly limited in their ability to preemptively prohibit publication, "one of the most extraordinary remedies known to our jurisprudence." *Hunt v. National Broadcasting Co.*, 872 F.2d 289, 293 (9th Cir. 1989). While nobody is unsympathetic to the families of victims, there is no interest at issue here that can justify censorship of the Media Parties, as detailed below.

III. STATEMENT OF FACTS AND PROCEDURAL HISTORY

As noted above, the NPRA Order required the Coroner's Office to produce redacted versions of the 1 October victims' autopsy records and the Coroner's Office complied with that portion of the NPRA Order. (II PA236-251.) In so doing, the Coroner's office made careful redactions to ensure that the identities of the victims could not be matched to the reports. (I PA001.) Subsequently, several media entities—including the Media Parties—reported on the release of the redacted autopsy reports and the general information contained in those reports. (I PA002-007.) The Coroner's Office also disseminated the redacted autopsy reports to other media entities. (II PA327-355.)

Before filing the Hartfield Action, counsel for the real parties in interest never obtained a copy of the redacted Hartfield Report (II PA260-261, ¶ 12 (declaration of Margaret A. McLetchie).) Further, the Hartfield Report was never presented to the district court and, thus, there was no evidence of a privacy violation. Compounding the unconstitutionality of the Gag Order, it requires the Media Parties to the already-disclosed and already reported-on redacted autopsy report pertaining to Mr. Hartfield to the Coroner's Office. Those reports may have privileged notes on them. Compounding the myriad logistical issues with the Gag Order, the Media Parties have no way of discerning which report pertains to Mr. Hartfield, and requiring that it be returned will actually identify Mr. Hartfield.

No written order has been entered to memorialize the Gag Order but immediate action from this Court in is still necessary due to the First Amendment violation at hand. In fact, the lack of a written order only compounds the constitutional issues. The Minutes from the district court's hearing on the Gag Order are attached. (II PA324 (granting the "Preliminary Injunction requested by Plaintiff Veronica Hartfield and the Estate of Charleston Hartfield."); *see also* I PA014 (stating that Plaintiffs sought an order enjoining the Media Parties "from releasing and publishing the protected health information of autopsies to public entities, specifically the autopsy report of officer Charleston Hartfield to the Las Vegas Review-Journal and other public entity [sic]").)

IV. JURISDICTION AND REASONS WHY THE WRIT SHOULD ISSUE

The court may issue a writ of mandamus to enforce the "performance of an act which the law especially enjoins as a duty resulting from an office . . . or to compel the admission of a party to the use and enjoyment of a right . . . to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal." Nev. Rev. Stat. § 34.160.

Mandamus will not lie to control a discretionary action unless it is manifestly abused or is exercised arbitrarily or capriciously. *Office of the Washoe County District Attorney v. Second Judicial District Court*, 5 P.3d 562, 566 (2000). Thus, a writ of mandamus will issue to "control a court's arbitrary or capricious exercise of

its discretion." *Id*. (*citing Marshal v. District Court*, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992)); *City of Sparks v. Second Judicial District Court*, 998 P.2d 1190, 1193 (2000). It is within the discretion of the Court to determine if such a writ will be considered. *Id*.; *see also State ex. rel. Dep't Transportation v. Thompson*, 99 Nev. 358, 662 P.2d 1338 (1983).

Alternatively, this Court may issue a writ of prohibition when the district court has acted in excess of its jurisdiction, and petitioners have no plain, speedy, and adequate remedy in the ordinary course of law. Nev. Rev. Stat. §§ 34.320 and 34.330. A writ of prohibition does not serve to correct errors; its purpose is to prevent courts from transcending the limits of their jurisdiction in the exercise of judicial but not ministerial power. *Olsen Family Trust v. District Court*, 110 Nev. 548, 551, 874 P.2d 778, 780 (1994); *Low v. Crown Point Mining Co*., 2 Nev. 75 (1866). However, "a writ of prohibition must issue when there is an act to be 'arrested' which is 'without or in excess of the jurisdiction' of the trial judge." *Houston Gen. Ins. Co. v. District Court*, 94 Nev. 247, 248, 78 P.2d 750, 751 (1978); *Ham v. Eight Judicial District Court*, 93 Nev. 409, 412, 566 P.2d 420, 422 (1977); *see also Goicoechea v. District Court*, 96 Nev. 287, 607 P.2d 1140 (1980); *Cunningham v. District Court*, 102 Nev. 551, 729 P.2d 1328 (1986).

The object of a writ of prohibition is to restrain inferior courts from acting without authority of law in cases where wrong, damage, and injustice are likely to

follow such action. *Olsen Family Trust*, 110 Nev. at 552, 874 P.2d at 781; *see also Silver Peaks Mines v. Second Judicial District*, 33 Nev. 97, 110 P. 503 (1910).

Here, the district court has entered a preliminary injunction which acts as a prior restraint on the Media Parties' First Amendment rights. Although the granting of a denial is an appealable order, *see* NRAP 3A(3), an appeal would not be adequate or speedy in this case. *Johanson v. Eighth Judicial Dist. Court of State of Nev. ex rel. Cty. of Clark*, 124 Nev. 245, 249, 182 P.3d 94, 96 (2008) (holding that it would consider a writ of mandamus challenging a gag order because an appeal would not be adequate or speedy and no adequate legal remedy was available). Moreover, the Media Parties seek to vindicate their rights under the First Amendment—rights that will be irrevocably lost if this matter is not addressed on an immediate basis. *See Nebraska Press Assoc. v. Stuart*, 427 U.S. 539 (1976) (First Amendment right of access raises "profound constitutional implications demanding immediate resolution"). This Court has held that extraordinary relief by writ petition is appropriate "where circumstances reveal urgency or strong necessity" and "where an important issue of law needs clarification and the public policy is served[.]" *Falcke v. Douglas County*, 116 Nev. 583, 586, 3 P.3d 661 (2000). That is exactly the situation here.

V. ARGUMENT

A. The District Court Manifestly Abused its Discretion or Arbitrarily and Capriciously Exercised its Discretion When It Issued the Gag Order.

While the desire to provide comfort or relief to victims of 1 October is understandable, the district court's decision was a clear abuse of discretion. As detailed below, gag orders (prior restraints) are considered by reviewing courts on a *de novo* basis and it is likely that the Media Parties will prevail under that standard. This is so because the district court: *(1) did not consider evidence and simply presumed that the redacted version of the Hartfield Report, which was never submitted to the court, violated privacy rights; (2) did not apply First Amendment jurisprudence; (3) instead, evenly balanced the presumed privacy interests with the First Amendment; (4) ignored that no irreparable harm was at hand because the Hartfield Report had been issued, reporting had already been done and the Hartfield Parties did not point to any harm other than not generally wanting reporting on Mr. Hartfield's death; (5) ignored the patent Equal Protection issue with issuing a gag order against the Media Parties while other media outlets received the victims' reports and were not likewise restrained; (6) ignored that the Hartfield Parties necessarily were not facing irreparable harm because they did not seek to identify and name the other recipients of the report; (7) found that the events of 1 October were unprecedented and thus supported a gag order while, in fact, there is no such exception to the First Amendment; (8) conflated the law pertaining to whether the*

media could access unredacted autopsy materials, such as photos, under FOIA or state public records laws with the law applicable to gag orders; (9) issued a gag order despite the fact that a gag order cannot provide effective relief because the Autopsy Report has already been widely disseminated; and (10) issued a ruling in conflict with the ruling previously issued by Judge Williams in the NPRA case.

The undersigned is not aware of any case in which the United States Supreme Court or this Court has ever found a gag order issued to the media to be constitutional. This Court has jurisdiction to review gag orders *de novo* and has held that a gag order may only be issued when "(1) the activity poses a clear and present danger or a serious and imminent threat to a protected competing interest, (2) the order is narrowly drawn, and (3) no less restrictive means are available." *Johanson v. Eighth Judicial Dist. Court of State of Nev. ex rel. Cty. of Clark*, 124 Nev. 245, 251, 182 P.2d 94, 98 (2008) (citing and adopting standard set in *Levine v. U.S. Dist. Court for C. Dist. of Cal*., 764 F.2d 590, 595 (9th Cir.1985)). Publication of the Hartfield Report does not satisfy these criteria.

Here, there is no "clear and present danger or a serious and imminent threat to a protected competing interest." The Hartfield Report has already been disseminated (and has been accessible to the public since January 31, 2018) and stories have already been published. No harm to any protected competing interests has resulted and there is no privacy implicated with redacted autopsy reports. Indeed,

the only action that will serve to connect Mr. Hartfield's identity to a specific report is the relief the district court ordered: dislodging and thus singling out the Hartfield Report from the other records already produced.

Even if, *arguendo*, the publication of this widely-disseminated information resulted in harm to these competing interests, the interests themselves are not weighty enough to justify a prior restraint on speech. As the Sixth Circuit Court of Appeals observed, "[i]n the case of a prior restraint on pure speech, the hurdle is substantially higher: publication must threaten an interest more fundamental than the First Amendment itself." *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226-27. (6th Cir. 1996). Mrs. Hartfield's dislike of reporting on her husband's death, while understandable, does not meet this standard.

The Order is also not narrowly drawn and will not further the interest asserted by the Hartfield Parties for two reasons. First, no privacy interest has been demonstrated to be at stake. Second, there is no effective relief that can be granted, as the dissemination of the Hartfield Report has already occurred. *Cf. Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 n. 11 (2d Cir.2004) ("Once the cat is out of the bag, the ball game is over.") (quoting *Calabrian Co. v. Bangkok Bank, Ltd.*, 55 F.R.D. 82 (S.D.N.Y.1972)).

In short, no gag order can issue to force the Media Defendants to return and not publish or discuss records they lawfully obtained in response to a NPRA request.

Courts have specifically considered the balance of state-protected privacy interests with the First Amendment rights of the media in reporting on lawfully-obtained information— and have repeatedly found in favor of free speech. For example, in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), the United States Supreme Court vacated a civil damages award entered against a television station for broadcasting the name of a rape-murder victim that the station had obtained from courthouse records. Notably, *Cox Broadcasting* just involved damages and not what is at issue here: a presumptively unconstitutional prior restraint on speech. Then, in *Oklahoma Publishing Co. v. Oklahoma County District Court*, 430 U.S. 308 (1977), the United States Supreme Court found unconstitutional a pretrial order enjoining the media, who had lawfully attended a juvenile proceeding, from publishing the name or photograph of an 11-year-old boy. Then, in *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979), the United States Supreme Court found unconstitutional the indictment of two newspapers for violating a state statute forbidding newspapers from publishing the name of a youth charged as a juvenile offender without written prior permission from the court after the newspapers had learned about a shooting from police scanners and learned the juvenile's name from witnesses.

Finally, in *The Florida Star v. B.J.F.*, 109 S. Ct. 2603 (1989), the United States Supreme Court considered whether two newspapers could be subject to

compensatory damages for publishing the statutorily-protected name of a rape victim the paper had nonetheless legally obtained. Even though it was not considering the far more extreme remedy of a gag order that is at issue in this case, the Court upheld free speech over privacy: "where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order…" *Id.* at 2613.

The *Florida Star* case also examined an issue of note here: unequal application of punishing publication. As noted above, other media outlets have received and published articles about the victims' autopsy reports, but the district court's order only applies to the RJ and the AP. This is impermissible:

> When a State attempts the extraordinary measure of punishing truthful publication in the name of privacy, it must demonstrate its commitment to advancing this interest by applying its prohibition evenhandedly, to the smalltime disseminator as well as the media giant. Where important First Amendment interests are at stake, the mass scope of disclosure is not an acceptable surrogate for injury. A ban on disclosures effected by "instrument [s] of mass communication" simply cannot be defended on the ground that partial prohibitions may effect partial relief. See *Daily Mail*, 443 U.S., at 104-105, 99 S.Ct., at 2671-2672 (statute is insufficiently tailored to interest in protecting anonymity where it restricted only newspapers, not the electronic media or other forms of publication, from identifying juvenile defendants); *id.*, at 110, 99 S.Ct., at 2674-75 (REHNQUIST, J., concurring in judgment) (same); cf. *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 229, 107 S.Ct. 1722, 1727-1728, 95 L.Ed.2d 209 (1987); *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585, 103 S.Ct. 1365, 1371-72, 75 L.Ed.2d 295 (1983).

Id. at 2613. The Gag Order violates the Equal Protection Clause, which directs that "'all persons similarly circumstanced shall be treated alike.'" *Plyler v. Doe,* 457 U.S. 202, 216 (1982) (*quoting F.S. Royster Guano Co. v. Virginia,* 253 U.S. 412, 415 (1920)). Strict scrutiny applies here because the Gag Order burdens the speech of only two of the recipients of the Hartfield Report. *See United States v. Hancock,* 231 F.3d 557, 565 (9th Cir.2000) (strict scrutiny applies if a classification "targets a suspect class or burdens the exercise of a fundamental right."); *see also Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1047 (9th Cir. 2002); *see also San Antonio School District v. Rodriguez*, 411 U.S. 1, 16, 93 S.Ct. 1278, 1287, 36 L.Ed.2d 16 (1973); *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 312, 96 S. Ct. 2562, 2566, 49 L. Ed. 2d 520 (1976).

These cases and the test for prior restraints apply in this case and render the Gag Order unconstitutional. However, even under the more relaxed (but still exacting) standard set in Nev. R. Civ. P. 65, a preliminary injunction is improper, and it is of note that the Hartfield Parties are not ultimately entitled to relief in the underlying action. Not only is there no irreparable harm because the Hartfield Report is redacted and has already been disseminated and reported on, the Hartfield Parties also cannot establish any likelihood of success. As the NPRA Order makes clear, the records at issue in this action (in redacted form) are public records subject to production. Moreover, while HIPAA and the other law cited by the Hartfield Parties

do not take the records out of the reach of the NPRA, the NPRA Order did consider privacy concerns and found that redacting personally identifying information adequately addressed those concerns. Indeed, in light of the unique facts of this case, the Media Parties self-limited their request for victims' autopsies to redacted versions.

This matter is thus unnecessary to protect the interests asserted by Plaintiffs. It is also moot. As noted, the Coroner's Office has already provided the redacted versions of the autopsies and the Petitioners have already reported on the records, as have other media outlets.[2] "[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it." *Nat'l Collegiate Athletic Ass'n v. Univ. of Nevada, Reno*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981); *see also*, *e.g.*, *Zana v. State*, 125 Nev. 541, 545–46, 216 P.3d 244, 247 (2009) ("it is beyond the power of any court to unring a bell"). The Hartfield Parties' action was moot even before they submitted it to this Court. As noted above, the Coroner's Office disseminated the autopsy reports to the Media Parties on January 31, 2018, two days prior to the initiation of their action. Moreover, the media reported on the autopsy

[2] *See*, *e.g.*, http://www.fox5vegas.com/story/37399460/coroner-releases-autopsy-records-of-all-1-october-victims-person-of-interest-speaks (last accessed February 7, 2018).

reports hours after their dissemination. The Coroner's Office widely disseminated the Hartfield Report (but, again, in redacted form).

Notably, none of the reporting has jeopardized the privacy of the Hartfield Parties. And, the Media Parties currently have no means of discerning which records pertain to Mr. Hartfield for the very reason that the Coroner's Office provided the records in redacted form. Thus, it is any "claw back" of the Hartfield Report that threatens to reveal his identity in connection with any of the autopsy reports. Finally, nothing in the NPRA provides for an action like the one that the Hartfield Parties are pursuing: an action to retroactively declare confidential a record that has already been disseminated in connection with an NPRA lawsuit. Unlike other states, the NPRA does not contain a privacy exemption or allow for intervention.

In short, the action filed by the Hartfield Parties directly conflicts with another order of the district court and does not seek any relief that a court can constitutionally provide.

B. The Media Parties Face Immediate, Irreversible, and Irreparable Harm.

Prior restraints on speech and publication cause immediate, irrevocable, and irreversible harm—therefore they are almost always intolerable under the First Amendment of the U.S. Constitution and Article I, Section 9 of the Nevada Constitution. As the United States Supreme Court articulated, commenting on its track record of holding prior restraints on speech and publication unconstitutional:

> The thread running through all these cases is that **prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights**. A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted. Only after judgment has become final, correct or otherwise, does the law's sanction become fully operative. A prior restraint, by contrast and **by definition**, has an **immediate** and **irreversible** sanction. If it can be said that a threat of criminal or civil sanctions after publication "chills" speech, prior restraint "freezes" it at least for the time. **The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current events**"

Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976) (emphasis added). Every minute the district court's order remains in place is another minute of harm suffered by the Media Parties and the public, which is entitled to reporting on the performance of its public agencies.

Perhaps even more troubling is the district court's proposition that a representative from the Coroner's Office look through the already-redacted reports in the Media Parties' files to determine which should be wrenched from the Media Parties' possession, or that copies of the Hartfield Report (which could contain reporters' notes) be returned to the Coroner's Office. This would cause the immediate, irrevocable, and irreversible harm of revealing potentially privileged information, such as reporters' notes that the Media Parties have a duty to protect.[3]

[3] *See Perry v. Schwarzenegger*, 591 F.3d 1147, 1157–58 (9th Cir. 2010).

The Media Parties also face irreparable harm because they face contempt if they violate the gag order. An act or omission resulting in disobedience or resistance to any ***lawful*** writ, order, rule or process issued by the court shall constitute contempt. Nev. Rev. Stat. § 22.010(3) (emphasis added). As the Nevada Supreme Court has made clear, "[o]ne cannot be punished for contempt for violating an order which a court has no authority to make." *State ex rel. Culinary Workers Union, Local No. 226 v. Eighth Judicial Dist. Ct. in and for Clark County*, 66 Nev. 166, 171, 207 P.2d 990, 992 (1949); *see also State Indus. Ins. Sys. v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) ("[o]ne may not be held in contempt of a void order"). Furthermore, "[a] broadcaster or publisher should not . . . be required to make a sudden appearance in court and then to take urgent measures to secure appellate relief, all the while weighing the delicate question of whether or not refusal to comply with an apparently invalid order constitutes a contempt." *Goldblum v. Nat'l Broad. Corp*., 584 F.2d 904, 907 (9th Cir. 1978).

By contrast, the real parties in interest do not face immediate or irreparable harm. As noted above, the Coroner's Office has already complied with Judge Williams' order and disclosed the **redacted** autopsy reports, and the media has already reported on their contents. Nothing in the reports or the media stories regarding the reports identify any victim or otherwise violate any interest of the real parties.

VI. CONCLUSION

Based upon the foregoing reasons, the Gag Order must be dissolved immediately.

DATED this 12th day of February, 2018.

/s/ Margaret A. McLetchie
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CERTIFICATE OF SERVICE

I certify and affirm that I am an employee of McLetchie Shell LLC and that on this 12th day of February, 2018 the EMERGENCY PETITION FOR WRIT OF PROHIBITION OR IN THE ALTERNATIVE MANDAMUS PURSUANT TO NRAP 21 AND 27(e) IMMEDIATE ACTION REQUIRED was served by First Class United States Mail, postage fully prepaid to the following:

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Honorable Judge Richard F. Scotti
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/s/ Pharan Burchfield
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