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IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER M FALCONI, Petitioner, vs. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE CHARLES HOSKIN, DISTRICT COURT JUDGE, Respondents, TROY A MINTER, JENNIFER R EASLER, Real-Parties in Interest.	Case No.: 85195

REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS

COMES NOW, Alexander Falconi d/b/a/ Our Nevada Judges, (hereinafter "Our Nevada Judges") by and through the undersigned counsel, and hereby files the following reply to Real-Party in Interest Troy

Docket 85195 Document 2022-35113

Minter's (hereinafter "Minter") *Answer to Petition for Writ of Mandamus* filed October 19, 2022.

Minter's core argument is that the district court's denial of Our Nevada Judges's media request was a discretionary act under a procedural standard that was authorized by existing court rules. *Answer* at 4. This reply is based upon the following points and authorities and *Petitioner's Appendix* ("PA") on file herein.

a. The Supreme Court's approval of a court rule does not render the rule immune to Constitutional scrutiny

Minter asserts that the Supreme Court's approval of EDCR 5.207 and EDCR 5.212 precludes any constitutional challenge. *Answer* at 1. In *Lippis v. Peters*, 112 Nev. 1008, 1011, 921 P.2d 1248, 1249 (1996), this Court rejected an identical argument in the context of a constitutional challenge to Justice Court Rule of Civil Procedure ("JCRCP") 106, which rendered summary eviction orders unappealable. The *Lippis* Court conceded it "ill-advisedly approved the issuance of [JCRCP 106];" but struck down the rule as unconstitutional anyway. *Id.*

Minter also requests that any opinion from this Court nullifying EDCR 5.207 and EDCR 5.212 be applied prospectively, as opposed to

retroactively. *Answer* at 4. This request is unsupported by points and authorities and is inconsistent with *Lippis v. Peters*. *Id. See Edwards v. Emperor's Garden Rest.,* 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (courts should decline to consider issues that are not cogently argued or supported by relevant authority).

b. Our Nevada Judges has shown clear invalidity of EDCR 5.207, EDCR 5.212, and their supporting statutes and rules

Minter also argues that there is no precedent for the standard of reviewing court rules for constitutionality. *Answer* at 5. Minter then argues that the standard of review in cases where the constitutionality of a statute is challenged requires a showing of "clear" invalidity. *Id.* Minter then states that this Court "may, by analogy, apply the same standard of review as in contested statutes" and then argues that the instant writ petition should be denied because this standard was not met. *Id*.

Constitutional issues present questions of law that are always reviewed *de novo*. *Awada v. Shuffle Master, Inc*., 123 Nev. 613, 618, 173 P.3d 707, 711 (2007) citing *Callie v. Bowling*, 123 Nev. 181, 182, 160 P.3d 878, 879 (2007). In *State v. Castaneda*, 126 Nev. 478, 480, 245 P.3d 550,

552 (2010) this Court upheld that a party seeking to invalidate a statute on the grounds that it is unconstitutionally vague must make a clear showing of invalidity under all reasonable constructions, even where review is *de novo*, citing *Berry v. State*, 125 Nev. 265, 279, 212 P.3d 1085, 1095 (2009). Here, the constitutional question is much more straightforward, and this case does not simply involve a challenge to a statute or rule based on vagueness, but rather, plain language[1] denying access to filings and/or court proceedings.

The standard for denial of public and press rights to access to judicial proceedings is well established: "[a] state may deny this right of public access only if it shows that 'the denial is necessitated by a compelling government interest, and is narrowly tailored to serve that interest.'" *Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 248 (1996) quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607, 73 L. Ed. 2d 248, 102 S. Ct. 2613 (1982). EDCR 5.207 and EDCR 5.212 are abundantly clear, and anything but "narrowly tailored", instead

[1] *J.E. Dunn Nw., Inc. v. Corus Constr. Venture, LLC*, 127 Nev. 72, 79, 249 P.3d 501, 505 (2011) ("When the language of a statute is clear on its face, this court will not go beyond the statute's plain language.")

categorically blocking public access to all domestic relations matters on the whim of a party.

Indeed, NRS 126.211[2] turns these principles on their head by inverting the standard such that closure of court proceedings is the rule and opening is literally the "exception." EDCR 5.212(a) is even more restrictive than NRS 126.211, as it extinguishes what little discretion a district court has in determining whether closure is appropriate in a given case. EDCR 5.212(d) unconstitutionally places the onus on a non-party to gain access to the private-on-demand hearing, and the language is crafted such that the status of the proceedings remain private.[3]

An example of a case involving interpretation of a complex statutory scheme with particular interpretations that implicate constitutional rights can be found in *Falconi v. Secretary of State,*[4] in which this Court relied upon NRS 217.464(2)(b) to derive a procedure with the discretion necessary to save the statutory scheme that would have otherwise

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[2] This statute is triggered by reference in EDCR 5.207.

[3] This is not to concede that mere *de jure* would control whether a hearing is public or private; it could be argued that once persons not essentially participating in a case are allowed access, that the proceeding is *de facto* public.

[4] *Falconi v. Sec'y of Nev*., 129 Nev. 260, 263, 299 P.3d 378, 381 (2013).

unconstitutionally interfered with a parent's fundamental rights. There is simply no "reasonable construction" in the instant case where the rules and statutes can be interpreted in a manner consistent with the underlying constitutional right to access court proceedings.

c. Statutes and rules that arbitrarily close courtrooms and seal filings are not constitutional merely because they do so in the context of domestic relations matters

Minter argues that Our Nevada Judges should comply with EDCR 5.207, EDCR 5.212, to protect children and families. *Answer* at 10. But by doing so, Our Nevada Judges would not actually protect children and families; rather, Our Nevada Judges would be abandoning them.

Minter argues that the District Court exercised its discretion in invoking the rules to seal the filings and close the courtroom. See *Answer* at 4. But there is no indicia in the record of any exercise of discretion by the District Court in this case. Once Minter objected EDCR 5.212(a) was triggered, forcing the District Court to deprive the public of access to the proceedings - effectively bypassing the SCR 230 electronic coverage presumption that all proceedings are open to the public. PA-0002.

Indeed, Our Nevada Judges requested an opportunity to appear and argue, which may have conceivably allowed a record to be made on the issues, i.e. the constitutionality, statutory construction, and public policy issues related to closure of the case. PA–0011. But the District Court presumably[5] recognized the plain, mandatory language of EDCR 5.212(a) and refused any opportunity for Our Nevada Judges to be heard or for further briefing, and summarily denied the media request. PA-0009.

Minter argues that existing precedent supports public access to criminal cases, and civil cases "which are wholly inapplicable" to obtaining access to domestic relations matters. *Answer* at 6. Minter infers that domestic relations matters are not civil cases and that they should otherwise be exempt from the First Amendment of the Constitution as applied to other civil cases. In effect, Minter argues that because the First Amendment is harmful to children, the judiciary should recognize a policy categorically blocking public and press access because it is in the best

[5] The language in the Court's Order is ambiguous as to whether camera access was denied without closing the courtroom, but the SCR 230(1) presumption could not have been overcome under SCR 230(2)(b) without evidentiary support, especially given the generic, non-specific citation to "privacy". See *Solid v. Eighth Judicial District Court*, 133 Nev. 118, 393 P. 3d 666 (2017).

interests of children. *Id*. At the outset, In *Solid v. Eighth Judicial Dist. Court*, 133 Nev. 118, 123, 393 P.3d 666, 672 (2017) this Court affirmed that the SCR "governing media in the courtroom are 'applicable to all civil and criminal trials in Nevada,'" quoting *Minton v. Bd. of Med. Exam'rs*, 110 Nev. 1060, 1083 n.16, 881 P.2d 1339, 1355 n.16 (1994) (internal quotation marks omitted), disapproved of on other grounds by *Nassiri v. Chiropractic Physicians' Bd*., 130 Nev. Adv. Rep. 27, 327 P.3d 487, 491 (2014). There is no carveout for family court matters.

Minter furthers his argument that an exception exists for family court by relying emotionally charged examples and on myriad case law, the first of which is *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8-9, 92 L. Ed. 2d 1, 10 S. Ct. 273 (1986). *Answer* at 7. The *Press-Enterprise* Court considered both tradition and public oversight. As pointed out by the Legal Aid Center of Southern Nevada, Inc., Nevada Legal Services, Northern Nevada Legal and Volunteer Attorneys for Rural Nevadans (hereinafter "the Legal Aid Coalition"), "family courts, and even child custody disputes, have historically been open and public." *Brief of Amici Curiae* filed November 3, 2022. Mary Gofen, *The Right of Access to Child Custody and Dependency*

Cases, 62 U. Chi. L. Rev. 857, 867 (Spring, 1995). By 1931, nineteen states had statutes allowing public access to divorce proceedings. *Id*. To the extent secrecy in domestic relations matters is a tradition in this State extending back to 1865 by virtue of NRS 125.080, it is as arbitrary as it is ancient, and to the undersigned counsel's knowledge the statute has never been challenged and determined to have passed constitutional muster.[6]

The *Press-Enterprise* Court also considered the positive impact of public attention on the perception and functioning of courts, which is apparent to Our Nevada Judges not merely theoretically but in practice, as District Court Judges Hon. David Gibson Jr.[7], Hon. Linda Marquis[8], Hon.

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[6] NRS 125.080 is so extraordinary and unusual that Nevada is the only state with anything like it. *W. Thomas McGough, Jr., Public Access to Divorce Proceedings*, 17 Am. Acad. Matrim. Law 29, 32 (2001). *White Paper: Access to Divorce Proceedings, Reporter's Committee for Freedom of the Press* (2015) ("The least access-friendly law is in Nevada, where divorce proceedings are private upon demand of either party.")

[7] J-20-351190-P1, Family Division, Eighth Judicial District Court; an NRS 432B abuse & neglect action.

[8] 99G020357, Family Division, Eighth Judicial District Court; a guardianship action.

Tamatha Schreinert[9], Hon. Dawn Throne[10], Hon. Michelle "Shell" Mercer[11], Hon. Mary Perry[12], Hon. Cynthia Lu[13], Hon. Egan Walker[14], and Hon. Heidi Almase[15] (hereinafter "The Family Court Judges Allowing Camera Access") have already recognized Our Nevada Judges's SCR 229(1)(c) status as a news reporter and allowed electronic coverage pursuant to SCR 230(1) to their domestic relations matters, NRS 432B abuse & neglect proceedings, and guardianship proceedings in their courts. The educational value of Our Nevada Judges's videos is also apparent by the public feedback which is readily viewable on YouTube. The videos have also bolstered public confidence in the judiciary by ameliorating the suspicions of gender bias and reducing the anxiety of litigant-viewers, especially those representing

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[9] FV20-00697, Family Division, Second Judicial District Court; a child custody action.

[10] D-19-600841-C, Family Division, Eighth Judicial District Court; a child custody action.

[11] D-14-500815-C, Family Division, Eighth Judicial District Court; a child custody action.

[12] D-22-641830-A, Family Division, Eighth Judicial District Court; an adoption (parents waived confidentiality.)

[13] FV21-01484, Family Division, Second Judicial District Court; a child custody action.

[14] GR14-00159, Second Judicial District Court; a guardianship action.

[15] D-18-570436-C, Family Division, Eighth Judicial District Court; a child custody action.

themselves, by showing them examples of what to expect when they must appear in court.

The Supreme Court of Nevada and Commission on Judicial Discipline cannot alone bear the burden of supervising and policing the Family Divisions of Districts 2 and 8. See *In the Matter of Hughes*, 136 Nev. Adv. Rep. 46, 467 P. 3d 627 (2020). Aside from their statutory and constitutional constraints, these bodies are limited in their ability to act quickly and are not empowered to correct a proper[16] exercise of discretion. Ultimately, it is the public that is most interested in how family court judges consider and make findings of fact, as well as how they exercise the wide latitude of discretion that they are afforded - as family court judges wield enormous power over the lives of the litigants before these courts. The public is most likely to interact with the judiciary through traffic cases and family court cases, and family court cases are precisely the types of cases that many in the public will insist on litigating, desperately, even without an

[16] Though the Supreme Court and Commission on Judicial Discipline may decline to take action in these situations, *Ybarra v State*, 127 Nev. 47, 58, 247 P.3d 269, 276 (2011); it is within the public's prerogative to express disapproval or even outrage at an otherwise legally permissible exercise of discretion.

attorney[17], because they often involve paramount issues in litigants lives, such as whether a parent will have a relationship with their child. The *Press-Enterprise* Court emphasizes "the absence of a jury, long recognized as 'an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge[.]'" *Id*. at 478 U.S. 14. In light of this, it should not be taken lightly that domestic relations matters are ***never*** conducted before a jury, and many of the grievances expressed by family court litigants are claims of judicial incompetence, judicial corruption, and overzealous lawyers, especially in cases where only one of the parties is representing themselves. For these several reasons, the "'community therapeutic value of openness" is as relevant if not more so to domestic relations matters here as it was to the *Press-Enterprise* Court. *Id*.

Minter's citation to *Maryland v Craig*, 497 U.S. 836 (1990) is not only distinguishable, it is highly damaging to Minter's own position. *Answer* at

[17] As pointed out by the Legal Aid Coalition, "86% of those with legal problems experienced inadequate assistance or no assistance at all." *Brief of Amici Curiae* at 7, Paragraph 1, citing Kathryn M. Kroeper et al., *Underestimating the Unrepresented: Cognitive Biases Disadvantage Pro Se Litigants in Family Law Cases*, 26 Psychol., Pub. Pol'y & L., No. 2, 198 at 198-199 (2020).

9. Firstly, the dispute in *Maryland v Craig* stems from a criminal defendant's assertion that the Confrontation Clause was violated; Secondly, the protection afforded to minor witnesses in that case is consistent with the same types of protections Our Nevada Judges has already afforded and does afford to minor witnesses and children as far back as 2019. Most importantly, however, is the *Maryland v Craig* Court's holding summary closure of court proceedings without any findings of fact categorically unlawful:

> The requisite finding of necessity must of course be a case-specific one: The trial court must hear evidence and determine whether use of the one-way closed circuit television procedure is necessary to protect the welfare of the particular child witness who seeks to testify. See *Globe Newspaper Co*., 457 U. S., at 608-609 (compelling interest in protecting child victims does not justify a mandatory trial closure rule[.])

Id. at P.3d 855.

The District Court did not take any evidence before sealing filings and closing this case to the public because EDCR 5.207 and EDCR 5.212 mandate summary sealing and closure. Minter makes a lengthy policy argument on the potential harms that may occur if domestic relations matters were open to the public. *Answer* at 9. But these arguments and

issues are precisely what should have been considered at the District Court before summarily closing the case. Just because these things may potentially harm a litigant or child in a specific case, "does not justify a mandatory [] closure rule[.]" *Id*. The Constitution is not set aside merely because children might suffer some theoretical and nebulous harm. For example, adherence to the Second Amendment poses a non-theoretical threat to children, with guns responsible for "[a]pproximately 25,000 gun-deaths ... each year[, a] quarter of [which] were children under the age of 14". *District of Columbia v. Heller*, 554 U.S. 570, 694, 128 S. Ct. 2783, 2854 (2008).

Minter repeatedly tries to bolster his position on mandatory closure rules, by citing precedent where case-specific analysis has occurred. Each time Minter does this, he only supports Our Nevada Judges's position. In *Answer* at 15, Minter cites *Mager v. Dept. of State Police*, 595 N.W.2d 142, 146 (1999). This is distinguishable because the *Mager* Court considered the merits of a "freedom of information" request and balanced the request against the public's interest in openness, whereas the District Court here summarily closed and sealed. In *Answer* at 16, Minter cites *P.B.*

v. C.C., 223 A.D.2d 294, 298 (NY App. 1996), which is distinguishable because there was a review for an abuse of discretion on the trial court's application of the State of New York's Domestic Relations Law § 235 (2). The trial court allowed public access, and the appellate court reversed upon considering specific facts of abuse, neglect, alcoholism, and child supervision. In the instant case, the District Court conducted no analysis whatsoever, and instead summarily closed and sealed. In *Answer* at 20, Paragraph 2, to 21, Paragraph 1, Minter argues "no absolute right [] to inspect judicial records" and that "courts have the power to seal files", but Our Nevada Judges is not arguing any absolute right to inspect nor that the District Court lacks the power to seal; merely that sealing must occur consistent with the First Amendment. At one point, Minter appears to reach the same conclusion as Our Nevada Judges, i.e. that summary closure without findings of fact and conclusions of law is unlawful, citing the need to show a compelling interest for closure to occur. *Answer* at 16, Paragraph 2 to 17, Paragraph 1.

Minter asserts that NRS 125.110 is constitutional because it allows certain pleadings and other papers to remain public. *Answer* at 10. Firstly,

the underlying case is not a divorce action, so NRS 125.110 has no relevance. Secondly, the sealing of parts of a record is still based on the whim of a party, and the language of the statute is mandatory, thus affording the court no discretion to consider the public's interest in the sealed documents. Arguably, the statute might satisfy the requirements of *Press-Enterprise* if it was merely an efficient manner in which to seal, by default, documents that could at a later date, upon request, be subjected to the *Press-Enterprise* analysis for unsealing - but this is not the law.

Our Nevada Judges sympathizes with Minter about the concern of unsubstantiated allegations being made public. *Answer* at 11, Paragraph 2. But litigants routinely make unsubstantiated allegations in all sorts of legal proceedings - and a primary purpose of the adversarial system is that the wheat be separated from the chaff. The greatest source of public discussion in a domestic relations matter is typically not a stranger to the

case, but the parties themselves. There are several cases[18] that Our Nevada Judges is providing electronic coverage of or monitoring where the litigant who has requested closure of their domestic relations matter goes onto social media to publicly[19] discuss their case, denigrating their child's other parent, and disparaging the court. This makes a mockery of the confidentiality rules and statutes, effectively allowing the litigant to be the sole source of information, with impunity. The existing statutes and rules do nothing to protect the children and family in these situations, and actually exacerbate the dangers to public confidence, incite a disrespect of the family court, and spread disinformation as described in *Del Papa v*

[18] C-19-338469-1, Eighth Judicial District Court; a criminal proceeding covered electronically and connected to D-12-469416-C, Family Division, Eighth Judicial District Court (sealed and closed per NRS 126.211). A-21-8209038-C and A-22-851472-C, Eighth Judicial District Court; both civil proceedings covered electronically and connected to D-18-578142-D, Family Division, Eighth Judicial District Court (sealed and closed per NRS 125.110 and NRS 125.080; respectively.) D-10-424830-Z, Family Division, Eighth Judicial District Court (monitoring while sealed and closed per NRS 125.110 and NRS 125.080; respectively.) D-18-581208-P, Family Division, Eighth Judicial District Court (monitored while sealed and closed per NRS 126.211.) D-12-467098, R-17-198640-R, and D-19-593073-Z, Family Division, Eighth Judicial District Court (monitoring while sealed and closed per NRS 125.110 and NRS 125.080; respectively.)

[19] One of these litigants even demanded closure of their case in response to an order granting SCR 230(1) coverage, only to have the unmitigated gall to both personally and through proxies communicate with Our Nevada Judges, laud the importance of the public interest in the case, and leak selected sealed filings.

Steffen, 112 Nev. 369, 915 P. 2d 245 (1996). Our Nevada Judges could have made a record of these points had the District Court not summarily closed and sealed.

Minter's assertion that the Legislature intended the Family Division to operate in secret, like a Star Chamber, is unsupported by its points and authorities. *Answer* at 12. NRS 3.006 defines family court. NRS 3.0105 institutes a Family Division in Districts 2 and 8, to date. Why would the confidentiality principles argued by Minter only apply to the domestic relations matters litigated in 2 of the 11 judicial districts of this State?

Minter's assertion that EDCR 5.212 is rooted in the Fourteenth Amendment is unsupported by his points and authorities. Answer at 13. Obviously, if "exercis[ing] his right to seal his case" was a "freedom of choice" issue supported by a recognized liberty interest, that same principle would extend to any litigant in any case involving children, not just a domestic relations matter. The assertion that a liberty interest protected by the Due Process clause of the 14th Amendment would extend to the right to keep court proceedings secret is unsupported by any citation to any case in which a court reached this same conclusion. It is

well established that parents and children possess a constitutionally protected liberty interest in companionship and society with each other (*Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987), overruled on other grounds by *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc)). Inferring, however, an associated liberty interest in secret judicial proceedings in cases involving parents and children is wholly unsupported.

d. Nebulous assertions of privacy, best interests, and media intent, do not override the First Amendment

Repeatedly, and most emphatically in *Answer* at 20, Paragraph 1, Minter demands that the public right of access not prevail over his right to privacy. The *Press-Enterprise* Court specifically confronted a California decision holding that "the right of access must give way when there is conflict" with the defendant's right to a fair trial, and rejected the notion, underlining the important role public observers play in our judicial proceedings and more importantly pointing out that these rights "are not necessarily inconsistent." *Press-Enterprise* at 478 U.S. 6. Frequently, attorneys have approached Our Nevada Judges assuming that "the other party" must have requested media coverage for "tactical" reasons; this

wrongheaded notion assumes Our Nevada Judges's presence in covered cases is to "take a side" and influence an outcome. The purpose of Our Nevada Judges's electronic coverage is to educate and inform in accordance with SCR 241(1). Our Nevada Judges provides electronic coverage for the public, and is not concerned with the interests of a particular party or attorney.

Minter asserts a multitude of theoretical privacy concerns and speculates as to the intent and purpose of public and press participation in domestic relations matters. All of these assertions could have been considered by the District Court in balancing the public's interest. Take one example, where Minter articulates privacy concerns. *Answer* at 12, Paragraph 2 to 4. Minter apparently feels the public is only interested in domestic relations matters to gossip over the frivolous details of the individual litigants' lives. Our Nevada Judges's viewership, however, has expressed tremendous interest in how judges fashion timeshare schedules, the circumstances that impact physical and legal custody awards, attorney courtroom conduct, judicial temperament, delays, child support awards, alimony awards, how holiday and vacation schedules are

fashioned, relocation, the impact of child abuse and neglect, how evidence is presented to the court, quality of the advocates, impact of third-party custody evaluators, parenting coordinators, and etiquette of the participants. The myriad factors that could be relevant if considered makes it clear why case-specific analysis is needed, as required by SCR 230(2)(a-f).

Minter's assertion that a government interest is essential to override privacy concerns is unsupported by his points and authorities. *Answer* at 13, Paragraph 2-4. By focusing intensely on the involvement of a prosecutor, Minter overlooks the fact that a judge is also a government actor, and that the public has an interest in a judge's courtroom conduct. *Del Papa v Steffen*, at P.3d 249. Minter also overlooks the public's interest in an attorney's courtroom conduct, which this Court has determined is a matter of public concern. *Abrams v. Sanson*, 136 Nev. 83, 89, 458 P.3d 1062, 1067 (2020). See also *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 298 (2d Cir. 2012). Minter's conceding that privacy interests evaporate only when a litigant to a domestic relations matter is subjected to criminal proceedings stems from a school of thought that has

been doing substantial damage to the public's confidence in the judiciary. *Answer* at 14, Paragraphs 1-2. Our Nevada Judges has been covering several criminal proceedings that intersect with domestic relations matters, and observing the public's reaction is what led Our Nevada Judges to understanding the importance of expanding coverage into domestic relations matters. The viewership's comments reflect, starkly, the difference between their understanding of the mechanics and reasoning in criminal proceedings, and the blind speculation as to what is occurring in the domestic relations matter. Overwhelmingly, the public supports what is occurring in the criminal proceeding, only to guess wildly and draw bizarre, often conspiratorial inferences as to what is occurring in the domestic relations matter. The position that sufficient public interest does not exist until a case spills from family court into criminal court is causing serious damage to the confidence that the public has towards the courts generally, and the family court especially.

Minter's citation to NRS 432B.430 is irrelevant. *Answer* at 14, Paragraph 4. The underlying proceeding is not an abuse and neglect proceeding, and if it were, Our Nevada Judges would assert the same First

Amendment arguments seeking to have the statute struck down as unconstitutional. If the best interests of the child were the silver bullet to defeating the Constitution, arbitrary gun bans would have prevailed long ago. Compare *District of Columbia v. Heller, Id*. NRS 3.2201 and NRS 127.007 are distinguishable for other reasons, especially adoptions, which may implicate unique governmental interests that go beyond the children's best interests.

j. An abuse of discretion occurred in denying electronic coverage, whether or not the right is rooted in the First Amendment

Minter asserts that there is no First Amendment right to ***camera*** access specifically. *Answer* at 17, Paragraph 2-3, to 18. Our Nevada Judges agrees, and has never argued otherwise. *Courtroom TV Network, LLC v. State*, 833 N.E. 2d 1197 (NY Ct. App. 2005) is distinguishable from the instant case, because Our Nevada Judges is able to rely on the Nevada Supreme Court Rules to obtain the right to provide electronic coverage of a proceeding. SCR 230(1). The District Court's denial of camera access was an abuse of discretion because it runs afoul of the SCR 230(2) presumption that "all courtroom proceedings that are open to

the public are subject to electronic coverage" and this Court's ruling in *Solid v. Eighth Judicial District Court*, 133 Nev. 118, 93 P. 3d 666 (2017) affirming the same. Minter's citation to *C.C. v. D.D.*, 105 N.Y.S.3d 794 (NY 2019) actually represents an example of what could have been relevant and persuasive here, had summary denial not occurred and the District Court heard argument, taken evidence, and made particularized findings. Indeed, the State of New York apparently has promulgated electronic coverage rules similar to our own, and a number of factors considered in *C.C. v. D.D.* could have been analogous and even instructive in that they consider the interests of the participants, witnesses, unprofessionalism by the news reporter, and potential misconduct by the news reporter. Minter could have also raised, and the District Court considered, Our Nevada Judges' intended purpose for publication. SCR 241(1). But none of this occurred, because the District Court summarily denied camera access.

Minter discusses at length the privacy concerns, appropriate use of the court, non-public-figure status, individualized child's needs, medical and psychiatric issues, expert witnesses, the permanence of electronic publication, intrinsic gag orders, the importance of non-disparagement,

day-to-day social details, exposure of other family members, and school attendance. *Answer* at 19, Paragraph 1, to 20, Paragraph 1. These all represent issues that the District Court could have considered and made particularized findings on under the applicable SCR 230(2)(a-f). Minter's argument that these issues support summary and categorical denial of camera access to any and all domestic relations matters is inconsistent with SCR 230(2), SCR 240(1), and *Solid*. This Court could have fashioned a rule expressly forbidding electronic coverage of domestic relations orders if it was intended. The Family Court Judges Allowing Camera Access have already demonstrated that Our Nevada Judges can responsibly and professionally provide the public with education and informational content of domestic relations matters. Indeed, many of the concerns expressed by Minter have been addressed by both Our Nevada Judges and District Court Judge Dawn Throne, involving specifically the importance of redacting personal and identifying family information[20].

[20] *Order for Camera Access to Court Proceedings* filed September 10, 2021, docket no. D-19-600841-C, Family Division, Eighth Judicial District Court; requiring redaction of "the names of the parties, the name of the minor child, the name of the child's school and case number".

e. It is self-evident that procedural rules promulgated by a judicial body do not undermine Constitutional rights

Minter argues that the judiciary can promulgate rules that override even the Legislature's authority. See *Answer* at 2, citing *Lyft, Inc. v. Eighth Judicial Dist. Court of Nev*., 137 Nev. Adv. Rep. 86, 501 P.3d 994, 997 (Nev. 2021) The *Lyft* Court, however, also recognized NRS 2.120(2), which prohibits the judiciary from promulgating rules that "abridge, enlarge or modify any substantive right[21]" or is otherwise "inconsistent with the Constitution of the State of Nevada". The Nevada Constitution is the supreme law of the state and controls over any conflicting provisions. *Thomas v. Nevada Yellow Cab Corp*., 130 Nev. 484, 488, 327 P.3d 518, 521 (2014), citing *Clean Water Coal. v. The M Resort, LLC*, 127 Nev. 301, 255 P.3d 247 (2011) quoting *Goldman v. Bryan*, 106 Nev. 30, 37, 787 P.2d 372, 377 (1990)). While the judiciary has the inherent power to govern its own procedures and to adopt and promulgate rules of procedure, this power does not include the power to adopt rules of procedure that result

[21] It appears the proponents of EDCR 5.212 may have been aware of this, as Senate Bill 334 was proposed during the Legislature's 81st session and included language identical to EDCR 5.212(a). The bill died in committee without a vote, and shortly thereafter, EDCR 5.212 was promulgated, avoiding the need for the Legislature's consideration of the issue.

in constitutional violations. *Whitlock v. Salmon*, 104 Nev. 24, 26, 752 P.2d 210, 211 (1988). See also *State v. Second Judicial Dist. Court,* 116 Nev. 953, 11 P.3d 1209 (2000).

EDCR 5.207 and EDCR 5.212 at best could be considered "procedural rules" from the perspective of the parties, but from the perspective of the public, the media, and Our Nevada Judges, they are substantive, as they interfere with the right of access to court proceedings by the media. As thoroughly argued in this reply, the right to access, to speak, and to publish concerning what happens in court proceedings is protected by the First Amendment and is a clearly established substantive federal right as well. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 576-77, 100 S. Ct. 2814, 2827 (1980). See *Lyft, Inc. v. Eighth Judicial Dist. Court of Nev*., 501 P.3d 994, 1001 (Nev. 2021) utilizing the definition of "Legal Right" as a substantive right *in Black's Law Dictionary* (11th ed. 2019) (defining a right as "[t]he capacity of asserting a legally recognized claim against one with a correlative duty to act").

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f. Conclusion

Closing hearings and sealing filings may favor some individual litigants, the individual lawyers practicing in a particular case, and the specific judge presiding over a case; but secret courts are damaging to the bench as a whole, the bar as a whole, and the general public. Secrecy rules for the benefit of the government and the individual, at the expense of confidence and trust in our institutions, will alienate the public and undermine public confidence in the judiciary in a time where trust in institutions is eroding nationwide. Electronic coverage takes the principles of access and transparency, and amplifies them enormously; it is a crucial tool in the information era. For these several reasons, and as the Constitution required, public and camera access to domestic relations matters is an issue that must be decided on a case-by-case basis. EDCR

5.207, EDCR 5.212(a)[22], NRS 126.211[23], NRS 125.110[24], and NRS 125.080[25] are anathema to the Constitution and this Court should strike them down as unconstitutional.

DATED this Nov 8, 2022

By: /s/ Luke Busby, Esq.

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[22] EDCR 5.212(a) is also facing a constitutional challenge in Supreme Court docket no. 84947 and could be addressed by this court as the issues are similar.

[23] EDCR 5.207 incorporates the unconstitutionality of this statute by reference. It is also facing a constitutional challenge in Supreme Court docket no. 84947 and could be addressed by this court as the issues are similar.

[24] NRS 125.110 is also facing a constitutional challenge by the Las Vegas Review Journal in Supreme Court docket no. 85228 and could be addressed by this court as the issues are similar.

[25] The language of this statute is identical to and inspired the promulgation of EDCR 5.212(a). It is also facing a constitutional challenge by the Las Vegas Review Journal in Supreme Court docket no. 85228 and could be addressed by this court as the issues are similar.

VERIFICATION OF ALEXANDER FALCONI

I, Alexander M. Falconi, state that I have read this *Reply* 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 Nov 8, 2022

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CERTIFICATE OF COMPLIANCE

I, Luke Busby, declare and certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Google Docs in 14-point Helvetica. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 5396 words.

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NRAP 25(5)(c)(1)(B) Certificate of Service

I, Luke Busby, do hereby declare that I personally served a true and correct copy of this *Reply* by placing it into a sealed envelope and mailing it, postage prepaid, *via* United States Postal Service, addressed as follows:

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