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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**
10 **FAMILY DIVISION**

<p>11 MARY RASMUSSEN, 12 13 Petitioner, 14 15 vs. 16 JULIE HAMMER; 17 18 Respondent.</p> <hr/>	<p>19 CASE NO: D-12-XXXXXX-C 20 DEPT NO: N 21 22 Hearing: 23 March 19, 2024 at 11 a.m.</p>
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24 **RESPONSE TO OBJECTION TO SCR 230(1) CAMERA ACCESS**

25 COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by
26 and through the undersigned counsel, and hereby files a response to *Plaintiff's*
27 *Objection to Order* filed February 28, 2024.

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

MEMORANDUM OF POINTS AND AUTHORITIES

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

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

2 Ms. Hammer complains of ex parte, unsigned submission of the camera
3 access request. NRCP 11 does not control; rather, the Supreme Court Rules control.
4 SCR 230(1) requires the SCR 229(1)(c) news reporter to provide the request only
5 “with the judge.” It is not until after the judge’s review, that “[t]he attorneys of record
6 shall be notified by the court administrator or by the clerk of the court[.]” It is not the
7 news reporter’s role to notify counsel, it's the court administrator’s role. This simple
8 procedure is not “a huge concern” and is used by all news reporters throughout the
9 entire State. Ms. Hammer was notified by the clerk of the court via electronic
10 service. Even if, *in arguendo*, Ms. Hammer did not receive notice, Ms. Hammer is
11 now aware, and SCR 230(1) allows the judge to waive the request.
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14 **2. The First Amendment Overrules Laws That Summarily Close the Court**

15 Ms. Hammer appears to rely on NRS 126.211 as a basis to circumvent the
16 judicial exercise of discretion and First Amendment analysis required by the
17 Constitution of the United States before a court may be closed to the press. NRS
18 126.211 cannot supersede the Constitution any more than NRS 125.080, EDCR
19 5.207, and EDCR 5.212 could. The Supremacy Clause establishes that the United
20 States Constitution is the supreme Law of the Land. U.S. Const. art. VI, § 2. To her
21 own detriment, Ms. Hammer argues a construction that is quite simply
22 unconstitutional, “[b]ecause the local rules and statutes [that] **require** the district
23 court to close the proceeding [would] eliminate the process by which a judge should
24 evaluate and analyze the factors that should be considered in closure decisions, and
25 by **bypassing the exercise of judicial discretion**, the closure cannot be narrowly
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1 tailored to serve a compelling interest.” See *Falconi v. Eighth Jud. Dist. Ct.*, 140
2 Nev., Advance Opinion 8 (2024) (emphasis added). The decision in *Falconi* is broad;
3 it applies to “local rules and statutes” that “require” closure. *Id.* This Court must
4 exercise the discretion constitutionally mandated by the First Amendment to
5 determine whether and how a proceeding may be closed to the press, and any
6 other “local rules and statutes” that “bypass [this] exercise of judicial discretion” are
7 as unconstitutional as NRS 125.080, EDCR 5.207, and EDCR 5.212 are.
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9 This entire case file is not sealed, as Plaintiff asserts it is. The terminology
10 developed by lawyers litigating domestic relations matters has evolved to
11 oversimplify the practice of referencing, citing, and triggering the statutory sealing
12 privileges they have enjoyed under NRS 125.110, NRS 126.211, and NRS 128.090
13 as “sealing cases.” Because of this, uses of the phrase “sealed case” are routinely
14 and mistakenly used in pleadings, other papers, and orders. But NRS 126.211 does
15 not seal the entire file, it only seals the specific “papers and records” contemplated
16 under the statute. ONJ has not moved this Court to unseal because ONJ assumed
17 this Court would discuss the issue at the upcoming hearing. To the extent the Court
18 requires filings be unsealed, ONJ can move to do so; ONJ is merely requesting
19 access to the hearings and out of respect for Parties privacy is only requesting as
20 much access as is necessary to perform its news reporting functions. Ms.
21 Hammer’s assertions that the seal status of filings in this matter somehow preclude
22 physical access to upcoming hearings is in essence presenting this Court with
23 questions of statutory construction, the rules of which “require[] neither argument
24 nor reference to authorities to show that when the language of a statute admits of
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1 two constructions, one of which would render it constitutional and valid and the
2 other unconstitutional and void, that construction should be adopted which will save
3 the statute. *State v. Castenada*, 126 Nev. 478, ___, 245 P.3d 550, 552 (2024). NRS
4 126.211 provides this Court with the exception necessary to apply the First
5 Amendment analysis mandated by the *Falconi* Court; any construction to the
6 contrary would be offensive to the First Amendment. Compare *Falconi v. Secretary*
7 *of State*, 129 Nev. ___, 299 P. 3d 378 (2013) (relying upon NRS 217.464(2)(b) to save
8 the statutory scheme by shoehorning in a procedure consistent with constitutional
9 principles.)
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12 The *Falconi* Court mandated a First Amendment analysis by broadly
13 expanding it from criminal proceedings to civil proceedings:

14 We take this opportunity to expand our discussion in *Stephens*
15 *Media*, which concluded that there is a right to access criminal
16 proceedings, and hold that the right to access also applies in civil
17 proceedings, including family law proceedings.

18 *Falconi v. Eighth Jud. Dist. Ct., Id.* The *Falconi* Court reiterated “there is no reason to
19 distinguish family law proceedings from civil proceedings[.]” *Id.* In other words, the
20 same rules that apply to civil court apply to family court. A child custody proceeding
21 involving unmarried persons is a family law proceeding as much as a divorce is.
22 The First Amendment analysis must occur. Ms. Hammer’s *res judicata* argument
23 also fails, because the basis by which Family Court Judge Mathew Harter barred
24 press access to these proceedings is no longer tenable; his summary closure of all
25 hearings was no less violative to the First Amendment than the summary closure
26 District Court Judge Charles Hoskin ordered in *Falconi v. Eighth Jud. Dist. Ct., Id.*
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3. The First Amendment Requires Physical Access to these Proceedings

ONJ sympathizes with Ms. Hammer’s frustration at the camera publication of her criminal prosecution, as any other criminally convicted person would be. ONJ provided electronic coverage for the general public because of the insight it offered into child abduction cases. Ms. Hammer may feel the coverage of her case is “obsessive”, but Ms. Hammer only amounts to 2.7% of ONJ’s videos. This particular domestic relations matter presents a matter of tremendous public interest; namely, how the family court will resolve the question of a child with three parents. The *Falconi* Court cited *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1, 8 (1986) in referencing the two-pronged First Amendment analysis, within which are a number of profound observations, the most relevant of which is the lack of a jury. The *Press-Enterprise* Court recognized efforts to rely on the lack of a jury to distinguish from other precedents allowing public access; however, in doing so, the majority not only soundly rejected the basis but countered that “the absence of a jury...makes the importance of public access to a preliminary hearing even more significant” because the jury is “an inestimable safeguard against the corrupt or overzealous prosecutor and against the complaint, biased, or eccentric judge.” The public constantly complains of “compliant” and “biased” family court judges, and “one of the important means of assuring a fair trial is that the process be open to neutral observers” because the “interests [of parties’ and the public] are not necessarily inconsistent.” The *Falconi* Court also relied upon *Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 249 (1996), in pointing out not only the positive benefits of “open court proceedings” but conversely “the threat that secret judicial proceedings pose

1 to public confidence in this court and the judiciary”; namely, that “secrecy
2 encourages misunderstanding, distrust, and disrespect for the courts.” *Id.*

3 ONJ would agree that protecting specific identifying information serves a
4 compelling interest and that ONJ does not object to an order prohibiting publication
5 of: 1) the addresses of homes, 2) the names of schools, 3) dates of birth, 4) social
6 security numbers, and 5) the names of children at any hearings. As mentioned
7 before, ONJ does not intend to unseal any filings unless Parties attempt to rely upon
8 the seal status of filings as a basis to bar physical access to the courtroom.
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10 **4. Our Nevada Judges Responsibly Uses Camera Access**

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12 As an SCR 229(1)(c) news reporter with camera access, ONJ does exercise its
13 editorial discretion to protect litigants and children. Often, like here, litigants
14 opposed to camera access are actually opposed to press coverage generally and
15 lash out with an SCR 230(1) objection. However, SCR 230(1) does not contemplate
16 press coverage, nor does it generally contemplate the use of a camera or
17 publication of electronic content. A news reporter could simply sit in a courtroom,
18 observe, and then step out of the courtroom and go on camera to publish the
19 information. There have in fact been other news outlets that published Ms.
20 Hammer’s criminal misconduct without even bothering to request camera access.
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22 What is relevant in considering restrictions to camera access, however, is the actual
23 video and audio footage that could be recorded within the boundaries of the
24 courtroom itself. ONJ has a reputation for protecting the visual identity of children in
25 domestic relations matters. It is built into ONJ’s internal operating procedures and
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1 policy¹ and an order by this court imposing these restrictions would readily be
2 complied with by ONJ.

3 ONJ has published more than 600 hearings² from the First, Second, Fifth,
4 Sixth, Eighth, Ninth, and Tenth Judicial District Courts; and, the Supreme Court;
5 and, the Court of Appeals; and, the Commission on Judicial Discipline; and, the Las
6 Vegas, Henderson, Beatty, Virginia, Elko, Reno, Sparks, and North Las Vegas
7 Justice Courts; and, the Reno and Henderson Municipal Courts. Mr. Falconi has
8 been solicited for expertise consistent with Judicial Canon 2.9(A)(2) to assist the
9 Reno Municipal Court with the handling of SCR 230(1) requests submitted to the
10 Chief Judge. Mr. Falconi recently took the stand to discuss ONJ's policies and
11 reputation in covering a very contentious criminal matter³ before District Court
12 Judge Barry Breslow and is willing to explain these policies to this Court as well.
13 Ultimately, forbidding camera access of these proceedings does not actually thwart
14 media coverage but weakens the accuracy of the public's perception of the
15 operation of the court. Once the camera access presumption has triggered, the
16 Supreme Court does not allow a denial to occur without the evidentiary support and
17 the proper exercise of discretion contemplated in *Solid v Eighth Judicial District*
18 *Court*, 133 Nev. 118, 393 P.3d 666 (2017).
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24 ¹[https://ournevadajudges.com/assets/docs/documents/1-uniform-internal-operating-pro](https://ournevadajudges.com/assets/docs/documents/1-uniform-internal-operating-procedures-and-policy.pdf)
25 [cedures-and-policy.pdf](https://ournevadajudges.com/assets/docs/documents/1-uniform-internal-operating-procedures-and-policy.pdf)

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

³ The State of Nevada vs Roger Hillygus, Stewart Handte:
<https://www.youtube.com/watch?v=uYvy4n4FLY0>

1 Ms. Hammer points out ONJ received \$5,000 from the Nevada Bar
2 Foundation, but the actual amount received is \$20,000 and will likely be much
3 higher after matching funds are disbursed. A non-profit corporation is permitted to
4 generate revenue consistent with the public service it provides, and the grant award
5 provided by the Bar Foundation was for coverage of ONJ's camera operational
6 expenses. The Bar Foundation recognizes the educational value ONJ provides to
7 lawyers. Exhibit 1. The *Solid* Court recognized that the only forbidden use of footage
8 was for unrelated advertising purposes. *Id.* at P.3d 671. There is no restriction on
9 generating revenue, as if there was, all of the mainstream media outlets would be
10 barred camera access.
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13 Ms. Hammer's reliance on SCR 240 is unnecessary, as ONJ already visually
14 redacts the parents and children. This Court could simply order the camera only be
15 used to record audio of parents. The Court could also order the camera turned off in
16 the event the child testifies. These restrictions are of no concern to ONJ and would
17 be complied with.
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19 Finally, Ms. Hammer accuses ONJ of broadcasting this case prior to sealing,
20 but this is untrue. ONJ only published 18 videos of her criminal prosecution. District
21 Court Judge Jerry Wiese authorized comprehensive electronic coverage of the
22 proceedings, no objection of which was ever filed by Ms. Hammer. Exhibit 2.
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24 **5. Requests For Removal of Published Material Should Be Denied**

25 Ms. Hammer's requests for an order requiring ONJ to remove published
26 material are outside the scope of this Court's requested briefing and unsupported
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1 by points and authorities. EDCR 2.20(c). DCR 13(2). The Court would be in excess
2 of its jurisdiction to order removal of material Judge Wiese authorized for filming.

3 **6. ONJ's Use of the Service List Is Not Improper**

4 Ms. Hammer's request for removal of ONJ from the service list is unsupported
5 by points and authorities and should be disregarded. EDCR 2.20(c). DCR 13(2). ONJ
6 uses the service list to keep abreast of hearing dates and times, which enhances its
7 ability to educate and inform the public. The NEFCR do not prohibit use of the
8 service list by non-party news reporters, and Ms. Hammer has failed to allege any
9 abuse of the system. NEFCR 13(d). If the Eighth Judicial District Court wanted to
10 forbid non-parties from registering, a rule could be created. NEFCR 13(d)(2). Until
11 that occurs, ONJ will continue to use the service list. Ms. Hammer and anyone else
12 who does not want to serve ONJ with a filing can simply uncheck the transmission
13 box.
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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:

John Jones, Esq.

Julie Hammer

Gonzalo Galindo

DATED this Mar 10, 2024

By: /s/ Luke Busby