

# EXHIBIT 1

*Steven D. Grierson*

**ORDR**

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**DISTRICT COURT**

**CLARK COUNTY NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER,

Respondent.

Case No.: A-17-758501-W

Dept. No.: XXIV

**ORDER GRANTING**

**PETITIONER LVRJ'S PUBLIC**  
**RECORDS ACT APPLICATION**  
**PURSUANT TO NEV. REV. STAT.**  
**§ 239.001/ PETITION FOR WRIT**  
**OF MANDAMUS**

The Las Vegas Review-Journal's Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus, having come on for hearing on September 28, 2017, the Honorable Jim Crockett presiding, Petitioner Las Vegas Review-Journal (the "LVRJ") appearing by and through its counsel, Margaret A. McLetchie and Alina M. Shell, and Respondent Clark County Office of the Coroner/Medical Examiner ("Coroner's Office") appearing by and through its counsel, Laura C. Rehfeldt, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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**I.**

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

1. On April 13, 2017, the LVRJ sent the Coroner’s Office a request pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”).

2. The LVRJ’s request sought all autopsy reports of autopsies conducted of anyone under the age of 18 from 2012 through the date of the request.

3. The Coroner’s Office responded via email on April 13, 2017. It provided a spreadsheet with information consisting of the Coroner case number, name of decedent, date of death, gender, age, race, location of death, and cause and manner of death, but refused to provide “autopsy reports, notes or other documents.”

4. In its April 13, 2017 email, the Coroner’s Office stated it would not disclose the autopsy reports because they contain medical information and confidential information about a decedent’s body. The Coroner’s Office relied on Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 (“AGO 82-12”) as the basis for non-disclosure.

5. The LVRJ followed up by emailing the Clark County District Attorney’s Office on April 13, 2017, requesting legal support for the refusal to provide records.

6. The District Attorney’s Office, Civil Division, on behalf of the Coroner’s Office, responded via email on April 14, 2017, again relying on AGO 82-12 and also relying on Assembly Bill 57, 79<sup>th</sup> Sess. (Nev. 2017) (a bill then pending consideration in the 2017 session of the Nevada Legislature and proposing changes to Nevada law regarding a coroner’s duty to notify next-of-kin of the death of a family member but not addressing public records) as the bases for its refusal to disclose the requested records.

7. The Coroner’s Office did not assert any other basis for withholding records within five (5) business days.

8. On May 9, 2017, following a meeting between the Coroner and the LVRJ, the Coroner mailed a second spreadsheet to the LVRJ listing child deaths dating back to 2011 in which the Coroner conducted autopsies.

1           9.       On May 23, 2017, counsel for the LVRJ wrote to the Coroner's Office to  
2 address concerns with the Coroner's Office's refusal to provide access to any of the  
3 requested juvenile autopsy reports.

4           10.      On May 26, 2017, the Coroner's Office (via the District Attorney)  
5 responded to the May 23, 2017 letter, again relying on the legal analysis in AGO 82-12, and  
6 agreed to consider providing redacted versions of autopsies of juveniles if the LVRJ  
7 provided a specific list of cases it wished to review.

8           11.      In its May 26, 2017 response, the Coroner's Office for the first time also  
9 asserted that the records may be protected by Nev. Rev. Stat. § 432B.407 and that privacy  
10 interests outweighed public disclosure.

11          12.      The LVRJ provided the Coroner's Office with a list of specific cases it  
12 wanted reports for via email on May 26, 2017.

13          13.      The Coroner's Office responded to the May 26, 2017 email on May 31,  
14 2017.

15          14.      In its May 31, 2017 response, the Coroner's Office stated that responsive  
16 records were "subject to privilege will not be disclosed" and that it would also redact other  
17 records. However, it did not assert any specific privilege.

18          15.      The Coroner's Office also asked the LVRJ to specify the records it wanted  
19 to receive first, which the LVRJ did on June 12, 2017.

20          16.      On July 9, 2017, in a response to a further email from the LVRJ inquiring  
21 on the status of the records, the Coroner's Office indicated it would not produce any records  
22 that pertained to any case that was subsequently handled by a child death review team  
23 pursuant to Nev. Rev. Stat. § 432B.407. By that time, the Coroner had determined which  
24 cases were not handled by the child death review team and provided a list to the LVRJ.

25          17.      On July 11, 2017, the Coroner's Office provided sample files of redacted  
26 autopsy reports for other autopsies of juveniles that were not handled by a child death review  
27 team. The samples files were heavily redacted; the Coroner's Office asserted that the  
28 redacted language consisted of information that was medical, related to the health of the

1 decedent's mother, could be marked with stigmata or considered an invasion of privacy.  
2 Statements of diagnosis or opinion that were medical or health related that went to the cause  
3 of death were not redacted.

4 18. On July 11, 2017, the Coroner's Office also demanded that the LVRJ  
5 commit to payment for further work in redacting files for production, and declined to  
6 produce records without payment. The Coroner's Office indicated it would take two persons  
7 10-12 hours to redact the records it was willing to produce, and that the LVRJ would have  
8 to pay \$45.00 an hour for the two reviewers, one of which would be an attorney. The  
9 Coroner's Office contended that conducting a privilege review and redacting autopsy  
10 reports required the "extraordinary use of personnel" under Nev. Rev. Stat. § 239.055. The  
11 Coroner's Office stated it did not intend to seek fees for the work associated with the  
12 previously provided spreadsheets and redacted reports.

13 19. On July 17, 2017, the LVRJ filed its Application Pursuant to Nev. Rev.  
14 Sta. § 239.001/Application for Writ of Mandamus/Application for Declaratory and  
15 Injunctive Relief ("Application"), and requested expedited consideration pursuant to Nev.  
16 Rev. Stat. § 239.011(2).

17 20. On August 17, 2017, the LVRJ submitted a Memorandum in support of its  
18 Application. The Coroner's Office submitted its Response on August 30, 2017, and the  
19 LVRJ submitted its Reply on September 7, 2017. The LVRJ also submitted a Supplement  
20 on September 25, 2017 that included autopsy records the LVRJ had received from White  
21 Pine County and Lander County in response to public records requests.

22 21. The Court held a hearing on the LVRJ's Application on September 28,  
23 2017.

## 24 II.

### 25 CONCLUSIONS OF LAW

26 22. The purpose of the NPRA is to foster democratic principles by ensuring  
27 easy and expeditious access to public records. Nev. Rev. Stat. § 239.001(1) ("The purpose  
28 of this chapter is to foster democratic principles by providing members of the public with

access to inspect and copy public books and records to the extent permitted by law”); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011) (holding that “the provisions of the NPRA are designed to promote government transparency and accountability”).

23. To fulfill that goal, the NPRA must be construed and interpreted liberally; government records are presumed public records subject to the Act, and any limitation on the public’s access to public records must be construed narrowly. Nev. Rev. Stat. §§ 239.001(2) and 239.001(3); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that the Nevada legislature intended the provisions of the NPRA to be “liberally construed to maximize the public’s right of access”).

24. The Nevada Legislature has made it clear that—unless they are explicitly confidential—public records must be made available to the public for inspection or copying. Nev. Rev. Stat. § 239.010(1); *see also Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879-80, 266 P.3d 623, 627 (2011).

**A. The Coroner’s Office Has Not Met Its Burden in Withholding or Redacting Records.**

25. The NPRA “considers all records to be public documents available for inspection unless otherwise explicitly made confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure.” *Reno Newspapers v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010).

26. If a statute explicitly makes a record confidential or privileged, the public entity need not produce it. *Id.*

28. If a governmental entity seeks to withhold a document that is not explicitly made confidential by statute, it must prove by a preponderance of the evidence that the records are confidential or privileged, and must also prove by a preponderance of the evidence that the interest in nondisclosure outweighs the strong presumption in favor of public access. *See, e.g., Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147–48 (1990).

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29. In balancing those interests, “the scales must reflect the fundamental right of a citizen to have access to the public records as contrasted with the incidental right of the agency to be free from unreasonable interference.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421–22 (1961)).

30. Pursuant to the NPRA and Nevada Supreme Court precedent, the Court hereby finds that the Coroner’s Office has not established by a preponderance of the evidence that the withheld records are confidential or privileged such that withholding the autopsy records pertaining to cases that were subsequently handled by a child death review team pursuant to Nev. Rev. Stat. § 432B.407(6) in their entirety is justified, nor has it established by a preponderance of the evidence that any interest in nondisclosure outweighs the strong presumption in favor of public access.

31. Further, with regard to the proposed redactions to the autopsy reports the Coroner’s Office was willing to disclose, the Court finds that the Coroner’s Office has not established by a preponderance of the evidence that the redacted material is privileged or confidential.

***The Coroner’s Office Did Not Comply With the NPRA’s Mandate to Provide Legal Authority in Support of Its Decision to Withhold or Redact Records Within Five Days.***

32. The NPRA provides that a governmental entity must provide timely and specific notice if it is denying a request because the entity determines the documents sought are confidential. Nev. Rev. Stat. § 239.0107(1)(d) states that, within five (5) business days of receiving a request,

[i]f the governmental entity must deny the person’s request because the public book or record, or a part thereof, is confidential, provide to the person, in writing: (1) Notice of that fact; and (2) A citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.

1           33. The Coroner’s Office cannot rely on privileges, statutes, or other  
2 authorities that it failed to assert within five (5) business days to meet its burden of  
3 establishing that privilege attaches to any of the requested records.

4           ***The Attorney General Opinion Does Not Justify Non-Disclosure.***

5           34. In its April 13, 2017 response to the LVRJ’s records request, the Coroner’s  
6 Office relied on a 1982 Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 as a  
7 basis for its refusal to produce the requested autopsy reports.

8           35. The Court finds that, consistent with Nevada Supreme Court precedent,  
9 Attorney General Opinions are not binding legal authority. *See Univ. & Cmty. Coll. Sys. of*  
10 *Nevada v. DR Partners*, 117 Nev. 195, 203, 18 P.3d 1042, 1048 (2001) (citing *Goldman v.*  
11 *Bryan*, 106 Nev. 30, 42, 787 P.2d 372, 380 (1990)); *accord Redl v. Secretary of State*, 120  
12 Nev. 75, 80, 85 P.3d 797, 800 (2004).

13           36. Because it is not binding legal authority, the legal analysis contained in  
14 AGO 82-12 does not satisfy the Coroner’s Office’s burden of establishing that the records  
15 are confidential and that the interest in non-disclosure outweighs the presumption in favor  
16 of access.

17           ***Nevada Assembly Bill 57 Does Not Justify Non-Disclosure.***

18           44. The Coroner’s Office also cites to Assembly Bill 57, a bill adopted during  
19 the 2017 legislative session which made changes to Nevada laws pertaining to next-of-kin  
20 notifications as evidence that the privacy interest in autopsy reports outweighs the public’s  
21 right of access.

22           45. The Court finds that Assembly Bill 57 (which had not been passed by  
23 Nevada Legislature at the time the Coroner’s Office cited it in its April 14, 2017 email) is  
24 not “legal authority” as required by Nev. Rev. Stat. § 239.0107(d)(1).

25           46. Moreover, the Court finds that Assembly Bill 57 does not demonstrate a  
26 legislative intent to undermine or negate the NPRA’s mandates regarding producing public  
27 records. Thus, the Coroner’s Office cannot rely on Assembly Bill 57 to meet its burden of  
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1 establishing that the records are confidential and that the interest in non-disclosure  
2 outweighs the presumption in favor of access.

3 ***Nev. Rev. Stat. § 432B.407 Does Not Justify Non-Disclosure.***

4 37. On July 9, 2017, in a response to a further email from the LVRJ inquiring  
5 on the status of the records, the Coroner's Office indicated it would not produce any records  
6 that pertained to any case that was subsequently handled by a child death review team  
7 pursuant to Nev. Rev. Stat. § 432B.403, *et. seq.* The Coroner's Office specifically cited Nev.  
8 Rev. Stat. § 432B.407, a statute which pertains to information acquired by child death  
9 review teams, as a basis for refusing to produce the records.

10 38. In addition to not being timely cited, Nev. Rev. Stat. § 432B.407 does not  
11 satisfy the Coroner's Office's burden of establishing that any interest in nondisclosure  
12 outweighs the public's interest in the records.

13 39. Pursuant to Nev. Rev. Stat. § 432B.403, the State can organize child death  
14 review teams to review the records of selected cases of children under the age of 18 to assess  
15 and analyze the deaths, make recommendations for changes to law and policy, support the  
16 safety of children, and a prevent future deaths.

17 40. Under Nev. Rev. Stat. § 432B.407(1), a child death review team may  
18 access, inter alia, "any autopsy and coroner's investigative records" relating to the death of  
19 a child. Nev. Rev. Stat. § 432B.407(1)(b). Section 432B.407(6) in turn provides that  
20 "information acquired by, and the records of, a multidisciplinary team to review the death  
21 of a child are confidential, must not be disclosed, and are not subject to subpoena, discovery  
22 or introduction into evidence in any civil or criminal proceeding."

23 41. However, the Court finds that nothing in the language of Nev. Rev. Stat. §  
24 432B.407(6) indicates that records obtained by child death review teams are automatically  
25 confidential simply because the Coroner's Office transmitted those records at some point in  
26 time to a child death review team.

27 42. Moreover, to the extent that Nev. Rev. Stat. § 432B.407 renders any  
28 records confidential, nothing in the language of Nev. Rev. Stat. § 432B.407 indicates

1 records obtained by a child death review team must be kept confidential in perpetuity.  
2 Instead, the records of a child death review team must be kept confidential only during a  
3 child death review team's review of a child fatality.

4 43. Thus, the Coroner's Office's reliance on Nev. Rev. Stat. § 432B.407 does  
5 not meet its burden of establishing that the records are confidential and that the interest in  
6 non-disclosure outweighs the presumption in favor of access.

7 ***HIPAA Does Not Justify Non-Disclosure.***

8 44. In addition to its reliance on Nev. Rev. Stat. § 432B.407, the Coroner's  
9 Office in its September 7, 2017 Response also pointed to privacy protections for medical  
10 data under the Health Insurance Portability and Privacy Act (HIPAA) and NRS Chapter  
11 629, as persuasive authority for its position that the requested records should be kept  
12 confidential.

13 47. However, in addition to that fact that the Coroner's Office failed to timely  
14 cite HIPAA as a basis for withholding or redacting the requested records, the Coroner's  
15 Office, it is not a covered entity under HIPAA.

16 48. Pursuant to 45 C.F.R. § 160.103, a covered entity is defined as: (1) a health  
17 plan; (2) a "health care clearinghouse;" or (3) "[a] health care provider who transmits any  
18 health information in electronic form in connection with a transaction covered by  
19 [HIPAA]." Moreover, 42 C.F.R. § 160.102 specifically states that HIPAA only applies to  
20 those three categories of health care entities. Thus, by its plain language, HIPAA is not  
21 intended to apply to autopsy records, and cannot be used by the Coroner's Office to withhold  
22 the requested records.

23 49. Accordingly, both because the Coroner's Office did not timely assert any  
24 legal or statutory authority to meet its burden in withholding the records, and because it has  
25 not met its burden in withholding or redacting the requested records, the Court finds that the  
26 Coroner's Office must disclose the requested records to the LVRJ in unredacted form.

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1                   **B. The NPRA Does Not Permit Government Entities to Charge to Redact or**  
2                   **Withhold Records or to Conduct a Privilege Review.**

3                   50.     The fees provisions relevant to public records requests are those set forth  
4                   in Nev. Rev. Stat. §§ 239.052 and 239.055(1).

5                   51.     The Coroner's Office relied on Nev. Rev. Stat. § 239.055(1) for fees for  
6                   "extraordinary use." That statute provides that "... if a request for a copy of a public record  
7                   would require a governmental entity to make extraordinary use of its personnel or  
8                   technological resources, the governmental entity may, in addition to any other fee  
9                   authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such  
10                  extraordinary use...." In its Responding Brief, even the Coroner's Office acknowledged that  
11                  in 2013, the Nevada Legislature modified Nev. Rev. Stat. § 39.055 to limit fees for the "  
12                  extraordinary use of personnel" to 50 cents per page.

13                  52.     The Court finds that Nev. Rev. Stat. § 239.055(1) does not allow  
14                  governmental entities to charge a fee for privilege review or to redact or withhold records.  
15                  Interpreting Nev. Rev. Stat. § 239.055 to limit public access by requiring requesters to pay  
16                  public entities to charge for undertaking a review for responsive documents, confidentiality,  
17                  and redactions would be inconsistent with the plain terms of the statute and with the mandate  
18                  to liberally construe the NPRA. *See* Nev. Rev. Stat. § 239.001(3).

19                  53.     Further, allowing a public entity to charge a requester for legal fees  
20                  associated with reviewing for confidentiality is impermissible because "[t]he public official  
21                  or agency bears the burden of establishing the existence of privilege based upon  
22                  confidentiality." *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6  
23                  P.3d 465, 468 (2000).

24                  54.     Moreover, the Court finds that no provision within the NPRA allows a  
25                  governmental entity to charge a requester for a privilege review. Rather, the NPRA provides  
26                  that a governmental entity may charge for providing a copy of a record, (Nev. Rev. Stat. §  
27                  239.052(1)), for providing a transcript of an administrative proceeding, (Nev. Rev. Stat. §  
28                  239.053), for information from a geographic information system (Nev. Rev. Stat. §

239.054), or for the “extraordinary use” of personnel or technology. Nev. Rev. Stat. § 239.055. A privilege review does not fall within any of these provisions.

55. The Court therefore finds that the Coroner’s Office cannot charge the LVRJ a fee under Nev. Rev. Stat. § 239.055(1) to conduct a review of the requested records.

56. Pursuant to Nev. Rev. Stat. § 239.052(1) “a governmental entity may charge a fee for providing a copy of a public record.” However, that fee may not exceed the “actual cost to the governmental entity to provide a copy of the public records ...” *Id.*

57. The LVRJ indicated it wished to receive electronic copies of the requested records. The LVRJ is not requesting hard copies, and the NPRA does not permit a per page fee to be charged for electronic copies. Thus, because the only cost for electronic copies is that of the medium (a CD), the Court finds that the Coroner’s Office may not charge any additional fee besides the cost of the CD.

### III.

#### ORDER

58. Based on the foregoing findings of fact and conclusions of law, the Court hereby orders as follows:

59. The Coroner’s Office shall produce autopsy reports of autopsies conducted of anyone under the age of 18 conducted from 2012 through April 13, 2017 to the LVRJ in unredacted form.

60. The Coroner’s Office shall make the records available to the LVRJ expeditiously and on a rolling basis. The Coroner’s Office must provide all the requested records to the LVRJ by no later than December 28, 2017.

61. At the hearing, the Coroner’s Office stated it would be able to produce CDs with electronic copies of the requested records at a cost of \$15.00 per CD, and the LVRJ stated it was willing to pay such a fee or provide its own CD. In producing the requested records, the Coroner’s Office may charge the LVRJ a fee of up to \$15.00 per CD consistent with Nev. Rev. Stat. § 239.052(1). No additional fees shall be permitted.

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A75B501 - ORDER GRANTING  
PETITIONER LVRT'S PUBLIC  
RECORDS ACT APPLICATION  
PURSUANT TO NRS 239.001  
PETITION FOR WRIT OF  
MANDAMUS

ORDER

It is so ORDERED this 8 day of Nov., 2017.

  
DISTRICT COURT JUDGE

Prepared and submitted by:

  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

SUPREME COURT CASE NO.  
74604

DISTRICT COURT CASE NO.:  
A-17-758501-W

**MOTION TO EXPEDITE**  
**APPEAL**

Electronically Filed  
Dec 15 2017 02:38 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Pursuant to Nevada Rule of Appellate Procedure 2, Respondent Las Vegas Review-Journal ("Review-Journal"), by and through its counsel, Margaret A. McLetchie, hereby respectfully requests that this Court expedite resolution of the above-captioned appeal.

DATED this the 15<sup>th</sup> day of December, 2017.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931

Alina M. Shell, Nevada Bar No. 11711

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*Counsel for Respondent, Las Vegas Review-Journal*

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

The Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (“NPRA”) reflects that the public has a right to immediate access to public records. Further, even a temporary delay in access to court documents impermissibly burdens the First Amendment. *See, e.g., Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) (“[E]ven a one to two day delay impermissibly burdens the First Amendment”) (citing *Associated Press v. U.S. Dist. Court for Cent. Dist. of California*, 705 F.2d 1143, 1147 (9th Cir. 1983) (finding that sealing court documents for 48 hours represented a “total restraint on the public’s first amendment right of access even though the restraint is limited in time”)).

In this case, the Las Vegas Review-Journal (the “Review-Journal”) has been working to obtain records from the Clark County Coroner’s Office since April. After the Review-Journal filed suit, the Eighth Judicial District Court granted access and found that the Coroner’s Office had no legitimate basis to withhold records. However, the district court recently granted a request to stay its order pending appeal because it determined that if it did not do so, the Coroner’s Office’s instant appeal would be moot. Accordingly, the Review-Journal respectfully requests that this Court expedite its appeal so that, should this Court agree with the District Court, the public’s right to access records—and the Review-Journal’s right to report on those

records—are not delayed any more than necessary. For these same reasons, the Review-Journal also respectfully requests that this matter be removed from this Court’s Settlement Program.

## **II. FACTS AND PROCEDURAL HISTORY**

### ***NPRA Request***

On April 13, 2017, the Review-Journal sent the Coroner’s Office a request pursuant to the NPRA seeking all autopsy reports of autopsies of anyone under the age of 18 conducted from 2012 through the date of the request. (Exhibit 1 (November 8, 2017 Order), ¶¶ 1-2.) The Coroner’s Office refused to provide autopsy reports, notes, or other related documents. (*Id.*, ¶¶ 3-4.)

### ***Review-Journal’s Successful Petition In District Court***

After multiple attempts to negotiate access to the records failed, the Review-Journal filed a petition with the district court on July 17, 2017 pursuant to Nev. Rev. Stat. § 239.011(1) to obtain a court order requiring the Coroner’s Office to provide access to the requested records. (*Id.*, ¶ 19.)

Following briefing from the parties, the district court entered an order on November 9, 2017 requiring, *inter alia*, that the Coroner’s Office provide the Review-Journal unredacted electronic copies of the requested records. (*Id.*, ¶ 59.) Pursuant to the district court’s order, the Coroner’s Office was required to provide



the records “expeditiously and on a rolling basis,” and complete that production by December 28, 2017. (*Id.*, ¶ 60.)

### ***Review-Journal’s Successful Petition in District Court***

Subsequently, on November 28, 2017, thirty days before the deadline for full compliance and three weeks after the Clark County Board of County Commissioners approved appeal<sup>1</sup>, the Coroner’s Office moved the district court pursuant to Nev. R. App. P. 8 (a)(1) for a stay of the November 9, 2017 order pending appeal on an order shortening time. At a hearing on December 12, 2017, the district court raised concerns about the delays by the Coroner’s Office but granted the Coroner’s Office motion for a stay.<sup>2</sup> In so doing, the district court noted that requiring the Coroner’s Office to disclose the records pending appeal would defeat the object of the Coroner’s Office’s appeal. *See* Nev. R. App. P. 8(c)(1) (noting that one of the factors a court must weigh in assessing the propriety of a stay is “whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied”).

On December 6, 2017, this Court entered an order referring this appeal to the Court’s Settlement Program. On December 12, 2017, undersigned counsel notified

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<sup>1</sup> <https://www.reviewjournal.com/investigations/clark-county-commissioners-vote-to-fight-open-records-ruling/> (last accessed December 15, 2017).

<sup>2</sup> As of the date of this filing, neither the minutes from the December 12, 2017 hearing nor a written order were available, and are therefore not appended to this motion.

the settlement judge assigned to the appeal that the parties did not believe the appeal was appropriate for settlement, and that she intended to file the instant motion. The undersigned has also advised counsel for the Coroner's Office of the Review-Journal's intent to seek expedited treatment.

This motion follows.

### **III. ARGUMENT**

Pursuant to Nev. R. App. P. 2, “[o]n the court’s own or a party’s motion, the court may—to expedite its decision or for other good cause—suspend any provision of these Rules in a particular case and order proceedings as the court directs.” Good cause exists in this appeal to expedite the proceedings.

The legislative intent underpinning the NPRA is to foster democratic principles by ensuring easy and expeditious access to public records. Nev. Rev. Stat. § 239.001(1) (“The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law”); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011) (holding that “the provisions of the NPRA are designed to promote government transparency and accountability”). Indeed, the importance of access—and specifically, speedy access—is reflected in the NPRA’s mandate that courts prioritize public records matters. Nev. Rev. Stat. § 239.001(2) (“The court shall give this matter priority over other civil matters to

which priority is not given by other statutes...”).

This legislative interest in swift disclosure is woven throughout the NPRA. For example, Nev. Rev. Stat. § 239.010(1) requires that public records “must be open at all times during office hours to inspection by any person.” If a governmental entity receives a records request, Nev. Rev. Stat. § 239.0107(1) mandates that, by not later than the end of the fifth business day, a governmental entity must either (1) make the records available; (2) if they entity does not have custody of the requested records, notify the requester of that fact and direct them to the appropriate government entity; (3) if the records are not available by the end of the fifth business day, provide notice of that fact and a date when the records will be available; or (4) if the records or any part of the records are confidential, provide the requestor with notice of that fact and a citation to the statute or law making the records confidential. Nev. Rev. Stat. § 239.0107(1)(a)-(d).

In addition to this timely notification and disclosure scheme, the NPRA specifically provides for expedited court consideration of a governmental entity’s denial of a records request. Nev. Rev. Stat. § 239.011(2) (mandating that a court give an application for public records “priority over other civil matters”).) Thus, the NPRA is designed to provide quick access to withheld public records.

In addition to the fact that the intent of the NPRA is to provide the public with expeditious access to records, the denial of access to public records impinges on the

Review-Journal’s First Amendment rights to access public records and report on them—and any violation of a First Amendment right is irreparable harm. *See, e.g., Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) (“even a one to two day delay impermissibly burdens the First Amendment”). The importance of immediate public access to documents has also been recognized in cases providing the press with access to public records in court files. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110,126-27 (2d Cir. 2006) (“Our public access cases and those in other circuits emphasize the importance of immediate access where a right of access is found.”) (emphasis added) (citations omitted)); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (public access to documents in court’s file “should be immediate and contemporaneous”).

Here, the Review-Journal has waited over nine months to obtain access to public records and cannot report on records it does not receive. The normal appellate process could add many months or more of additional delay. Thus, in accordance with the intent of the NPRA, the Review-Journal respectfully requests this Court, remove this matter from the Settlement Program, suspend the normal briefing schedule, and expedite its consideration and resolution of this appeal.

#### **IV. CONCLUSION**

Because over nine months have passed since the Review-Journal made its records request at issue in this appeal, and because the district court’s recent decision

to grant a stay of its order pending appeal will further delay access to the requested records, this court should expedite its resolution of this appeal pursuant to Nev. R. App. P. 2. The NPRA and the First Amendment demand nothing less.

Dated this the 15<sup>th</sup> day of December, 2017.

/s/ Margaret A. McLetchie

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing MOTION TO EXPEDITE APPEAL was filed electronically with the Nevada Supreme Court on the 15th day of December, 2017. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven B. Wolfson and Laura Rehfeldt  
**Clark County District Attorney's Office**  
*Counsel for Appellant,*  
*Clark County Office of the Coroner/Medical Examiner*

/s/ Pharan Burchfield  
Employee of McLetchie Shell LLC