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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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| In Re: SEARCH WARRANT for<br><br>3888 Quadrel St.<br>Las Vegas, NV 89129<br><br>ROBERT LESLIE LAUER<br><br>Petitioner. | Case No.:<br><br>Dept. No.:<br><br>**EX PARTE PETITION FOR THE RETURN OF SEIZED PROPERTY AND UNSEALING OF THE AFFIDAVIT SUPPORTING WARRANT** |

COMES NOW Petitioner ROBERT LESLIE LAUER (hereinafter referred to as "Petitioner', 'Lauer', "Robert Lauer"), by and through his attorney, DAVID J. OTTO of the law firm of David Otto & Affiliates, PC, and hereby Petitions and moves this Court to return property seized from him in a search on his house conducted on January 31, 2015 as shown on the attached Return of Warrant and Warrant. The Warrant was issued by District Court Department 9 Lauer also moves and petitions this Court to unseal the affidavit supporting the Warrant. Said warrant was based on the false statements of Assemblyman Chris Edwards and/or Detective Schoen of Las Vegas, Metropolitan Police Intelligence Section (hereinafter referred to as "Metro") This Petition is based on the points and authorities shown below as follows:

**POINTS AND AUTHORITIES**

Robert Lauer hereby petitions and moves this court to direct that certain property of which the defendant is the owner, a schedule of which is annexed hereto as attached hereto as Exhibit One and which on Januray31, 2015 at 3888 Quadrel Street, Las Vegas, Nevada, 89129

was unlawfully seized and taken from Rob Lauer by a peace officer of the State of Nevada - Detective Bill Schoen P. Number 4798, who is an employee of the Las Vegas Metropolitan Police Department, working in the so-called Organized Crime Bureau - Criminal Intelligence Section be returned.

> NRS 179.335 - Motion for return of seized property and suppression of evidence. Nevada Rev Stat § 179.335 (2013)
>
> 1. A person aggrieved by an unlawful search and seizure may move the court having jurisdiction where the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:
>
> (a) The property was illegally seized without warrant;
>
> (b) The warrant is insufficient on its face;
>
> (c) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or
>
> (d) The warrant was illegally executed.
>
> The judge shall receive evidence on any issue of fact necessary to the decision of the motion.
>
> 2. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible evidence at any hearing or trial.
>
> 3. The motion to suppress evidence may also be made in the court where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

The petitioner further states that the property was seized against his will and without a valid search warrant. What is more, the Affidavit supporting the search warrant for Mr. Lauer's property was sealed by an Order of this Court based on the ex parte application of Detective William Schoen. There is no reason to seal this Affidavit as the sealing is only serving to protect the criminal activities of public officials.

FACTS and ARGUMENT

On Information and Belief:

1. There was not probable cause for believing the existence of the grounds on which the

warrant was issued.

2. This warrant, and its subsequent unlawful search and seizure has nothing to do with collecting evidence against Mr. Lauer and any such statement sworn to by Mr. Edwards Detective Schoen is based on lies and/or it is perjured, fraudulent and false. Any statement in the affidavit that the warrant sought was based on probable cause is a lie and is perjury if sworn to under oath.

3. There was and is no reason for the affidavit in support of warrant in this case to be sealed. It was well known among his Colleagues that Chris Edwards was aggressively 'hawking' his vote in exchange for money – unlawfully soliciting bribes. If the court wishes, undersigned counsel will supply the court with a publicly available, hour long recording of an internet radio show wherein three members of the Nevada State Assembly publicly state this.

4. The word putative is used herein to signify that this perjury and false statements cannot be shown absolutely absent the unsealing of the affidavit supporting the warrant. But no other reasonable or sensible conclusion can be drawn except that the warrant was issued based on false statements in the affidavit.

5. This warrant, and its subsequent unlawful search and seizure are a pretext, a sham and a fraud on this court.

6. The warrant in this case was sought from District Court Department 9, the Department presided over by Chief Judge Jennifer Togliati. In most instances search warrant applications are presented to the Justice Courts for issuance. Perhaps the political import of this matter is the reason Detective Schoen went to the Chief Judge for the issuance.

7. In late November of 2014 certain individuals, including Robert Lauer began discussing a recall election against Chris Edwards who is a freshman Assemblyman.

8. Chris Edwards has or had serious campaign debts which he wished or wishes to retire.

9. Chris Edwards has been actively soliciting campaign donations.

10. Nevada State Assemblyman John Moore and perhaps others has stated to police that Chris Edwards was actively offering to trade his vote for Speaker of the Assembly in return for money.

11. Brent Jones is also a Nevada State Assemblyman. Mr. Jones had stated to individuals that he would be supportive of any recall effort against Chris Edwards. Assemblyman Jones is mentioned in the warrant seeking recordings or documents to which he might have been a part.

12. Jerry Littman is the Chief of Staff for Nevada Assemblywoman Vicky Dooling. Mr. Littman and Ms. Dooling both support a recall effort against Chris Edwards. Mr. Littman is considering running as a candidate in the future recalls election against Mr. Edwards. Mr. Littman is named on the face of the search warrant and his house may have been searched as part of this specious and fraudulent so-called investigation as well.

13. Laurel Lee is the Chief of Staff for Assemblyman Brent Jones. Ms. Lee is a supporter of the future recall election against Chris Edwards. Ms. Lee is also named on the face of this invalid search warrant.

14. Chris Edwards is among a group of Republicans known as Moderates in the Nevada Assembly. There is a 'schism' in the Nevada Republican Party between the so-called Moderates and more conservative Republicans.

15. Governor Brian Sandoval is aggressively pursuing an agenda of higher taxes for Nevada residents that has raised serious concerns among conservative Republicans.

16. Nevada's divided Assembly Republican caucus has prompted recall efforts against moderates, and activist Chuck Muth has formed a Political Action Committee to go after Speaker-designate John Hambrick.

17. A recall cannot be commenced against an Assembly member until 10 days after lawmakers are sworn into office on the first day of the 2015 session which was February 2, 2015.

18. Chuck Muth has stated that he is serious about a recall effort against Hambrick. Muth has also assisted with the efforts to begin a recall against Chris Edwards.

19. There is, or at the time of filing this petition, was, a split among the 25 members of the new Assembly GOP. Chris Edwards and Speaker Hambrick is one of 13 GOP moderates who control the caucus leadership. This position is a swing vote – 'the 13th Man'. Without this swing vote in his favor, Governor Brian Sandoval will not be able to pass his sweeping and aggressive 1.3 Billion Dollar tax hike.

20. Governor Sandoval and his operatives will stop at nothing to see this tax hike enacted into law. The court is reminded of the 2003 legislative session when Brian Sandoval acting as Nevada Attorney General took the unprecedented step of suing the State Legislature on behalf of then Governor Kenny Guinn in order to accomplish an 800 million dollar tax hike which was said to be going to fund education in this state.

21. Then Supreme Court Justice Deborah Agosti sided with the tax hike and made rulings in favor of Governor Guinn. Deborah Agosti was not re-elected.

22. If either Speaker Hambrick or Chris Edwards are successfully recalled the leadership of the Assembly would then be controlled by the more conservative faction of the Republican majority in the Assembly who oppose any such tax hikes.

23. Governor Brian Sandoval gave money to only two individuals in the last election cycle in 2014. The Governor gave $5,000.00 to Assemblyman Chris Edwards and to Assemblyman Derek Armstong who heads the Assembly's Tax Committee.

24. It is well known that Las Vegas Metro Police have aggressively sought tax hikes in Clark County. There are Bills in the Assembly, seeking budget increases some of which would provide funds to Metro.

25. Las Vegas Metro's so-called Intelligence Section is well known among Metro Police Officers and some lawyers and others as the Sheriff's personal 'hit squad'.

26. The Nevada Attorney General's Public Integrity Unit would usually investigate and prosecute crimes such as those discussed in the warrant subject here. The AG's Public Integrity Unit investigates and prosecutes crimes committed by state employees and officials in the course of their duties.

27. Instead of using the Attorney General to investigate and prosecute in this case, in order to facilitate both the Governor's and the Sheriff's mutual interest in higher taxes the so-

called Intelligence Unit of Las Vegas Metro to investigate these crimes.

28. The pretext and the warrant in this investigation has caused a violation of Mr. Lauer's First Amendment Right to free speech and to engage in political discourse with his legislators and others.

29. The pretext and the warrant in this investigation has caused a violation of Mr. Lauer's Fourth Amendment rights because such warrant was issued by this court based on a false and fraudulent affidavit promulgated and presented by Detective Schoen and Chris Edwards. Such search and seizure of Mr. Lauer and his property were done without probable cause.

30. The pretext and the warrant in this investigation has caused a violation of Mr. Lauer's Fifth Amendment rights in that his property was taken unlawfully without due process of law.

31. Since this unlawful search and seizure Mr. Lauer has been unable to effectively communicate with others in the Republican interested in recalling Mr. Edwards and other Assemblymen. The seizure of his cell phone, computer, hard drives, and various papers has stopped Mr. Lauer from advocating for his position on important matters of public policy.

32. Police officials gratuitously and unnecessarily destroyed $2,000 worth of carpet and drywall in Mr. Lauer's home while supposedly executing the search warrant. This is nothing but further intimidation against Mr. Lauer and was done for no other purpose but intimidation of him and to dissuade and prevent him from public participation and being part of a recall effort against Chris Edwards.

33. The acts by police and politicians in 'arranging' to have Mr. Lauer's home searched and his property seized is nothing more than a political vendetta and intimidation in an effort to silence Mr. Lauer and his compatriots. It is a violation of law, of the constitution and of the misplaced trust which the people of Nevada have, to a certain degree, in police.

34. On Thursday February 5, 2015 Metro detectives, accompanied by Virginia state troopers, raided the home and office of Republican activist Tony Dane in Front Royal, Virginia.

35. This raid was based on a specious and demonstrably false claim by Nevada Assemblyman Chris Edwards. This is not Chris Edwards simply crying wolf regarding non-existent extortion against him. This is Chris Edwards, Governor Brian Sandoval and Sheriff Joe Lombardo stifling any criticism of Sandoval's proposed 1.5 billion dollar tax hike. This is not about extortion, it's about political power and the silencing of political opponents.

36. Mr. Dane financed political activity against Chris Edwards based on the fact that Edwards would not take a public position on the tax increase. He has recently produced mailers and robo-calls into Mr. Edwards district.

37. The affidavit in the Lauer Case has been sealed. This is the secret police at work to stifle dissent and political activity, nothing more.

38. Assemblywoman Victory Seaman and others have stated that they believe that Edwards was wearing a recording device for several weeks During December, 2014 and January, 2015. Edwards was secretly recording conversations with activists and legislative colleagues.

39. Metro Detective William Schoen has told Robert Lauer that it could take six months or more for Metro to return the property unlawfully seized from him.

40. In six months' time the legislative session will have ended and the efforts to silence political dissent will have been successful, at least for this political session.

41. Before January 2nd, Chris Edwards was soliciting money to pay off his campaign debt. Edwards told potential donors and others he needed to do this and soon. After January 2, 2015 Edwards was prohibited by law from accepting any further donations.

42. Assemblyman John Moore has stated to police and to others that Edwards was seeking to exchange his vote for money, the sum of $10,000.00 was mentioned, Edwards also mentioned the sum of $10,000.00 in conversations with Rob Lauer.

43. Exchanging money for a legislative vote is a crime. It's bribery.

44. Once he could no longer take donations, Edwards took great pains, (some would say he was in a panic) to stop the recall effort that beginning in his district. Governor Brian Sandoval had given Chris Edward's campaign $5,000 in late December.

45. After January 2, 2015 Chris Edwards began asking people how he could stop the recall effort. Conversations and supposed deal making with activists and recall organizers in Mesquite continued into the last week of January and the first week of February 2015.

46. Chris Edwards reportedly solicited or appeared to solicit bribes for his vote on the Republican caucus leadership. There was no extortion, citizen activists were applying political pressure using the threat of a possible recall campaign to get Edwards to oppose Speaker Hambrick and to clearly state his position on the governor's proposed $1.3 billion tax hike.

47. The citizens, including Robert Lauer, and others who support organizing a recall election against want Edwards to vote against the tax hike. Edwards, is hiding his position on the tax hike.

48. What Chris Edwards, Governor Sandoval and others have done, using Metro's so-called intelligence section is to criminalize political activity. Special interests groups, corporate lobbyists, unions, routinely issue political threats.

49. There is nothing illegal about issuing political threats. There is no extortion in it. Yet Metro, acting solely on the basis of false information supplied to it by Chris Edwards, and/or based on Detective Schoen's putatively perjurious affidavit, and without any

investigation have squelched political dissent against Chris Edwards, an important swing vote in the Assembly by searching the homes of political activists. This taking of private property, in retribution for political activity smacks of totalitarian government.

50. On January 22, 2015, Rob Lauer form a Political Action Committee called Nevada Business and Education Coalition, to oppose the aggressive tax increases sought by Governor Sandoval and his allies in the legislature.

51. Mr. Dane and Mr. Lauer are the only persons to have their homes searched and their property seized by Metro Police at the behest of the Sheriff and the Governor. They are also formed PACs to oppose the Governor's Tax and Spend agenda.

52. On January 31, 2015 Robert Lauer's home was searched by Metro using a heavily armed SWAT Team in order to put fear into Mr. Lauer. Such use of a SWAT Team is extremely dangerous and reckless. It is an excellent tactic to scare the innocent.

**LAW and ARGUMENT**

This motion is equal in most respects to a Motion to Suppress Evidence even though no criminal case has yet been filed. Since there is no evidence of any wrongdoing by Mr. Lauer, it is believed that no criminal process – beyond this fatally defective warrant will be sought. The political aims of Chris Edwards, Governor Sandoval and the Sheriff of Clark County have already been accomplished by having Metro's SWAT Team attack, occupy, search, destroy and confiscate Lauer's property without a lawful warrant based on probable cause. They have effectively stifled their political opponents.

The search of Mr. Lauer's home and the seizing of his property is nothing more than a political fear campaign carried out by the terror of police, with SWAT teams attacking citizens' homes for the purpose of terrorizing them out of any further political activities.

**The problem of police perjury – "Probable Cause in a World of Pure Imagination"**

The "central value of the Fourth Amendment" is the protection of the sanctity of the home from unjustifiable intrusion by law enforcement officials. Georgia v. Randolph, 547 U.S. 103, 115 (2006); see also Kyllo v. United States, 533 U.S. 27, 40 (2001); Wilson v. Layne, 526 U.S. 603, 610 (1999); United States v. U.S. Dist. Court for the E.D. of Mich., 407 U.S. 297, 313 (1972).

Before law enforcement officers may 'legally' enter a home to conduct a search or make an arrest they must, absent consent or exigent circumstances, first procure a valid warrant from a neutral and detached magistrate. The rubric of the protections and benefits of the warrant requirement is based wholly on the necessary, and in the modern day perhaps naïve, assumption that in each case the law enforcement officer's warrant application affidavit faithfully provides to the magistrate a truthful telling of the underlying facts and circumstances necessary for an independent judicial determination. **The Fourth Amendment gives no protection at all if it can be evaded by a "policeman concocting a story that he feeds a magistrate**." See, e.g,

Illinois v. Rodriguez, 497 U.S. 177, 181 (1990), United States v. Matlock, 415 U.S. 164, 170-71 (1974) (stating warrantless search valid when consent given by one who controls premises even if not defendant); Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973) (holding search authorized by consent as valid), Arizona v. Hicks, 480 U.S. 321, 325 (1987); Mincey v. Arizona, 437 U.S. 385, 392 (1978), Groh v. Ramirez, 540 U.S. 551, 560 (2004); Steagald v. United States, 451 U S. 204, 214 (1981); Payton v. New York, 445 U.S. 573, 588-89 (1980). The Fourth Amendment requires a valid warrant, G.M. Leasing Corp. v United States, 429 U.S. 338, 358-59 (1977), Katz v. United States, 389 U.S. 347, 353 (1967); United States v. Jeffers, 342 U.S. 48, 51¬52 (1951) (searching hotel room); Baldwin v. Placer County, 418 F.3d 966, 970 (9th Cir. 2005) (Policeman concocting a perjured affidavit).

Any assumption that police perjury in warrant affidavits is rare and effectively deterred by the warrant application process is counter-intuitive and contradicted by any and all available evidence.

**Lies and deception are an acceptable, and encouraged feature of much routine law enforcement activity**, in that police routinely lie to the public and see it as part of their jobs. Police are trained to lie. Police are encouraged to lie to the public in order to provoke responses from the people they lie to. It should come as no surprise that scholars have found that law enforcement officers frequently lie to their own superiors in police reports and even perjure themselves in testimony at criminal trials. See generally GARY T. MARX, UNDERCOVER: POLICE SURVEILLANCE IN AMERICA (1988); Katherine Goldwasser, After ABSCAM: An examination of Congressional Proposals to Limit Targeting Discretion in Federal Undercover Investigations, 36 EMORY L.J. 75 (1987); Richard A. Leo & Welsh S. White, Adapting to Miranda: Modern Interrogators' Strategies for Dealing with the Obstacles Posed by Miranda, 84 MINN. L. REV. 397 (1999) (explaining undercover investigations and sting operations rely on falsehoods and deception for success); see also Deborah Young, Unnecessary Evil, Police Lying in Interrogation, 28 CONN. L. REV. 425, 427-29 (1996) (describing how lies and deceit have replaced physical coercion as proper interrogation practice) Stanley Z. Fisher, "Just the Facts, Ma'am". Lying and the Omission of Exculpatory Evidence in Police Reports, 28 NEW ENG. L. REV. 1, 13-14 (1993); see also Samuel R. Gross & Katherine Y. Barnes. Road Work: Racial Profiling and Drug Interdiction on the Highway, 101 MICH. L. REV. 651, 678-79 (2002) Michael Goldsmith, Reforming the Civil Rights Act of 1871: The Problem of Police Perjury, 80 NOTRE DAME L. REV. 1259, 1266 (2005) (noting widespread anecdotal evidence of police perjury during suppression hearings).

The consensus among scholars is that **rampant and pervasive police perjury** occurs at suppression hearings. Police are not dissuaded by the laws against perjury because they feel that they are above the law. Indeed, substantial evidence demonstrates that police perjury is so common that scholars describe it as a "subcultural norm rather than an individual aberration." No honest jurist would pretend that there is no reason to believe that police perjury does not also present a serious problem in warrant affidavits. In fact, many of the same empirical investigations upon which scholars base their conclusion that police perjury constitutes a serious

problem in these other contexts also document widespread perjury by law enforcement officers in warrant affidavits. Please see ALAN M. DERSHOWITZ, REASONABLE DOUBTS 49-64 (1996); Gabriel J. Chin & Scott C. Wells, The "Blue Wall of Silence" as Evidence of Bias and Motive to Lie. A New Approach to Police Perjury, 59 U. PITT. L. REV. 233, 246 (1998); Morgan Cloud, Judges, "Testilying," and the Constitution, 69 S. CAL. L. REV. 1341, 1355-56 (1996) [hereinafter Cloud, Testilying]; David N. Dorfman, Proving the Lie: Litigating Police Credibility, 26 AM. J. CRIM. L. 455 (1999); Donald A. Dripps, Police, Plus Perjury, Equals Polygraphy, 86 J. CRIM. L. & CRIMINOLOGY 693 (1996); Andrew J. McClurg, Good Cop, Bad Cop: Using Cognitive Dissonance Theory to Reduce Police Lying, 32 U.C. DAVIS L. REv. 389, 398 (1999); Myron W. Orfield, Jr, Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts, 63 U. COLO. L. REV. 75, 97 (1992); Christopher Slobogm, Deceit, Pretext, and Trickery. Investigative Lies by the Police, 76 OR. L. REV. 775 (1997). See generally JONATHAN RUBINSTEIN, CITY POLICE (1973); H. RICHARD UVILLER, TEMPERED ZEAL (1988); Jerome H. Skolnick, Deception by Police, 1 CRIM. JUST. ETHICS, Summer/Fall 1982, at 40, 42-43, available at http://www.lib.jjay.cuny.edu/cje/html/sample 1 .html; see also Chin & Wells, supra at 246; Carl B. Klockars, Blue Lies and Police Placebos. The Moralities of Police Lying, 27 AM. BEHAV. SCI. 529, 543 (1984); See generally U.S. DEPT. OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, THE FBI LABORATORY: AN INVESTIGATION INTO LABORATORY PRACTICES AND ALLEGED MISCONDUCT IN EXPLOSIVES-RELATED AND OTHER CASES (1997), available at http://www.usdolgoy/oig/specia1/9704a/index.htm; NEW YORK (N.Y.), CITY COMMISSION ON HUMAN RIGHTS, BREAKING THE US VS. THEM BARRIER: A REPORT ON POLICE/COMMUNITY RELATIONS (1993); THE CITY OF NEW YORK, COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPT., COMMISSION REPORT: ANATOMY OF FAILURE: A PATH FOR SUCCESS (1994), available at http://www.parc.info/client_files/Special%20Reports/4%20-%20Mollen%20Commission%20-%2ONYPD.pdf. REPORT OF THE INDEPENDENT COMMISSION ON THE L.A. POLICE DEP'T (1991), available at http://www parc. info/client_files/Special%20Reports/1%20-%20Chistopher%20Commision.pdf; COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE CITY'S ANTI-CORRUPTION PROCEDURES, THE KNAPP COMMISSION REPORT ON POLICE CORRUPTION (1972); UNITED STATES, PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY: A REPORT (1967); ESTES KEFAUVER, CRIME IN AMERICA (1968); U.S. WICKERSHAM COMMISSION REPORTS, U.S NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT: REPORT ON POLICE VOL. 14 (1931); REPORT AND PROCEEDINGS OF THE SENATE COMMITTEE APPOINTED TO INVESTIGATE THE POLICE DEPARTMENT OF THE CITY OF NEW YORK VOL. V (1895). In addition, widespread perjury by police officers in Atlanta, Detroit, DuPage County,

Illinois, Los Angeles, Minneapolis, New Orleans, New York City, upstate New York, and Philadelphia has been reported. See Chin & Wells, supra at 234-35 nn.4 & II (sources omitted).

The ease with which one can find examples of falsified warrant applications is not only sickening; it also provides powerful evidence of the serious problem of police perjury in our society. In 2002, the United States Foreign Intelligence Surveillance Court (FISC) reported that in September of 2000, the federal government admitted to "misstatements and omissions of material acts" in "75 FISA applications related to major terrorist attacks directed against the United States." As a result, the court refused to accept inaccurate affidavits from FBI agents and even prohibited one FBI agent from appearing before the court as a FISA affiant. Six months later, in March 2001, the federal government admitted to "similar misstatements in another series of FISA applications." More disturbing is the Justice Department's apparent lack of interest in the punishment of the FBI agents or the prevention of similar future occurrences. The FISC noted that:

> These incidents have been under investigation by the FBI's and the Justice Department's Offices of Professional Responsibility for more than one year to determine how the violations occurred in the field offices, and how the misinformation found its way into the FISA applications and remained uncorrected for more than one year despite procedures to verify the accuracy of FISA pleadings. As of this date, no report has been published, and how these misinterpretations occurred remains unexplained to the Court.

In re All Matters Submitted to the Foreign Intelligence Surveillance Ct., 218 F. Supp. 2d 611, 620 (FISA Ct. 2002), abrogated by In Re Sealed Case, 310 F.3d 717 (FISA Ct. Rev. 2002); Id at 621; Id. Id. FBI agents have also filed affidavits, which included intentionally or recklessly false statements of fact, in support of "material witness" arrests and search warrants related to the war on terror. See Ricardo J. Bascuas, The Unconstitutionality of "Hold Until Cleared": Reexamining Material Witness Detentions in the Wake of the September 11th Dragnet, 58 VAND. L. REV. 677, 678-80, 720-25 (2005)

In 2001, the FBI undertook "Operation Candyman." This was one of the largest investigations into the internet distribution of child pornography ever undertaken by law enforcement. The operation's efforts were jeopardized upon discovery that the sworn affidavits of an FBI Special Agent, filed in support of numerous applications to search the suspects' residences, contained knowingly false statements of purported fact. See generally Francis A. Cavanagh, Comment, Probable Cause in a World of Pure Imagination. See: Why the Candvman Warrants Should Not Have Been Golden Tickets to Search, 80 ST. JOHN'S L. REV. 1091 (2006), see also United States v. Martin, 426 F.3d 68, 70-71 (2d Cir. 2005). The Second Circuit affirmed the denial of the defendant's motion to suppress on the ground that the remaining content of the affidavits,

after the court redacted the perjured statement, sufficiently established probable cause for the search. Martin, 426 F.3d at 73. Judge Pooler's dissenting opinion questioned the dubious character of the majority's reasoning. Id. at 79 (Pooler, J., dissenting).

In another sickening example of law enforcement subverting the rule of law through lies - subsequent evidence revealed that the warrant authorizing the search of the Branch Davidian compound near Waco, Texas, which resulted in a law enforcement disaster and the tragic and unnecessary deaths of several innocent children, was based on an affidavit containing many falsehoods. See David B. Kopel & Paul H. Blackman, The Unwarranted Warrant The Waco Search Warrant and the Decline of the Fourth Amendment, 18 HAMLINE .1 PUB. L. & POL' Y I, 8-9 (1996).

"Search and arrest warrants and the resulting criminal prosecution for federal gun crimes are routinely based on the purported accuracy of the information contained in the National Firearms Registration and Transfer Record, maintained by the Bureau of Alcohol, Tobacco, and Firearms. The head of the National Firearms Act branch of the Bureau has stated,

> "When we testify in court, we testify that the database is one hundred percent accurate. That's what we testify to, and we will always testify to that. As you probably well know, that may not be one hundred percent true."

Kopel & Blackman, supra, at 8-9. In truth, the accuracy of this database has been as low as fifty percent. Id. at 9. Law enforcement officers also routinely present the results of DNA testing, fingerprint analysis, and other laboratory procedures as entirely accurate in affidavits for search and arrest warrants despite their actual knowledge that the reliability and integrity of the crime laboratories are open to serious doubt. See. e.g, J. Herbie Difonzo, The Crimes of Crime Labs, 34 HOFSTRA L. REV. 1, 8-9 (2005); Laurel P. Gorman, Comment, The Brady Solution A Due Process Remedy for Those Convicted with Evidence from Faulty Crime Labs, 39 U.S.F. L. REV. 725, 728-29 (2005); Stephen W. Gard, Bearing False Witness: Perjured Affidavits and the Fourth Amendment, 41 Suffolk University Law Review 445 (2008).

Numerous and disgusting examples of law enforcement officers falsifying statements of their own observations in warrant affidavits also exist. See generally, e g , United States v Martin, 426 F.3d 68 (2d Cir. 2005); United States v Mick, 263 F.3d 553 (6th Cir. 2001); Sythe v City of Eureka, 78 F. Supp. 2d 1050 (N.D. Cal. 1999). One of the most notorious examples of this type of police perjury occurred in the O.J. Simpson murder case, in which the judge found that the affidavit for the search of the Simpson residence contained numerous falsehoods made in reckless disregard of the truth. See Cloud, Testilying, supra at 1357-61 & n.90; Christopher Slobogin, Testilying. Police Perjury and What To Do About It, 67 U. COLO. L. REV. 1037, 1037-39 (1996).

**The Problem of Lying Informants and Police' Reckless Disregard of the Truth of Those Informant's Lies**

The well-documented common practice of police officers including fictitious statements from nonexistent confidential informants in warrant affidavits is another disgusting example of the filthy tactics employed by police. Even when a confidential informant actually exists, law enforcement officers frequently falsify statements in the warrant affidavit regarding the informant's reliability or credibility. This is what we have here. See, e.g., United States v. Brown, 298 F.3d 392, 396 (5th Cir. 2002); United States v. Allen, 297 F.3d 790, 795 (8th Cir. 2002) (detailing allegations of omitting criminal history and drug addiction of informant); United States v. Vigeant, 176 F.3d 565, 573 (1st Cir. 1999) (holding as material error omission of informant's criminal history from affidavit); United States v. Meling, 47 F.3d 1546, 1553 (9th Cir. 1995) (reasoning FBI misled court by omitting informant's criminal history). In Brown, for example, the FBI agent swore in the affidavit that "[s]ince his cooperation with the FBI [the informant] has never been known to provide false or misleading information." Brown, 298 F.3d at 396. In fact, the FBI agent knew that the informant was "thoroughly dishonest." Id. at 409. Moreover, the Assistant U.S. Attorney who filed the affidavit testified in a contemporaneous legal proceeding that "**the things that we're not able to independently corroborate, we believe are lies.**" Id. at 397; Also See generally Commonwealth v. Lewin, 542 N.E.2d 275 (Mass. 1989) (detailing perjurious statements of the Boston Drug Control Unit); Larry Wentworth, Comment, The XYZ Affair of Massachusetts Prosecutorial Misconduct. The Curious Case of Commonwealth v. Lewin—Was Dismissal Warranted?, 25 NEW ENG. L. REV. 1019 (1991). The practice of law enforcement officers using imaginary informants is not limited to Boston, Massachusetts. See Albright v. Oliver, 510 U.S. 266, 293 n.3 (1994) (Stevens, J., dissenting) (noting problem in Illinois); Riley v. City of Montgomery, 104 F.3d 1247, 1250 (11th Cir. 1997) (detailing state investigation revealing Montgomery Police knowingly relying on false information from informants); McClurg, supra note 19, at 401-02 & n.71 (discussing prevalence of problem in New York).

Detective Schoen made no attempts to corroborate the stories – the lies of Assemblyman Chris Edwards, instead, based on his marching orders from the Sheriff to destroy Chris Edward's vocal critics Schoen sent a SWAT Team to terrorize Lauer and others without anything but political motivations supporting such attacks and terrorism by these SWAT Teams. These tactics do not simply resemble the tactics used in other totalitarian governments, they are precisely those tactics and are indistinguishable from the tactics of the Nazis, the Soviet Union and others in banana republics the world over.

In this case involving Robert Lauer, not only did Detective Schoen putatively lie in his affidavit, he relied on the lies of Assemblyman Chris Edwards to fabricate a story for the sole purpose of harassing and stopping the political activities of Robert Lauer and others including but not limited to conservative Republican members of the Nevada State Assembly who oppose Chris Edwards' and Governor Brian Sandoval's aggressive tax raising agenda.

**Secret Courts, Secret Government, Secret Affidavits based on lies.**

**It is then no surprise that Detective Schoen immediately sought to have the affidavit sealed from the view of the people whose lives he seeks to destroy with lies using the heavy handed tactics of dictators – that is: armed men at the door demanding entry.**

Police perjury in warrant affidavits is a rampant, common, disgusting and serious problem. Despite the naiveté or the willing cooperation of many or even most jurists, the warrant application process is entirely unsuited to the discovery of false statements in warrant affidavits. See supra: e.g., Morgan Cloud, The Dirty Little Secret, 43 EMORY L.J 1311, 1347 (1994); Carol S. Steiker, Second Thoughts About First Principles, 107 HARV. L. REV. 820, 853-54 (1994); William J. Stuntz, Warrants and Fourth Amendment Remedies, 77 VA. L. REV. 881, 915 (1991) [hereinafter Stuntz, Remedies]; See, e.g , Craig M. Bradley, The "Good Faith Exception" Cases- Reasonable Exercise in Futility, 60 IND. L.J. 287, 292 (1985); Steiker, supra at 854; Stuntz, Remedies, supra at 915. See Stuntz, Remedies, supra, at 915

This Court conducted the warrant application ex parte and may not have questioned the police officer about the content of the affidavit. In any event, this Court lacks the investigative resources to verify the truthfulness of the statements in the officer's affidavit.

Detective Schoen and/or other police officers created the warrant affidavit which simply relayed information learned from another officer, the Sheriff and/or from Assemblyman Chris Edwards who has every motive to lie in that he is scrambling for his political survival.

The warrant affidavit used to unlawfully search and seize computers, phones, records, documents and an ‘affidavit’ which might have outlined complaints to be presented to the Nevada Ethics Commission, from Robert Lauer consisted entirely of hearsay and lies from Chris Edwards which was likely bolstered by the putatively perjured testimony of Detective Schoen. In such cases, the supposed ability of the magistrate to judge the credibility of the affiant becomes an ineffective safeguard.

Even when a search is based on a warrant, the first opportunity the criminal process affords the defendant to challenge the factual basis for the search occurs at an after-the-fact suppression hearing, or as we have here, a Petition and Motion to return seized property and unseal the affidavit. Said affidavit being based on lies and putatively on perjury is invalid ab initio.

This motion – petition is analogous to a suppression hearing. At the time of a suppression hearing, the magistrate's prior issuance of a warrant generally creates "a presumption of validity with respect to the affidavit supporting the search warrant." A warrant-based search is generally less vulnerable to challenge than a warrantless search.

The warrant and its accompanying affidavit in this case are based on hearsay, lies and putatively perjured testimony within the affidavit. In this case, and in any case where a so-called victim and a police officer get together to lie in order to stop the political activities of an individual such as Robert Lauer, no such presumption of validity should attach. See, e.g., Illinois v. Gates, 462

U.S. 213, 241-42 (1983); Jones v. United States, 362 U.S. 257, 269 (1960); Draper v. United States, 358 U S. 307, 313-14 (1959).

The affidavit in support of this warrant must be unsealed in order for there to be a robust questioning of the statements and motives of both Detective Schoen who lied on the face of the affidavit and of Chris Edwards, who lied to Detective Schoen in order to attempt silence his critics, rivals and those who seek to unseat him by recall election.

The Founding Fathers crafted the Fourth Amendment in direct response to "the harsh experience of householders having their doors hammered open by magistrates and writ-bearing agents of the crown. William J. Cuddihy & B. Carmon Hardy, A Man's House Was Not His Castle. Origins of the Fourth Amendment to the United States Constitution, 37 WM. & MARY Q. 371, 372 (1980).

In Nevada today, the "agents of the Crown include Las Vegas Metro Police, especially the so-called "Intelligence Section," The Crown is Governor Brian Sandoval who finds the rule of law repugnant to his political agenda, Assemblyman Chris Edwards and other government employees.

Today, the warrant clause of the Fourth Amendment is the only safeguard that exists to prevent arbitrary and unjustified governmental intrusions into the sanctity of the home of any person not least Robert Lauer, who was doing his civic duty to effect the machinations of State Government.

The efficacy of Fourth Amendment protection, in turn, depends wholly upon the truthfulness of the underlying affidavit sworn to by the police officer. Perjured affidavits filed by law enforcement officers and/or based upon the lies of a politician looking to protect what power he has, strike at the very heart of the Fourth Amendment. Police perjury and/or affidavits based on the self-serving lies of a 'stricken' politician such as Assemblyman Chris Edwards strikes a death blow at the lifeblood of the protections against unreasonable searches and seizures that the warrant clause of the Fourth Amendment should provide. See Gates, 462 U.S. at 238 (abandoning two-pronged Aguilar-Spinelli test in favor of totality of circumstances test for determining probable cause in confidential informant situations).

The Fourth Amendment requires that, in order to withstand constitutional scrutiny, a warrant must: (1) be issued by a neutral and detached magistrate; (2) set forth under oath or affirmation facts sufficient to establish probable cause; and (3) particularly describe the place to be searched and the persons or things to be seized. See, e.g., Groh v. Ramirez, 540 U.S. 551, 556 (2004) (detailing what warrant clause necessitates). In its entirety, the Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or

affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONSTITUTION Amendment IV

Warrant affidavits which are based on the lies of a police informant or the perjury of a police detective, or the reckless reliance on the lies of an informant as demonstrated here by Detective Schoen, defeat each of the three requirements imposed by the warrant clause of the Fourth Amendment.

The Fourth Amendment particularity requirement relates to and buttresses the probable cause requirement because it is intended to prevent "the issue of warrants on loose, vague or doubtful bases of fact[,]" such as we have here in the Warrant and its affidavit used unjustly and unlawfully against Robert Lauer. Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931).

This petition and motion and its legal discussion, which if necessary will be used in future appellate review of this case are of the effect of perjurious warrant affidavits on the probable cause requirement. Such discussion is equally applicable to the particularity requirement of the Fourth Amendment. Another purpose of the particularity requirement is to limit the scope and intensity of the execution of the warrant. See, e.g., Lo-Ji Sales, Inc. v. New York, 442 U.S. 319. 325 (1979); Andresen v. Maryland, 427 U.S. 463, 480 (1976); Marron v. United States, 275 U.S. 192, 196 (1927). Perjured warrant affidavits or putatively perjured warrant affidavits such as we have in this case involving Robert Lauer and others, similarly defeat the purpose of the particularity requirement.

Probable cause for a search warrant exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found" in the particular place for which the warrant is sought.

In each case, an assessment of probable cause requires the consideration of two necessary elements: (1) the totality of the facts and circumstances of the particular case; and (2) whether these facts and circumstances are sufficient to constitute probable cause. See Gates, 462 U.S. at 238 (abandoning two-pronged Aguilar-Spinelli test in favor of totality of circumstances test for determining probable cause in confidential informant situations).

The U.S. Supreme Court has stated many times that the foundation of the probable cause analysis is "the known facts and circumstances," this statement is somewhat misleading and creates a misperception of objectivity. When a police officer makes assertions in a warrant affidavit they are, as in this case, usually based upon "hearsay and upon information received from informants, such as Chris Edwards who has motive to lie, as well as upon information within the officer's own knowledge that sometimes must be gathered hastily." Franks v. Delaware, 438 U.S. 154, 165 (1978). It is clearly established law that probable cause may be

based on hearsay. See, e g , Gates, 462 U.S. at 238; Jones v. United States, 362 U.S. 257, 271 (1960); Draper, 358 U.S. at 312-13.

Why was there such haste in this case and why such secrecy regarding the sealing of Detective Schoen's affidavit? Obviously it was used only to silence Assemblyman Chris Edwards' and Governor Brian Sandoval's political rivals, critics and those who desire to stop the aggressive tax raising agenda of Governor Sandoval and his cronies in the Assembly.

The purpose of the probable cause requirement is to ensure that residential searches and seizures are constitutionally permissible only when based on individualized suspicion of wrongdoing created by the actions of the home's occupant. Here, the only allegations of wrongdoing against Mr. Lauer come from Chris Edwards a politician in trouble who has every motive to lie, a politician who sought money in exchange for his legislative vote - bribes. Even the face of the Warrant states that Detective Schoen is seeking information based on some vague idea of an extortionate plot against Assemblyman Chris Edwards – the warrant therefore is defective on its face and should be quashed. See, e.g., Thomas K. Clancy, The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures, 25 U. MEM. L. REV. 483, 533-37 (1995); David A. Harris, Using Race Or Ethnicity as a Factor in Assessing the Reasonableness of Fourth Amendment Activity: Description, Yes; Prediction, No, 73 Miss L.J. 423, 438-42 (2003); Scott E. Sundby, "Everyman's Fourth Amendment: Privacy or Mutual Trust Between Government and Citizen?, 94 CoLum. L. REV. 1751, 1766-68 (1994).

Robert Lauer is a minor political activist without any real power. He is a veteran who advocates on behalf of matters which are important to him and to veterans. Robert Lauer had absolutely nothing to gain by committing the crime of extortion. In fact Robert Lauer had already gone public to a blogger named Chuck Muth with reports of Chris Edwards' attempts at bribery – selling his vote in the legislature. Lauer had nothing to gain. Lauer had no leverage. Lauer never used any extortionate language at all. Metro sought this search warrant only to harass and frighten Mr. Lauer and anyone else who wanted to criticize Governor Sandoval's political ally Chris Edwards.

We will not – in this case - engage in a discourse which would implausibly tend to show that Chris Edwards and Detective Schoen acted without purpose. Detective Schoen and Chris Edward's intent behind this intentionally or recklessly false statements in the warrant affidavit in this case is and was to manufacture probable cause or particularity where none actually exists or existed. This was done for the sole purpose of harassing Robert Lauer and others and to prevent them from exercising their First Amendment Right to speak on matters of public concern to supposed public servants. These falsehoods and the use of the Metro Intelligence Section were sanctioned by Governor Sandoval and by Sheriff Joe Lombardo in order to further their own political agendas.

Shifting the focus from the reporting of the facts and circumstances in sworn affidavits filed by law enforcement officers to determining whether those facts and circumstances sufficiently

establish probable cause, makes it quite obvious that perjured warrant affidavits strike at the very heart of the Fourth Amendment warrant clause and its protections . “The central purpose of the warrant clause is to prevent unjustifiable governmental intrusions into the sanctity of the home, not merely to deter or punish such intrusions after the fact." The distinctive means chosen by the Founding Fathers to achieve this purpose is the requirement of ex ante review of the necessity and scope of the proposed police action by an independent decision-maker. See, e.g., United States v. Grubbs, 547 U.S. 90, 99 (2006) ("The Constitution protects property owners . . . by interposing, ex ante, the 'deliberate, impartial judgment of a judicial officer . . . between the citizen and the police.'" (quoting Wong Sun v. United States, 371 U.S. 471, 481-82 (1963))); Katz v. United States, 389 U.S. 347, 359 (1967) ("[T]he procedure of antecedent justification . . is central to the Fourth Amendment"); Trupiano v. United States, 334 U S. 699, 709-10 (1948). The Supreme Court has noted the deep historical roots of the warrant clause's requirement of ex ante authorization by a magistrate. Quoting Lord Mansfield, the Court wrote, "It is not fit that the receiving or judging of the information should be left to the discretion of the officer. The magistrate ought to judge; and should give certain directions to the officer." United States v. U.S. Dist. Court for the E.D. of Mich., 407 U.S. 297, 316 (1972) (quoting Leach v. Three of the King's Messengers, 19 How. St. Tr. 1001, 1027 (1765)).

The United States Supreme Court has uniformly held that a search or seizure inside a home, even if based on probable cause and executed with particularity, violates the Fourth Amendment absent a valid warrant issued ex ante by a neutral and detached magistrate. See, e.g., Groh v. Ramirez, 540 U.S. 551, 558-63 (2004); Payton v. New York, 445 U.S. 573, 587-88 (1980); Agnello v. United States, 269 U.S. 20, 33-34 (1925).

The warrant affidavit in this case is currently sealed. We do not know why it was sealed. There is nothing on the face of the warrant to suggest that Robert Lauer is validly even suspected of committing a crime of any kind. Detective Schoen conducted no investigation other than swallowing the lies of Chris Edwards who is covering for his own criminal acts of soliciting bribes.

There is no individualized suspicion of wrongdoing by Robert Lauer. In fact, Detective Schoen has stated in writing that he has corroborated Robert Lauer’s statement about informing a political blogger named Muth about Chris Edward’s attempting to exchange his vote for money, also known as soliciting a bribe. The face of the warrant shows that the police are seeking an affidavit which they believe may have been written by Lauer reporting on Chris Edwards solicitations of bribes, to the Nevada Ethics Commission. Do we need any more proof that Metro was seeking to protect Chris Edwards? No. It’s clear that they wanted to confiscate all the tools Mr. Lauer had in order to protect Assemblyman Edwards and the tax and spend agenda of Governor Sandoval.

Detective Schoen has already informed Robert Lauer that he knew that Lauer had informed Political Blogger Chuck Muth about Chris Edwards’ soliciting, or appearing to solicit bribes.

Lauer had gone public with his suspicions prior the raid of his home. How does this tend to show that Lauer committed extortion?

This begs the question: If Detective Schoen knows that Robert Lauer had already -

1. informed a blogger by the name of Chuck Muth (see: http://www.muthstruths.com) about Chris Edwards' crimes and;

2. Was or may have been starting to prepare an affidavit to submit to the ethics commission then Robert Lauer, could not have been intending to extort anything from anybody.

He had already gone public long before his home was tossed by agents sent by Sheriff Joe Lombardo who is also seeking a tax hike to increase the size of his fiefdom. Chuck Muth is a so-called conservative blogger who has encouraged residents to consider recalls against Republican lawmakers, including Assembly Speaker John Hambrick R-Las Vegas and Chris Edwards, R-Las Vegas.

This warrant and the seizure of Robert Lauer's personal property was a blatant attempt to shut him up and silence his dissent against the so-called 'moderate' or tax and spend Republican wing of his party. It is an egregious breach of law and the public trust and it should be harshly punished.

The constitutional significance of intentionally or recklessly false statements in warrant affidavits must concentrate on the magistrate requirement of the Fourth Amendment for the simple reason that "[t]he search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws." Agnello, 269 U.S. at 32 (emphasis added); see also Kyllo v. United States, 533 U.S. 27, 31 (2001) (noting a warrantless search of the home unconstitutional with few exceptions).

**Reckless reliance on the false statements of Assemblyman Chris Edwards**

If a police detective such as Detective Schoen perjures himself or recklessly relies on the false statements of an informant such as Chris Edwards, then the police have effectively cut the magistrate out of the constitutional rubric and the warrant is invalid. That is what happened here.

The Warrant in this case is invalid and must be quashed and Robert Lauer's property must be returned to him. The affidavit should be immediately released to the public in order to clear Robert Lauer's name. Metro Police must also pay for the wanton and unreasonable destruction of Lauer's property.

The United States Supreme Court has repeatedly emphasized that the very purpose of the warrant clause of the Fourth Amendment is to mandate that the decision whether a residential search or seizure is justifiable must be made by a neutral and detached magistrate and not a law enforcement officer:

> The informed and deliberate determinations of magistrates empowered to issue warrants as to what searches and seizures are permissible under the Constitution are to be preferred over the hurried action of officers and others who may happen to make arrests. Security against unlawful searches is more likely to be attained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime. (Emphasis Added).

United States v. Lefkowitz, 285 U.S. 452, 464 (1932); see also Coolidge, 403 U.S. at 450; Johnson, 333 U.S. at 13-14.

Perjurious statements in warrant affidavits by law enforcement officers deprive magistrates of the accurate information necessary to exercise their informed judgment and thereby impermissibly substitute the police officer for the magistrate as the actual decision-maker in the warrant issuance process. The Supreme Court noted this intent of the warrant clause: "The right of privacy was deemed too precious to entrust to the discretion of [law enforcement officials].

**Power is a heady thing; and history shows that the *police acting on their own cannot be trusted***." Emphais Added. See, e.g., Illinois v. Gates, 462 U.S. 213, 239 (1983); United States v. Ventresca, 380 U S. 102, 108¬09 (1965); Wong Sun, 371 U S. at 481-82; McDonald v. United States, 335 U.S. 451, 455-56 (1948).

It is violative of the most fundamental values of the Fourth Amendment for the magistrate, including this Court, to act as a mere "rubber stamp" for warrant decisions actually made by law enforcement officers. For this reason, the United States Supreme Court has consistently held that a valid warrant cannot be based on an affidavit which contains only the beliefs, suspicions, or conclusions of a police officer. "Sufficient information must be presented to the magistrate to allow that official to determine probable cause." Ventresca, 380 U.S. at 108-09 (stating magistrate must look at underlying circumstances upon which affiant bases his or her belief that probable cause exists). See, e.g, Aguilar v. Texas, 378 U.S. 1081, 112-13 (1964); Giordenello v. United States, 357 U.S. 480, 486 (1958); Nathanson v. United States, 290 U.S. 41, 47 (1933); United States v. Leon, 468 U.S. 897, 915 (1984) (quoting Illinois v. Gates, 462 U.S. 213, 239 (1983)), see also Aguilar, 378 U.S. at 112-13.

**Warrants issued by Courts acting as 'Rubber Stamps' for lying witnesses and perjuring police agents are invalid**

When a police officer lies, or recklessly relies on the lies of an informant such as Assemblyman Chris Edwards and these lies are relied on by this Court, this Court becomes a mere 'rubber stamp' for lying police officers – who can't be trusted - and the lying informants used by them.

Other bedrock Fourth Amendment principles serve to guarantee that the independent and detached magistrate, rather than a law enforcement officer, makes the assessment of whether the underlying facts and circumstances sufficiently establish probable cause.

**The Warrant Clause of the Fourth Amendment has been unlawfully and unconstitutionally rendered meaningless in this case. The Fourth Amendment in this case has become nothing but empty phrases and its protections have been unlawfully nullified by this Court.**

Absent stringent judicial enforcement the warrant clause would be rendered meaningless with search and arrest warrants issued not on the basis of the independent and informed judgment of the magistrate, but instead on the un-reviewed discretion of law enforcement officers. The police would indirectly be empowered to perform that which the Constitution prohibits if done directly - that is, conduct residential searches and seizures without a valid warrant issued by a magistrate with knowledge of the underlying information believed to justify the invasion. In such cases, "the provisions of the Fourth Amendment would become empty phrases and the protections it affords largely nullified. See, e.g., Florida v. 11., 529 U.S. 266, 271 (2000) (search predicated on anonymous tip with no basis of knowledge invalid even though information suspect carried gun proved true); Wong Sun v. United States, 371 U.S. 471, 481-82 (1963) (officer's entry into home upon invalid search warrant not righted by suspect's suspicious flight from officer); United States v. Di Re, 332 U.S. 581, 595 (1948) ("[A] search is not to be made legal by what turns up"). Whiteley v. Warden, Wyo. State Penitentiary, 401 U.S. 560, 565 n.8 (1971); see also Aguilar, 378 U.S. at 109 n.1; Agnello v. United States, 269 U.S. 20, 33 (1925). Thus, only that information properly presented to the magistrate, either in the sworn affidavit or in verbal testimony given under oath, may be considered. See Aguilar, 378 U.S. at 109 n.1 (noting fact that police conducted surveillance was irrelevant because officers failed to mention to magistrate when applying for warrant). In a few States, a magistrate, in making his probable cause determination, may consider only that contained in the written affidavit as a result of statute or rule. See generally Commonwealth v. Edmunds, 586 A.2d 887 (Pa. 1991) (explaining under Pennsylvania State Constitution, no "good faith" exception to exclusionary rule exists as under Fourth Amendment of Federal Constitution). Jones v. United States, 357 U.S. 493, 498 (1958).

In short, a law enforcement officer who files a warrant affidavit that contains intentionally or recklessly false statements of fact usurps the constitutionally mandated role of the magistrate. The officer deprives the magistrate of the truthful information necessary to make an independent and informed decision regarding probable cause. The nature of the assessment of whether probable cause exists further emphasizes the harm done to the targets of such police intrusions, many of whom are entirely innocent, and to the Fourth Amendment itself. See Thomas Y. Davies, Recovering the Original Fourth Amendment, 98 MICH. L. REV. 547, 576-77, 589 (1999). It is impossible to assess the effectiveness of the warrant clause in preventing unjustified searches and seizures. See Maryland v. Pringle, 540 U.S. 366, 371 (2003) ("The probable-cause standard is incapable of precise definition or quantification into percentages...."). A recent study

of the success rate of warrant-based narcotics searches, conducted in the San Diego Judicial District, found that the success rates of warrant-based searches for methamphetamine was sixty-three percent and twenty-eight percent for rock cocaine. Benner, supra at 205 tb1.16. When the target of the warrant-based search is African-American or Hispanic the success rate declines precipitously. Benner, supra, at 204-05 tbls. 13, 14, 15. Perjured warrant affidavits surely increase the rate of unsuccessful searches.

In this case Detective Schoen conducted no investigation of the facts except talking to Chris Edwards who was and is desperate to silence his critics and end the recall effort brewing against him. This amounts to Detective Schoen supposedly accepting Edwards' lies as true.

Unsealing the warrant affidavit will show us just what was stated in it. There was never any legitimate or legal reason to seal such affidavit in the first place. It serves only the purposes of 'secret government' and 'secret police'. It is truly Un-American and truly disgusting.

**Franks v. Delaware and Perjury – United States Supreme Court**

The United States Supreme Court directly confronted the issue of perjurious statements in search warrant affidavits only once, in the 1978 case of Franks v. Delaware, 438 U.S. 154 (1978). In Franks, the United States Supreme Court granted certiorari to decide the limited question: "Does a defendant in a criminal proceeding ever have the right, under the Fourth and Fourteenth Amendments subsequent to the ex parte issuance of a search warrant, to challenge the truthfulness of factual statements made in an affidavit supporting the warrant." All but one of the federal circuit courts of appeals had already answered this question affirmatively. Id at 155, See Id. at 160. A clear majority of the state courts which had addressed the issue also permitted such veracity challenges to warrant applications. Id. at 159 n.3, 176-80. The courts of appeals then proceeded to consider the separate and distinct issue of the circumstances under which such a challenge to the veracity of a warrant affidavit could be made by a criminal defendant in a subsequent suppression hearing.

In this case we have a central principal of American Constitutional Law at stake. Should the Secret Police be able to seal a warrant affidavit only to only to protect a lying politician and his mentor the Governor of Nevada? This question becomes even more crucial to be answered when you consider that the warrant was used to silence political opposition and for no other purpose. This warrant and its resulting search violate the First Amendment's prohibition against laws being made abridging the freedom of speech. It is still the law that political speech enjoys the highest protections as core speech and judges are or should be aware of this.

The question of when, as opposed to whether, a successful challenge could be made seriously divided the federal circuit courts of appeals. Compare United States v. Belculfine, 508 F.2d 58, 63 (1st Cir. 1974) (holding warrant invalidated only if false statement was both intentional and "non-trivial" to the issue of probable cause), and United States v. Thomas, 489 F.2d 664, 669 (5th Cir. 1973) (false statement made with "intent to deceive the magistrate" results in suppression without regard to materiality of the statement, but non-intentional falsehood

invalidates warrant only if material to probable cause), with Carmichael v. United States, 489 F.2d 983, 988-89 (7th Cir. 1973) (en banc) (invalidating warrants containing intentional falsehoods regardless of materiality or reckless falsehoods, only if material; but stating negligent falsehoods would never invalidate the warrant), and United States v. Marihart, 492 F.2d 897, 900 (8th Cir. 1974).

Justice Blackmun, writing for the majority in Franks, resolved the pure Fourth Amendment issue upon which the Court granted certiorari with dispatch, reasoning simply, **"Because it is the magistrate who must determine independently whether there is probable cause[,] . . . it would be an unthinkable imposition upon his authority if a warrant affidavit, revealed after the fact to contain a deliberately or reckless false statement, were to stand beyond impeachment."** Justice Blackmun then quickly diverted attention away from the Fourth Amendment question presented by subtly restating the issue: "[w]hether the Fourth and Fourteenth amendments, and the derivative exclusionary rule . . . ever mandate that a defendant be permitted to attack the veracity of a warrant affidavit after the warrant has been issued and executed." Franks, 438 U.S. at 165. The dissenting opinion, written by Justice Rehnquist for himself and Chief Justice Burger, did not disagree with this fundamental interpretation of the warrant clause of the Fourth Amendment. See id. at 181 (Rehnquist, J., dissenting); Franks, 438 U.S. at 164.

In Franks, the United States Supreme Court held that in order to establish a violation of the Fourth Amendment, a defendant must prove by a preponderance of the evidence "that the false statement was included in the affidavit by the affiant knowingly and intentionally, or with reckless disregard for the truth." The federal courts of appeals have generally concluded that "[t]he Supreme Court in 'Franks gave no guidance concerning what constitutes a reckless disregard for the truth in fourth amendment cases, except to state that "negligence or innocent mistake [is] insufficient. On the basis of this erroneous premise, these federal courts of appeals have either abdicated their responsibility to locate the meaning of the phrase "reckless disregard for the truth" within the Fourth Amendment or developed an interpretation inconsistent with Fourth Amendment values. Franks v. Delaware, 438 U.S. 154, 155-56 (1978); United States v. Yusuf, 461 F.3d 374, 383 (3d Cir. 2006) (quoting Wilson v. Russo, 212 F.3d 781, 787 (3d Cir. 2000)); See infra Part VI.B.

The Fourth Amendment is intended to protect the people from the tyranny of the government. Here, however, the warrant clause guarantees (or did in the past – even in Nevada) individual freedom and security by prohibiting government agents from forcibly invading the sanctity of a person's home. Absent both probable cause and a valid warrant issued by a neutral and detached magistrate, based on the demonstration of sufficient specific facts, and sworn to under oath by the law enforcement officer, the government has no right to breach one's individual security. The neutral and detached magistrate must then draw the independent conclusion that the invasion is justified. Under the Fourth Amendment, there exists no countervailing value in exaggerations, distortions, vilifications, mischaracterizations, unsupported conclusory statements, or even

reckless falsehoods. These exemplify poor, sloppy police work that threatens the security and liberty of law-abiding citizens.

The Fourth Amendment protects individual liberty by treating reckless disregard of the truth as a pure question of fact, provable by a preponderance of the evidence, and only subject to appellate review for clear error. See, e.g., Ornelas v. United States, 517 U.S. 690, 699-700 (1996); United States v. Awadallah, 349 F.3d 43, 65 (2d Cir. 2003); United States v. Elliott, 322 F.3d 710, 714 (9th Cir. 2003).

**Allowing a law enforcement officer to swear to the truth of a fact simply because he did not have a "high degree of awareness of [its] probable falsity" would make a mockery of the very purpose of the Fourth Amendment**

Bedrock Fourth Amendment doctrine dictates that under the warrant clause, the law enforcement affiant must **accurately report** the specific facts. Only the neutral and detached magistrate may draw any inferences or conclusions from the facts contained in the warrant affidavit. A warrant based on the mere conclusions or interpretations of the events by the law enforcement officer is clearly invalid. Indeed, a law enforcement officer who conducts a search on the basis of such a warrant cannot even claim the benefit of the "good faith" exception to the exclusionary rule. While under First Amendment principles, the reckless disregard standard seeks to free public debate from the rigid standards of provable truthfulness which govern testimony given in a legal proceeding, a warrant affidavit is a legal document, the truthfulness of which is sworn to under oath by the affiant. Allowing a law enforcement officer to swear to the truth of a fact simply because she did not have a "high degree of awareness of [its] probable falsity" would make a mockery of the very purpose of the Fourth Amendment. See United States v. Leon, 468 U.S. 897, 915, 923 (1984); 163; St. Amant v. Thompson, 390 U.S. 727, 731 (1968) (quoting Garrison v. Louisiana, 379 U.S. 64, 74 (1964)).

Under the law of perjury, "when one makes an unqualified statement of a fact as true which he does not know to be true, . . . such unqualified statement will itself constitute perjury." Under the Fourth Amendment, as under the law of perjury, when a law enforcement officer swears an oath, she must know or believe that the contents of the affidavit are actually true, not merely that there is "a possibility that they might be true." People v. Cook, 583 P.2d 130, 143 (Cal. 1978) (en banc) (quoting People v. Von Tiedeman, 52 P.2d 155, 158 (Cal. 1898)); see also Bronston v. United States, 409 U.S. 352, 359 (1973); Butler v. State, 429 S.W 2d 497, 502 (Tex. Cnm. App. 1968); State v. Claxton, 594 P.2d 112, 114 (Ariz. App. 1979); see also Cook, 583 P.2d at 143; Commonwealth v. Nine Hundred and Ninety-Two Dollars, 422 N.E.2d 767, 769 (Mass. 1981); State v. Little, 560 S.W.2d 403, 407 (Tenn. 1978). In Olson v. Tyler, the court, believing that qualified immunity required an objective standard, stated the test as whether the information in the affidavit "was not reasonably believed by defendants to be true." Olson v. Tyler 771 F.2d 277, 281 (7th Cir. 1985). In Crawford-El v. Britton, the Supreme Court rejected the notion that objective reasonableness will immunize a government official when the constitutional violation is one based on subjective intent. 523 U.S. 574, 593-94 (1998). In Mason v. Lowndes County

Sheriff's Dep 't, 106 F. App'x 203, 206-07 (5th Cir. 2004), the Fifth Circuit added that a § 1983 plaintiff must also prove that the law enforcement affiant engaged in a "deliberate attempt to mislead the magistrate judge" as to the existence of probable cause. Every other court to consider the issue properly rejected this additional element. See, e.g., Wilson v. Russo, 212 F.3d 781, 788 (3d Cir. 2000); United States v. Vigeant, 176 F.3d 565, 572-73 n.8 (I st Cir. 1999); Lombardi v. City of El Cajon, 117 F.3d 1117, 1124 (9th Cir. 1997). The Supreme Court also rejected this additional element in its construction of the federal perjury statute, 18 U.S.C. § 1621. See Bronston v. United States, 409 U.S. 352, 359 (1973). Mason inappropriately ignores the fact that **affiants may make falsehoods recklessly**; "even if they involve minor details—recklessness is measured not by the relevance of the information, but by the demonstration of willingness to affirmatively distort the truth." Mason, 106 F. App'x at 207 (quoting Wilson v. Russo, 212 F.3d 781, 788 (3d Cir. 2000)). Detective Schoen either purposely or recklessly made falsehoods on his affidavit in support of this Search Warrant, it must be quashed Lauer's property must be returned and the affidavit must be unsealed.

In every area of the law, including perjury, a person's subjective state of mind, including knowledge, belief, and intent, is a pure issue of fact for the trier of fact to resolve. This is proper because such questions depend on "[c]redibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts," all of which ordinarily lie within the exclusive province of the trier of fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)

In Franks, the Supreme Court held that in addition to proving that a warrant affidavit contains one or more intentionally or **recklessly false statements**, the individual challenging the warrant also must establish that, "with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause" in order to suppress the evidence obtained as a result of the warrant.'" In subsequent cases, the Supreme Court has explained that neither the good faith exception to the exclusionary rule nor the immunity doctrines, which ordinarily protect law enforcement officers from liability under 42 U.S.C. § 1983, are applicable if a warrant affidavit contains perjurious statements. Thus, the remainder of the affidavit must establish actual, not merely arguable, probable cause. This probable cause determination is an issue of fact to be resolved by the trier of fact. Franks v. Delaware, 438 U.S. 154, 156 (1978) See United States v. Leon, 468 U.S. 897, 922 (1984) (holding no good faith exception to exclusionary rule where affidavits contain perjurious statements); see also Groh v. Ramirez, 540 U.S. 551, 565 n.8 (2004) (reasoning no qualified immunity if good faith exception not applicable); Kalina v. Fletcher, 522 U.S. 118 (1997) (finding no absolute immunity in § 1983 suits for prosecutor who certified an affidavit containing perjurious statements).

The probable cause test as set forth in Gates requires that the magistrate base his determination of probable cause on the "totality of circumstances" set forth in the affidavit. Illinois v. Gates, 462 U.S. 213, 230 (1983). Gates presupposes that the underlying affidavit sets forth all the facts comprising the totality of the circumstances then known to the affiant. In contrast, the "corrected affidavits doctrine" affirmatively encourages law enforcement affiants to omit known, relevant

information from the affidavit by permitting the later supplementation of the affidavit with after-the-fact testimony. See Escalera v. Lunn, 361 F.3d 737, 743 (2d Cir. 2004). Judicial acceptance of a police policy or practice of omitting important, usually exculpatory, information from warrant affidavits institutionalizes the issuance of warrants by magistrates who never know the totality of the circumstances as required by Gates. See, e.g., Golino v. City of New Hower, 950 F.2d 864, 867 (2d Cir. 1991) (police affiant testified it was his general practice to omit exculpatory information from affidavit); Salmon v. Schwarz, 948 F.2d 1131, 1138 (10th Cir. 1991) (police practice to include only information pertinent to objective of securing warrant and not exculpatory information); Forest v. Pawtucket Police Dep't, 290 F. Supp. 2d 215, 229 (D. R.I. 2003) (same).

When, as is likely in this case, the warrant affidavit contains perjurious statements, one cannot fairly say that the Court or magistrate ever determined ex ante the sufficiency of the remaining content. Rather, this Court based its ex ante determination on the totality of the facts and circumstances set forth in the original affidavit, not on the basis of some then-unspecified portion of that affidavit. The Fourth Amendment violation inherent in any warrant based on a perjured affidavit is not a merely technical one because "[r]easonable minds frequently may differ on the question whether a particular affidavit establishes probable cause ...." See Illinois v. Gates, 462 U.S. 213, 238-39 (1983), United States v. Leon, 468 U.S. 897, 914 (1984).

The foregoing paragraphs suggest the correct answer to the question of the proper role of probable cause in the Franks analysis. The probable cause issue in Franks should be framed not as a question of whether a Fourth Amendment violation occurred, but whether the law should grant a remedy for such a violation. As the Supreme Court held in Hudson v. Michigan, 547 U.S. 586 (2006) "[w]hether the exclusionary remedy is appropriately imposed in a particular case . . . is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.'" Id. at 591 (quoting United States v. Leon, 468 U.S. 897, 906 (1984), Illinois v. Gates, 462 U.S. 213, 223 (1983)). The Hudson Court reasoned that the remedy of exclusion is only appropriate when the Fourth Amendment violation has caused constitutionally cognizable harm.

Special thanks to: Stephen W. Gard, Bearing False Witness: Perjured Affidavits and the Fourth Amendment, 41 Suffolk University Law Review 445 (2008) – quoted and used passim.

**Warrant and Unlawful Search and Seizure were sought only to terrorize Chris Edward's critics and to silence them.**

**THE AFFIDAVIT IN SUPPORT OF WARRANT MUST BE UNSEALED**

The Nevada Supreme Court recently addressed this issue.

> Based on an "unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inheres in the very nature of a

> criminal trial under our system of justice." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 573, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) (commenting on historical openness of trials in England and America). Openness and transparency are the cornerstones of an effective, functioning judicial system. Id. at 569, 571–72, 100 S.Ct. 2814 (observing that historical English jurists recognized importance of open trials to thwart "perjury, the misconduct of participants, and decisions based on secret bias or partiality" and that "[t]o work effectively, it is important that society's criminal process 'satisfy the appearance of justice' " (quoting Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954))). Safeguarding those cornerstones requires public access not only to judicial proceedings but also to an equally important aspect of the judicial process—judicial records and documents. See Roman Cath. Diocese of Lexington v. Noble, 92 S.W.3d 724, 732 (Ky.2002) (observing that access to judicial records and documents "east[ ] the disinfectant of sunshine brightly on the courts, and thereby acts as a check on arbitrary judicial behavior and diminishes the possibilities for injustice, incompetence, perjury, and fraud"); see also Com. v. Upshur, 592 Pa. 273, 924 A.2d 642, 647–48 (2007)("any item that is filed with the court as part of the permanent record of a case and relied on in the course of judicial decision-making will be a public judicial record or document"). For that reason, long-standing English and American tradition recognizes public access to judicial records and documents, Erica A. Kaston, Note, The Expanding Right of Access: Does It Extend to Search Warrant Affidavits?, 58 Fordham L. Rev. 655, 661 (1990).

Howard v. State, 291 P.3d 137, 128 Nev. Adv. Op. 67 (Nev., 2012)

In the opening paragraphs of this decision the Nevada Supreme Court with Justice Hardesty writing the opinion, focuses on thwarting perjury, checking arbitrary judicial behavior, incompetence and fraud.

The Affidavit in Support of Warrant in this case was arbitrarily granted and is encouraging fraud, incompetence and perjury by Assemblyman Chris Edwards and by agents of Metro Police.

> With acute awareness of the presumption favoring public access to judicial records and documents, federal and state courts have decided that a court may exercise its inherent authority to seal those materials only where the public's right to access is outweighed by competing interests. Minter v. Wells Fargo Bank, N.A., 258 F.R.D. 118, 120–21 (D.Md.2009)(stating that although

> common law presumes right of public access to judicial records, presumption may be rebutted if countervailing interests heavily outweigh public interest in access); U.S. v. Jacobson, 785 F.Supp. 563, 569 (E.D.Va.1992)(acknowledging trial court's supervisory power over its own records and inherent discretion to seal documents if the public's right to access is outweighed by competing interests); State v. Archuleta, 857 P.2d 234, 240–41 (Utah 1993) (noting that common-law right to public access to documents in criminal cases is not absolute and court has discretion to seal documents if right to public access is outweighed by competing interests); In re Sealed Documents, 172 Vt. 152, 772 A.2d 518, 526 (2001) ("The common law has long recognized that courts are possessed of an inherent authority to deny access to otherwise public court records when necessary to serve overriding public or private interests."). Courts also recognize that the party seeking to overcome the presumption of public access bears the burden of demonstrating a significant interest that outweighs this presumption. Bank of America Nat. Trust v. Hotel Rittenhouse, 800 F.2d 339, 344 (3d Cir.1986); Rufer v. Abbott Laboratories, 154 Wash.2d 530, 114 P.3d 1182, 1187 (2005)("The party wishing to keep a record sealed usually has the burden of demonstrating the need to do so.").
>
> Id.

Detcetive Schoen has demonstrated no need to this court to seal this affidavit. The ex parte motion to seal it was devoid of any reason or legal excuse to do so.

At least three Nevada State Assembly Members have publicly stated that Chris Edwards was soliciting bribes in exchange for his vote in the Assembly, metro publicly named Lauer as a target of this illegal warrant, **what or who is the sealing of this document protecting?** Nothing in this record shows anything demonstrating a significant interest that outweighs the presumption of openness in Court Records.

Because Detective Schoen's efforts to seal the subject affidavit were not accompanied by a motion requesting relief which identified a sufficiently significant interest that overrides the right to public access to records and documents filed in this court, the affidavit in support of search warrant must be unsealed as it should never have been sealed to begin with.

**FIRST AMENDMENT CORE POLITICAL SPEECH**

The warrant in this case is invalid. It was sought for no other reason than to silence and intimidate the political opponents of Assemblyman Chris Edwards and Governor Brian

Sandoval. It is an egregious and extremely troubling violation of free speech. Politcal Speech is considered the Core speech of the First Amendment.

Core political speech consists of conduct and words that are designed, intended and meant to directly rally public support for a particular issue, position, or candidate. In this case, the speech being silenced by this Court and the Secret Police – i.e. the Las Vegas Metropolitan Police Department was intended to challenge both Assemblyman Chris Edwards' and Governor Brian Sandoval through the recall election of Chris Edwards and through political "horse trading'.

In one case, the U.S. Supreme Court suggested that core political speech involves any "interactive communication concerning political change." Meyer v. Grant, 486 U.S. 414, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988). There is no more important, or protected speech than political speech. Yet Metro, using this Court to rubber stamp its warrant application has so far successfully subverted the political process.

Discussion of public issues and debate on the qualifications of candidates, the Supreme Court concluded, are forms of political expression integral to the system of government established by the federal Constitution. Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). Thus, circulating handbooks and petitions, posting signs and placards, and making speeches and orations are all forms of core political speech, so long as they in some way address social issues, political positions, political parties, political candidates, government officials, or governmental activities.

The First Amendment raised core political speech above all other forms of individual expression.

This warrant was sought only to silence the legitimate and perfectly legal and important political activities of Robert Lauer and others. The Warrant was issued based on the putative perjury of Detective Schoen or based on his reckless disregard of the truth of comments made to Detective Schoen by Assemblyman Chris Edwards. Reckless disregard of the truth by a police officer seeking a warrant is equal to perjury in the Federal System. All of Chris Edwards' statements to Detective Schoen were self-serving and part of a broader plan to silence his critics and to seek to end any recall efforts those critics were planning.

Edwards Is the Swing Vote Regarding Governor Brian Sandoval's Tax Increase Legislation

So far, the only warrants issued and served by Metro Police involving these false allegations have been against people who were seeking to recall Chris Edwards and other so-called moderate Republicans. Chris Edwards is the 'swing vote' on the subject of support for Governor Brian Sandoval's aggressive agenda to raise taxes in Nevada.

The warrant affidavits have been made secret by this court.

These warrants are nothing but a political vendetta and a course of intimidation in an effort to end legitimate political activities by those who disagree with Governor Sandoval and his minions in the legislature including Chris Edwards. Robert Lauer was a critic of Edwards. Robert Lauer

has been unlawfully and disgustingly silenced by the execution of this warrant to search his home. Metro has violated Rober Lauer's constitutional rights which are both a civil and criminal wrong.

42 U.S.C. § 1983 provides, in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

CONCLUSION

For the reasons stated above the Affidavit in Support of Warrant must be unsealed in order for it to be examined for truthfulness, Robert Lauer's property must be returned to him as it was taken without a valid warrant and the warrant should be quashed if necessary.

Respectfully Submitted,

DAVID OTTO & AFFILIATES, PC.

By:_____

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