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8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 OUR NEVADA JUDGES, INC. and
11 ALEXANDER MICHAEL FALCONI,
12 Petitioners,
13 vs.
14 THE STATE OF NEVADA ex rel.
15 DEPARTMENT OF MOTOR VEHICLES,
16 Respondent.

17 Case No.: A-25-914630-W

18 Dept. No.: 4

19 **REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS**

20 COMES NOW, Our Nevada Judges, Inc., a Nevada Non-Profit Corporation
21 (hereinafter "ONJ"); and, Alexander Michael Falconi by and through the undersigned
counsel, and hereby replies the *Answer to Ex-Parte Petition for Writ of Mandamus*
filed March 31, 2025.

This reply is based on the following memorandum of points and authorities and
all exhibits on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

Respondent assumes NRS 49.275 implicates a first amendment concern in
attempting to distinguish *Toll v. Wilson*, 135 Nev. 430, 435, 453 P.3d, 1215, 1219
(2019) from the present case. However, the News Shield Privilege in NRS 49.275 has
no relevant constitutional backdrop, and the Supreme Court has stated that the
privilege is a creature of statute. *Newburn v. Howard Hughes Med. Inst.*, 95 Nev. 368,

1 594 P. 2d 1146 (1979): (“Absent a statute, communications to a news reporter do not
2 enjoy a privilege against use as evidence, and the reporter may be compelled to
3 reveal information...[c]onsequently, if the legislature has not enacted a shield law the
4 tendency of the courts is not to extend the classes to whom the privilege from
5 disclosure is granted[.]”) See also *Diaz v. Eighth Jud. Dist. Ct.*, 116 Nev. 88, 94, 99,
6 993 P.2d 50, 54, 57 (recognizing NRS 49.275 “confers [] an absolute privilege” wholly
7 separate from but purposed to “enhance” the First Amendment[.]”) *Branzburg v.*
8 *Hayes*, 408 U.S. 665 (1972) (“The issue in these cases is whether requiring newsmen
9 to appear and testify before state or federal grand juries abridges the freedom of
10 speech and press guaranteed by the First Amendment. We hold that it does not.”)

11 The Toll Court's analysis of Fourth Amendment principles was simply an
12 illustration of how statutory construction works. It showed that the core principle
13 remains constant, even though technological advancements or shifting circumstances
14 might change how that principle appears in practice, across countless possible
15 scenarios. The *Toll Court* clearly held “just because a newspaper can exist online, it
16 does not mean it ceases to be a newspaper. To hold otherwise would be to create an
17 absurd result in direct contradiction to the rules of statutory interpretation.” *Supra.* at
18 435.

19 Both NRS 49.275 and NRS 482.3672 define “newspaper” in an identically
20 broad manner, leaving the Respondent with no credible basis for their claim. Their
21 assertion—that the Department of Motor Vehicles' interpretation of the term somehow
outweighs the Supreme Court's definitive ruling in the *Toll* case—is baseless. There’s
no question that the NDOT is unjustifiably second-guessing the Supreme Court’s
authoritative and binding decision.

Because the *Toll Court* has already applied the principles of statutory
construction to NRS 49.275, and because the language at issue is identical to NRS

1 482.3672 for all practical purposes, Respondent’s proposed construction fails in the
2 instant case as Lance Gilman’s similar construction failed before the *Toll Court*.¹

3 It is the prerogative of the legislature to alter the language of NRS 482.3672 to
4 exclude “online media.” Unless and until this occurs, Respondent’s refusal to deem
5 Petitioners a member of the press is a manifest abuse of discretion. See *Round Hill*
6 *Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus
7 should be issued where a respondent has “a clear, present legal duty to act.”
8 Mandamus will overturn discretionary actions where “discretion is manifestly abused
9 or is exercised arbitrarily or capriciously.” *Id.* at 603. Petitioners ask this Court to issue
10 a peremptory writ of *mandamus* accordingly.

11 **AFFIRMATION:** *This document does not contain a social security number
12 of any person.*

13 **DATED** this Mar 31, 2023

14 By: /s/ Luke Busby, Esq.

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21 ¹ The undersigned counsel was Toll’s attorney, along with John Marshall, Esq. before
the Nevada Supreme Court.

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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:

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Adam Honey

DATED this Mar 31, 2023

By: /s/ Luke Busby, Esq.