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

<p>8 [REDACTED] Plaintiff, 9 vs. 10 [REDACTED] Defendant. 11 _____/</p>	<p>CASE NO: D-23-[REDACTED]-D DEPT NO: O  Hearing: March 21, 2024 at 10 a.m.</p>
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**RESPONSE TO OBJECTION TO SCR 230(1) CAMERA ACCESS**

14 COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by  
15 and through the undersigned counsel, and hereby files a response to *Plaintiff's*  
16 *Objection to the Media Request and Order for Camera Access to Court*  
17 *Proceedings.*

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

**MEMORANDUM OF POINTS AND AUTHORITIES**

23 Alexander Falconi is an SCR 229(1)(c) news reporter who directs Our Nevada  
24 Judges, Inc. ('ONJ'), a Nevada non-profit corporation recognized by the IRS as a  
25 Section 501(c)(3) organization. ONJ is requesting camera access to these  
26 proceedings. Plaintiff has objected. Defendant has not objected.

1           **1. The News Reporter’s Procedure For Obtaining Camera Access**

2           Plaintiff complains of not having received notice of the camera access request.  
3           SCR 230(1) requires the SCR 229(1)(c) news reporter to provide the request only  
4           “with the judge.” It is not until after the judge’s review, that “[t]he attorneys of record  
5           shall be notified by the court administrator or by the clerk of the court[.]” It is not the  
6           news reporter’s role to notify counsel, it's the court administrator’s role. Plaintiff was  
7           notified by the clerk of the court via electronic service. Even if, *in arguendo*, Plaintiff  
8           did not receive notice, Plaintiff is now aware, and SCR 230(1) allows, the judge to  
9           waive the request.  
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11           **2. The First Amendment Overrules Laws That Summarily Close the Court**

12           Plaintiff appears to rely on NRS 125.110 as a basis to circumvent the judicial  
13           exercise of discretion and First Amendment analysis required by the Constitution of  
14           the United States before a court may be closed to the press. NRS 125.110 cannot  
15           supersede the Constitution any more than NRS 125.080, EDCR 5.207, and EDCR  
16           5.212 could. The Supremacy Clause establishes that the United States Constitution  
17           is the supreme Law of the Land. U.S. Const. art. VI, § 2. Quite simply, “[b]ecause the  
18           local rules and statutes **require** the district court to close the proceeding, they  
19           eliminate the process by which a judge should evaluate and analyze the factors that  
20           should be considered in closure decisions, and by **bypassing the exercise of**  
21           **judicial discretion**, the closure cannot be narrowly tailored to serve a compelling  
22           interest.” See *Falconi v. Eighth Jud. Dist. Ct.*, 140 Nev., Advance Opinion 8 (2024)  
23           (emphasis added). The decision in *Falconi* is broad; it applies to “local rules and  
24           statutes” that “require” closure. *Id.* This Court must exercise the discretion  
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1 constitutionally mandated by the First Amendment to determine whether and how a  
2 proceeding may be closed to the press, and any other “local rules and statutes” that  
3 “bypass [this] exercise of judicial discretion” are as unconstitutional as NRS  
4 125.080, EDCR 5.207, and EDCR 5.212 are.  
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6 This entire case file is not sealed, as Plaintiff asserts it is. The “seal[ing] [of] the  
7 entire case file [is a] manifest[] abuse[] [of] discretion” and a “fail[ure] to comply with  
8 NRS 125.110[.]” *Johanson v. Dist. Ct.*, 124 Nev. 245, 189 P.3d 94 (2008). The  
9 terminology developed by lawyers litigating domestic relations matters has evolved  
10 to oversimplify the practice of referencing, citing, and triggering the statutory sealing  
11 privileges they have enjoyed under NRS 125.110, NRS 126.211, and NRS 128.090  
12 as “sealing cases.” Because of this, uses of the phrase “sealed case” are routinely  
13 and mistakenly used in pleadings, other papers, and orders. But NRS 125.110 does  
14 not seal the entire file, it only seals the specific filings contemplated under NRS  
15 125.110(1)(b). *Johanson v. Dist. Ct., Id.*  
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18 Simply stated, NRS 125.110 is not now nor was it ever a lawful basis for  
19 closing divorce hearings to the press; instead, NRS 125.080 was. NRS 125.080 was  
20 expressly struck down as unconstitutional, and Plaintiff is left without any other  
21 authority to justify closure. In essence, this Court is presented with questions of  
22 statutory construction, the rules of which “require[] neither argument nor reference  
23 to authorities to show that when the language of a statute admits of two  
24 constructions, one of which would render it constitutional and valid and the other  
25 unconstitutional and void, that construction should be adopted which will save the  
26 statute. *State v. Castenada*, 126 Nev. 478, \_\_\_, 245 P.3d 550, 552 (2024).  
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1 Chief Judge Jerry Weise’s reference to this as a “sealed case” is unavailing.  
2 The *Falconi* Court mandated a First Amendment analysis by broadly expanding it  
3 from criminal proceedings to civil proceedings:  
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5 We take this opportunity to expand our discussion in *Stephens Media*,  
6 which concluded that there is a right to access criminal proceedings,  
7 and hold that the right to access also applies in civil proceedings,  
8 including family law proceedings.

9 *Falconi v. Eighth Jud. Dist. Ct., Id.*

10 The Falconi Court reiterated “there is no reason to distinguish family law  
11 proceedings from civil proceedings[.]” *Id.* In other words, the same rules that apply  
12 to civil court apply to family court. The First Amendment analysis must occur. For  
13 these several reasons, the basis by which Judge Wiese barred press access to  
14 these proceedings is no longer tenable; his summary closure of the November 14,  
15 2023 hearing was no less violative to the First Amendment than the summary  
16 closure District Court Judge Charles Hoskin ordered in *Falconi v. Eighth Jud. Dist.*  
17 *Ct., Id.*

### 18 **3. The First Amendment Requires Physical Access to these Proceedings**

19 ONJ sympathizes with Plaintiff, as with any other public figure, whether  
20 politician, celebrity, or judge, that the nature of her work brings a certain level of  
21 “harassment.” However, this alone is not a sufficient basis for closure of access to  
22 all hearings in her divorce, any more than it would be a basis to support closure of  
23 District Court Judge Crystal Eller’s civil proceedings in Eighth Judicial District Court,  
24 docket no. A-20-822640-C, which are currently under electronic coverage by ONJ.  
25 The basis relied upon by the Plaintiff is especially problematic given the Supreme  
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1 Court's rejection of a similar effort by Family Court Judge Robert Lueck to seal his  
2 entire case file and impose a gag order in his own divorce. *Johanson v. Dist. Ct., Id.*  
3 The Legislature's intentions, codified by NRS 293.908, are no more relevant than its  
4 intentions were in codifying NRS 125.080. Legislative intent aside, a judge's request  
5 to maintain the confidentiality of her "home address, phone numbers, and email  
6 addresses" is reasonable and compelling in the context of the first prong of analysis  
7 required by the *Falconi* Court. The second prong, however, requires the Court to  
8 narrowly tailor its restriction, if any, to mitigate the disclosure of only that  
9 information.  
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12 Defendant's alleged misconduct and purported objectives to harass Plaintiff  
13 are unavailing. If a party's misbehavior could be used to thwart press access to the  
14 court, any party who wanted to interfere with press access to their particular case  
15 could simply act out to create a basis by which to bar press access. The litigants  
16 and lawyers participating in this case are under the control and supervision of the  
17 Court and the State Bar. The Court and Bar have tools at their disposal to command  
18 obedience. In the context of physical access, it is not the role of the press to  
19 concern itself with a participant's conduct. In the context of camera access, the  
20 press does take on specific responsibilities, which will be discussed in detail in  
21 section 4.  
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24 The *Falconi* Court cited *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1, 8  
25 (1986) in referencing the two-pronged First Amendment analysis, within which are a  
26 number of profound observations, the most relevant of which is the lack of a jury.  
27 The *Press-Enterprise* Court recognized efforts to rely on the lack of a jury to  
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1 distinguish from other precedents allowing public access; however, in doing so, the  
2 majority not only soundly rejected the basis but countered that “the absence of a  
3 jury...makes the importance of public access to a preliminary hearing even more  
4 significant” because the jury is “an inestimable safeguard against the corrupt or  
5 overzealous prosecutor and against the complaint, biased, or eccentric judge.” The  
6 public constantly complains of “compliant” and “biased” family court judges, and  
7 “one of the important means of assuring a fair trial is that the process be open to  
8 neutral observers” because the “interests [of parties’ and the public] are not  
9 necessarily inconsistent.” The *Falconi* Court also relied upon *Del Papa v. Steffen*,  
10 112 Nev. 369, 374, 915 P.2d 245, 249 (1996), in pointing out not only the positive  
11 benefits of “open court proceedings” but conversely “the threat that secret judicial  
12 proceedings pose to public confidence in this court and the judiciary”; namely, that  
13 “secrecy encourages misunderstanding, distrust, and disrespect for the courts.” *Id.*

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17 ONJ would agree that protecting specific identifying information serves a  
18 compelling interest and that ONJ does not object to an order prohibiting Parties and  
19 counsel from uttering: 1) the addresses of homes, 2) the names of schools, 3) dates  
20 of birth, 4) social security numbers, and 5) the names of children at any hearings.  
21 ONJ would also consent to an order forbidding the publication of such information.  
22 ONJ does not intend to unseal any filings unless Parties attempt to rely upon the  
23 seal status of filings as a basis to bar physical access to the courtroom.  
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#### 25 **4. Our Nevada Judges Responsibly Uses Camera Access**

26 As an SCR 229(1)(c) news reporter with camera access, ONJ does exercise its  
27 editorial discretion to protect litigants and children. Often, litigants opposed to  
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1 camera access are actually opposed to press coverage generally and lash out with  
2 an SCR 230(1) objection. However, SCR 230(1) does not contemplate press  
3 coverage, nor does it generally contemplate the use of a camera or publication of  
4 electronic content. A news reporter could simply sit in a courtroom, observe, and  
5 then step out of the courtroom and go on camera to publish the information. Thus,  
6 the informational issue would be appropriately handled by this Court's First  
7 Amendment analysis in contemplating physical access as required by the *Falconi*  
8 Court. What is relevant in considering restrictions to camera access, however, is the  
9 actual video and audio footage that could be recorded within the boundaries of the  
10 courtroom itself. ONJ has a reputation for protecting the visual identity of children in  
11 domestic relations matters. It is built into ONJ's internal operating procedures and  
12 policy<sup>1</sup> and an order by this court imposing these restrictions would readily be  
13 complied with by ONJ.

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17 ONJ has published more than 600 hearings<sup>2</sup> from the First, Second, Fifth,  
18 Sixth, Eighth, Ninth, and Tenth Judicial District Courts; and, the Supreme Court;  
19 and, the Court of Appeals; and, the Commission on Judicial Discipline; and, the Las  
20 Vegas, Henderson, Beatty, Virginia, Elko, Reno, Sparks, and North Las Vegas  
21 Justice Courts; and, the Reno and Henderson Municipal Courts. Mr. Falconi has  
22 been solicited for expertise consistent with Judicial Canon 2.9(A)(2) to assist the  
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25 <sup>1</sup><https://ournevadajudges.com/assets/docs/documents/1-uniform-internal-operating-procedures-and-policy.pdf>

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27 <sup>2</sup> These hearings include several Family Division hearings, electronic coverage of which  
28 was allowed by Family Court Judges Tamatha Schreinert, Cynthia Lu, Shell Mercer, Stacy Rocheleau, Bryce Duckworth, Dawn Throne, Bridget Robb, Linda Marquis, and David Gibson Jr.





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2 DECLARATION OF ALEXANDER FALCONI

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

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

8  
9 EXECUTED this Mar 10, 2024

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