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 10 **UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

11 Nevada Press Association,

12 Plaintiff(s),

13 vs.

14 Steve Sisolak, Governor; Charles Daniels, Director
 15 of the Nevada Department of Corrections; William
 Allan Gittere, Warden of Ely State Prison; the State
 16 of Nevada, ex. rel. Department of Corrections
 (NDOC); and Does 1–10, Unknown NDOC
 17 Personnel, in their official capacities as Agents of
 18 NDOC

19 Defendant(s).

Case Number

VERIFIED COMPLAINT FOR
 TEMPORARY RESTRAINING
 ORDER AND PRELIMINARY
 INJUCTION

20
 21 COMES NOW Nevada Press Association, by and through undersigned counsel, and in
 22 accordance with Fed. R. Civ. P. 65 and the equitable powers of this Court, to request that the Court
 23 enter a Preliminary Injunction and Temporary Restraining Order, and in support thereof, state:

24 **PARTIES**

25 1. Plaintiff Nevada Press Association is the formal trade organization for news publications
 26 in the state of Nevada. It is a voluntary non-profit organization that represents daily and weekly

1 news publications in Nevada and the Lake Tahoe region of Northern California, as well as online
2 news services, magazines and others. It is dedicated to representing the common interests of
3 Nevada newspapers, furthering the public's right to know through an understanding that strong
4 newspapers (protected by the First Amendment) are the cornerstone of a democratic society,
5 promoting a closer fellowship within the newspaper fraternity, encouraging the elevation of
6 journalistic standards and promoting the value of newspaper advertising.

7 2. Defendant Steve Sisolak is the governor of the State of Nevada and is being sued in his
8 official capacity for equitable, injunctive, and declaratory relief.

9 3. Defendant Charles Daniels is the Director of NDOC and is being sued in his official
10 capacity for equitable, injunctive, and declaratory relief.

11 4. Defendant William Allan Gittere is the Warden of Ely State Prison, where Zane Floyd is
12 currently incarcerated and will be executed, and is being sued in his official capacity for equitable,
13 injunctive, and declaratory relief.

14 5. Defendant the State of Nevada, Department of Corrections, is the agency tasked with
15 planning and carrying out Zane Floyd's execution.

16 6. Defendants John and Jane Does are unknown employees, staff, contractors, or agents of
17 NDOC or the State of Nevada who are NDOC officers, successors in office, agents, contractors,
18 staff, and employees, along with those acting in concert with them, who have participated or will
19 participate in Zane Floyd's execution in capacities involving, *inter alia*, developing and
20 implementing NDOC's execution procedures – including the protocols governing the preparation
21 and administration of drugs designed to execute people. Plaintiff is not aware of the true identities
22 of the John and Jane Does, but alleges that when Plaintiff discovers their identities, Plaintiff will
23 amend this Complaint accordingly.¹

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26 ¹ The Plaintiff refers to the Defendants variably as “Defendants,” “the State,” or “NDOC” where appropriate. This variation is solely for ease of reference and should not be interpreted as limiting the scope of the Plaintiff's claims. All claims are brought against each and all Defendants.

1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. §
3 1343 (civil-rights violations), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202
4 (injunctive relief). Plaintiffs invoke this Court’s jurisdiction pursuant to the First Amendment of
5 the United States Constitution and 42 U.S.C. § 1983.

6 8. Venue is proper pursuant to 28 U.S.C. § 1391(b). As a domestic Nevada corporation, the
7 Plaintiff resides in this District. As the State represents in its Execution Manual, the State will
8 execute Zane Floyd at Ely State Prison, a facility in this District, so the events giving rise to this
9 Motion will occur in this District.

10 **FACTS**

11 9. Executions in the United States have traditionally been public affairs. *California First*
12 *Amendment Coalition v. Woodford*, 299 F.3d 868, 875 (9th Cir. 2002). These public displays have
13 served multiple purposes, deterring similar misconduct, forcing the community to accept
14 responsibility for sentencing one of its own to death, and holding the state executioners
15 accountable if their conduct violated the Constitution.

16 10. As executions moved from the town square to the prison yard, limiting the number of
17 witnesses in attendance, the press became the public’s eyes and ears. Nevada law ensures that
18 witnesses are always on hand at each execution,² and the media has always been keen to report
19 whether the State is performing its most grim duty fairly and humanely, from the State’s gruesome
20 experimentation with the first gas chamber³ to Nevada’s current efforts to execute Zane Floyd in
21 an untried execution chamber with an untested drug cocktail.

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23 ² See NRS 176.355 (requiring “not less than six reputable citizens over the age of 21 years” be
present for an execution).

24 ³ Nevada performed the first ever gas chamber execution on February 8, 1924. Due to a
25 miscalculation, most of the poisonous gas remained in its liquid state, and witnesses watched the
26 condemned suffocate to death for approximately 10 minutes. Ryan Fan, *The Gruesome First Gas
Chamber Execution*, Medium, March 19, 2021, [https://medium.com/crimebeat/the-gruesome-
first-gas-chamber-execution-a7440dda2d8b](https://medium.com/crimebeat/the-gruesome-first-gas-chamber-execution-a7440dda2d8b). Warden Dickerson, who over saw the execution,
reported that “This method of execution, while no doubt painless, is not, in my judgment practical.”

1 11. Reflecting on this history and the importance of public access to executions, the Ninth
2 Circuit Court of Appeals has formally recognized that the public and the press have a First
3 Amendment right “to view executions in their entirety.” *First Amendment Coalition v. Ryan*, 938
4 F.3d 1069, 1075 (9th Cir. 2019), *citing Woodford*, 299 F.3d at 875–77.

5 12. In establishing this right, the Ninth Circuit explained that “[e]xecution witnesses need to
6 be able to observe and report on the entire process so that the public can determine whether lethal
7 injections are fairly and humanely administered.” *Id.* at 1076.

8 **A. The Historical Significance of Zane Floyd’s Execution**

9 13. Zane Floyd was sentenced to death on July 22, 2000. The State now seeks to carry out his
10 execution.

11 14. While the death penalty has existed in Nevada since its days as a territory of the United
12 States, the State has not performed an execution since April 26, 2006, a hiatus of over 15 years.⁴
13 During this time, it closed the Nevada State Prison, the only prison to ever host an execution in
14 Nevada, and built a new, \$860,000 execution chamber at Ely State Prison.⁵ The new chamber that
15 has sat unused since construction concluded in 2016.

16 15. The State’s efforts to conduct its first execution at Ely coincide with a recent public push
17 to abolish the death penalty and a growing discussion about whether the practice should stay on
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21 Scott Christianson, *Fatal Airs: The Deadly History and Apocalyptic Future of Lethal Gases that*
22 *Threaten Our World* 50 (Praeger 2010). By comparison, newspapers described the execution as
“the worst piece of official barbarity since the Dark Ages,” and claimed that “One hundred years
from now Nevada will be referred to as a heathen commonwealth controlled by savages with only
the outward symbols of civilization.” *Id.* at 50–51.

23 ⁴ Khaleda Rahman, *Nevada Set to Execute Death Row Inmate for First Time in 15 Years*,
24 *Newsweek*, June 8, 2021, <https://www.newsweek.com/nevada-set-execute-first-inmate-15-years-1598519>.

25 ⁵ Sean Whaley, *Nevada’s new \$860,000 execution chamber is finished but gathering dust*, *Las*
26 *Vegas Review-Journal*, November 27, 2016, <https://www.reviewjournal.com/crime/nevadas-new-860000-execution-chamber-is-finished-but-gathering-dust/>

1 jenniferNevada’s books.⁶ During Nevada’s last legislative session, the state House of
 2 Representatives passed a bill to end executions only to see the legislation die in the Senate judiciary
 3 committee without a hearing.⁷ There was extensive coverage around the bill with politicians on
 4 both sides of the aisle speaking out in favor of its passage,⁸ and many reports drew a connection
 5 between Clark County District Attorney Steve Wolfson’s efforts to move forward with Zane
 6 Floyd’s execution and his efforts to kill the abolition bill.⁹

7 16. Perhaps most significant from a national perspective is Nevada’s intent to use an untested
 8 drug cocktail to execute Floyd. According to its Execution Manual Procedure (“EM”) 103,¹⁰
 9 Nevada proposes to kill Floyd with either a three- or four-drug combination comprised of Fentanyl
 10 or Alfentanil (depending on availability); Ketamine; Cisatracurium; and Potassium Chloride or
 11 Potassium Acetate (depending on availability). Cisatracurium is a paralytic agent that inhibits an

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 14 ⁶ Khaleda Rahman, *Nevada is Trying to Abolish the Death Penalty – Democrats Stand In the Way*,
 15 Newsweek, May 11, 2021, <https://www.newsweek.com/why-nevada-must-abolish-death-penalty-1590054>.

16 ⁷ Ken Ritter & Sam Metz, *Governor, top Democrat call Nevada death penalty repeal dead*, AP
 17 News, May 13, 2021, <https://apnews.com/article/nevada-las-vegas-mass-shooting-b0ff30e95183f66012b88f5f0c17273f>.

18 ⁸ Sam Metz, *Blue states chart diverging paths on death penalty debate*, AP News, April 21, 2021,
 19 <https://apnews.com/article/race-and-ethnicity-government-and-politics-nevada-legislature-las-vegas-mass-shooting-f96adbb830e8757bc501f919b276bddc>.

20 ⁹ See Daniel Nichanian, *Nevada Prosecutors are Standing in the Way of Abolishing the Death*
 21 *Penalty*, The Appeal, May 7, 2021, <https://theappeal.org/politicalreport/nevada-prosecutors-are-standing-in-the-way-of-abolishing-the-death-penalty/>; Michael Lyle, *Prosecutor senators pressed to quit foot-dragging on death penalty abolish bill*, Nevada Current, May 11, 2021, <https://www.nevadacurrent.com/2021/05/11/prosecutor-senators-pressed-to-quit-foot-dragging-on-death-penalty-abolition-bill/>; Tabitha Mueller & Michelle Rindels, *Opponents of the death penalty turn up the heat as abolition bill’s future remains murky*, The Nevada Independent, May 11, 2021, <https://thenevadaindependent.com/article/opponents-of-the-death-penalty-turn-up-the-heat-as-abolition-bills-future-remains-murky>.

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 26 ¹⁰ See, Defendant’s Notice of Filing, Exhibit A – Redacted Execution Manual at 22, *Floyd v. Daniels*, No. 3:21-cv-00176-RFB-CLB (D. Nev. June 10, 2021), ECF No. 93.

1 inmate’s ability to communicate but does not affect an inmate’s “consciousness, awareness, pain
2 or anxiety” during the execution.¹¹

3 17. No state in the United States has previously used this combination of chemicals to perform
4 a lethal injection.¹²

5 18. Specifically, neither Alfentanil or Ketamine have ever been used in a lethal injection
6 cocktail.¹³

7 19. Both drugs have disturbing side effects: Alfentanil inhibits breathing and causes
8 suffocation,¹⁴ while Ketamine causes vomiting, psychosis, disorientation, and hallucinations.¹⁵

9 20. None of the drugs in the cocktail are known to induce unconsciousness, a shortcoming that,
10 in conjunction with the painful chemical potassium chloride, will likely lead to suffering before
11 death.

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13 ¹¹ Marcella Corona, *How will Scott Dozier die? Experts weigh in on Nevada’s experimental*
14 *execution cocktail*, Reno Gazette-Journal, Nov. 3, 2017,
[https://www.rgj.com/story/news/2017/11/03/medical-experts-explain-effects-lethal-injection-](https://www.rgj.com/story/news/2017/11/03/medical-experts-explain-effects-lethal-injection-drugs-nevada-execution/822497001/)
15 [drugs-nevada-execution/822497001/](https://www.rgj.com/story/news/2017/11/03/medical-experts-explain-effects-lethal-injection-drugs-nevada-execution/822497001/).

16 ¹² Ken Ritter, *Nevada plans to use 3 or 4 drugs for late-July execution*, AP News, June 10, 2021,
17 [https://apnews.com/article/government-and-politics-nv-state-wire-nevada-executions-](https://apnews.com/article/government-and-politics-nv-state-wire-nevada-executions-04c612f234542476daa6d1f6f329729b)
18 [04c612f234542476daa6d1f6f329729b](https://apnews.com/article/government-and-politics-nv-state-wire-nevada-executions-04c612f234542476daa6d1f6f329729b).

19 ¹³See, *State-by-State Lethal Injection Protocol*, Death Penalty Information Center,
20 <https://deathpenaltyinfo.org/executions/lethal-injection/state-by-state-lethal-injection-protocols>
21 (last visited July 19, 2021) (listing all drugs used in lethal injection protocols across the country).

22 ¹⁴See, *Alfentanil*, PubChem (National Library of Medicine),
23 <https://pubchem.ncbi.nlm.nih.gov/compound/alfentanil> (last visited July 19, 2021) (“Serious, life-
24 threatening, or fatal respiratory depression has been reported with the use of opioids, even when
25 used as recommended. Respiratory depression, if not immediately recognized and treated, may
26 lead to respiratory arrest and death.”).

27 ¹⁵ Phillip R. Corlett, et al., *Frontal responses during learning predict vulnerability to the*
28 *psychotogenic effects of ketamine: linking cognition, brain activity, and psychosis*, Arch Gen
29 Psychiatry, 2006 Jun; 63(6):611-21, <https://pubmed.ncbi.nlm.nih.gov/16754834/> (“High-dose
30 ketamine produces perceptual aberrations . . . and delusion-like beliefs.”); see, *KETAMINE*
31 *HYDROCHLORIDE- ketamine hydrochloride injection, solution, concentrate*, Hospira, Inc.,
32 available at <http://labeling.pfizer.com/ShowLabeling.aspx?id=4485> (last visited July 19, 2021)
33 (labelling insert indicating that nausea and vomiting are potential side effects).

1 21. Putting aside Nevada’s troubled history with pioneering execution methods,¹⁶ when states
2 have experimented with new drugs or changed the dosages in lethal injection cocktails, these
3 efforts have often ended in disaster. Considering that at least one study found that 7.1% of lethal
4 injections in the United States were “botched,” twice the rate of American executions generally,
5 these grim results are not surprising.¹⁷

6 22. Recently botched lethal injection executions include:

- 7 • Dennis McGuire in Ohio, where McGuire appeared to “gasp, snort and struggle for air”
8 with his body “convulsing in an apparent attempt to breathe” roughly 10 minutes before
9 he was announced dead.¹⁸
- 10 • Joseph R. Wood in Arizona, whose execution lasted 117 minutes as he died “like a fish
11 on shore gulping for air.”¹⁹
- 12 • Clayton Lockett in Oklahoma, where witnesses watched as he “groaned, writhed, lifted
13 his head and shoulders off the gurney and said ‘man’,” after he was supposedly
14 sedated.²⁰

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18 ¹⁶ See *supra* fn. 3.

19 ¹⁷ From 1890 to 2010, about 3% of American executions were “botched.” Debbie Sigelbaum,
20 *America’s ‘inexorably’ botched executions*, BBC News, August 1, 2014,
<https://www.bbc.com/news/magazine-28555978>.

21 ¹⁸ Josh Sweigart, *Ohio executes McGuire, killer of Preble County woman in 1989*, Dayton Daily News,
22 January 16, 2014, <https://www.daytondailynews.com/news/local/ohio-executes-mcguire-killer-preble-county-woman-1989/ddQzdQpjWlwl9q4pir9oEL/>

23 ¹⁹ Laurie Roberts, *Arizona Needs a Timeout After Botched Execution*, Arizona Republic, July 23,
24 2014, <http://www.azcentrol.com/story/laurieroberts/2014/07/23/woods-execution-botched/13073777>.

25 ²⁰ Katie Fretland, *Scene at botched Oklahoma execution of Clayton Lockett was ‘a bloody mess’*,
26 The Guardian, December 13, 2014, <https://www.theguardian.com/world/2014/dec/13/botched-oklahoma-execution-clayton-lockett-bloody-mess>.

- 1 • Charles Warner in Oklahoma, who had been given a sedative but still described the
2 injection as “feel[ing] like acid” and whose final words were, “My body is on fire.”²¹

3 23. After botched executions, the press often served as an important counterbalance to the
4 official narrative offered by the government. For example, Arizona's governor claimed Joseph R.
5 Wood did not suffer and the procedure was conducted lawfully²² even as newspapers reported that
6 Wood “appeared to be in agony” as he died.²³

7 **B. Procedures in the State’s Execution Manual that violate the First Amendment by**
8 **preventing witnesses from observing Floyd’s execution.**

9 24. In addition to describing the lethal injection cocktail combinations, the State’s Execution
10 Manual explains the procedures the State intends to follow for Floyd’s execution, including how
11 the Director will select the witnesses for the event and what the witnesses will be able to observe
12 as Floyd’s execution proceeds.²⁴

13 25. EM 110.1, which states that Floyd’s execution will begin with the “Execution Area
14 Viewing Room blinds” closed and the Viewing Room lights full illuminated. The blinds will only
15 be opened after (1) Floyd enters the Execution Chamber Room, (2) Floyd is secured to the
16 execution table, (3) Floyd’s IV has been connected, and (4) the Warden is alone in the Execution
17 Chamber with Floyd. It also suggests that witnesses will not be able to hear anything inside the
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21 ²¹ Dana Ford, *Oklahoma executes Charles Warner*, January 16, 2016, CNN,
<https://www.cnn.com/2015/01/15/us/oklahoma-execution-charles-frederick-warner/index.html>

22 ²² Erik Eckholm, *Arizona Takes Nearly 2 Hours to Execute Inmate*, New York Times, July 23,
23 2014, [https://www.nytimes.com/2014/07/24/us/arizona-takes-nearly-2-hours-to-execute-](https://www.nytimes.com/2014/07/24/us/arizona-takes-nearly-2-hours-to-execute-inmate.html)
[inmate.html](https://www.nytimes.com/2014/07/24/us/arizona-takes-nearly-2-hours-to-execute-inmate.html).

24 ²³ *First Amend. Coal. of Arizona, Inc. v. Ryan*, 938 F.3d 1069, 1073 (9th Cir. 2019) (summarizing
25 newspaper reports from the incident).

26 ²⁴ Defendant’s Notice of Filing, Exhibit A – Redacted Execution Manual, *supra* n. 10 (detailing
the procedures for Floyd’s execution).

1 Chamber until after the blinds open, and even then the witnesses will only hear Floyd's last
2 words.²⁵

3 26. EM 110.02(D)(1)(b), which states that "[i]f at any point, the Attending Physician
4 determines that the condemned inmate's responses to the lethal drugs deviates from expected, the
5 Drug Administrators, Warden and Director will pause the procedure, close the Viewing Room
6 window blinds, and consult with the Attending Physician," and only if the execution is continued
7 will the blinds reopen.²⁶

8 27. EM 101.03(C), which states that "[t]he Director [of NDOC], in his sole discretion, shall
9 determine whether to approve a member of the news media or other media representative to be a
10 witness to the execution."²⁷

11 28. EM 101.03(C)(1), which states that "[a] person who has not been invited by the Director
12 may not witness the execution."²⁸

13 29. Furthermore, the procedures detailed in the Execution Manual do not describe any
14 alternative means that otherwise qualified witnesses will be able to observe the execution if they
15 are denied an invitation by the Director.²⁹

16 30. These limitations necessarily inhibit any witness's or potential witness's ability to observe
17 and report on Floyd's execution, which violates the First Amendment of the United States
18 Constitution.

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21 ²⁵ *Id.* at 56–57 (“The Warden will then open the Execution Area Viewing Room blinds and advise the
condemned inmate that those witnessing the execution may now hear his last words.”)

22 ²⁶ *Id.* at 58.

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24 ²⁷ *Id.* at 17.

25 ²⁸ *Id.*

26 ²⁹ *See generally, id.*

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CLAIMS FOR RELIEF

Claim One - The procedures described in the State's Execution Manual violate the Plaintiff's First Amendment rights as the procedures prevent witnesses from observing Floyd while he is inside the Execution Chamber and suggest that witnesses will not be able to hear what is occurring in the Chamber when the blinds are closed.

31. Plaintiff incorporates by reference, as though fully set forth herein, each an every preceding paragraph of this Complaint.

32. The public and press have a First Amendment right to view and hear executions in their entirety, from the moment the condemned inmate enters the Execution Chamber until the inmate's death. *Ryan*, 938 F.3d at 1075.

33. EM 110.01, which prevents witnesses from observing Floyd entering the execution chamber or the insertion of his IV, a procedure identical to California's Procedure 770, a procedure struck down as unconstitutional by the Ninth Circuit Court of Appeals. *Woodford*, 299 F.3d at 871.

34. While EM 110.02 varies from California Procedure 770 in that it conceals the condemned after the execution is already under way rather than at the beginning, drawing the blinds in the middle of the execution necessarily contradicts *Woodford's* requirement that witnesses have "uninterrupted viewing" from the moment Floyd enters the chamber to when he is declared dead. *Id.*

35. Finally, the State's Execution Manual does not explain what witnesses will be able to hear coming from the Execution Chamber during Floyd's execution, but it suggests that witnesses will only be able to hear Floyd's final words after the blinds have been drawn back. "[T]he public and the press have a constitutional right to hear the sounds of the entire execution process." *Ryan*, 983 F.3d at 1076. An open microphone in the Chamber from the moment Floyd enters to his death would be acceptable, but the Execution Manual makes no such assurance. Without this accommodation, the procedure for Floyd's execution violates the First Amendment pursuant to *Ryan*.

1 **Claim Two - The State's procedures violate the Plaintiff's First Amendment rights when it**
2 **gives the Director of the Nevada Department of Corrections unfettered authority to deny**
3 **requests from media representatives for an invitation to Floyd's execution**

4 36. Plaintiff incorporates by reference, as though fully set forth herein, each an every preceding
5 paragraph of this Complaint

6 37. To attend the Floyd's execution, news media and other media representatives must make a
7 request for an invitation to NDOC's Public Information Officer ("PIO") under EM 101.03(B). *See*.

8 38. However, EM 101.03(C) states "The Director [of NDOC], in his sole discretion, shall
9 determine whether to approve a member of the news media or other media representative to be a
10 witness to the execution."

11 39. According to the redacted State's Execution Manual, there is no limit on the Director's
12 discretion nor is the Director required to provide an explanation for a rejection. Under EM
13 101.03(C), this unfettered discretion necessarily burdens the Plaintiff's First Amendment right to
14 observe Floyd's execution.

15 40. Giving the Director complete control over what, if any, media representatives observe the
16 execution undermines the basic reason the First Amendment grants access to the proceedings in
17 the first place. As explained in *Ryan*, "the public has a right to *independent* eyewitness accounts
18 of the entire execution process. . . [r]eports of executions by the same prison officials who carry
19 them out are not adequate substitutes." *Id.* at 1077 (emphasis added). The current procedure
20 granting the Director unlimited discretion over what witnesses may attend the execution subverts
21 this fundamental principle and necessarily violates the First Amendment.

22 **Claim Three - The State's procedures violate the Plaintiff's First Amendment rights by**
23 **failing to providing an alternative way to observe Floyd's execution to press outlets that have**
24 **been denied an invitation to the execution such as broadcasting the execution on closed**
25 **circuit television**

26 41. Plaintiff incorporates by reference, as though fully set forth herein, each an every preceding
paragraph of this Complaint.

42. Under EM 101.03(C)(1), which is based on NRS 176.355(4), "[a] person who has not been
invited by the Director may not witness the execution."

1 43. Neither EM 101.03(C)(1) nor NRS 176.355(4) explicitly provides a “a valid, rational
2 connection between” its blanket ban on any person not invited by the Director from witnessing the
3 execution and a “legitimate governmental interest.”

4 44. While a legitimate government interest may exist to limit the number of witnesses
5 physically present in the viewing chambers, to bar witnesses otherwise entitled to view the
6 execution from observing through alternative means such as closed-circuit television serves no
7 legitimate purpose.

8 45. This alternative is not speculative. The federal government previously offered such an
9 accommodation when it executed Timothy McVeigh, providing secure, off-site video feeds of
10 McVeigh’s execution when requested by witnesses that satisfied certain criteria. *Ent. Network,*
11 *Inc. v. Lappin*, 134 F. Supp. 2d 1002, 1008 (S.D. Ind. 2001).

12 46. McVeigh was executed over two decades ago. With 20 more years of advances in internet
13 and video technology, offering the opportunity to observe and hear the execution has become an
14 even more viable option. *See* David Lat & Zachary Shemtob, *The Execution Should Be Televised:*
15 *An Amendment Making Executions Public*, 78 Tenn. L. Rev. 859, 864 (2011) (“The technological
16 advances of the digital age make it easier than ever to make executions public while reducing
17 logistical difficulties or the prospect of public disorder.”).

18 47. The State’s failure to provide similar accommodations to otherwise eligible media
19 representatives who are denied an invitation violates the First Amendment.

20 **Claim Four - The States’ use of the paralytic agent cistracurium to create a “chemical**
21 **curtain” violates the Plaintiff’s First Amendment right observe Floyd’s execution it prevents**
22 **the Plaintiff from observing and accurately report on the effects of Nevada’s experimental**
23 **drug cocktail.**

24 48. Plaintiff incorporates by reference, as though fully set forth herein, each an every preceding
25 paragraph of this Complaint.

26 49. As made clear in *Ryan*, the public’s First Amendment right to observe an execution exists
to ensure that the public has “full information regarding the administration of lethal-injection drugs
and the prisoner’s experience as he dies.” *See* 938 F.3d at 1076 (“Barring witnesses from hearing

1 sounds after the insertion of intravenous lines means that *the public will not have full information*
2 *regarding the administration of lethal-injection drugs and the prisoner's experience as he dies.*")
3 (emphasis added). In particular, the public's First Amendment right to observe executions is
4 closely linked to the public's right to observe what, if any, pain the prisoner is in.

5 50. The State's inclusion of a paralytic agent like cistracurium into the drug cocktail inevitably
6 burdens this right to full information regarding the prisoner's experience by creating a chemical
7 curtain that (1) obscures the symptoms that the prisoner is suffering from witnesses and (2)
8 prevents the prisoner from describing what they are experiencing.

9 51. Cistracurium does not reduce the prisoner's anxiety, reduce his pain, or cause his death. It
10 is included in the cocktail for the sole purpose of obscuring the prisoner's reaction to the drug to
11 create the illusion that death by lethal injection is painless.

12 52. Plaintiff incorporates by reference, as though fully set forth herein, each an every preceding
13 paragraph of this Complaint.

14 53. Considering that public has a right to information related to the prisoner's experience,
15 additions to the cocktail that do not reduce prisoner suffering or induce death but exist solely to
16 obscure what the prisoner is experiencing cannot serve a legitimate government interest.

17 54. The use of the paralytic agent cistracurium unconstitutionally burdens the public's right to
18 observe the execution in its entirety and have full information related to the prisoner's experience
19 during the execution.

20 **INJUNCTIVE RELIEF**

21 55. The Plaintiff incorporates by reference as though fully set forth herein, each preceding
22 paragraph of this Complaint.

23 56. If the State is permitted to carry out Zane Floyd's execution using the procedures described
24 in the State's Execution Manual the Plaintiff will suffer from actual and immediate irreparable
25 injury to its rights under the First Amendment of the United States Constitution.

26 57. No harm will be done to the State if the injunction is granted as it would maintain the status
quo and will not deprive the State its authority to carry out the execution of Zane Floyd. The impact

1 of granting the preliminary injunction will only provide a positive effect on the public as it will
2 ensure that the public's right to access government proceedings under First Amendment is fully
3 vindicated in that the public will have independent witnesses present to report on the
4 administration of the lethal injection and Floyd's experience during the execution.

5 58. The public will be best served by granting the requested Preliminary Injunction and
6 Temporary Restraining Order enjoining the State from executing Zane Floyd until the State's
7 procedures are amended and modified to comply with the First Amendment of the United States
8 Constitution.

9 **DECLARATORY RELIEF**

10 59. The Plaintiff incorporates by reference as though fully set forth herein, each preceding
11 paragraph of this Complaint.

12 60. An actual controversy has arisen and now exists between the Plaintiff and the Defendants
13 concerning the Plaintiff's rights under the First Amendment to:

- 14 (1) observe and hear Floyd's execution in its entirety;
15 (2) have reasonable limitations placed on the Director's authority to deny an invitation to a
16 media representative;
17 (3) have alternative means to observe the execution if denied an invitation to attend in person;
18 and
19 (4) not have a chemical added to Floyd's cocktail that will obscure Floyd's experience during
20 the execution.

21 61. The Plaintiff now seeks a judicial determination of whether it has an enforceable interest
22 in having the State amend their procedures so that:

- 23 (1) witnesses will be able to observe Floyd from the moment he enters the Execution Chamber
24 to his death;
25 (2) witnesses will be able to hear all sounds in the Execution Chamber from the moment Floyd
26 enters the Chamber until his death;

1 (3) limitations will be placed on the Director's ability to refuse an invitation to an otherwise
2 eligible witness, including standards that the Director must follow in making the decision, a
3 written explanation as to why an invitation was denied, and the opportunity to appeal a denial;
4 (4) a reasonable alternative to view the execution, closed circuit television, will be made
5 available to otherwise eligible witnesses who are denied an invitation; and
6 (5) neither cistracurium, any other paralytic agent, nor any chemical meant to obscure Floyd's
7 experience during the execution will be included in the lethal injection cocktail in order that
8 the Plaintiff may ascertain their First Amendment rights to observe and hear Floyd's execution
9 in its entirety unhindered by physical, bureaucratic, or chemical barriers.

10 62. A judicial determination of the rights and responsibilities of the parties in regards to the
11 procedures used during execution of Zane Floyd is necessary and appropriate at this time in that
12 the uncertainty over the issue of whether the Plaintiff have an enforceable interest in the procedures
13 is hindering final resolution of the claims as brought forth herein.

14 WHEREFORE, the Nevada Press Association demands judgment against Defendants to
15 include:

16 a) Injunctive relief preventing the State from executing Zane Floyd using the procedures
17 described in the State's Execution Manual and requiring the State amend the execution
18 procedures so that:

19 (1) witnesses will be able to observe Floyd from the moment he enters the Execution
20 Chamber to his death;

21 (2) witnesses will be able to hear all sounds in the Execution Chamber from the moment
22 Floyd enters the Chamber until his death;

23 (3) limitations will be placed on the Director's ability to refuse an invitation to an
24 otherwise eligible witness, including standards that the Director must follow in making
25 the decision, a written explanation as to why an invitation was denied, and the
26 opportunity to appeal a denial;

1 (4) a reasonable alternative to view the execution, closed circuit television, will be
2 made available to otherwise eligible witnesses who are denied an invitation; and

3 (5) cistracurium or any chemical meant to obscure Floyd's experience during the
4 execution will not be included in the lethal injection cocktail;

5 b) Temporary Restraining Order to achieve the above-requested relief;

6 c) Declaratory relief recognizing the Plaintiff's First Amendment right to:

7 (1) view Floyd's execution from the moment he enters the Execution Chamber until
8 his death;

9 (2) hear all sounds inside the Execution Chamber from the moment Floyd enters the
10 Execution Chamber until his death;

11 (3) have reasonable limitations placed upon the Director of NDOC's authority to refuse
12 an invitation to an otherwise eligible witness;

13 (4) have reasonable alternative means to observe the execution if denied an invitation
14 to the execution; and

15 (5) observe Floyd's experience during the execution without cistracurium or any other
16 paralytic agent obscuring or manipulating that observation.

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1 d) Costs and attorneys' fees; and

2 e) Such other and further relief as this Court deems appropriate.

3 DATED this 23rd day of July, 20 21

4 Pursuant to NRS 53.045, I declare under
5 penalty of perjury that the foregoing is true
6 and correct.

7
8 /s/Christopher Peterson

9 JENNIFER B. SHOMSHOR

Nevada Bar No. 13248

10 CHRISTOPHER M PETERSON

Nevada Bar No. 13932

11 NICOLE C. LEVY

Nevada Bar No. 15061

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16 Email: Levy@aclunv.org

17 *Attorneys for Plaintiffs*

LR 5-1 PROOF OF SERVICE

I HEREBY CERTIFY that on the 23rd day of July, 2021

I served: Complaint

EM/ECF;

Electronic mail; or

US Mail or Carrier Service

Upon: All listed defendants

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

Tamika Shauntee

NAME
an employee of the ACLU of Nevada

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