



1 LUKE A. BUSBY, ESQ.
2 SBN 10319
3 316 California Ave.
4 Reno, Nevada 89509
5 775-453-0112
6 luke@lukeandrewbusbyltd.com
7 *Attorney for Our Nevada Judges, Inc.*

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

<p>8 [REDACTED]</p> <p>9 Petitioner,</p> <p>10 vs.</p> <p>11 [REDACTED]</p> <p>12 Respondent.</p> <p>13 _____/</p>	<p>CASE NO: D-12 [REDACTED]-C</p> <p>DEPT NO: N</p> <p><u>REPLY TO OPPOSITION TO MOTION TO UNSEAL CERTAIN J.A.V.S.</u></p>
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14 COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by
15 and through the undersigned counsel, and hereby replies Respondent’s opposition
16 to motion to unseal filed February 4, 2025.

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

MEMORANDUM OF POINTS AND AUTHORITIES

21 ONJ seeks¹ to unseal J.A.V.S. videos. Petitioner does not oppose. Respondent
22 opposes². This reply follows.

25 ¹ Respondent characterizes the motion as having been filed by “Mr. Falconi”. Mr.
26 Falconi previously operated ONJ as a sole proprietorship; it has since incorporated
as a Nevada Non-profit Corporation.

27 ² Respondent’s arguments as to the underlying substantive child custody and
28 paternity issues are disregarded herein because they exceed the scope of ONJ’s
motion. The press is not a parent of the child at issue and has no interest in those
points.

1. The First Amendment Cannot Be Circumvented

Respondent argues the Court must deny ONJ's motion because existing statutes and court rules deprive it of discretion to unseal, but this is not the law. Respondent's reliance on Supreme Court docket no. 89180 is unavailing. This is because, at the time, EDCR 5.207 converted this matter into a paternity action, triggering NRS 126.211. At that time, the Supreme Court was complying with its own rule in sealing the proceeding before them. SRCR 7. It wasn't until *Falconi v. Eighth Judicial Dist. Court*, 543 P.3d 92 (Nev. 2024) was issued on February 15, 2024, that EDCR 5.207 was struck down as unconstitutional. Indeed, even District Court Judge Charles Hoskin was recently admonished for relying on the now-defunct EDCR 5.207 in refusal to unseal. See *Our Nev. Judges, Inc. v. Eighth Judicial Dist. Court*, 555 P.3d 777 (Nev. Unpublished 2024) (holding "that EDCR 5.207, EDCR 5.212, and NRS 125.080 [are] unconstitutional.") Analogously, "this matter is a child custody action, arising under NRS Chapter 125C where the [SRCR] would apply." *Id.*

Respondent appears to argue that alternative reasons exist supporting these proceedings be construed as a paternity action. ONJ sympathizes with Respondent, but NRS 126.211 cannot circumvent the First Amendment any more than NRS 128.080 could. 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. Castenada*, 126 Nev. 478, ___, 245 P.3d 550, 552 (2024). In other words, even if NRS 126.211 did apply, this Court would be forced to construe the

1 language of the statute in a way that still allows judicial discretion under the strict
2 scrutiny test mandated by the *Falconi* Court. See also *Nester v. Eighth Judicial Dist.*
3 *Court*, 141 Nev. Advance Opinion 4 (Jan. 30, 2025) Even if the language of NRS
4 126.211 lacked the necessary discretionary window to conduct the test, its effects
5 would simply be nullified as unconstitutional. *Id.*

7 Respondent appears to assert that ONJ lacks standing to file. ONJ is a
8 non-party news reporter. SCR 229(1)(c). SRCR 4(2) authorizes non-party filings.

9 Respondent appears to misread the language³ of SCR 240, which expressly
10 states that “[t]he consent of participants to coverage is **not** required” (emphasis
11 added).

13 Respondent appears to misread the language of SRCR 4(2), which expressly
14 states that “[a] sealed court record in a civil case shall be unsealed only upon
15 stipulation of all the parties, upon the court’s own motion, **or upon a motion filed**
16 **by a named party or another person**” (emphasis added). While Parties may
17 stipulate to unseal records, the same does not hold for the converse. “The parties’
18 agreement alone does not constitute a sufficient basis for the court to seal or redact
19 court records.” SRCR 3(4). Judges are empowered to unseal *sua sponte*. SRCR 4(2).
20 Indeed, even “[w]hen a request for closure is granted, courts ‘**must sua sponte**
21 consider possible alternatives to [the] closure even when they are not offered by the
22 parties.” *Nester v. Eighth Jud. Dist. Ct., Id.*, citing *United States v. Allen*, 34 F.4th
23 789, 797 (9th Cir. 2022) (emphasis added).

28 ³ It should also be noted that SCR 240 does not control because the motion before
the Court has nothing to do with providing electronic coverage.

2. A Strict Scrutiny Test Supports Unsealing

The *Falconi* and *Nester* Courts require consideration of the following factors:

(1) closure serves a compelling interest: (2) there is a substantial probability that, in the absence of closure, this compelling interest could be harmed: and (3) there are no alternatives to closure that would adequately protect the compelling interest.

As to the first factor, closure serves no compelling interest. Respondent cites a dispute over paternity but goes no further. In fact, Respondent's disputes before this Court were so emphatic that the actions she took resulted in her criminal prosecution and conviction⁴. A conceivable compelling interest may arise in a paternity case where a celebrity is falsely accused of being the parent of a child; but this is not even remotely at issue in this case. Indeed, even if it were, the compelling interest would evaporate once the Court confirmed paternity. There is no private dispute over paternity in this case; rather, what is before the Court is a very public dispute over whether the law recognizes a surrogate parent.

As to the second factor, "the absence of closure" would do nothing to protect a compelling interest because the case is already public. District Court Judge Jerry Wiese allowed comprehensive electronic coverage of Respondent's criminal proceedings, all of which have been published. District Court Judge Paul Gaudet allowed electronic coverage of proceedings before this Court as well, all of which have been published. It is also important for this Court and Respondent to understand that refusal to unseal and open a court does not necessarily bar press coverage. The media can, and occasionally does, inform and educate the public on

⁴ Eighth Judicial District Court, docket no. C-19-338469-1.

1 cases even without access⁵ to records or the courtroom. For example, the Las
2 Vegas Review Journal reported⁶ on Respondent's absconding with the child,
3 records and courtroom access of which were not needed. Thus, access to records
4 and the courtroom may not be necessary to free speech but certainly are necessary
5 to improving the accuracy of reporting, which is of critical importance and at the
6 crux of what the *Falconi* Court wisely cautioned in citing *Del Papa v. Steffen*, 112
7 Nev. 369, 374, 915 P.2d 245, 249 (1996) (“[S]ecret judicial proceedings pose [a
8 threat] to public confidence in this court and the judiciary” because “secrecy
9 encourages misunderstanding, distrust, and disrespect for the courts.”)
10
11

12 As to the third factor, this Court can identify specific J.A.V.S. videos for
13 redaction or sealing, such as those implicating a child interview. Regardless of this
14 Court's orders, ONJ as a matter of internal policy redacts the identities of the
15 children and parents in domestic relations matters.
16

17 **3. Conclusion**

18 "People in an open society do not demand infallibility from their institutions,
19 but it is difficult for them to accept what they are prohibited from observing."
20 *Richmond Newspapers v. Virginia*, 448 U.S. 555, 572, 100 S. Ct. 2814, 2825 (1980)
21
22
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24 ⁵ To be clear, this point makes two assertions: first, that Parties and others tend to
25 be the easiest way to obtain sealed records; and, second, that even if no records
26 were obtained, absent a gag order the press is under no prohibition to publish on a
27 case.

28 ⁶ Blake Apgar."Las Vegas woman's child found safe in Tennessee" Las Vegas
Review Journal, December 5, 2018,
<https://www.reviewjournal.com/crime/las-vegas-womans-child-found-safe-in-tennessee-1543288/>

1 For these several reasons, this Court should order the Clerk to unseal the
2 J.A.V.S. videos.

3 **NRS 239B.030(4) AFFIRMATION**

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

7 **DATED** this Feb 5, 2025

8 By: /s/ Luke Busby _____
9 LUKE A. BUSBY, ESQ.
10 Nevada Bar No. 10319
11 316 California Ave.
12 Reno, Nevada 89509
13 775-453-0112
14 luke@lukeandrewbusbyltd.com
15 *Attorney for the Our Nevada Judges*
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1 DECLARATION OF ALEXANDER FALCONI

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

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

8 EXECUTED this Feb 5, 2025

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12 _____
13 Alexander M. Falconi
14 205 N. Stephanie St.
15 Suite D#170
16 Henderson, NV 89074
17 admin@ournevadajudges.com
18 Our Nevada Judges, Inc.
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