IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,

Appellant.

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

Supreme Court No. 75534

District Court No. A750151
District Court Dept. No. XVI

APPELLANT'S REPLY BRIEF

Appeal from Eighth Judicial District Court, Clark County, Findings of Fact and Conclusions of Law and Order

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II. INTRODUCTION

CCSD'S argument for reversal of the District Court's order awarding LVRJ attorney fees and costs fees is the District Court erred when it read NRS 239.011(2) in isolation from NRS 239.012 and failed to consider the legislative history of the NPRA, which provides CCSD is immune from damages (i.e. attorney's fees and costs) because it acted in good faith in refusing to disclose the requested information.

In its answering brief ("RAB"), LVRJ urges this Court to ignore established rules of statutory construction and interpret NRS 239.011(2) in isolation and in disregard for NRS 239.012. LVRJ also mistakenly asserts this Court has already interpreted NRS 239.011 on its face and has rejected CCSD's same arguments in *Blackjack*. RAB 21-22. In *Blackjack*, however, the issue before the Court was whether Blackjack Bonding, as a requester, was a prevailing party – not whether LVMPD was immune pursuant to NRS 239.012. *See LVMPD v Blackjack Bonding*, 343 P.3d608, 615 (Nev. 2015). Thus, whether NRS 239.012 immunizes CCSD from attorney fees and costs when it acted in good faith in refusing to disclose information is an issue of first impression for this Court.[1]

[1] The same issues as presented in this case are also currently before this court in case number 7509, *Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review Journal*.

The arguments LVRJ presented for its theory that NRS 239.012 only applies in civil lawsuits and not to an award of attorney fees and costs focus on civil tort actions by a third party. But, the only example LVRJ provides, actually involving a requester, concerns constitutional claims. RAB 36. As such, LVRJ's flawed reasoning discounts the standing principle that state law immunities have no force against 42 U.S.C § 1983 suits. See *Howlett v. Rose*, 496 U.S. 356 (1990) ("A construction of federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the supremacy clause of the constitution insures that the proper construction may be enforced."). Thus, a government entity could not assert NRS 239.012 to defend against constitutional claims. There is but one instance in which a requester could obtain monetary damages against a government entity in relation to a public records request – an award of attorney fees and costs.

LVRJ's contention that NRS 239.012 is limited to a public official or employer is also misguided. The plain language of NRS 239.012 explicitly provides that a public employee or its employer is immune from damages. *See Edington v. Edington*, 119 Nev. 577, 582-583, 80 P.3d 1282, 1286 (2003) ("[W]hen a statute's language is clear and unambiguous, the apparent intent must be given effect, as there is no room for construction.").

Finally, LVRJ argues that even if NRS 239.012 provides for immunity to damages as argued by CCSD, CCSD has not demonstrated it has acted in good faith in this matter. RAB 53. In the present case, LVRJ sought an order that CCSD acted in bad faith at the time of requesting attorney fees and costs. Appellant's App. IV 684-705. The district court, by way of its order dated March 19, 2018, found CCSD did not act in bad faith after the issue was fully briefed and argued along with the request for fees. Appellant's App. V 1140-1159. LVRJ never appealed this issue. The record demonstrates the issue of CCSD's "faith", whether one wants to refer to it in the negative, "bad faith" or the positive, "good faith" has already been raised at the district court level where the district court found in favor of CCSD and LVRJ never appealed the issue. As a result, CCSD asks this Court to confirm the safe harbor language in NRS 239.012 and apply the rules of statutory construction to interpret NRS 239.011(2) and NRS 239.012 together and in harmony. See *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (determining that this Court has a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized). In doing so, this Court should determine that NRS 239.012 immunizes CCSD from LVRJ's award of attorney fees and costs because CCSD acted in good faith in refusing to disclose all the records sought.

III. LEGAL ARGUMENT

A. *BLACKJACK* DOES NOT SUPPORT LVRJ'S ASSERTION THAT IT IS ENTITLED TO FEES AND COSTS IN THIS CASE.

LVRJ improperly asserts this Court has previously determined the NPRA "unconditionally entitle[s]" a prevailing requester to its reasonable attorney fees and costs. RAB 22. It appears LVRJ is relying on *Blackjack* to support its contention that attorney fees must always be awarded. RAB 21. LVRJ contends that in *Blackjack*, this Court expressly rejected policy arguments concerning the constructions of NRS 239.011. RAB 21 (citing *Blackjack*, 343 P.3d at 615 n.6). However, the particular issue before the Court in *Blackjack* concerned whether Blackjack Bonding, as a requester, was a prevailing party, despite being ordered to pay costs associated with production of the requested records. *Id*. at 614-615. This Court ruled NRS 239.011 allows a requester to recover attorney fees and costs "without regard to whether the requester is to bear the costs of production." *Id*. at 615. Thus, this Court's holding in *Blackjack* presents an entirely different context and is, therefore, dicta. *See Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 282, 21 P.3d 16, 22 (2001) (concluding that dicta is not controlling). More importantly, the issues raised in this appeal, including the immunity clause in NRS 239.012 and its interplay with NRS 239.011(2), are issues of first impression within this Court. LVRJ's analysis of *Blackjack* is misplaced.

Furthermore, NRS 239.011(2) does not "unconditionally entitle" a requester to its attorney fees and costs. Indeed, LVRJ admits the Legislature explicitly included the "reasonable" condition in relation to attorney fees with this statute.[2] RAB 25. This Court has repeatedly held that, although a statute requires an award of costs, the trial court retains discretion in determining the reasonableness of any award. *See U.S. Design & Const. Corp. v. Int'l Broth. Of Elec. Workers*, 118 Nev. 458, 463, 50 P.3d 170, 173 (2002). This is also true for attorney fees. *See Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005) (reserving for the trial court to determine the reasonableness of attorney fees). Unlike NRS 18.020, the plain language of NRS 239.011 does not mandate that the court award attorney fees and costs. Compare NRS 239.011 to NRS 18.020 ("Costs must be allowed of course to the prevailing party. . . "). Thus, LVRJ's "unconditionally entitle[d]" argument fails, as NRS 239.011 does not mandate an award of attorney fees and costs. Therefore, the Court should reject LVRJ's arguments misconstruing the law on prevailing parties.

B. THIS COURT SHOULD READ NRS 239.011(2) AND NRS 239.012 IN HARMONY WITH ONE ANOTHER.

[2] NRS 239.011(2), in pertinent part, states, "If the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record."

LVRJ ignores the fact statutory provisions with the NPRA statutory scheme must be read as a whole and in harmony with one another. *See Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (determining that courts have a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized). Instead, LVRJ urges this Court to read NRS 239.011(2) in isolation and, contrary to Nevada law, construe such provision liberally. *See Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998) (strictly construing statutes permitting the recovery of costs because they are in derogation of the common law).

The Legislature has declared that provisions within the NPRA must be construed to promote its purpose, which is access to records. *See* NRS 239.001. Without any supporting authority or evidence, LVRJ asserts in blanket fashion that CCSD's interpretation would discourage actions to enforce the NPRA. LVRJ argues that NRS 239.011 must be read to "allow a requester to get fees for having to go to court to get access to records." RAB 23. To the contrary, a requester does not automatically get attorney fees and costs for filing a lawsuit. A requester must prevail. *See* NRS 239.011(2). And if NRS 239.012 is to be afforded the legislature's intent, fees would only be allowed if the government failed to act in good faith. In essence, LVRJ's reasoning would require the government to pay

attorney fees for frivolous lawsuits. This flawed reasoning would encourage requesters to be unreasonable in the pre-litigation stages of a public records request and result in more litigation over these matters. But, the filing of a lawsuit itself does not guarantee records will be disclosed or that a requester prevails. In other words, NRS 239.011 has no effect on the public's access to records. The Legislature intended that provisions concerning access to records, such as NRS 239.010, be construed liberally and statutes concerning exemptions and exceptions be construed narrowly. See NRS 239.001. To be sure, if this Court were to follow LVRJ's logic of construing provisions liberally, the same construction would necessarily apply to NRS 239.012.

Accordingly, since NRS 239.011(2) concerns the rights of a prevailing party, and not access to records, the Court should construe NRS 239.011(2) and NRS 239.012 together and, to the extent practicable, reconciled and harmonized. *See Leven*, 123 Nev. at 405, 168 P.3d at 716. Hence, the district court erred when it interpreted NRS 239.011(2), without considering NRS 239.012, and this court should now reverse.

C. CCSD IS IMMUNE FROM ATTORNEY FEES AND COSTS BECAUSE THE DISTRICT COURT HAS ALREADY DETERMINED CCSD DID NOT ACT IN BAD FAITH.

1. The applicable provisions of NRS 239.012 extend immunity for refusing to disclose information in good faith.

In its answering brief, LVRJ focuses on language within NRS 239.012 that is not applicable to the case at hand. Specifically, LVRJ claims that NRS 239.012 addresses liability to "the person whom the information concerns" for disclosing records. RAB 27. For purposes of this appeal, however, that language is irrelevant because NRS 239.012 joins the provision with "or."[3] Instead, this Court must decide whether NRS 239.012 immunizes CCSD from attorney fees and costs because it acted in good faith in refusing to disclose portions of the requested records. LVRJ further contends that, because of this language NRS 239.012 is more broad than NRS 239.011(2), and, thus, not applicable. RAB 27. To the contrary, the mere fact that NRS 239.012 is broader than NRS 239.011(2) supports CCSD's interpretation that NRS 239.012 is meant to encompass the "narrow circumstance" of NRS 239.011. Therefore, whether NRS 239.012 also provides immunity to the public official and the government entity in disclosing records is of no consequence and irrelevant to this Court's determination of whether NRS 239.012 immunizes a government entity from attorney fees and costs when it acts in good faith in refusing to disclose records.

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[3] **NRS 239.012 Immunity for good faith disclosure or refusal to disclose information.** A public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester ***or to the person whom the information concerns*.** (emphasis added).

2. NRS 239.012 applies to government entities such as CSSD.

LVRJ next disregards the plain language of NRS 239.012 and contends immunity applies only to individuals and not government entities. RAB 27-28. The plain language in this statute stating, "employer of the public officer" demonstrates the Legislature's intent to provide immunity to the government entity. *See Edington v. Edington*, 119 Nev. 577, 582-583, 80 P.3d 1282, 1286 (2003) ("[W]hen a statute's language is clear and unambiguous, the apparent intent must be given effect, as there is no room for construction.").

NRS 239.012 explicitly provides:

> A public officer or employee who acts in good faith in disclosing or refusing to disclose information and **the employer of the public officer** or employee **are immune** from liability for damages, either to the requester or to the person whom the information concerns.

(emphasis added). There is no doubt that the "employer of the public officer" is, in fact, the government entity. The statute provides immunity to the entity from attorney fees and costs if its employee acted in good faith in refusing to disclose records. The language of the statue first addresses the actions of an individual--refusing to disclose information in good faith. The next portion of the statute identifies the entity that enjoys immunity—the employer of the public officer or the employee.

If there is any doubt that the language within NRS 239.012 pertains to a government entity, the legislative history must be consulted to clarify any amibiguity. *See Nuleaf CLV Dispensary, LLC v. State Dep't Health and Human Servs*., 134 Nev. Adv. Op. 17, 414 P.3d 305, 309 (2018). As initially drafted, the language of Assembly Bill 365 ("AB 365") (1993) did not include the employer language that is now codified in NRS 239.012. IV Appellant's App. 842-843. During the legislative hearings, testimony was given addressing "agency" language within the statute. IV Appellant's App. 879. At the subcommittee hearing, Chairman Rick Bennett ensured that AB 365 was amended to include the "agency" language discussed at the previous hearing. Appellant's App. 883. This bill was amended and codified to include "and the employer" as reference to the agency. Id. Thus, the legislative history further supports CCSD's position that immunity is extended to the government entity. LVRJ's interpretation is inconsistent with the plain language of the statute and the legislative history and should not be followed.

3. NRS 239.012 encompasses attorney fees and costs contemplated by NRS 239.011(2).

LVRJ's final argument that the broad language of "damages" does not encompass "fees" is contrary to the plain language of NRS 239.012. There is but one instance where a requester may seek monetary damages from a government entity related to a public records request—attorney fees and costs. Thus, LVRJ's

logic that a requester's fees and costs in an NPRA action are excluded from NRS 239.012 is flawed.

First, LVRJ's reliance on *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 957-958, 35 P.3d 964, 970 (2001), *clarified by Horgan v. Felton*, 123 Nev. 577, 584, 173 P.3d 982, 986 (2007) is misplaced. The instances enumerated within *Sandy Valley* concerning attorney fees as damages are not exhaustive. While the NPRA provides a statute that permits a requester to seek attorney fees, the analysis in *Sandy Valley* does not address statutory interpretation of such statutes nor does it address good faith exceptions or immunity to attorney fee statutes. Likewise, the other cases relied on by LVRJ discussing attorney fees and damages are not applicable because the authorities are silent on good faith exceptions and immunity provisions.[4] RAB 30. CCSD's citation to *Sandy Valley* was merely to demonstrate this Court has previously recognized that damages can encompass attorney fees in certain circumstances and should in this instance as well. *See Liv v. Christopher Homes, LLC*, 321 P.3d 875 (Nev. 2014) (clarifying scope of attorney fees as special damages); *Albios v. Horizon Cmtys., Inc.*, 122

[4] *See Carolina Cas. Ins. Co. v. Merge Healthcare Solutions, Inc.*, 728 F.3d 615, 617 (7th Cir. 2013) (determining whether an insurance policy referencing multiplied portion of multiplied damages includes fees); *United Labs, Inc. v. Kuykendall*, 437 S.E.2d 374 (N.C. 1993) (addressing punitive damages and attorney fees). LVRJ also improperly relies on *City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986) because state immunity laws do not apply to constitutional claims. *See Howlett v. Rose*, 496 U.S. 356 (1990).

Nev. 409, 427 132 P.3d 1022, 1034 (2006) (construing NRS 40.655 authorizing attorney fees to be treated as an element of "damages").

In another failed attempt to distinguish between attorney fees and damages, LVRJ cites NRS 40.655. RAB 33-34. NRS 40.655, however, makes no mention of attorney fees and costs specifically as damages. In fact, this Court construed the attorney fees and costs language in NRS 40.655(1) to be treated as damages. *See Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 427 132 P.3d 1022, 1034 (2006) (construing NRS 40.655 authorizing attorney fees to be treated as an element of "damages"). As such, NRS 40.655 actually supports CCSD's interpretation. Further, NRS 239.012 is similar to NRS 41.032. NRS 41.032 grants immunity to an officer or employee of the State or any of its agencies or political subdivisions in certain circumstances. Notably, NRS 41.032 does not mention attorney fees and costs, however, this Court has determined that the State and its agencies are statutorily immune from all damages, including attorney fees. *See Esmeralda County v. Grogran*, 94 Nev. 723, 725, 587 P.2d 34, 36 (1978). Following this Court's analysis and interpretation of NRS 41.032, the only logical conclusion that can be reached is that NRS 239.012 also includes immunity from all damages, including attorney fees and costs permitted under NRS 239.011(2) as long as the government acted in good faith.

LVRJ additionally misconstrues CCSD's interpretation of NRS 239.012 to mean the only liability that can exist under NRS 239.012 is attorney fees and costs. RAB 34. CCSD recognizes NRS 239.012 also immunizes a government entity from a third party concerning the disclosure of information. As such, "damages" within NRS 239.012 is not limited to but includes attorney fees and costs. In an effort to identify instances in which liability may attach to a government entity, LVRJ contends the employer language within NRS 239.012 signifies immunity from vicarious liability. RAB 25. Vicarious liability, however, applies in actions for tort. NRS 41.130; NRS 41.745; *Wood v. Safeway, Inc*. 121 Nev. 724, 121 P.3d 1026 (2005). LVRJ has failed to explain in what instances **a requester** may have a state law cause of action against an entity for failing to disclose public records pursuant to the NPRA.[5] That is because the NPRA does not provide a cause of action or claim for relief for which damages may be awarded, resulting in attorney fees and costs being the only damages **a requester** can seek. NRS 239.011. *Cariega v. City of Reno*, No. 316CV00562MMDWGC, 2017 WL 329030 at *2 (D. Nev. Aug. 2, 2017) (declining to exercise supplemental jurisdiction over plaintiff's amended claims because the NPRA does not provide a "claim for relief"). This

[5] LVRJ relies on examples of when a third party may bring an action against a government entity for disclosing information. RAB 35 ("if a person claims that disclosure of a record violated his or her privacy rights . . ."); RAB 39 ("if a police department negligently discloses the identity of one of its confidential informants, who then sues the department after criminals' exact physical revenge"). These examples are not applicable to the instant action.

holding is further supported by this Court's ruling in *Von Ehresmann v. Lee*, 98 Nev. 335, 647 P.2d 377 (1982), which concluded that in equitable actions, attorney fees are damages.

Instead LVRJ cites examples where media outlets have asserted **constitutional claims** against government agencies regarding public information pursuant to 42 U.S.C. § 1983. RAB 36. LVRJ's reasoning discounts the standing principle that state law immunities have no force against § 1983 suits. *See Howlett v. Rose*, 496 U.S. 356 (1990) ("A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the supremacy clause of the Constitution insures that the proper construction may be enforced.").

To further support its untenable position, LVRJ relies on Hawaii's irrelevant authority concerning public records and immunity. RAB 37. Contrary to LVRJ's portrayal, the issue presented before the *Molfino* court concerned a negligence claim against the county for breach of a legal duty to use reasonable care in maintaining a file. *See Molfino v. Yuen*, 339 P.3d 679, 681 (Haw. 2014). Thus, the *Molfino* case is not applicable because it did not arise out of a public records request. More importantly, the *Molfino* court did not make any determination as to the application of Hawaii's immunity provision. *Id*. at 685. Rather, the court ruled that Hawaii "does not create a statutory legal duty, flowing from the Planning

Department to Molfino, to maintain a property's TMK file in accurate, relevant, timely, and complete conditions at all times." *Id*. Indeed, the court acknowledged that it did not "express [an] opinion as to whether HRS Chapter 92F imposes tort liability for bad faith disclosures or nondisclosures of government records, as bad faith nondisclosure was not alleged in this case, nor does the record show that the absence of the May 2000 letter from the Planning Department's TMK files was in bad faith." *Id*. at 685 n.3. Furthermore, the liability statute in Hawaii is significantly different than NRS 239.012 because it provides immunity from "any liability, criminal or civil." HRS § 92F-16.[6] Accordingly, the *Molfino* court would never get to the issue of damages because the statute precludes liability generally.

Accordingly, this Court should reach the conclusion "damages" within NRS *See Glosen v Barnes*, 724 F.2d 1418, 1421 (9th Cir. 1984) ("It would be anomalous to require the state to pay attorney's fees when the Eleventh Amendment and [case law] bar recovery of damages from the state."). Thus, the district court erroneously concluded that "damages" within NRS 239.012 does not include fees and costs, and this Court should reverse.

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[6] LVRJ also cites to *Dalessio v. Univ. of Wash.*, No. C17-642 MJP, 2018 WL 4538900, at *1 (W.D. Wash. Sept. 21, 2018). The cases referenced in *Dalessio* all concern tort claims from third parties against the government entity in disclosing information and, thus, are of no use here. *See Nicholas v. Wallenstein*, 266 F.3d 1083, 1086 (9th Cir. 2001) (plaintiffs alleged violation of privacy and negligence); *Levine v. City of Bothell*, No. 2:11-CV-1280-MJP, 2012 WL 2567095, at *1 (W.D. Wash. July2, 2012) (plaintiff alleging violation of invasion of privacy).

4. The legislative history and Nevada's public policy support CCSD's interpretation that they are immune from attorney fees and costs because they acted in good faith.

Generally, when examining a statute, this Court should ascribe the plain meaning in its words, unless the plain meaning was not clearly intended. *See A.J. v. Dist. Ct.,* 133 Nev. Adv. Op. 28, 394 P.3d 1209, 1213 (2017). "The plain meaning rule is not be used to thwart or distort the intent of the Legislature by excluding from consideration enlightening material from the legislative history." Id. (quoting 2A Norman J. Singer & Shambie Singer, Statutes And Statutory Construction, § 48:1, at 555-556 (7th ed. 2014). Relying on the United States Supreme Court, this Court has recognized that "even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent." *Id*. (*citing Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 458, 94 S. Ct. 690 (1974)). Thus, this Court should look to the legislative history of NRS 239.012 in determining that "damages" encompasses attorney fees and costs.

In an attempt to conflate the legislative history, LVRJ points this Court to a discussion on "whether the government agency should be entitled to fees if it prevailed." RAB 24. This discussion, however, plays no role in the issue before this Court. LVRJ further argues that an LCB Bulletin supports its theory because the language concerning attorney fees appears in a different subsection than the

good faith exception language. RAB 48. LVRJ correctly notes that the fee language was included in the subsection entitled, "Procedures for Access to Public Records." RAB 48 (citing IV AA807-808). However, LVRJ's assertions are wholly misleading, as the subsection, "Enforcement of Public Records Laws" includes both the fee language and good faith exception:

> E. Enforcement of Public Records Laws
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> . . . .
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> 21. Enact legislation that prescribes the procedures for direct appeal to a court of law seeking an order compelling access and giving such proceedings priority on the court's calendar. **Provide for court costs and attorneys' fees if the requester prevails**. (Discussed in Section C regarding procedures for access.) (BDR 19-393)
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> 22. Enact legislation providing that **governmental entities** and employees **are immune from suit and liability** if they act in good faith in disclosing or refusing to disclose information. (BDR 13-393)

Appellant's App. IV 810 (emphasis added). The legislative history further evidences that a government entity, not just the public official or employee, is also immune from liability. *Id*.

"Damages" within NRS 239.012 encompasses attorney fees and costs and is not limited to damages arising out of separate claims for relief. As noted by LVRJ, the term "damages" is broader than attorney fees. Had the legislature substituted the language "attorney fees and costs" for damages, a third party would be able to

seek damages against a government entity for disclosing information. On the other hand, by utilizing the term "damages," the Legislature intended to immunize a government entity from all monetary damages, including attorney fees and costs, where a public official or employee acted in good faith. Limiting liability from damages, rather than from civil liability generally is consistent with the NPRA because it allows a requester, or a third party, to seek equitable relief.

In challenging the clear legislative intent of NRS 239.012, LVRJ maintains that Ande Engleman's testimony concerning attorney fees and costs ("granted only when it was a denial of what was clearly a public record") is limited to frivolous lawsuits. RAB 51. But Engleman's testimony was not limited to frivolous lawsuits. IV Appellant's App. 879. Legislators raised concerns that taxpayers would essentially be responsible for paying both attorney fees of the agency and the requester through tax dollars. Id. Engleman explained the requesters would not be able to recover attorney fees and costs, "if it concerned a record everyone had thought to be confidential." Id. Rather, the recovery of attorney fees and costs is contingent upon a "denial of what was clearly a public record." Id. This reasoning supports the language of NRS 239.012 that immunizes a government entity for damages (i.e., attorney fees and costs) if it refuses to disclose information in good faith. In other words, if the public official or employee does not disclose information because he or she believes in good faith, that the information is

confidential, the government entity is immune from attorney fees and costs if a requester prevails.

LVRJ also asks this Court to set aside Nevada's well-settled law and public policy concerning awards of attorney fees and costs. Nevada's statutes on attorney fees, as well as public policy, may be used to determine the legislative intent. *See Nuleaf CLV Dispensary, LLC*, 414 P.3d at 309 (explaining this Court "will evaluate legislative intent and similar statutory provisions" and "construe the statute in a manner that conforms to reason and public policy"); *City of Sparks v. Reno Newspapers, Inc*. 399 P.3d 352, 356 (Nev. 2017) (a court will consider reason and public policy to determine legislative intent). Here, the Court should follow Nevada law and related precedent that have established that statutes concerning an award of fees and costs must be narrowly construed. *See Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998) (strictly construing statutes permitting recovery of costs because they are in derogation of the common law); *Hardisty v. Astrue*, 592 F.3d 1072, 1077 (9th Cir. 2010) (recognizing that the Supreme Court has repeatedly interpreted attorney fees statutes narrowly and waivers of immunity must be construed strictly in favor of the sovereign).[7]

[7] LVRJ argues that this language should be disregarded because the Ninth Circuit affirmed a district court's decision to deny attorney fees on issues not reached by a

As CCSD pointed out in its opening brief, the good faith exception to damages codified within NRS 239.012 is similar to several Nevada statutes concerning attorney fees and bad faith conduct. *See e.g.*, NRS 7.085 (permitting award of fees when an attorney acts in bad faith); NRS 18.010(2)(b) (permitting award of fees when a litigant acts in bad faith); *see also* NRCP 68 and *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983) (granting courts the discretion to ward fees when a party rejects an offer of judgment, but only after balancing the relative good faith of the parties). LVRJ contends these statutes are irrelevant to this Court's interpretation of NRS 239.011 and NRS 239.012. RAB 40. LVRJ's reasoning, however, disregards this Court's previous determination that similar statutory provisions may be considered to determine legislative intent. *See Nuleaf CLV Dispensary, LLC*, 414 P.3d at 309. LVRJ further argues these statutes evidence the Legislature's intent to not include any such limitations within NRS 239.011. RAB 41. Such an interpretation blatantly disregards NRS 239.012, which explicitly states a good faith exception recognized in the numerous similar statutes. Thus, LVRJ's attempt to interpret NRS 239.011 in isolation is inconsistent with this Court's precedent on statutory construction.

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district court. RAB 33. But, the Ninth Circuit reviewed the language of the provision at issue and determined that statutes awarding fees against the United States concerning waivers of immunity must be construed strictly in favor of the United States. *Hardisty*, 592 F.3d at 1077. Thus, the court's analysis in reaching its determination is relevant here.

NRS 239.012 further comports with other statutes granting immunity to government actors when acting in good faith. *Cf*. NRS 41.032 (providing immunity to State officials and its political functions for discretionary functions); *Falline v. GNLV Corp*., 107 Nev. 1004, 1009, 823 P.2d 888, 891 (1991) (determining that immunity does not attach for actions taken in bad faith). Given the Legislature's inclusion of NRS 239.012 within NPRA demonstrates the Legislature's intent to follow Nevada's overwhelming authority for awarding fees in instances where a party acts in bad faith, as well as providing immunity from damages to government actors.

5. CCSD acted in good faith and is immune from LVRJ's attorney fees and costs.

Should this Court conclude that NRS 239.012 immunizes a government entity from fees and costs, LVRJ argues CCSD is not entitled to immunity because CCSD has not demonstrated that it has acted in good faith. RAB 54 LVRJ goes as far as to request an evidentiary hearing be conducted to determine if CCSD has acted in good faith. Id. This argument fails to recognize that this Court agreed in part with CCSD's refusal to turn over minimally redacted documents in disregard of individual privacy rights as ordered by the district court. *See Clark County School District v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84 (Oct. 25, 2018). The fact this Court agreed in part with CCSD's arguments that LVRJ has sought information that if turned over would violate individuals privacy rights

evidences that CCSD did act in good faith in this matter. Additionally, LVRJ's argument fails to inform this Court that LVRJ already sought an order from the district court stating CCSD acted in bad faith. Appellant's App. IV 684-705. The district court having read the briefs and heard oral argument of the parties on the topic of CCSD's good faith or alleged lack thereof at the time of the hearing on attorney fees and cost found CCSD did not act in bad faith. Appellant's App. V 1143-1159.[8] If LVRJ disputed the district court's final order on CCSD's "faith" in this case, LVRJ should have appealed the district court's order. Having chosen to not appeal the district court's order, this Court has no jurisdiction in this regard as the issue of CCSD's good or bad faith is not before the Court in this appeal. See Appellant's OB 3 and RAB 1.

[8] "Under the facts of this case, the Court finds that CCSD did not act in bad faith in declining to provide the requested records to the Review-Journal." Appellant's App. V 1158. "Further, the Court hereby ORDERS that the Review-Journal's Motion to Find CCSD in Bad Faith is DENIED." Appellant's App. V 1159.

IV. CONCLUSION

In summary, this Court should vacate the district court's order awarding attorney fees and cost to LVRJ. In doing so this Court should construe NRS 239.011(2) and NRS 239.012 together, along with the legislative history, and determine CCSD is immune from LVRJ's award of attorney fees and cost because it acted in good faith.

Respectfully submitted, this 21st day of December, 2018.

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COMBINED NRAP 28.2 AND NRAP 32 CERTIFICATE OF ATTORNEY AND CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

    [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 pt. font; or

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the briefs exempted by NRAP 32(a)(7)(c), it is either:

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    [ ] Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text, or

    [ ] The text of this brief does not exceed fifteen (15) pages.

3. Finally, I hereby certify that I have read this Appellant's Reply Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript

or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

Respectfully submitted, this 21st day of December, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **APPELLANT'S REPLY BRIEF** was filed electronically with the Nevada Supreme Court on the 21st day of December, 2018. I further certify that on the same date, I served a copy of this document upon Respondent's counsel by depositing a true and correct copy hereof in the United States mail at Las Vegas, Nevada, postage fully prepaid, addressed as follows:

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