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11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 In the Matter of State v. Telles

14 Case No.: A-22-859361-C
15 Dept. No.: XXII

16 **REQUEST FOR LEAVE TO**
17 **PARTICIPATE IN PROCEEDINGS**
18 **AS AMICI CURIAE**

19 The Reporters Committee for Freedom of the Press (“Reporters Committee”), along with
20 54 Media Organizations (collectively, the “Amici”), by and through their counsel of record,
21 McDonald Carano LLP, hereby respectfully request leave to file an amicus curiae brief in support
22 of the Las Vegas Review-Journal Inc.’s (“Review-Journal”) Motion for Return of Seized Property
23 and Appointment of Special Master to Conduct Reporters’ Privilege Review and the Review-
24 Journal’s Ex Parte Application for an Emergency Temporary Restraining Order and Preliminary
25 Injunction Hearing (hereinafter the “Motions”).

26 The 54 Media Organizations supporting lead amicus, the Reporters Committee, are: The
27 Associated Press; The Atlantic Monthly Group LLC; Boston Globe Media Partners, LLC;
28 BuzzFeed; California News Publishers Association; The Center for Investigative Reporting
(d/b/a Reveal); Committee to Protect Journalists; Courthouse News Service; Criminal Justice

1 Journalists; The E.W. Scripps Company; First Amendment Coalition; First Look Institute, Inc.;
2 Forbes Media LLC; Fundamedios Inc.; Gannett Co., Inc.; The Guardian U.S.; Hearst
3 Corporation; Inter American Press Association; Investigative Reporting Workshop at American
4 University; Los Angeles Times Communications LLC; The McClatchy Company, LLC; The
5 Media Institute; Media Law Resource Center; Mother Jones; National Newspaper Association;
6 The National Press Club; The National Press Club Journalism Institute; National Press
7 Photographers Association; NBCUniversal Media, LLC; Nevada Broadcasters Association; The
8 Nevada Independent; The Nevada Press Association; New England Newspaper and Press
9 Association, Inc.; The News Leaders Association; News/Media Alliance; Newsday LLC; The
10 NewsGuild – CWA; Nexstar Media Group, Inc.; Open Vallejo; The Philadelphia Inquirer;
11 POLITICO LLC; Pro Publica, Inc.; Radio Television Digital News Association; Reuters News
12 & Media Inc.; The Seattle Times Company; Slate; Society of Environmental Journalists; Society
13 of Professional Journalists; Student Press Law Center; TIME USA, LLC; Tully Center for Free
14 Speech; VICE Media Group; The Washington Post; and Yahoo News. Amici have provided
15 notice to counsel for Plaintiff the State of Nevada, Defendant Robert Telles, and Nonparty the
16 Review-Journal of the Amici’s intent to file a brief, but have not received unanimous agreement.
17 Amici desire to provide the Court with their informed perspective concerning the essential role
18 that state shield laws, like Nevada’s, play in ensuring that the news media can fulfill its
19 constitutionally protected role of informing the public. The following memorandum of points
20 and authorities and statement of intent to participate are submitted in support of Amici’s request.
21 The proposed amicus curiae brief is attached hereto as Exhibit 1 and will be filed separately if
22 the Court permits Amici to participate.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. INTRODUCTION**

25 As members and representatives of the news media, Amici have a substantial interest in
26 the application of Nevada’s shield law, NRS 49.275, to the contents of Review-Journal reporter
27 Jeff German’s seized electronic devices. The proposed amicus brief will aid the Court in resolving
28 the Motions by providing Amici’s perspective—informed by Amici’s broad experience—of the

1 importance of protecting reporter-source communications and the identities of confidential
2 sources. The proposed amicus brief will further explain the potentially drastic ramifications of
3 permitting the offices of the district attorney and public defender to freely review privileged
4 information from Mr. German’s electronic devices, which may place any confidential government
5 sources that Mr. German may have had—including individuals who may work in the offices of
6 the district attorney and public defender—at risk of retaliatory harm, both personal and
7 professional.

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

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

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

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

1 *People’s Legislature v. Miller*, No. 2:12-CV-00272, 2012 WL 3536767, at *5 n.5 (D. Nev. Aug.
2 20 15, 2012) (quoting *United States v. State of La.*, 751 F. Supp. 608, 620 (E.D. La. 1990)).
3 Indeed, “[d]istrict courts frequently welcome amicus briefs from nonparties concerning legal
4 issues that have potential ramifications beyond the parties directly involved or if the amicus has
5 ‘unique information or perspective that can help the court beyond the help that the lawyers for the
6 parties are able to provide.’” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 335 F.Supp.2d.
7 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003));
8 *see also United States v. Renown Health*, No. 3:12-CV-00295, 2016 WL 6803078, at *2 (D. Nev.
9 Nov. 15, 2016) (“An amicus brief should normally be allowed . . . when the amicus has unique
10 information or perspective that can help the court beyond the help that the lawyers for the parties
11 are able to provide.”) (citing *Cmty. Ass'n for Restoration of Env't (CARE) v. DeRuyter Bros. Dairy*,
12 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999) (internal quotations and citations omitted)). Moreover,
13 “[a] court may grant leave to appear as an amicus if the information offered is ‘timely and useful.’”
14 *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999) (citation omitted).

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

16 Amici are members of the news media and organizations that advocate on behalf of the
17 First Amendment and newsgathering rights of journalists and news organizations. As such, Amici
18 have a substantial interest in the resolution of the Motions. Journalists regularly communicate with
19 sources to gather news, and they depend on the protections of NRS 49.275 and other shield laws
20 to protect these communications, and to give confidential sources confidence that their identities
21 will not be disclosed, even when, as here, the threat of disclosure stems from the murder of a
22 journalist. If courts do not rigorously apply these protections, sources will be less likely to come
23 forward with newsworthy information, stifling the free flow of information to the public.

24 For these reasons, lead amicus, the Reporters Committee, and other news media
25 organizations have appeared as amicus curiae in courts around the country in cases that implicate
26 the reporter’s privilege and state shield laws. *See, e.g.*, Br. of Amicus Curiae the Reporters
27 Committee in Support of Petitioner, *Shriner v. the Superior Court of the State of California, et al.*,
28 Case No. E076320 (Cal. Ct. Appeal) (filed Dec. 23, 2020); Br. of Amicus Curiae the Reporters

1 Committee, *Subpoena Duces Tecum to KIRO TV, Inc., et al.*, Case No. 20-0-616926 (Wash.
2 Superior Ct.) (filed June 29, 2020); Br. of Amici Curiae the Reporters Committee and 19 Media
3 Organizations in Support of Reporter Jamie Kalven’s Mot. to Quash Subpoena, *People v. March*,
4 Case No. 2017-CR-9700 (Ill. Cir. Ct.) (filed Nov. 26, 2018); Br. for Amici Curiae the Reporters
5 Committee and 48 Media Organizations in Support of Non-Party Respondent, *People v. Juarez*,
6 APL-2017-00057 (N.Y.) (filed Oct. 6, 2017); Br. of Amicus Curiae the Reporters Committee in
7 Support of Non-Party Witness John Sepulvado, *United States v. Patrick*, Civil No. 3:16-cr-00051-
8 BR (D. Or.) (filed Feb. 22, 2017).

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

13 **IV. CONCLUSION**

14 For the foregoing reasons, Amici respectfully request that the Court use its discretion to
15 grant Amici permission to file an amicus brief in support of the Motions.

16 DATED: October 10, 2022

17 McDONALD CARANO LLP

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

I certify that on October 10, 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 Curiae Brief of Reporters Committee for Freedom of the Press and 54 Media Organizations in Support of Nonparty Las Vegas Review-Journal, Inc.'s Motion for Return of Seized Property and Ex Parte Application for an Emergency Temporary Restraining Order and Preliminary Injunction Hearing	1

EXHIBIT 1

EXHIBIT 1

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7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9
10 In the Matter of State v. Telles

Case No.: A-22-859361-C
Dept. No.: XXII

11 **AMICI CURIAE BRIEF OF THE**
12 **REPORTERS COMMITTEE FOR**
13 **FREEDOM OF THE PRESS AND 54**
14 **MEDIA ORGANIZATIONS IN**
15 **SUPPORT OF LAS VEGAS REVIEW-**
16 **JOURNAL, INC.'S MOTION FOR**
17 **RETURN OF SEIZED PROPERTY**
18 **AND EX PARTE APPLICATION FOR**
19 **AN EMERGENCY TEMPORARY**
20 **RESTRAINING ORDER AND**
21 **PRELIMINARY INJUNCTION**
22 **HEARING**

23 The Reporters Committee for Freedom of the Press (“Reporters Committee”), along with
24 54 Media Organizations (collectively, the “Amici”), by and through their counsel of record,
25 McDonald Carano LLP, hereby respectfully submit the following amicus curiae brief in support
26 of the Las Vegas Review-Journal Inc.’s (“Review-Journal”) Motion for Return of Seized Property
27 and Appointment of Special Master to Conduct Reporters’ Privilege Review and the Review-
28 Journal’s Ex Parte Application for an Emergency Temporary Restraining Order and Preliminary
Injunction Hearing (hereinafter the “Motions”).

INTRODUCTION AND INTEREST OF AMICI CURIAE

As part of its investigation into the murder of journalist Jeff German, a career investigative reporter employed by the Review-Journal, Las Vegas law enforcement seized electronic devices

1 belonging to Mr. German (collectively the “Seized Devices”) which Amici understand are likely
2 to contain reporter-source communications and other newsgathering materials belonging to Mr.
3 German and the Review-Journal. *See* Review Journal’s Mot. for Temporary Restraining Order at
4 5. Amici further understand that both the Las Vegas district attorney and public defender seek to
5 review the contents of the Seized Devices for any evidence—inculpatory and exculpatory—that
6 may be relevant to its investigation into Mr. German’s murder. *Id.* The Review-Journal has reason
7 to believe that the Seized Devices contain the identities of many, if not all, of Mr. German’s
8 sources—in local government and otherwise—including sources that may be employed by the
9 district attorney or public defender. *Id.*

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

20 The Associated Press

21 The Atlantic Monthly Group LLC

22 Boston Globe Media Partners, LLC

23 BuzzFeed

24 California News Publishers Association

25 The Center for Investigative Reporting (d/b/a Reveal)

26 Committee to Protect Journalists

27 Courthouse News Service

28 Criminal Justice Journalists

- 1 The E.W. Scripps Company
- 2 First Amendment Coalition
- 3 First Look Institute, Inc.
- 4 Forbes Media LLC
- 5 Fundamedios Inc.
- 6 Gannett Co., Inc.
- 7 The Guardian U.S.
- 8 Hearst Corporation
- 9 Inter American Press Association
- 10 Investigative Reporting Workshop at American University
- 11 Los Angeles Times Communications LLC
- 12 The McClatchy Company, LLC
- 13 The Media Institute
- 14 Media Law Resource Center
- 15 Mother Jones
- 16 National Newspaper Association
- 17 The National Press Club
- 18 The National Press Club Journalism Institute
- 19 National Press Photographers Association
- 20 NBCUniversal Media, LLC
- 21 Nevada Broadcasters Association
- 22 The Nevada Independent
- 23 The Nevada Press Association
- 24 New England Newspaper and Press Association, Inc.,
- 25 The News Leaders Association
- 26 News/Media Alliance
- 27 Newsday LLC
- 28 The NewsGuild - CWA

- 1 Nexstar Media Group, Inc.
- 2 Open Vallejo
- 3 The Philadelphia Inquirer
- 4 POLITICO LLC
- 5 Pro Publica, Inc.
- 6 Radio Television Digital News Association
- 7 Reuters News & Media Inc.
- 8 The Seattle Times Company
- 9 Slate
- 10 Society of Environmental Journalists
- 11 Society of Professional Journalists
- 12 Student Press Law Center
- 13 TIME USA, LLC
- 14 Tully Center for Free Speech
- 15 VICE Media Group
- 16 The Washington Post
- 17 Yahoo News

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

27 //
28 //

1 **ARGUMENT**

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

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

14 Indeed, during his celebrated four-decade career reporting in Las Vegas, Jeff German
15 relied on numerous sources—both confidential and non-confidential—to investigate and report on
16 stories of significant public interest to Nevadans and to people around the country. *See, e.g.*, Jeff
17 German, *FBI seizes Nevada GOP chief’s cellphone as part of invalid elector probe*, Las Vegas
18 Review-Journal (June 23, 2022), <https://perma.cc/D73Q-WG8E>; Jeff German, *Teacher who*
19 *reported strip searches back at work, faces suspension*, Las Vegas Review-Journal (April 25,
20 2022), <https://perma.cc/ASS2-MZMY>; JEFF GERMAN, *MURDER IN SIN CITY* (2001). Significantly,
21 his reporting about Robert Telles and the Clark County Public Administrator’s Office would not
22 have been possible without information gathered from sources who worked in the Administrator’s
23 Office, some of whom sought to remain anonymous. *See* Jeff German, *County office in turmoil*
24 *with secret video and claims of bullying, hostility*, Las Vegas Review-Journal (May 16, 2022),
25 <https://perma.cc/XH6K-TBUG>; *see also* Nicholas Bogel-Burroughs & Mike Baker, *A Slain*
26 *Reporter, a City of Sin and a Politician Charged With Murder*, N.Y. Times (Sept. 11, 2022),
27 <https://perma.cc/5HMY-YQ2Y> (“Mr. German met at a table outside of a Starbucks with two new
28 sources. They shared about troubles in the office of the public administrator . . . wondering if Mr.

1 German might be interested in writing an article. Mr. German listened intently, calming their jitters
2 and jotting notes in his notepad.”).

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

4 Protecting journalists’ communications with their sources and the identities of their
5 confidential sources is acutely important to a well-functioning, effective press—not least because
6 many sources will disclose newsworthy information *only* if they trust that their communications
7 or identities will be kept confidential. *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981)
8 (“[J]ournalists frequently depend on informants to gather news, and confidentiality is often
9 essential to establishing a relationship with an informant”). Numerous history-altering news
10 reports have relied on confidential sources. These include reporting about the involvement of the
11 Nixon Administration in the Watergate break-in and subsequent cover-up, *see* Andrew
12 Buncombe, *How Woodward Met Deep Throat*, *The Independent* (June 3, 2005),
13 <https://perma.cc/Q38Z-JACJ>; the NSA’s use of an illegal wiretapping program to monitor phone
14 calls and e-mails of individuals suspected of involvement in terrorist activities without court
15 review or a warrant, *see* James Risén & Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without*
16 *Courts*, *N.Y. Times* (Dec. 16, 2005), <https://perma.cc/5RK3-2V3T>; the U.S. government’s use of
17 harsh “enhanced” interrogation techniques on terrorism suspects, *see* Scott Shane et al., *Secret*
18 *U.S. Endorsement of Severe Interrogations*, *N.Y. Times* (Oct. 4, 2007) [https://perma.cc/8DFF-](https://perma.cc/8DFF-LEVE)
19 [LEVE](https://perma.cc/8DFF-LEVE); and the private sector’s use of offshore financial havens to launder money and evade taxes,
20 *see* Ferderik Obermaier et al., *About the Panama Papers*, *Suddeutsche Zeitung* (2016),
21 <https://perma.cc/RC9J-2QWZ>.

22 Courts have long recognized that journalists depend on confidential sources to gather
23 news, and that permitting journalists to protect those sources’ identities is, therefore, vital. *See*,
24 *e.g.*, *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) (describing the qualified First Amendment
25 privilege against the compelled disclosure of confidential sources as “a recognition that society’s
26 interest in protecting the integrity of the newsgathering process, and in ensuring the free flow of
27 information to the public, is an interest of sufficient social importance to justify some incidental
28 sacrifice of sources of facts needed in the administration of justice”) (internal quotation marks

1 omitted); *Zerilli*, 656 F.2d at 711; *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000) (“If
2 reporters were routinely required to divulge the identities of their sources, the free flow of
3 newsworthy information would be restrained and the public’s understanding of important issues
4 and events would be hampered in ways inconsistent with a healthy republic.”); *Delaney v.*
5 *Superior Ct.*, 50 Cal. 3d 785, 803 n.13 (1990) (“In most cases, a reporter is able to reveal
6 corruption and malfeasance within government only with the help of an honest employee.”). The
7 ability to foster and maintain relationships with sources is crucial to effective reporting. It allows
8 journalists to better understand the relevant issues, “to see newsmakers in an unguarded setting,”
9 Matt Flegenheimer, *What Does ‘Off the Record’ Really Mean?*, N.Y. Times (Aug. 2, 2018),
10 <https://perma.cc/Z5XV-GNHB>, and to correct errors or misunderstandings before a news story is
11 published, Chris Taylor, *What ‘Off the Record’ Means and How to Use It: A Cheat Sheet* (Nov.
12 19, 2014) Mashable, <https://bit.ly/38jXHBe>.

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

15 Denying the Review-Journal’s request for a protective order here would profoundly chill
16 further newsgathering activity and reporter-source communications essential to investigative
17 reporting about possible government and official misconduct—precisely the kind of investigative
18 reporting that allegedly led to the murder of Mr. German. When confidential sources fear that
19 their identities—or other information shared in confidence—may be revealed, they are less willing
20 to speak to reporters, threatening the news media’s ability to engage in the type of newsgathering
21 activity that underpins reporting of critical importance to the public. This chilling effect, which
22 the Shield Law was expressly designed to prevent, is no less powerful here—where government
23 officials seek to review privileged information obtained from a deceased journalist’s devices—
24 than it is when a living journalist is threatened with the compelled disclosure of his or her sources.
25 On the contrary, the dangers of compelled disclosure here loom particularly large. Permitting the
26 offices of the district attorney and public defender to freely review privileged information from
27 the Seized Devices would place any of Mr. German’s confidential government sources—including
28 any individual who may work in the office of the district attorney or public defender—at acute

1 risk of retaliatory harm, both personal and professional. The tragic circumstances of this matter
2 make it clear that such harm is more than a remote possibility. Indeed, failing to protect the
3 privileged information on the Seized Devices would turn Mr. German’s horrific killing into a
4 perverse windfall for anyone in the offices of the district attorney or public defender wishing to
5 identify and root out press-friendly employees.

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

16 **CONCLUSION**

17 For the foregoing reasons, Amici respectfully urge this Court to grant the Review-
18 Journal’s Motions.

19 DATED: October 10, 2022

20 McDONALD CARANO LLP

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