

**IN THE SUPREME COURT
OF THE STATE OF NEVADA**

JOHN DOE,
Petitioner,

v.

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

Respondents,

And

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

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 89277

District Court Case No. CV22-02015

**PETITIONER JOHN DOE'S EMERGENCY MOTION FOR STAY
OF REMITTITUR UNDER NRAP 41(d)(3)**

Emergency Motion Under NRAP 27(e)

Action Needed on or Before May 5, 2025

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NRAP 27(e) Certificate

Undersigned counsel hereby certifies the following pursuant to NRAP 27:

1. The telephone numbers and office address for the attorneys for the parties are as follows:

Petitioner/Movant John Doe

Jeffrey F. Barr, Esq.

Ashcraft & Barr LLP

9205 W. Russell Road, Suite 240

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Real Parties in Interest David McNeely and

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Real Parties in Interest Hillary Schieve and Vaughn Hartung

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100 W Liberty St, 10th Floor

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2. As shown in the Memorandum of Points and Authorities below, Petitioner seeks a stay of remittitur to file a petition for writ of certiorari to the United States Supreme Court to address whether he has a First Amendment privilege to remain anonymous. As more fully discussed below, in the absence of such a stay, disclosure of his identity before the U.S. Supreme Court has an opportunity for review could potentially result in an irreparable deprivation of Mr. Doe's constitutional rights. Remittitur (or Notice in Lieu of

Remittitur) issues on or before May 5, 2025. Thus, this Court's action is necessary before May 5, 2025.

3. Counsel for the Real Parties in Interest were notified of the Motion by email on April 25, 2025. They will be served with the Motion through the Court's electronic filing system, and undersigned Counsel will also email a file-stamped copy to them.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner John Doe hereby moves this Court for an order staying remittitur under NRAP 41(d)(3) to permit Mr. Doe to file a Petition for Writ of Certiorari with the United States Supreme Court.

II. PROCEDURAL BACKGROUND

1. On or about September 6, 2024, Mr. Doe filed a Petition for Writ of Prohibition in this Court seeking relief from the District Court's discovery order compelling the disclosure of Mr. Doe's identity.

2. In the Petition to this Court and in the District Court, Mr. Doe argued that he had a First Amendment privilege against the disclosure of his identity.

3. The District Court stayed its order pending relief in this Court, recognizing the constitutional interest at the heart of this case, stating, "This Court acknowledges the irreparability of harm if John

Doe's identity is disclosed now but an appellate court later reaches a different conclusion." [PA0231]

4. This Court ordered the Real Parties in Interest to answer the Petition, and then ordered en banc oral argument on the issues, which was held on April 8, 2025.

5. This Court then denied the Petition holding, "We conclude that the conduct at issue was non-expressive in nature and not subject to First Amendment protection."

6. As shown by the Declaration of Michael Francisco, Esq. attached to this Motion as **Exhibit 1**, Mr. Doe has hired U.S. Supreme Court counsel and, though the deadline to file a Petition is not until July, intends to expeditiously file a Petition for Writ of Certiorari to the U.S. Supreme Court no later than May 19, 2025.

III. ARGUMENT

NRAP 41(d)(3)(A) permits a party to "file a motion to stay the remittitur pending application to the United States Supreme Court for a writ of certiorari." The motion must show "that the petition would present a substantial federal question," and "that there is good cause for a stay." NRAP 41(d)(3)(A).

A. Substantial Federal Question

Whether John Doe has a First Amendment privilege to remain anonymous is the central question of this case. Both this Court and the District Court have recognized as much. Federal courts, including the Ninth Circuit have recognized the core First Amendment right to both anonymous political speech and the right to engage in surreptitious news-gathering. *See, e.g. Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1203 (9th Cir. 2018). Thus, Mr. Doe’s Petition for Writ of Certiorari to the United States Supreme Court raises a substantial Federal Constitutional question properly decided by the United States Supreme Court.

B. Good Cause

The United States Supreme Court is the ultimate arbiter of Federal constitutional questions. *See Nev. Const. art. I, sec. 2* (“But the Paramount Allegiance of every citizen is due to the Federal Government in the exercise of all its Constitutional powers *as the same have been or may be defined by the Supreme Court of the United States*” [emphasis added]).

In addition, “deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023). If Mr. Doe’s identity is revealed in violation of his constitutional rights, no court will be able to remedy his injury. Not only because deprivation of constitutional rights is per se irreparable, but because he will never be able to recall his name from the public consciousness. Compelling disclosure of his identity before the Supreme Court is given a chance to weigh in therefore risks irreparable harm to Mr. Doe. The risk of irreparable harm without a stay is so pressing that the District Court went out of its way to solicit a stay motion from Mr. Doe when it ruled that his identity must be disclosed. [PA0231]

Thus, good cause exists for this Court to stay issuance of remittitur (or notice in lieu of remittitur) pending John Doe’s Petition for Writ of Certiorari to the United States Supreme Court.

Finally, as shown by the Declaration of Michael Francisco, Esq. on **Exhibit 1**, John Doe has already retained Supreme Court counsel. [Ex. 1, ¶3] Counsel intends on filing the Petition for Writ of Certiorari on or before May 19, 2025, well-before the filing deadline of such Petition. [Ex. 1, ¶4]

Dated this 25th day of April 2025.

ASHCRAFT & BARR LLP

/s/ Jeffrey F. Barr

Jeffrey F. Barr, Esq. (NV Bar # 7269)

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barrj@ashcraftbarr.com

Attorneys for Petitioner John Doe

CERTIFICATE OF SERVICE

I certify that on this 25rd day of April 2025 the *PETITIONER JOHN DOE'S MOTION FOR STAY OF REMITTITUR UNDER NRAP 41(d)(3)* was filed electronically with the clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the Master service list as follows:

The Honorable David A. Hardy
SECOND JUDICIAL DISTRICT COURT
DEPARTMENT NO. 15
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Carrie.lipparelli@washoecourts.us
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*Attorneys for Real Parties in
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Alpha Industries LLC*

/s/ Jeffrey F. Barr
An Employee of Ashcraft & Barr LLP

Exhibit 1

Emergency Motion for Stay of Remittitur

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Case No. 89277

District Court Case No. CV22-02015

**DECLARATION OF MICHAEL FRANCISCO, ESQ. IN SUPPORT
OF PETITIONER JOHN DOE'S EMERGENCY MOTION FOR
STAY OF REMITTITUR UNDER NRAP 41(d)(3)**

MICHAEL FRANCISCO, ESQ. hereby declares:

1. I am a lawyer with the law firm of First & Fourteenth PLLC, and
I am admitted in the United States Supreme Court and regular
Supreme Court practitioner. I am over the age of 18, and I am
competent to testify to the matters herein.


2. I make this Declaration in Support of John Does EMERGENCY
MOTINO FOR STAY OF REMITTITUR UNDER NRAP 41(d)(3).

3. Petitioner John Doe has hired First & Fourteenth PLLC to file a
Petition for Writ of Certiorari in the above-captioned case.

4. We intend to expedite and file the Petition for Writ of Certiorari
with United States Supreme Court no later than May 19, 2025,
well in advance of the deadline for seeking certiorari.

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

Dated this 24rd day of April 2025.



Michael Francisco, Esq.