Case No. 92008

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS REVIEW JOURNAL, INC.; NOBLE BRIGHAM; BIZUAYEHU TESFAYE; and AKIYA DILLON

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA; and THE HONORABLE JESSICA PETERSON, DISTRICT JUDGE,

Respondents,

NATHAN CHASING HORSE; and THE STATE OF NEVADA,

Real Parties in Interest.

From the Eighth Judicial District Court of the State of Nevada,
in and for County of Clark
District Court Case No. C-24-387035-1

BRIEF OF AMICI CURIAE NEVADA PRESS ASSOCIATION ACLU OF NEVADA FOUNDATION, INC. THE FIRST AMENDMENT LAWYERS ASSOCIATION THE CENTER FOR AMERICAN LIBERTY IN SUPPORT OF PETITIONERS

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SUMMARY

Petitioners, members of the press, wished to accurately report on a high-profile criminal trial. Rather than allow this attendance and reporting, as the First Amendment requires, the District Court first invented a requirement that if any member of the media wants to cover a trial, it must have an "approved media request in the case file." The First Amendment will not abide any restriction on the press that requires asking permission from any branch of government to cover a public event.

To compound this constitutional sin, the court then issued an ultimatum to a reporter who had come to the court to report on the case: either submit to a prior restraint regarding the court proceedings or leave the courtroom.

If the Court's abuse of power is not checked it will threaten freedom of the press in Nevada. The Order's unconstitutional conditions must be struck down.

ARGUMENT

1.0 The Decorum Order Seeks to Impermissibly License the Press

The "Decorum Order" is a grave insult to the First Amendment. Just *look* at it: "*All members of the media wishing to cover proceedings in the Eighth Judicial District Court must have an approved media request in the case file*." III.PA.0387. This Order purports to require preapproval before someone can cover a trial. Meanwhile, approval was already granted on December 15, 1791.[1] Judge Peterson has no power to revoke that approval.

It is not ambiguous that "judicial proceedings" are "without question events of legitimate concern to the public and consequently fall within the responsibility of the press to report the operations of government." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 492 (1975). Our Constitution "requires that court proceedings be open to the public, and by extension the news media, absent the most clearly articulated and compelling reason for closing them in a particular circumstance." *Katzman v. Victoria's Secret Catalogue*, 923 F. Supp. 580, 588 (S.D.N.Y. 1996). *See also Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17, 587, 599 (1980) ("[A] trial courtroom is also a public place where the people generally – and representatives of the media – have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes

[1] This is the date that the First Amendment was ratified.

place"); *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (court access "is justified by the interest of citizens in keep[ing] a watchful eye on the workings of public agencies") (cleaned up).

Nevada's state courts loyally follow this federal constitutional mandate and there is an even greater presumption of openness in this State's courts. *Stephens Media LLC v. Eighth Judicial Dist. Court*, 125 Nev. 849, 859-60, 221 P.3d 1240, 1248 (Nev. 2009) ("Public access inherently promotes public scrutiny of the judicial process," and observing that "the tradition of openness can be traced back to sixteenth-century English common law"). This Court recognized that "the press often acts as a proxy for the public, advancing the public's understanding and awareness of the criminal justice system." *Id*. at 860.

This tradition is not merely to ensure the public has access to its own institutions, but to ensure that the vital right to informed, valuable debate is protected to the greatest extent possible. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 605 (1982) (the right to open trials recognized by *Richmond Newspapers* protects the "informed" discussion of governmental affairs). In *Press-Enterprise Company v. Superior Court of California*, the United States Supreme Court issued a ringing endorsement for public access to judicial proceedings as proof of the justice system's strength:

> The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the acceptance of fairness so essential to public confidence in the system.

464 U.S. 501, 508 (1984).

If the Court is open to the public, then it is open to any reporter, from any publication, and no permission nor request, no license of any kind, can be required. If the public has a right to be there, the media has a right to be there as a "surrogate" for the public. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980). A Court order that the press must ask *permission* and be *approved* before even sitting in the courtroom to cover a trial sounds like a story some crazy person just made up. But here we are nearly a century after *Lovell v. Griffin*, 303 U.S. 444 (1938), which established that no branch of government can license the press. In that case, the Supreme Court invoked John Milton and the very struggle for freedom of the press.

> The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing." And the liberty of the press became initially a right to publish "without a license what formerly could be published only with one." While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision.

Id. at 451-452 (internal cites omitted).

That case demolished all instrumentalities to concoct any power the lower court might wish for in order to require a permission slip for the media to cover its trials. Frankly, the "media" cannot be defined. Any person could come into the courtroom and cover the trial for a national publication or their own blog or X feed.

> The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.

Id. at 452.

Accordingly, the "media" is all of us. *Reno v. ACLU*, 521 U.S. 844, 869-70 (1997) ("any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer"). Either the court's "Decorum Order" is singling out "the media" as a defined group for unequal protection, or the Court is trying to create a distinction between "the media" and others who would report on these official proceedings. A court has no business making any decision about who is "media." *See Von Bulow v. Von Bulow*, 811 F.2d 136, 143 (2d Cir. 1987).

Amicus makes no claim that the First Amendment requires absolute openness. This mighty shield may be overcome "by an overriding interest based on findings

that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise*, 464 U.S. at 510. But that burden is both greasy and heavy, and anyone trying to lift it will usually only be able to grip it with gloves made out of the Defendant's Sixth Amendment right to a fair trial. *See Stephens Media*, 125 Nev. at 862. But no such interest has arisen here. All that has arisen here is that the District Court wants to control who can report on its proceedings, and what they can write.

2.0 The District Court's Prior Restraint Must be Eliminated

Once the press managed to squeeze through the door, it walked into a hellscape adorned with a Constitutionally obscene horror – a prior restraint. The District Court interprets its order as requiring that the judge gets editorial control over their reporting, or they must exit the courtroom. This sounds less like *real life* and more like a hypothetical in a First Amendment course by a kind-hearted law professor who wants all of their students to get a perfect grade on the first quiz so that their confidence is soaring as they enter the second week of the class.

The Order states: "*The privacy and safety of victims, witnesses, and jurors should be respected at all times. Media personnel are requested out of respect for the alleged sexual assault victims to not disclose their personal identifying information including their full names, without their consent, but rather to refer to them by their initials*." III.PA.0389.

"Safety?" From what? How could a reporter compromise anyone's "safety" by reporting on the case? Is someone's life at risk? The erosion of the definition of this word is not the trial court's fault. "Unsafe" has, in some circles, become untethered from its actual meaning and has drifted toward a meaning of "words I don't like." The Court should be a stabilizing force for language, not on the staff of the Newspeak dictionary.

The Court has interpreted its order to mean that the Court can order that certain names not make it into the reporter's article. Meanwhile, even if this were permissible at all, there should at least be findings to support it. There are no findings that publishing anyone's name is likely to cause any harm at all. And while the language of the order uses the word "request," the District Court means that it is *mandatory*. The judge kicked a reporter out of the courtroom because he would not promise to honor this "request." That isn't a "request" – that is a prior restraint.

"[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). As such, they are presumptively unconstitutional. *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). The proponent of a prior restraint on the press '"carries a heavy burden of showing justification for the imposition of such a restraint."' *Las Vegas Review-Journal v. Eighth Judicial Dist. Court of Nev.*, 134 Nev. 40, 43-44, 412 P.3d 23, 26 (2018) (quoting *N.Y. Times Co. v. United States*,

403 U.S. 713, 714 (1971)); *see also Kinney v. Barnes*, 443 S.W.3d 87 at n.7 (Tex. 2014) (citing SOBCHAK, W., THE BIG LEBOWSKI, 1998) ("For your information, the Supreme Court has roundly rejected prior restraint!")

For such a restraint to be permissible, "the interest the prohibition protects must be of the 'highest order,'" the restraint '"must be the narrowest available to protect that interest; and the restraint must be necessary to protect against an evil that is great and certain, would result from the reportage, and cannot be mitigated by less intrusive measures."' *LVRJ v. Eighth Judicial Dist. Court of Nev.*, 134 Nev. at 43-44 (quoting *The Fla. Star v. B.J.F.*, 491 U.S. 524, 541 (1989) and *People v. Bryant*, 94 P.3d 624, 628 (Colo. 2004)).

The only interest that has arisen here is that the District Court relies on a witness's privacy rights – rights the witness herself did not even invoke, and which do not actually exist. That is not going to cut it to support a prior restraint.

A right to privacy wasn't even really a thing in American law until Samuel D. Warren & Louis D. Brandeis published *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890). The authors argued that the common law should recognize a right to privacy, summarized as the "right to be let alone." We have struggled with this concept ever since. *See Roe v. Wade*, 410 U.S. 113, 152 (1973) (following *Griswold v. Connecticut,* 381 U.S. 479 (1965), and finding a constitutional right to privacy "in the penumbras of the Bill of Rights"); *Dobbs v. Jackson Women's Health Org.*, 597

U.S. 215, 332 n.* (2022) (Thomas, J., concurring) (overturning *Roe* and rejecting the penumbral privacy rights theory). A right to privacy might be a good thing, and worth debating. But we don't just cook up new privacy rights at the expense of civil liberties that have been firmly rooted in our constitutional soil for generations.

However, The District Court stirs the cauldron to summon a new penumbra – a privacy right in information that has already been discussed in open court. And this strange new species of privacy right does not seem to be one where the witness had a right to keep certain information *private*, as that information is already in the public record. No, this penumbra only casts a shadow over the press, and is made of the fragments of long shattered legal theories. *Florida Star v. B.J.F.*, 491 U.S. 524, 541 (1989) dispensed with the notion that truthful information about victims of crime, even minors, could be suppressed consistent with the First Amendment.

Judge Peterson and the State claimed that Marsy's law, Nevada Const. Art. I, § 8A, provided an underpinning for the prior restraint. IV.PA.0550-0551. Wrong. This provision of the Nevada Constitution notes that victims of crime are entitled "[t]o be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process." On its face, Marsy's law does not seek to create a new privacy interest that could be enforced this way. And if it did, it would be struck down as violating the First Amendment.

Even if this provision of the state Constitution could *potentially* justify the District Court's prior restraint, Judge Peterson never made any findings that such a restraint was necessary to protect the victim's rights. And even if the District Court had made such findings, they would be implausible. This is because the State already put the victim's name in the record. I.PA.0043, 0059, 0078, 0082, 0135-0137, 0148-0152. The prior publication of allegedly private information terminates an individual's privacy interests. *LVRJ v. Eighth Judicial Dist. Ct.*, 134 Nev. at 45; *Cox Broad.*, 420 U.S. at 494-95 ("the interests in privacy fade when the information involved already appears on the public record"); *Doe v. City of N.Y.*, 15 F.3d 264, 268 (2d Cir. 1994) ("Certainly, there is no question that an individual cannot expect to have a constitutionally protected privacy interest in matters of public record"); *McNally v. Pulitzer Publ'g Co.*, 532 F.2d 69, 77-78 (8th Cir. 1976) (relying on *Cox Broadcasting* to hold that there was no harm to any constitutional right of privacy when the information claimed to be private was already a matter of public record).

CONCLUSION

Court proceedings are open to the public. The First Amendment right of the press to attend and report on criminal trials is sacrosanct. It cannot be overcome by whim nor can a penumbra dim its blazing bright light. We do not license the press, and we do not let any branch of government act as editor or censor.

This Court should correct the District Court's error, making it clear that anyone may report on the proceedings without prior licensing or permission. And once that coverage begins, the District Court has no place deciding what can and cannot be in that coverage.

Dated this 27th day of January, 2026.

Respectfully Submitted,

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ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. The undersigned has read the following Brief of *Amici Curiae*;

2. To the best of the undersigned's knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

3. The following brief complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion in the brief regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found; and

4. The brief complies with the formatting requirements of Rule 32(a)(4)-(6), and the type-volume limitations stated in Rule 32(a)(7) and Rule 29(e). Specifically, the brief is 3,330 words.

Dated this 27th day of January, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this foregoing document was electronically filed and served upon counsel for each of the parties to this appeal through the Supreme Court of Nevada's electronic filing system on this 27th day of January, 2026.

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