LUKE A. BUSBY, ESQ.
SBN 10319
316 California Ave.
Reno, Nevada 89509
775-453-0112
luke@lukeandrewbusbyltd.com
Attorney for Our Nevada Judges, Inc.

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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

OUR NEVADA JUDGES, INC.,
a Nevada Non-Profit Corporation,
Petitioner,
Vs.

Case No.

FIRST, SECOND, AND EIGHTH JUDICIAL DISTRICT COURTS OF THE STATE OF NEVADA IN AND FOR THE COUNTIES OF CARSON CITY, WASHOE, and CLARK; RESPECTIVELY; AND, THE HONORABLE DAVID HARDY AND GREGORY GORDON, DISTRICT COURT JUDGES;
AND, THE HONORABLE EDMUND GORMAN, PROBATE COMMISSIONER;
Respondents.
_____/

Dist. Ct. Case Nos.
PR23-00813, CV24-00231,
and D-23-661332-R.

THE DOE 1 TRUST; AND, DOES 1 THROUGH 9; AND, STEVE EGGLESTON, CANDACE McDONALD, AND MICHAEL McDonald; AND, THE DEPARTMENT OF FAMILY SERVICES, CHILD SUPPORT SERVICES, CLARK COUNTY, NEVADA;
Real Parties In Interest.
_____/

PETITION FOR WRIT OF MANDAMUS

Docket 89600 Document 2024-42588

COMES NOW, Our Nevada Judges, Inc., a Nevada Non-Profit Corporation (hereinafter "ONJ") by and through the undersigned counsel, and hereby files the following petition for writ of *mandamus*. This petition is based on the following memorandum of points and authorities and on the petitioner's appendix (hereinafter 'PA') on file.

I. Routing Statement

This matter should be retained by the Supreme Court because it involves an important issue of first impression. NRAP 17(a).

The Supreme Court has retained cases 89347 and 89475, which involve petitions seeking review of orders denying media access in Second Judicial Dist. Court docket nos. PR23-00813 (hereinafter 'the Trust Case') and CV24-00231; respectively.

II. NRAP 26.1 Disclosure

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed.

Petitioner does not have a parent corporation.

Real Parties in Interest are government entities, natural persons, or litigating pseudonymously, and either lack a parent corporation, or the corporate status of the entity cannot be determined because its identity has not been disclosed.

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The undersigned attorney is the only attorney appearing on behalf of Petitioner in this matter.

Dated this Nov 12, 2024

By: /s/ Luke Busby, Esq.

LUKE A. BUSBY, ESQ.
SBN 10319
316 California Ave.
Reno, Nevada 89509
775-453-0112

III.

Summary of the Argument

The issue of public and press access to Nevada courts is of utmost importance; in this Petition, we ask the Court to provide clear direction to judges, court administrators, and court clerks on how to properly follow the United States Constitution, the Nevada Constitution, and Nevada's Rules for Sealing and Redacting Court Records (SRCR) such that the First Amendment right to access to Courts is preserved and available to the press and the public.

The New York Times, Cable News Network, Associated Press, National Public Radio, WP Company, Reuters News & Media, and American Broadcasting Companies (hereinafter 'the Media Coalition'), are litigating overlapping issues before this Court in case no. 89347. ONJ and the Media Coalition are both independently confronting, *inter alia*, the unconstitutional and pervasive practice of "super-sealing[1]", which spans

[1] The term "super-seal", colloquially used to distinguish the ordinary practice of sealing specific filings from the disturbing practice of sealing…

multiple judicial districts and interferes with the important work of teh press in Nevada.

IV. Parties

Petitioner is Our Nevada Judges, a Nevada Non-Profit Corporation.

Respondents are the First, Second, and Eighth Judicial District Courts; and, Probate Commissioner Edmund Gorman; and, District Court Judges David Hardy and Gregory Gordon.

Real Parties in Interest are an anonymous trust, nine (9) pseudonymous litigants, the Department of Family Services, Steve Eggleston, Michael McDonald, and Candace Ruiz fka McDonald.

V. Jurisdiction & Standing

This Court has original jurisdiction. Article 6, Section 4 of the Nevada Constitution. See also NRS 34.330.

VI. Relief Requested

ONJ seeks a writ to three Courts on the same essential grounds. First, ONJ filed a request to restore SRCR 3(5)(c) access and submitted a request to provide electronic coverage of trust proceedings in the Second Judicial District Court. PA-044. PA-054. Probate Commissioner Edmund

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…entire case files, cropped up several times in local news publications. District Court Judge Brent Adams and Justice James Hardesty provided remarks to the newspaper. *Judges Stop 'Supersealing' Court Records*, Las Vegas Review-Journal (2009). So too did Justice William Maupin. *Standards for Sealing Civil Cases Tougher*, Las Vegas Review Journal (2008). A federal judge referred to the practice as "constitutionally abhorrent". Jeff German, *'Super-Sealing' in Federal Court Has New Name, Same Result*, Las Vegas Review-Journal (2014).

Gorman (hereinafter "Commissioner Gorman") recommended summary denial of all requests. PA-061. PA-291:10-13. Probate Judge David Hardy's (hereinafter "Judge Hardy") ruling is either unknown[2], does not exist[3], or is lumped into the Media Coalition's denial of access. PA-232. Petitioner requests this Court issue a writ directing Commissioner Gorman and Judge Hardy to allow physical and camera access to the Trust Case.

Second, ONJ filed an unopposed[4] request to restore SRCR 3(5)(c) access to a termination of parental rights action in the Family Division of the Eighth Judicial District Court. PA-044. District Court Judge Gregory Gordon (hereinafter "Judge Gordon") granted the request in part, but allowed the entire case file to remain sealed. PA-049. Petitioner requests this Court issue a writ of *mandamus* directing the Judge Gordon to restore SRCR 3(5)(c) access to docket no. D-23-661332-R (hereinafter 'the TPR Case').

Third, ONJ filed a request to restore SRCR 3(5)(c) access and provide electronic coverage of judicial review of an NRS 432B abuse & neglect proceeding in the First Judicial District Court. PA-001. District

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[2] Petitioner has been unable to fully develop a record or comply with the obligation to submit an appendix that complies with NRAP 21(a)(4) and NRAP 30 because its own filings and filings served upon it remain under seal and inaccessible. PA-238. See also *Declaration of Luke Busby, Esq*, included herein.

[3] Compare *Bd. of Gallery of History, Inc. v. Datecs Corp*., 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) ("The absence of a ruling [] constitutes a denial of the claim.")

[4] In addition to not filing oppositions, the parents have communicated ONJ that they do not intend to oppose unsealing.

Court Judge James Wilson[5] granted the request, with the exception[6] of disclosing hearing dates. PA-030.

The First, Second, and Eighth Judicial District Court clerks' practice of unilaterally and categorically sealing paternity, unmarried child custody, abuse & neglect, and termination of parental rights case files is ongoing. Petitioner requests this Court issue a writ of *mandamus* directing the clerks to restore SRCR 3(5)(c) access to all civil cases, including trust and domestic relations matters.

VII. Issues Presented

1) Whether trust proceedings are subject to the First Amendment right of public access, thereby requiring courts to satisfy strict scrutiny before closing proceedings to the public; and,
2) Whether Commissioner Gorman and Judge Hardy abused their discretion in closing the bench trial to the public in the Trust Case; and,
3) Whether Commissioner Gorman and Judge Hardy abused their discretion in refusing to allow camera access to the bench trial in the Trust Case; and,

[5] Because District Court Judge James Wilson did not rule that the SRCR were inapplicable, PA-030, only The First Judicial District Court is included as a respondent on the specific issue of the clerk unilaterally and categorically sealing the entire case file of each and every NRS 432B proceeding.

[6] This ruling pre-dates *Falconi v. Eighth Judicial Dist. Court*, 140 Nev ___, 543 P.3d 92 (2024).

4) Whether Judge Gordon abused his discretion by refusing to restore SRCR 3(5)(c) access to the TPR Case; and,
5) Whether court clerks violate the First Amendment and SRCR 3(5)(c) by sealing entire case files without individualized judicial determinations.

VIII. Procedural History

On July 2, 2022, ONJ filed *Limited Motion to Unseal*. PA-001. Steve Eggleston did not oppose.

On July 19, 2022, the Department of Family Services filed opposition. PA-017.

On August 1, 2022, ONJ filed a reply to opposition. PA-027.

On August 5, 2022, District Court Judge James Wilson filed *Order Unsealing Certain Records*. PA-030.

On March 6, 2023, Senior Judge Cheryl Moss (hereinafter 'Judge Moss') entered an order allowing comprehensive electronic coverage of termination of parental rights proceedings. PA-033. On same day, Jack Fleeman, Esq., filed *Declaration* invoking NRS 128.090 and demanding[7] closure of the court. PA-035. Judge Moss capitulated with a minute order revoking camera access. PA-041.

On March 4, 2024, ONJ filed a motion to unseal. PA-044. Candace and Michael McDonald (hereinafter 'The Parents') did not oppose.

[7] ONJ notes that nowhere in the filing does it indicate his client supported the request.

On April 4, 2024, Judge Gordon granted the motion in part, citing the inapplicability of the SRCR in refusing to restore access to the docket. PA-049.

On July 24, 2024, ONJ asked the Second Judicial District Court to provide the Trust Case. PA-233.

On July 25, 2024, Alicia Lerud, court administrator for the Second Judicial District Court, did not deny the existence of the Trust Case, but responded that "no public records" were available. PA-234.

On August 16, 2024, without inquiry from ONJ and presumably in response to the Media Coalition's tsunami of unrelenting inquiries, Ms. Lerud formally acknowledged the existence of the Trust Case. PA-236. ONJ immediately submitted an SCR 230(1) request. PA-254.

On August 19, 2024, ONJ filed a motion to unseal. PA-055.

On August 21, 2024, Commissioner Gorman filed a recommendation denying physical and camera access. PA-061.

On August 26, 2024, ONJ filed an objection to Commissioner Gorman's recommendation, PA-070; and, a request for judicial review of the commissioner's recommendation. PA-078.

On August 26, 2024, Doe 9 filed a response to ONJ's request for judicial review of Commissioner Gorman's recommendation. PA-088.

On August 26, 2024, Doe 9 filed a request for submission of both its own response and ONJ's aforementioned request for judicial review. PA-093.

On August 27, 2024, Doe 1 and Doe 2 filed joinders to Doe 9's response to ONJ's request for judicial review of Commissioner Gorman's recommendation. PA-195. PA-198.

On September 3, 2024, ONJ filed a reply. PA-201.

On September 12, 2024, Commissioner Gorman recommended, *inter alia,* denial of The Media Coalition's motion to unseal. PA-215. In this recommendation, Probate Judge David Hardy appears to confirm all recommendations, pending and prospective, up to and through the upcoming evidentiary hearings. PA-232. ONJ can only assume that this order confirms against its own pending request for judicial review because the docket remains sealed[8] and Ms. Lerud is not responding to further inquiries. PA-238.

IX. Reasons Why the Writ Should Issue

Alexander Falconi was recognized by the *Falconi Court* as running the "press organization" now incorporated as a Nevada Non-Profit Corporation, ONJ. *Falconi v. Eighth Judicial Dist. Court*, 543 P.3d 92, 94 (Nev. 2024)(hereinafter "*Falconi*").

a. Mandamus is Necessary, Appropriate, and Efficient

A writ of *mandamus* may be issued "to compel the performance of an act which the law especially enjoins as a duty resulting from an office,

[8] The Second Judicial District Court has added the case under a "Notable Cases" section of its website. PA-236. Though similar to an ordinary docket index, it is not in compliance with SRCR 3(5)(c). ONJ takes this opportunity to note that whole swaths of similar cases, which lack media interest, remain wholly invisible to the public and press.

trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person," when there is no plain, speedy, and adequate remedy. NRS 34.160; NRS 34.170. "[T]he scope of the press's and public's access to courts is an important issue of law, as well as a substantial issue of public policy, warranting [] extraordinary consideration [because] direct appellate review is often not available to the press, and thus, writs for extraordinary relief may be necessary to challenge a denial of access." *Falconi,* 543 P.3d at 95 (Nev. 2024).

1. Regarding Electronic Coverage

An SCR 229(1)(c) reporter is forbidden from appealing an electronic coverage order and may only seek appellate relief by extraordinary writ. SCR 243. Compare *Solid v. Eighth Judicial District Court*, 133 Nev. 118, 393 P. 3d 666 (2017).

b. Physical Access Implicates a First Amendment Analysis

1. The Rupert Murdoch News Corp Trust Case

"Who has control of Rupert Murdoch's many companies, his legacy, and his $20 billion fortune is a matter of immense public interest[.]" *Emergency Petition* filed[9] September 19, 2024. Commissioner Gorman and Judge Hardy were able to ignore the colossal public interest in this case by exempting trust proceedings from the purview of the First Amendment.

[9] Supreme Court Docket No. 89347.

Falconi, 543 P.3d at 96. PA-227:11-15. Once the Constitution was bypassed, Commissioner Gorman justified the extreme sealing applied to the trust case by citing statutes that delegate his discretion to the litigants themselves. PA-228:14-230:13. PA-65:2-5. PA-66:10-13. This is analogous to the seal-on-demand privilege[10] that advocates of secrecy claimed entitlement to in Supreme Court Docket No. 85195. This Court should do as the *Falconi Court* did and once again reject the notion that nebulous family privacy interests are arbitrarily paramount to the public interest. The "experience and logic" test controls. *Falconi*, 543 P.3d at 96.

The "experience" prong is not frustrated by focusing narrowly on Nevada's history; this failed argument was already considered by the *Falconi Court*, which cited *El Vocero de P.R. v. Puerto Rico*, 508 U.S. 147, 150, 113 S. Ct. 2004, 2006 (1993) (rejecting efforts to apply the test to local jurisdictions and holding that "the experience in that type or kind of hearing throughout the United States" controls.) PA-206:13-228:27. Multiple jurisdictions have held that probate records are open to the public. *In re Estates of Zimmer*, 151 Wis. 2d 122, 125, 442 N.W.2d 578, 580 (Ct. App. 1989) (applying presumption of openness to probate matters); *Estate of Campbell*, 106 P.3d 1096, 1097 (Haw. 2005) (same); *Estate of Hearst*, 136 Cal.Rptr. 821, 67 Cal.App.3d 777 (Cal. App. 1977).

The "experience" of modern probate and trust litigation is far different from the Chancery Courts and Courts of Equity in the 19th

[10] The unconstitutional statute, NRS 125.080, conferred a privilege upon parties that allowed them to close their divorce hearings on demand.

century. This concept of secrecy in equitable proceedings did not carry over to American law. Nevada has abolished the procedural distinction between courts of law and equity. Nev. Const. Art 6, § 14; *Maples v. Geller*, 1 Nev. 233, 239 (1865). See also *Seattle Times Co. v. U.S. Dist. Ct.*, 845 F.2d 1513, 1516 (9th Cir. 1988) (historical tradition becomes "much less significant" when modern proceedings no longer resemble historical practices); *United States v. Chagra*, 701 F.2d 354, 363 (5th Cir. 1983) ("[a]ccess to bail reduction hearings [] should not be foreclosed because [they] lack the history of openness"); *United States v. Criden*, 675 F.2d 550, 555 (3d Cir. 1982) (historical analysis irrelevant in determining whether there is a First Amendment right of access [when] there was "no counterpart at common law to the modern suppression hearing" (citations omitted)).

The *Falconi Court* has also found sound "logic" in open proceedings due to the public interest in the operation of the courts as well as participating judges and lawyers. *Falconi*, 543 P.3d at 98 (openness provides "litigants with examples" and assists the electorate in "check[ing] the judicial branch on election day.") See also *Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 249 (1996) (the conduct of the bench is of public importance). See also *Abrams v. Sanson*, 136 Nev. 83, 458 P.3d 1062 (2020) (the courtroom conduct of the bar is of public importance). Indeed, even a California court recognized the logic in applying the First Amendment right of access to trust matters. *Estate of Hearst*, 67 Cal. App.

3d at 784 ("If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism…Anglo-American jurisprudence distrusts secrecy [] and favors a policy of maximum public access[.]")

For these several reasons, this Court should come to the same conclusion as the *Falconi Court* and determine that the First Amendment applies as much to trust matters as it does to domestic relations matters.

2. The First, Second, and Eighth Judicial District Court Clerks Are Unilaterally And Constructively Closing the Courts

The clerks' practice of sealing entire case files, not on the order of any judge but by their own interpretations of NRS 126.211, NRS 432B.280, NRS 128.090, and EDCR 5.207[11], is constructively and categorically closing whole swaths of civil cases without any exercise of judicial discretion, and is thus unconstitutional. *Civil Beat Law Ctr. for the Pub. Int., Inc. v. Maile*, 113 F.4th 1168, 1180 (9th Cir. 2024)(Hawai'i Court rules requiring all medical and health records be filed under seal without further order of a judge are unconstitutionally overbroad).

The press cannot reasonably be expected to be able to seek to obtain physical access because the dates and times of the hearings being held are unknown. PA-233. This is especially troubling with abuse & neglect cases where the Legislature provided that certain hearings should

[11] Despite the *Falconi Court*'s nullification of this court rule, and a subsequent reminder in Supreme Court docket no. 88412, the clerk's unlawful practice of sealing entire case files in unmarried child custody actions is ongoing, which disrupts ONJ's monitoring of multiple cases.

be publicly accessible by default. *See* NRS 432B.430(1)(a). Blanket sealing policies prevent both passive and active monitoring of cases. Without basic case information, including case numbers, the press cannot even file motions to challenge the sealing of specific proceedings. This creates a catch-22: the press cannot challenge the secrecy of hearings because the very existence of those hearings is itself kept secret.

While certain hearings may properly be closed to the public, their mere existence on the court calendar should never be sealed. This Court should expressly prohibit court personnel from concealing the dates and times of hearings, even when the substance of those hearings warrants confidentiality. The public and press have a right to know when courts are in session, regardless of whether they may attend.

c. Courts Must Narrowly Tailor Electronic Coverage Restrictions to Address Only Specific Recording Concerns

"It is not unrealistic even in this day to believe that public inclusion affords citizens a form of legal education and hopefully promotes confidence in the fair administration of justice." *State v. Schmit*, 273 Minn. 78, 87-88, 139 N. W. 2d 800, 807 (1966). “Instead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates for the public.” *Richmond Newspapers*, 448 U. S. 525, 573 (1980). PA-082:25-083:7.

Commissioner Gorman's reliance on SCR 230(2)(b) to exclude the press from the Trust Matter is not sufficiently particular and in excess of his discretion. A court cannot justify barring cameras simply because certain individuals will appear at a hearing. Any information about participants that a camera would capture is already available to reporters who attend in person and can publish that same information through other electronic means. Therefore, the presence of particular individuals, standing alone, is not a valid basis for denying electronic coverage. PA-083:18-084:6.

Privacy concerns about information revealed during a hearing must be addressed through courtroom closure, not by selectively barring cameras. Under Falconi, such closure requires passing strict scrutiny. The mere choice of recording method - whether by reporter's notes or camera - does not implicate distinct privacy interests. Instead, SCR 230(2)(b) concerns itself with the video and audio footage recorded by the camera specifically deployed to the courtroom. It would only be properly within the discretion of a court to bar electronic coverage in the context of the visual or audio footage gleaned by the camera itself. Even if this were of legitimate concern, Commissioner Gorman's findings are purely speculative. *Solid*, *Id*. PA-066:13-069:6. An individual party's privacy concerns cannot justify a blanket ban on recording everyone in the courtroom. If a party raises valid privacy issues, courts must narrowly tailor any recording restrictions rather than prohibiting cameras from capturing judges, attorneys, and court officers conducting official business.

For these several reasons, Commissioner Gorman and Judge Hardy have abused their discretion in failing to make particular findings supporting an appropriately narrow denial of electronic coverage of the proceedings.

d. The Sealing of Records Implicates First Amendment Concerns

SRCR 1(4) provides the scope of the rules on sealing and redaction of court records. The provided list is not exclusive[12] and actually manifests the harmonious construction[13] principle of statutory construction with the additional caveat that the court rules[14] give way to any "specific" statute governing sealing and redaction. In other words, SRCR 1(4) is not categorically inapplicable[15] to the unsealing of actions filed under the listed chapters, but rather, yields to certain "specific" statutes; namely, NRS 128.090, NRS 164.041, NRS 432B.280, and NRS 669A.256. PA-056:14-19. PA-002:6-8.

"A court's authority to limit or preclude public access to judicial records and documents stems from three sources: constitutional law,

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[12] SRCR 1(4): "These rules do not apply to the sealing or redacting of court records under **specific** statutes, **such as**…" (emphasis added).

[13] *Simmons Self-Storage vs Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P. 3d 850, 854 (2014) ("this court interprets `provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes' to avoid unreasonable or absurd results and give effect to the Legislature's intent.")

[14] *Weddell v. Stewart,* 127 Nev. 645, 650, 261 P.3d 1080, 1084 *(2011)* ("rules of statutory construction apply to court rules.")

[15] Indeed, even this Court applies SRCR 7 on appellate review where underlying cases are listed under SRCR 1(4). See *Order Regarding Sanctions* filed on June 30, 2022, docket no. 83979.

statutory law, and common law." *Howard v. State*, 128 Nev. 736, 291 P. 3d 137 (2012). See also *United States v. James*, 663 F. Supp. 2d 1018, 1020 (W.D. Wash. 2009) ("domestic press outlets unquestionably have standing to challenge access to court documents.") (citation omitted). The *Howard Court* pointed out at the time that the common law generally favors public access but gives way to statutes and court rules. While there were no constitutional issues relevant to the *Howard Court's* analysis at the time, the *Falconi* Court later held that a First Amendment right of access to the underlying proceedings exists. In doing so, the *Falconi Court* broadly expanded the scope of *Stephens Media, LLC. v. Eighth Judicial District Court*, 125 Nev. 849, 221 P. 3d 1240 (2009) from criminal proceedings to all civil proceedings, including family law proceedings.

Importantly, the *Stephens Media Court* recognized a powerful distinction left untouched by the *Howard Court*; namely, that there was a distinction between oral proceedings and documentation that "merely facilitate[s] and expedite[s]" one of those oral proceedings, specifically, jury questionnaires and *voir dire*. The *Stephens Media Court* recognized that the purpose of the jury questionnaires was their direct connection to and facilitation of *voir dire* proceedings such that they constituted access to the proceedings themselves and thus implicated First Amendment concerns. Analogously, the information outlined in SRCR 3(5)(c)[16] goes

[16] ONJ agrees with the Media Coalition. If the SRCR were deemed inapplicable, the specific items outlined under SRCR 3(5)(c) go to the constitutional fabric of litigation and "reflect[s] basic principles of law and fairness and should apply[.]" *Emergency Petition* filed September 19,...

beyond mere court records and constitutes access to the proceedings themselves. For this reason, the discretion conferred by NRS 128.090(7), NRS 164.041(3), NRS 432B.280(1), and NRS 669A.256(2) must include application of the strict scrutiny test required by the *Falconi Court*. This is because "when the language of a statute admits of two constructions, one of which would render it constitutional and valid and the other unconstitutional and void, that construction should be adopted which will save the statute." *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 553 (2010). Even if, *in arguendo*, the aforementioned statutes did not confer the discretion necessary to conduct the strict scrutiny test, such a statute would necessarily have to be nullified as the *Falconi Court* demonstrated with its strike down of NRS 125.080 and its progeny. PA-056:19-058:3.

1. Court Clerks' Blanket Sealing Practices Violate Constitutional Access Rights

The unilateral and categorical sealing of entire case files by the First, Second, and Eighth Judicial District Court clerks[17] must also be addressed because the press cannot monitor courts "without access to…documents that are used in the performance of Article III functions." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995). See also *Grove Fresh Distribs.,*

…2024. in Supreme Court docket no. 89347 at page 22.

[17]As District Court Judge Gregory Gordon conceded, there is no judicial order sealing the case file. PA-050:13-15.

Inc. v. Everfresh Juice Co., 24 F.3d 893, 897 (7th Cir. 1994) ("access should be immediate and contemporaneous...[t]he newsworthiness of a particular story is often fleeting. To delay[18] [] disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression...each passing day may constitute a separate and cognizable infringement of the First Amendment.") (internal citations and quotations omitted)); see also *Courthouse News Serv. v. Gabel*, No. 2:21-CV-000132, 2021 *U.S. Dist. LEXIS 224271, 2021 WL 5416650*, at 14 (D. Vt. Nov. 19, 2021) ("the focus must be on whether any delay is appropriate because any restriction on the First Amendment right of access must have 'sufficient justification.'")

Sealing an entire case file is arguably impossible under SRCR 3(5)(c), but if it were to occur it would require the exercise of judicial discretion, not administrative discretion. Compare *Civil Beat Law Center for the Public Interest, Inc., Id*. Blanket sealing of case files does not prevent media coverage - it merely ensures that coverage will be less accurate. When clerks seal entire files, journalists must rely on second-hand sources and incomplete information rather than official court records. The result is not

[18] ONJ's Founding Director is aware of multiple instances where delay impacted accuracy of media coverage, the most recent of which involved a KTNV news reporter asking how to obtain J.A.V.S. videos evidencing the misconduct the Commission on Judicial Discipline cited when imposing discipline against District Court Judge Mary Perry. The Founding Director was informed by the news reporter that even a 1-day delay was unacceptable and would not justify a postponement of broadcast nor publication.

secrecy, but rather news reports based on potentially inaccurate or incomplete information that neither serves the public nor protects legitimate privacy interests.

Blanket sealing rules serve two purposes: they purportedly protect family privacy, but their most tangible effect is shielding judges and lawyers from public oversight. The public recognizes this self-serving arrangement, which, as this Court has warned, erodes confidence in the judiciary. When courts operate behind an unnecessary veil of secrecy, they breed the very distrust and disrespect they claim to prevent.[19] *Del Papa*, 915 P.2d 245 at 249. See also *Littlejohn v. Bic Corp.*, 851 F.2d 673, 682 (3d Cir. 1988) (the press's dissemination of the gathered information "serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness.") This case squarely presents the constitutional question: can court clerks seal entire case files without individualized judicial review? The Court's ruling will define when courts must protect specific private information versus when wholesale sealing of records violates constitutional access rights. *Courthouse News Serv. v. O'Shaughnessy*, 663 F. Supp. 3d 810, 818-19 (S.D. Ohio, 2023) (collecting cases establishing that immediate and

[19] For example, certain District Court Judges of the Family Division lock their courtroom doors, citing SRCR 1(4) as justification. This practice disenfranchises professional news reporters who question why they are able to so readily gain access to criminal proceedings, even cases involving child abuse & neglect.

contemporaneous access is necessary to comport with the First Amendment's presumption in favor of access).

Court clerks must stop automatically sealing entire case files. This applies to all civil cases, whether family law matters, abuse and neglect proceedings, or any other civil litigation. No clerk may unilaterally seal records that the First Amendment protects. Under Falconi, even judges must satisfy three requirements before sealing an entire case file: statutory authority, compliance with court rules, and proof that sealing survives strict scrutiny.

2. Regarding the Termination of Parental Rights Case

"Termination of parental rights is an exercise of awesome [judicial] power that is tantamount to imposition of a civil death penalty[.]" *In re Parental Rights as to AL*, 116 Nev. 790, ___, 337 P. 3d 758, 761 (2014). Automatically sealing termination of parental rights cases is as constitutionally offensive as sealing all death penalty cases would be. Both involve the state's most severe sanctions - execution in criminal cases, permanent loss of parental rights in civil cases - and both demand maximum public oversight. ONJ's coverage of corresponding divorce[20] and criminal[21] proceedings were of intense public interest, the jury trials themselves of which were broadcast live.

[20] Eighth Judicial District Court, docket no. D-15-518905-D.

[21] Eighth Judicial District Court, docket nos. C-18-335284-1 and C-18-333684-1. District Court Judges Cristina Silva and Ronald Israel allowed comprehensive electronic coverage of the proceedings.

For this reason, Judge Gordon erred in refusing to direct the clerk to restore SRCR 3(5)(c) access to the case.

3. Regarding the Rupert Murdoch News Corp Trust Case

The sealing that has occurred in the underlying trust proceedings is so egregiously excessive that ONJ has had difficulties in identifying the attorneys to serve as well as in building its appendix, which is possibly incomplete despite efforts to comply with[22] NRAP 30(l).

For these reasons, Commissioner Gorman and Judge Hardy abused their discretion in refusing to bring the trust case into compliance with SRCR 3(5)(c).

e. The Mootness Exception Applies

Generally, this Court decides only actual controversies and does not give opinions on moot questions or abstract issues. *Univ.& Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712,720, 100 P.3d 179, 186 (2004) quoting *NCAA v. University of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). However, where an issue is arguably moot, the Court should still consider such an issue "[I]f it involves a matter of widespread importance that is capable of repetition, yet evading review." *Solid* at 120 (2017), quoting *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010), citing *Traffic Control Servs. v. United Rentals*, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057 (2004). "The party seeking to overcome

[22] Not only did this force ONJ to litigate blindly, without the names of attorneys to effect service upon, it made it impossible to get file-stamped copies of its own filings and the filings served upon it by opposing counsel.

mootness must prove 'that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important.'" *Valdez-Jimenez v. Eighth Judicial Dist. Court of Nev*., 136 Nev. 155, 158, 460 P.3d 976, 982 (2020) quoting *Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 328, 334-35, 302 P.3d 1108, 1113 (2013).

This Court declined[23] to stay the Trust Case's bench trial, rendering the issues of physical and camera access moot. ONJ has repeatedly encountered the problem of mootness regarding camera access. See Supreme Court Docket Nos. 80033, 87296, and 89475.

An exception to the mootness doctrine is warranted as it meets all three criteria outlined in *Valdez-Jimenez.* The denial of physical and camera access in court proceedings is inherently brief, often lasting only for the duration of a single case or hearing. This short timeframe makes it difficult to fully litigate the issue before it becomes moot. As recognized in *Solid*, "...episodes on any future seasons, will present many of the same issues of widespread importance". *Solid*, 133 Nev. at 120 (2017). The issue of physical and camera access in courtrooms is generally of public importance, and specifically of significant public importance in cases like the one below which implicates the governance of a global media conglomerate.

[23] *Order Directing Answer* filed September 20, 2024 in docket no. 89347.

Should the Court be so inclined, this case offers an opportunity to hold that the First Amendment prohibits clerks from automatically sealing entire categories of civil cases, including trust proceedings, paternity actions, unmarried child custody matters, abuse and neglect cases, and termination of parental rights proceedings.

XI. Conclusion

A court is "...required to consider alternatives to closure even when they are not offered by the parties." *United States v. Yazzie*, 743 F.3d 1278, 1287 (9th Cir. 2014) citing *Presley v. Georgia*, 558 U.S. 209, 214, 130 S.Ct. 721, 175 L.Ed.2d 675 (2010). This is especially crucial here, where transcripts and other sealed filings are visible only to this Court. See *Leigh v. Salazar*, 668 F.3d 1126 (9th Cir. 2012) ("the independent judiciary is the guardian of the free press.")

The First Amendment right of access applies equally to trust proceedings as it does to domestic relations matters, requiring the exercise of judicial discretion before any closure can be permitted. The categorical sealing practices currently employed by court clerks are unconstitutionally overbroad and violate both the First Amendment and SRCR 3(5)(c). When courts and clerks implement blanket sealing policies without individualized judicial determination, they violate fundamental constitutional principles of open courts and public access.

Neither the Trust Case nor the TPR Case sealing orders contain the detailed findings that *Falconi* requires to satisfy strict scrutiny. Moreover,

the district courts' failure to consider alternatives to complete closure, as required by *Yazzie*, constitutes an abuse of discretion. The unilateral sealing policies of court clerks have created an unconstitutional system of secret proceedings that undermines public confidence in the judiciary and violates the press's right to contemporaneous access to court proceedings.

WHEREFORE, Petitioner respectfully requests this Court:

1. Issue a writ of *mandamus* directing Commissioner Gorman and Judge Hardy to:
    a. Allow physical access to the Trust Case proceedings;
    b. Allow camera access to the Trust Case proceedings; and
    c. Restore SRCR 3(5)(c) access to the Trust Case files.
2. Issue a writ of *mandamus* directing Judge Gordon to restore SRCR 3(5)(c) access to the TPR Case.
3. Issue a writ of *mandamus* directing the First, Second, and Eighth Judicial District Court clerks to:
    a. Cease the practice of unilaterally sealing entire case files;
    b. Restore SRCR 3(5)(c) access to all civil cases, including domestic relations matters;
    c. Make hearing dates publicly available absent specific judicial orders to the contrary; and
    d. Require individualized judicial determinations before any sealing of court records.

4. Grant such other relief as this Court deems just and proper.

DATED this Nov 12, 2024

By: /s/ Luke Busby, Esq.

LUKE A. BUSBY, ESQ.
316 California Ave.
Reno, Nevada 89509
775-453-0112
luke@lukeandrewbusbyltd.com

DECLARATION OF ALEXANDER FALCONI

I, Alexander M. Falconi, state that I am the Founding Director of Our Nevada Judges, Inc., and that I have read this *Petition* 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 12, 2024

Alexander M. Falconi
Our Nevada Judges, Inc.
Founding Director
admin@ournevadajudges.com

DECLARATION OF LUKE BUSBY

I, Luke Busby, Esq., declare as follows:

I am an attorney licensed to practice law in the State of Nevada. I have personal knowledge of the facts stated herein, and if called as a witness, could and would testify competently thereto.

On October 9, 2024, at 9:58 PM, I sent an email to Alicia Lerud, Clerk of the Second Judicial District Court in Washoe County, requesting file-stamped copies of all papers filed in the Trust Case that were filed by or served on ONJ or This Is Reno.

On October 10, 2024, at 6:20 AM, Ms. Lerud responded acknowledging my request, stating "We will work on this request."

On October 16, 2024, having received no documents, I sent a follow-up email to Ms. Lerud requesting an update on when the documents would be available, noting that I had no access to the docket.

On October 23, 2024, having still received no response, I sent another email to Ms. Lerud and left a message with her assistant. In this email, I requested that if the records would not be provided, to please inform me of that fact.

Despite having paid an initial appearance fee in the matter, ONJ has no access to the records and the case through the Second Judicial District Court's eFlex docketing program because the record has been sealed.

As of the date of this Declaration, I have received neither the requested documents nor any further response from Ms. Lerud regarding my request.

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

EXECUTED this Nov 12, 2024

By: /s/ Luke Busby, Esq.

LUKE BUSBY, ESQ.
Nevada Bar No. 10319
316 California Ave. #82
Reno, Nevada 89509

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 6018 words.

EXECUTED this Nov 12, 2024

By: /s/ Luke Busby, Esq.

LUKE A. BUSBY, ESQ.
SBN 10319
316 California Ave.
Reno, Nevada 89509
775-453-0112
luke@lukeandrewbusbyltd.com

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

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

First Judicial District Court
885 E. Musser St.
Carson City, NV 89701

The Hon. David Hardy
The Hon. Edmund Gorman
Second Judicial District Court
75 Court St.
Reno, NV 89507

Jack Fleeman, Esq.
8925 S Pecos Rd #14A
Henderson, NV 89074
Attorney for Ms. McDonald

Stephanie B. Casteel
Clark Knobel
William E. Peterson
1700 S. Pavilion Center Dr. #700
Las Vegas, NV 89135
Attorneys for Doe 3

The Hon. Gregory Gordon
Eighth Judicial District Court
601 N. Pecos Rd
Las Vegas, NV 89155

Paola Armeni, Esq.
1700 S Pavilion Center Dr. #500
Las Vegas, NV 89135
Attorney for Mr. Eggleston

Valerie Fuji, Esq.
706 S 8th St
Las Vegas, NV 89101
Attorney for Mr. McDonald

Michael A. Burke
Kent R. Robison
Hannah E. Winston
71 Washington St.
Reno, NV 89503
Attorneys for Doe 2

Michaelle D. Rafferty
Rick R. Hsu
Christopher M. Stanko
Michelle Mowry-Willems
P.O. Box 30000
Reno, NV 89520
Attorneys for Doe 1

Alexander G. Levegue
Alan D. Freer
Dana A. Dwiggins
Brian K. Steadman
9060 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Doe 9

Tyler R. Andrews
Reynolds T. Cafferata
Mark E. Ferrario
Jason K. Hicks
10845 Griffith Peak Dr.
Las Vegas, NV 89135

Oliver J. Pancheri
Adam J. Pernsteiner
Nicholas J. Santoro
300 S. 4th Street Ste 1600
Las Vegas, NV 89101
Attorneys for Does 4, 5, 6, 7, & 8

Margaret A. McLetchie
Leo S. Wolpert
602 South Tenth Street
Las Vegas, NV 89101
Attorneys for WP Co. LLC.
The New York Times Co.
Cable News Network, Inc.
The Associated Press
National Public Radio, Inc.
Reuters News & Media, Inc.
American Broadcasting Cos., Inc.

Amity C Dorman, Esq.
601 N. Pecos Rd.
Building B, Room 470
Las Vegas, NV 89101
For the Dept. Child & Family Svcs.

… and *via* email to: PriceM@clarkcountycourts.us, Alicia.Lerud@washoecourts.us, districtcourtclerk@carson.org, Danielle.Spinella@washoecourts.us, Mikki.Merkouris@washoecourts.us, deptclc@clarkcountycourts.us, parmeni@clarkhill.com, jack@pecoslawgroup.com, vip@fujiilawlv.com, mrafferty@mcllawfirm.com, rhsu@mcllawfirm.com, cstanko@mcllawfirm.com, mmowry-willems@mcllawfirm.com, afreer@sdfnvlaw.com, ddwiggins@sdfnvlaw.com, bsteadman@sdfnvlaw.com,

andrewst@gtlaw.com, opancheri@spencerfane.com, apernsteiner@nvlawfirm.com, nsantoro@spencerfane.com, ferrariom@gtlaw.com, hicksja@gtlaw.com, scasteel@swlaw.com, tpeterson@petersonbaker.com, mburke@rssblaw.com, krobison@rssblaw.com, hwinston@rssblaw.com, Amity.Dorman@clarkcountyda.com, maggie@nvlitigation.com.

SERVED this Nov 12, 2024

By: /s/ Luke Busby, Esq.

LUKE A. BUSBY, ESQ.
SBN 10319
316 California Ave.
Reno, Nevada 89509
775-453-0112
luke@lukeandrewbusbyltd.com