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**DISTRICT COURT
CLARK COUNTY, NEVADA
FAMILY DIVISION**

CANDACE MCDONALD,
Petitioner,
vs.
MICHAEL MCDONALD,
Respondent.

Case No.: D-23-661332-R
Dept No.: C

NO HEARING REQUESTED

MOTION TO UNSEAL CASE FILE

NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by and through the undersigned counsel, and hereby files the following **MOTION TO UNSEAL CASE FILE**.

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This motion is based upon the following memorandum of points and authorities, and the exhibits attached hereto.

DATED this 13th day of May 2026.

THE GERSTEN LAW FIRM PLLC

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1 has been diverted via amicus brief to support the efforts of the Legal Aid Center
2 of Southern Nevada in Supreme Court case no 91212. The issue as to the
3 constitutionality of NRS 128.090 is appropriately renewed before this Court now,
4 especially considering the Supreme Court’s holding in NY Times Co. v. Dist. Ct.
5 (Doe 1 trust), 141 Nev. Adv. Op. 71 (Dec. 23, 2025).
6

7 In order to justify sealing and courtroom closure, judicial discretion must
8 be exercised. Falconi v. Eighth Jud. Dist. Ct., 140 Nev., Advance Op. 8 (2024)
9 (*striking* down NRS 125.080 and EDCR 5.207 as unconstitutional). NRS
10 128.090(7)(b) provides a mechanism by which this Court may exercise its
11 discretion, conduct the strict scrutiny analysis as the Falconi Court has
12 mandated for all civil cases, including family court cases, and unseal the case
13 file. Indeed, efforts to distinguish records and trust actions by the Rupert
14 Murdoch News Corp trust parties failed, and the Supreme Court united, *en*
15 *banc*, to emphatically articulate the requirement of the judiciary to consider
16 statutory, constitutional, and common law principles, a failure of which has been
17 denounced as a manifest abuse of discretion. Specifically, the NY Times Court
18 held:
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22 Weeks later, this court decided Falconi, in which we held that civil
23 proceedings, and family court proceedings specifically, are presumptively open to
24 the public under the First Amendment. 140 Nev., Adv. Op. 8, 543 P.3d 92. We
25 determined that NRS 125.080 and certain local court rules, which applied to
26 either automatically close divorce proceedings or require closure and sealing of
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1 documents on a party's request, were unconstitutional. Id. at 100. We reasoned
2 that the statute and rules improperly prevented the district court from
3 exercising discretion to determine whether compelling privacy interests warrant
4 closure and outweigh the First Amendment presumption of public access. Id. We
5 later clarified in Nester v. Eighth Judicial District Court that the presumption of
6 access under the First Amendment does not preclude the district court from
7 considering closure; rather, the district court must determine on a case-by-case
8 basis whether compelling reasons support closure and overcome the presumption
9 of access. 141 Nev., Adv. Op. 4, 562 P.3d 1071, 1077 (2025).

10
11 "The public's right of access extends beyond simply the ability to attend
12 open court proceedings" and encompasses "a pervasive common law right to
13 inspect and copy ... judicial records and documents." Id. citing In re Cendant
14 Corp., 260 F.3d 183, 192 (3d Cir. 2001) (internal quotation marks omitted); see
15 also Grae v. Corr. Corp. of Am., 134 F.4th 927, 931-33 (6th Cir. 2025) (*applying*
16 the common law right of access where a press entity sought access to sealed
17 documents two years after the parties entered a class-action settlement
18 resolving the case).

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22 Even if this Court came to the conclusion that certain interpretations of
23 law could allow banning press access to hearings and electronic court indices to
24 be hidden from the press, this Court must adopt the interpretation that is
25 constitutional. This is because "when the language of a statute admits of two
26 constructions, one of which would render it constitutional and valid and the
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1 other unconstitutional and void, that construction should be adopted which will
2 save the statute.” State v. Castaneda, 126 Nev. 478, 481, 245 P.3d 550, 553
3 (2010). In other words, before the Court are two (2) possibilities:

- 4 a) NRS 128.090(7)(b) does not allow the discretion necessary to conduct the
5 strict scrutiny analysis, empowering this Court to declare it
6 unconstitutional and void, consistent with the Falconi Court’s holding; or,
7
8 b) NRS 128.090(7)(b) does allow the discretion necessary to conduct the strict
9 scrutiny analysis, in which case this Court should proceed.

10
11 Simply stated, one way or another, this Court is empowered to conduct
12 the strict scrutiny analysis and must exercise its discretion to do so. Accordingly,
13 ONJ urges this Court to unseal the entire case file; except to the extent “the
14 presumption of a First Amendment right of access can be overcome [or
15 otherwise] preserve [an identified] compelling interest [by] narrowly tailor[ing
16 any restriction] to serve that interest.”

17
18 "It is not unrealistic even in this day to believe that public inclusion
19 affords citizens a form of legal education and hopefully promotes confidence in
20 the fair administration of justice." State v. Schmit, 273 Minn. 78, 87-88, 139 N.
21 W. 2d 800, 807 (1966). “Instead of acquiring information about trials by
22 firsthand observation or by word of mouth from those who attended, people now
23 acquire it chiefly through the print and electronic media. In a sense, this
24 validates the media claim of functioning as surrogates for the public.” Richmond
25 Newspapers, 448 U. S. 525, 573 (1980).
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1 DATED this May 13th, 2026

2 **THE GERSTEN LAW FIRM PLLC**

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NRS 239B.030(4) AFFIRMATION

1 Pursuant to NRS 239B.030 the undersigned hereby affirms that this
2 document does not contain the social security number of any person.
3

4 DATED this May 13th, 2026

5
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DECLARATION OF ALEXANDER FALCONI

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

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

EXECUTED this May 10, 2026



Alexander M. Falconi
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Our Nevada Judges, Inc.
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CERTIFICATE OF SERVICE

I certify that on the date shown below, I caused service to be completed of
a true and correct copy of the foregoing document by:

- _____ personally delivering;
- _____ delivery via Reno/Carson Messenger Service;
- _____ sending via Federal Express (or other overnight delivery service);
- _____ depositing for mailing in the U.S. mail, with sufficient postage
affixed thereto; or,
- delivery via electronic means (fax, eflex, NEF, etc.) to:

Candace Ruiz f.k.a. McDonald
Michael McDonald

DATED this May 13, 2026



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