

CASE NO: DC-FM-XX-XX

DEPT NO: 2

AFFIRMATION

Pursuant to NRS 239B.030,
This document contains no
Social Security numbers.

**IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ELKO**

XXXXXXXXXXXXXXXXXX

Plaintiff,

vs.

XXXXXXXXXXXXXXXXXX

Defendant.

_____ /

**RESPONSE TO REQUEST
FOR PRIVATE PROCEEDING**

COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by and through the undersigned counsel, and hereby files this opposition to Plaintiff's September 18, 2025 request for private proceedings. This response is based upon the following memorandum of points and authorities.

DATED this 19 day of September, 2025.

By: /s/ Paul Malikowski

Paul Malikowski, Esq.

4747 Caughlin Pkwy #7

Reno, NV 89519

Our Nevada Judges, Inc.

Director

paul.malikowski@ournevadajudges.com

MEMORANDUM OF POINTS AND AUTHORITIES

Our Nevada Judges, Inc. ('ONJ') sympathizes with Plaintiff's desire to avoid media coverage. Parents occasionally panic at the prospect of media coverage and lash out with an objection assuming that this Court is going to make a decision whether or not media coverage *in general* can occur. However, the Court has not imposed a gag order nor has Plaintiff requested one. This means that Plaintiff misunderstands the question before the Court, because without a gag order, ONJ can republish Defendant's remarks, televise an interview, conduct independent investigations, and do the best it can with anecdotes. With particular and exceptional reasons, interfering with courtroom access unnecessarily interferes with the accuracy of coverage and is not in the best interests of the public, the parents, or the children. Indeed, ONJ has already agreed to redact the parents' and children's identities. Exhibit 1.

Nester v. Eighth Judicial Dist. Court, 141 Nev. Advance Opinion 4 (Jan. 30, 2025) recognized a simple principle. There is no law or court rule that can supersede the Constitution to deprive the Court of discretion to close a hearing, just as there is no law or court rule that can supersede the Constitution deprive the Court of discretion to open one. *Falconi v. Eighth Judicial Dist. Court*, 140 Nev. Adv. Rep. 8, 543 P.3d 92 (Nev. 2024). The *Falconi* writ issued because the latter occurred. The *Nester* writ issued because the former occurred. The Supreme Court is not categorically in favor of or against courtroom access, but rather, disapproves of

1 “sweeping generalization[s]” and requiring that “a case-by-case basis and judicial
2 discretion is to be exercised”. *Nester, Id.*

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4 The *Nester* Court could have disapproved of or abrogated the *Falconi* decision
5 in its entirety, but instead recognized “that ‘open family law proceedings play a
6 significant role in the functioning of the family court, warranting a presumption of
7 open access,’ hinging on the First Amendment's ‘purpose to ensure that the
8 individual citizen can effectively participate in and contribute to our republican
9 system of self-government.’” *Id.* Indeed, the *Nester* Court emphatically bolstered the
10 effect of the *Falconi* decision by uniting¹ behind its principles and adding a
11 **requirement** that judges “*sua sponte* consider possible alternatives to [the] closure
12 even when they are not offered by the parties.” *Id.* citing *United States v. Allen*, 34
13 F.4th 789, 797 (9th Cir. 2022).

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15 In the constitutional context of courtroom access, SB432’s language is as
16 irrelevant as the struck-down NRS 125.080’s language was, because a statute or rule
17 survives First Amendment scrutiny only if the Court construes the language in a way
18 that allows the strict scrutiny test. Compare *State v. Castenada*, 126 Nev. 478, ___,
19 245 P.3d 550, 552 (2024). See also *Falconi v. Secretary of State*, 299 P. 3d 378 (2013)
20 (relying upon the language of NRS 217.464(2)(b) to save the statutory scheme by
21 shoehorning in the necessary constitutional principles.) If the Court can find no such
22 language, the statute or rule is nullified. Compare *Falconi, Id.* This is because the
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¹ Unlike the *Nester* decision, The *Falconi* decision was not unanimous.

1 Constitution of the United States is the supreme law of the land. U.S. Const. Art. VI,
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3 cl. 2. Stated simply, “local rules and statutes [that] require the district court to close
4 the proceeding [unconstitutionally] eliminate the process by which a judge should
5 evaluate and analyze the factors that should be considered in closure decisions, and
6 by bypassing the exercise of judicial discretion, the closure cannot be narrowly
7 tailored to serve a compelling interest.” *Falconi, Id.*

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10 “[T]he absence of a jury...makes the importance of public access to a
11 preliminary hearing even more significant” because the jury is “an inestimable
12 safeguard against the corrupt or overzealous prosecutor and against the complaint,
13 biased, or eccentric judge.” *Falconi, Id.* citing *Press-Enterprise Co. v. Superior Ct.*,
14 478 U.S. 1, 8 (1986) (given complains of “compliant” and “biased” judges, “one of
15 the important means of assuring a fair trial is that the process be open to neutral
16 observers” because the “interests [of parties’ and the public] are not necessarily
17 inconsistent.”) See also *Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 249
18 (1996) (“secret judicial proceedings pose [a threat] to public confidence in this court
19 and the judiciary” because “secrecy encourages misunderstanding, distrust, and
20 disrespect for the courts.”)

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25 The purpose of ONJ is to educate and inform through the lens of a camera,
26 consistent with the Supreme Court’s educational and informational mandate. SCR
27 241(1). ONJ’s coverage of non-family court proceedings vastly outnumber family
28 court coverage, but several recent events have sharply increased the public interest

1 in the operation of the family court, including the Houston-Prince case², the Scott
2 MacDonald case³, the Doug Crawford case⁴, and the Gary Guymon case⁵. The issues
3 before this Court underscore a growing discontentment by the public not so much
4 on how they are disposed but more so the process itself. Indeed, high-conflict child
5 custody cases are of specific interest to the public, some of which involve sexual
6 abuse allegations that spill into criminal court; examples of which District Court
7 Judges Mari Parlade⁶ and Michele Leavitt allowed⁷ comprehensive electronic
8 coverage of. Parties cannot avoid⁸ media coverage simply by barring access to
9 records and documents. The First Amendment allows publication regardless of this
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15 ² A divorce lawyer, Joe Houston, shot dead divorce lawyer Dylan Houston's ex and
16 her attorney, Dennis Prince. District Court Judges Bill Henderson and Dawn Throne
17 allowed comprehensive electronic coverage of the proceedings.

18 ³ John Scott MacDonald, a divorce lawyer, has been disbarred, convicted and
19 sentenced to prison for stealing money connected to interpleader actions. Justice
20 of the Peace Amy Chelini and District Court Judge Michele Leavitt are allowing
21 comprehensive electronic coverage.

22 ⁴ Doug Crawford stands accused of sexually exploiting clients and employees. The
23 District and Justice Courts allowed comprehensive electronic coverage, the
24 proceedings of which were dismissed following the divorce lawyer's consent to
25 disbarment.

26 ⁵ Gary Guymon, a defense and family law attorney, was convicted of pimping his
27 clients and intimidating witnesses. Justices of the Peace Suzan Baucum and
28 Noreen Demonte allowed comprehensive electronic coverage of the proceedings.

⁶ In *Fessler v. Fessler*, the child victim, now an adult, consented to media coverage
and requested her supporters be allowed access to the courtroom. She has since
sued her abuser, a registered sex offender, the proceedings of which are under
electronic coverage due to the approval of District Court Judge Mark Denton.

⁷ In *Nevada vs John McDonald*, the children provided general, non-specific
testimony at sentencing, their identities of which were redacted.

⁸ The "gag order" is the only mechanism that could do this, and, given the lack of
an empaneled jury, would have no likelihood of success.

1 Court's sealing orders. Indeed, there are entities that sidestep this Court's
2 supervision by simply obtaining sealed records from one of the litigants and even
3 inviting litigants to appear on podcasts to discuss even sealed cases. These one-
4 sided discussions often involve a disparagement of the family court, consistent with
5 what the *Del Papa Court* warned us would occur. Even if the court finds compelling
6 privacy, interest, and that closure is justified, closure must occur in a manner that's
7 narrowly tailored to address the specific privacy concern and issue.
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11 SCR 230(1) appears to allow ONJ to participate as a non-party only on the
12 issues of electronic coverage. ONJ would prefer not to obtain party status, but, to
13 the extent this Court deems intervention necessary for ONJ to obtain standing on the
14 issue of physical access to the Courtroom, this request follows. The *Stephens Media*
15 court allowed the press to intervene in criminal proceedings for "limited purpose[s]";
16 namely, First Amendment access principles. The *Falconi Court* has broadly
17 expanded the *Stephens Media Court's* scope to include civil proceedings, including
18 family law proceedings such as this. Accordingly, if this Court requires it, ONJ moves
19 for intervention solely for the purposes of obtaining physical press access to the
20 proceedings. While ONJ and Plaintiff disagree on the issue of access, ONJ is not an
21 adversary of Plaintiff. ONJ is merely interested in providing coverage of the process,
22 whatever the outcome may be.
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1 For the several reasons outlined above, this Court should allow physical and
2 camera access to these proceedings, with narrowly tailored restrictions to protect
3 compelling interests, if any, consistent with the First Amendment.
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5 DATED this 19 day of September, 2025.
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7 By: /s/ Paul Malikowski
8 Paul Malikowski, Esq.
9 NV Bar No.: 980
10 *Attorney for Our Nevada Judges, Inc.*

11 DECLARATION OF ALEXANDER FALCONI

12 I, Alexander M. Falconi, declare that I have read the foregoing *Response* and
13 that the contents are true and correct of my own personal knowledge, except for
14 those matters I have stated that are not of my own personal knowledge, but that I
15 only believe them to be true, and as for those matters, I do believe they are true.
16

17 ***I declare under penalty of perjury that the foregoing is true and correct.***

18 EXECUTED this Sep 19, 2025
19

20 
21 _____
22 Alexander M. Falconi
23 205 N. Stephanie St.
24 Suite D#170
25 Henderson, NV 89074
26 Our Nevada Judges
27 admin@ournevadajudges.com
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