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1 **NRAP 26.1 DISCLOSURE STATEMENT**

2 The Nevada Employment Security Division of the Nevada
3 Department of Employment, Training and Rehabilitation is a “governmental party”
4 and is therefore not required to file a disclosure statement under NRAP 26.1.
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1 eligible for unemployment benefits, under NRS 612.085). *See*, AA V.1,
2 002-006; *see also*, AA V.1, 049, ¶¶ 4-9.

3 Moreover, this case should be retained by the Supreme Court
4 because the case also involves substantial issues of first impression and
5 issues of statewide public policy regarding the applicability of the NPRA,
6 specifically:

7 (1) Whether the Legislature, under NRS 239.010(1),
8 expressly exempted from disclosure all information protected under NRS
9 612.265 and protected by the attorney-client privilege under NRS 49.095.

10 (2) Whether information obtained under the requirements of
11 NRS Chapter 612 has been expressly and unequivocally declared absolutely
12 privileged, and shall “not be the subject matter or basis for any lawsuit.”
13 NRS 612.265(14). Whether the Legislature, in so declaring, deemed all
14 information prepared pursuant to the requirements of NRS Chapter 612
15 exempt from disclosure, and must not be the basis of litigation under NRS
16 239.001, *et seq.*, which expressly excludes NRS 239.011 litigation. *See*
17 *also*, NRS 239.010(1).

18 (3) Whether the Legislature has “declared by law to be
19 confidential” information protected under NRS 612.265 §§ (1), (2) & (14),
20

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1 and therefore such information is additionally exempted from disclosure
2 under NRS 239.010(1). *See also*, NRS 612.265(13).

3 (4) Does the District Court have subject matter jurisdiction
4 to permit a party to a pending (non-final) administrative proceeding to use
5 NRS 239 as a collateral method for discovery, overriding the authority of the
6 Administrative Law Judge (ALJ) to render discovery decisions, in violation
7 of NRS 612.500, NRS 612.510, NAC 612.225 and NAC 612.228, *inter alia*,
8 and which would interrupt and delay the administrative proceeding and open
9 a floodgate of administrative appeals before finality of the administrative
10 process?

11 (5) Whether a party to an NRS Chapter 612 administrative
12 proceeding has a statutory right under NRS 239 (or under NRS 34.170) to an
13 (interlocutory) appeal to the District Court from an ALJ's preliminary
14 decision regarding discovery, before the administrative hearing is final, in
15 violation of the NRS 612.525(1) requirement to exhaust administrative
16 remedies, and when such appeal would also interrupt and delay the
17 administrative proceedings, depriving the parties of a prompt hearing under
18 NRS 612.500(1).

19 (6) Whether the District Court has subject matter jurisdiction
20 under NRS 239.011 to issue independent findings of fact in an Order

21

1 Granting Petition for Writ of Mandamus, regarding the merits of a pending
2 administrative NRS 612 proceeding in which the ALJ has already assumed
3 jurisdiction, but has not yet rendered a final decision.

4 (7) This case also involves issues where *En Banc*
5 consideration is necessary to maintain uniformity of this Court's decisions.

6 **STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

7 Did the District Court Err in Granting the Petition for Writ of
8 Mandamus Under the Standards Established Per NRS Chapters 34, 239 &
9 612, and This Court's Decisions in *City of Sparks v. Reno Newspapers, Inc.*,
10 133 Nev.Adv.Opn. 56, 399 P.3d 352 (2017); *City of Reno v. Reno Gazette-*
11 *Journal*, 119 Nev. 55, 63 P.3d 1147 (2003); and *Civil Rights for Seniors v.*
12 *Administrative Office of the Courts*, 129 Nev. 752, 313 P.3d 216 (2013);
13 *Benson v. State Engineer*, 131 Nev.Adv.Op. 78, 358 P.3d 221 (2015);
14 *Goldman v. Bryan*, 106 Nev. 30, 38, 787 P.2d 372, 377 (1990); *Circus*
15 *Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 61, 657 P.2d 101, 105
16 (1983); *Swan v. Swan*, 106 Nev. 464, 469, 196 P.2d 221, 224 (1990); *Scott v.*
17 *Nevada Employment Sec. Dep't*, 70 Nev. 555, 278 P.2d 602, 604 (1954)?

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1 **STATEMENT OF THE NATURE OF THE CASE**

2 After having requested an NRS 612 administrative appeal, and
3 after the Employment Security Division's Administrative Law Judge (ALJ
4 or referee) had assumed jurisdiction over the appeal, but before an
5 evidentiary hearing could be held, Sierra National Corporation, *dba* The
6 Love Ranch, a Nevada Corporation (SNC), submitted an NRS Chapter 239
7 Public Records Act (NPRA) request seeking NRS Chapter 612
8 unemployment insurance information in support of SNC's appeal. SNC's
9 request stated: "the public records requested are necessary for the proper
10 presentation of a proceeding pursuant to NRS Chapter 612, and are not
11 sought for any other purpose." (AA V.1, 037-40)

12 Employment Security Division (ESD) served a timely response
13 to SNC's NPRA request, respectfully declining, stating the reasons
14 therefore, preserved its objections, and noted that the information sought is
15 discoverable in the ongoing administrative matter under NRS Chapter 612.¹
16 (AA V.1, 041)

17 Before the administrative hearing could be held, SNC filed a
18 Petition for Writ of Mandamus in the First Judicial District Court, under
19 NRS 239.011, essentially appealing the ALJ's interlocutory decision
20
21

1 concerning the scope of discovery for the administrative hearing. The
2 District Court, devoid of jurisdiction, erroneously considered and granted the
3 Petition for Writ of Mandamus under NRS 239. Even though the
4 Legislature expressly exempted and declared absolutely privileged the
5 requested NRS 612.265 information from the Nevada Public Records Act
6 under NRS 239.010, the First Judicial District Court, in and for Carson City,
7 erroneously issued an Order Granting the Petition for Writ of Mandamus.
8 (AA V.3, 255-275) In so doing, the Court inappropriately ordered ESD to
9 comply with SNC's NPRA request, in violation of NRS 239.010,² and
10 superseded the authority of the ALJ over the scope of discovery in the
11 pending administrative proceeding. (The administrative proceeding has
12 been stayed pending this appeal.)

13 **STATEMENT OF THE FACTS**

14 ESD conducted an audit and determined on May 12, 2017 that
15 the prostitutes working for SNC were employees rather than independent
16 contractors and, as such, would be eligible for unemployment insurance
17
18

19 ¹ ESD has provided SNC with all relevant discovery in the process of the
20 administrative proceeding, and as directed by the Administrative Law Judge.

21 ² The Court's Order also violates NRS Chapter 612 and NRS Chapter 34.

1 benefits³ and SNC would accordingly be subject to unemployment insurance
2 taxes under NRS 612.085. (AA V.1, 002-007) May 23, 2017, SNC appealed
3 ESD's determination⁴ and requested a hearing before ESD's Appeal
4 Tribunal (referee or ALJ). (AA V.1, 008) SNC requested the issuance of a
5 subpoena for production of documents and witnesses, and asked that the
6 administrative hearing be delayed until the fall of 2017 (the documents SNC
7 requested were the same or similar to what appears to be sought is sought in
8 the October 10, 2017 NPRA request). (AA V.1, 022-24; 026; 039-040)
9 SNC sent a June 6, 2018 letter addressed to ESD asking that the Appeal
10 Tribunal (ALJ or referee) issue a subpoena for ESD's production of records.
11 (AA V.3, 305-307) SNC was informed that its questions regarding the
12 discovery in this administrative case should be directed to the referee at the
13 prehearing conference. (AA V.1, 035) SNC's appeal was assigned to
14 Referee Larsen who assumed jurisdiction over the appeal; prehearing
15 communications between Referee Larsen and the parties transpired
16 concerning the date of the hearing and instructions concerning the discovery
17 process for the administrative hearing. (AA V.1, 030-31; 042) ESD's

18
19 ³ As employees, the prostitutes would be eligible for unemployment
insurance benefits if otherwise eligible under NRS Chapter 612.

20 ⁴ See, NRS 612.495 which provides statutory authority for an appeal to the
ESD Appeal Tribunal.

1 counsel invited SNC's counsel to confer regarding discovery before the
2 prehearing conference. (AA V.1, 029; 034-36)

3 Despite Referee Larsen providing SNC with initial instruction
4 regarding the discovery process for the administrative hearing (AA V.1,
5 030-31; 042), and after being advised by ESD's counsel regarding the
6 administrative discovery process that SNC should request any subpoena it
7 seeks at the October 19, 2017 prehearing conference (AA V.1, 035), SNC
8 did not proffer any subpoena at the October 17, 2017 conference. (AA V.3,
9 323, ll. 10-13) SNC does not dispute that it proffered no subpoena to
10 Referee Larsen.

11 Before the evidentiary hearing was held, before the referee's
12 final decision regarding the requested evidence could be rendered, and
13 before an appeal of the referee's decision to the Board of Review⁵ could be
14 submitted, SNC sidestepped the referee's authority regarding the scope of
15 discovery⁶ and presented ESD with a collateral NRS 239 Public Records Act
16 (NPRA) request seeking NRS Chapter 612 unemployment insurance
17
18

19 ⁵ See, NRS 612.525 which provides statutory authority for an appeal to the
Board of Review.

20 ⁶ See, NRS 612.500(3) which provides the referee statutory authority to
develop the record with material evidence.

1 information.⁷ SNC's request under the NPRA was the same or similar to the
2 information requested in the NRS 612 administrative proceeding; and SNC
3 does not dispute this fact. (*See*, AA V.1, 008; 022-24) SNC's request
4 stated: "the public records requested are necessary for the proper
5 presentation of a proceeding pursuant to NRS Chapter 612, and are not
6 sought for any other purpose." (AA V.1, 037⁸)

7 Employment Security Division (ESD) served a timely response
8 to SNC's NPRA request, respectfully declining and noting that the
9 information sought is discoverable in the ongoing administrative matter
10 under NRS Chapter 612, and preserved its objections.⁹ (AA V.1, 041)
11 Referee Larsen presided over the October 19, 2017 prehearing conference
12 concerning the date of the evidentiary hearing and the discovery of evidence

13 ⁷ The Petition for Writ of Mandamus also states, "[h]aving had its requests
14 for discovery stonewalled by DETR in the administrative proceeding, and
15 ignored (and ultimately denied) by the Appeals Referee, The Love Ranch
16 issued a formal public records request ("Public Records Request") to DETR
for documents that are necessary for the proper resolution of its appeal of
DETR's Determination." (Petition for Writ of Mandamus, p. 7, ll. 13-14
(AA V.1, 047-055)).

17 ⁸ There can be no dispute that SNC requested the records in furtherance of
18 SNC's pending appeal to ESD's Appeal Tribunal re: the NRS 612.085
19 determination, as evidenced by the fact that SNC asked that the Order
granting writ relief be admitted into the administrative record. *See*, AA V.4,
365.

20 ⁹ ESD has provided SNC with all relevant discovery in the process of the
administrative proceeding, and in accordance with the presiding referee's
direction. *See*, AA V.2, 140, 149, 151, 153, 155, 160-161; V.3, 323.

1 relevant to the hearing. (AA V.1, 042) *See*, NRS 612.500(3). Before the
2 administrative hearing could be held and before a final decision could be
3 rendered regarding what evidence may have been relevant that SNC seeks,
4 and before any appeal of the referee's decision could be made to the Board
5 of Review and thereafter to the District Court,¹⁰ SNC refused to exhaust its
6 administrative remedies under NRS 612.525, and filed an errant Petition for
7 Writ of Mandamus under NRS 239.011 in the First Judicial District Court,
8 causing interruption and significant delay in the pending NRS 612
9 administrative matter, violating NRS 612.500(1). (AA V.1, 045-69)

10 ESD filed an Answer to Petition for Writ of Mandamus on
11 November 21, 2017. (AA V.1-2, 071-163) SNC filed a Motion for Leave to
12 File Reply in Support of Petition for Writ of Mandamus on or about
13 December 5, 2017. (AA V.2, 176-179) ESD's Opposition to Motion for
14 Leave to File Reply was filed on December 29, 2017. (AA V.2, 171-175)
15 SNC's Request for Submission of Motion for Leave was filed January 2,
16 2018. (AA V.2, 181) The Court's Order granting leave to file the Reply in
17 Support of Petition for Writ of Mandamus was entered January 4, 2018.
18 *Before* the Court's Order was entered, SNC's Reply in Support of Petition
19 for Writ of Mandamus was filed January 2, 2018. (AA V.2, 184-221)

20 ¹⁰ *See*, NRS 612.530 which is the statutory authority to appeal the Board's
21

1 SNC's Reply contained new issues and legal arguments that were not
2 contained in the Petition for Writ of Mandamus and deprived ESD of an
3 opportunity to respond; NRS Chapter 34 does not grant a respondent an
4 opportunity respond to a petitioner's Reply. *See*, NRS 34.260.

5 Even though the Legislature expressly and unequivocally
6 exempted the NRS 612 information that SNC sought under the presumed
7 authority of the NPRA pursuant to NRS 239.010, declaring such requested
8 information absolutely privileged and confidential, and despite SNC's
9 refusal to exhaust its administrative remedies under NRS 612, the First
10 Judicial District Court exceeded its jurisdiction and issued an Order
11 Granting the Petition for Writ of Mandamus. (AA V.3, 255-275) In so
12 doing, the Court ordered ESD to comply with SNC's NPRA request, in
13 violation of NRS 239.010,¹¹ superseding the referee's authority to make
14 discovery decisions, develop evidence and issue a final decision, and
15 superseding the authority of Board of Review, as well as that of the
16 appropriate reviewing district court¹² on a Petition for Judicial Review

17
18 decision to District Court with a Petition for Judicial Review.

19 ¹¹ The Court's (Judge Russell's) Order also violates NRS Chapter 612 and
20 NRS Chapter 34.

21 ¹² The First Judicial District Court could never have jurisdiction to review a
Petition for Judicial Review in this administrative matter, as prostitution is
illegal in Carson City, CCMC 8.04.110, and therefore, Carson City would

1 regarding the scope of discovery. (AA [Part II] V.5, 567) The Court acted
2 in excess of its statutory authority when it reviewed the preliminary
3 discovery decisions of the ALJ, made findings of fact regarding the pending
4 administrative matter, even *before* the hearing could be held and a decision
5 could be issued and become final. (AA V.5, 567-593) The Notice of Entry
6 of Order was entered February 14, 2018. (AA V.5, 567-593)

7 SNC submitted the NPRA request in support of the NRS
8 Chapter 612 administrative case (Docket No. V-17-A-04041-TX). Because
9 SNC's NPRA request is inextricably intertwined with the underlying
10 administrative case, judicial review is controlled by NRS 612.525 and
11 612.530. The discovery sought by SNC must be addressed administratively
12 and judicial review is strictly limited -- requiring finality and confinement to
13 the administrative record. *See, Lellis v. Archie*, 89 Nev. 550, 552-53, 516
14 P.2d 469, 470 (1973); *Ranieri v. Catholic Community Services*, 111 Nev.
15 1057, 1061, 901 P.2d 158, 1061 (1995). Judicial review of the
16 administrative proceedings in this particular case would inevitably be held
17 by the Third Judicial District Court, as SNC is located in Lyon County,

18
19 not have been "the county where the employment . . . was performed" which
20 is necessary to establish jurisdiction. NRS 612.530(1) (although the ALJ has
21 not yet held a hearing or issued a decision -- no findings of fact have yet
been established.) SNC's Petition admits that SNC operates its business in

1 Nevada. NRS 612.530(1). (AA V.1, 001, 048, 1. 5) SNC took the
2 additional step of advising the ALJ of the District Court's Order during a
3 prehearing conference, *delivering* the "Order Granting Petition for Writ of
4 Mandamus" to *the ALJ*. SNC requested same to be admitted into the
5 administrative record, in a clear attempt to override the ALJ's initial
6 discovery decision(s) and to direct the ALJ to comply with the District
7 Court's specific Findings of Fact, despite the Legislature reserving such
8 authority to make findings of fact exclusively with the ALJ. *See*, NRS
9 612.500 and NRS 612.510. (AA V.3, 325; AA V.5, 567-592)

10 During the February 9, 2018 prehearing conference, Referee
11 Larsen presiding, SNC's counsel advised Referee Larsen that the District
12 Court granted writ relief. *See*, AA V.3, 325. Remarking upon this
13 information, Referee Larsen requested a copy of Order granting writ relief.
14 *See*, AA V.3, 325. Counsel for SNC immediately thereafter emailed Referee
15 Larsen with the Order and requested that the Order granting writ relief be
16 admitted as an exhibit into the administrative record in Docket No. V-17-A-
17 04041-TX. (AA V.3, 325)

18 On February 16, 2018, ESD filed with the First Judicial District
19 Court, a Motion to Reconsider Pursuant to NRCP 59(e) and 60(b). (AA V.3,
20
21 *Lyon County*, Nevada. Carson City is not located within Lyon County (AA

1 284-335) SNC filed an *untimely* “Opposition to Motion for
2 Reconsideration” on March 14, 2018. (AA V.4, 409-423) The District
3 Court ordered that ESD’s Motion to Reconsider was denied on July 11,
4 2018. (AA V.4, 445) The NRS 612 administrative proceeding before
5 Referee Larsen has been stayed pending this appeal. The District Court
6 proceedings have likewise been stayed. (AA V.5, 551-555)

7 SUMMARY OF ARGUMENT

8 When SNC unreasonably believed it was being “stonewalled”
9 regarding its discovery requests in the NRS 612 administrative proceeding,
10 SNC submitted an NPRA request to ESD seeking privileged and
11 confidential information protected under NRS Chapter 612.265 and NRS
12 49.095. SNC’s request stated, in part:

13 the public records requested are necessary for the
14 proper presentation of **a *proceeding pursuant to***
NRS Chapter 612, and are ***not sought for any***
15 ***other purpose.*** (Emphasis added) (AA V.1, 037-
40; 049, ll. 11-13)

16 ESD responded with a letter respectfully declining to provide
17 SNC the information. The letter explained that the requested information
18 was discoverable in the ongoing NRS 612 administrative matter described in
19

20
21 V.1, 048, ll. 5)

1 SNC's request.¹³ After the October 19, 2017 prehearing conference in the
2 administrative matter, Referee Larsen presiding (AA V.1, 42), SNC
3 apparently disagreed with Referee Larsen's initial discovery decision. (AA
4 V.1, 049, ll. 12) Before any evidentiary hearing could be held, and absent
5 statutory authority, SNC filed an errant Petition for Writ of Mandamus with
6 the First Judicial District Court, seeking the same or similar information
7 requested in the NRS 612 administrative proceeding, citing to the NPRA as
8 authority. (AA V.1, 022-024; 045-69) Superseding the authority of the
9 referee concerning the scope of discovery, the District Court erroneously
10 granted the Petition for Writ of Mandamus, under NRS Chapter 239; and in
11 so doing, it acted in excess of its jurisdiction and infringed the authority of
12 the Legislature. *See*, NRS 612.500.

13 In 2013, the Legislature expressly and unequivocally *exempted*
14 information protected under NRS 612.265 from the Nevada Public Records
15 Act. *2013 Statutes of Nevada*, Page 2268; NRS 239.010(1); *see also*, NRS
16 612.265 & NRS 49.095. The District Court erred, as a matter of law, when
17 it incorrectly presumed that the NPRA granted it statutory authority to order

18 ¹³ ESD has supplied SNC with all discovery relevant to its pending NRS
19 Chapter 612 administrative appeal, and in accordance with the direction of
20 the presiding Administrative Law Judge (ALJ) or referee. *See*, AA V.2, 140,
149, 151, 153, 155, 160-161, V.3, 323.

1 the release of information protected under NRS 612.265. *See*, NRS
2 239.010(1); and *see also*, NRS 612.265(1),(2),(13) & (14). Since NRS
3 239.010(1) carved out exceptions under NRS 612.265 (and NRS 49.095) the
4 information sought in SNC's request is *expressly exempt* from the NPRA;
5 the District Court, therefore, had no authority to take any action other than to
6 dismiss the Petition for Writ of Mandamus. *See*, NRS 239.010(1); *see also*,
7 *Scott vs. Nevada Employment Security Department*, 70 Nev. 555, 278 P.2d
8 602 (1954) ("When a court lacks subject matter jurisdiction, it can enter only
9 one order and that is an order dismissing the Petition for Judicial Review.")

10 The District Court's Order must be reversed and the Petition
11 dismissed. The Court exceeded its jurisdiction when it permitted SNC to
12 abuse the discovery process by using the NPRA as a tool to *interrupt*,
13 *disrupt*, and *delay* the NRS Chapter 612 administrative hearing which must
14 be *promptly afforded* to all parties under NRS 612.500(1). If the District
15 Court's Order is permitted to stand, it will open the floodgates to new
16 administrative litigation and overload the dockets of Nevada's District
17 Courts and Appellate Courts by parties using the NPRA request to *interrupt*,
18 *disrupt*, and *delay* the NRS 612 (and NRS 233B) administrative process. In
19 such case, SNC along with *any* party who disagrees with an ALJ's discovery
20 decision will obtain the right to an immediate appeal *via* the NPRA, in

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1 violation of the clear intent of the Legislature regarding the authority of the
2 ALJ concerning the scope of discovery, and contrary to the requirement for a
3 party to exhaust all administrative remedies before seeking judicial review.¹⁴
4 *See*, NRS 612.500 and NRS 612.525; *see also*, *Washoe County v. Otto*, 282
5 P.3d at 724-25; *see also*, *e.g.*, *Benson v. State Engineer*, 131 Nev. Adv. Op.
6 78, 358 P.3d 221 (2015); *Maleon Tobacco, LLC v. State ex rel. Dept. of*
7 *Taxation*, 118 Nev. 837, 59 P.3d 474 (2002); *Gray Line Tours of So.*
8 *Nevada, Inc. v. Eighth Judicial Dist. Court*, 99 Nev. 124, 659 P.2d 304
9 (1983).

10 The First Judicial District Court acted contrary to law when it
11 exempted SNC from the mandatory requirement to exhaust its NRS §§
12 612.515 and 612.525 administrative remedies before seeking District Court
13 review of the ALJ's initial discovery decisions (when the ALJ's authority
14 regarding discovery is mandated in NRS 612.500, NAC 612.225 or NAC
15 612.228), and when SNC may ultimately prevail¹⁵ at the administrative level

16 ¹⁴ Generally, the writ of mandate is not properly used to review pretrial
17 orders granting or denying discovery. *Mears v. State*, 83 Nev. 3, 7-8 422
18 P.2d 230, 233 (1967); *Franklin v. Eighth Judicial Dist. Court In and For*
Clark Cty., 85 Nev. 401, 403-04, 455 P.2d 919, 921 (1969).

19 ¹⁵ SNC may prevail concerning its perceived discovery dispute regarding
20 SNC's request that the ALJ issue subpoenas; and it may also prevail
21 regarding any other perceived discovery disputes. Moreover, SNC may
actually proffer subpoenas for the ALJ to issue before the administrative
evidentiary hearing; the ALJ may order that SNC receive the additional

1 after the administrative hearing is conducted and once the ALJ's decision is
2 rendered.

3 Categorically, the First Judicial District Court erred in granting
4 the Writ of Mandamus when an NRS Chapter 34.170 plain, speedy, and
5 adequate remedy is clearly available regarding SNC's perceived discovery
6 dispute in the NRS Chapter 612 administrative proceeding, since the
7 proceedings in this administrative matter are still pending, and the decision
8 of the ALJ has not yet been rendered, and SNC may still prevail.

9 In NRS Chapter 34 proceedings, the Legislature has granted
10 authority for SNC to file *one* brief: The Petition for Writ of Mandamus;
11 Respondent is granted authority to file *one* brief: an Answer. SNC requested
12 leave to file a Reply under NRS 34.160 (AA V.2, 176), which ESD opposed
13 (AA V.2, 171-175). The District Court almost immediately granted SNC
14 leave to file a Reply. (AA V.2, 169) The District Court erred when it
15 allowed the Petitioner to raise *new* issues and *new* legal argument in a Reply
16 in Support of the Petition for Writ of Mandamus; and the Court further erred

17
18 discovery it seeks. Discovery had been provided to SNC before SNC's
19 filing of the errant Petition for Writ of Mandamus. (AA V.1, 045, V.2, 140-
20 161) Since the hearing has not yet been held, and no ALJ decision has been
21 rendered, it is entirely possible that SNC may ultimately prevail in the
underlying administrative matter concerning whether or not the prostitutes
working for SNC are employees or independent contractors, and whether

1 when it adopted these new issues into its Order Granting Petition for Writ of
2 Mandamus. (*See*, AA V.5, 567-592)

3 SNC incorrectly argued that ESD's failure to provide a log
4 justifies the granting of the Writ of Mandamus, even though the holding in
5 *Reno Newspapers v. Gibbons, infra.*, does not require a log, and the
6 information SNC seeks is **exempt** under NRS Chapter 612, NRS 49.095 and
7 NRS 239.010. SNC also incorrectly argued that ESD should have produced
8 *redacted* documents in response to the NPRA request. *See*, NRS 239.010;
9 NRS 612.265 §§ (13) and (14).

10 Not only is NRS Chapter 612 and NRS 49.095 information
11 absolutely exempt from the NPRA under NRS 239.010(1) for reasons of
12 statutory confidentiality and privilege, the First Judicial District Court
13 should not have ordered release of the information because SNC's NPRA
14 request failed to satisfy the requirements of NRS 239.

15 Since the First Judicial District Court erred in granting the
16 Petition for Writ of Mandamus, the decision to award SNC costs and
17 attorneys' fees is likewise inappropriate.

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21 their wages are reportable for the purpose of determining eligibility for

1 **STATEMENT OF THE STANDARD OF REVIEW**

2 “A writ of mandamus is available to compel the performance of
3 an act that the law requires as a duty resulting from an office, trust, or
4 station, or to control an arbitrary or capricious exercise of discretion.” *Civil*
5 *Rights for Seniors v. AOC*, 129 Nev. 752, 757313 P.3d 216 (2013)(citing
6 *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197,
7 179 P.3d 556, 558 (2008)(footnote omitted). A “writ will only issue where
8 ‘there is not a plain, speedy and adequate remedy in the ordinary course of
9 law.’ NRS 34.170.” *Diaz v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*,
10 116 Nev. 88, 93, 993 P.2d 50, 54 (2000).

11 ““When reviewing a district court order resolving a petition for
12 mandamus relief, this court considers whether the district court abused its
13 discretion.”” *City of Sparks v. Reno Newspapers, Inc.* 399 P.3d 352, 354
14 (2017)(citing *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805
15 (2006)). “However, questions of statutory construction, including the
16 meaning and scope of statute, are questions of law, which this court reviews
17 de novo.” *City of Reno v. Reno Gazette Journal*, 119 Nev. 55, 58, 63 P.3d
18 1147, 1148 (2003). Here, the issue of whether the NRS Chapter 612 and
19 NRS 49.095 information requested by SNC is expressly exempted from
20 _____
unemployment insurance benefits.

21

1 NRS 239.010 and whether the First Judicial District Court had jurisdiction to
2 consider and grant the Petition for Writ of Mandamus are questions of law
3 which this Court reviews *de novo*.

4 ARGUMENT

5 A. THE FIRST JUDICIAL DISTRICT COURT LACKED 6 JURISDICTION WHEN IT GRANTED THE 7 PETITION FOR WRIT OF MANDAMUS.

7 The First Judicial District Court acted in excess of its
8 jurisdiction, infringing the authority of the Legislature when it granted the
9 Petition for Writ of Mandamus, and ordered ESD's compliance with SNC's
10 NPRA request, and denied ESD's Motion To Reconsider. The First Judicial
11 District Court's Order must be reversed and the Petition for Writ of
12 Mandamus must be dismissed.

13 In 2010, this Court explained that it "will presume that all
14 public records are open to disclosure unless . . . the Legislature has expressly
15 and unequivocally created an exemption or exception to statute." *Reno*
16 *Newspapers, Inc. v. Haley*, 126 Nev. 211, 234 P.3d 922 (2010). With
17 respect to records of the Employment Security Division, that is exactly what
18 the Legislature did – it unequivocally created an exemption to statute. In
19 2013, the Legislature amended NRS 239.010 to expressly and unequivocally
20 *exempt* information protected under NRS Chapter 612 and NRS 49.095 from

1 the Nevada Public Records Act.¹⁶ 2013 Nev. Stat. ch. 414, § 1 at 2268; NRS
2 239.010(1); *see also*, NRS 612.265. The protected information that SNC
3 seeks is absolutely privileged as a matter of law; and as such, is not open to
4 the public. NRS 612.265.

5 Indeed, in 2013, the Nevada Legislature substantively amended
6 NRS 239.010(1) to include a broad range of statutory exceptions to the
7 NPRA.¹⁷ The First Judicial District Court's Order Granting the Petition for
8 Writ of Mandamus relied heavily upon Nevada Supreme Court opinions
9 issued before the Legislature so profoundly amended NRS 239.010(1) in
10 2013. For example, the Court interpreted NRS Chapter 239 in *Gibbons*,
11 *Haley*, and *DR Partners*,¹⁸ *inter alia*, which were all issued by the Supreme
12 Court *before* the Legislature made such substantive amendments to the
13 NPRA.¹⁹ Moreover, SNC failed to inform Court below of the holding in
14 *City of Sparks v. Reno Newspapers, Inc.*, *supra* -- that the Second Judicial
15 District Court's order granting the petition for writ of mandamus was

16 ¹⁶ 2013 Statutes of Nevada, Page 2268 (Chapter 414, AB 31).

17 ¹⁷ 2013 Statutes of Nevada, Page 2268 (Chapter 414, AB 31).

18 ¹⁸ *Reno Newspapers v. Gibbons*, 266 P.3d 623 (2011); *Reno Newspapers v.*
19 *Haley*, 126 Nev. 211, 234 P.3d 922 (2010); *DR Partners v. Bd. Of County*
Comm'rs, 6 P.3d 465 (2000).

20 ¹⁹ *See also*, *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 63 P.3d
21 1147 (2003)(holding that "the records in question are confidential. They are
therefore exempt from the Nevada Public Records Act.")

1 reversed because Nevada law expressly prohibited the disclosure of
2 information Reno Newspapers requested under purported NPRA authority.
3 399 P.3d 352, 357 (2017)(holding that information concerning MME
4 business license holders was expressly and unequivocally confidential. “The
5 Nevada Legislature intended to expand the grant of confidentiality beyond
6 the then-existing medical marijuana-related statutes to include information
7 of MME business license holders.”)

8 Because NRS 239.010(1) expressly and unequivocally
9 exempted the information requested by SNC, the District Court was absent
10 jurisdiction to act under the NPRA. *See, Swan v. Swan*, 106 Nev. 464, 469,
11 196 P.2d 221, 224 (1990). The First Judicial District Court had no statutory
12 or common law authority to mandate that ESD release records which are
13 protected under NRS 612.265 or NRS 49.095. *See, City of Sparks, supra*.
14 As this Court explained in *Civil Rights for Seniors v. AOC, supra*, absent a
15 legislative authority, the common law affords no right to inspect public
16 records. 129 Nev. 752, 313 P.3d 216. (“The public’s ‘general right to
17 inspect and copy records’ is not absolute and courts have inherent authority
18 to deny public access to its records when justified.”)

19 The District Court clearly erred when it found that the NPRA
20 has authority over records protected under Chapter 612.265. *See, NRS*

21

1 239.010(1); and *see also*, NRS 612.265(1),(2),(13) & (14). (AA V.5, 567-
2 592) Because records protected under NRS 612.265 and NRS 49.095 are
3 expressly exempt from the NPRA, the district court had no authority to take
4 any action other than to dismiss the Petition for Writ of Mandamus. *See*,
5 NRS 239.010(1); *see also*, e.g., *Scott vs. Nevada Employment Security*
6 *Department*, 70 Nev. 555, 278 P.2d 602 (1954) (“When a court lacks subject
7 matter jurisdiction, it can enter only one order and that is an order dismissing
8 the Petition for Judicial Review.”)

9 SNC has inappropriately argued that ESD waived privilege --
10 without citation to any legal support and without any legal analysis for how
11 such waiver purportedly occurred.²⁰ (AA V.1, 053) SNC’s waiver argument
12 fails for multiple reasons. Lack of subject matter jurisdiction can be raised
13 *at any time*; it can even “be raised for the first time on appeal.” *Swan, supra*.
14 “Subject matter jurisdiction is not waivable.” *Id.* Since the First Judicial
15 District Court lacked jurisdiction under NRS 239.010(1), any order entered
16 by that Court, save an order of dismissal, should properly be a nullity. *Scott*

17
18 ²⁰ SNC alleged for the first time in the Reply in Support of Petition for Writ
19 of Mandamus, that ESD waived any privileges. The Petition for Writ of
20 Mandamus did not contain relevant legal support for the waiver argument.
21 The NRS Ch. 34 Writ of Mandamus process does not grant a respondent
another opportunity to respond to new legal arguments a petitioner raises in
a Reply. ESD was denied a meaningful opportunity to respond to this

1 v. Nevada Employment Sec. Dep't, 70 Nev. 555, 559, 278 P.2d 602, 604
2 (1954)(“[t]he conclusive answer is that if the court did not have jurisdiction
3 it could not have made an effective order of any kind except the order of
4 dismissal.”) And, lastly, even though NRS 239.010(1) confers no authority
5 over privileged information which is protected under NRS 612.265 and NRS
6 40.095, ESD nonetheless preserved its objections. (AA V.1, 041)

- 7 1. All information protected under NRS 612.265 is
8 *unequivocally exempt from release* under NRS
Chapter 239.

9 All information and records protected under NRS 612.265 are
10 exempt and are therefore not open for public inspection or disclosure under
11 NRS Chapter 239. The Legislature enacted broad and dual protections for
12 NRS 612.265 information, and in so promulgating, ensured that such
13 information would be shielded from public inspection or disclosure. First,
14 the Legislature decreed that NRS 612.265 information is categorically
15 exempt pursuant to NRS 239.010(1); and secondly, NRS 612.265
16 information is additionally exempt as it has been expressly “declared by law
17 to be confidential.” NRS 239.010(1). Indeed, the Legislature declared the
18 protected information absolutely privileged and confidential in NRS

19
20 argument. ESD was denied any opportunity to challenge this erroneous
allegation.

21

1 612.265. The analysis will start with the categorical exemption followed by
2 the confidentiality and privilege exemptions.

3 NRS 239.010(1) provides, in pertinent part: “Except as
4 otherwise provided in this section and . . . NRS 612.265 . . .and unless
5 otherwise declared by law to be confidential, all public records of a
6 government entity must be open at all times during office hours to inspection
7 by any person.” NRS 239.010(1) additionally states that “unless otherwise
8 *declared by law to be confidential*, all public books and public records of a
9 government entity must be open” to the public. (Emphasis added) (As
10 explained below, the information sought by SNC is exempt from the NPRA
11 as having been declared confidential and privileged under NRS 612.265 §§
12 (1), (2), (13), and (14)).

13 NRS 612.265(14) forbids release to the public of “[a]ll letters,
14 reports or communications of any kind, oral or written from the employer or
15 employee to each other or to the Division or any of its agents,
16 representatives or employees.” NRS 612.265(1) prohibits release of
17 “information obtained from any employing unit or person pursuant to the
18 administration of this chapter and any determination as to the benefits rights
19 of any person.” NRS 612.265(13) established criminal penalties for the
20 release of information in violation of NRS 612.265. Open access to public

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1 records is limited in Nevada by statute. NRS 239.010. Conversely, when
2 the Legislature declared NRS 612.265 records and communications
3 confidential, it declined to include an exception for the public to obtain
4 access to information it deemed confidential and privileged. NRS 612.265.

5 Given the expansive shield against release of NRS 612.265
6 information, and the obvious direction from the Legislature that ALL
7 information protected under NRS 612.265 is exempt from the NPRA, the
8 District Court clearly acted in excess of jurisdiction when it granted the
9 Petition for Writ of Mandamus ordering ESD to release the requested
10 information. NRS 230.010(1).

11 2. The information SNC requested under the
12 NPRA is *absolutely privileged and*
 unequivocally exempt, as a matter of law.

13 The information that SNC requested in its October 10, 2017
14 letter is exempt and unequivocally protected from public release under NRS
15 239.010(1) and NRS 612.265. (*See, AA V.1, 037-040*) Since the
16 information SNC requested is expressly exempt under NRS 239.010(1), the
17 District Court was absent any lawful authority to take any action, or order
18 the release of the information SNC requested under NRS Chapter 239, when
19 it granted the Petition for Writ of Mandamus.

20 ///

21

1 All of the information that SNC sought under the NPRA falls
2 squarely within the information protected from release under NRS
3 612.265(14), which provides:

4 All letters, reports or communications of any kind,
5 oral or written, from the employer or employee to
6 each other or to the Division or any of its agents,
7 representatives or employees are privileged and
8 must not be the subject matter or basis for any
lawsuit if the letter, report or communication is
written, sent, delivered or prepared pursuant to the
requirements of this chapter.

9 NRS 612.265(14), *see also*, NRS 612.265(1) which provides that
10 "...information obtained from any employing unit or person pursuant to the
11 administration of this chapter..." is "...confidential and may not be
12 disclosed or be open to public inspection in any manner..."

13 This Court explained in *Circus Circus Hotels, Inc. v.*
14 *Witherspoon*, that "[t]he purpose of [NRS 612.265(14)²¹] is to encourage
15 employers and employees to submit any and all potentially relevant
16 information to the Employment Security Department that might bear on an
17 employee's right to receive unemployment compensation, without fear of
18 civil liability." The statute also promotes the vigorous contesting of grants
19 of benefits. 99 Nev. 56, 61, 657 P.2d 101, 105 (1983)(internal citations
20

21

1 omitted). A contested unemployment hearing may involve the taking of
2 evidence which is confidential in nature, including trade secrets,
3 commercial, financial, proprietary, personal, medical, sensitive, classified, or
4 disciplinary, which are some of the reasons such hearings are declared
5 confidential and closed to the public.²² NAC 612.252; *see also*, NRS
6 612.265(14).

7 A summary of the information that SNC requested in its
8 October 10, 2017 letter (SNC's NPRA request) is set forth below, in
9 pertinent part:

- 10 1. "[E]vidence obtained by DETR in connection
11 with DETR's audit and May 12, 2017
determination concerning The Love Ranch."
- 12 2. "[D]ocuments prepared, relied upon, consulted,
13 or reviewed by DETR in connection with its
audit and May 12, 2017 **determination**."
- 14 3. "[R]ecords of communications between
15 DETR's investigators/auditors and other DETR
employees regarding the preparation for the
16 **audit** of The Love Ranch, the status of the
audit, and the result of the **audit**."
- 17 4. "[D]ocuments concerning DETR's initiation
18 and implementation of the audit of The Love

19 ²¹ The exact language found in NRS 612.265(14) was previously under
NRS 612.265(7). Only the section number has changed.

20 ²² For example, SNC explains that some of the prostitutes want to keep
details of their work secret. (AA V.1, 026, ¶ 3)

1 Ranch, and directing or framing the scope of
2 the **audit**.”

3 5. “[R]ecords ... concerning the methodology used
4 by DETR, if DETR claims it randomly selected
5 The Love Ranch to be **audited**.”

6 6. “[R]ecords ... and any other evidence obtained
7 by DETR in connection with any of its prior
8 audits and **determinations** concerning The
9 Love Ranch.”

10 7. “[R]ecords ... and any other evidence obtained
11 by DETR in connection with any of its prior
12 audits and **determinations** concerning The
13 Love Ranch.

14 8. “[D]ocuments prepared, relied upon, consulted,
15 or reviewed by DETR in connection with its
16 prior audits and **determinations** concerning
17 The Love Ranch, including the decisions to
18 conduct the audits, or directing the framing and
19 scope of the **audits**.”

20 9. “[R]ecords ... and evidence obtained by DETR
21 in connection with any of its **audits** and
determinations concerning other brothels.”

10. “[D]ocuments ... in connection with its **audits**
and **determinations** concerning other brothels.

11. “[R]ecords of communications between
DETR’s investigators/auditors and other DETR
employees regarding the preparation for its
audits of other brothels, and directing or
framing the scope of such **audits**.”

12. “[R]ecords concerning DETR’s initiation and
implementation of its audits of other brothels,
directing or framing the scope of such **audits**.”

1
2 13. “[D]ocuments ... concerning the methodology
3 used by DETR, if it claims it randomly selected
other brothels to be **audited**.” (Emphasis
added) (AA V.1, 037-040)

4 The information that SNC requested would have been, by
5 necessity, prepared under the requirements of NRS Chapter 612 and NAC
6 612. The Legislature charged ESD’s Administrator with expansive duties
7 under NRS Chapter 612. NRS 612.220(1). Of these duties, the
8 Administrator must determine if the worker is an employee under NRS
9 612.085; determine whether the services performed by the putative
10 employee constitute employment under NRS 612.245(1); whether an
11 employee is eligible for benefits under NRS 612.375; and whether
12 contributions (taxes) are payable under NRS 612.535. The subject matter of
13 all 13 paragraphs of information that SNC requested concerns either an
14 “audit” or “determination” purportedly conducted by ESD. (AA V.1, 037-
15 040) The information that SNC seeks concerning the purported audits and
16 determinations would have, by necessity, included “communications of any
17 kind, oral or written [which is] sent, delivered or prepared pursuant to the
18 requirements of this chapter.” NRS 612.265(14).

19 The performance of an audit and the issuance of a
20 determination are both responsibilities the ESD Administrator is charged

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1 with executing under NRS Chapter 612. *See*, NRS 612.220(1), and NRS
2 612.245. Since these are duties that the ESD Administrator must carry out
3 under NRS Chapter 612, all communication with respect to the execution of
4 these duties is not open to the public, but is expressly protected under NRS
5 612.265(14). Accordingly, the information that SNC seeks pursuant to its
6 NPRA request is therefore *exempt* from NRS 239.001, *et seq.*, and the
7 District Court had no authority to grant the Petition for Writ of Mandamus or
8 to grant attorney's fees or costs under NRS 239.011.

9 Likewise, under the circumstances of this absolute statutory
10 exemption, any requirements directed by the NPRA to meet any NRS
11 239.0113(2) burdens of proof are irrelevant; there is likewise no obligation
12 for any NRS 239.010(3) redaction or *Vaughn* index preparation, nor was
13 there any NRS 239.0113(2) requirement to conduct a balancing test
14 regarding the interests of nondisclosure against the need for an open and
15 accessible government. The District Court erred when it made contrary
16 findings in this case.

17 SNC makes much of its waiver argument, which fails as a
18 matter of law. Since the NPRA created an absolute statutory exemption for
19 information protected under NRS 612.265, any alleged waiver on ESD's
20 part is of no legal significance or consequence since the NPRA exercises no

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1 legal authority whatsoever over NRS 612.265 or NRS 49.095
2 communications. *See*, NRS 239.010(1). Moreover, NRS 612.265 provides
3 that all communications of any kind from an “employer or employee to each
4 other or to the Division or any of its agents, representatives or employees are
5 privileged and must not be the subject matter or basis of any lawsuit” which
6 obviously excludes NPRA litigation. NRS 612.265(14). Additionally, if
7 NRS 612.265 declares the information SNC seeks as confidential and
8 subject to criminal penalties (under § 13) if improperly disclosed, waiver
9 cannot work to somehow convert the confidential information into open and
10 public information.

11 3. The information SNC requested under the
12 NPRA is *expressly exempt* for yet another
reason; it has been *declared confidential*.

13 The information and records protected under NRS 612.265 are
14 exempt from public inspection or disclosure under NRS Chapter 239, for an
15 additional reason: the Legislature expressly declared such records
16 *confidential*.

17 *The Legislature fundamentally protected and declared*
18 *confidential NRS 612.265 §§ (1) and (2) information.*

19 (a) **NRS 612.265(1)** information has been
20 declared confidential.

21

1 NRS 612.265(1) provides, in pertinent part, "...information obtained from
2 any employing unit or person pursuant to the administration of this chapter
3 and any determination as to the benefits rights of any person is *confidential*
4 and *may not be disclosed or open to public inspection* in any manner which
5 would reveal the person's or the employing unit's identity." (Emphasis
6 added) The mere act of deleting the names and Social Security numbers or
7 employer identification numbers of the parties would be insufficient to
8 shield the identities of the parties, as other personal identifying information
9 is readily available by combining the publicly available information with
10 collective evidence in the contested case, especially in a small industry such
11 as legal prostitution, for example. *See, e.g.*, NRS 205.4617; *see also*, 2 CFR
12 § 200.79 & § 200.80.

13 Here, SNC requested information concerning purported ESD
14 audits and determinations. (AA V.1, 036-40) The Legislature declared
15 confidential "information obtained from any person under the administration
16 of this chapter." NRS 612.265(1). Information obtained from an employer
17 or "employing unit," whether it be for the purpose of an audit or for the
18 purpose of issuing a determination, can be combined with other information
19 to identify a person or an employing unit, even if names and Social Security
20 numbers are redacted. *See, e.g.*, NRS 205 §§ 461 & 463, *et seq.*; *see also*, 2

21

1 CFR § 200.79 & § 200.80. NRS 612.265(1) declared determinations issued
2 by ESD confidential and closed to the public if persons or employers can be
3 identified. Moreover, communication about an audit or determination would
4 necessarily include information regarding the employer or the person
5 seeking benefits, and as such, the information is protected to “promote the
6 vigorous contesting of grants of benefits.” *Witherspoon, supra*.
7 Accordingly, the information that SNC requested has been declared
8 confidential under NRS 612.265(1), and is therefore exempt from the
9 NPRA. *See*, NRS 239.010(1).

10 (b) **NRS 612.265(2)** information has been
11 declared confidential.

12 The information SNC requested has also been declared
13 confidential under section 2 of NRS 612.265, which provides, in pertinent
14 part, “...an employing unit is not entitled to information from the records of
15 the Division for any other purpose” other than “to the extent necessary for
16 the proper presentation of a proceeding pursuant to this chapter.” NRS
17 612.265(2). Here, SNC is an employer or an employing unit,²³ and, as such,
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19 ²³ NRS 612.055 defines “employer” as “any employing unit for which any
20 calendar quarter has paid or is liable to pay wages of \$225 or more, and
21 which employs during that period one or more persons in an employment
subject to this chapter.” SNC prematurely filed a Petition for Writ of

1 would only be entitled to records from ESD for the specific purpose of
2 “presentation of its administrative appeal.” SNC is therefore “not entitled to
3 records from the Division for any other purpose” which obviously excludes
4 the purpose of *public inspection* and public disclosure under the NPRA.
5 *See*, NRS 612.265(2). SNC has adequate remedies under the NRS 612
6 administrative process. The Chapter 612 statutory and regulatory schemes
7 both clearly provide that the administrative process must remain closed to
8 public inspection and disclosure in order to foster “vigorous contesting of
9 grants of benefits” and to ensure that “all potentially relevant information
10 [be submitted to ESD] that might bear on the employee’s right to receive
11 unemployment compensation, without fear of civil liability.” *Witherspoon*,
12 *supra*. *See*, NAC 612.252 (declaring that “hearings and reviews are
13 confidential proceedings under NRS 612.265 and are closed to the
14 public.”)²⁴ SNC’s request for information would clearly fall within the NRS
15 239 confidentiality exemption and has been expressly declared confidential
16 under NRS 612.265(2); it has also been declared confidential under NRS

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18 Mandamus, overriding the authority of the referee regarding discovery and
authority to render a decision on SNC’s appeal.

19 ²⁴ For example, if the proceedings were *not* confidential, a prostitute
20 working for SNC may decline to exercise her right to apply for
unemployment benefits or participate in hearings so that her work as an SNC
prostitute would not be exposed or open to the public. (AA V.1, 026, ¶ 1)

1 612.265(13) as the release of same would subject the disclosing party to
2 criminal penalties. *See*, NRS 612.265(2) and NRS 612.265(13). The
3 information that SNC requested is therefore expressly exempt from the
4 requirements of the NPRA for reasons of confidentiality. *See*, NRS
5 239.010(1).

6 Given the statutory exemptions from the NPRA, and the
7 confidentiality declared in NRS 612.265, the District Court clearly acted in
8 excess of jurisdiction when it granted the Petition for Writ of Mandamus and
9 ordered that ESD release information protected under NRS 612.265.

10 B. SNC FAILED TO EXHAUST ITS ADMINISTRATIVE
11 REMEDIES, VIOLATING THE SEPARATION OF
12 POWERS DOCTRINE.

13 The First Judicial District Court invaded the province of the
14 Legislature in granting writ relief. The District Court violated the separation
15 of powers doctrine when the District Court granted the Petition for Writ of
16 Mandamus. *See*, Article 3, Section 1 of the Nevada Constitution; *K-Kel, Inc.*
17 *v. State, Department of Taxation*, 412 P.3d 15, 17 (2018)(a district court has
18 no authority to review the decision of an administrative agency except when
19 the legislature has granted such statutory authority); and *see, Tate v. State,*
20 *Board of Medical Examiners*, 356 P.3d 506, 508 (2015); *see also, State*

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1 *Department of Health and Human Services v. Samantha, Inc.*, 407 P.3d 327
2 (2017).

3 Exhaustion of administrative remedies must be completed
4 before jurisdiction can be conferred in administrative law cases; *see*, NRS
5 612.500 and NRS 612.525(1); *see also*, *Otto*, 282 P.3d at 724-25; *see also*,
6 *e.g.*, *Benson v. State Engineer*, 131 Nev.Adv.Op. 78, 358 P.3d 221 (2015);
7 *Maleon Tobacco, LLC v. State ex rel. Dept. of Taxation*, 118 Nev. 837, 59
8 P.3d 474 (2002); *Gray Line Tours of So. Nevada, Inc. v. Eighth Judicial*
9 *Dist. Court*, 99 Nev. 124, 659 P.2d 304 (1983); *Allstate Ins. Co. v. Thorpe*,
10 123 Nev. 565, 170 P.3d 989 (2007); exhaustion is specifically required in
11 this case. Under NRS 612.515, any aggrieved party may appeal the referee's
12 Decision to the Board of Review. The District Court can only exercise
13 judicial review after the Board of Review has reached a decision. *See*, NRS
14 612.500, NRS 612.510, NRS 612.515, NRS 612.525(1) and NRS 612.530.
15 Judicial review "is permitted only after any party claiming to be aggrieved
16 thereby has *exhausted administrative remedies* as provided by this chapter."
17 NRS 612.525(1)(Emphasis added); *see also*, NRS 612.485 (1); NRS
18 612.495(1); NRS 612.510(2).

19 SNC submitted the NPRA request to advance its ongoing NRS
20 Chapter 612 administrative case (Docket No. V-17-A-04041-TX). SNC's

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1 NPRA request and Petition for Writ of Mandamus is inextricably
2 intertwined with the underlying administrative case, judicial review is
3 controlled by NRS 612.525 and 612.530.²⁵ The discovery sought by SNC
4 must be addressed administratively and judicial review is strictly limited --
5 requiring finality and confinement to the administrative record. Judicial
6 review would inevitably be conducted by the Third Judicial District Court,
7 as mentioned above and further explained below.

8 The referee has yet to take the following actions: conclude the
9 prehearing conference, hold an evidentiary hearing, and render a Decision in
10 this administrative matter. Likewise, the Board of Review could not have
11 received an appeal of the referee's decision before it is written. NRS 612 §§
12 500 & 510. SNC could not have lawfully appealed to the District Court
13 without a decision from the Board of Review. NRS 612 §§ 525(1) & 530.
14 SNC failed to exhaust its administrative remedies before using the writ of
15 mandate as a collateral remedy for its discovery issue; the ALJ currently
16 presides over the scope of discovery in the administrative case.

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18 ²⁵ SNC's Petition for Writ of Mandamus states, "[h]aving had its requests
19 for discovery stonewalled by DETR in the administrative proceeding, and
20 ignored (and ultimately denied) by the Appeals Referee, The Love Ranch
21 issued a formal public records request ("Public Records Request") to DETR
for documents that are necessary for the proper resolution of its appeal of
DETR's Determination." Petition for Writ of Mandamus, p. 7, ll. 13-14.

1 The District Court erroneously and unlawfully excused SNC
2 from its statutory duties to exhaust its administrative remedies before
3 seeking judicial review of this (interlocutory) administrative decision
4 regarding discovery. *See*, NRS 612.515(1). SNC appealed ESD's
5 determination (AA V.1, 002) under NRS 612.495 because it ultimately seeks
6 to overturn ESD's Determination that the prostitutes working for SNC are
7 employees and therefore may *qualify* for unemployment benefits, and SNC,
8 accordingly, would be subject to unemployment taxes, pursuant to NRS
9 612.085. (AA V.1, 008) SNC's appeal of ESD's Determination and request
10 for a hearing is the reason that SNC seeks the information and documents
11 that it requested through the administrative discovery process, and also
12 requested *via* the NPRA. (AA V.1, 008, 022-24) No final decisions have
13 been made regarding discovery in this administrative matter and no final
14 decisions as to SNC's request to overturn the Determination have been
15 issued, as required by NRS 612.510, because SNC interrupted and delayed
16 this process with the improper Petition for Writ of Mandamus. Because
17 SNC clearly has an NRS 612.515(1) right to appeal the referee's decision
18 regarding discovery to the Board of Review, in the event SNC disagrees
19 with the Decision of the referee (and thereafter the right to appeal to the

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1 District Court in *Lyon County*,²⁶ if it disagrees with the decision of the Board
2 of Review, pursuant to NRS 612.515 and NRS 612.530), the District Court
3 had *no* authority to consider any evidentiary issues or grant the writ of
4 mandate.

5 Despite the District Court having no subject matter jurisdiction
6 to decide any evidentiary issues or take any action in this administrative
7 matter, the District Court nonetheless erroneously issued findings of fact and
8 conclusions of law regarding SNC's pending administrative appeal in its
9 Order Granting Petition for Writ of Mandamus. (AA V.5, 567-592) SNC's
10 counsel immediately directed the District Court's Order to Referee Larsen's
11 attention, and requested its admission into the administrative record, so that
12 the First Judicial District Court's Order would serve to override the referee's
13 decisions. *See*, NRS 612.515. (AA V.3, 325) Due to the compilation of
14 egregious errors, including the violation of the separation of powers
15 doctrine, and the denial of the Motion To Reconsider, this Court must

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17 ²⁶ The First Judicial District Court cannot invoke jurisdiction to review a
18 Petition for Judicial Review in this administrative matter, as prostitution is
19 illegal in the Carson City, CCMC 8.04.110, and therefore, Carson City
20 would *not* have been "the county where the employment . . . was performed"
which is necessary to establish jurisdiction. NRS 612.530(1) (the ALJ has
not yet held a hearing or issued a decision -- no findings of fact have yet
been established, however, Love Ranch is presumably located in Mound
House, Lyon County, Nevada, within the jurisdiction of the Third Judicial
District Court, SNC does not dispute this). (AA V.1, 001; 048, l. 5)

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1 reverse the District Court's Order, and the Petition for Writ of Mandamus
2 must be dismissed.

3 C. SNC HAS A PLAIN, SPEEDY, AND ADEQUATE
4 REMEDY TO REDRESS ITS CONCERNS. WRIT
RELIEF WAS INAPPROPRIATE.

5 The District Court should have denied the Petition for Writ of
6 Mandamus and granted the Motion To Reconsider because SNC has a plain,
7 speedy and adequate remedy in the pending NRS 612 administrative hearing
8 before ESD's referee. (*See*, AA V.1, 042) SNC sought discovery of
9 information and documents "necessary for the proper presentation of a
10 proceeding pursuant to NRS Chapter 612." (AA V.1, 037) In its Petition,
11 SNC reaffirmed that because "its requests for discovery [were] stonewalled.
12 . . and ignored (and ultimately denied) by the Appeals Referee, The Love
13 Ranch issued a formal public records request ... for documents that are
14 necessary for the proper resolution of its appeal of DETR's [ESD's]
15 Determination" and currently under the jurisdiction of the presiding referee.
16 (AA V.1, 049, ll. 11-14) As such, SNC inappropriately used the NRS
17 Chapter 34 writ of mandate to override the ALJ's statutory authority under
18 NRS 612.500 to make decisions regarding the scope of discovery in SNC's
19 pending NRS 612.495 appeal.

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1 The issuance of the writ of mandate was clearly improper under
2 the circumstances of this case. NRS 34.170 provides, in pertinent part:
3 “This writ shall be issued in all cases where there is not a plain, speedy and
4 adequate remedy in the ordinary course of law.” (Emphasis Added) This
5 Court recently articulated “[w]e have long held that the right to an appeal is
6 generally a plain, speedy, and adequate remedy that precludes writ relief.”
7 *Rawson v. Ninth Judicial Dist. Court in & for Cty. of Douglas*, 396 P.3d
8 842, 844, 2017 (2017). Here, SNC has an administrative appeal currently
9 pending which is adequate to address its discovery concerns, and the appeal
10 is readily available. The District Court should have refrained from issuing
11 writ relief.

12 This Court has also explained that the writ of mandate should
13 **not** be granted when the issue is currently pending before another judicial
14 officer, as in this case:

15 [T]he remedy of mandamus is available to compel
16 performance of an act that the law especially
17 enjoins as a duty resulting from an office, the
18 extraordinary remedy of mandamus is neither
19 available nor appropriate where an otherwise
20 speedy and adequate remedy exists in the ordinary
21 course of law. *See* NRS 34.170. As the Governor
observes, appellant failed to establish below that
the Commission's assumption of jurisdiction over
the question of appellant's entitlement to enhanced
disability retirement, combined with appellant's
right to appeal any adverse decision of the

1 Commission to this court, would deprive appellant
2 of an adequate remedy to vindicate any prejudicial
3 error that might occur in the Commission
proceedings. *Goldman v. Bryan*, 106 Nev. 30, 38,
787 P.2d 372, 377(1990).

4 It is improper for SNC to bypass the administrative process by
5 seeking authority from another judicial forum to decide its discovery issues.
6 The First Judicial District Court did not have jurisdiction to consider a
7 matter properly before ESD's referee, as a district court's jurisdiction is
8 limited in this Chapter 612 special statutory proceeding. *See*, NRS
9 612.525(1); *see also*, *Bd. of Review, Nevada Dep't of Employment, Training*
10 *& Rehab., Employment Sec. Div. v. Second Judicial Dist. Court in & for Cty.*
11 *of Washoe*, 396 P.3d 795, 797 (2017) ("We have consistently held that the
12 requirements of statute are jurisdictional and mandatory"). This Court
13 should grant this appeal, so that the First Judicial District Court's clearly
14 erroneous decision can be reversed, and the writ of mandate be dismissed.

15 D. SNC's REQUEST WAS INAPPROPRIATE UNDER
16 NRS CHAPTER 239.

17 This Court held in *Civil Rights for Seniors, supra*, that there is
18 no common law right to inspect public records. Without the Legislative
19 enactment of the NPRA, the public has no general right to inspect public
20 records. *See, Id.* This Court cited to *Nixon v. Warner Communications*,

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1 *Inc.*, 435 U.S. 589, 597-99 (1978) for the proposition that ‘the public’s
2 general right to inspect and copy public records is not absolute and courts
3 have inherent authority to deny public access to its records when justified’”)
4 *Id.*

5 The Legislature carved out numerous exceptions to the NPRA
6 in 2013, which significantly changed the scope of the NPRA after this
7 Court’s holding in *Gibbons, supra*, and *Haley, supra*. Indeed, the NPRA did
8 not confer jurisdiction upon the District Court to consider SNC’s Petition for
9 Writ of Mandamus under NRS 239. *2013 Statutes of Nevada*, Page 2268;
10 NRS 239.010(1); *see also*, NRS 612.265. Notwithstanding the above, the
11 District Court also erred in granting the Petition because SNC failed to
12 follow the NRS Chapter 239 statutory mandates for such request. The
13 Public Records Request failed to identify *specific* records as required by
14 NRS 239.008 and NAC 239.869 (which incorporates the “*Nevada Public*
15 *Records Act: A Manual for State Agencies*, 2014 edition and any subsequent
16 edition”).

17 The Legislature declared that specific forms and specific
18 procedures would be followed by persons who seek information under the
19 NPRA. SNC’s request failed to follow such statutory obligations and failed
20 to identify specific records as mandated by NRS 239.008 and NAC 239.869

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1 (incorporating the *Nevada Public Records Act: A Manual for State*
2 *Agencies*). NRS 239.008(3)(1) provides, in pertinent part:

3 ...the State Library, Archives and Public Records
4 Administrator, ... in cooperation with the Attorney
General, shall prescribe:

5 (a) the form for a request by a person to inspect or
6 copy a public book or record of an agency of the
Executive Department pursuant to NRS 239.0107;

7 ... and,

8 (c) By regulation the procedures with which a
9 records official must comply in carrying out his or
her duties.”

10 Accordingly, the *Nevada Public Records Act: A Manual for State Agencies*,
11 2016 edition provides, in pertinent part, that “[a] public record is any record
12 that is prepared, used, or maintained by any state agency in the course of
13 governing or performing a governmental function. A public records request
14 should be for an *identifiable record* that exists at the time of the request. An
identifiable record is a contract, an invoice, a letter, a final report, etc.”

15 (Emphasis added) Moreover, the manual further provides:

16 The Act does not require an agency to create data
17 or generate new documents to respond to a public
records request. A request applies only to existing
18 records. An agency is not required to organize
data to create a record that doesn’t exist at the time
19 of the request. There is no requirement to
reconstruct a record that was lawfully destroyed
20 prior to receipt of the request.

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1 As set forth in NRS 239.008, DETR's Public Records Request
2 form contains the following language: "Records Requested: . . . *Please be*
3 *specific and include as much detail as possible regarding the records you*
4 *are requesting.*" (Petition, Exh. 2; AA V.1, 061-064) As such, the
5 regulation and manual of which the Legislature obligated the state to issue,
6 provides that the requesting party must provide a description of the public
7 record that is sufficient to identify the record (specific). Indeed, NRS
8 239.0107 explains that the agency only has five (5) business days to respond
9 to a request for a public record, it is reasonable that the Legislature obligated
10 the request to sufficiently articulate and identify the specific record sought,
11 for the requester to clarify which record is being sought and not to create an
12 undue burden. See, NRS 239.008 and NAC 239.869 (incorporating the
13 *Nevada Public Records Act: A Manual for State Agencies*, 2016 edition).

14 SNC made *no* effort whatsoever to comply with its
15 responsibility to specifically identify the document(s) it requested under the
16 Public Records Act. (AA V.1, 37-40) Because the scope of SNC's request
17 was cast so broadly SNC's request failed to satisfy the direction in NRS
18 239.008, NAC 239.869, incorporating the *Nevada Public Records Act: A*
19 *Manual for State Agencies*, 2016 edition, the District Court erred in granting
20 writ relief. SNC's request was so vague and overly broad it created

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1 ambiguity -- when it was obligated to specify identifiable documents. Such
2 request was so overly broad it appeared to include NRS 49.095 attorney-
3 client privilege material, *inter alia*, which is categorically exempt from the
4 NPRA under NRS 239.010; SNC's request appeared to inappropriately
5 encompass confidential documents containing deliberative process privilege
6 and confidential work product. *Id.* The timing of SNC's October 10, 2017
7 non-specific NPRA request also created ambiguity, as it was submitted **after**
8 its appeal of ESD's NRS 612.085 administrative determination, **after** SNC's
9 request for a delayed evidentiary hearing in October or November 2017,
10 **after** its administrative discovery requests, **after** ESD's counsel contacted
11 SNC's counsel on September 20, 2017 and September 27, 2017, inviting
12 discussion regarding discovery and informing SNC that the standard
13 discovery deadlines that one might expect in civil proceedings are not
14 applicable in NRS Chapter 612 administrative proceedings, and **after** the
15 ALJ's September 20, 2017 email providing direction concerning discovery,
16 and **after** discovery was provided, but immediately *before* the October 19,
17 2017 prehearing conference during which the presiding ALJ was to exercise
18 his statutory authority concerning the scope of discovery. *See*, NRS

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1 612.500. (AA V.1, 008, 022, 029, 030-31, 025-25, 035, 037, 042; V.2, 133,
2 140-161) NRS 612.500.²⁷

3 The instant request was inadequate because it was overly broad
4 and non-specific. *Id.* The instant request contained 13 paragraphs. Each
5 paragraph in SNC's request started with the phrase "*Any and all records*" or
6 "*Any and all documents.*" AA V.1, 039-40 (Emphasis added) This "any and
7 all" approach, which is common to discovery requests, was not what the
8 Legislature intended, but rather the request for specific document(s) must be
9 sufficiently identified so that the scope of the search for such documents can
10 be reasonably narrowed and understood. *See*, NRS 239.008 and NAC
11 239.869 (incorporating the *Nevada Public Records Act: A Manual for State*
12 *Agencies*, 2016 edition). Additionally, SNC's request was exceedingly
13 vague in that only three (3) of the thirteen (13) paragraphs in SNC's request
14 contain any date. (AA V.1, 039-040) Provision of an approximate date for
15 the documents sought is reasonable and necessary to specify the identifiable
16 record. For example, in the case *LVMPD v. Blackjack Bonding*, the
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18 ²⁷ Also confusing is SNC's unfounded allegation that its requests for
19 discovery were stonewalled by DETR in the administrative hearing, and
20 ignored (and ultimately denied) by the Appeals Referee, and considering that
21 SNC did not proffer any subpoena at the 10/19/17 Prehearing Conference for
the ALJ's approval (AA V.3, 323) because the NRS 612.500 hearing was
not yet scheduled or conducted, and because ESD had provided SNC with a

1 requester appropriately “narrowed the scope” to ‘all telephone numbers
2 listed on the various bail bond agent jail lists posted in CCDC in 2011 and
3 2012.’” 131 Nev.Adv.Op. 10, 343 P.3d 608, 611 (2015). In *Gibbons, supra*,
4 the requester sought “email communications sent over a six-month time-
5 period between Governor Gibbons and ten individuals.” 127 Nev. 873, 875
6 (2011). In contrast to *Gibbons, supra*, and *LVMPD v. Blackjack Bonding*,
7 *supra*, SNC’s request was absent pertinent dates and was exceedingly
8 general in nature.

9 Moreover, the manner in which the request was written is
10 clearly beyond the scope of what was intended by NRS 239 and NAC 239
11 (the *Nevada Public Records Act: A Manual for State Agencies*). NAC
12 239.705 explains that the term “record” “does not include nonrecord
13 materials. Nonrecord materials include, without limitation, ... informal
14 notes, ... drafts, convenience copies, ad hoc reports, reference materials not
15 relating to a specific project.” DETR’s Public Records Request form
16 provides, in pertinent part: “Records Requested: ... *Please be specific and*
17 *include as much detail as possible regarding the records you are*
18 *requesting.*” (Petition, Exh. 2; AA V.1, 061-064) For example, Paragraph 9
19 of SNC’s request, is an example of the overly generalized request:

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1 *Any and all* records, including notices,
2 correspondence, *notes*, audio or video recordings
3 or other records of conversations or interviews
4 with any witnesses and any documents or *other*
5 *tangible evidence* obtained by DETR (such as
6 photographs, film, recordings, text messages, and
7 emails), and *any other evidence* obtained by DETR
8 in connection with *any of its audits* and
9 determinations concerning *other* brothels.
10 (Emphasis added)

11 Further, to the extent that the information requested by SNC is not already
12 included in a public record, ESD is not required to create a record to satisfy
13 SNC's request. *See*, NAC 239.867; *Nevada Public Records Act: A Manual*
14 *for State Agencies*, 2016 edition.

- 15 1. The District Court improperly ordered release of records which
16 are protected as the attorney work product.

17 SNC's request was non-specific as to the identifiable records it
18 seeks. It was so overly broad that, apparently, SNC's request sought internal
19 work product which is confidential and protected from discovery. This
20 Court explained in *Wardleigh v. Second Judicial Dist. Court* that
21 communications concerning mental impressions, conclusions, opinions, and
22 legal theories in anticipation of litigation are not discoverable. 111 Nev.
23 345, 891 P.2d 1180 (1995). In order to overcome the work product doctrine,

24 161;V.3 323)

1 the party seeking the work product must demonstrate relevancy, and that the
2 evidence is unavailable without undue hardship. *Id.* Here, it is for the ALJ
3 to determine what evidence is material and relevant and if the information is
4 available elsewhere without undue hardship. NRS 612.500(3). SNC has not
5 yet shown why the records it requested are relevant and what attempts it has
6 made to locate the records it seeks elsewhere. The District Court, therefore,
7 lacks subject matter jurisdiction to consider and make findings of fact and
8 conclusions regarding such discovery issues. It was error to grant writ relief
9 concerning evidence protected under the work-product doctrine.

10 2. The District Court erred when it ordered release of records
11 protected by the deliberative process privilege.

12 To the extent the request predates the issuance of ESD's
13 Determination, the information requested by SNC is confidential under the
14 deliberative process privilege. This Court has explained:

15 [T]he deliberative process or 'executive privilege'
16 is one of the traditional mechanisms that provide
17 protection to the deliberative and decision-making
18 process of the executive branch of government"
19 This privilege 'shields from mandatory disclosure
20 inter-agency or intra-agency memorandums or
21 letters which would not be available by law to a
party other than an agency in litigation with an
agency[.]' *Paisley v. C.I.A.*, 712 F.2d 686, 697 (D.
C. Cir. 1983)(quoting 5 U.S.C. § 552(b)(5)). It
also permits 'agency decision-makers to engage in
frank exchange of opinions and recommendations

1 necessary to the formulation of policy without
2 being inhibited by fear of later public disclosure,'
3 *Id.* at 698, and thus protects materials or records
4 that reflect a government official's deliberative or
5 decision-making process. ... The privilege is not,
6 at least in general, designed to protect purely
7 factual matters. *Id.* More particularly, purely
8 factual matters are not protected unless
9 'inextricably intertwined' with the policy-making
10 process. *DR Partners v. Board of County Com'rs*
11 *of Clark County*, 116 Nev. 616, 622-23, 6 P.3d
12 465, 469 (2000).

13 "To qualify for non-disclosure under [the deliberative process]
14 privilege, the requested documents must be both predecisional and
15 deliberative." *Id.* To establish that the information and documents
16 requested by SNC are "predecisional," ESD must identify an agency
17 decision to which the documents contributed. *See, Id.* "To qualify as part of
18 the 'deliberative' process, the materials requested must consist of opinions,
19 recommendations, or advice about agency policies." *See, DR Partners v.*
20 *Board of County Commissioners of Clark County*, 166 Nev. 616, 623-24, 6
21 P.3d 465, 469-70 (2000).

22 Here, the deliberative process privilege applies in this situation
23 as information SNC seeks in its overly broad and vague request (and beyond
24 the extent of entire audit file) includes predecisional and deliberative
25 communications which predates ESD's May 12, 2017 Determination. (AA

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1 V.1, 002-005) Beyond the audit file, a copy of which has been provided to
2 SNC (AA V.2, 140, 149, 151, 153, 155, 160-161; V.3, 323), the additional
3 documentation requested by SNC is protected because it involves ESD's
4 decision making, interagency communication, deliberation, work product,
5 opinion, and/or policy formation process and is not therefore discoverable.

6 *Id.* The District Court unreasonably declined to hold a hearing in this case.

7 3. SNC'S request was vague and overly broad. To the extent that the
8 request included attorney-client privileged information, such
information is *absolutely exempt* under NRS 239.010.

9 Similar to the deliberate privilege, all attorney-client
10 communications and attorney work product are privileged. NRS 49.035, *et*
11 *seq.*; *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S.Ct. 677, 682, 66
12 L.Ed.2d 584 (1981) ("The attorney-client privilege is the oldest of the
13 privileges for confidential communications known to the common law.")
14 *citing*, 8 *J. Wigmore, Evidence* § 2290 (McNaughton rev. 1961); *Hickman v.*
15 *Taylor*, 329 U.S. 495 (1947); *Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev.
16 345, 891 P.2d 1180 (1995); *Soeder v. Gen. Dynamics Corp.*, 90 F.R.D. 253
17 (D. Nev. 1980). Given that the attorney-client privilege is the oldest of
18 privileges known to the common law, the Legislature accordingly carved out
19 an additional exception, among many others, which excludes NRS 49.095
20 attorney-client information from the NPRA under NRS 230.010(1).

21

1 The information that SNC seeks is overly broad and vague such
2 that it would obviously include attorney-client privileged information which
3 is categorically exempt from the NPRA. As such, the District Court clearly
4 erred in ordering that ESD release NRS 49.095 information to SNC under
5 the writ of mandate. The District Court lacked jurisdiction to order release
6 of NRS 49.095 information.

7 CONCLUSION

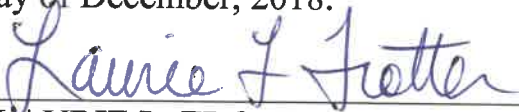
8 ESD respectfully requests this Court grant the appeal, reverse
9 the First Judicial District Court's Order granting writ relief, *in toto*, and
10 Order that the Petition for Writ of Mandamus be dismissed.

11 The District Court manifestly erred under NRS 239, NRS 612,
12 and NRS 34; and under *City of Sparks v. Reno Newspapers, Inc.*; *City of*
13 *Reno v. Reno Gazette-Journal, supra*; *Civil Rights for Seniors v.*
14 *Administrative Office of the Courts, supra*; *Benson v. State Engineer, supra*;
15 *Goldman v. Bryan, supra*; *Circus Circus Hotels, Inc. v. Witherspoon, supra*;
16 *Swan v. Swan*, 106 Nev. *supra*; *Scott v. Nevada Employment Sec. Dep't,*
17 *supra*, as the District Court lacked jurisdiction and infringed upon
18 Legislative authority when it granted writ relief, ordered the issuance of the
19 writ, and awarded attorneys' fees and costs; when the proper course of
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1 action for the District Court was to dismiss the Petition for Writ of
2 Mandamus or grant the Motion To Reconsider.

3 **DATED** this 24th day of December, 2018.

4 

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1 **ATTORNEY'S CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this Opening Brief complies with the
3 formatting requirements of NRAP 32(a)(4), the typeface requirements of
4 NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because
5 this Opening Brief has been prepared in a proportionally spaced typeface
6 using Microsoft Word 2010 in 14 point Times New Roman.

7 2. I further certify that this Opening Brief complies with the
8 page- or type-volume limitations of NRAP 32(a)(7) because, excluding the
9 parts of the Opening Brief exempted by NRAP 32(a)(7)(C), it contains
10 11,072 words.

11 3. Finally, I hereby certify that I have read this appellate
12 brief, and to the best of my knowledge, information, and belief, it is not
13 frivolous or interposed for any improper purpose. I further certify that this
14 Opening Brief complies with all applicable Nevada Rules of Appellate
15 Procedure, in particular NRAP 28(e)(1), which requires every assertion in
16 the brief regarding matters in the record to be supported by a reference to the
17 page and volume number, if any, of the transcript or appendix where the
18 matter relied on is to be found.

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1 I understand that I may be subject to sanctions in the event that
2 the accompanying Opening Brief is not in conformity with the requirements
3 of the Nevada Rules of Appellate Procedure.

4 DATED this 24th day of December, 2018.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(d)(1)(B), I hereby certify that I am an
3 employee of the State of Nevada, over the age of 18 years; and that on the
4 date hereinbelow set forth, I electronically filed the foregoing
5 APPELLANT'S OPENING BRIEF with the Clerk of the Nevada Supreme
6 Court; and, as a consequence thereof, electronic service was made in
7 accordance with the Master List as follows:

8 ANTHONY HALL, ESQ.

9 RICO CORDOVA, ESQ.

10 And by mailing within an envelope which was deposited with the State of
11 Nevada Mail for postage and mailing from Carson City, Nevada, addressed
12 as follows:

13 Anthony Hall, Esq.
14 Rico Cordova, Esq.
15 *Holland & Hart LLP*
5441 Kietzke Lane, Second Floor
Reno, NV 89511

16 **DATED** this 24th day of December, 2018.

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SHERI C. IHLER