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

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| <p>XXXXXXXXXXXXXXXXXXXX<br/>Petitioner,<br/>vs.<br/>XXXXXXXXXXXXXXXXXXXX<br/>Respondent.</p> <hr/> | <p>CASE NO: D-12-XXXXXX-C<br/>DEPT NO: N<br/><br/>NO HEARING REQUESTED</p> |
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**MOTION TO UNSEAL CERTAIN J.A.V.S.**

NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by and through the undersigned counsel, and hereby files the following motion to unseal.

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

**MEMORANDUM OF POINTS AND AUTHORITIES**

An SCR 229(1)(c) non-party news reporter may file a motion to unseal. SRCR 4(2). SRCR 1(4) provides the scope of the rules on sealing and redaction. A list of

1 NRS Chapters is provided, but the list is not exclusive<sup>1</sup> and actually manifests the  
2 harmonious construction<sup>2</sup> principle of statutory construction with the additional  
3 caveat that the court rules<sup>3</sup> give way to any “specific” statute governing sealing and  
4 redaction. In other words, SRCR 1(4) is not categorically inapplicable to the  
5 unsealing of actions filed under NRS Chapters 126, but rather, *could* yield to certain  
6 “specific” statutes like NRS 126.211. Nevertheless, this is not a paternity action, and  
7 EDCR 5.207, which was found to be unconstitutional, converted unmarried child  
8 custody cases to paternity cases such that public access to such cases could be  
9 summarily denied. *Falconi v. Eighth Jud. Dist. Ct.*, 140 Nev., Advance Op. 8 (2024).  
10 See also *Our Nev. Judges, Inc. v. Eighth Judicial Dist. Court*, 555 P.3d 777 (Nev.  
11 2024)(unpublished) (recognizing the underlying case as a “child custody action,  
12 arising under NRS Chapter 125C” that could not by virtue of the nullified EDCR  
13 5.207 implicate the confidentiality provisions of NRS Chapter 126.)

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17 “A court's authority to limit or preclude public access to judicial records and  
18 documents stems from three sources: constitutional law, statutory law, and  
19 common law.” *Howard v. State*, 128 Nev. 736, 291 P. 3d 137 (2012). See also  
20 *United States v. James*, 663 F. Supp. 2d 1018, 1020 (W.D. Wash. 2009) (“domestic  
21 press outlets unquestionably have standing to challenge access to court  
22 documents.”) (citation omitted). The *Howard* Court pointed out at the time that the  
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24 <sup>1</sup> 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 <sup>2</sup> *Simmons Self-Storage vs Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P. 3d 850, 854 (2014)  
27 (“[T]his court interprets `provisions within a common statutory scheme harmoniously with  
28 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.”)

<sup>3</sup> *Weddell v. Stewart*, 127 Nev. 645, 650, 261 P.3d 1080, 1084 (2011) (“[R]ules of  
statutory construction apply to court rules.”)

1 common law generally favors public access but gives way to statutes and court  
2 rules. While there were no constitutional issues relevant to the *Howard* Court’s  
3 analysis at the time, the Supreme Court later clarified that a First Amendment right  
4 of access to the underlying proceedings exists. *Falconi Id.* See also *Civil Beat Law*  
5 *Ctr. for the Pub. Int., Inc. v. Maile*, 113 F.4th 1168, 1180 (9th Cir. 2024) (Hawai’i  
6 Court rules requiring all medical and health records be filed under seal without  
7 further order of a judge are unconstitutionally overbroad).

8 The *Falconi* Court broadly expanded the scope of the ruling in *Stephens*  
9 *Media, LLC. v. Eighth Judicial District Court*, 125 Nev. 849, 221 P. 3d 1240 (2009)  
10 from criminal proceedings to all civil proceedings, including family law  
11 proceedings. Importantly, the *Stephens Media* Court recognized a powerful  
12 distinction left untouched by the *Howard* Court; namely, that there was a  
13 distinction between oral proceedings and documentation that “merely facilitate[s]  
14 and expedite[s]” one of those oral proceedings, specifically, jury questionnaires  
15 and *voir dire*. The *Stephens Media* Court recognized that the purpose of the jury  
16 questionnaires was their direct connection to and facilitation of *voir dire*  
17 proceedings such that they constituted access to the proceedings themselves and  
18 thus implicated First Amendment concerns. Analogously, the J.A.V.S. videos are a  
19 distillation of preceding motion practice and actual records of the hearings  
20 themselves. Accordingly, ONJ is hereby requesting the unsealing of all J.A.V.S.  
21 videos for any hearings that occurred on or after January 20, 2020.

22 Even if this Court came to the conclusion that certain interpretations of law  
23 could allow court records to be hidden from the press, this Court must adopt the  
24 interpretation that is constitutional and narrowly tailor confidentiality orders based  
25 on a compelling privacy interest. This is because “when the language of a statute  
26 admits of two constructions, one of which would render it constitutional and valid  
27 and the other unconstitutional and void, that construction should be adopted  
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1 which will save the statute.” *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550,  
2 553 (2010).

3 "People in an open society do not demand infallibility from their institutions,  
4 but it is difficult for them to accept what they are prohibited from observing."  
5 *Richmond Newspapers*, 448 U. S., at 572.

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

8 **DATED** this Jan 20, 2025

9 By: /s/ Luke Busby  
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2 DECLARATION OF ALEXANDER FALCONI

3 I, Alexander M. Falconi, declare that I have read the forgoing *Motion* and that  
4 the contents are true and correct of my own personal knowledge, except for those  
5 matters I have stated that are not of my own personal knowledge, but that I only  
6 believe them to be true, and as for those matters, I do believe they are true.  
7

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

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10 EXECUTED this Jan 20, 2025

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