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

<div style="border: 2px solid red; background-color: black; width: 150px; height: 20px; margin-bottom: 10px;"></div> <p style="text-align: right; margin-right: 20px;">Plaintiff,</p> <p style="text-align: center; margin: 10px 0;">vs.</p> <div style="border: 2px solid red; background-color: black; width: 150px; height: 20px; margin-bottom: 10px;"></div> <p style="text-align: right; margin-right: 20px;">Defendant.</p> <hr style="width: 30%; margin-left: 0;"/>	<p>CASE NO: D-21 -D DEPT NO: Q</p> <p><u>OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER GRANTING CAMERA ACCESS AND FOR CLOSED HEARING</u></p> <p>NO HEARING REQUESTED</p>
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COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by and through the undersigned counsel, and hereby files an opposition to Plaintiff's motion for reconsideration of order granting camera access and for closed hearing filed March 14, 2024.

This opposition 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. Plaintiff has objected. Defendant has not objected.

1 **1. Summary**

2 ONJ agrees with Plaintiff that no hearing would be preferable. Plaintiff has set
3 forth facts intimate and substantive to the family that ONJ will give deference to the
4 Court on as far as any specific findings concerning the children and press access to
5 these proceedings. If the Court has concerns that require the taking of evidence it
6 could be resolved briefly prior to the evidentiary hearing but ONJ would appreciate
7 as much advance notice as possible so counsel can appear on the corporation's
8 behalf.
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10 **2. The Applicability of the NRS 125.110 and the SRCR**

11 SRCR 1(4) contemplates the scope of the rules on sealing and redaction. A list
12 of NRS Chapters are provided. The list is not exclusive¹ and actually manifests the
13 harmonious construction² principle of statutory construction with the additional
14 caveat that the court rules³ give way to any specific statute governing sealing and
15 redaction. Accordingly, ONJ is in agreement with Plaintiff that NRS 125.110
16 provides for the sealing of specific records, but that Plaintiff may seek to seal and
17 redact additional records via SRCR 3(1) if the procedure for sealing is complied with
18 consistent with the rule.
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24 ¹ SRCR 1(4): "These rules do not apply to the sealing or redacting of court records under
25 **specific** statutes, **such as...**" (emphasis added).

26 ² *Simmons*, 130 Nev. at 546, 331 P.3d at 854 ("[T]his court interprets `provisions within a
27 common statutory scheme harmoniously with one another in accordance with the
28 general purpose of those statutes' to avoid unreasonable or absurd results and give
effect to the Legislature's intent.")

³ *Weddell v. Stewart*, 127 Nev. 645, ___, 261 P. 3d 1080, 1084 (2011) ("[R]ules of
statutory construction apply to court rules.")

1 Plaintiff correctly points out that NRS 125.110(2) lists “proceedings” and
2 associated evidence and transcripts as sealed, but concedes this court may have a
3 basis to proceed with the First Amendment analysis. NRS 125.110 generally
4 survives so long as it does not interfere with press access to the courtroom. NRS
5 125.110(2), however, is repugnant to the First Amendment and cannot supersede
6 the Constitution any more than NRS 125.080, EDCR 5.207, and EDCR 5.212 could.
7 Quite simply, “local rules and statutes [that] **require** the district court to close the
8 proceeding [unconstitutionally] eliminate the process by which a judge should
9 evaluate and analyze the factors that should be considered in closure decisions, and
10 by **bypassing the exercise of judicial discretion**, the closure cannot be narrowly
11 tailored to serve a compelling interest.” *Falconi v. Eighth Jud. Dist. Ct.*, 140 Nev.,
12 Advance Opinion 8 (2024) (emphasis added). NRS 125.110(2) is not now nor was it
13 ever a lawful basis for closing divorce hearings to the press; instead, NRS 125.080
14 was. NRS 125.080 was expressly struck down as unconstitutional. In essence,
15 Plaintiff’s citation to NRS 125.110(2) presents this Court with questions of statutory
16 construction, the rules of which “require[] neither argument nor reference to
17 authorities to show that when the language of a statute admits of two constructions,
18 one of which would render it constitutional and valid and the other unconstitutional
19 and void, that construction should be adopted which will save the statute. *State v.*
20 *Castenada*, 126 Nev. 478, ___, 245 P.3d 550, 552 (2024). The decision in *Falconi* is
21 broad; it applies to “local rules and statutes” that “require” closure. This Court must
22 exercise the discretion constitutionally mandated by the First Amendment to
23 determine whether and how a proceeding may be closed to the press, and any
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1 other “local rules and statutes” that “bypass [this] exercise of judicial discretion” are
2 as unconstitutional as NRS 125.080, EDCR 5.207, and EDCR 5.212 are.

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

4 Plaintiff’s reliance on the fundamental interest parents have “in the care,
5 custody, and control of their children is unavailing. The mere observation of the
6 proceedings is not interfering with the parents custody and control of their children.
7 If it did, this would not serve as a specific basis to bar access to this matter; instead,
8 it would serve as a categorical basis to deny access to any and all cases involving
9 children, whether criminal, civil, or family law. The *Falconi* Court mandated a First
10 Amendment analysis by broadly expanding it from criminal proceedings to civil
11 proceedings:
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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.*

20 At best, Plaintiff arguably asserts that the observation of the evidentiary
21 hearing interferes with her mere desire to conduct the proceedings in private, which
22 the Falconi Court specifically considered:

23 We acknowledge that there is an interest in protecting litigants'
24 privacy rights in family law proceedings, as those proceedings
25 apply wholly to their private lives. See, e.g., *In re Marriage of*
26 *Burkle*, 37 Cal. Rptr. 3d 805, 807-18 (Ct. App. 2006). However, a
27 litigant's privacy interests do not automatically overcome the
28 press's and the public's right to access court proceedings. In
fact, the majority of jurisdictions to have considered this issue
have concluded that when there are no extraordinary

1 circumstances present, the public's right to access family law
2 proceedings outweighs the litigants' privacy interests.

3 ONJ understands Plaintiff's assertions that the Legislature places privacy,
4 specifically the privacy of children, in high esteem. The Legislature's intentions,
5 however, codified by any other statute, is no more relevant than its intentions were
6 in codifying NRS 125.080. This is because the United States Constitution is the
7 supreme Law of the Land. U.S. Const. art. VI, § 2. In other words, the Legislature
8 was overpowered and its intent nullified.
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10 The Supreme Court did not do this lightly. There are profound reasons that go
11 far beyond the interests of Plaintiff and her children that serve as a counterweight in
12 favor of public access. The Falconi Court cited *Press-Enterprise Co. v. Superior Ct.*,
13 478 U.S. 1, 8 (1986) in referencing the two-pronged First Amendment analysis,
14 within which are a number of important observations, the most relevant of which is
15 the lack of a jury. The *Press-Enterprise* Court recognized efforts to rely on the lack of
16 a jury to distinguish from other precedents allowing public access; however, in
17 doing so, the majority not only soundly rejected the basis but countered that "the
18 absence of a jury...makes the importance of public access to a preliminary hearing
19 even more significant" because the jury is "an inestimable safeguard against the
20 corrupt or overzealous prosecutor and against the complaint, biased, or eccentric
21 judge." The public constantly complains of "compliant" and "biased" family court
22 judges, and "one of the important means of assuring a fair trial is that the process
23 be open to neutral observers" because the "interests [of parties' and the public] are
24 not necessarily inconsistent." The *Falconi* Court also relied upon *Del Papa v. Steffen*,
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1 112 Nev. 369, 374, 915 P.2d 245, 249 (1996), in pointing out not only the positive
2 benefits of “open court proceedings” but conversely “the threat that secret judicial
3 proceedings pose to public confidence in this court and the judiciary”; namely, that
4 “secrecy encourages misunderstanding, distrust, and disrespect for the courts.” *Id.*
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6 ONJ would agree that protecting particular identifying information serves a
7 compelling interest and that ONJ does not object to an order prohibiting Parties and
8 counsel from uttering the information lineated under SRCR 2(6)(1-8). ONJ would
9 also consent to an order forbidding the publication of such information.
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11 SRCR 2(6)(9) presents a more complex issue. Preliminarily, ONJ is not
12 interested in actual filings or reports. The Court should not be closed, however,
13 merely due to the possibility of relevant medical and financial testimony. As the
14 Falconi Court explained, family law proceedings have not been given any more
15 heightened protection than ordinary civil proceedings; ONJ and other news
16 reporters routinely cover cases involving sensitive medical information, which was
17 an important point raised by Justice Elissa Cadish at oral arguments. See also
18 SRCR 3(4). Typically, relevant medical information is of an intrinsic interest to the
19 public and press because it assists with understanding the basis of a Court’s
20 decision. “People in an open society do not demand infallibility from their
21 institutions, but it is difficult for them to accept what they are prohibited from
22 observing.” *Richmond Newspapers*, 448 U. S., at 572. Irrelevant medical and
23 financial information can be excluded, but the Court and counsel are tasked with
24 controlling what participants utter through examination and argument. There must
25 be a specific, extraordinary circumstance to bar public access to relevant medical
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1 and financial information because such privacy interests must be weighed against
2 the public's interest in the operation of the court. SRCR 3(4).

3 **4. Our Nevada Judges Responsibly Uses Camera Access**

4 "It is not unrealistic even in this day to believe that public inclusion affords
5 citizens a form of legal education and hopefully promotes confidence in the fair
6 administration of justice." *State v. Schmit*, 273 Minn. 78, 87-88, 139 N. W. 2d 800,
7 807 (1966). "Instead of acquiring information about trials by firsthand observation or
8 by word of mouth from those who attended, people now acquire it chiefly through
9 the print and electronic media. In a sense, this validates the media claim of
10 functioning as surrogates for the public." *Richmond Newspapers*, 448 U. S. 525, 573
11 (1980).

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, litigants opposed to
14 camera access are actually opposed to press coverage generally and lash out with
15 an SCR 230(1) objection. However, SCR 230(1) does not contemplate press
16 coverage, nor does it generally contemplate the use of a camera or publication of
17 electronic content. A news reporter could simply sit in a courtroom, observe, and
18 then step out of the courtroom to publish the information. Thus, the informational
19 issue would be appropriately handled by this Court's First Amendment analysis in
20 contemplating physical access as required by the *Falconi* Court. What is relevant in
21 considering restrictions to camera access, however, is the actual video and audio
22 footage that could be recorded within the boundaries of the courtroom itself. ONJ
23 has a reputation for protecting the visual identity of children in domestic relations
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1 matters. ONJ can also refrain from pointing the camera at presentation screens that
2 display visual diagrams or reports the Court deems sensitive. It is built into ONJ's
3 internal operating procedures and policy⁴ to protect parents and children and an
4 order by this court imposing these restrictions would readily be complied with.
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6 ONJ has published more than 600 hearings⁵ from the First, Second, Fifth,
7 Sixth, Seventh, Eighth, Ninth, and Tenth Judicial District Courts; and, the Supreme
8 Court; and, the Court of Appeals; and, the Commission on Judicial Discipline; and,
9 the Las Vegas, Henderson, Beatty, Virginia, Elko, Reno, Sparks, and North Las
10 Vegas Justice Courts; and, the Reno and Henderson Municipal Courts. Mr. Falconi
11 has been solicited for expertise consistent with Judicial Canon 2.9(A)(2) to assist the
12 Reno Municipal Court with the handling of SCR 230(1) requests submitted to the
13 Chief Judge. Mr. Falconi recently took the stand to discuss ONJ's policies and
14 reputation in covering a very contentious criminal matter⁶ before District Court
15 Judge Barry Breslow. Ultimately, forbidding camera access of these proceedings
16 does not actually thwart media coverage but weakens the accuracy of the public's
17 perception of the operation of the court. Once the camera access presumption has
18 triggered, the Supreme Court does not allow a denial to occur without the
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24 ⁴[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 ⁵ These hearings include several family court hearings, electronic coverage of which was
27 allowed by District Court Judges Tamatha Schreinert, Cynthia Lu, Shell Mercer, Stacy
28 Rocheleau, Bryce Duckworth, Dawn Throne, Bridget Robb, Linda Marquis, David Gibson
Jr., Gary Fairman, and Mari Parlade.

⁶ The State of Nevada vs Roger Hillygus, Stewart Handte:
<https://www.youtube.com/watch?v=uYvy4n4FLY0>

1 evidentiary support and the proper exercise of discretion contemplated in *Solid v*
2 *Eighth Judicial District Court*, 133 Nev. 118, 393 P.3d 666 (2017).

3 **5. Conclusion**

4 While ONJ and Plaintiff are at odds on the issue of access, ONJ is not
5 generally an adversary of Plaintiff. ONJ is merely interested in providing coverage of
6 the matter, whatever the outcome may be.
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8 The media and the Court both serve the public, but they do so in different
9 ways. The Court should allow physical access to these proceedings, and narrowly
10 tailor its restrictions as appropriate. ONJ also understands that evidentiary hearings
11 can be fluid, and that the Court may need to make decisions on instinct and at the
12 moment to remove the press from the courtroom depending on the testimony and
13 evidence presented.
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15 This Court should allow physical and camera access to these proceedings,
16 with narrowly tailored restrictions to mitigate the disclosure of especially personal
17 identifying information, as articulated above.
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19 **NRS 239B.030(4) AFFIRMATION**

20 Pursuant to NRS 239B.030 the undersigned hereby affirms that this document
21 does not contain the social security number of any person.
22

23 **DATED** this Mar 15, 2024

24 By: /s/ Luke Busby _____
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DECLARATION OF ALEXANDER FALCONI

I, Alexander M. Falconi, declare that I have read the forgoing *Opposition* 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 Mar 15, 2024



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