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DISTRICT COURT  
CLARK COUNTY, NEVADA

<p>8 BRITTANEY ROBERTSON, an individual; and 9 WESLEY ROBERTSON, an individual, 10 Plaintiffs, 11 vs. 12 MICHAEL STILES, an individual,; et. al.; 13 Defendant.</p>	<p>CASE NO: A-22-859490-C DEPT NO: 9  NO HEARING REQUESTED</p>
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**OPPOSITION TO MOTION TO SEAL**

14 COMES NOW, Our Nevada Judges, Inc. (hereinafter ‘ONJ’), a Nevada  
15 non-profit corporation, by and through the undersigned counsel, and hereby files an  
16 opposition to the motions to seal filed October 15, 2024 and October 16, 2024.

17 This opposition is based upon the following memorandum of points and  
18 authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

19 Defendants (hereinafter “Movants”) are asking this Court to seal and/or redact  
20 reference to their names in all filings. ONJ’s opposition follows.

21 This Court is allowing comprehensive electronic coverage of these  
22 proceedings. *Media Request and Order Allowing Camera Access to Court*  
23 *Proceedings* filed March 6, 2023. A non-party SCR 229(1)(c) news reporter may file a  
24 motion to unseal. SRCR 4(2). See also *United States v. James*, 663 F. Supp. 2d  
25 1018, 1020 (W.D. Wash. 2009) (“[d]omestic press outlets unquestionably have  
26 standing to challenge access to court documents.”) (citation omitted). See also *Neb.*  
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1 *Press Ass'n v. Stuart*, 427 U.S. 539, 560-61 (1976) (the right to access judicial  
2 proceedings and records recognized by the Supreme Court, the United States  
3 Supreme Court, and courts across the country, is a right of contemporaneous  
4 access). The motion must be filed within five (5) years of sealing. SRCR 4(4). ONJ  
5 concedes this Court has not yet considered the pending motion; but, it would be  
6 more efficient to brief this Court on opposition now. To comply strictly with this rule  
7 would be inefficient and constitute a waste of judicial resources. NRCP 1 and EDCR  
8 1.10 are persuasive.

9 ONJ's concerns stem from the likelihood that an order sealing Movants'  
10 names will later be used to block camera access, already granted, to proceedings in  
11 which Movants' are mentioned or in which Movants' testify at an evidentiary hearing  
12 or trial. ONJ has already published nine (9) videos in this coverage series, and as  
13 such, Movants' names, identities, and images, have already been exposed<sup>1</sup> to the  
14 public.

15 Even if this Court were to grant the motion, the Court could not practically  
16 "claw back" videos that have already been published, and such a sealing would do  
17 little to protect the identities of the Movants. Indeed, ONJ would still be able to  
18 publish the identities of Movants prospectively because they have not undertaken  
19 any efforts to obtain a gag order. Compare *Johanson v. Dist. Ct.*, 124 Nev. 245, 182  
20 P. 3d 94 (2008).

21 ONJ recognizes that on occasion parties to a lawsuit will settle their claims  
22 and that routinely these settlement terms are confidential. In this case, Movants are  
23 cooperating with Plaintiffs in seeking to seal. But, "[t]he parties' agreement alone  
24 does not constitute a sufficient basis for the court to seal or redact court records."  
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26 <sup>1</sup> This also frustrates Movants' reliance on *Does I thru XXIII v. Advanced Textile Corp.*,  
27 214 F.3d 1058, 1068 (9th Cir. 2000). Proceeding pseudonymously would be entirely  
28 ineffective because the viewers are already aware of their identities. See also SRCR  
3(5)(c)(vii) (the sealing of a movant's identity is expressly forbidden.)

1 SRCR 3(4). SRCR 3(4)(e) allows this Court to seal the confidential settlement  
2 agreement itself, which ONJ does not oppose. “[T]here is an interest in protecting  
3 litigants' privacy rights in family law proceedings, as those proceedings apply wholly  
4 to their private lives, [h]owever, a litigant's privacy interests do not automatically  
5 overcome the press's and the public's right to access court proceedings...when  
6 there are no extraordinary circumstances present, the public's right to access family  
7 law proceedings outweighs the litigants' privacy interests.”) *Falconi v. Eighth Jud.*  
8 *Dist. Ct.*, 543 P.3d 92, 99 (Nev. 2024).

9 “A court's authority to limit or preclude public access to judicial records and  
10 documents stems from three sources: constitutional law, statutory law, and  
11 common law.” *Howard v. State*, 128 Nev. 736, 291 P. 3d 137 (2012). The *Howard*  
12 Court pointed out at the time that the common law generally favors public access  
13 but gives way to statutes and court rules. While there were no constitutional issues  
14 relevant to the *Howard* Court’s analysis at the time, the *Falconi* Court later clarified  
15 that a First Amendment right of access to civil proceedings exists. *Falconi*, 543 P.3d  
16 at 97; see also *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580, 100 S. Ct.  
17 2814, 65 L. Ed. 2d 973 & n.17 (1980). The *Falconi* Court broadly expanded the  
18 scope of the ruling in *Stephens Media, LLC. v. Eighth Judicial District Court*, 125  
19 Nev. 849, 221 P. 3d 1240 (2009) from criminal proceedings to all civil proceedings.  
20 Importantly, the *Stephens Media* Court recognized a powerful distinction left  
21 untouched by the *Howard* Court; namely, that there was a distinction between oral  
22 proceedings and documentation that “merely facilitate[s] and expedite[s]” one of  
23 those oral proceedings, specifically, jury questionnaires and *voir dire*. The *Stephens*  
24 *Media* Court recognized that the purpose of the jury questionnaires was their direct  
25 connection to and facilitation of *voir dire* proceedings such that they constituted  
26 access to the proceedings themselves and thus implicated First Amendment  
27  
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1 concerns. Analogously, the motion practice and other procedural filings constitute  
2 access to the proceedings themselves.

3 Even if this Court came to the conclusion that certain interpretations of  
4 statutes and rules could allow circumvention of the strict scrutiny test, this Court  
5 must apply the interpretation that is constitutional. This is because “when the  
6 language of a statute admits of two constructions, one of which would render it  
7 constitutional and valid and the other unconstitutional and void, that construction  
8 should be adopted which will save the statute.” *State v. Castaneda*, 126 Nev. 478,  
9 481, 245 P.3d 550, 553 (2010). Even if a rule or statute did not confer the discretion  
10 necessary to conduct the strict scrutiny test, such a statute would necessarily have  
11 to be nullified as the *Falconi Court* demonstrated with its strike down of NRS  
12 125.080 and its progeny.

13 This Court is empowered to raise any other points supporting public access  
14 *sua sponte*. SRCR 4(2). See also *United States v. Yazzie*, 743 F.3d 1278, 1287 (9th  
15 Cir. 2014) citing *Presley v. Georgia*, 558 U.S. 209, 214, 130 S.Ct. 721, 175 L.Ed.2d  
16 675 (2010) (a court is “...required to consider alternatives to closure even when  
17 they are not offered by the parties.”)

18 “The free press is the guardian of the public interest, and the independent  
19 judiciary is the guardian of the free press.” *Leigh v. Salazar*, 668 F.3d 1126 (9th Cir.  
20 2012).

21 THEREFORE, ONJ hereby requests Movants motion to seal be denied.

22 Pursuant to NRS 239B.030 the undersigned hereby affirms that this document  
23 does not contain the social security number of any person.  
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1 DATED this Nov 13, 2024

2 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 Nov 13, 2024



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Alexander M. Falconi  
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Our Nevada Judges  
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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:

Matthew Friedman, Esq.  
Leland Eugene Backus, Esq.  
Lisa A. Rasmussen, Esq.  
Dale Hayes, Jr., Esq.

DATED this Nov 13, 2024

By: /s/ Luke Busby