

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,

Appellant,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

Supreme Court No.: 77511

Electronically Filed
Mar 12 2019 11:55 a.m.

District Court Case No. A-18-780538-W
Department 4

Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX VOLUME 2 of 4

FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE KERRY EARLEY, DISTRICT COURT JUDGE

DEANNA L. FORBUSH
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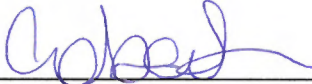
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this 11th day of March, 2019, I caused to be served a true and correct copy of the foregoing **JOINT APPENDIX VOLUME 2 of 4** by the method indicated to the counsel stated below:

- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- BY PERSONAL DELIVERY:** by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.
- BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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Attorneys for Respondent Las Vegas
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An Employee of Clark Hill PLLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN ATTORNEYS
GENERAL ASSOCIATION,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF CLARK, AND
THE HONORABLE KERRY EARLEY,
DISTRICT JUDGE,

Respondent,

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Real Party in Interest.

Supreme Court Case No.:

Electronically Filed
[District Court Case No. 2018-03:10 p.m.
A-18-780538-W] Elizabeth A. Brown
Clerk of Supreme Court

**FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE KERRY EARLEY, DISTRICT JUDGE**

**EMERGENCY PETITION FOR WRIT OF MANDAMUS PURSUANT TO
NRAP 21(a) AND NRAP 27(e)**

ACTION REQUIRED: IMMEDIATELY

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Attorneys for Petitioner Republican
Attorneys General Association

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

1. The Petitioner, Republican Attorneys General Association (“RAGA”) is the only entity that is an Petitioner in this case;

2. The undersigned counsel of record for RAGA are the only attorneys who have appeared on its behalf in this matter in this Court. The undersigned, Colleen E. McCarty, Esq. and Deanna L. Forbush Esq., both appeared on behalf of RAGA before the District Court.

These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Dated this 5th day of October, 2018.

CLARK HILL PLLC

By: 

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ROUTING STATEMENT

RAGA respectfully asserts that this Emergency Petition is presumptively retained by the Supreme Court, pursuant to NRAP 17(a)(11). The matter raises as a principle issue a question of statewide public importance, specifically the denial of RAGA's ability to test Metro's claim of confidentiality in an adversarial setting with regard to BWC footage of Senator Ford purportedly using his position of authority as an elected official to influence the outcome of an encounter with Metro officers on November 13, 2017.

POINTS AND AUTHORITIES

I.

STATEMENT OF THE CASE

Petitioner, Republican Attorneys General Association (“RAGA”), by and through its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of the law firm Clark Hill PLLC, hereby submits its Emergency Petition for Writ of Mandamus (“Emergency Petition”) with the following Points and Authorities.

This Emergency Petition is brought pursuant to NRAP 21(a), in compliance with NRAP 27(e), for the issuance of a writ of mandate directing the district court to grant RAGA’s request for immediate “attorney’s eyes only” review of Body Worn Camera (“BWC”) footage involving State Senator and Attorney General candidate, Aaron D. Ford (“Senator Ford”), which Real Party in Interest, Las Vegas Metropolitan Police Department (“Metro”), has broadly identified in response to RAGA’s pending public records request. Emergency relief is necessary to allow RAGA to test in a fair and adversarial manner at the upcoming October 17, 2018 public records hearing (“Hearing”) the claim by Metro that the BWC footage is confidential and unable to be redacted. Maintaining the Hearing’s expedited setting is necessary to ensure the matter receives priority attention, pursuant to NRS 239.011(2), and to meaningfully effectuate the public’s access to

the BWC footage prior to the start of early voting on October, 20, 2018.

RAGA fully advanced its argument for “attorney’s eyes only” restricted access to the BWC footage with the district court first by filing an Emergency Motion for Examination of Withheld Records on Order Shortening Time on September 27, 2018. (See Appendix Exhibit 1.) Metro filed its Opposition on October 3, 2018. (See Appendix Exhibit 2.) District Court Judge Kerry Earley heard the matter on October 5, 2018 and denied RAGA’s request, requiring only that the BWC footage be provided to her alone for *in camera* review, in contravention of this Honorable Court’s public records jurisprudence. (See Appendix Exhibit 3¹.)

II.

RELIEF SOUGHT BY PETITIONER

RAGA seeks an immediate Order from this Honorable Court directing District Court Judge Kerry Earley to order the “attorney’s eyes only” review of the BWC footage identified by Metro in response to RAGA’s public records request, with appropriate privacy protections, as follows:

¹ RAGA requested a JAVs recording of the October 5, 2018 hearing in advance of entry of the Court’s minutes or formal order, in light of the present time constraints. RAGA will submit the recording as Exhibit 3 to the Appending as soon as possible upon receipt.

1. That the BWC footage is made available for “attorney’s eyes only” review by Collen E. McCarty, Esq., attorney of record for RAGA, no later than close of business Thursday, October 11, 2018;

2. That the format in which the BWC footage is made available may be at Metro’s discretion (e.g. CD, thumb drive, drop box, etc.), as long as the format is immediately accessible to Ms. McCarty;

3. That the BWC footage is made available to Ms. McCarty in its entirety, without prior redaction by Metro;

4. That Ms. McCarty is afforded access to the BWC footage solely for the purpose of litigation and must act with all prudence to prevent disclosure of the footage or its content to others, including but not limited to her fellow attorneys and staff, the parties and their staff, and any outside third parties;

5. That Ms. McCarty is permitted to make reference to the BWC footage and the contents thereof only as necessary for the purpose of advocating on behalf RAGA in its reply brief due on October 15, 2018 and again at the time of the public records hearing on October 17, 2018;

6. That Ms. McCarty will not make any reproductions of the BWC footage absent further order of the district court and will provide her “attorney’s eyes only” copy to the district court at the time and place directed to ensure its proper disposal.

III.

ISSUE PRESENTED

Whether the Eighth Judicial District Court (the Honorable Kerry Earley) manifestly abused its discretion or exercised it arbitrarily and capriciously in denying RAGA's request for an "attorney's eyes only" review of BWC footage responsive to its public records request, and thereby effectively eliminating any opportunity to test in a fair and adversarial manner at the public records Hearing on October 17, 2018, the claim by Metro that the BWC footage is confidential and unable to be redacted.

IV.

FACTS NECESSARY TO UNDERSTAND THE ISSUE PRESENTED

Early voting begins in Nevada on October 20, 2018. And, unless the district court quickly intervenes to end Metro's unlawful, wholesale embargo on certain public records, voters will go to the polls without information that may determine their choice of candidate.

There is no factual dispute that BWC footage exists of Senator Ford, sitting State Senate Majority Leader and current candidate for Nevada Attorney General, engaging with Metro officers on November 13, 2017. (Appendix Exhibit 1 at 4:15-19, 5:8-15.) The same day RAGA filed suit on September 6, 2018 seeking the BWC footage and other related public records regarding Senator Ford, Senator

Ford's campaign stated publicly that "It was a minor incident on private property involving one of their pre-teen children," and that "Metro called the parents of all the kids involved so that they could deal with the issue privately." (Appendix Exhibit 1 at 4:8-14.) Metro has taken the contrary position that the BWC footage contains information that is both confidential because it relates to juveniles at the scene of the incident being arrested, as well as information that is unrelated to the incident, but that there is no way to redact or otherwise separate the information. (Appendix Exhibit 1 at 4:15-19.)

Given the completely contrary positions regarding the contents of the BWC footage taken by Senator Ford's campaign and Metro, RAGA's counsel of record reached out to Metro's counsel of record to seek a stipulation allowing a restricted, "attorney's eyes only" review of the BWC footage for purposes of either informal resolution or formal argument. (Appendix Exhibit 1 at 4:20-24.) Metro's counsel denied the request, asserting the belief that the BWC footage in its entirety is confidential and not subject to redaction because some unspecified portion thereof pertains to juveniles who were arrested. (Appendix Exhibit 1 at 5:2-6.) Believing no such confidentiality to be applicable to the instant case, RAGA immediately sought relief from the district court through the filing of its Emergency Motion for Examination of Withheld Records on Order Shortening Time on September 27, 2018. (Appendix Exhibit 1.) District Court Judge Kerry Earley heard the matter

on October 5, 2018 and denied relief to RAGA stating that anything beyond the court's *in camera* review would be tantamount to "waiving the privilege." (Appendix Exhibit 3.)

RAGA's only opportunity at this time to test Metro's claim in a fair and adversarial manner is for its attorney of record to be afforded meaningful and immediate access to the BWC footage, contemporaneous with the district court's *in camera* review.

V.

STATEMENT OF REASONING FOR ISSUANCE OF THE WRIT

A. Legal Standard.

A writ of mandamus will issue to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, and where there is no plain, speedy, and adequate remedy in the ordinary course of law. *Hickey v. District Court*, 105 Nev. 729, 782 P.2d 1336 (1989); NRS 34.160. A writ of mandamus is available when the respondent has a clear, present legal duty to act, or to control an arbitrary or capricious exercise of discretion. *Round Hill Gen. Imp. Dist. V. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). The writ is the appropriate remedy to compel performance of a judicial act. *Solis-Ramirez v. Eighth Judicial District Court ex rel. County of Clark*, 112 Nev. 344, 913 P.2d 1293 (1996).

In the instant Emergency Petition, the essential facts are agreed. The only dispute is as to a matter of controlling law, going to a duty to act, which duty RAGA respectfully asserts was violated by the lower court and requires an order by way of an extraordinary writ from this Honorable Court.

B. The District Court Was Required By Controlling Law to Grant RAGA's Emergency Motion for Examination of Withheld Records.

A claim that records are confidential can only be tested in a fair and adversarial manner. This Honorable Court clearly stated this keystone of current public records law in *Reno Newspapers, Inc. v. Gibbons*, holding that “Equally unmistakable is the emphasis that our NPRA jurisprudence places on adequate adversarial testing. Indeed, the framework established in *Bradshaw, DR Partners* and *Reno Newspapers v. Sheriff* exemplifies an intensely adversarial method for determining whether requested records are confidential.” 127 Nev. 873, 882-83, 266 P.3d 623, 629 (2011). Further, the Court erased any doubt that *in camera* review of records alone does not permit effective advocacy. 127 Nev. at 883-884, 266 P.3d at 630 (citing *Wiener v. F.B.I.*, 943 F.2d 972, 979 (9th Cir. 1991)).

District Court Judge Kerry Earley's ruling that RAGA's counsel would not be permitted to view the BWC footage in question, and that she alone would be permitted to undertake an *in camera* review, is in direct contravention of long-standing public records jurisprudence. And, such manifest abuse of discretion did

not end there. RAGA made clear it was seeking an “attorney’s eyes only” review of the BWC footage, as this was the only alternative that would allow RAGA to test Metro’s claim of confidentiality in the required fair and adversarial manner in advance of the October 17, 2018 hearing, given the extreme time sensitivity and the fact that Metro failed to provide even the most basic information about the withheld BWC footage at the outset of the litigation. In not recognizing and implementing the privacy protections available that allow for the review of public records for litigation purposes, the district court ignored important and timely public records jurisprudence. *See Comstock Residents Ass’n v. Lyon Cty. Bd. of Commissioners*, 134 Nev. Adv. Op. 19, 414 P.3d 318, 323 n. 2 (2018).

Under Nevada law, all video and audio recordings made by police-worn body cameras are public records subject to inspection, without exception. NRS 289.830(2) states in pertinent part:

Any record made by a portable event recording device² pursuant to this section is a public record which may be:
(a) Requested only on a per incident basis; and
(b) Available for inspection only at the location where the record is held if the record contains confidential information that may not otherwise be redacted.

² “‘Portable event recording device’ means a device issued to a peace officer by a law enforcement agency to be worn on his or her body and which records both audio and visual events occurring during an encounter with a member of the public while performing his or her duties as a peace officer.” NRS 289.830(3)(b).

(Emphasis added.) Further, the NPRA reflects that records of governmental entities belong to the public in Nevada. NRS 239.010(1) requires that, unless a record is confidential, “all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied[.]” The NPRA also contains specific legislative findings and declarations that “[its] purpose . . . is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law” and that its provisions “must be construed liberally to carry out this important purpose[.]” NRS 239.001(1)-(2). And, “[a]ny exemption, exception or balancing of interests which limits access to public books and records....must be construed narrowly.” NRS 239.001(3).

Beyond the general provisions of NRS 239.001, the NPRA also contains the specific and controlling mandate that a governmental entity:

“....shall not deny a request....to inspect or copy a public book or record on the basis that the public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.”

NRS 239.010(3) (emphasis added). Each and every one of these dictates were ignored by the district court in denying RAGA the relief requested.

At this late date there is no plain, speedy and adequate remedy for RAGA in the ordinary course of law. There is one way, and one way only, for RAGA's counsel to meaningfully test the veracity of Metro's claim of confidentiality and lack of a redaction option related to the BWC footage in question and to provide the district court with the information and arguments it needs to make the necessary findings regarding its public records request. RAGA's counsel must be permitted an "attorney's eyes only" review of the BWC footage this week, in advance of the October 15, 2018 due date for its reply brief and the October 17, 2018 date set for the hearing on its public records request.

VI.

CONCLUSION

For all of the reasons, RAGA respectfully requests this Honorable Court grant this emergency petition for writ of mandamus. The district court has manifestly abused its discretion and acted arbitrarily and capriciously in denying

...
...
...
...
...
...

relief.

Dated this 8th day of October, 2018.

CLARK HILL PLLC

By: Allen E. McCarty

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Attorneys for Petitioner

Republican Attorneys General

Association

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Under penalty of perjury, the undersigned declares that she is the attorney for the Petitioner named in the foregoing petition and knows the contents thereof, that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as to such matters she believes them to be true.

This verification is made by the undersigned attorney, pursuant to NRS 15.010, on the ground that matters stated and relied upon in the foregoing petition are all contained in the prior pleadings and other records of the Court and district court, true and correct copies of which have been included in the appendix submitted with the petition.

Respectfully Submitted,

CLARK HILL PLLC

By: Colleen E. McCarty
DEANNA L. FORBUSH

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Attorneys for Petitioner
Republican Attorneys General
Association

NRAP 27(e) CERTIFICATE

Pursuant to NRAP 27(e), I hereby certify that I am counsel to Petitioner, Republican Attorneys General Association and further certify:

1. The contact information for the attorneys for the Real Party in Interest, Las Vegas Metropolitan Police Department, is:

Nick D. Crosby, Esq.
ncrosby@maclaw.com
Jackie V. Nichols, Esq.
jnichols@maclaw.com
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2. The facts showing the nature and cause of the emergency are set forth in the Points and Authorities herein. These facts include the following:

a. On October 5, 2018, Respondent denied Petitioner's Emergency Motion for Motion for Examination of Withheld Records on Order Shortening Time, requiring only that the records be provided for *in camera* review, in contravention of this Honorable Court's public records jurisprudence.

b. Respondent's ruling relegates Petitioner to the inequitable position of having to advocate from a position where it is powerless to contest the Real Party in Interest's claim of confidentiality.

c. I will email a copy of this Emergency Petition to Respondent and counsel for the Real Party in Interest immediately after filing.

Dated this 8th day of October, 2018.

CLARK HILL PLLC


By: Colleen E. McCarty
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Attorneys for Petitioner
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Association

CERTIFICATE OF SERVICE

I certify that on the 8th day of October, 2018, I served a copy of the foregoing **EMERGENCY PETITION FOR WRIT OF MANDAMUS PURSUANT TO NRAP 21(a) and NRAP 27(e)** upon all counsel of records:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attached a separate sheet with the addresses.)

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Attorneys for Real Party in Interest
Las Vegas Metropolitan Police Department



An Employee of Clark Hill PLLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN ATTORNEYS
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Petitioner,

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DISTRICT JUDGE,

Respondent,

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Real Party in Interest.

Supreme Court Case No.: 77131

[District Court Case No. A-18-780538-W] Electronically Filed
Oct 08 2018 04:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE KERRY EARLEY, DISTRICT JUDGE**

**APPENDIX VOLUME 1 OF 1 TO
EMERGENCY PETITION FOR WRIT OF MANDAMUS PURSUANT TO
NRAP 21(A) AND NRAP 27(E)**

ACTION REQUIRED: IMMEDIATELY

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On October 8, 2018, I caused to be served a true and correct copy of the foregoing **APPENDIX VOLUME 1 OF 1** by the method indicated:

- BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- BY PERSONAL DELIVERY:** by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.
- BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

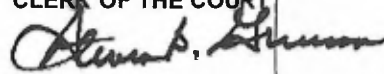
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APPENDIX
EXHIBIT 1

APPENDIX
EXHIBIT 1



1 MEXM
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9
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,

13
14 Petitioner,

15 vs.

16 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

17
18 Respondent.

Case No.: A-18-780538-W
Dept. No.: IV

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION'S EMERGENCY
MOTION FOR EXAMINATION OF
WITHHELD RECORDS ON ORDER
SHORTENING TIME

Date:
Time:

19
20 Petitioner, Republican Attorneys General Association ("RAGA" or "Petitioner"), by and
21 through its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of the
22 law firm of Clark Hill PLLC, hereby submits its Emergency Motion for Examination of
23 Withheld Records on Order Shortening Time ("Emergency Motion"), which pertains to the
24 video and audio recordings made by police-worn body cameras Metro has identified as
25 responsive to RAGA public records requests, in order to ensure that the claim said records are
26 confidential and unable to be redacted is tested in a fair and adversarial matter. *See e.g. Reno*
27 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882-83, 266 P.3d 623, 629 (2011).
28

1 This Emergency Motion is made and based on the following Memorandum of Points
2 and Authorities; the Declaration of Colleen E. McCarty, Esq., included therein; the papers and
3 pleadings already on file; and any argument the Court may permit at the hearing of this matter.

4 Dated this 25th of September, 2018.

5 CLARK HILL PLLC

6
7
8 By: Colleen E. McCarty

9 DEANNA L. FORBUSH

10 Nevada Bar No. 6646

11 COLLEEN E. MCCARTY, ESQ.

12 Nevada Bar No. 13186

13 3800 Howard Hughes Parkway, Suite 500

14 Las Vegas, Nevada 89169

15 Telephone: (702) 862-8300

16 Attorneys for Petitioner

17 Republican Attorneys General Association

18 ORDER SHORTENING TIME

19 Having considered the Declaration of Counsel in Support of Order Shortening Time, and
20 good cause appearing:

21 IT IS HEREBY ORDERED that the time to hear the instant Emergency Motion for
22 Examination of Withheld Records is shortened and set on the 5 day of October
23 2018, at 9:00 a.m. p.m., in Dept. IV of the Eighth Judicial District Court. Petitioner shall
24 file and electronically serve Respondents the same day the OST is returned signed by the Court.

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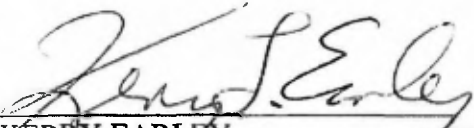
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1 Respondent shall have until the 3 day of Oct., 2018 to file a written
2 Opposition. Petitioner shall be permitted to reply orally at the time set for the hearing, above.

3 Dated this 26 day of September, 2018.

4 
5 KERRY EARLEY
6 DISTRICT COURT JUDGE

7 Respectfully submitted by:

8 CLARK HILL PLLC

9 By: 

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17 Attorneys for Petitioner
18 Republican Attorneys General Association

19 **DECLARATION OF COLLEEN E. MCCARTY IN SUPPORT OF**
20 **EMERGENCY MOTION ON ORDER SHORTENING TIME**

21 I, COLLEEN E. MCCARTY, attest and declare as follows:

22 1. I am an attorney licensed to practice before all the courts of the State of Nevada,
23 and I am admitted to practice before this Court. I am one of the attorneys for the Republican
24 Attorneys General Association (“RAGA”), the Petitioner in the instant matter.

25 2. I have personal knowledge of the facts stated in this Declaration. If called upon
26 to testify to the same, I am competent to do so.

27 3. The purpose of RAGA’s Emergency Motion is to ensure that Respondent, Las
28 Vegas Metropolitan Police Department (“Metro”), provides opposing counsel and the Court a
fair opportunity to argue and ultimately determine whether disclosure of the video and audio
recordings made by police-worn body cameras at the time of the encounter between Metro

1 police officers and State Senator Aaron Ford (“Senator Ford”) on November 13, 2017 will be
2 made, with or without redaction.

3 4. In an effort to determine whether this matter might be resolved informally, I
4 initiated a teleconference with counsel of record for Metro, Jackie V. Nichols, Esq. of the law
5 firm Marquis Aurbach Coffing, which took place on Monday, September 24, 2018. The
6 purpose of the call was to confirm the published statement by Senator Ford’s campaign in
7 response to the instant lawsuit that “[I]t was a minor incident on private property involving one
8 of their pre-teen children,” and that “Metro called the parents of all the kids involved so that
9 they could deal with the issue privately.”¹ In such case, RAGA believed the video and audio
10 recording made by police-worn body cameras would not be confidential under the provisions of
11 NRS 62H.025 and NRS 62H.030 pertaining to juvenile justice records, and Metro would be in a
12 position to stipulate to disclosure.
13
14

15 5. Contrary to Senator Ford’s campaign statement, however, Ms. Nichols disclosed
16 for the first time on behalf of Metro that there is substantial body camera video of the encounter
17 in question, that the juveniles at the scene were arrested, and that there was no way to provide
18 redacted versions of any of the videos because the entirety of the encounter concerned juveniles
19 being arrested.
20

21 6. In light of the complete disparity between Senator Ford’s campaign statement
22 and the claim of Metro’s counsel concerning the substance of the body camera videos, I emailed
23 Ms. Nichols to request that her client stipulate to a temporary protective order for an attorneys’
24 eyes only viewing of the videos as soon as possible. I explained that, absent the opportunity to
25 view the videos, we would have insufficient information with which to meaningfully contest
26

27 ¹ Riley Snyder, “Republican AG Group Files Lawsuit Seeking Police Footage of Interaction With Democratic
28 Candidate Aaron Ford and His Child, *The Nevada Independent*, September 6, 2018;
<https://thenevadaindependent.com/article/republican-ag-group-files-lawsuit-seeking-police-footage-of-interaction-with-democratic-candidate-aaron-ford-and-his-child>.

1 Metro's claim of confidentiality and would have no alternative but to seek Court intervention.

2 7. In response, Ms. Nichols explained that pursuant to NRS 62H.025, Metro did not
3 have the authority to enter into an agreement to allow for attorney's eyes only viewing of the
4 video in question and denied RAGA's request. Ms. Nichols asserted that because the videos
5 ostensibly contain juvenile justice information the body camera footage in its entirety is
6 confidential and may not be redacted.
7

8 8. Ms. Nichols also advised that the body worn camera video of the event at issue is
9 encompassed in some 16 hours of unrelated video because the officers left their body cameras
10 rolling continuously. Such continuous activation is contrary to Metro's body worn cameras
11 policy, which generally requires officers to activate the cameras at the beginning of an event
12 and to deactivate the cameras when the event concludes. Further, Ms. Nichols did not confirm
13 what quantity of footage actually relates to the event at issue, only to state that it was less than
14 16 hours' worth.
15

16 9. The Court previously entered the parties' Stipulation and Order Regarding
17 Briefing Schedule on September 21, 2018 and set RAGA Public Records Act Application
18 Pursuant to NRS 239.001/Petition for Writ of Mandamus ("Petition") on for expedited hearing
19 on October 17, 2018. If there is to be any reasonable opportunity for counsel and the Court to
20 receive and view the videos in question, RAGA's Emergency Motion must be heard by the
21 Court at the very earliest opportunity, preferably no later than Monday, October 1, 2018.
22

23 10. As a former investigative journalist for KLAS-TV, I am well versed in video
24 editing and am uniquely qualified to review the videos in question to assist the Court in
25 determining whether the videos may, in fact, be redacted or otherwise edited to separate the
26 confidential information from the information that is not confidential, as required pursuant to
27 NRS 239.010(3).
28

11. This request for Order Shortening Time is made in good faith and without

1 dilatory motive, and is meant to assist the Court in the timely disposition of all pending matters.

2 I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045)²,
3 that the foregoing is true and correct.

4 Dated this 25th day of September, 2018.

5 
6 COLLEEN E. MCCARTY

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 I.

9 STATEMENT OF RELEVANT FACTS

10 The facts relevant to the instant Emergency Motion are contained within the Declaration
11 of Colleen E. McCarty, Esq., supra, and are incorporated by reference herein.

12 II.

13 RESPONDENT SHOULD BE REQUIRED TO PROVIDE THE WITHHELD RECORDS
14 TO PETITIONER'S COUNSEL AND THE COURT FOR EXPEDITED REVIEW

15 Under Nevada law, all video and audio recordings made by police-worn body cameras
16 are public records subject to inspection. NRS 289.830(2) states in pertinent part:

17 *Any record made by a portable event recording device³ pursuant to*
18 *this section is a public record which may be:*

- 19 (a) Requested only on a per incident basis; and
20 (b) Available for inspection only at the location where the record is
21 held if the record contains confidential information that may
22 not otherwise be redacted.

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26 ² NRS 53.045 Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose
27 existence or truth may be established by an affidavit or other sworn declaration may be established with the same
28 effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and
dated, in substantially the prescribed form.

³ "'Portable event recording device' means a device issued to a peace officer by a law enforcement agency to be
worn on his or her body and which records both audio and visual events occurring during an encounter with a
member of the public while performing his or her duties as a peace officer." NRS 289.830(3)(b).

1 (Emphasis added.) See also Metro Form LVMPD 556 (entitled “Body-Worn Camera Video
2 Public Records Request, Pursuant to NRS 239”), [https://www.lvmpd.com/en-us/Documents/
3 LVMPD556_BWC_10-15v2_07-2017.pdf](https://www.lvmpd.com/en-us/Documents/LVMPD556_BWC_10-15v2_07-2017.pdf).

4 The Nevada Public Records Act (“NPRA”) reflects that records of governmental
5 entities belong to the public in Nevada. NRS 239.010(1) requires that, unless a record is
6 confidential, “all public books and public records of a governmental entity must be open at all
7 times during office hours to inspection by any person, and may be fully copied[.]” The NPRA
8 also contains specific legislative findings and declarations that “[its] purpose . . . is to foster
9 democratic principles by providing members of the public with access to inspect and copy
10 public books and records to the extent permitted by law” and that its provisions “must be
11 construed liberally to carry out this important purpose[.]” NRS 239.001(1)-(2). Further, “[a]ny
12 exemption, exception or balancing of interests which limits access to public books and
13 records....must be construed narrowly.” NRS 239.001(3).

14 Beyond the general provisions of NRS 239.001, the NPRS contains the specific mandate
15 that a governmental entity:

16
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18 “...shall not deny a request...to inspect or copy a public book or
19 record on the basis that the public book or record contains
20 information that is confidential if the governmental entity can
21 redact, delete, conceal or separate the confidential information
from the information included in the public book or record that is
not otherwise confidential.”

22 NRS 239.010(3) (emphasis added).

23 In the instant case, Metro’s counsel has taken the firm position that redaction of the
24 videos in question is impossible. In light of the contrary position advanced by Senator Ford’s
25 campaign, RAGA’s counsel and the Court are left in the untenable position of guessing at the
26 truth of the matter. Even now, some nine months after RAGA’s initial public records request,
27 Metro still cannot or will not provide even the most basic information regarding the body
28

1 camera footage at issue. RAGA does not know how many videos exist, what quantity of video
2 is relevant to RAGA's request for records involving Senator Ford, or what efforts, if any Metro
3 has undertaken to identify the potential for redaction.

4 There is, however, a simple way for RAGA's counsel to test the veracity of Metro's
5 claim, and for the Court to have the information and arguments it needs to make the necessary
6 findings regarding the Petition, and that is to require Metro to provide a copy of the videos in
7 question to RAGA's counsel, who is extremely well versed in video editing, for an attorney's
8 eyes only review, and to provide a copy to the Court for its own in camera inspection, in
9 advance of the October 17, 2018 hearing.

11 As the Supreme Court stated clearly in *Reno Newspapers, Inc. v. Gibbons*, "[E]qually
12 unmistakable is the emphasis that our NPRA jurisprudence places on adequate adversarial
13 testing. Indeed, the framework established in *Bradshaw, DR Partners* and *Reno Newspapers v.*
14 *Sheriff* exemplifies an intensely adversarial method for determining whether requested records
15 are confidential." 127 Nev. at 882-83, 266 P.3d at 629. RAGA is entitled to, and hereby
16 respectfully requests, the opportunity to engage in just such adequate adversarial testing.

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III.

CONCLUSION

For all of the reasons set forth above, RAGA respectfully requests this Court grant its Emergency Motion and require Metro to provide copies of all audio and video recordings of police-worn body cameras related to the encounter between Metro officers and Senator Ford on November 13, 2017 to the Court and to RAGA's counsel for its attorney's eyes only review, in order to allow Metro's claim of confidentiality to be tested and decided in a fair and adversarial manner.

Dated this 25th of September, 2018.

CLARK HILL PLLC

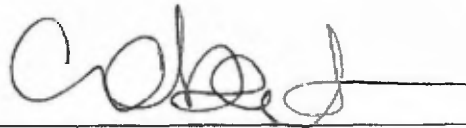
By: 

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1 CERTIFICATE OF SERVICE

2 Pursuant to NRC 5(b), I certify that I am an employee of Clark Hill PLLC, and that on
3 this 27th day of September, 2018, I served a true and correct copy of the foregoing
4 **REPUBLICAN ATTORNEYS GENERAL ASSOCIATION'S EMERGENCY MOTION**
5 **FOR EXAMINATION OF WITHHELD RECORDS ON ORDER SHORTENING TIME**
6 **by electronic means by operation of the Court's electronic filing system, upon each party in this**
7 **case who is registered as an electronic case filing user with the Clerk.**

9 Nick D. Crosby, Esq.
10 Jackie V. Nichols, Esq.
11 MARQUIS AURBACH COFFING
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14 ncrosby@maclaw.com
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16 Attorneys for Respondent
17 Las Vegas Metropolitan Police Department

18 

19 _____
20 An Employee of Clark Hill PLLC

**APPENDIX
EXHIBIT 2**

**APPENDIX
EXHIBIT 2**



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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **REPUBLICAN ATTORNEYS GENERAL**
ASSOCIATION,

Case No.: A-18-780538-W
Dept. No.: IV

11 **Petitioner,**

12 **vs.**

13 **LAS VEGAS METROPOLITAN POLICE**
14 **DEPARTMENT,**

15 **Respondent.**

16 **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S**
17 **OPPOSITION TO REPUBLICAN ATTORNEYS GENERAL ASSOCIATION'S**
18 **EMERGENCY MOTION FOR EXAMINATION OF WITHHELD RECORDS ON**
ORDER SHORTENING TIME

19 Respondent Las Vegas Metropolitan Police Department ("LVMPD" or the
20 "Department"), by and through its attorneys of record, Nicholas Crosby, Esq. and Jackie Nichols,
21 Esq., of the law firm of Marquis Aurbach Coffing, hereby files an Opposition to Republican
22 Attorneys General Association's Emergency Motion for Examination of Withheld Records on
23 Order Shortening Time.

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26 ///

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28 ///

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This Opposition is made and based upon the papers and pleadings on file herein, the Memorandum of Points and Authorities, and any oral argument allowed by the Court at a hearing on this matter.

Dated this 3 day of October, 2018.

MARQUIS AURBACH COFFING

By: 
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Jackie V. Nichols, Esq.
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Las Vegas, Nevada 89145
*Attorneys for Respondent, Las Vegas
Metropolitan Police Department*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court is charged with making a simple determination: Whether the records requested pertain directly to a child subject to the jurisdiction of the juvenile court. If the Court determines that the incident involves a child subject to the jurisdiction of the juvenile court, this Court must dismiss the instant Petition because the juvenile court retains exclusive jurisdiction over this matter. It is undisputed that the records sought pertain to a minor child or children, as demonstrated by RAGA's own requests. Thus, it is LVMPD's position that the records sought contain juvenile justice information, placing subject matter jurisdiction over this case in the hands of the juvenile court. Nevertheless, if the Court retains jurisdiction over this matter, then the Court must decide this case on the merits and determine whether the production of the records is required. Importantly, prior to an order requiring the dissemination of records, including to opposing counsel, this Court must notify Juvenile Justice Services and afford it an opportunity to be heard.

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1 Should this Court determine that the Nevada Public Records Act applies, RAGA's
2 Emergency Motion is premature. While the burden is on the government to demonstrate
3 confidentiality, LVMPD has not yet been afforded the opportunity to prove its case on the
4 merits. The Supreme Court has specifically addressed similar situations where the requester
5 contends it does not have sufficient information to argue against confidentiality. In those
6 scenarios, the court must first entertain the Petition for Writ of Mandamus to determine whether
7 the government has met its burden. If the government's response is deficient, the court may
8 order the agency to provide a *Vaughn* Index—not an examination of the records. Under no
9 circumstances is an agency required to turn over the records it deems confidential prior to the
10 matter being heard on the merits.

11 In sum, the actual footage from the videos is entirely irrelevant to LVMPD's objections
12 to disclosure and RAGA's request that counsel be permitted to review the records is
13 unprecedented and wholly improper prior to this matter being heard on the merits.

14 II. STATEMENT OF FACTS

15 A. RAGA'S REQUEST FOR JUVENILE JUSTICE INFORMATION.

16 Republican Attorneys General Association ("RAGA") has sought records pertaining to
17 juveniles. See Petition for Writ of Mandamus ("Petition") at Exhibits 1-A, 1-C, 1-F, and 1-I.
18 While RAGA claims it only seeks the Body Worn Camera ("BWC") footage from a particular
19 event involving juveniles, its request specifically seeks the following information:

20 [W]e request all body camera footage and or audio from body camera footage (if
21 visual images do not exist), the police or investigative report or summary, witness
22 and or victim statements, all computer aided dispatch (CAD) between all LVMPD
23 personnel at the scene and with dispatch or any other statements by officers or
24 witnesses related to an incident with LVMPD Officer Zarkowski concerning
minor child and/or, Aaron D. Ford (State Senator) at
approximately 3:00 p.m. on November 13, 2017 at 7008 Connor Cove Street, Las
Vegas, NV 89118.

25 *Id.* at Exhibit 1-C, 1-F, and 1-I (emphasis added). Notably, RAGA redacted the minor child's
26 name(s) in its Petition with Court because it recognized that juvenile information is protected
27 under NRS 62H.020 and 62H.025. Nevertheless, it cannot be any clearer that RAGA's request
28 directly relates to a minor child. *Id.*

1 **B. RAGA’S IMPROPER AND FLAWED EMERGENCY MOTION.**

2 In its Emergency Motion, RAGA argues that it seeks information related to Senator Ford
3 and not the minor child. In support of disclosure, RAGA argues that statements between Senator
4 Ford and the police officers do not directly relate to a child. *See* Petition at Exhibit 1-I. RAGA,
5 however, continues to ignore the simple fact that the footage requested directly pertains to a
6 juvenile incident. Any communications between the officers and any other individual regarding
7 the subject incident directly relates to the juveniles and is deemed confidential. *See* NRS
8 62H.025.

9 RAGA’s Emergency Motion is also factually flawed. Counsel claims that the first time it
10 learned that the juveniles were arrested was through a phone call with LVMPD’s counsel. *See*
11 Emergency Motion at p.4, ¶ 5. To the contrary, on May 15, 2018, LVMPD informed RAGA that
12 the juveniles had been arrested. *See* Petition at Exhibit 1-I. LVMPD further explained that NRS
13 62H.025 and NRS 62H.030 governed dissemination of the requested records. *Id.* In response,
14 RAGA claimed that LVMPD’s interpretation was too broad and “does not encompass all
15 situations ‘involving juveniles arrested[.]’” *See* Petition at Exhibit 1-I. Whether by mistake, or
16 misrepresentation, RAGA’s claim that it recently learned of the arrests is simply not true.
17 Indeed, RAGA learned that the juveniles involved in the subject incident had been arrested
18 nearly four months prior to Senator Ford’s campaign press release.

19 RAGA’s Motion also misstates the communication between counsel. On September 24,
20 2018, Ms. McCarty contacted the undersigned to discuss LVMPD’s position on the requested
21 records. *See* Declaration of Jackie V. Nichols, Esq., attached hereto as **Exhibit A**. It was
22 explained to Ms. McCarty that LVMPD maintained the same position—the requested records
23 were subject to NRS 62H.025 and NRS 62H.030 and not subject to disclosure given that the
24 juveniles had been arrested. *Id.* Redaction of the footage was not discussed. *Id.* Ms. McCarty
25 also inquired into facts regarding the video footage including how many videos regarding the
26 incident existed and how many hours of footage existed. *Id.* At the time, counsel for LVMPD
27 had not yet reviewed the records and estimated approximately either 24 hours of footage or 24
28 videos. *Id.*

1 The following day, Ms. McCarty followed up with an email to LVMPD's counsel
2 claiming that this was the first time she had heard of the juveniles being arrested. *See* a true and
3 correct copy of the emails between counsel attached hereto as **Exhibit B**. Quite tellingly, Ms.
4 McCarty later acknowledged that the arrest of the juveniles would implicate the confidentiality
5 provisions set forth in NRS 62H.025 and prohibit disclosure. *Id.* Ms. McCarty also requested,
6 without any supporting authority, that she be provided copies of the footage prior to the matter
7 being heard on the merits. *Id.*

8 In response, the undersigned clarified that there were 16 total hours of footage associated
9 with the incident and explained that the officers involved had their cameras activated prior to
10 responding to the incident subject to RAGA's request, resulting in continuous footage. *Id.*
11 Counsel for LVMPD also indicated that LVMPD does not manipulate the footage, but associates
12 the entire video with the incident, despite the fact that entire video(s) may not be relevant to the
13 incident. *Id.* Nevertheless, in the event the Court orders production, the footage not relevant to
14 RAGA's request would be redacted. *Id.*

15 **C. THE NOVEMBER 13, 2017 INCIDENT.**

16 On November 13, 2017, LVMPD investigated an incident involving certain juveniles.
17 *See* Declaration of Officer Zarkowski attached hereto as **Exhibit C**. As a result of the
18 investigation, the juveniles were arrested for an alleged violation of law. *Id.* The incident did
19 not involve an arrest of any adult. *Id.* As a result of the arrest of the juveniles, LVMPD
20 provided its investigative file, including Body Worn Camera footage, to relevant personnel
21 within the juvenile justice system. *Id.*

22 **III. LEGAL ARGUMENT**

23 **A. LEGAL STANDARD.**

24 Under the Nevada Public Records Act ("NPR"), a person may request to inspect or
25 have a copy made of a public record from a governmental entity. *See* NRS 239.010. A
26 governmental agency may deny a public records request if the public record sought is deemed
27 confidential. NRS 239.0107(1)(d). In doing so, the governmental entity must inform the
28 requester that the requested records are confidential and cite to the legal authority that renders

1 the records confidential. *Id.* Upon denial of a request to inspect or copy records, the requester
2 may apply to the district court for an order requiring the disclosure or inspection of records.
3 NRS 239.011(1). Generally, a court is to presume that all public records are open to disclosure
4 unless either: (1) a statute has expressly created an exemption or exception to disclosure; or (2)
5 after balancing the interests for nondisclosure against the general policy of access, the court
6 determines restriction of public access is appropriate. *See City of Sparks v. Reno Newspapers,*
7 *Inc.*, 399 P.3d 352, 355 (2017). During a *judicial proceeding* regarding the confidentiality of
8 records, the governmental entity has the burden of proving by a preponderance of the evidence
9 that the requested record is confidential. NRS 239.0113 (emphasis added).

10 **B. THE RECORDS SOUGHT ARE DIRECTLY RELATED TO JUVENILES.**

11 Nevada maintains statutes that directly address juveniles and dissemination of related
12 records. *See* NRS Chapters 62 and 63. In its Petition, RAGA justifies its request under NRS
13 Chapter 179A, claiming that the record being sought pertains to criminal history information.
14 NRS 179A.070(2)(b), however, specifically excludes juveniles records from criminal history
15 information. Rather, NRS Chapter 62H governs the confidentiality and dissemination of juvenile
16 records. In particular, NRS 62H.025 provides:

17 Juvenile justice information is confidential and may only be released in
18 accordance with the provisions of this section or as expressly authorized by other
federal or state law.

19 The statute further defines “juvenile justice information” as “any information which is directly
20 related to a child in need of supervision, a delinquent child or any other child who is otherwise
21 subject to the jurisdiction of the juvenile court.” NRS 62H.025(6)(b). A child living or found
22 within the county who is alleged to have committed a delinquent act, is subject to the jurisdiction
23 of the juvenile court. NRS 62B.330. With respect to this particular statute, a child commits a
24 delinquent act when such an act violates the law. NRS 62B.330(2)(a)-(b).

25 Here, the juveniles were arrested for allegedly committing a delinquent act, rendering the
26 child subject to the jurisdiction of the juvenile court. Whether the footage depicts Senator Ford,
27 or any other adult, is of no consequence. The focus must be on the information being recorded.
28 In this instance, the information recorded and sought, concerns an incident involving the arrest of

1 juveniles. It follows that any communication between victims, witnesses, and officers regarding
2 the arrest of the juveniles on the body worn camera footage is directly related to the incident
3 involving a child subject to the jurisdiction of the juvenile court, i.e., juvenile justice
4 information. Thus, any record directly related to the juvenile incident at issue would be deemed
5 juvenile justice information and subject to the provisions in NRS 62H.025 and not the NPRA.

6 **C. JUVENILE RECORDS ARE NOT GOVERNED BY THE NPRA.**

7 In 2013, the Legislature made significant changes to the NPRA, and specifically to NRS
8 239.010 based upon recent Supreme Court decisions. *See* Assembly Bill 31, 77 Nev. Leg.,
9 *generally*. Today, NRS 239.010 provides:

10 Except as otherwise stated in this section and . . . NRS 62H.025, NRS 62H.030 . .
11 . and unless otherwise declared by law to be confidential . . . all public books and
12 public records of a governmental entity must be [subject to inspection] and may
be fully copied . . .

13 There is no doubt that the lists of statutes now enumerated within NRS 239.010 serve as
14 exceptions from the NPRA. In fact, the entire purpose of codifying statutes was to provide
15 clarity to both the public and government in determining what records were exempt from the
16 NPRA. *See* Hearing on AB 31 Before the Assembly Committee on Government Affairs, 77 Leg.
17 (Nev. Feb. 7, 2013).

18 Based on the inclusion of NRS 62H.025 and NRS 62H.030 within the set of statutes
19 exempted from the NPRA, it is clear that the Legislature recognized an exception to the NPRA
20 for juvenile records. In determining whether the instant juvenile records are required to be
21 disclosed, the Court must rely on NRS 62H.025 and NRS 62H.030—not the NPRA. However,
22 because this matter involves juvenile records, the juvenile court retains exclusive jurisdiction.
23 NRS 62B.310 and NRS 62B.410. Thus, this Court lacks jurisdiction to enter an order providing
24 for the dissemination of the subject juvenile records.

25 **D. THE JUVENILE COURT RETAINS EXCLUSIVE JURISDICTION OVER**
26 **THE RECORDS BEING REQUESTED.**

27 As indicated above, the records at issue pertain to a child subject to the jurisdiction of the
28 juvenile court. Because the records stem from the incident that placed the juvenile within the

1 juvenile court's jurisdiction, the juvenile court retains exclusive jurisdiction over the instant case.
2 A juvenile court retains exclusive jurisdiction over the juvenile and related records until the
3 juvenile court terminates its jurisdiction. NRS 62B.310 and NRS 62B.410; *see also Montesano*
4 *v. Donrey Media Group*, 99 Nev. 644, n.4, 868 P.2d 1081 (1983) (recognizing that although a
5 juvenile court loses jurisdiction over an individual who is 21 years old, publication of juvenile
6 records after the child reaches 21 years old is wholly without merit given the protective goals of
7 the Juvenile Court Act, which seeks to encourage rehabilitation of the youthful offenders).
8 Because the records being sought pertain to the very incident that placed the child within the
9 jurisdiction of the juvenile court, the juvenile court maintains jurisdiction to determine whether
10 the requested records may be disseminated.

11 In 2002, the Attorney General issued an opinion related to the dissemination of juvenile
12 records. *See Juveniles; Sex offenders; Parole and Probation*, Op. Att'y Gen. No. 2002-47
13 (December 31, 2002). The Attorney General addressed whether the Nevada Department of
14 Public Safety's Division of Parole and Probation ("Division") was prohibited from disseminating
15 unsealed juvenile record information, related to a violent crime or sex offense, to a third party
16 such as an employer, spouse, or potential victim. *Id.* at *1. While the Attorney General
17 ultimately determined that the Division is not prohibited from releasing violent crime or sex
18 offense information under certain circumstances, it also indicated that the Division should defer
19 to the juvenile court and NRS Chapter 62 for guidance. *Id.* at *5. Indeed, the Attorney General
20 recommended that the Division refer the requester to the juvenile court to demonstrate a
21 legitimate interest in the records. *Id.* Furthermore it is the juvenile court that may order the
22 records to be disseminated. *Id.*

23 Despite amendments to NRS Chapter 62 since 2002, the purpose and policy of the
24 Juvenile Court Act has remained intact. Juvenile records, including juvenile justice information,
25 must be sought from the juvenile court, as it is in the best position to determine whether or not
26 dissemination of such records is appropriate pursuant to NRS 62H.025. Thus, the juvenile court
27 retains exclusive jurisdiction to hear matters concerning the juvenile and related records.
28

1 Because this Court lacks jurisdiction, the Petition must be dismissed. Alternatively, this Court
2 should enter an order directing this case to the juvenile court.

3 **E. LVMPD IS NOT THE PROPER PARTY TO THIS CASE.**

4 NRS Chapter 62 makes clear that the Juvenile Justice Agency is responsible for releasing
5 records related to juveniles. The Juvenile Justice Agency may only release juvenile justice
6 information in certain circumstances outlined in NRS 62H.025. Generally, a request for juvenile
7 justice information must be directed at the Juvenile Justice Agency, not the law enforcement
8 agency. NRS 62H.025(3). A Juvenile Justice Agency may deny a request for information if the
9 request does not demonstrate good cause or the release of information would cause material
10 harm to the child or prejudice a court proceeding. *Id.* It is the Juvenile Justice Agency, not
11 LVMPD, in the position to make the determination whether the juvenile records are appropriate
12 for release. Not only are the subject records not governed by the NPRA, but a request for the
13 records must be directed to the Juvenile Justice Agency and not LVMPD.

14 Even if this Court determines that LVMPD is a proper party to this action, the Juvenile
15 Justice System is an indispensable party. *See* NRCP 19(b). To be sure, a Court that orders
16 juvenile justice information to be released must provide the Juvenile Justice Agency with notice
17 and an opportunity to be heard before the issuance of such order. NRS 62H.025(2)(r). Thus,
18 prior to ordering LVMPD to disseminate the requested records, including to opposing counsel,
19 this Court must notify the Juvenile Justice Agency¹ and give the agency an opportunity to be
20 heard on the matter.

21 **F. THE NPRA DOES NOT SUPPORT RAGA'S REQUEST FOR**
22 **EXAMINATION OF RECORDS.**

23 The NPRA does not permit records to be pre-disclosed prior to the case being heard on
24 the merits. RAGA improperly relies on NRS 239.010(3) to support its position that the records
25 should be provided to counsel. An agency is required to redact confidential information within
26

27 ¹ It is LVMPD's understanding that the Juvenile Justice Services is the proper Juvenile Justice Agency to
28 be notified.

1 public records as it relates to disclosure to the requester—not counsel. NRS 239.010(3).
2 Notably, RAGA’s counsel is not seeking to examine redacted versions of the records, but
3 requests to review all 16 hours of footage. More importantly, no language within the NPRA
4 requires, or even permits, records to be provided to counsel prior to the case being heard on the
5 merits. The Supreme Court has established the proper procedural vehicle for addressing the very
6 issue RAGA raises. The NPRA places the burden on the government agency to demonstrate that
7 the records at issue are confidential. NRS 239.0113. LVMPD has not yet been given this
8 opportunity. If LVMPD demonstrates that the records are, in fact, confidential, the inquiry ends.
9 RAGA, however, may argue that it was not given an opportunity to argue against confidentiality.
10 If the Court determines that LVMPD did not meet its burden and RAGA was not given an
11 opportunity to rebut confidentiality, the Court may order LVMPD to produce a *Vaughn* Index.
12 *Reno Newspapers v. Gibbons*, 127 Nev. 873, 882-84, 266 P.3d 623, 629-631 (2011). In
13 *Gibbons*, the court determined that the agency had failed to meet its burden and the in camera
14 proceeding was improper. *Id.* The court further explained that to preserve the adversarial
15 process the requester should have been provided the log that was given to the court, or at least
16 been provided a factual explanation of the emails and the privilege asserted. *Id.* The court
17 remanded the case to the lower court with instructions to direct the agency to provide the
18 requester with a log. *Id.*

19 This case does not require a *Vaughn* Index. RAGA’s request specifically outlines that it
20 seeks the BWC footage related to the incident involving minor children. Despite requesting
21 footage that depicts Senator Ford, the information within the videos explicitly pertains to
22 juvenile justice information which is deemed confidential per statute.² Moreover, when a per se
23 exemption exists, like NRS 62H.025 provides, a *Vaughn* Index is not required. *See Lewis v.*
24 *Internal Revenue Service*, 823 F.2d 375, 380 (9th Cir. 1987) (determining that a *Vaughn* Index
25 was not required because the documents requested were *per se* exempt from disclosure,

26
27 ² As counsel for LVMPD indicated previously, footage not related to the incident would be redacted as it
28 is not responsive to RAGA’s request. Nevertheless, the footage responsive to RAGA’s request, directly
concerns the incident involving the juveniles, who are subject to the jurisdiction of the juvenile court.

1 regardless of the content of the records, and the government did not gain an advantage by access
2 to material facts that the requester lacked).

3 The question in this case pertains to whether NRS 62H.025 and NRS 62H.030 prohibit
4 disclosure of the requested information. In other words, this Court must determine whether or
5 not the records are considered juvenile justice information. Neither a privilege log nor a cursory
6 review of the footage will assist RAGA in arguing against confidentiality pursuant to NRS
7 62H.025. More importantly, it is the Court—not Ms. McCarty herself—who must apply the law
8 and test the veracity of LVMPD’s confidentiality arguments. This, however, is done after
9 LVMPD has had an opportunity to argue the merits of the case. There is simply no legal
10 authority that supports RAGA’s request for examination of records prior to LVMPD being given
11 the opportunity to meet its burden.

12 **IV. CONCLUSION**

13 Based on the foregoing, LVMPD requests that this Court deny RAGA’s Emergency
14 Motion for examination of the body worn camera footage and dismiss the Petition for lack of
15 jurisdiction. If this Court determines it has jurisdiction, prior to ordering disclosure, it must
16 notify Juvenile Justice Services and provide it an opportunity to be heard on the matter. Finally,
17 neither a privilege log nor review of the records is proper in this case because the records are *per*
18 *se* exempt pursuant to NRS 62H.025 and NRS 62H.030 and would not assist RAGA in arguing
19 against confidentiality.

20 Dated this 3 day of October, 2018.

MARQUIS AURBACH COFFING

By: 

Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
*Attorneys for Respondent, Las Vegas
Metropolitan Police Department*

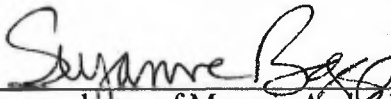
1 CERTIFICATE OF SERVICE

2 I hereby certify that the foregoing RESPONDENT LAS VEGAS METROPOLITAN
3 POLICE DEPARTMENT'S OPPOSITION TO REPUBLICAN ATTORNEYS GENERAL
4 ASSOCIATION'S EMERGENCY MOTION FOR EXAMINATION OF WITHHELD
5 RECORDS ON ORDER SHORTENING TIME was submitted electronically for filing and/or
6 service with the Eighth Judicial District Court on the 3rd day of October, 2018. Electronic
7 service of the foregoing document shall be made in accordance with the E-Service List as
8 follows:³

9
10 Deanna L. Forbush, Esq. .
11 Colleen E. McCarty, Esq.
12 CLARK HILL, PLLC
13 3800 Howard Hughes Pkwy., Suite 500
14 Las Vegas, NV 89169
15 dforbush@clarkhill.com
16 cmccarty@clarkhill.com
17 *Counsel for Petitioner,*
18 *Republican Attorneys General Association*

19 I further certify that I served a copy of this document by mailing a true and correct copy
20 thereof, postage prepaid, addressed to:

21 N/A

22 
23 _____
24 An employee of Marquis Aurbach Coffing

25
26
27 ³ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
28 consents to electronic service in accordance with NRCP 5(b)(2)(D).

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

EXHIBIT "A"

RAGA000023
JA000228

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DECLARATION OF JACKIE V. NICHOLS, ESQ. IN SUPPORT OF OPPOSITION TO EMERGENCY MOTION FOR EXAMINATION OF WITHHELD RECORDS

JACKIE V. NICHOLS, ESQ., declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am duly licensed to practice law in the State of Nevada and have personal knowledge of and I am competent to testify concerning the facts herein.

3. I make this declaration in support of Respondent Las Vegas Metropolitan Police Department's Opposition to Republican Attorneys General Associate's Emergency Motion for Examination of Withheld Records on Order Shortening Time filed on behalf of the Respondent, Las Vegas Metropolitan Police Department ("LVMPD"), in the case Republican Attorneys General Association v. Las Vegas Metropolitan Police Department, District Court Case No. A-18-780538-W.

4. I am the attorney for the Respondent, LVMPD in the above-referenced matter.

5. On September 24, 2018, Ms. McCarty contacted me to discuss LVMPD's position on the requested records.

6. I explained to Ms. McCarty that LVMPD maintained the same position—that the records requested are subject to NRS 62H.025 and NRS 62H.030 and not subject to disclosure given that the juveniles had been arrested.

7. Neither redaction nor examination of the body worn camera footage was discussed.

8. Ms. McCarty also inquired into facts regarding the video footage including how many videos regarding the incident there were and how many hours of footage existed.

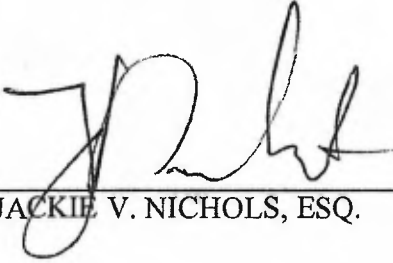
9. At the time, I had not yet reviewed the records but had an understanding that there may be approximately either 24 hours of footage or 24 videos.

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10. On September 25, 2018, Ms. McCarty followed up with an email requesting that the body worn camera footage be provided for her review prior to this matter being heard on the merits. See a true and correct copy of the email exchange between counsel attached to the Opposition to Emergency Motion for Examination of Withheld Records as **Exhibit B**.

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 3 day of October, 2018.



JACKIE V. NICHOLS, ESQ.

EXHIBIT “B”

**RAGA000026
JA000231**

Jackie V. Nichols

From: McCarty, Colleen E. <cmccarty@clarkhill.com>
Sent: Tuesday, September 25, 2018 12:13 PM
To: Jackie V. Nichols
Cc: Nick Crosby; Forbush, Deanna L.; Robertson, Cristina P.
Subject: RE: RAGA v. LVMPD
Attachments: image001.jpg

Ms. Nichols,

Thank you for your prompt response. For clarification, RAGA's request is solely for records involving Senator Aaron Ford, an adult. As we have stated, we have no interest in obtaining records regarding juveniles. And, until we spoke yesterday, based on the statements from Senator Ford's campaign, we were under the impression that no juveniles had actually been arrested, negating the applicability of NRS 62H.025.

Further, the recording you describe, i.e. 16 hours of continuous recording, is contrary to Metro policy which requires generally that officers activate the body camera when they respond to a call and deactivate it when the call concludes. I am unfamiliar with any scenario wherein an office would simply record all day as that would render labeling and categorizing the videos nearly impossible. Such inconsistencies make it all that more necessary for counsel to view the videos as soon as possible.

Finally, NRS 239.010(3) requires redaction of confidential information from information that is not otherwise confidential. Any records involving Senator Ford, an adult, are in no way confidential and should be produced. In order to ensure that we are able to have adequate adversarial testing of Metro's claims regarding the video, we believe your client's response leaves my client with no alternative but to seek a court order to view the video in question and we will proceed accordingly.

Colleen

Colleen E. McCarty
Associate

CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500 | Las Vegas, Nevada 89169
(702) 697-7502 (direct) | (702) 862-8400 (fax)
CMccarty@ClarkHill.com | www.clarkhill.com

From: Jackie V. Nichols [mailto:jnichols@maclaw.com]
Sent: Tuesday, September 25, 2018 8:57 AM
To: McCarty, Colleen E.
Cc: Nick Crosby; Forbush, Deanna L.; Robertson, Cristina P.
Subject: RE: RAGA v. LVMPD [IWOV-iManage.FID1042505]

Ms. McCarty,

For clarification, there is approximately 16 hours of video. The reason for 16 hours is that the officers involved had their body worn cameras running for hours prior to the event that you are seeking records for. Because the cameras were continuously recording, the entire video is associated with incident. In other words, LVMPD does not manipulate the recording to only include the subject incident if the officer's video includes other unrelated footage. Nonetheless, this information does not pertain to your client's request. The request at issue specifically identifies the incident involving **minor children** on November 13, 2017, at 7008 Connor Cove Street. The actual footage related to the incident is less than the total 16 hours of footage. Thus, the information contained

RAGA000027
JA000232

those videos, such as traffic stops, would be redacted in the event of production because they are not subject to your request and entirely unrelated.

However, as I explained on the phone, and as recognized by your client's request, this incident involves juveniles. Indeed, the request asks for records related to the minor children. In accordance with NRS 62h.025, this information contains juvenile justice information which is only to be released to certain individuals or entities under certain circumstances. Nothing within that statute provides for redaction given the sensitive information. Given the provisions of NRS 62h.025, LVMPD does not have authority to enter into any agreement to allow you to review records that are clearly confidential.



**MARQUIS AURBACH
COFFING**

Jacqueline V. Nichols, Esq.

10001 Park Run Drive


Las Vegas, NV 89145

t | 702.207.6091

f | 702.856.8991

jnichols@maclaw.com

maclaw.com

 Please consider the environment before printing this e-mail!

Pursuant to IRS Circular 230, any tax information or written tax advice contained herein (including any attachments) is not intended to be and can neither be used by any person for the purpose of avoiding tax penalties nor used to promote, recommend or market any tax-related matter addressed herein.

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you.
Marquis Aurbach Coffing - Attorneys at Law

From: McCarty, Colleen E. [mailto:cmccarty@clarkhill.com]

Sent: Monday, September 24, 2018 1:29 PM

To: Jackie V. Nichols

Cc: Nick Crosby; Forbush, Deanna L.; Robertson, Cristina P.

Subject: RAGA v. LVMPD

Ms. Nichols,

Thank you for taking the time to speak with me this morning. In follow-up to our conversation, I was surprised to learn, based on my understanding of the facts and circumstances at issue (albeit limited) that there are 24 to 26 hours of videos, or 24 to 26 videos at play. I was also surprised to learn that the entirety of the video involved juvenile arrests such that redactions would be unavailable.

Accordingly, it seems clear to me that in order to provide the Court with a clear picture of the public records at issue, and the potential for redaction, counsel will need to view the videos. To that end, would your client agree to a stipulated temporary protective order for attorney's eyes only viewing of the videos as soon as possible? Absent that, counsel will have insufficient information with which to meaningfully contest Metro's claim of confidentiality and my client will have no alternative but to seek Court intervention.

**RAGA000028
JA000233**

Given the time sensitivity of this matter, if I do not receive a response from you by noon tomorrow, September 25, 2018, I will assume your client is unable and/or unwilling to agree to our request.

In an effort to accommodate any logistical concerns, counsel is willing to view the videos at Metro HQ at your earliest convenience. Should you wish to discuss this matter further, please do not hesitate to contact me.

Colleen

Colleen E. McCarty

Associate

CLARK HILL PLLC

3800 Howard Hughes Parkway, Suite 500 | Las Vegas, Nevada 89169

(702) 697-7502 (direct) | (702) 862-8400 (fax)

CMccarty@ClarkHill.com | www.clarkhill.com

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify us immediately by reply email and destroy all copies of this message and any attachments. Please do not copy, forward, or disclose the contents to any other person. Thank you.

RAGA000029
JA000234

EXHIBIT "C"

RAG A000030
JA000235

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DECLARATION OF SEBASTIAN ZARKOWSKI, POLICE OFFICER II
LAS VEGAS METROPOLITAN POLICE DEPARTMENT

I, Sebastian Zarkowski, hereby declare under the penalty of perjury:

1. I have personal knowledge of the facts stated herein, except for those stated upon information and belief, and, as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. That I am employed by the Las Vegas Metropolitan Police Department (LVMPD) as a Police Officer II.

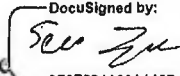
3. That on November 13, 2017 at approximately 1600 hours I was dispatched to a call involving juveniles under LVMPD Event No. 17113-2462.

4. That the juveniles were arrested for an alleged violation of law. The incident did not involve an arrest of any individual adult.

5. As a result of the arrest of the juveniles, LVMPD provided its investigative file to relevant personnel within the juvenile justice system.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. NRS 53.045.

EXECUTED this 2nd day of October, 2018.

DocuSigned by:

Signature _____
0F0E221A00A145D...
Sebastian Zarkowski

**APPENDIX PROPOSED
EXHIBIT 3**

**APPENDIX PROPOSED
EXHIBIT 3**

JAVS
RECORDING OF HEARING ON
EMERGENCY MOTION FOR EXAMINATION
OF WITHHELD RECORDS
ON ORDER SHORTENING TIME

Case No. A-18-780538-W
Republican Attorneys General Association
v.
The Eighth Judicial District Court, in
and for the County of Clark, and the Honorable Kerry Earley,
District Judge

Recording of Hearing on Emergency Motion
For Examination of withheld Records on
Order Shortening Time

JA000238

A-18-780538-W Republican Attorneys General Association, Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

October 09, 2018 09:00 AM OST

HEARD BY: Earley, Kerry COURTROOM: RJC Courtroom 11C

COURT CLERK: Ortega, Natalie

RECORDER: Nichols, Sharon

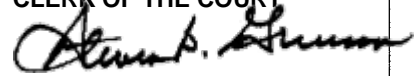
REPORTER:

PARTIES PRESENT:

Colleen E. McCarty Attorney for Plaintiff
Deanna Forbush Attorney for Plaintiff
Jacqueline Nichols Attorney for Defendant

JOURNAL ENTRIES

Upon Court's inquiry, Ms. Forbush advised the writ of mandamus had not been accepted. Court noted it still retained jurisdiction. Further, this hearing was continued to determine the length, as in time frame, of the footage Ms. Nichols noted it was six hours of body cam footage stating there was no more than two hours depicting Senator Aaron Ford. Colloquy by counsel regarding the video footage. COURT ORDERED, matter HEARD; Las Vegas Metropolitan Police Department to provide the in camera review of all footage related to this event, for the Court's review.



1 **Marquis Aurbach Coffing**
2 Nick D. Crosby, Esq.
3 Nevada Bar No. 8996
4 Jackie V. Nichols, Esq.
5 Nevada Bar No. 14246
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 ncrosby@maclaw.com
11 jnichols@maclaw.com
12 *Attorneys for Respondent, Las Vegas*
13 *Metropolitan Police Department*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 REPUBLICAN ATTORNEYS GENERAL
11 ASSOCIATION,

Case No.: A-18-780538-W
Dept. No.: IV

12 Petitioner,

13 vs.

14 LAS VEGAS METROPOLITAN POLICE
15 DEPARTMENT,

Respondent.

16 **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S**
17 **RESPONSE TO REPUBLICAN ATTORNEYS GENERAL ASSOCIATION'S PUBLIC**
18 **RECORDS ACT APPLICATION PURSUANT TO NRS 239.001/PETITION FOR WRIT**
19 **OF MANDAMUS**

20 Respondent Las Vegas Metropolitan Police Department ("LVMPD" or the
21 "Department"), by and through its attorneys of record, Nicholas Crosby, Esq. and Jackie Nichols,
22 Esq., of the law firm of Marquis Aurbach Coffing, hereby files its Response to Republican
23 Attorneys General Association's Public Records Act Application Pursuant to NRS
24 239.001/Petition for Writ of Mandamus.

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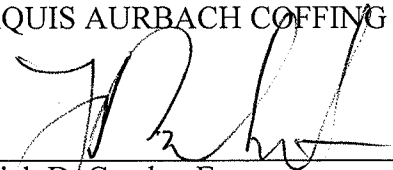
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1 This Response is made and based upon the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities, and any oral argument allowed by the Court at a hearing
3 on this matter.

4 Dated this 10 day of October, 2018.

MARQUIS AURBACH COFFING

6
7
8 By: 
9 Nick D. Crosby, Esq.
10 Nevada Bar No. 8996
11 Jackie V. Nichols, Esq.
12 Nevada Bar No. 14246
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 *Attorneys for Respondent, Las Vegas*
16 *Metropolitan Police Department*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 The records being sought directly relate to a juvenile incident that places the juveniles
20 within the exclusive jurisdiction of the juvenile court. Because the information sought pertains
21 to juveniles, the Juvenile Justice Act governs—not the NPRA. This is further evidenced by the
22 fact that NRS 62H.025 and NRS 62H.030 are codified within the list of statutes that are exempt
23 from the NPRA’s application.

24 In particular, RAGA seeks Body Worn Camera footage related to a juvenile incident.
25 While RAGA attempts to distinguish its request by characterizing it as a request related to
26 Senator Ford, there is no dispute that the incident at issue involves juveniles, not adults or
27 Senator Ford. The appearance of adults, parents, and witnesses in the background at the crime
28 scene do not remove the subject records outside the realm of juvenile justice information. The
Body Worn Camera footage expressly pertains to the crime scene, depicts the arrested juveniles,
and contains communications regarding the charges and juvenile process.

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1 The Legislature has explicitly deemed these records confidential. In certain
2 circumstances, such as a court order, juvenile justice information may be disseminated. Unlike
3 the NPRA, the Juvenile Justice Act requires the requester to demonstrate a legitimate interest in
4 access to the records. There is simply no legitimate interest that exists to disseminate the
5 confidential juvenile records to RAGA. Finally, if the Court determines that disclosure is
6 warranted, it is statutorily required to notify Juvenile Justice Services and give it an opportunity
7 to be heard.

8 **II. STATEMENT OF FACTS**

9 **A. THE JUVENILE INCIDENT.**

10 On November 13, 2017, LVMPD investigated an incident involving certain juveniles.
11 See Declaration of Officer Zarkowski attached hereto as **Exhibit A**. As a result of the
12 investigation, the juveniles were arrested for an alleged violation of law. *Id.* The incident did
13 not involve an arrest of any adult. *Id.* Because the juveniles were arrested, LVMPD was
14 required to notify the parents of the incident. See NRS 62C.010 (requiring an officer to notify
15 the parent or guardian of the child that is taken into custody). LVMPD provided its investigative
16 file, to relevant personnel within the juvenile justice system. *Id.*

17 In accordance with LVMPD's policies, the officers at the scene had activated their Body
18 Worn Cameras. Below is a chart of the officers with activated cameras, what time the Body
19 Worn Camera was activated and the length of the video:

<u>Officer</u>	<u>Recorded On</u>	<u>Video Length</u>
Gregory	3:31 PM	0:30:31
Hansen	3:34 PM	0:30:31
Kelly	3:38 PM	0:03:57
Byers	3:41 PM	0:00:51
Byers	3:43 PM	0:02:31
Zarkowski	3:44 PM	0:17:45
Byers	3:52 PM	0:02:10
Gregory	4:01 PM	0:14:04
Zarkowski	4:01 PM	1:13:40
Byers	4:02 PM	0:01:24

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Byers	4:04 PM	0:04:13
Hansen	4:05 PM	0:02:12
Kelly	4:25 PM	0:38:43
Byers	4:37 PM	0:03:15
Byers	4:44 PM	0:03:37
Byers	4:47 PM	0:03:58
Byers	4:53 PM	0:06:32
Donegan	5:01 PM	0:04:39
Byers	5:07 PM	0:06:18
Donegan	5:08 PM	0:01:29
Donegan	5:11 PM	0:54:59
Zarkowski	5:15 PM	0:48:45

See Privilege Log of Videos attached hereto as **Exhibit B.**¹ Prior to February 2018, officers had the ability to “mute” the Body Cam. See Declaration of Ofc. Pinto attached hereto as **Exhibit C.** LVMPD policy allows the muting of the camera during an investigation if there may be personal conversations or sensitive information being discussed, including information related to juveniles. *Id.* This policy was in place during November 2017 and remains in place. *Id.* However, the mute button on the cameras has been deactivated since February 2018. *Id.* Some of the footage produced to the Court for *in camera* review contains sections where the officers’ utilized the mute button. *Id.* Nevertheless, the information contained on the videos directly relates to the juveniles because the footage is recorded at the crime scene, depicts the arrested juveniles, and contains discussions regarding the charges and juvenile process. See Exhibit B.

B. REQUESTS FOR RECORDS DIRECTLY RELATED TO JUVENILES.

Republican Attorneys General Association (“RAGA”) has sought records pertaining to juveniles. See Petition for Writ of Mandamus (“Petition”) at Exhibits 1-A, 1-C, 1-F, and 1-I. While RAGA claims it only seeks the Body Worn Camera (“BWC”) footage from a particular event involving juveniles, its request specifically seeks the following information:

¹ Pursuant to this Court’s order, LVMPD provided the Court with the following videos for *in camera* inspection: Zarkowski (4:01 PM); Kelly (4:25 PM); and Byers (4:37 PM, 4:44 PM, and 5:07 PM).

1 [W]e request all body camera footage and or audio from body camera footage (if
2 visual images do not exist), the police or investigative report or summary, witness
3 and or victim statements, all computer aided dispatch (CAD) between all LVMPD
4 personnel at the scene and with dispatch or any other statements by officers or
5 witnesses related to an incident with LVMPD Officer Zarkowski **concerning**
6 **minor child _____ and/or _____**, Aaron D. Ford (State Senator) at
7 approximately 3:00 p.m. on November 13, 2017 at 7008 Connor Cove Street, Las
8 Vegas, NV 89118.

9 *Id.* at Exhibit 1-C and 1-F (emphasis added). Notably, RAGA redacted the minor child’s
10 name(s) in its Petition with Court because it recognized that juvenile information is protected
11 under NRS 62H.020 and 62H.025. Nevertheless, it cannot be any clearer that RAGA’s request
12 directly relates to a minor child. *Id.*

13 In an attempt to circumvent the confidential nature of its requests, RAGA claims that it is
14 seeking information related to Senator Ford, not the juveniles. *See* Exhibit 1-I. It is also
15 important to note that the request is not limited to Body Worn Camera footage. Indeed, RAGA
16 seeks investigative reports and Computer Aided Dispatch (“CAD”) related to the juvenile
17 incident. *Id.* RAGA’s amended characterization of its request does not place it outside the realm
18 of juvenile justice information as defined in NRS 62H.025. *See* Exhibit 1-J. In fact, RAGA
19 recognizes that its request relates to a juvenile incident as its most recent request excludes any
20 information that may be confidential pursuant to NRS 62H.025 and NRS 62H.030. *Id.*

21 **III. LEGAL ARGUMENT²**

22 **A. LEGAL STANDARD.**

23 **1. The NPRA.**

24 Under the Nevada Public Records Act (“NPRA”), a person may request to inspect or
25 have a copy made of a public record from a governmental entity. *See* NRS 239.010. A
26 governmental agency may deny a public records request if the public record sought is deemed
27 confidential. NRS 239.0107(1)(d). In doing so, the governmental entity must inform the
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² LVMPD incorporates its jurisdictional arguments made in its Opposition to RAGA’s Emergency Motion for Examination of Records. Specifically, LVMPD contends that the juvenile court retains exclusive jurisdiction over the records at issue. Because the records sought pertain to a juvenile incident that placed the children within the exclusive jurisdiction of the juvenile court, the juvenile court retains jurisdiction to determine whether dissemination is warranted pursuant to the Juvenile Justice Act.

1 requester that the requested records are confidential and cite to the legal authority that renders
2 the records confidential. *Id.* The governmental agency may also notify the requester that a
3 public record cannot be made available within the 5-day time period. NRS 239.0107(1)(c). If
4 this is the case, the governmental entity must provide a date when the record withheld will be
5 made available. *Id.* In the event the record is not made available by that date, “the person may
6 inquire regarding the status of the request.” *Id.*

7 Upon denial of a request to inspect or copy records, the requester may apply to the
8 district court for an order requiring the disclosure or inspection of records. NRS 239.011(1).
9 Generally, a court is to presume that all public records are open to disclosure unless either: (1) a
10 statute has expressly created an exemption or exception to disclosure; or (2) after balancing the
11 interests for nondisclosure against the general policy of access, the court determines restriction of
12 public access is appropriate. *See City of Sparks v. Reno Newspapers, Inc.*, 399 P.3d 352, 355
13 (2017). During a *judicial proceeding* regarding the confidentiality of records, the governmental
14 entity has the burden of proving by a preponderance of the evidence that the requested record is
15 confidential. NRS 239.0113 (emphasis added).

16 In this case, the provisions set forth in the Juvenile Justice Act, specifically NRS Chapter
17 62H (Records Related to Children), expressly addresses the records at issue—records directly
18 pertaining to children subject to the jurisdiction of the juvenile court. As such, the Juvenile
19 Justice Act, not the NPRA, governs the dissemination of the requested records.

20 **2. The Juvenile Justice Act.**

21 Although RAGA initiated this action under the provisions of the NPRA, this matter is
22 governed by the Juvenile Justice Act codified at NRS Chapters 62 and 63. The Legislature
23 explicitly recognized the Juvenile Justice Act as an exemption to the NPRA. *See* NRS
24 239.010(1). In 2013, the Legislature made significant changes to the NPRA, and specifically to
25 NRS 239.010 based upon recent Supreme Court decisions. *See* Assembly Bill 31, 77 Nev. Leg.,
26 *generally*. Today, NRS 239.010 provides:

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1 Except as otherwise stated in this section and . . . NRS 62H.025, NRS 62H.030 . .
2 . and unless otherwise declared by law to be confidential . . . all public books and
3 public records of a governmental entity must be [subject to inspection] and may
4 be fully copied . . .

4 There is no doubt that the lists of statutes now enumerated within NRS 239.010 serve as
5 exceptions from the NPRA. In fact, the entire purpose of codifying statutes was to provide
6 clarity to both the public and government in determining what records were exempt from the
7 NPRA. See Hearing on AB 31 Before the Assembly Committee on Government Affairs, 77 Leg.
8 (Nev. Feb. 7, 2013). Based on the inclusion of NRS 62H.025 and NRS 62H.030 within the set of
9 statutes exempted from the NPRA, it is clear that the Legislature recognized an exception to the
10 NPRA for juvenile records. In determining whether the instant juvenile records are required to
11 be disclosed, the Court must rely on NRS 62H.025 and NRS 62H.030—not the NPRA.

12 Even if this Court rejects LVMPD’s exemption argument, statutory construction requires
13 the application of the specific statute, NRS 62H.025, and not the NPRA. “When two statutory
14 provisions conflict, this court employs the rules of statutory construction and attempts to
15 harmonize conflicting provisions so that the act as a whole is given effect.” *State v. Eighth Jud.*
16 *Dist. Court*, 129 Nev. 492, 508, 306 P.3d 369, 380 (2013) (internal citations omitted). “Under
17 the general/specific canon, the more specific statute will take precedence and is construed as an
18 exception to the more general statute, so that, when read together, the two provisions are not in
19 conflict, but can exist in harmony.” *Williams v. State, Dep’t of Corr.*, 133 Nev. ____, ____, 402
20 P.3d 1260, 1265 (internal citations and quotation marks omitted); see also *Piroozi v. Eighth Jud.*
21 *Dist. Court*, 131 Nev. 1004, 1009, 363 P.3d 1168, 1172 (2015) (providing that “[w]here a
22 general and a special statute, each relating to the same subject, are in conflict and they cannot be
23 read together, the special statute controls” (internal quotation marks omitted)). Because the
24 Juvenile Justice Act governs the confidentiality and dissemination of records related to children
25 and the NPRA pertains to all records within a government agency’s legal control or custody, the
26 Juvenile Justice Act is the special statute and controls here.

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1 **B. WAIVER IS NOT A REMEDY PROVIDED BY EITHER THE NPRA OR**
2 **JUVENILE JUSTICE ACT.**

3 Nothing within the NPRA or Juvenile Justice Act explicitly provides for waiver as to an
4 agency's failure to timely deny a request. With respect to the NPRA, the remedy is to submit an
5 application with the court and request to inspect or obtain a copy of the records. NRS 239.011.
6 It seems logical that failing to timely deny request, in effect, acts as a denial of the record. Thus,
7 a denial of a record permits the requester to seek judicial intervention for access to the same. *Id.*
8 Similarly, the Juvenile Justice Act permits dissemination of juvenile justice information in
9 specific instances, one of which is through a court order. NRS 62H.030. The Act does not
10 address waiver because the burden falls on the requester to demonstrate a legitimate interest for
11 disclosure. *Id.*

12 RAGA's reliance on other non-binding orders by courts within the Eighth Judicial
13 District that have accepted the waiver argument is unpersuasive. Quite tellingly, RAGA cannot
14 point to a single authority, from Nevada or other states, that supports its waiver theory. RAGA
15 also ignores the cases where the courts denied to apply such a waiver theory. For instance, the
16 Honorable Judge Richard Scotti recently rejected the waiver argument in relation to the 1
17 October Massacre records. *See LVRJ, et al., v. LVMPD*, Eighth Judicial District Court, Case No.
18 A-17-764030-W; *see also LVRJ v. City of Henderson*, Eighth Judicial District Court, Case No.
19 A-16-747289-W; and *LVRJ, et al., v. Clark County Office of the Coroner/Medical Examiner*,
20 Eighth Judicial District Court, Case No. A-17-764842-W. Moreover, the orders cited by RAGA
21 are not binding precedent and should not be considered by this Court on its determination of
22 waiver.

23 More importantly, the Nevada Supreme Court has expressly established that if a statute
24 provides a remedy, it will not read any additional remedies into the statute. *Richardson Const.,*
25 *Inc. v. Clark Cnty. School Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 24 (2007). In *Richardson Const.*,
26 the court analyzed NRS 338.1381 in determining whether the statutory scheme at issue permitted
27 a private cause of action. *Id.* The court concluded that NRS 338.1381 expressly authorized a
28 means of remedying any wrongful prequalification denial: an administrative hearing, followed,

1 if necessary, by judicial review. *Id.* Because the statute provides an express remedy, the Court
2 refused to read any additional remedies into the statute, finding there was no private cause of
3 action. *Id.*

4 This analysis applies with equal strength to the NPRA and the Juvenile Justice Act. The
5 NPRA directly provides for judicial intervention as a remedy when public records requests are
6 denied. Because the NPRA provides an express remedy, this Court is prohibited from reading
7 any additional remedies, including waiver, into the statute. Furthermore, nothing within the
8 NPRA provides that confidentiality is waived by failing to timely to respond to public records
9 requests. Failing to timely respond is the equivalent of a denial, which permits the requester to
10 seek judicial intervention for an order to access to the records. This is further supported by the
11 statutory language that places the burden on the governmental entity to demonstrate
12 confidentiality in a *judicial proceeding*. See NRS 239.0113 (emphasis added). An interpretation
13 of the NPRA to include waiver would render an agency's obligation in a judicial proceeding
14 superfluous. See *In Re Estate of Murray*, 131 Nev. Adv. Op. 8, 344 P.3d 419 (2015) (requiring
15 the court to must a statute's terms their plain meaning, considering its provisions as a whole so as
16 to read them in a way that would not render words or phrases superfluous or make a provision
17 nugatory). Likewise, nothing in NRS 62H.025 permits waiver. To the contrary, the statute
18 explicitly provides that juvenile justice information is confidential, as well as juvenile
19 fingerprints and photographs depicting juveniles.³ NRS 62H.025; NRS 62H.010. The Juvenile
20 Justice Act also permits the Juvenile Justice Agency to release information to a request upon the
21 issuance of a court order. NRS 62H.025(1)(r).

22 Generally, courts have recognized waiver regarding juvenile information in instances
23 where the confidential information is put at issue, by the juvenile, in a civil proceeding. See *Doe*
24 *v. D'Angelo*, 154 A.D.3d 1300 (N.Y. 2017) (finding that the privilege governing records related
25 to juveniles is waived where the individual affirmatively places the information or conduct in
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27 ³ It is LVMPD's position that photographs encompasses the Body Worn Camera videos because the
28 footage contains images of juveniles.

1 issue); *State v. Brockelbank*, 33 A.3d 925 (Ma. 2011) (holding that the defendant, by voluntarily
2 submitting information related to his nonpublic juvenile adjudication at sentencing hearing,
3 waived, to a limited degree, the statutory protection from disclosure of information related to
4 nonpublic juvenile adjudications); *Bishop v. Craft-Jones*, 2 F.Supp.2d 1317 (D. Or. 1998)
5 (determining that depositions and transcripts of testimony in a juvenile proceeding were required
6 to be turned over to a city, following institution of a civil action against the city for deprivation
7 of civil rights occurring in connection with the juvenile proceeding; commencement of the civil
8 proceeding was a waiver of the confidentiality of the juvenile proceedings). Because the
9 juveniles have not placed the confidential records at issue, there is no waiver.

10 From a public policy perspective, waiver of confidentiality would undermine the very
11 purpose of the Juvenile Justice Act. Moreover, LVMPD cannot waive a privilege that belongs to
12 the Juvenile Justice Agency, pursuant to NRS 62H.025, or the juvenile. In essence, RAGA
13 requests that this Court strip the juveniles of the very protections explicitly recognized and
14 codified by Legislature. Such an interpretation of the confidentiality provision is not only absurd
15 but inherently contrary to the purpose of protecting juvenile justice information.

16 **C. RECORDS RELATED TO CHILDREN ARE EXPLICITLY DEEMED**
17 **CONFIDENTIAL.**

18 **1. The Records Sought are Directly Related to Children Subject to the**
Jurisdiction of the Juvenile Court, and Thus, are Confidential.

19 Juvenile justice information is confidential and may only be released in accordance with
20 the provisions of NRS 62H.025. A juvenile justice agency—not law enforcement—may release
21 juvenile justice information to a person who is authorized by a court order to receive the juvenile
22 justice information, if the juvenile justice agency was provided with notice and opportunity to be
23 heard before the issuance of the order. NRS 62H.025(1)(r). Upon a request for juvenile justice
24 information, a juvenile justice agency may deny such a request if the request does not
25 demonstrate good cause for the release of information or if the release of such information would
26 cause material harm to the child or prejudice any court proceeding to which the child is subject.
27 NRS 62H.025(3).

1 Juvenile justice information is “any information which is directly related to a child in
2 need of supervision, a delinquent child or any other child who is otherwise subject to the
3 jurisdiction of the juvenile court.” NRS 62H.025(6)(b). A child living or found within the
4 county who is alleged to have committed a delinquent act, is subject to the jurisdiction of the
5 juvenile court. NRS 62B.330. With respect to this particular statute, a child commits a
6 delinquent act when such an act violates the law. NRS 62B.330(2)(a)-(b). The Act also protects
7 against the disclosure of juvenile images. NRS 62H.010(4). Photographs and videos of children
8 in custody may be inspected only to conduct criminal investigations and photographic lineups.
9 *Id.*; *see People v. Pollock*, 13 Cal. Rptr. 3d 34, 46, 89 P.3d 353 (2004) (considering video
10 evidence under the same rules that apply to photographs); *Perez v. State*, 653 S.W.2d 878 (Tex.
11 1983) (finding that movie pictures, being but a succession of photographs, are governed by the
12 same rules that apply to still photographs).

13 Here, the juveniles were arrested for allegedly committing a delinquent act, rendering the
14 child subject to the jurisdiction of the juvenile court. Furthermore, because the juveniles were
15 within the custody of LVMPD, any images depicting the juveniles is prohibited from disclosure.
16 Whether the footage depicts Senator Ford, or any other adult, in the background is of no
17 consequence. The focus must be on the information being recorded. In this instance, the
18 information recorded and sought concerns an incident involving the arrest of juveniles. It
19 follows that any communication between victims, witnesses, and officers regarding the arrest of
20 the juveniles on the Body Worn Camera footage is directly related to the incident involving a
21 child subject to the jurisdiction of the juvenile court, i.e., juvenile justice information. RAGA
22 argues that any communication between officers and Senator Ford does not concern the
23 juveniles. Contrary to RAGA’s assertions, the information and communication on the videos are
24 directly related to the juvenile incident, including communications regarding the charges brought
25 and the juvenile process.

26 While some of the footage depicting Senator Ford lacks audio, this Court must take extra
27 precaution in ordering the disclosure of such footage. Despite the fact that there may not be an
28 audio component to portions of the footage, disclosing the videos, or any portion thereof, will

1 provide information related to the crime committed, the location of the crime, and the victim
2 involved. Although this generally may not cause harm, it is important to recognize that RAGA
3 has the identity of the juveniles, which is usually not the case. Additional information provided
4 pertaining to the juvenile incident will circumvent the very purpose and policy behind the
5 Juvenile Justice Act, which is to give juveniles an opportunity to rehabilitate themselves without
6 the information becoming public. Thus, any record directly related to the juvenile incident at
7 issue would be deemed juvenile justice information and subject to the provisions in NRS
8 62H.025 and not the NPRA. Nevertheless, NRS 62H.025 expressly declares the requested
9 records confidential, as required by the NPRA.

10 **2. It is RAGA's Burden to Demonstrate that a Legitimate Interest**
11 **Exists.**

12 Records of any case brought before the juvenile court may be opened to inspection only
13 by court order to persons who have a legitimate interest in the records. NRS 62H.030. Upon a
14 request for juvenile justice information, a juvenile justice agency may deny such a request if the
15 request does not demonstrate good cause for the release of information or if the release of such
16 information would cause material harm to the child or prejudice any court proceeding to which
17 the child is subject. NRS 62H.025(3).

18 Prior to ordering disclosure, RAGA must satisfy its burden to demonstrate that it has a
19 legitimate interest in receiving the requested records. RAGA cannot meet its burden. Courts
20 have determined that a legitimate interest for access, to otherwise confidential juvenile records,
21 exists to ensure a fair trial in the criminal context. *See Davis v. Alaska*, 415 U.S. 308 (1974). A
22 legitimate interest in access may also exist in civil proceedings where victims seek to bring a
23 civil action against the juvenile for the delinquent act. *See NRS 62H.040*. In these instances,
24 courts have found that the requester had a legitimate interest in the records sought. Obtaining
25 juvenile records that are completely unrelated to Senator Ford for the purposes of an election is
26 not a legitimate interest. On the other hand, a legitimate interest argument could be made if the
27 records sought pertained to Senator Ford when he was a juvenile. The records sought do not
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1 pertain to Senator Ford; therefore, the upcoming election is not a basis for access to juvenile
2 records.

3 **D. JUVENILE JUSTICE SERVICES IS AN INDISPENSABLE PARTY.**

4 NRS Chapter 62 makes clear that the Juvenile Justice Agency is responsible for releasing
5 records related to juveniles. The Juvenile Justice Agency may only release juvenile justice
6 information in certain circumstances outlined in NRS 62H.025. Generally, a request for juvenile
7 justice information must be directed at the Juvenile Justice Agency, not the law enforcement
8 agency. NRS 62H.025(3). A Juvenile Justice Agency may deny a request for information if the
9 request does not demonstrate good cause or the release of information would cause material
10 harm to the child or prejudice a court proceeding. *Id.* It is the Juvenile Justice Agency, not
11 LVMPD, in the position to make the determination whether the juvenile records are appropriate
12 for release. Not only are the subject records not governed by the NPRA, but a request for the
13 records must be directed to the Juvenile Justice Agency and not LVMPD.

14 Even if this Court determines that LVMPD is a proper party to this action, the Juvenile
15 Justice System is an indispensable party. *See* NRCP 19(b). To be sure, a Court that orders
16 juvenile justice information to be released must provide the Juvenile Justice Agency with notice
17 and an opportunity to be heard before the issuance of such order. NRS 62H.025(2)(r). Thus,
18 prior to ordering LVMPD to disseminate the requested records, including to opposing counsel,
19 this Court must notify the Juvenile Justice Agency⁴ and give the agency an opportunity to be
20 heard on the matter.

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27 ⁴ It is LVMPD's understanding that the Juvenile Justice Services is the proper Juvenile Justice Agency to
28 be notified.

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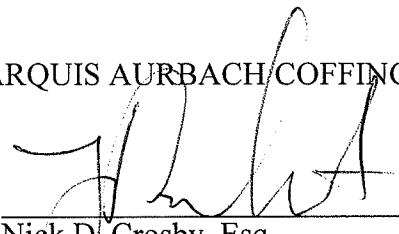
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IV. CONCLUSION

Based on the foregoing, LVMPD requests that this Court deny RAGA's Petition in its entirety and deem the requested records confidential in accordance with the Juvenile Justice Act. Alternatively, if the Court determines disclosure is warranted, it must notify and give Juvenile Justice Services an opportunity to be heard.

Dated this 10 day of October, 2018.

MARQUIS AURBACH COFFING



By: _____

Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
*Attorneys for Respondent, Las Vegas
Metropolitan Police Department*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S RESPONSE TO REPUBLICAN ATTORNEYS GENERAL ASSOCIATION'S PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS 239.001/PETITION FOR WRIT OF MANDAMUS was submitted electronically for filing

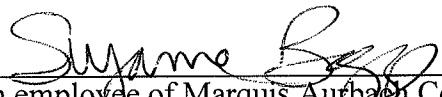
and/or service with the Eighth Judicial District Court on the 10th day of October, 2018.

Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁵

Deanna L. Forbush, Esq.
Colleen E. McCarty, Esq.
CLARK HILL, PLLC
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Las Vegas, NV 89169
dforbush@clarkhill.com
cmccarty@clarkhill.com
*Counsel for Petitioner,
Republican Attorneys General Association*

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A


An employee of Marquis Aurbach Coffing

⁵ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT “A”

JA000255

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DECLARATION OF SEBASTIAN ZARKOWSKI, POLICE OFFICER II
LAS VEGAS METROPOLITAN POLICE DEPARTMENT

I, Sebastian Zarkowski, hereby declare under the penalty of perjury:

1. I have personal knowledge of the facts stated herein, except for those stated upon information and belief, and, as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. That I am employed by the Las Vegas Metropolitan Police Department (LVMPD) as a Police Officer II.

3. That on November 13, 2017 at approximately 1600 hours I was dispatched to a call involving juveniles under LVMPD Event No. 17113-2462.

4. That the juveniles were arrested for an alleged violation of law. The incident did not involve an arrest of any individual adult.

5. As a result of the arrest of the juveniles, LVMPD provided its investigative file to relevant personnel within the juvenile justice system.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. NRS 53.045.

EXECUTED this 2nd day of October, 2018.

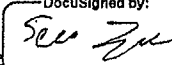
DocuSigned by:

Signature _____
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Sebastian Zarkowski

EXHIBIT “B”

PRIVILEGE LOG
BODY WORN CAMERA FOOTAGE
EVENT NO. 17113-2462

<u>Officer</u>	<u>Recorded On</u>	<u>Video Length</u>	<u>Time Frame</u>	<u>Factual Description</u>	<u>Privilege Asserted</u>
Gregory	3:31 PM	0:30:31		Receives call, responds and arrives on scene; Arrest of juveniles; Information from victim	Juvenile Justice Information (NRS 62H.025)
Hansen	3:34 PM	0:30:31		Receives call, responds and arrives on scene; Arrest of juveniles; Prior history check; Telephone call to parents; Preparing paperwork	Juvenile Justice Information (NRS 62H.025)
Kelly	3:38 PM	0:03:57		Review of scene; Arrest of juveniles	Juvenile Justice Information (NRS 62H.025)
Byers	3:41 PM	0:00:51		Arrives on scene Arrest of juveniles	Juvenile Justice Information (NRS 62H.025)
Byers	3:43 PM	0:02:31		Review of scene; Arrest of juveniles	Juvenile Justice Information (NRS 62H.025)
Zarkowski	3:44 PM	0:17:45		Receives call, responds, and arrives on scene Juveniles are arrested Review of scene	Juvenile Justice Information (NRS 62H.025)
Byers	3:52 PM	0:02:10		Obtaining information from juveniles Information from victim;	Juvenile Justice Information (NRS 62H.025)
Gregory	4:01 PM	0:14:04		Discussion about incident and juveniles Prepare paperwork related to incident; Leaves scene	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:00:01 - 0:18:39	Placing juveniles in vehicle Review of Scene	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:18:40-0:18:50	Senator Ford arrives on scene	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:19:15 - 0:20:45	Senator Ford speaking with juvenile	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:23:02 - 0:27:03	Victim discussing incident with Senator Ford and parents.	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:27:06 - 0:29:51	Telephone call with parent regarding juvenile	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:30:12 - 0:30:19	Senator Ford appears	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:30:20 - 1:13:40	Discussion with officers; interaction with juveniles; Additional discussion with officers; Leaves scene to transport juveniles to juvenile hall	Juvenile Justice Information (NRS 62H.025)
Byers	4:02 PM	0:01:24		Arrested juveniles	Juvenile Justice Information (NRS 62H.025)
Byers	4:04 PM	0:04:13		Arrested juveniles	Juvenile Justice Information (NRS 62H.025)

PRIVILEGE LOG
 BODY WORN CAMERA FOOTAGE
 EVENT NO. 17113-2462

Officer	Recorded On	Video Length	Time Frame	Factual Description	Privilege Asserted
Hansen	4:05 PM	0:02:12		Preparing paperwork related to the incident; arrested juveniles	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:00:05 - 0:01:01	Victim discussing incident with Senator Ford and parent.	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:01:49 - 0:06:57	Senator Ford, parent, arrested juvenile, and victim depicted. Victim on phone. Discussions about incident	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:08:16 - 0:10:04	Interaction with arrested juvenile	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:10:18 - 0:11:46	Communication with officer	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:12:02 - 0:15:46	Depiction of Senator Ford, parents, and arrested juvenile	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:16:50 - 0:19:13	Partial depiction of Senator Ford and parents in background while communicating with officers	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:19:17 - 0:20:34	Interaction with arrested juvenile	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:20:40 - 0:35:02	Communication with other officers; interaction with arrested juvenile and parent	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:30:45 - 0:30:58	Senator Ford depicted in background	Juvenile Justice Information (NRS 62H.025)
				Senator Ford introduces himself to Sgt. Beyers	
				Depiction of arrested juvenile;	
				Communication with parent regarding juvenile process	Juvenile Justice Information (NRS 62H.025)
				Sgt. Beyers telephone call with victim	Juvenile Justice Information (NRS 62H.025)
				Review of scene and communication with victim regarding incident	Juvenile Justice Information (NRS 62H.025)
				Discussion with parents and Senator Ford regarding incident and juvenile booking process	Juvenile Justice Information (NRS 62H.025)
				Communication with other officers regarding the incident;	
				Review of scene	Juvenile Justice Information (NRS 62H.025)
				Continue to review scene and discussion with victim about incident	Juvenile Justice Information (NRS 62H.025)
				Juvenile in vehicle	Juvenile Justice Information (NRS 62H.025)
				Communication with parents, including Senator Ford, regarding juvenile process and victim	Juvenile Justice Information (NRS 62H.025)
				Communications with victim regarding incident	Juvenile Justice Information (NRS 62H.025)
				Communications with parents, including Senator Ford regarding juvenile process	Juvenile Justice Information (NRS 62H.025)
				Communications with officers and juvenile about incident	Juvenile Justice Information (NRS 62H.025)
				Transporting juveniles to juvenile hall	Juvenile Justice Information (NRS 62H.025)
				Transporting juveniles to juvenile hall	Juvenile Justice Information (NRS 62H.025)

EXHIBIT “C”

JA000260

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DECLARATION OF OFFICER JANE PINTO
LAS VEGAS METROPOLITAN POLICE DEPARTMENT

I, JANE PINTO, hereby declare under the penalty of perjury:

1. I have personal knowledge of the facts stated herein, except for those stated upon information and belief, and, as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

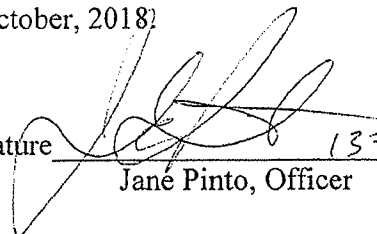
2. That I am employed by the Las Vegas Metropolitan Police Department (LVMPD) as an Officer in the Project Management and Video Bureau.

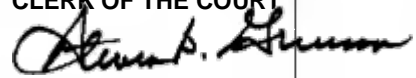
3. That I received a request from LVMPD's counsel to review body camera footage under LVMPD Event No. 171113-2462 to identify audio disappearing in a few of the videos connected to the event. There were two videos in question: 1) Officer Kelly recorded on 4:25 PM 38:43 in length. The silent audio occurs at 1:09-1:52; 7:04-12:58; and 15:58 to the end of the video; 2) Office Zarkowski recorded on 4:01 PM 1:13:40 in length. The silent audio occurs at 14:50-19:25; 21:00-22:10; 30:04-31:25; and 33:23 to the end of the video.

4. That after my review of these videos it was determined that the officers were using the "mute" feature of the cameras. At the time of this incident the "mute" feature was active and functional on the body camera. Officers were trained to keep the video going but could stop or mute the video per Department policy 5/210.01 in any location where recordings could document operational and tactical planning, procedures, or deployment tactics. During the officers' investigation at the scene the camera may have been muted when having personal conversations or discussing sensitive information, including information pertaining to juveniles. In February 2018 the Department disabled the "mute" feature.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. NRS 53.045.

EXECUTED this 10th day of October, 2018

Signature  13729
Jane Pinto, Officer



1 **ODM**
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2 Nevada Bar No. 6646
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3 COLLEEN E. MCCARTY
Nevada Bar No. 13186
4 Email: cmccarty@clarkhill.com
CLARK HILL PLLC
5 3800 Howard Hughes Parkway, Suite 500
6 Las Vegas, Nevada 89169
Telephone: (702) 862-8300
7 Facsimile: (702) 862-8400
Attorneys for Petitioner
8 Republican Attorneys General Association

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11
12 REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,

13 Petitioner,

14 vs.

15 LAS VEGAS METROPOLITAN POLICE
16 DEPARTMENT,

17 Respondent.
18

Case No.: A-18-780538-W
Dept. No.: IV

**ORDER DENYING REPUBLICAN
ATTORNEYS GENERAL
ASSOCIATION'S EMERGENCY
MOTION FOR EXAMINATION OF
WITHHELD RECORDS**

19 The matter of the Emergency Motion for Examination of Withheld Records filed by
20 Petitioner, Republican Attorneys General Association ("Petitioner") having come on for hearing
21 on order shortening time before the Honorable Kerry Earley on October 5, 2018; Petitioner and
22 Respondent, Las Vegas Metropolitan Police Department ("Respondent"), appearing by and
23 through their respective attorneys of record; the Court having reviewed all papers and pleadings
24 on file; and good cause appearing the Court finds as follows:

25
26 1. Petitioner initiated this instant action by filing a Petition for Writ of Mandamus
27 pursuant to the Nevada Public Records Act ("NPR") on September 6, 2018.
28

1 2. Petitioner seeks records from an incident involving juveniles that occurred on
2 November 13, 2017 related to Senator Aaron Ford, inclusive of Body Worn Camera (“BWC”)
3 footage.

4 3. The Parties stipulated to a briefing schedule on the matter, to wit:

- 5 • Petitioner’s Opening Brief due September 26, 2018;
- 6 • Respondent’s Response Brief due October 10, 2018;
- 7 • Petitioner’s Reply Brief due October 15, 2018.

8 4. The Petition is currently scheduled to be heard on October 17, 2018 at 9:00 a.m.

9 5. Petitioner submitted an Emergency Motion for Examination of Withheld
10 Records on Order Shortening Time (“Motion”) on September 25, 2018.

11 6. Upon review of the relief requested, this Court determined there was good cause
12 to entertain the Motion on shortened time and ordered Respondent to provide a written
13 Opposition no later than October 3, 2018 and scheduled a hearing on the matter for October 5,
14 2018 at 9:00 a.m.

15 7. Respondent filed its Opposition to Petitioner’s Motion on October 3, 2018.

16 8. On October 5, 2018, the Court entertained oral arguments related to the Motion.

17 9. Petitioner argued that in order to adequately test Respondent’s confidentiality
18 arguments, it must be afforded an “attorney’s eyes only” review in accordance with *Reno*
19 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011).

20 10. Respondent contended that *Gibbons* first gives the agency an opportunity to
21 meet its burden and then the Court may order a privilege log to be produced, but under no
22 circumstances are the confidential records required to be produced to counsel for “attorney’s
23 eyes only.”

24 11. The Court finds that granting Petitioner “attorney’s eyes only” access to the
25 disputed BWC footage would be waiving a privilege claimed by Respondent, and the Court
26
27
28

1 does not read *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011) to include
2 such a requirement.

3 12. The Court further finds that conducting an *in camera* review of all BWC footage
4 relevant to Petitioner's request will allow the Court to make a fair ruling at the October 17,
5 2018 hearing on the Petition.

6 Based on the foregoing, the Court orders as follows:

7
8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioner's Motion is
9 DENIED.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in light of the
11 upcoming hearing on October 17, 2018 concerning the merits of the Petition, Respondent shall
12 provide the Court with copies of the Body Worn Camera footage concerning the subject
13 incident for purposes of an *in camera* review to assist the Court with a determination on
14 confidentiality.

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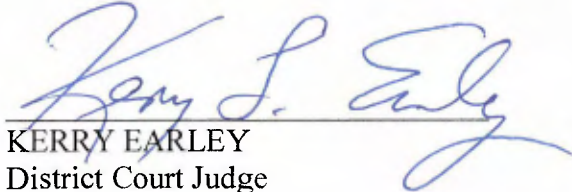
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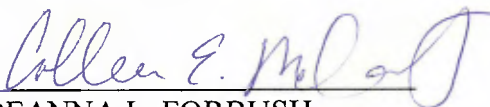
1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that a Status Check is
2 scheduled for October 9, 2018 at 9:00 a.m. to determine how many hours of Body Worn
3 Camera footage related to this incident exists and for production of the same to the Court for *in*
4 *camera* review.

5 Dated this 11 day of October, 2018.

6
7 
8 KERRY EARLEY
District Court Judge

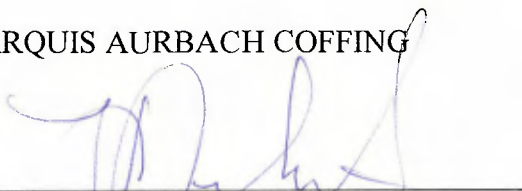
9 Respectfully submitted by:

10 CLARK HILL PLLC

11
12 By: 
13 DEANNA L. FORBUSH
14 Nevada Bar No. 6646
15 COLLEEN E. MCCARTY, ESQ.
16 Nevada Bar No. 13186
17 3800 Howard Hughes Parkway, Suite 500
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Telephone: (702) 862-8300
Attorneys for Petitioner
Republican Attorneys General Association

18 Approved as to form and content:

19 MARQUIS AURBACH COFFING

20
21 By: 
22 Nicholas D. Crosby, Esq.
23 Nevada Bar No. 8996
24 Jackie V. Nichols, Esq.
25 Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
26 Attorney(s) for Las Vegas Metropolitan Police Department
27
28

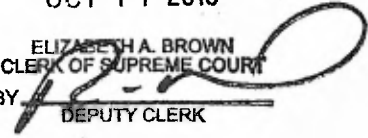
IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KERRY LOUISE EARLEY, DISTRICT
JUDGE,
Respondents,
and
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Real Party in Interest.

No. 77131

FILED

OCT 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER DIRECTING SERVICE ON RESPONDENT AND
DENYING MOTION TO SUPPLEMENT APPENDIX*

This original, emergency petition for a writ of mandamus challenges the district court's oral ruling on a motion to examine body worn camera footage. However, because petitioner has not fully complied with NRAP 21, we are unable to proceed with this matter at this time.

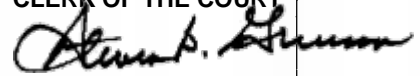
First, under NRAP 21(a), petitioners must serve the respondent judge with a copy of the petition and provide this court with proof of service. From petitioner's certificate of service in this case, it appears that petitioner has not properly served respondent District Judge Kerry Louise Earley with its petition. Accordingly, petitioner shall promptly serve a copy of its petition and appendix on Judge Earley and provide this court with a certificate of service indicating that such service has been properly made.

Second, NRAP 21(a)(4) requires petitioners to include in the appendix a copy of any written order and any other parts of the record relevant to the petition. Here, petitioner has not provided this court with a copy of a written district court order reflecting the challenged ruling or otherwise demonstrated that the district court refuses to enter such an order. Instead, petitioner has moved for leave to supplement its appendix with a JAVS video recording of the October 5, 2018, district court hearing. Petitioner asserts that the matter is urgent but neither the minutes nor a written order from the hearing is available. However, petitioner does not explain why transcripts of the proceedings cannot be prepared on an expedited basis and included in the appendix. *See generally* NRAP 9(a)(1)(B). Moreover, we cannot proceed with the petition on the district court's oral ruling alone: "the district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose." *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987). Therefore, the motion for leave to submit the JAVS video recording is denied. NRAP 30(d). The clerk of this court shall return, unfiled, the proposed exhibit provisionally received on October 9, 2018. No further action may be taken on this petition the NRAP 21 requirements have been met.

It is so ORDERED.

 C.J.

cc: Hon. Kerry Louise Earley, District Judge
Clark Hill PLLC
Marquis Aurbach Coffing
Eighth District Court Clerk



1 **NEO**
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2 Nevada Bar No. 6646
Email: dforbush@clarkhill.com
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Attorneys for Petitioner
8 Republican Attorneys General Association

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **REPUBLICAN ATTORNEYS GENERAL**
12 **ASSOCIATION,**

13 **Petitioner,**

14 vs.

15 **LAS VEGAS METROPOLITAN POLICE**
16 **DEPARTMENT,**

17 **Respondent.**

Case No.: A-18-780538-W
Dept. No.: IV

**NOTICE OF ENTRY OF ORDER
DENYING REPUBLICAN ATTORNEYS
GENERAL ASSOCIATION'S
EMERGENCY MOTION FOR
EXAMINATION OF WITHHELD
RECORDS**

19 **PLEASE TAKE NOTICE** that on October 11, 2018, the Court entered an Order
20 Denying Republican Attorneys General Association's Emergency Motion for Examination of
21 Withheld Records.

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1 A true and correct copy of the Order is attached as Exhibit 1.

2 Dated this 12th of October, 2018.

3 CLARK HILL PLLC

4
5 By: 

6 DEANNA L. FORBUSH
7 Nevada Bar No. 6646
8 COLLEEN E. MCCARTY, ESQ.
9 Nevada Bar No. 13186
10 3800 Howard Hughes Parkway, Suite 500
11 Las Vegas, Nevada 89169
12 Telephone: (702) 862-8300
13 Attorneys for Petitioner
14 Republican Attorneys General Association
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1
2 CERTIFICATE OF SERVICE

3 Pursuant to NRCP 5(b), I certify that I am an employee of Clark Hill PLLC, and that on
4 this 12th day of October, 2018, I served a true and correct copy of the foregoing **NOTICE OF**
5 **ENTRY OF ORDER DENYING REPUBLICAN ATTORNEYS GENERAL**
6 **ASSOCIATION'S EMERGENCY MOTION FOR EXAMINATION OF WITHHELD**
7 **RECORDS** by electronic means by operation of the Court's electronic filing system, upon each
8 party in this case who is registered as an electronic case filing user with the Clerk.
9

10 Nick D. Crosby, Esq.
11 Jackie V. Nichols, Esq.
12 MARQUIS AURBACH COFFING
13 10001 Park Run Drive
14 Las Vegas, NV 89145
15 ncrosby@maclaw.com
16 jnichols@maclaw.com
17 Attorneys for Respondent
18 Las Vegas Metropolitan Police Department
19
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27
28



An Employee of Clark Hill PLLC

EXHIBIT 1

EXHIBIT 1

JA000271



1 **ODM**
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2 Nevada Bar No. 6646
Email: dforbush@clarkhill.com
3 COLLEENE E. MCCARTY
Nevada Bar No. 13186
4 Email: cmccarty@clarkhill.com
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5 3800 Howard Hughes Parkway, Suite 500
6 Las Vegas, Nevada 89169
Telephone: (702) 862-8300
7 Facsimile: (702) 862-8400
Attorneys for Petitioner
8 Republican Attorneys General Association

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **REPUBLICAN ATTORNEYS GENERAL**
12 **ASSOCIATION,**

13 **Petitioner,**

14 **vs.**

15 **LAS VEGAS METROPOLITAN POLICE**
16 **DEPARTMENT,**

17 **Respondent.**

Case No.: A-18-780538-W
Dept. No.: IV

ORDER DENYING REPUBLICAN
ATTORNEYS GENERAL
ASSOCIATION'S EMERGENCY
MOTION FOR EXAMINATION OF
WITHHELD RECORDS

19 The matter of the Emergency Motion for Examination of Withheld Records filed by
20 Petitioner, Republican Attorneys General Association ("Petitioner") having come on for hearing
21 on order shortening time before the Honorable Kerry Earley on October 5, 2018; Petitioner and
22 Respondent, Las Vegas Metropolitan Police Department ("Respondent"), appearing by and
23 through their respective attorneys of record; the Court having reviewed all papers and pleadings
24 on file; and good cause appearing the Court finds as follows:

25
26 1. Petitioner initiated this instant action by filing a Petition for Writ of Mandamus
27 pursuant to the Nevada Public Records Act ("NPR") on September 6, 2018.
28

1 2. Petitioner seeks records from an incident involving juveniles that occurred on
2 November 13, 2017 related to Senator Aaron Ford, inclusive of Body Worn Camera (“BWC”)
3 footage.

4 3. The Parties stipulated to a briefing schedule on the matter, to wit:

- 5 • Petitioner’s Opening Brief due September 26, 2018;
- 6 • Respondent’s Response Brief due October 10, 2018;
- 7 • Petitioner’s Reply Brief due October 15, 2018.

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13 Opposition no later than October 3, 2018 and scheduled a hearing on the matter for October 5,
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16 8. On October 5, 2018, the Court entertained oral arguments related to the Motion.

17 9. Petitioner argued that in order to adequately test Respondent’s confidentiality
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19 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011).
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21 10. Respondent contended that *Gibbons* first gives the agency an opportunity to
22 meet its burden and then the Court may order a privilege log to be produced, but under no
23 circumstances are the confidential records required to be produced to counsel for “attorney’s
24 eyes only.”
25

26 11. The Court finds that granting Petitioner “attorney’s eyes only” access to the
27 disputed BWC footage would be waiving a privilege claimed by Respondent, and the Court
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1 does not read *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011) to include
2 such a requirement.

3 12. The Court further finds that conducting an *in camera* review of all BWC footage
4 relevant to Petitioner's request will allow the Court to make a fair ruling at the October 17,
5 2018 hearing on the Petition.

6 Based on the foregoing, the Court orders as follows:

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioner's Motion is
8 DENIED.
9

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in light of the
11 upcoming hearing on October 17, 2018 concerning the merits of the Petition, Respondent shall
12 provide the Court with copies of the Body Worn Camera footage concerning the subject
13 incident for purposes of an *in camera* review to assist the Court with a determination on
14 confidentiality.
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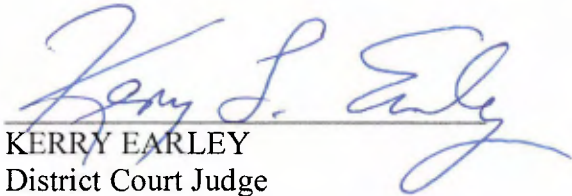
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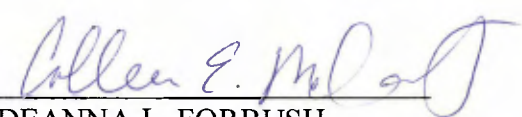
1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that a Status Check is
2 scheduled for October 9, 2018 at 9:00 a.m. to determine how many hours of Body Worn
3 Camera footage related to this incident exists and for production of the same to the Court for *in*
4 *camera* review.

5 Dated this 11 day of October, 2018.

6
7 
8 KERRY EARLEY
District Court Judge

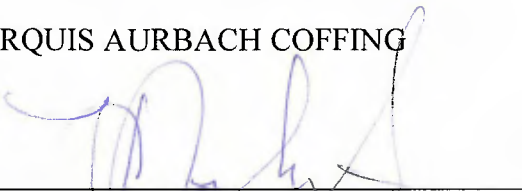
9 Respectfully submitted by:

10 CLARK HILL PLLC

11
12 By: 
13 DEANNA L. FORBUSH
14 Nevada Bar No. 6646
15 COLLEEN E. MCCARTY, ESQ.
16 Nevada Bar No. 13186
17 3800 Howard Hughes Parkway, Suite 500
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Telephone: (702) 862-8300
Attorneys for Petitioner
Republican Attorneys General Association

18 Approved as to form and content:

19 MARQUIS AURBACH COFFING

20
21 By 
22 Nicholas D. Crosby, Esq.
23 Nevada Bar No. 8996
24 Jackie V. Nichols, Esq.
25 Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
26 Attorney(s) for Las Vegas Metropolitan Police Department
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN ATTORNEYS
GENERAL ASSOCIATION,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF CLARK, AND
THE HONORABLE KERRY EARLEY,
DISTRICT JUDGE,

Respondent,

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Real Party in Interest.

Supreme Court Case No.: 77131

[District Court Case No. A-18-780538-W] Electronically Filed
Oct 12 2018 01:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE KERRY EARLEY, DISTRICT JUDGE**

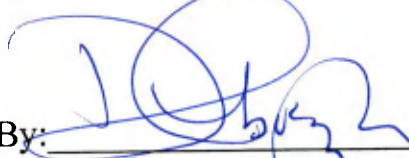
**SUPPLEMENT TO APPENDIX TO THE EMERGENCY PETITION FOR WRIT
OF MANDAMUS PURSUANT TO NRAP 21(A) AND NRAP 27(E)**

Petitioner Republican Attorneys General Association (“RAGA”), by and through its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of the law firm Clark Hill PLLC, hereby submits this Supplement to the Appendix to the Emergency Petition for Writ of Mandamus Pursuant to NRAP 21(a) and NRAP 27(e) (“Supplement”). This Supplement provides the Court with the filed Notice of Entry of Order Denying Republican Attorneys General

Association's Emergency Motion for Examination of Withheld Records (“Notice”), signed by the Honorable Kerry Earley, District Judge for the Eighth Judicial District Court, on October 11, 2018. The Notice is attached hereto as **Appendix Exhibit 5**.

Dated this 12th day of October, 2018.

CLARK HILL PLLC

By: 

DEANNA L. FORBUSH

Nevada Bar No. 6646

COLLEEN E. MCCARTY

Nevada Bar No. 13186

3800 Howard Hughes Pkwy., Ste. 500

Las Vegas, Nevada 89169

Telephone: (702) 862-8300

Attorneys for Petitioner

Republican Attorneys General

Association

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On October 12th, 2018, I caused to be served a true and correct copy of the foregoing **SUPPLEMENT TO APPENDIX TO THE EMERGENCY PETITION FOR WRIT OF MANDAMUS PURSUANT TO NRAP 21(A) AND NRAP 27(E)** by the method indicated:

- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- BY PERSONAL DELIVERY:** by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.
- BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

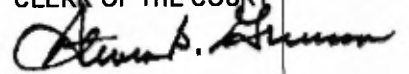
The Honorable Kerry Earley
District Court Judge, Dept. IV
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, NV 89155

Nick D. Crosby, Esq.
ncrosby@maclaw.com
Jackie V. Nichols, Esq.
jnichols@maclaw.com
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145

By: *N. Martinez*
An Employee of Clark Hill PLLC

**APPENDIX
EXHIBIT 5**

**APPENDIX
EXHIBIT 5**



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13 Attorneys for Petitioner
14 Republican Attorneys General Association

DISTRICT COURT

CLARK COUNTY, NEVADA

11 REPUBLICAN ATTORNEYS GENERAL
12 ASSOCIATION,

13 Petitioner,

14 vs.

15 LAS VEGAS METROPOLITAN POLICE
16 DEPARTMENT,

17 Respondent.

Case No.: A-18-780538-W
Dept. No.: IV

**NOTICE OF ENTRY OF ORDER
DENYING REPUBLICAN ATTORNEYS
GENERAL ASSOCIATION'S
EMERGENCY MOTION FOR
EXAMINATION OF WITHHELD
RECORDS**

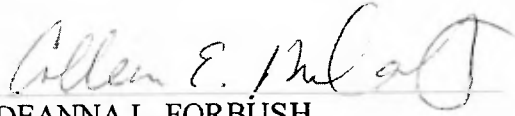
19 PLEASE TAKE NOTICE that on October 11, 2018, the Court entered an Order
20 Denying Republican Attorneys General Association's Emergency Motion for Examination of
21 Withheld Records.

22 ...
23 ...
24 ...
25 ...
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28 ...

1 A true and correct copy of the Order is attached as Exhibit 1.

2 Dated this 12th of October, 2018.

3 CLARK HILL PLLC


4
5 By: 
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Clark Hill PLLC, and that on this 2th day of October, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING REPUBLICAN ATTORNEYS GENERAL ASSOCIATION'S EMERGENCY MOTION FOR EXAMINATION OF WITHHELD RECORDS** by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk.

Nick D. Crosby, Esq.
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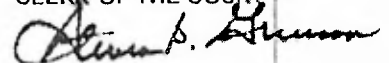


An Employee of Clark Hill PLLC

EXHIBIT 1

EXHIBIT 1

**RAGA000040
JA000283**



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9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 REPUBLICAN ATTORNEYS GENERAL
12 ASSOCIATION,

13 Petitioner,

14 vs.

15 LAS VEGAS METROPOLITAN POLICE
16 DEPARTMENT,

17 Respondent.

Case No.: A-18-780538-W
Dept. No.: IV

**ORDER DENYING REPUBLICAN
ATTORNEYS GENERAL
ASSOCIATION'S EMERGENCY
MOTION FOR EXAMINATION OF
WITHHELD RECORDS**

19 The matter of the Emergency Motion for Examination of Withheld Records filed by
20 Petitioner, Republican Attorneys General Association ("Petitioner") having come on for hearing
21 on order shortening time before the Honorable Kerry Earley on October 5, 2018; Petitioner and
22 Respondent, Las Vegas Metropolitan Police Department ("Respondent"), appearing by and
23 through their respective attorneys of record; the Court having reviewed all papers and pleadings
24 on file; and good cause appearing the Court finds as follows:

26 Petitioner initiated this instant action by filing a Petition for Writ of Mandamus
27 pursuant to the Nevada Public Records Act ("NPR") on September 6, 2018.

1 2. Petitioner seeks records from an incident involving juveniles that occurred on
2 November 13, 2017 related to Senator Aaron Ford, inclusive of Body Worn Camera (“BWC”)
3 footage.

4 3. The Parties stipulated to a briefing schedule on the matter, to wit:

- 5 • Petitioner’s Opening Brief due September 26, 2018;
- 6 • Respondent’s Response Brief due October 10, 2018;
- 7 • Petitioner’s Reply Brief due October 15, 2018.

8 4. The Petition is currently scheduled to be heard on October 17, 2018 at 9:00 a.m.

9 5. Petitioner submitted an Emergency Motion for Examination of Withheld
10 Records on Order Shortening Time (“Motion”) on September 25, 2018.

11 6. Upon review of the relief requested, this Court determined there was good cause
12 to entertain the Motion on shortened time and ordered Respondent to provide a written
13 Opposition no later than October 3, 2018 and scheduled a hearing on the matter for October 5,
14 2018 at 9:00 a.m.

15 7. Respondent filed its Opposition to Petitioner’s Motion on October 3, 2018.

16 8. On October 5, 2018, the Court entertained oral arguments related to the Motion.

17 9. Petitioner argued that in order to adequately test Respondent’s confidentiality
18 arguments, it must be afforded an “attorney’s eyes only” review in accordance with *Reno*
19 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011).

20 10. Respondent contended that *Gibbons* first gives the agency an opportunity to
21 meet its burden and then the Court may order a privilege log to be produced, but under no
22 circumstances are the confidential records required to be produced to counsel for “attorney’s
23 eyes only.”

24 11. The Court finds that granting Petitioner “attorney’s eyes only” access to the
25 disputed BWC footage would be waiving a privilege claimed by Respondent, and the Court
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does not read *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011) to include such a requirement.

12. The Court further finds that conducting an *in camera* review of all BWC footage relevant to Petitioner's request will allow the Court to make a fair ruling at the October 17, 2018 hearing on the Petition.

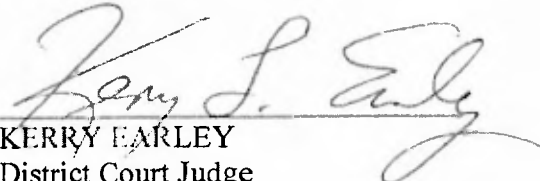
Based on the foregoing, the Court orders as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioner's Motion is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in light of the upcoming hearing on October 17, 2018 concerning the merits of the Petition, Respondent shall provide the Court with copies of the Body Worn Camera footage concerning the subject incident for purposes of an *in camera* review to assist the Court with a determination on confidentiality.

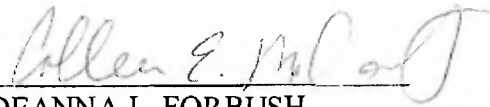
1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that a Status Check is
2 scheduled for October 9, 2018 at 9:00 a.m. to determine how many hours of Body Worn
3 Camera footage related to this incident exists and for production of the same to the Court for *in*
4 *camera* review.

5 Dated this 11 day of October, 2018.

6
7 
8 KERRY EARLEY
District Court Judge

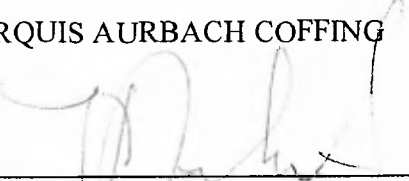
9 Respectfully submitted by:

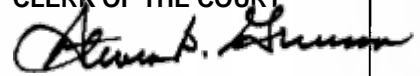
10 CLARK HILL PLLC

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18 Approved as to form and content:

19 MARQUIS AURBACH COFFING

20
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DISTRICT COURT

CLARK COUNTY, NEVADA

12 REPUBLICAN ATTORNEYS GENERAL
13 ASSOCIATION,

14 Petitioner,

15 vs.

16 LAS VEGAS METROPOLITAN POLICE
17 DEPARTMENT,

18 Respondent.

Case No.: A-18-780538-W
Dept. No.: IV

**REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION'S REPLY IN SUPPORT OF
PUBLIC RECORDS ACT APPLICATION
PURSUANT TO NRS 239.001/PETITION FOR
WRIT OF MANDAMUS**

Hearing Date: October 17, 2018
Heating Time: 9:00 a.m.

19 Petitioner, Republican Attorneys General Association ("RAGA"), by and through its attorneys
20 of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of the law firm of Clark Hill PLLC,
21 hereby files its Reply to the Response of the Las Vegas Metropolitan Police Department ("Metro") to
22 its Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus (the
23 "Reply," "Response" and "Petition," respectively).

25 ///

26 ///

27 ///

1 This Reply is made and based on the following Memorandum of Points and Authorities; the
2 Declaration of Colleen E. McCarty, Esq. attached hereto as **Exhibit 3** and the exhibits thereto; the
3 papers and pleadings already on file herein; and any argument the Court may permit at the hearing of
4 this matter.

5 Dated this 15th of October, 2018.

6 **CLARK HILL PLLC**

7
8
9 By: 

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16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I.**

18 **INTRODUCTION**

19 Metro's records relevant to this Petition are neither privileged nor confidential. We know this
20 first and foremost because in its Response, Metro has not asserted any facts, let alone provided any
21 evidence, to justify the application of any provision of NRS Chapter 62H, Records Related to
22 Children. Metro specifically argues that NRS 62H.025 and NRS 62H.030 preclude dissemination of
23 the body worn camera ("BWC") video and other requested records. This is simply not true. The
24 requirements of these statutes, by their clear and unambiguous language, pertain only to records in
25 cases actually brought before the juvenile court. *See* NRS 62H.025(6)(b); NRS 62H.030(1). The
26 only facts asserted by Metro in its Response, however, fall well short of establishing this applicability
27 requirement.
28

1 Indeed, Metro asserts nothing more in the Declaration of Officer Zarkowski than “juveniles
2 were arrested for an alleged violation of law,” and “as a result of the arrest of juveniles, LVMPD
3 provided its investigative file to relevant personnel within the juvenile justice system.” See Response
4 Exhibit A at 1:12-15. As the Court is well aware, an arrest does not automatically mean a matter will
5 become a court case. And, an arrest of a juvenile does not automatically mean a matter will become a
6 case in the juvenile court, thereby creating juvenile justice records subject to Chapter 62H.
7

8 Personnel within the juvenile justice system could easily mean any number of positions
9 outside of the court’s purview, including a screening deputy who ultimately rejects the matter before
10 it ever becomes a court case, and Metro has left us only to speculate as to which “personnel” were
11 provided with its investigative file. And, an investigative file is by no means certain to be inclusive
12 of BWC video. However, neither the Court nor RAGA can know the truth of this matter still,
13 because Metro chose to argue and support nothing more than the assertion that juveniles were
14 arrested. The opportunity for Metro to provide proof of any actual privilege or confidentiality of its
15 records pursuant to NRS Chapter 62H, whether by *in camera* review or otherwise, is now lost and so,
16 too, is its only claimed defense to the Petition.
17

18 Metro is right about one thing in its Response. There is a specific statute that takes
19 precedence over a more general statute relevant to RAGA’s Petition. The specific statute is NRS
20 289.830, and it states that “*Any record made by a portable event recording device [a/k/a BWC
21 video]...is a public record....*” NRS 289.830(2) (emphasis added). The statute goes on to place
22 limitations on where the BWC video may be viewed if it contains confidential information, not
23 whether it may be viewed. Without exception, NRS 289.830 makes all BWC video subject to
24 inspection, and, if not confidential, to full public disclosure. This statute is also listed among the
25 many enumerated in the Nevada Public Records Act (“NPRO”) at NRS 239.010(1), and it is far more
26 specific in its application to this case than the statutes relied on by Metro generally concerning
27 records brought before a juvenile court. But, again, the above statutory construction is moot the
28

1 instant the Court recognizes that Metro has not provided any evidentiary support for the application
2 of NRS Chapter 62H in the instant case.

3 For these and all other reasons set forth in the Petition, the corresponding Opening Brief, and
4 this Reply, RAGA respectfully requests the Court immediately grant the Petition and enter an Order
5 in its favor and against Metro including, but not limited to, the following relief:
6

- 7 • Injunctive relief ordering Metro to immediately make available complete copies of all
8 requested records;
- 9 • Reasonable attorney's fees and costs, as required by NRS 239.011(2); and
- 10 • Any other relief this Court deems appropriate.

11
12 **II.**

13 **STATEMENT OF FACTS**

14 RAGA incorporates by reference herein the facts and procedural background set forth in its
15 Petition and Opening Brief, respectively, including those contained in each of the Declarations of
16 Colleen E. McCarty, Esq. and the supporting exhibits attached thereto.

17 For ease of reference in the Court's anticipated review of the matter prior to the October 17,
18 2018 hearing, however, RAGA submits that the factual statements of the parties are not materially
19 diverse. The specific public record requests made by RAGA between December 5, 2017 and May 17,
20 2018 and Metro's untimely responses thereto are set forth in their entirety in a chart in the Opening
21 Brief at 4:11-5:19. The information in the chart, which was taken directly from the documents
22 referenced therein, speaks for itself and is not reasonably disputed, despite Metro's
23 mischaracterizations.
24

25 What is new from Metro and patently offensive given the history of this matter, although
26 again not factually disputed for purposes of the upcoming argument, is Metro's disclosure for the first
27 time of a log of the BWC video and the admission that significant portions of the video recorded by
28 two of the three Metro officers who engaged with State Senator and Attorney General candidate,

1 Aaron Ford (“Senator Ford”), include “audio disappearing.” *See* Response Exhibit C at 1:10. In fact,
2 of the 1:13:40 of video recorded by Officer Zarkowski, 47:23 is “silent audio.” *Id.* at 1:13-14.
3 Similarly, of the 38:34 of video recorded by Officer Kelly, 28.82 is “silent audio.” *Id.* at 1:12. And,
4 when you look at the descriptions on the log that correspond to the missing audio, you see that it
5 encompasses almost exclusively the time these officers were engaging with Senator Ford. *See*
6 **Exhibit 3-A**¹, copy of Response Exhibit B with the entries containing “silent audio” highlighted in
7 yellow for ease of reference.

9 Metro’s explanation for the missing audio is that these officers were using the “mute” feature
10 of the body worn camera, a feature that has since been disabled. *See* Response Exhibit C at 1:15-16,
11 21-22. And, the purported authority for an officer to “stop or mute” video is identified as
12 “Department policy 5/210.01.” *Id.* at 1:18. In fact, the Metro policy on Body Worn Cameras, Policy
13 No. 5/210.01, contains no authorization for muting audio/video, and the portion of the policy
14 specifically referenced in the Declaration of Officer Pinto pertains only to circumstances involving
15 “Major Incidents.” *See* **Exhibit 3-B**, copy of Metro’s policy on Evidence and Property Procedures,
16 Section 1 – Body Worn Camera Use, with certain text highlighted in yellow for ease of reference.

18 III.

19 LEGAL ARGUMENT

20 RAGA understands that it must convince the Court that the Metro records relevant to this
21 Petition are neither privileged nor confidential. Based on Metro’s representations, the Court made the
22 assumption of privilege in conjunction with ordering an *in camera* review of the BWC video and
23 presumably watched the video through that specific lens. At that time, however, Metro’s formal
24 Response was still pending, and the evidence Metro would be putting forward was still unknown.
25 Metro’s Response is now on file, and while much is still unknown about the quantity of records
26
27

28

¹ Exhibits 1-A through 1-J attached to the Petition, and Exhibits 2-A through 2-C attached to the Opening Brief, are
Page 5 of 12

1 responsive to RAGA's request, Metro has in no way met its acknowledged burden in this judicial
2 proceeding of proving by a preponderance of the evidence that the requested records are privileged or
3 confidential. NRS 239.0113; *see also* Response at 6:13-15.

4 **A. The NPRA Does Not Exempt Any Statute, Including NRS 62H.025 or NRS 62H.030.**

5 Metro is simply wrong when it argues that the "Legislature explicitly recognized the Juvenile
6 Justice Act as an exemption to the NPRA." *See* Response at 6:21-24. It bases its false assumption on
7 the fact that NRS 62H.025 and NRS 62H.030 and other related provisions are among the statutes
8 enumerated at the beginning of NRS 239.010. NRS 239.010 provides in pertinent part that:

9
10 Except as otherwise provided in this section and [statutes omitted] and
11 unless otherwise declared by law to be confidential, all public books and
12 public records of a governmental entity must be open at all times during
13 office hours to inspection by any person and may be fully copied or an
abstract or memorandum may be prepared from those public books and
those public records.

14 NRS 239.010(1). Metro's argument for exemption from these requirements conflates "exemption"
15 with "exception," incorrectly using the terms interchangeably, as when it states: "There is no doubt
16 that the list of statutes now enumerated within NRS 239.010 serve as exceptions from the NPRA. In
17 fact the entire purpose of codifying statutes was to provide clarity to both the public and government
18 in determining what records were exempt from the NPRA." *See* Response at 7:4-7 (citation omitted).

19
20 There are, in fact, 400+ statutes enumerated at the beginning of NRS 239.010, and their
21 inclusion obviously does nothing more than point the reader to statutes wherein certain confidentiality
22 requirements pertaining to otherwise public records may be found. As proof this analysis is correct,
23 the Court may simply take notice of the fact that, in addition to the provisions of NRS Chapter 62H,
24 two provisions of the NPRA itself are listed, i.e. NRS 239.0105 and NRS 239.0113. *See* **Exhibit 3-**
25

26
27
28 incorporated by reference as stated herein. The Exhibits attached to this Reply are numbered sequentially thereafter as
Exhibits 3-A through 3-C, respectively, to avoid any confusion amongst the briefings.

1 C, copy of online printout of NRS 239.010, with certain statutory references highlighted in yellow for
2 ease of reference.

3 The application, then, of any one or more the statutes enumerated in NRS 239.010(1) to an
4 otherwise public record, where appropriate, requires the governmental entity to comply with section
5 of NRS 239.010(3), which requires in pertinent part that:

6
7 A governmental entity that has legal custody or control of a public book or
8 record shall not deny a request made pursuant to subsection 1 to inspect or
9 copy or receive a copy of a public book or record on the basis that the
10 requested public book or record contains information that is confidential if
11 the governmental entity can redact, delete, conceal or separate the
12 confidential information from the information included in the public book
13 or record that is not otherwise confidential.

14 NRS 239.010(3). And, of course, prevailing Supreme Court case law mandates that the NPRA must
15 be construed liberally, and any limitation of the public's access to public records must be construed
16 narrowly. NRS 239.001(2), (3); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266
17 P.3d 623, 628 (2011) (holding "the provisions of the NPRA place an unmistakable emphasis on
18 disclosure") (emphasis added).

19 The Legislature clearly did not intend to exempt the NPRA from itself, just like it did not
20 intend to exempt any other statute listed, and Metro's exemption argument is completely unavailing.

21 **B. The Specific Provisions of NRS 289.830² Take Precedence Over the General**
22 **Provisions of NRS 62H.025 and NRS 62H.030.**

23 Metro next argues that the rules of statutory construction mandate that a more specific statute
24 applicable in the instant case must take precedence over, and be construed as an exception to, a more
25 general statute, in order to harmonize the conflicting provisions. *See* Response at 7:12-23 (citations
26 omitted). RAGA agrees. And, RAGA respectfully asserts that the proper statutory construction

27
28 ² In addition to BWC video under NRS 289.830, RAGA also asked for related records of criminal history as defined in
NRS 179A.070. The statutory construction arguments stated herein are applicable to both statutes, but, like Metro,
RAGA will focus on the BWC video record with which the Court is most familiar.

1 analysis is not between the provisions of NRS Chapter 62H and the NPRA, but, instead, it is between
2 those statutes and any specific statutes governing the actual records sought by RAGA.

3 In the instant case, RAGA specifically seeks BWC video of a November 13, 2017 encounter
4 between Senator Ford and Metro officers. Pursuant to NRS 289.830:

5 *Any record made by a portable event recording device³ pursuant to this*
6 *section is a public record* which may be:

- 7 (a) Requested only on a per incident basis; and
8 (b) Available for inspection only at the location where the record is held if
9 the record contains confidential information that may not otherwise be
10 redacted.

11 NRS 289.830(2) (emphasis added). This clear and unambiguous language renders all BWC video
12 available to the public, period, with a limitation as to location only if it can be determined that the
13 video contains confidential information. Nothing in the specific BWC video statute allows for the
14 preclusion of public access in its entirety. And, nothing about the NRS Chapter 62H provisions cited
15 by Metro speaks to BWC video records specifically, only to juvenile court records generally.

16 “When the legislature enacts a statute it must be presumed that it did so with full knowledge
17 of existing statutes related to the same subject.” *State, Div. of Ins. v. State Farm Mut. Auto Ins. Co.*,
18 116 Nev. 290, 295, 995 P.2d 482, 486 (2000) (quoting *City of Boulder v. General Sales Drivers*, 101
19 Nev. 117, 118-19, 694 P.2d 498, 500 (1985)). NRS 62H.025 and NRS 62H.030 existed in their
20 current form when the Legislature enacted NRS 289.830 in 2015. Although the subject matter of
21 NRS 289.830 is not precisely the same as the NRS Chapter 62H provisions, the possibility of their
22 overlap compels the Court to attempt to construe them harmoniously. *See, e.g., State Farm*, 116 Nev.
23 295, 995 P.2d 486. In this regard, the Supreme Court has specifically stated that, where there is
24 “nothing to suggest [a] rule and [a] statute cannot be read in harmony[,]” a court should give effect to
25 both. *Watson Rounds v. Eighth Jud. Dist. Ct.* 131 Nev. Adv. Op. 79, 358 P.3d 228, 232 (2015).

26
27
28 ³ “‘Portable event recording device’ means a device issued to a peace officer by a law enforcement agency to be worn on his or her body and which records both audio and visual events occurring during an encounter with a member of the public while performing his or her duties as a peace officer.” NRS 289.830(3)(b).

1 And, indeed, nothing does suggest the statutes cannot be read in harmony and both given
2 effect. In enacting NRS 289.830, the Legislature explicitly addressed what would happen in the
3 event BWC video contained confidential information that may not otherwise be redacted, as Metro
4 argues is the effect of NRS 62H.025 and NRS 62H.030. In doing so, it chose to limit only the
5 location of the public's access in that instance, not to preclude access in its entirety, as Metro
6 erroneously suggests. Far from conflicting, therefore, RAGA respectfully asserts that these statutes
7 are entirely compatible and that RAGA is entitled to access to the BWC video thus far denied by the
8 Court. Further, for the reasons set forth in Section C, below, RAGA respectfully asserts that Metro
9 has not met its burden to show the BWC video is, in fact, confidential and therefore, RAGA's access
10 should be unlimited.
11

12 Even if the Court believes the statutes are in conflict to the degree that they cannot be read in
13 harmony, then as argued by Metro, the more specific statute must be the one that controls. *See, e.g.,*
14 *Piroozi v. Eighth Jud. Dist. Ct.*, 131 Nev. 1004, 1009, 363 P.3d 1168, 1172 (2015). And, the more
15 specific statute, by any reasonable review, is the BWC video statute codified as NRS 289.830, not the
16 statutes pertaining to cases before the juvenile court which may or may not involve BWC video. In
17 that instance, RAGA is entitled to have its public record request regarding the BWC video granted in
18 its entirety without further analysis.
19

20 **C. The Mere Inclusion of Juveniles In a Metro BWC Video Does Not a Privilege Make.**
21

22 In the final analysis, neither the exemption nor statutory construction discussions above
23 should matter when Metro failed entirely to meet its burden of proof to defeat RAGA's Petition.

24 NRS 239.0113 clearly establishes that:

25 Except as otherwise provided in NRS 239.0115, if:

- 26 1. The confidentiality of a public book or record, or a part thereof, is at
27 issue in a judicial proceeding; and
- 28 2. The governmental entity that legal custody or control of a public
book or record asserts that the public book or record, or a part thereof, is
confidential.

1 the governmental entity has the burden of proving by a preponderance of
2 the evidence that the public book or record, or part thereof, is confidential.

3 (Emphasis added.). Admittedly, the preponderance of the evidence standard is not a high one, but it
4 still required Metro to come forward in its Response with some modicum of evidence to prove that its
5 version of the facts is more likely than not the correct version. Metro's failure to do so is fatal to its
6 claimed defense.

7 Metro strenuously argues that NRS 62H.025 and NRS 62H.030 preclude any dissemination
8 of any kind of the BWC video and other records requested by RAGA. By their plain terms, however,
9 these statutes pertain only to records in cases actually brought before the juvenile court. See NRS
10 62H.025(6)(b); NRS 62H.030(1). In this regard, Metro has never attempted to go beyond the basic
11 claim that the November 13, 2017 incident involved juveniles being arrested. The only sworn
12 statement provided by Metro in its Response, that of Officer Sebastian Zarkowski, simply states that
13 "juveniles were arrested for an alleged violation of law," and "as a result of the arrest of juveniles,
14 LVMPD provided its investigative file to relevant personnel within the juvenile justice system." See
15 Response Exhibit A at 1:12-15. No mention of the existence of any actual juvenile court case
16 resulting from the incident is ever made, and no evidence of the juvenile court exercising jurisdiction
17 over anyone arrested at the scene is ever offered, for *in camera* inspection or otherwise.
18

19 Further, Officer Zarkowski's claim that he turned an investigative file over to someone within
20 the juvenile justice system falls well short of meeting the preponderance standard. Officer Zarkowski
21 gives no indication whatsoever of what was in the file, and he certainly makes no claim that BWC
22 video was included. As far as the person he turned the file over to, Officer Zarkowski provides no
23 specifics as to a name or a title, and, of course, his reference to "relevant personnel within the
24 juvenile justice system" in no way specifically connotes juvenile court personnel or anyone working
25 on behalf of a juvenile court case.
26
27
28

1 In the end, Metro chose to argue and support nothing more than the assertion that juveniles
2 were arrested. This is wholly insufficient to prove by a preponderance of the evidence that the
3 confidentiality provisions of NRS Chapter 62H apply in the instant case. Accordingly, Metro has left
4 the Court with no alternative but to grant RAGA's Petition in its entirety.

5
6 IV.

7 CONCLUSION

8 For all of the reasons set forth above, RAGA respectfully requests this Court grant the relief
9 requested in the Petition in its entirety and issue an Order requiring that Metro immediately release to
10 RAGA any and all body camera footage and other related records resulting from the interaction
11 between State Senator Aaron Ford and Metro officers on November 13, 2017, as well as pay all of the
12 attorneys' fees and costs incurred by RAGA in bringing the Petition.

13 Dated this 15th of October, 2018.

14
15 CLARK HILL PLLC

16
17 By: 

18 DEANNA L. FORBUSH
19 Nevada Bar No. 6646
20 COLLEEN E. MCCARTY, ESQ.
21 Nevada Bar No. 13186
22 3800 Howard Hughes Parkway, Suite 500
23 Las Vegas, Nevada 89169
24 Telephone: (702) 862-8300
25 Attorneys for Petitioner
26 Republican Attorneys General Association
27
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCPC 5(b), I certify that I am an employee of Clark Hill PLLC and that on this
3 15th day of October, 2018, I served a true and correct copy of the foregoing **REPUBLICAN**
4 **ATTORNEYS GENERAL ASSOCIATION'S REPLY IN SUPPORT OF PUBLIC RECORDS**
5 **ACT APPLICATION PURSUANT TO NRS 239.001/ PETITION FOR WRIT OF**
6 **MANDAMUS** by electronic means by operation of the Court's electronic filing system, upon each
7 party in this case who is registered as an electronic case filing user with the Clerk.
8

9 Nick D. Crosby, Esq.
10 Jackie V. Nichols, Esq.
11 MARQUIS AURBACH COFFING
12 10001 Park Run Drive
13 Las Vegas, NV 89145
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15 jnichols@maclaw.com
16 Attorneys for Respondent
17 Las Vegas Metropolitan Police Department

18 

19 _____
20 An Employee of Clark Hill PLLC
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EXHIBIT 3

EXHIBIT 3

JA000300

1 **DECLARATION OF COLLEEN E. MCCARTY IN SUPPORT OF REPUBLICAN**
2 **ATTORNEYS GENERAL ASSOCIATIONS' REPLY IN SUPPORT OF PUBLIC**
3 **RECORDS ACT APPLICATION PURSUANT TO NRS 239.001/PETITION FOR**
4 **WRIT OF MANDAMUS**

5 I, COLLEEN E. MCCARTY, attest and declare as follows:

6 1. I am an attorney licensed to practice before all the courts of the State of Nevada,
7 and I am admitted to practice before this Court. I am one of the attorneys for the Republican
8 Attorneys General Association ("RAGA"), the Petitioner in the instant matter.

9 2. I have personal knowledge of the facts stated in this Declaration. If called upon
10 to testify to the same, I am competent to do so.

11 3. Attached hereto as **Exhibit 3-A** is a true and correct copy of the Body Worn
12 Camera Footage log attached as Exhibit B to Metro's Response, with those entries containing
13 "silent audio" highlighted in yellow for ease of reference.

14 4. Attached hereto as **Exhibit 3-B** is a true and correct copy of the Metro's policy
15 on Evidence and Property Procedures, Section 1 – Body Worn Camera Use, with certain text
16 highlighted in yellow for ease of reference.

17 5. Attached hereto as **Exhibit 3-C** is a true and correct copy of the online printout
18 of NRS 239.010, with certain statutory references highlighted in yellow for ease of reference.

19 I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045)¹,
20 that the foregoing is true and correct.

21 Dated this 14th day of October, 2018.

22 
23 COLLEEN E. MCCARTY
24
25
26
27

28 ¹ **NRS 53.045** Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the prescribed form.

EXHIBIT 3-A

EXHIBIT 3-A

PRIVILEGE LOG
BODY WORN CAMERA FOOTAGE
EVENT NO. 17113-2462

Officer	Recorded On	Video Length	Time Frame	Factual Description	Privilege Asserted
Hansen	4:05 PM	0:02:12		Preparing paperwork related to the incident; arrested juveniles	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:00:05 - 0:01:01	Victim discussing incident with Senator Ford and parent.	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:01:49 - 0:06:57	Senator Ford, parent, arrested juvenile, and victim depicted. Victim on phone. Discussions about incident	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:08:16 - 0:10:04	Interaction with arrested juvenile	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:10:18 - 0:11:46	Communication with officer	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:12:02 - 0:15:46	Depiction of Senator Ford, parents, and arrested juvenile	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:16:50 - 0:19:13	Partial depiction of Senator Ford and parents in background while communicating with officers	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:19:17 - 0:20:34	Interaction with arrested juvenile	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:20:40 - 0:35:02	Communication with other officers; interaction with arrested juvenile and parent	Juvenile Justice Information (NRS 62H.025)
Kelly	4:25 PM	0:38:43	0:30:45 - 0:30:58	Senator Ford depicted in background	Juvenile Justice Information (NRS 62H.025)
				Senator Ford introduces himself to Sgt. Beyers	
Byers	4:37 PM	0:03:15	0:00:36-0:1:57	Depiction of arrested juvenile; Communication with parent regarding juvenile process	Juvenile Justice Information (NRS 62H.025)
Byers	4:37 PM	0:03:15	0:2:14 - 0:3:10	Sgt. Beyers telephone call with victim	Juvenile Justice Information (NRS 62H.025)
Byers	4:44 PM	0:03:37	0:00:01 - 0:02:06	Review of scene and communication with victim regarding incident	Juvenile Justice information (NRS 62H.025)
Byers	4:44 PM	0:03:37	0:02:07 - 0:03:14	Discussion with parents and Senator Ford regarding incident and juvenile booking process	Juvenile Justice Information (NRS 62H.025)
Byers	4:47 PM	0:03:58		Communication with other officers regarding the incident; Review of scene	Juvenile Justice Information (NRS 62H.025)
Byers	4:53 PM	0:06:32		Continue to review scene and discussion with victim about incident	Juvenile Justice Information (NRS 62H.025)
Donegan	5:01 PM	0:04:39		Juvenile in vehicle	Juvenile Justice Information (NRS 62H.025)
Byers	5:07 PM	0:06:18	0:00:39 - 0:1:55	Communication with parents, including Senator Ford, regarding juvenile process and victim	Juvenile Justice Information (NRS 62H.025)
Byers	5:07 PM	0:06:18	0:02:31 - 0:03:28	Communications with victim regarding incident	Juvenile Justice Information (NRS 62H.025)
Byers	5:07 PM	0:06:18	0:03:58 - 0:04:56	Communications with parents, including Senator Ford regarding juvenile process	Juvenile Justice Information (NRS 62H.025)
Donegan	5:08 PM	0:01:29		Communications with officers and juvenile about incident	Juvenile Justice Information (NRS 62H.025)
Donegan	5:11 PM	0:54:59		Transporting juveniles to juvenile hall	Juvenile Justice Information (NRS 62H.025)
Zarkowski	5:15 PM	0:48:45		Transporting juveniles to juvenile hall	Juvenile Justice Information (NRS 62H.025)

PRIVILEGE LOG
BODY WORN CAMERA FOOTAGE
EVENT NO. 17113-2462

Officer	Recorded On	Video Length	Time Frame	Factual Description	Privilege Asserted
Gregory	3:31 PM	0:30:31		Receives call, responds and arrives on scene; Arrest of juveniles; Information from victim	Juvenile Justice Information (NRS 62H.025)
Hansen	3:34 PM	0:30:31		Receives call, responds and arrives on scene; Arrest of juveniles; Prior history check; Telephone call to parents; Preparing paperwork	Juvenile Justice Information (NRS 62H.025)
Kelly	3:38 PM	0:03:57		Review of scene; Arrest of juveniles	Juvenile Justice Information (NRS 62H.025)
Byers	3:41 PM	0:00:51		Arrives on scene Arrest of juveniles	Juvenile Justice Information (NRS 62H.025)
Byers	3:43 PM	0:02:31		Review of scene; Arrest of juveniles	Juvenile Justice Information (NRS 62H.025)
Zarkowski	3:44 PM	0:17:45		Receives call, responds, and arrives on scene Juveniles are arrested Review of scene	Juvenile Justice Information (NRS 62H.025)
Byers	3:52 PM	0:02:10		Obtaining information from juveniles	Juvenile Justice Information (NRS 62H.025)
Gregory	4:01 PM	0:14:04		Information from victim; Discussion about incident and juveniles Prepare paperwork related to incident; Leaves scene	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:00:01 - 0:18:39	Placing juveniles in vehicle Review of Scene	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:18:40-0:18:50	Senator Ford arrives on scene	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:19:15 - 0:20:45	Senator Ford speaking with juvenile	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:23:02 - 0:27:03	Victim discussing incident with Senator Ford and parents.	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:27:06 - 0:29:51	Telephone call with parent regarding juvenile	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	0:30:12 - 0:30:19	Senator Ford appears	Juvenile Justice Information (NRS 62H.025)
Zarkowski	4:01 PM	1:13:40	030:20 - 1:13:40	Discussion with officers; interaction with juveniles; Additional discussion with officers; Leaves scene to transport juveniles to juvenile hall	Juvenile Justice Information (NRS 62H.025)
Byers	4:02 PM	0:01:24		Arrested juveniles	Juvenile Justice Information (NRS 62H.025)
Byers	4:04 PM	0:04:13		Arrested juveniles	Juvenile Justice Information (NRS 62H.025)

EXHIBIT 3-B

EXHIBIT 3-B

Las Vegas Metropolitan Police Department
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5/210.00 EVIDENCE AND PROPERTY PROCEDURES

5/210.01 BODY WORN CAMERAS

- Section 1 Body Worn Camera (BWC) Use
- Section 2 Recorded Data Access and Review
- Section 3 Data Storage and Security
- Section 4 Recording Retention Schedule
- Section 5 Body Camera Sections Responsibilities

Section 1 BODY WORN CAMERA USE

It is the policy of the department to respect the legitimate privacy interests of citizens and visitors of Clark County, while ensuring professionalism in its work force.

Body Worn Cameras are an effective tool to preserve factual representations of officer-citizen interactions. BWCs are effective in capturing video and audio evidence for use in criminal and internal investigations, enhance officer training, and ensure public trust.

The purpose of this policy is to establish guidelines for the use, management, storage, and retrieval of video and audio data recorded by BWCs.

ACTIVATION AND DOCUMENTATION

This section applies to all BWC wearers of any rank.

Officers will activate the BWC as soon as a call is initiated via radio and/or Mobile Data Terminal (MDT) or as early as possible at the beginning of any self-initiated police action when it is safe and practical to do so. Officers should inform individuals that they are being recorded at the beginning of the contact or when it is possible, safe, and practical to do so. Specifically, officers will record all contacts with citizens in the following occurrences:

1. All dispatched calls for service involving contact with citizens or potential for contact with suspects.
2. Officer initiated activities (i.e., vehicles and person stops, etc.).
3. Detentions and/or investigations pursuant to an arrest, arrests, suspect interviews, and post-Miranda interrogations.
4. Search of persons, structures or vehicles, if not already activated.
5. As soon as possible after the occurrence of an officer-involved traffic accident, if not already activated.
6. When driving Code 3.
7. Any contact that becomes adversarial when body camera had not previously been activated.
8. Transport of prisoners.
9. Any other citizen contact or official duty circumstance at the officer's discretion, based on circumstances and reasonableness (i.e., field testing of narcotics, counting of seized money in the field, documenting high-value found property, etc.).

Activation of the BWC is not required during periods of unassigned time, breaks or lunch periods, or when not in service.

Officers will:

1. Document the existence of a BWC recording in all field interviews, investigative reports, and arrest documents.
2. Select "Body Camera Video" from the choices in the "Connecting Reports" section near the bottom of the "Administrative" tab page for P1 reports, and write "Body Camera Recording Available" on the first line of all report narratives.
3. Document the circumstances and reason as a closing comment to the event on the MDT and in any applicable reports (e.g., BWC video available).
4. Upload all recordings to evidence.com before the end of shift.

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Officers will not substitute "refer to video" or other similar language in place of a detailed and thorough report. Officers should avoid using exact quotes, but should represent statements in their reports as a summary of what is contained in the BWC recording.

Supervisors will:

1. Ensure all BWC officers utilize the cameras in accordance with this policy.
2. Direct the officer to remove the BWC from service and contact Body Camera Section for BWC repair or replacement.
3. Retrieve an officer's BWC and upload it by the end of the shift if that officer is unable to do so.
4. Access BWC recordings during the course of duties in accordance with the RECORDED DATA ACCESS AND REVIEW section of this policy.
5. Investigate following the application of reportable force (except use of deadly force):
 - a. Access the video on scene in the presence of the involved officer(s).
 - b. Record the interview of the subject citizen, for supervisors who wear a BWC.
 - c. Not record the subject officer during the investigation, for supervisors who wear a BWC.
 - d. Review the video with the officer as soon as practical prior to the Use of Force report being completed, if an involved officer(s) is unavailable at the scene.
 - e. Ensure the review of the BWC video is documented in the narrative of the investigative comments, and ensure that the video is labeled and categorized in accordance with this policy.
6. Respond to a citizen request to file a Statement of Complaint (SOC):
 - a. Handle receipts of complaints in accordance with 5/101.26, Maintenance of Values and Ethics, Section 2, sub-section IV.
 - b. Interview the complainant, when possible, before reviewing any available BWC video that recorded the alleged violation.
 - c. Record the interview with the complainant, for supervisors who wear a BWC.
 - d. Not record the subject officer during the investigation, for supervisors who wear a BWC.
 - e. Access the video on-scene through a mobile device or any MDT. NOTE: Review of the recording will not happen in the presence of the complainant.
 - f. If the allegation is not a violation of policy or law, notate so in the Blue Team Citizen Contact that BWC video is available, was reviewed, and is one of the justifications for the Citizen Contact Report.
 - g. If the allegation appears to be valid, notate so in the narrative of the SOC that BWC video is available, was reviewed, and is one of the justifications for the SOC.
 - h. If, during the course of the investigation, a supervisor has probable cause, based on BWC video and/or totality of circumstances, to believe a reporting citizen is in violation of NRS 207.280 (False Reporting of Crimes Unlawful), take the appropriate enforcement action, to include creating a crime report and notification to the Internal Affairs Bureau Criminal Team.

DEACTIVATION

Officers will continue to record for a short period after the event to demonstrate clearly to a subsequent viewer that the incident has concluded and the officer has resumed other duties or activities.

Officers have discretion to deactivate the BWC under the following circumstances:

1. The incident has concluded prior to the arrival of the officer.
2. The incident or event is of such duration that deactivating the BWC is necessary to conserve available recording time.
3. The BWC controller's battery light-emitting diode (LED) is red, indicating the remaining capacity is less than 20%, does not require activation of the BWC until arrival on scene unless traveling Code 3.
4. The officer has a reasonable belief there will be no loss of critical documentary information (for example, completing reports at the conclusion of an event, etc.).
5. Investigative personnel arrive and begin the formal investigative process.
6. Arrival at any detention facility and just prior to entering the booking area. Officers will not activate their BWC inside any detention facility.
7. SWAT, ARMOR, or other units who are on-call while traveling to the incident. Activation will occur once arrived and individual officer deployment begins.

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8. Resident officers who are responding to calls for service will activate their BWC when they are within five miles of arrival or when responding Code 3.

BALANCING PRIVACY CONCERNS

Officers have discretion to deactivate the BWC when privacy concerns outweigh law enforcement interests and the absence of a BWC recording will not affect the investigation. Officers should evaluate each situation and, when appropriate, deactivate the BWC. The decision to deactivate a BWC should be stated prior to deactivation. If a BWC is being deactivated in response to a citizen request, the request to turn the camera off should be recorded, as well as the officer's response. The following are examples of when an officer may exercise discretion:

1. A citizen has requested the officer stop recording. Officers have no obligation to stop recording in response to a citizen's request if the recording is pursuant to law enforcement activities, or the circumstances clearly dictate that continued recording is necessary. However, officers should evaluate the situation and, when appropriate, honor the citizen's request.
2. A citizen with standing has requested the officer stop recording within the citizen's residence/structure and the officer has entered the residence/structure on consent. As a general rule, if an officer must legally ask permission to enter a premise, a citizen with standing may put conditions on the officer's entry such as deactivation of the BWC.
3. If a victim or witness requests not to be recorded or is uncomfortable with being recorded:
 - a. Officers may consider asking a non-consenting victim or witness if they would agree to the option of diverting the camera away and recording only audio.
4. Officers should be mindful of locations such as places of worship, certain locations in hospitals or clinics, law offices, and day care facilities, where recording may be considered insensitive, inappropriate, or prohibited by privacy policies.

GENERAL

1. All regularly uniformed sergeants and officers assigned to the Law Enforcement Operations Group, SWAT, K-9, and the Headquarters Security Detail will be required to wear their assigned BWC when made available by the department. Other uniformed officers may voluntarily wear a BWC depending on availability.
2. The BWC will be worn on the collar, epaulette, eyewear, or head mounted; as instructed during initial BWC training.
3. Officers will not use privately owned BWC under any circumstances.
4. Officers will check at the beginning of shift that the BWC has a fully charged battery and is functioning properly.
5. Officers must notify a supervisor whenever there is a malfunction or damage to the BWC and document the malfunction/damage in an email submitted to the Body Camera Section at Body_Camera@LVMPD.com.
6. The Supply Section will issue and account for all BWC within the WASP Tracking System. Upon transfer to an assignment where a BWC is not worn, or separation from the department, officers must return the BWC to the Supply Section.
7. Officers must be trained prior to use. Officers who have not been trained to use a BWC in the Academy will be trained to use a BWC at the first time of issuance. All supervisors of BWC officers and other personnel who may access or otherwise be involved with BWCs may also be directed to attend training based on assignment. All training related to BWCs will be coordinated, developed, and conducted jointly by the Body Camera Section and the Organizational Development Bureau.
8. BWC will be used only in conjunction with official law enforcement duties. The BWC shall not be used to record:
 - a. Any personal conversation of or between other department employees without the recorded employee's knowledge (see 4/103.24, Covert Mechanical Recordings).
 - b. Non-work related personal activity and will not be activated in places where a reasonable expectation of privacy exists, such as locker rooms, dressing rooms, or restrooms.
 - c. Major crime investigative briefings without ranking ISD/HSD personnel approval.
 - d. Encounters with undercover officers or confidential informants.
 - e. Any administrative meetings, workgroups, professional development conversation, counseling, discipline, bargaining union contractual matters, or training event.

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- f. Large scale special events such as New Year's Eve, Electric Daisy Carnival, etc., unless engaged in activity previously listed in the "Activation and Documentation" section of this policy. The normal interaction with the crowd that occurs during these events does not require continuous recording.

NOTE: Using BWCs for training purposes such as to Field Training and Evaluation Program (FTEP), Advanced Officer Skills Training (AOST), or Reality Based Training (RBT) is not a violation of this restriction.

SPECIFIC OPERATIONAL CIRCUMSTANCES

Crime Scenes

1. BWCs may capture valuable information as officers arrive, handle, and conduct preliminary investigations at crime scenes. These recordings will not replace evidence collection by crime scene investigators and are not the primary means for documenting evidence at a crime scene.
2. Officers who record video at a crime scene will identify themselves to arriving investigative personnel so that the presence of video can be noted by detective(s).
3. Officers will cease recording, if they haven't already done so, once a formal investigation begins.

Major Incidents

1. Supervisors at major incidents should deploy BWC officers as necessary to meet tactical requirements and the assignment will be noted in the Major Incident Log.
2. BWCs will not be recording in or around the Incident Command Post, operational or tactical planning and assembly areas, or in any location where recordings could document operational and tactical planning, procedures, or deployment tactics unless directed by the Incident Commander.
3. BWCs will be utilized at the scene of major crowd control events, mass demonstrations, or riots at the direction of the Incident Commander.

Officer Involved Shootings

1. Following an officer involved shooting or other use of deadly force, involved personnel and/or any supervisor will not view the BWC recording prior to Force Investigative Team (FIT) or Critical Incident Response Team (CIRT) viewing the footage, except when articulable exigent circumstances exist.
2. Involved officers will be allowed to view their own BWC recording, as well as any witness officers' recordings, prior to a scene walkthrough and subsequent FIT/CIRT statement.
3. Witness officers will be allowed to view their own BWC recording prior to a scene walkthrough and subsequent FIT/CIRT statement.
4. The Incident Commander is responsible for identifying and documenting the location of all BWCs at the scene of an officer involved shooting. The Incident Commander will direct that all BWCs on involved, witness, and other officers in close proximity of the scene, are deactivated once the scene is static and/or the formal investigative process has begun.
5. The Incident Commander will also ensure that BWCs are not used to record an officer's Public Safety Statement.
6. FIT personnel will be responsible for collecting and securing the BWCs from all involved and witness officers upon arrival at the scene. FIT is responsible for upload of video into evidence.com.

Plainclothes Operations

1. Officers who have been issued a BWC, regardless of assignment, and are conducting pre-planned law enforcement operations will wear a department approved uniform, and are required to wear the assigned BWC. An example of pre-planned law enforcement operations would be directed patrol activities where pedestrian and vehicle stops will be made, service of search warrants and other activities that would cause officers to have citizen-suspect contact.

Community Policing Activities

2. Officers have great discretion whether to record informal, non-law enforcement related contacts with the public. Recording these activities should be an exception. These community-related activities foster a positive relationship between the public and the police. The presence of cameras that are recording may signal distrust of the public and hinder community relations.

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Special Events

3. BWC officers assigned to special events will wear their assigned BWC during the shift unless directed otherwise by the Events Planning Section. Officers will not use BWCs to record non-law enforcement activities. At the conclusion of the special event, officers will return and upload their BWC to their bureau of assignment on the next regular scheduled work day. If an officer is involved in any type of incident that requires reporting to their immediate supervisor, such as reportable force, pursuit, citizen complaint, etc., the BWC will be returned and uploaded at the end of that specific shift. Events Planning Section will add thirty minutes to the officer's overtime shift to compensate for their travel if beyond the end of their regularly scheduled shift.

Section 2

RECORDED DATA ACCESS AND REVIEW

All access and activity on evidence.com is logged and subject to audit. Access to evidence.com and the data stored in the system is permitted on a right-to-know, need-to-know basis. Recordings may only be viewed according to the provisions of this policy or as designated by the Body Camera Section lieutenant. Recorded data shall not be routinely or randomly viewed for the sole purpose of enforcing policy violations.

OFFICER ACCESS

Officers may view their own BWC recordings to:

1. Assist in completing an investigation and preparing official reports. Officers are encouraged to review the BWC recording prior to preparing reports.
2. Prior to court to refresh recollection.
3. Provide a statement pursuant to an internal investigation, including officer involved shooting investigations, and other deadly force or critical incidents.

Officers will not allow citizens to review BWC recording in the field. NOTE: Citizens requesting to view BWC recording will be advised to refer to the procedure on lvmpd.com or to call the LVMPD BWC Dissemination Manager.

SUPERVISOR ACCESS

Sergeants do not have direct access to their officer's BWC video through evidence.com. In appropriate circumstances, sergeants should be reviewing video for their officers. Examples of situations when it is appropriate to review video are: reportable use of force incidents, citizen complaints in the field, formal bureau level SOC investigations, and demonstrated performance issues. Supervisors may access BWC recordings from personnel under their supervision in the following manner:

1. View video at the scene in the presence of the officer.
2. Direct the officer to "share" the video through evidence.com.
3. Ask the shift lieutenant to "share" the video through evidence.com.
4. Ask the area command evidence.com manager to "share" the video.
5. Ask the Body Camera Section to "share" the video.

INTERNAL INVESTIGATIVE PERSONNEL

Internal Affairs Bureau (IAB) personnel will not access and search BWC recordings for offenses committed by users unless pursuant to an official complaint. IAB personnel may allow citizens, arrestees or violators to view BWC recordings as part of an investigation into an allegation of misconduct. Personnel assigned to criminal investigative sections may view BWC recordings as part of their review or investigation of the incident.

TRAINING

In instances where a BWC recording contains material that is beneficial for training purposes, the recording may be used only with consent from the recording officer and approval from the Body Camera Section lieutenant, in coordination with the Organizational Development Bureau Commander. This stipulation does not pertain to FTPE, AOST, or RBT.

EXHIBIT 3-C

EXHIBIT 3-C

NRS 239.010 Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be prepared by governmental entity and provided in medium requested.

1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.008, 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.035, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902, 433.534, 433A.360, 437.145, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735, 445A.665, 445B.570, 449.209, 449.245, 449A.112, 450.140, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.365, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641.325, 641A.191, 641A.289, 641B.170, 641B.460, 641C.760, 641C.800, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.320, 704B.325, 706.1725, 706A.230, 710.159, 711.600, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KERRY LOUISE EARLEY, DISTRICT
JUDGE,
Respondents,
and
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Real Party in Interest.

No. 77131

FILED

OCT 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

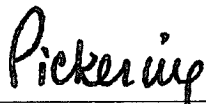
ORDER DENYING PETITION FOR WRIT OF MANDAMUS


This emergency petition for a writ of mandamus challenges a district court order denying petitioner's motion to examine withheld records under an "attorney's eyes only" restriction.

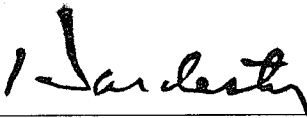
Having considered the petition and supporting documents, we are not persuaded that our extraordinary intervention is warranted at this time. NRS 34.160; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). The district court hearing on petitioner's public records request is scheduled for Wednesday this week. In view of the

upcoming hearing, we decline to exercise our discretion to intervene, and we

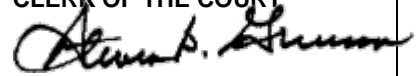
ORDER the petition DENIED.


_____, J.
Pickering


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Kerry Louise Earley, District Judge
Clark Hill PLLC
Marquis Aurbach Coffing
Eighth District Court Clerk



1 TRAN

DISTRICT COURT

2

CLARK COUNTY, NEVADA

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* * * * *

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6 REPUBLICAN ATTORNEYS GENERAL)
ASSOCIATION,)

CASE NO. A-18-780538

7)

8 Plaintiff,)

DEPT. NO. IV

8

9

vs.)

10 LAS VEGAS METROPOLITAN POLICE)
DEPARTMENT,)

Transcript of Proceedings

11)

12 Defendant.)

BEFORE THE HONORABLE KERRY EARLEY, DISTRICT COURT JUDGE

13

PETITION

14

WEDNESDAY, OCTOBER 17, 2018

15

16 APPEARANCES:

16

17 For the Plaintiff: COLLEEN E. MCCARTY, ESQ.
DEANNA FORBUSH, ESQ.

18

19 For the Defendant: JACQUELINE NICHOLS, ESQ.

19

20

21 RECORDED BY: SHARON NICHOLS, DISTRICT COURT
22 TRANSCRIBED BY: KRISTEN LUNKWITZ

22

23

24 Proceedings recorded by audio-visual recording, transcript
25 produced by transcription service.

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WEDNESDAY, OCTOBER 17, 2018 AT 10:18 A.M.

THE COURT: And it's my understanding the Supreme Court told me that the writ was denied. Correct? At this time.

MS. MCCARTY: That's correct, Your Honor.

THE COURT: Okay. What's procedurally done -- okay.

And, then, I am going to, as you know from my other order, I did review the two CD discs that were sent to -- that were given to me that I marked, counsel, for Las Vegas Metropolitan Police Department. That is what I did review. I'm going to put that as part of the record, sealed, so that if the record goes up, that is part of the record. So, I'm moving for that right now so I don't forget that because that's very important. So, I'm going to do that as the Court's Exhibit, I guess, 1. Okay. Exhibit 1 so you all -- it will be -- and it is being filed under seal because it's confidential. All right? And that is the two CD discs that I reviewed everything. That was the body cam footage of the Metro officers that are the subject of this litigation.

So, I'm going to do that first. Okay? So we don't -- all right. Okay. I'm ready to go forward. Okay, counsel?

1 MS. MCCARTY: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MS. MCCARTY: Your Honor, we respectfully assert
4 that none of the Metro records requested by RAGA are
5 privileged or confidential. Metro asserts incorrectly that
6 the requested records are confidential under NRS Chapter
7 62H.025 and 62H.030, which govern the disclosure of
8 juvenile justice records. The requirements of those
9 statutes by their clear and unambiguous language pertain
10 only to cases actually brought before the Juvenile Court.
11 Metro has provided --

12 THE COURT: Hold, hold. Actually brought. Where
13 does it say that in the statute?

14 MS. MCCARTY: If you look at 62H.1 --

15 THE COURT: I've got it right in front of me.

16 MS. MCCARTY: -- 025(b)6 [sic].

17 THE COURT: B -- okay. Wait a minute. 62H.025
18 what?

19 MS. MCCARTY: (b)6 --

20 THE COURT: 1, 2 --

21 MS. MCCARTY: (b)6.

22 THE COURT: There is no --

23 MS. FORBUSH: 6(b).

24 THE COURT: 6(b) --

25 MS. MCCARTY: Oh.

1 THE COURT: There's no (b)6 so you're going to
2 have to help me. If you say 6(b) --

3 MS. MCCARTY: My apologies, Your Honor.

4 THE COURT: I've got the statute in front of me.
5 I've almost memorized. 6 -- there is a 6(b), which defines
6 juvenile justice information. Is that what you're
7 referring to?

8 MS. MCCARTY: Yes.

9 THE COURT: Because I actually have that. I've
10 looked at that. That is the definition for juvenile
11 justice information, which means:

12 Any information which is directly related to a
13 child in need of supervision, a delinquent child, or
14 any other child who is otherwise subject to the
15 jurisdiction of the Juvenile Court.

16 MS. MCCARTY: Correct.

17 THE COURT: Okay. And you're saying that these
18 juveniles who are not?

19 MS. MCCARTY: Well, at this point, Your Honor,
20 Metro has provided no evidence that there was ever a
21 juvenile justice court case. They've provided no records
22 to show that the arrest of these juveniles ever resulted in
23 a juvenile court case.

24 THE COURT: Okay. But here's my question. Where
25 does it say case? It said subject to the jurisdiction of

1 the Juvenile Court. I know from their moving papers -- and
2 from reviewing the video, which you did say in your moving
3 papers so I'm not giving anything confidential because I
4 was trying to be very careful to separate, counsel, what I
5 saw in the video and the facts that you have, that these
6 juveniles were arrested at the scene. In fact -- so, how
7 are they not under the jurisdiction of the Juvenile Court
8 at the time they were actually arrested? And I know they -
9 - yeah, they were arrested and taken to Juvenile Court,
10 that is part of your moving papers. Right, counsel?

11 MS. NICHOLS: Yes, Your Honor.

12 THE COURT: Okay. I tried very hard for both of
13 you that I stayed with the facts. So, you think (b) means
14 the juvenile justice information means they had to have a
15 court case or otherwise it's not protected?

16 MS. MCCARTY: I do, Your Honor.

17 THE COURT: Okay. I'm --

18 MS. MCCARTY: For example --

19 THE COURT: I want to make sure I understand your
20 argument. As you know, I've tried very hard to --

21 MS. MCCARTY: And I appreciate that very much.

22 THE COURT: No. It's -- this is not easy. It's
23 very quite -- okay. So --

24 MS. MCCARTY: And as I'm sure you're aware, if I
25 am arrested, a case may or may not ever become before you

1 or it may or may not ever become before the jurisdiction of
2 this Court. I can be arrested and no charges are ever
3 filed.

4 THE COURT: Correct.

5 MS. MCCARTY: I can be arrested and released for
6 whatever reason. So, that is our position is that these
7 statutes only pertain to records involving a juvenile court
8 case.

9 THE COURT: Okay.

10 MS. MCCARTY: And, pursuant to NRS 239.0113,
11 absent any evidence, which Metro has not provided at this
12 point, that these juveniles who were ostensibly arrested,
13 actually had juvenile court cases, Metro has failed to meet
14 its burden by the preponderance of the evidence that the
15 records are confidential.

16 THE COURT: Okay.

17 MS. MCCARTY: Metro also argues to you
18 incorrectly, we believe, that the Nevada Public Records Act
19 lists statutes NRS 62H.025 and .030 as exemptions or
20 exceptions to the Nevada Public Records Act. This, too, is
21 -- it's just plain wrong. The 400 plus statutes that are
22 enumerated in the NPRA simply point to statutes that
23 provide further guidance regarding specific types of
24 records.

25 THE COURT: Sure.

1 MS. MCCARTY: And, for example, specific portions
2 of the NPRA itself are listed among those 400 enumerated
3 statutes. The public record statute would hardly exempt
4 portions of itself. Instead, we believe that the statute
5 who controls here is actually the body camera statute,
6 which is NRS 289.030 [sic]. It --

7 THE COURT: 289. -- did you put that in your
8 brief?

9 MS. MCCARTY: Oh yes, Your Honor.

10 THE COURT: The body cam statute?

11 MS. MCCARTY: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. MCCARTY: Sorry. 830. 289.830.

14 THE COURT: Okay. That's -- I thought it was a
15 different statute. I'm sorry.

16 MS. MCCARTY: My numbers are just a mess this
17 morning. I apologize.

18 THE COURT: And I'm sorry. I actually listed all
19 the statutes so -- okay. Now I'm okay. All right.

20 MS. MCCARTY: 289.830.

21 THE COURT: I thought I missed something, counsel.

22 MS. MCCARTY: Not at all.

23 THE COURT: Okay. Okay.

24 MS. MCCARTY: We believe it provides, without
25 exception, that any record made by a body worn camera is a

1 public record, period. The statute does place limitations
2 on where body camera video can be viewed but it does not
3 place limitations on whether it may be viewed. The Nevada
4 Legislature created this statute knowing long after the
5 statutes related to the juvenile justice cases and, also,
6 knowing in conjunction with the NPRA. And the body worn
7 camera statute recognizes the duty of a government entity
8 to redact information that is deemed confidential.

9 And this is consistent with the Nevada Public
10 Records Act, which places an unmistakable emphasis on
11 disclosure. The NPRA must be construed liberally and any
12 limitation on the public's right of access must be
13 construed narrowly. And it further mandates the government
14 entities respond to public records requests within five
15 days and, if the request is denied based on
16 confidentiality, it must provide the legal authority, which
17 justifies the disclosure. None of that happened here.

18 Your Honor, this law must have meaning and our
19 public records act is one of the most important laws that
20 we have. It fosters democratic principles. That is what
21 the Legislature stated is its purpose. And, here, what we
22 had is Metro failing to timely respond to not one, not two,
23 not three, but four public records requests dating back to
24 December of last year. RAGA seeks video and records
25 related to a law enforcement encounter, as you know, with

1 senate majority leader and attorney general candidate,
2 Senator Aaron Ford. These are records the public is not
3 only entitled to see but may very well inform their choice
4 of candidate for this state's highest law enforcement
5 office.

6 Metro ignored the requirements of the NPRA. It
7 changed its stated reasons for denying the request. It
8 stood before this Court, making representations about the
9 content of the video, when they admitted they hadn't even
10 seen it. And, then, only when you ordered an in-camera
11 review of the video did they finally acknowledge that the
12 police officers had edited the video in the field in
13 violation of their own body camera policies. And which
14 portions of the video did they edit? The portions
15 involving Senator Ford.

16 THE COURT: That's not what I reviewed. I'm so
17 sorry. I don't know where you're getting that but that's
18 not -- I will tell you -- and you said it, too, in your
19 Motion, the CDs that I saw did have parts of Aaron Ford.
20 And they even said that before. So, what are you -- what
21 are you saying they edited?

22 MS. MCCARTY: If you look at the --

23 THE COURT: I don't know where you're going. I'm
24 so sorry.

25 MS. MCCARTY: Sure. I'll help you and we'll get

1 there together. If you look at the body, at the log that
2 they provided in their Opposition --

3 THE COURT: I did look at the log. Uh-huh.

4 MS. MCCARTY: They assert that the -- it's
5 actually -- I put it in the -- it is Exhibit 3 -- let's
6 see.

7 THE COURT: You know, and on your Motion, I never
8 could find your Exhibit 1, counsel. I just -- did you put
9 it -- is there an Exhibit 1 on your Petition? I just had a
10 big note here. I never did get that.

11 MS. MCCARTY: Exhibit 1 on our Petition?

12 THE COURT: Yeah. You refer to it -- different
13 sections. Sorry. When you're talking about this. But I'm
14 --

15 MS. MCCARTY: No. It's okay.

16 THE COURT: -- I didn't have it. It doesn't
17 matter. At this point, I read what it --

18 MS. MCCARTY: I apologize.

19 THE COURT: But you have an Exhibit 1A, 1B, 1E,
20 1H, and there's none in the Petition that I have. I just
21 wanted to tell you that.

22 Okay. So, tell me on the log, Exhibit B.

23 MS. MCCARTY: Exhibit 3A -- Exhibit 3A to our
24 Reply --

25 THE COURT: Hold on. Okay. Exhibit --

1 MS. MCCARTY: And we highlighted the portions of
2 the video that Metro stated in its Opposition had been
3 muted. And --

4 THE COURT: Muted. That's not deleted. Muted is
5 --

6 MS. MCCARTY: I said edited. And what I mean by
7 edited is they turned off the sound.

8 THE COURT: Well, I read the affidavits -- okay.
9 Sometimes the body cam, they hit it on and sometimes they
10 don't. So, when you say edited, please be specific with me
11 because I didn't know what you meant. I thought you meant
12 they took it all out. That's what I thought by edit. What
13 you're saying, there's a muted portion. I understood that
14 and I -- okay. And they admitted that, that part of it was
15 muted, not because -- at least my understanding, it wasn't
16 muted at the scene, it was muted because it wasn't on. And
17 --

18 MS. MCCARTY: No, Your Honor. My understanding
19 is, based on their brief, that it was muted at the scene,
20 that the officers made the conscious decision at the scene
21 to mute the audio.

22 THE COURT: No. Okay. I don't know where you --

23 MS. MCCARTY: That's what the Opposition states,
24 Your Honor.

25 THE COURT: Okay.

1 MS. MCCARTY: If it was muted --

2 THE COURT: It happens.

3 MS. MCCARTY: -- sometime later, then I think
4 that's a point of clarification that's important for this
5 argument. And it look --

6 THE COURT: Well, you said edited. So, let's get
7 -- you're saying -- and I -- so, what you're saying is part
8 of your argument that there is -- okay. Let me understand
9 where you're going. Part of your argument that it is not
10 privileged, does this -- is because at the scene they made
11 the decision to mute it? So that makes it -- I'm trying --
12 where it -- where are you going with that so I -- I want to
13 make sure I follow so carefully.

14 MS. MCCARTY: Sure.

15 THE COURT: Where are you -- what -- is that part
16 of your waiver argument? Is that part of your -- it's not
17 part of the juvenile justice system information. What
18 we're -- what is the significance as far as this Court on
19 deciding whether it is privileged or not?

20 MS. MCCARTY: It goes to the waiver argument, Your
21 Honor.

22 THE COURT: To -- okay. I -- okay. Because they
23 mute -- so when -- I'm just trying to lead a little to make
24 sure I follow. So, if -- and I don't know that's -- if the
25 -- if it was muted at the scene by the police officer at

1 the time, that was a waiver of making it privileged under
2 62 -- NRS 62H.025?

3 MS. MCCARTY: No, Your Honor. It was a waiver for
4 failing to follow the Nevada Public Records Statutes that
5 require a response within five days. It goes to the
6 overall course of conduct that we have seen here.

7 THE COURT: Over -- so, that's -- okay. So, part
8 of your argument is you feel that the waiver is both stood
9 for -- that I should see from this that there's an overall
10 -- how would you -- course of conduct of Las Vegas
11 Metropolitan Police Department trying to not follow NPRA
12 239.001?

13 MS. MCCARTY: Correct.

14 THE COURT: Okay. I'm sorry. I -- I'm just
15 trying to follow to make I understand. Okay.

16 MS. MCCARTY: Your Honor, the body camera statute,
17 which we also attached to our Reply --

18 THE COURT: Right. I have it, too. I've read it.

19 MS. MCCARTY: -- does not provide for muting in
20 the field. The only incidents that are allowed to be
21 changed or turned off requires the entirety of the turning
22 off of the video only for major incidents and only for
23 tactical considerations. I fail to see how a conversation
24 with Senator Ford, a private citizen, could somehow be a
25 tactical consideration. These officers encountered Senator

1 Ford and those are really the only portions of the video
2 where they muted the audio and I think that's important
3 here.

4 THE COURT: Okay. And you know that from the
5 moving papers or you know that from some -- what -- where --
6 -- what is the source of that?

7 MS. MCCARTY: Again, Your Honor, when you look at
8 the log provided by Metro, --

9 THE COURT: I did.

10 MS. MCCARTY: -- the places that are muted are
11 Officer Kelly [phonetic] at 149 to 657, where Senator --

12 THE COURT: Hold on. Let me get yours instead of
13 -- what -- do it again. 2 -- let me look at yours --

14 MS. MCCARTY: Sure.

15 THE COURT: -- because you highlighted it.

16 MS. MCCARTY: It's 3A --

17 THE COURT: 3A again.

18 MS. MCCARTY: -- to our Reply.

19 THE COURT: 3A. Okay. Hold on. I've got it
20 here. I looked at it. That's 3B. Hold on. I'm sorry.
21 Just -- I just want to make sure I'm following --

22 MS. MCCARTY: Sure.

23 THE COURT: -- because it's important.

24 [Pause in proceedings]

25 THE COURT: Why is this not -- and thank you for

1 giving me the index. I did want to thank you personally.
2 That really helped me. The -- it's -- they just gave me
3 tabs so I didn't do anything ex parte. That's what I was
4 thanking them for on their Motion -- their Petition
5 yesterday.

6 Okay. All right. So, you're looking at --

7 MS. MCCARTY: If you look at Officer Kelly.

8 THE COURT: Okay. I got -- that's got to be page
9 2. Right?

10 MS. MCCARTY: It should be page 1.

11 THE COURT: Oh, I'm sorry.

12 MS. MCCARTY: It begins with Hansen [phonetic]
13 and, then, Kelly at the top.

14 THE COURT: Okay. Why am I struggling with this?
15 3, 3 -- okay. Goodness gracious. I have it. Okay.
16 You're right. At the top I have Officer -- I see Officer
17 Kelly.

18 MS. MCCARTY: Hansen, Kelly. We have highlighted
19 those portions for you that Metro acknowledged in its
20 moving papers: Had muted audio. And you can see there,
21 they are Senator Ford, parent, arrested juvenile,
22 interaction with arrested juvenile, communication with
23 officer, depiction of Senator -- depiction of Senator Ford,
24 depiction of Senator Ford. And it goes on and on. And,
25 then, when you look at Szarkowski [phonetic]: Senator Ford

1 arrives on scene, Senator Ford speaking with juvenile,
2 Senator Ford appears. The vast majority of what was muted
3 were their interactions with Senator Ford. And the
4 remainder here was not muted.

5 THE COURT: So --

6 MS. MCCARTY: We don't think that's a coincidence.

7 THE COURT: Okay.

8 MS. MCCARTY: We asked for these records in
9 December of last year and we didn't learn that the officers
10 had muted the audio in the field until it became clear that
11 you were going to have a look at the video.

12 Because Metro did not timely respond to any of
13 RAGA's requests, as mandated by 239.0107, it waived any
14 entitlement to assert a claim of confidentiality. And, on
15 that basis alone, you would be well within your discretion
16 to grant our Petition. Several of your colleagues have
17 exercised this very same discretion.

18 Judge Crockett noted in his decision granting the
19 petition for the release of coroner's records. I quote:

20 The coroner's office cannot rely on privileged
21 statutes or other authorities that if failed to assert
22 within five business days to meet its burden of
23 establishing that privilege attaches to any of the
24 requested records.

25 The same analysis is applicable here.

1 THE COURT: Do you think there's a distinction
2 between coroner's records and juvenile records?

3 MS. MCCARTY: No. Because in that --

4 THE COURT: You don't think there's a different
5 public policy between when you look at the history of
6 juvenile justice information --

7 MS. MCCARTY: No. I do not.

8 THE COURT: -- and coroner. You do not?

9 MS. MCCARTY: No.

10 THE COURT: Okay.

11 MS. MCCARTY: No. In fact, one of the statutes in
12 that particular case that was argued about why these
13 records cannot be disclosed was because they had been used
14 before a child death review team and that was unavailing to
15 the court.

16 THE COURT: But that's not part of the juvenile
17 justice -- but I understand. I --

18 MS. MCCARTY: Well, and, Your Honor, again,
19 respectfully, we had no evidence -- you have no evidence
20 before you that these arrested juveniles ever came before
21 the jurisdiction of the Juvenile Court.

22 THE COURT: Well, I do --

23 MS. MCCARTY: Those statutes are --

24 THE COURT: -- because they were taken off -- and
25 you admitted in your papers they were taken from the scene

1 to -- in handcuffs. So, I do know that --

2 MS. MCCARTY: That doesn't make a juvenile court
3 case. That means they were arrested.

4 THE COURT: I understand your argument on the
5 court case. But, you know, I do --

6 MS. MCCARTY: That means they were arrested.

7 THE COURT: Yeah.

8 MS. MCCARTY: These statutes are inapplicable.
9 The more specific statute here is the body camera statute,
10 289.830, provides without exception that any record made by
11 a body worn camera is a public record, period. It doesn't
12 say, any record except juvenile justice records, which
13 these are not.

14 THE COURT: Well, how do you -- how do you equate
15 that with what NRS 62H.025 says?

16 MS. MCCARTY: You have to -- if you are going to
17 look at them together --

18 THE COURT: So --

19 MS. MCCARTY: -- you have to --

20 THE COURT: I have to.

21 MS. MCCARTY: You have to put them in harmony.

22 THE COURT: Absolutely. I would totally agree
23 with you that. Absolutely.

24 MS. MCCARTY: But, again, we do not believe that
25 62H in any way applies to what occurred here. And it

1 certainly doesn't address body camera video. And we have
2 no evidence that the body camera video was ever transferred
3 to the Juvenile Court. Ever. Metro has not made that
4 assertion. So, we're talking about body camera video, you
5 have no evidence before you that that video ever went to
6 the Juvenile Court.

7 THE COURT: Okay.

8 MS. MCCARTY: Do you have some additional
9 questions for me?

10 THE COURT: Yeah. I did have. When I looked at
11 it, my -- I looked under, let's see, NRS 62H.025. There's
12 a section -- let me get it because it's 2(r), as in rabbit,
13 which says, for the purposes of ensuring -- if you felt --
14 I understand you feel like this is not juvenile justice
15 information, that's your argument. And my question was
16 that a person who is authorized -- (r) says, a person who
17 is authorized by a court, which if I did authorize it, to
18 receive the juvenile justice information -- if this Court
19 did rule or if I felt it was juvenile justice information,
20 if the juvenile justice agency was provided with notice and
21 opportunity to be heard before the issuance of this order -
22 - I tried to look, did you, on behalf of the Petition, ever
23 notify any counsel for the juvenile justice agency at all
24 regarding this petition? Was there any notice?

25 MS. MCCARTY: No, Your Honor. Because we do not

1 believe these statutes are applicable in any way.

2 THE COURT: Okay. So, you did not do it because
3 you felt this was not juvenile justice information. Okay.
4 I just --

5 MS. MCCARTY: Correct.

6 THE COURT: -- because it -- okay.

7 MS. MCCARTY: And, Your Honor --

8 THE COURT: I wanted to make sure on that because
9 on -- it says that they're supposed to have notice and
10 opportunity to be heard. And I wanted to make sure. I'm
11 not -- okay.

12 MS. MCCARTY: Your Honor, --

13 THE COURT: So, you did not do it because you felt
14 like 62H.025 is not applicable. So, if it's not
15 applicable, you don't have to notify them.

16 MS. MCCARTY: That is correct.

17 THE COURT: Okay. I just wanted to make sure I
18 had a clear record on that. 62H.025.

19 MS. MCCARTY: And, Your Honor, the burden here is
20 Metro's. Under the NPRA, --

21 THE COURT: Absolutely.

22 MS. MCCARTY: -- the burden here is Metro's to
23 prove to you by a preponderance of the evidence that the
24 body cam video we are requesting is confidential. They
25 haven't even proven to you that that video was ever

1 transmitted to the Juvenile Court. They haven't proven to
2 you that a video ever transmitted anywhere in connection
3 with this case. That's a problem.

4 THE COURT: And, so, you're -- the key you're
5 arguing to me is if it wasn't transmitted in some way to
6 the Juvenile Court, under your interpretation of the
7 definition of juvenile justice information, that means it
8 can never come under this statute?

9 MS. MCCARTY: Your Honor, if these cases did not
10 become juvenile court cases, if those records did not
11 result in a juvenile court case, then no.

12 THE COURT: Okay. I --

13 MS. MCCARTY: And you do not have --

14 THE COURT: Just so I understand your argument.
15 Okay.

16 MS. MCCARTY: You do not have any evidence from
17 Metro. If this were a juvenile court case, they could have
18 brought records to you for review in-camera. They did not
19 do that. They have made no assertion that these arrests
20 resulted in anything more than an arrest. And it's their
21 burden to show you that these records are confidential.

22 THE COURT: Okay. No question.

23 MS. MCCARTY: 289 is the more specific -- my
24 apologies.

25 THE COURT: It's okay. No problem. I hear you.

1 Okay.

2 MS. MCCARTY: -- is the more specific statute.
3 62H doesn't address body cam video, it doesn't address
4 public records, 289.830 does. That's the applicable
5 statute here.

6 THE COURT: Okay. All right. Thank you. I
7 appreciate that because it kind of narrowed it down a
8 little bit more for me. All right.

9 MS. MCCARTY: And, finally --

10 THE COURT: I'm sorry. I didn't mean to cut you.

11 MS. MCCARTY: No, no. The Nevada Public Records
12 Statute was not set up to force people to go to court.

13 THE COURT: No.

14 MS. MCCARTY: It was set up to encourage, and
15 prompt, and direct government agencies to fulfill its
16 provisions, fostering democratic principles by allowing
17 transparency in government. And, with that, we would ask
18 that you grant our Petition, order Metro to immediately
19 release the requested records, and to pay attorneys' fees
20 and costs as required by the statute.

21 THE COURT: Okay. And -- okay. All right. Thank
22 you.

23 MS. MCCARTY: Thank you.

24 THE COURT: All right. Counsel?

25 MS. NICHOLS: Thank you, Your Honor.

1 Just to address first a couple of issues that were
2 brought up during the petitioner's argument just now is
3 that Metro is not privy to juvenile justice court records.
4 We do not know whether or not a case is brought forward.
5 That is completely confidential under the Juvenile Justice
6 Act, which is why they -- the Juvenile Justice Act provides
7 that you notify Juvenile Justice Services, which is the
8 juvenile justice agency in Nevada, about this public
9 records request. Because had they done so and had they
10 said -- the Juvenile Justice Services Agency said this is
11 not within -- these records are not governed by the
12 Juvenile Justice Act --

13 THE COURT: We'd have a different case.

14 MS. NICHOLS: Exactly, Your Honor.

15 THE COURT: I understand that.

16 MS. NICHOLS: Exactly.

17 And, so, for those reasons, we have not been able
18 to provide you any documentation regarding whether or not a
19 juvenile case was opened because we don't even have that
20 information because that information is confidential.

21 What we did provide, Your Honor, is that in the
22 declaration, it's I believe --

23 THE COURT: Of one of the officers. Am I right?

24 MS. NICHOLS: Yes. And it's Szarkowski who was
25 one of -- who was, I believe, the main officer in -- to

1 this event who arrested the juveniles. He put in his
2 declaration, if you look at paragraph 5, that --

3 THE COURT: Hold on. Let me find. It's Exhibit
4 A. Right?

5 MS. NICHOLS: It is Exhibit A.

6 THE COURT: Okay. I just want to make -- okay.
7 Yes. 5. As a result, there were -- I have it.

8 MS. NICHOLS: That the investigative file, which
9 includes body worn camera, which includes all of their
10 reports, their entire investigative file was submitted to
11 Juvenile Justice Services. And that is the most
12 information that we can provide.

13 Furthermore, I would like to point the Court to
14 NRS 62C.010, which discusses the arrest of a juvenile and
15 the involvement of the Court -- of the Juvenile Court in
16 those instances. For instance, if the Juvenile Court
17 orders that the kids not be released to the parents, then
18 they cannot be released to the parents and have to be put
19 into a different institution. So, presumably, there is
20 some involvement from the Juvenile Court at the time that
21 the juveniles are arrested.

22 As far as the waiver argument, Your Honor, nothing
23 in the MPRA provides for waiver. And I think, from a
24 public policy standpoint, that a government agency cannot
25 waive a juvenile's right to -- under the Juvenile Justice

1 Act. And if you look at the cases that I cited to in our
2 brief, the only time that that privilege is waived is when
3 the juvenile, let's say, brings a civil action against a
4 law enforcement agency. Or if the victim seeks to bring a
5 civil action regarding the damages arising from the
6 delinquent act, 62H, I believe -- I want to say it's .040,
7 allows the Juvenile Court to release the juvenile's name
8 for purposes of a civil action. But only the juvenile's
9 name and not the related records.

10 Your Honor, this case is about juveniles. It is
11 not about Senator Ford. Had Senator Ford been pulled over
12 for a traffic citation and there were juveniles walking in
13 the background, I completely understand the petitioner's
14 argument. And, in that sense, yes, those juveniles had
15 nothing to do with this case but, nonetheless, would be
16 redacted for privacy considerations and the video related
17 to Senator Ford would be released. But that's not the case
18 here, Your Honor. This case is strictly about juveniles.
19 And just because you have a parent, or a witness, or a
20 Senator Ford in the background, does not transpose these
21 records to be about Senator Ford. They're simply about
22 juveniles.

23 I would like to make just one note, Your Honor.
24 On their Reply, they do include a footnote regarding
25 seeking criminal history information as well, under 179A --

1 let me see if I can find it. It's on page 7 of their
2 Reply, footnote 2. And they say that in addition to the
3 body cam footage video, they're seeking for related records
4 of criminal history. As defined in 17A.070, the definition
5 of criminal records, under subsection -- I believe it's
6 (a)2, specifically says under the definition of criminal
7 history, it excludes juvenile records. So, that by itself,
8 I think is very important because the Juvenile Justice Act
9 addresses juvenile records. There's no other statute here.

10 As far as trying to harmonize the body worn camera
11 statute and the Juvenile Justice Act, I think that you hit
12 the nail on the head when you said that there is a policy
13 interest in keeping juvenile information confidential,
14 which is supported by the Juvenile Justice Act.

15 And, one last thing as relates to the coroner case
16 that's cited -- that was cited by the petitioner, that case
17 is on a stay. No records have been produced and it's in
18 front of the Supreme Court right now.

19 THE COURT: Judge Crockett's the one they had --

20 MS. NICHOLS: Yes.

21 THE COURT: Because I tried to find it. Okay.

22 MS. NICHOLS: Yes.

23 THE COURT: It's on a stay?

24 MS. NICHOLS: Its -- Crockett stayed his own
25 order. And, actually --

1 THE COURT: Let --

2 MS. NICHOLS: -- our office is handling that
3 appeal.

4 THE COURT: So, they can go up on that?

5 MS. NICHOLS: Yes.

6 THE COURT: Okay.

7 MS. NICHOLS: So, no records have been produced in
8 that case. Even though he found a waiver, even though he
9 found the record should be produced, nothing has been
10 produced and it's on a stay.

11 THE COURT: It's -- okay.

12 MS. NICHOLS: Yeah. Do you have any questions for
13 me, Your Honor?

14 THE COURT: Let me see. I have so many notes.
15 Let me make sure. Okay. I made that -- I made sure -- you
16 don't have any objection, either of you, that I make sure
17 that the two discs -- I should have asked before I did it,
18 are part of the record? Because if it goes up, it should
19 be there.

20 MS. NICHOLS: I agree, Your Honor.

21 THE COURT: Is that fine? I'm sure you're fine --

22 MS. MCCARTY: Yeah. That's fine.

23 THE COURT: Okay. I just realized I didn't even
24 ask your permission. I mean, if you had an objection to
25 it. I guess you would have more the objection. We're --

1 you're good with that?

2 MS. NICHOLS: As long as it's under seal, I'm
3 perfectly fine it.

4 THE COURT: It is. And --

5 MS. NICHOLS: Yes.

6 THE COURT: And I did review it to make my
7 decision. So, that's why I'm making it part of the record
8 because it needs to be. Okay. Just -- that was one
9 question I had of you because it's -- okay. Wait. Let me
10 make sure I look through all my notes because -- okay.
11 Okay. Okay. Here -- I have one.

12 Here's what I'm going to do. I'm going to do my
13 own Order. And I know time is of the essence, believe --
14 I've gotten that. So, I think we can do -- we'll do it
15 today. I don't know. We're so -- I'm going to -- I know
16 time is of the essence and I know the other one took a
17 while by the time it was approved before me and I don't
18 want to do that to either one of you right now. Because
19 I'm -- I realize no matter what I do, it's going to go up
20 as it should -- I assume. I don't know. But let me do
21 this. I'm going to go and I'm going to -- I'm going to put
22 down I'm going to do a minute order. I probably won't, but
23 I'll work on it today. I promise you, I'm not holding it,
24 because then I want to serve it on you so whoever needs to
25 go whichever way up, I'm very -- the Court's very cognizant

1 that time is of the essence. All right?

2 MS. NICHOLS: Yes, Your Honor.

3 THE COURT: So, I'm going to do it that way. I'm
4 going to go look at the body cam statute --

5 MS. MCCARTY: Your Honor, may I make just a --

6 THE COURT: Sure.

7 MS. MCCARTY: -- brief final point or two?

8 THE COURT: Absolutely. Did -- I didn't mean to
9 cut you off.

10 MS. MCCARTY: Metro asserts that this case is
11 about juveniles. This case is not about juveniles. This
12 case is about Senator Ford's alleged abuse of power. We
13 are not interested in anything related to what occurred
14 with these juveniles.

15 THE COURT: Okay.

16 MS. MCCARTY: We are interested, as we have been
17 from the get-go, in what Senator Ford did in his
18 communications with law enforcement --

19 THE COURT: Okay.

20 MS. MCCARTY: -- on the scene. And --

21 THE COURT: And you're saying his abuse of power
22 as -- because he's not an attorney general, but his abuse
23 of power as a --

24 MS. MCCARTY: He's the senate majority leader.

25 THE COURT: No. I -- I'm very aware who he is.

1 MS. MCCARTY: Okay.

2 THE COURT: Senate majority leader, that you --
3 you say it's not about juvenile, that he somehow -- you're
4 looking at it that he abused his power at the scene. And
5 you are aware, his -- one of the juveniles -- you said
6 that, too. One of the juveniles, right, I've -- I'm trying
7 to be so careful to make sure I don't -- it's sometimes
8 hard to separate your brain --

9 MS. NICHOLS: I don't -- actually, Your Honor, I
10 don't know if I --

11 THE COURT: I don't know.

12 MS. NICHOLS: I don't think that I said that in
13 the -- on the record.

14 THE COURT: Yeah. Because your log says that he's
15 talking.

16 MS. NICHOLS: Yes.

17 THE COURT: I --

18 MS. MCCARTY: His campaign put it out publicly in
19 the newspaper that it was one of his kids, Your Honor.

20 THE COURT: It was one of your attachments.

21 MS. MCCARTY: Yes.

22 THE COURT: I know it's there because I very
23 carefully, counsel, tried to make sure all the facts, if I
24 said it in court, was in one of your pleadings. And I
25 thought the log mentioned it, too, that his child -- okay.

1 but I under -- I see how you're looking and I absolutely
2 see your focus and I see the other focus. Okay. And I
3 know that you're -- I understand your focus is not to have
4 information on juveniles.

5 MS. MCCARTY: Correct, Your Honor. I think that
6 the allegation has been made that Senator Ford influenced
7 the law enforcement outcome here. I don't know whether
8 that's true because I haven't seen the video. But that is
9 the reason that these records are being requested, is what
10 did he or did he not do at the scene?

11 The other clarification I want to make is that the
12 waiver argument has nothing to do with what Metro asserted
13 was its basis for not providing the records. The waiver
14 argument is that they failed to follow the law and timely
15 responded.

16 THE COURT: Oh no. And I understand --

17 MS. MCCARTY: Okay.

18 THE COURT: -- your legal basis for waiver.
19 Either I realize it and, then, I look at waiver. I do have
20 to do a balance. I under -- I do understand. I looked
21 extensively into the waiver argument. I did. All right.

22 MS. MCCARTY: Thank you.

23 THE COURT: Let me do that. Okay. Thank you so
24 much, counsel.

25 MS. NICHOLS: Thank you.

1 THE COURT: You know, and I promise I'll get -- I
2 understand that time is of the essence. Believe me, I'm
3 very -- let me get all my notes so I can work on it. All
4 right. I have one more hearing. It's a long morning.

5 MS. MCCARTY: Thank you.

6 THE COURT: You're welcome. Thank you, counsel.

7 MS. MCCARTY: Thank you, Your Honor.

8 MS. NICHOLS: Thank you, Your Honor.

9 THE COURT: Thank you, counsel. I appreciate your
10 good briefing and everything very much.

11 MS. MCCARTY: Thank you.

12

13 PROCEEDING CONCLUDED AT 10:52 A.M.

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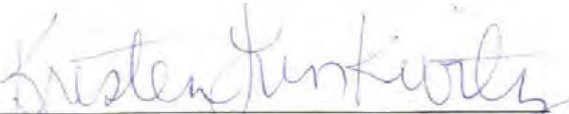
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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

October 17, 2018

A-18-780538-W Republican Attorneys General Association, Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

October 17, 2018 2:00 PM Minute Order

HEARD BY: Earley, Kerry **COURTROOM:** Chambers

COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.

PRESENT:

JOURNAL ENTRIES

- This matter came before the Court on October 17, 2018. The Court has reviewed (1) Petitioner Republican Attorneys General Association’s Emergency Motion for Examination of Records; (2) Respondent Las Vegas Metropolitan Police Departments Opposition Petitioner’s Emergency Motion; (3) Petitioner’s Opening Brief in Support of Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus; (4) Respondents’ Opposition thereto; and (5) Petitioner’s Reply to Respondent’s Opposition, including all attached exhibits and legal authority contained within all moving papers. Additionally, the Court has reviewed two (2) discs produced by Respondent for an in-camera review containing body worn camera footage from the scene of the investigation which is the subject of the present Petition. Based on all the papers, pleadings, exhibits, and legal authority presented to the Court, as well as considering oral arguments by Counsel Colleen McCarty, Esq. on behalf of Petitioner and Jackie V. Nichols on behalf of Respondent, the Court hereby makes its ruling.

The Court finds NRS 239.001 provides that public records are open to inspection; however, NRS 239.010(1) expressly creates an exemption to the disclosure of such records falling under NRS 62H.025. NRS 62H.025(6)(b) defines “juvenile justice information” as “any information which is directly related to a child in need of supervision, a delinquent child or any other child who is otherwise subject to the jurisdiction of the juvenile court.”

Having reviewed in-camera the body worn camera footage, the Court has determined that all portions of the footage, including the portions with Senator Aaron Ford, is directly related to the

investigation of a juvenile involved incident. The footage depicts the area where the incident occurred, juveniles being arrested, and discussions regarding the charges and juvenile process. All communications at the scene, including the ones involving Senator Aaron Ford, are directly related to the juvenile incident and the juvenile justice process as a result of the incident. Therefore, the Court finds all of the body worn camera footage in question is directly related to children who are otherwise subject to the jurisdiction of the juvenile court as defined in NRS 62H.025.

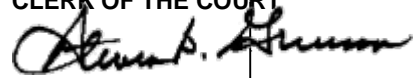
The Court further finds no legitimate interest exists to disseminate these confidential juvenile records. The appearance of adults and witnesses in addition to the juveniles at the crime scene does not remove the subject records outside the protection granted to juvenile justice information.

The Court further finds, records under 62H.025 may only be released in accordance with NRS 62H.025(r) which states juvenile justice information may only be released to "(a) person who is authorized by a court order to receive the juvenile information, if the juvenile justice agency was provided with notice and the opportunity to be heard before the issuance of the order." The record is devoid of Petitioner providing the required notice to the juvenile justice agency in the instant Petition.

The Court further finds no valid legal basis for Petitioner's waiver argument that the failure of the public agency to timely respond waives the confidentiality of records that fall within "juvenile justice information" under NRS 62H.025.

Therefore, based on the foregoing, Petitioner Republican Attorneys General Association's Application Pursuant to NRS 239.001/Petition for Writ of Mandamus is DENIED. Counsel for Petitioner to prepare and submit Findings of Fact, Conclusions or Law, and Order pursuant to this Court's Order, to be approved as to form and content by Respondent's counsel. The Order shall be submitted to the Court, signed and approved by Counsel for Petitioner and Counsel for Respondent, by 5:00 pm on Friday, October 19, 2018.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Colleen McCarty, Esq. (cmccarty@clarkhill.com), Deanna Forbush, Esq. (dforbush@clarkhill.com) and Jacqueline Nichols, Esq. (jnichols@maclaw.com) //ev 10/17/18



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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **REPUBLICAN ATTORNEYS GENERAL**
18 **ASSOCIATION,**

19 Petitioner,

20 vs.

21 **LAS VEGAS METROPOLITAN POLICE**
22 **DEPARTMENT,**

23 Respondent.

Case No.: A-18-780538-W
Dept. No.: IV

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER DENYING
REPUBLICAN ATTORNEYS
GENERAL ASSOCIATION'S PUBLIC
RECORDS ACT APPLICATION
PURSUANT TO NRS 239.001/PETITION
FOR WRIT OF MANDAMUS**

24 The matter of the Public Records Act Application Pursuant to NRS 239.001/Petition for
25 Writ of Mandamus filed by Petitioner, Republican Attorneys General Association ("Petitioner")
26 having come on for hearing on order shortening time before the Honorable Kerry Earley on
27 October 17, 2018; Petitioner and Respondent, Las Vegas Metropolitan Police Department
28 ("Respondent"), appearing by and through their respective attorneys of record; the Court having
29 reviewed all papers and pleadings on file, as well as two (2) discs produced by Respondent for
30 in-camera review, and considered oral arguments of counsel; and good cause appearing:

31 **COURT FINDS AND CONCLUDES** that NRS 239.001 provides that public records are
32 open to inspection; however, NRS 239.010(1) expressly creates an exemption to the disclosure

1 of such records falling under NRS 62H.025. NRS 62H.025(6)(b) defines "juvenile justice
2 information" as "any information which is directly related to a child in need of supervision, a
3 delinquent child or any other child who is otherwise subject to the jurisdiction of the juvenile
4 court."

5
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7 body worn camera footage, that all portions of the footage, including the portions with Senator
8 Aaron Ford, are directly related to the investigation of a juvenile involved incident. The footage
9 depicts the area where the incident occurred, juveniles being arrested, and discussions regarding
10 the charges and juvenile process. All communications at the scene, including the ones
11 involving Senator Aaron Ford, are directly related to the juvenile incident and the juvenile
12 justice process as a result of the incident. Therefore, the Court finds all of the body worn
13 camera footage in question is directly related to children who are otherwise subject to the
14 jurisdiction of the juvenile court as defined in NRS 62H.025.

15
16 COURT FURTHER FINDS AND CONCLUDES that no legitimate interest exists to
17 disseminate these confidential juvenile records. The appearance of adults and witnesses in
18 addition to the juveniles at the crime scene does not remove the subject records outside the
19 protection granted to juvenile justice information.

20
21 COURT FURTHER FINDS AND CONCLUDES that records under 62H.025 may only
22 be released in accordance with NRS 62H.025(r), which states juvenile justice information may
23 only be released to "(a) person who is authorized by a court order to receive the juvenile
24 information, if the juvenile justice agency was provided with notice and the opportunity to be
25 heard before the issuance of the order." The record is devoid of Petitioner providing the
26 required notice to the juvenile justice agency in the instant Petition.

1 COURT FURTHER FINDS AND CONCLUDES that no valid legal basis for
2 Petitioner's waiver argument that the failure of the public agency to timely respond waives the
3 confidentiality of records that fall within "juvenile justice information" under NRS 62H.025.

4 Accordingly,

5 COURT ORDERS that Petitioner's Public Records Act Application Pursuant to NRS
6 239.001/Petition for Writ of Mandamus is DENIED.
7

8 COURT FURTHER ORDERS that Counsel for Petitioner is to prepare and submit
9 Findings of Fact, Conclusions or Law, and Order pursuant to this Court's Order, to be approved
10 as to form and content by Respondent's counsel. The Order shall be submitted to the Court,
11 signed and approved by Counsel for Petitioner and Counsel for Respondent, by 5:00 pm on
12 Friday, October 19, 2018.

13 Dated this _____ day of October, 2018.


14
15
16 _____
KERRY EARLEY
District Court Judge

17 Respectfully submitted by:

Approved as to form and content:

18 **CLARK HILL PLLC**

MARQUIS AURBACH COFFING

19
20 By: 
21 DEANNA L. FORBUSH
22 Nevada Bar No. 6646
23 COLLEEN E. MCCARTY, ESQ.
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26 Las Vegas, Nevada 89169
27 Telephone: (702) 862-8300
28 Attorneys for Petitioner
Republican Attorneys General
Association

By: _____
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Nevada Bar No. 8996
JACKIE V. NICHOLS, ESQ.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Las Vegas
Metropolitan Police Department

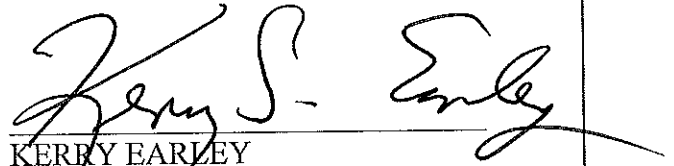
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9 Findings of Fact, Conclusions or Law, and Order pursuant to this Court's Order, to be approved
10 as to form and content by Respondent's counsel. The Order shall be submitted to the Court,
11 signed and approved by Counsel for Petitioner and Counsel for Respondent, by 5:00 pm on
12 Friday, October 19, 2018.

13 Dated this 18 day of October, 2018.

14 
15
16 KERRY EARLEY
17 District Court Judge


18 Respectfully submitted by:

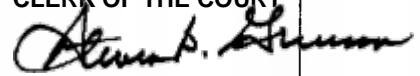
19 **CLARK HILL PLLC**

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21 By: _____
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28 Telephone: (702) 862-8300
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Republican Attorneys General
Association

Approved as to form and content:

MARQUIS AURBACH COFFING

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Attorneys General Association

9
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **REPUBLICAN ATTORNEYS GENERAL**
ASSOCIATION,

13
14 **Petitioner,**

15 **vs.**

16 **LAS VEGAS METROPOLITAN POLICE**
DEPARTMENT,

17
18 **Respondent.**

Case No.: A-18-780538-W
Dept. No.: IV

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
ORDER DENYING REPUBLICAN
ATTORNEYS GENERAL
ASSOCIATION'S PUBLIC RECORDS
ACT APPLICATION PURSUANT TO
NRS 239.001/PETITION FOR WRIT OF
MANDAMUS**

19
20 PLEASE TAKE NOTICE that on the 18th day of October, 2018, the above-entitled
21 Court entered its Findings of Fact, Conclusions of Law and Order Denying Republican
22 Attorneys General Association's Public Records Act Application Pursuant to NRS
23 239.001/Petition for Writ of Mandamus.

24 ...
25 ...
26 ...
27 ...
28 ...

1 A copy of this Order is attached hereto as Exhibit "1."

2 Dated this 19th day of October, 2018.

3
4 CLARK HILL PLLC

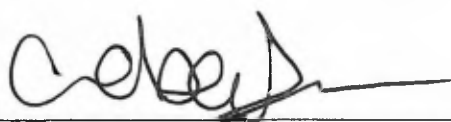
5 By: 

6 DEANNA L. FORBUSH
7 Nevada Bar No. 6646
8 COLLEEN E. MCCARTY, ESQ.
9 Nevada Bar No. 13186
10 3800 Howard Hughes Parkway, Suite 500
11 Las Vegas, Nevada 89169
12 Telephone: (702) 862-8300
13 Attorneys for Petitioner
14 Republican Attorneys General Association
15
16
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28

CERTIFICATE OF SERVICE

Pursuant to NRC 5(b), I certify that I am an employee of Clark Hill PLLC and that on this 19th day of October, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING REPUBLICAN ATTORNEYS GENERAL ASSOCIATION'S PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS 239.001/PETITION FOR WRIT OF MANDAMUS** by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk.

Nick D. Crosby, Esq.
Jackie V. Nichols, Esq.
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145
ncrosby@maclaw.com
jnichols@maclaw.com
Attorneys for Respondent
Las Vegas Metropolitan Police Department

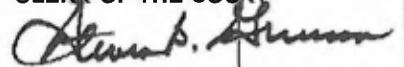


An Employee of Clark Hill PLLC

EXHIBIT 1

EXHIBIT 1

JA000358



1 **FFCO**
2 DEANNA L. FORBUSH
3 Nevada Bar No. 6646
4 Email: dforbush@clarkhill.com
5 COLLEEN E. MCCARTY
6 Nevada Bar No. 13186
7 Email: cmccarty@clarkhill.com
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10 Las Vegas, Nevada 89169
11 Telephone: (702) 862-8300
12 Facsimile: (702) 862-8400
13 Attorneys for Petitioner Republican
14 Attorneys General Association

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **REPUBLICAN ATTORNEYS GENERAL**
18 **ASSOCIATION,**

19 **Petitioner,**

20 **vs.**

21 **LAS VEGAS METROPOLITAN POLICE**
22 **DEPARTMENT,**

23 **Respondent.**

24 **Case No.: A-18-780538-W**
25 **Dept. No.: IV**

26 **FINDINGS OF FACT, CONCLUSIONS**
27 **OF LAW AND ORDER DENYING**
28 **REPUBLICAN ATTORNEYS**
GENERAL ASSOCIATION'S PUBLIC
RECORDS ACT APPLICATION
PURSUANT TO NRS 239.001/PETITION
FOR WRIT OF MANDAMUS

29 The matter of the Public Records Act Application Pursuant to NRS 239.001/Petition for
30 Writ of Mandamus filed by Petitioner, Republican Attorneys General Association ("Petitioner")
31 having come on for hearing on order shortening time before the Honorable Kerry Earley on
32 October 17, 2018; Petitioner and Respondent, Las Vegas Metropolitan Police Department
33 ("Respondent"), appearing by and through their respective attorneys of record; the Court having
34 reviewed all papers and pleadings on file, as well as two (2) discs produced by Respondent for
35 in-camera review, and considered oral arguments of counsel; and good cause appearing:

36 **COURT FINDS AND CONCLUDES** that NRS 239.001 provides that public records are
37 open to inspection; however, NRS 239.010(1) expressly creates an exemption to the disclosure

1 of such records falling under NRS 62H.025. NRS 62H.025(6)(b) defines "juvenile justice
2 information" as "any information which is directly related to a child in need of supervision, a
3 delinquent child or any other child who is otherwise subject to the jurisdiction of the juvenile
4 court."

5
6 COURT FURTHER FINDS AND CONCLUDES, after having reviewed in-camera the
7 body worn camera footage, that all portions of the footage, including the portions with Senator
8 Aaron Ford, are directly related to the investigation of a juvenile involved incident. The footage
9 depicts the area where the incident occurred, juveniles being arrested, and discussions regarding
10 the charges and juvenile process. All communications at the scene, including the ones
11 involving Senator Aaron Ford, are directly related to the juvenile incident and the juvenile
12 justice process as a result of the incident. Therefore, the Court finds all of the body worn
13 camera footage in question is directly related to children who are otherwise subject to the
14 jurisdiction of the juvenile court as defined in NRS 62H.025.
15

16 COURT FURTHER FINDS AND CONCLUDES that no legitimate interest exists to
17 disseminate these confidential juvenile records. The appearance of adults and witnesses in
18 addition to the juveniles at the crime scene does not remove the subject records outside the
19 protection granted to juvenile justice information.
20

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23 only be released to "(a) person who is authorized by a court order to receive the juvenile
24 information, if the juvenile justice agency was provided with notice and the opportunity to be
25 heard before the issuance of the order." The record is devoid of Petitioner providing the
26 required notice to the juvenile justice agency in the instant Petition.
27
28

1 COURT FURTHER FINDS AND CONCLUDES that no valid legal basis for
2 Petitioner's waiver argument that the failure of the public agency to timely respond waives the
3 confidentiality of records that fall within "juvenile justice information" under NRS 62H.025.

4 Accordingly,

5 COURT ORDERS that Petitioner's Public Records Act Application Pursuant to NRS
6 239.001/Petition for Writ of Mandamus is DENIED.
7

8 COURT FURTHER ORDERS that Counsel for Petitioner is to prepare and submit
9 Findings of Fact, Conclusions or Law, and Order pursuant to this Court's Order, to be approved
10 as to form and content by Respondent's counsel. The Order shall be submitted to the Court,
11 signed and approved by Counsel for Petitioner and Counsel for Respondent, by 5:00 pm on
12 Friday, October 19, 2018.

13 Dated this _____ day of October, 2018.

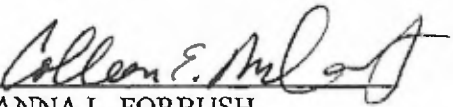
14
15
16 _____
KERRY EARLEY
District Court Judge

17 Respectfully submitted by:

Approved as to form and content:

18 CLARK HILL PLLC

MARQUIS AURBACH COFFING

19
20 By: 
21 DEANNA L. FORBUSH
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23 COLLEEN E. MCCARTY, ESQ.
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Republican Attorneys General
Association

By: _____
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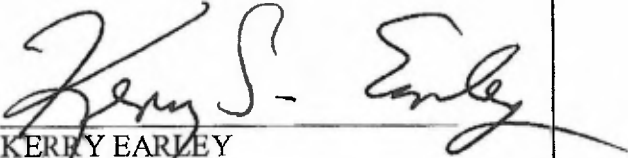
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11 signed and approved by Counsel for Petitioner and Counsel for Respondent, by 5:00 pm on
12 Friday, October 19, 2018.

13 Dated this 18 day of October, 2018.

14 
15
16 KERRY EARLEY
17 District Court Judge

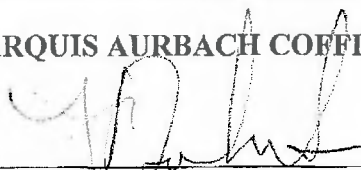
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Approved as to form and content:

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25 Nevada Bar No. 14246
26 10001 Park Run Drive
27 Las Vegas, Nevada 89145
28 Attorneys for Las Vegas
Metropolitan Police Department

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN ATTORNEYS
GENERAL ASSOCIATION,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF CLARK, AND
THE HONORABLE KERRY EARLEY,
DISTRICT JUDGE,

Respondent,

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Real Party in Interest.

Supreme Court Case No.:

Electronically Filed
Oct 22 2018 08:25 a.m.
[District Court Case No. A-18-780538-W] Elizabeth A. Brown
Clerk of Supreme Court

FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE KERRY LOUISE EARLEY, DISTRICT JUDGE

EMERGENCY PETITION FOR WRIT OF MANDAMUS PURSUANT TO
NRAP 21(a) AND NRAP 27(e)

ACTION REQUIRED: IMMEDIATELY

DEANNA L. FORBUSH
Nevada Bar No. 6646
COLLEEN E. MCCARTY
Nevada Bar No. 13186
CLARK HILL PLLC
3800 Howard Hughes Pkwy., Ste. 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Petitioner Republican
Attorneys General Association

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

1. The Petitioner, Republican Attorneys General Association, is the only entity that is a Petitioner in this case;

2. The undersigned counsel of record for Petitioner are the only attorneys who have appeared on its behalf in this matter in this Court. The undersigned, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of the law firm Clark Hill PLLC, both appeared on behalf of Petitioner before the district court.

These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Dated this 19th day of October, 2018.

CLARK HILL PLLC

By: Colleen E. McCarty
DEANNA L. FORBUSH
Nevada Bar No. 6646
COLLEEN E. MCCARTY
Nevada Bar No. 13186
3800 Howard Hughes Pkwy., Ste. 500
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Telephone: (702) 862-8300
Attorneys for Petitioner Republican
Attorneys General Association

ROUTING STATEMENT

Petitioner respectfully asserts that this Emergency Petition for Writ of Mandamus is presumptively retained by the Supreme Court, pursuant to NRAP 17(a)(11). The matter raises as a principle issue a question of statewide public importance, specifically the denial of a public records request for records not otherwise confidential regarding an encounter between State Senator and current candidate for Nevada Attorney General, Aaron Ford, and officers employed by Real Party in Interest, Las Vegas Metropolitan Police Department. Senator Ford is believed to have used his position of authority as an elected official to influence the outcome of the encounter, and some officers involved are believed to have covered up Senator Ford's actions by deactivating audio of the encounter in violation of law and policy.

POINTS AND AUTHORITIES

I.

RELIEF SOUGHT BY THE PETITIONER

A petition for writ of mandamus seeks an extraordinary remedy. Nevertheless, in this case, the issuance of such a writ is not only warranted, it is imperative. Unless this Court intervenes and soon, Nevada voters will be denied access to public records highly relevant to their choice for Nevada's next Attorney General.

In her order entered on October 19, 2018, the Honorable Kerry Louise Earley of the Eighth Judicial District Court ("Respondent") denied the Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus filed by the Republican Attorneys General Association ("RAGA" or "Petitioner"). The decision of the district court to find in favor of Real Party in Interest, Las Vegas Metropolitan Police Department ("Metro") and against RAGA on the basis that the records in question are confidential under NRS 62H.025 pertaining to "juvenile justice information" and that NRS 62H.025 is expressly exempt from the Nevada Public Records Act ("NPRA") under NRS 239.010(1), is in direct contravention of the plain language of the NPRA, the long-established public records jurisprudence of this Court, and the basic tenants of statutory construction.

The NPRA requires expeditious access to public records. Allowing public

records concerning an elected official and current candidate for constitutional office to remain undisclosed prior to the 2018 General Election on November 6, 2018 effectively disenfranchises voters who have a right to be so informed, and no appeal at a later date could correct that prejudice once it occurs. Petitioner is agreeable to the redaction of juvenile references from the recordings at issue, so the relief proposed herein has no risk of harm to juveniles, yet the failure of this Court to act will be irreparable. A writ of mandamus ordering the district court to immediately vacate its Findings of Fact, Conclusions of Law and Order entered October 19, 2018, and enter a replacement Order requiring the full and immediate disclosure of all records sought by Petitioner should issue so that the rights of the voting public are adequately protected.

II.

ISSUE PRESENTED

Did the Eighth Judicial District Court (the Honorable Kerry Louise Earley) manifestly abuse its discretion or exercise it arbitrarily and capriciously in denying RAGA's Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus on the basis that the records in question are confidential under NRS 62H.025 pertaining to "juvenile justice information" and that NRS 62H.025 is expressly exempt from the Nevada Public Records Act ("NPRA")?

III.

FACTS NECESSARY TO UNDERSTAND THE ISSUE PRESENTED

Early voting begins in Nevada on October 20, 2018, and the General Election takes place seventeen (17) days later on November 6, 2018. Unless this Court intervenes on an emergency basis to end the district court's manifest abuse of discretion, which has so far permitted Metro to withhold certain public records, voters will go to the polls without information that may determine their choice of candidate for the office of Nevada Attorney General.

The entirety of the written record placed before the district court is thorough and concise. It consists of the eight (8) filings made by the parties, each of which is included in the corresponding **Appendix**. For ease of reference, the facts stated herein are those contained in **Appendix Exhibits ("App. Ex.") 1 – 2, 5 and 7**, at the specific page and line locations noted below.

This Emergency Petition for Writ of Mandamus ("Emergency Petition") arises from the district court's denial of a public records application filed by RAGA against Metro on September 6, 2018. (App. Ex. 1). In its lawsuit against Metro, RAGA provided undisputed evidence that it submitted four (4) public records requests to Metro between December 2017 and May 2018, in which it sought records including, but not limited to, body worn camera ("BWC") video of an encounter between State Senator and current candidate for Nevada Attorney

General, Aaron Ford (“Senator Ford”), and Metro officers on November 13, 2017. (**App. Ex. 1 at 3:19-6:18; App. Ex. 2 at 4:11-5:19**).

After first denying RAGA’s request on the basis that it involved an “active criminal investigation,” Metro inexplicably changed its position to assert that the requested body camera video involved “juvenile suspects” and “juveniles arrested” and was, therefore, confidential under NRS 62H.025 and 62H.030. (**App. Ex. 1 at 3:19-6:18; App. Ex. 2 at 4:11-5:19**). Metro provided no explanation as to how the statutes it cited supported its claim of confidentiality or even how they were applicable to the requested records involving Senator Ford, an adult. (*Id.*). RAGA further provided undisputed evidence to the district court that Metro never disclosed any of the requested records, redacted or otherwise, and never provided a timely response as required under NRS 239.0107(d). (*Id.*).

The first time Metro disclosed anything specific about the requested records it was withholding came in its response filed on October 10, 2018 to RAGA’s public records application. (**App. Ex. 5 at 3:10-4:20.**) At that time, Metro provided only a log of the BWC video and a corresponding Declaration of Officer Jane Pinto, which together showed that three (3) Metro officers directly engaged with Senator Ford, and that the video recorded by two (2) of those Metro officers included a significant amount of “audio disappearing.” (**App Ex. 5 at Ex. B, C.**) Of the 1:13:40 of video recorded by Officer Zarkowski, 47:23 is

“silent audio.” (App. Ex. 5 at Ex. C at 1:13-14.) Similarly, of the 38:34 of video recorded by Officer Kelly, 28.82 is “silent audio.” (*Id.* at 1:12.) The descriptions on the log that corresponded to the missing audio identified that time as almost exclusively the time officers were engaging with Senator Ford. (App. Ex. 7 at Ex. 3-A.) The log further contained a column titled “Privilege Asserted” and each entry therein stated “Juvenile Justice Information (NRS 62H.025).” (App. Ex. 7 at Exhibit B.)

Metro’s explanation for the missing audio was that the officers were using the “mute” feature of the body worn camera, a feature that has since been disabled by Metro to prevent exactly this type of behavior. (App. Ex. 5 at Ex. C.) The purported authority for an officer to “stop or mute” the audio portion of the video was identified as “Department policy 5/210.01.” (*Id.* at 1:18.) Contrary to Metro’s assertion, its policy on Body Worn Cameras, Policy No. 5/210.01 contains no authorization for muting video, and the portion of the policy specifically referenced in the Declaration of Officer Pinto, pertains only to circumstances involving “Major Incidents” and the recording of operational or tactical planning procedures or assembly areas. (App. Ex. 7 at Ex. 3-B.)

The only evidence provided to the district court by Metro to support its assertion of confidentiality in the BWC video is the Declaration of Officer Sebastian Zarkowski, who stated that “juveniles were arrested for an alleged

violation of law.” (**App. Ex. 5 at Ex. A at 1:12-13.**) Metro did not provide evidence of the juvenile court’s involvement, if any, in the November 13, 2018 incident in which officers encountered Senator Ford. Officer Zarkowski stated in his Declaration only that “as a result of the arrest of juveniles, LVMPD provided its investigative file to relevant personnel within the juvenile justice system.” (**App. Ex. 5 at Ex. A at 1:14-15.**) He fails to state whether the contents of the file included the BWC video or to identify the specific person who received the file. (*Id.*).

For purposes of this Emergency Petition, the material facts are as stated above and not in actual dispute. The only dispute is as to the controlling law and its interpretation. As set forth in its Response, Metro asserts that the requested records pertain to juveniles, and are therefore confidential in their entirety under the Juvenile Justice Act, NRS Chapter 62H. (**App. Ex. 5**). RAGA asserts that the requested records are public records pursuant to the NPRA, and notably NRS 289.830, which states without exception, that BWC video is a public record. (**App. Ex. 7**). As the matter was fully briefed before the district court and all records thereof are contained in the Appendix filed contemporaneously herewith, this Court should not need to call for an answer and, for the reasons stated above and further detailed below, should provide relief to RAGA by way of an

extraordinary writ requiring the immediate and full disclosure by Metro of all requested public records.

V.

STATEMENT OF REASONING FOR ISSUANCE OF THE WRIT

A. **Writ Relief Is Appropriate Where the Relief Afforded by Appeal Is Not Sufficiently Plain, Speedy or Adequate.**

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to control a manifest abuse or arbitrary and capricious exercise of discretion. NRS 34.160; *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-604, 637 P.2d 534, 536 (1981); *see also State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931-932, 267 P.3d 777, 780 (2011) (defining manifest abuse of discretion and arbitrary or capricious exercise of discretion in the context of mandamus). The writ will not issue, however, if a petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170. Ultimately, the decision to entertain an extraordinary writ petition lies within the discretion of the Court, and the Court must “consider[] whether judicial economy and sound judicial administration militate for or against issuing the writ.” *Redeker v. Dist. Ct.*, 122 Nev. 164, 167, 127 P.3d 520, 522 (2006), limited on other grounds by *Hidalgo v. Dist. Ct.*, 124 Nev. 330, 341, 184 P.3d 369, 377 (2008).

The Court has settled that “[w]here the circumstances establish urgency or strong necessity, or an important issue of law requires clarification and public policy is served by this court’s exercise of its original jurisdiction, this court may exercise its discretion to consider a petition for extraordinary relief.” *Schuster v. Dist. Ct.* 123 Nev. 187, 190, 160 P.3d 873, 875 (2007). And, the Court has further recognized that even where, as in the instant case, the right to appeal exists and would otherwise generally constitute a speedy and adequate remedy, whether that right to appeal is sufficiently speedy and adequate necessarily turns on the underlying proceedings’ status, the types of issues raised in the writ petition, and whether the appeal will permit the court to meaningfully review the issues presented. *D.R. Horton, Inc. v. Eighth Judicial District Court ex rel. County of Clark*, 123 Nev. 468, 474-475, 168 P.3d 731, 736 (2007).

The Court has assured that, in determining the threshold issue of whether extraordinary relief is appropriate, it “will examine each case individually, granting extraordinary relief if the circumstances reveal urgency or strong necessity.” *Mona v. Eighth Jud. Dist. Ct.*, 132 Nev. Adv. Op. 72 at *5 (Sept. 29, 2016) (internal quotations omitted), citing *Jeep Corp. v. Second Jud. Dist. Ct.*, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982). And, the instant Emergency Petition lands on all counts to be considered for extraordinary relief. There is the urgency of the upcoming General Election on November 6, 2018 and the strong necessity that

voters have a meaningful opportunity to consider the records in question prior to actually casting their vote, which could take place at any time beginning October 20, 2018. There is the important clarification of law needed that no statute is exempt from NPRA consideration, the basis for the district court's manifest abuse of discretion. And, last but certainly not least, there is the strong public policy served by ensuring proper implementation of the NPRA. For all of these reasons, RAGA respectfully requests the Court exercise its discretion and proceed with consideration of the following substantive analysis.

B. The Nevada Public Records Act.

Under the NPRA, open records are the rule and any nondisclosure of records is the exception. NRS 239.010(1); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 627 (2011). The purpose of the NPRA is to "foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]" NRS 239.001(1). To that end, the NPRA must be construed liberally; government records are presumed public records subject to the act; and any limitation on the public's access to public records must be construed narrowly. NRS 239.001(2) and 239.001(3); *see also Gibbons*, 127 Nev. at 882, 266 P.3d at 629 ("the provisions of the NPRA place an unmistakable emphasis on disclosure").

If a statute explicitly makes a record confidential, the public entity may not

be required to produce it. NRS 239.0107(1)(d). The burden, however, rests with the entity to establish, by a preponderance of the evidence, the existence of the entitlement not to produce based upon confidentiality. NRS 239.0113; *see also DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468. “It is well settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly.” *See DR Partners*, 116 Nev. at 621, 6 P.3d at 468. If a government entity denies a request on the basis of confidentiality, it must provide the requesting party with notice and a citation to legal authority that justifies nondisclosure. NRS 239.0107(1)(d); *see also Gibbons*, 127 Nev. at 885, 266 P.3d at 631. Further, if a public record contains confidential information only in part, in response to a request for access to the record, a governmental entity shall redact the confidential information and produce the record in redacted form. NRS 239.010(3).

C. The District Court Abused Its Discretion In Finding the NPRA “Exempts” Any Statute, Including NRS 62H.025.

In contravention of the NPRA’s clear mandates, the district court simply got it wrong when it found the NPRA “expressly creates an exemption to the disclosure of such records falling under NRS 62H.025.” (App. Ex. 8 at 1:28-2:2 (emphasis added).) The Court based its erroneous finding, in part on the fact that NRS 62H.025, which allows for the maintenance and release of juvenile justice

information under certain circumstances, is among the many, many statutes listed in NRS 239.010(1). (*Id.* at 1:28).

NRS 239.010 provides in pertinent part:

Except as otherwise provided in this section and [statutes omitted] and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and those public records.

NRS 239.010(1) (emphasis added). There are, in fact, 400+ statutes listed at the beginning of NRS 239.010, the purpose of which are to do nothing more than point the reader to another statute wherein certain confidentiality requirements pertaining to otherwise public records may be found. Two provisions of the NPRA itself are also listed, i.e. NRS 239.0105 and NRS 239.0113.

The district court's conclusion that the mere inclusion of NRS 62H.025 in the listing mandates its exemption from the NPRA would require a determination that the Legislature also intended to exempt provisions of the NPRA from the NPRA. The district court must consider "the policy and spirit of the law and...seek to avoid an interpretation that leads to an absurd result." *Leven v. Frye*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (quoting *CityPlan Dev. v. State Labor Comm'r*, 121 Nev. 419, 435, 117 P.3d 182, 192 (2005)). The district court's

determination that NRS 62H.025 is exempt from the NPRA's application is an absurd result and a manifest abuse of its discretion.

D. The District Court Abused Its Discretion By Not Considering and Giving Precedence to the Specific Provisions of NRS 289.830¹ Over the General Provisions of NRS 62H.025.

To the extent the Court finds the statutes listed in NRS 239.010(1) are exempt from the requirements of the NPRA, the district court abused its discretion by not giving precedent to another statute listed there, NRS 289.830, pertaining to BWC video. In the instant case, RAGA specifically seeks in part the BWC video of the November 13, 2017 encounter between Senator Ford and Metro officers. Pursuant to NRS 289.830:

Any record made by a portable event recording device² pursuant to this section *is a public record* which may be:
(a) Requested only on a per incident basis; and
(b) Available for inspection only at the location where the record is held if the record contains confidential information that may not otherwise be redacted.

NRS 289.830(2) (emphasis added). This clear and unambiguous language renders all BWC video available to the public, period, with a limitation only as to location

¹ In addition to BWC video under NRS 289.830, RAGA also asked for related records of criminal history as defined in NRS 179A.070. The statutory construction argument stated herein is intended to be applied to both statutes.

² “‘Portable event recording device’ means a device issued to a peace officer by a law enforcement agency to be worn on his or her body and which records both audio and visual events occurring during an encounter with a member of the public while performing his or her duties as a peace officer.” NRS 289.830(3)(b).

of viewing if it is determined that the video contains confidential information. In the event BWC video is held to contain confidential information that may not otherwise be redacted, it is available for inspection only at the location where the record is housed. *Id.* Nothing in the specific BWC video statute allows for the preclusion of public access in its entirety. And, nothing about the NRS 62H.025 speaks to BWC video records specifically, only to records brought before the juvenile court generally.

“When the legislature enacts a statute it must be presumed that it did so with full knowledge of existing statutes related to the same subject.” *State, Div. of Ins. v. State Farm Mut. Auto Ins. Co.*, 116 Nev. 290, 295, 995 P.2d 482, 486 (2000) (quoting *City of Boulder v. General Sales Drivers*, 101 Nev. 117, 118-19, 694 P.2d 498, 500 (1985)). NRS 62H.025 existed in its current form when the Legislature enacted NRS 289.830 in 2015. Although the subject matter of NRS 289.830 is not precisely the same as the NRS 62H.025, the possibility of their overlap compels the Court to attempt to construe them harmoniously. *Id.* In this regard, the Supreme Court has specifically stated that, where there is “nothing to suggest [a] rule and [a] statute cannot be read in harmony[,]” a court should give effect to both. *Watson Rounds v. Eighth Jud. Dist. Ct.* 131 Nev. Adv. Op. 79, 358 P.3d 228, 232 (2015).

And, indeed, nothing does suggest the statutes cannot be read in harmony and both given effect. In enacting NRS 289.830, the Legislature explicitly addressed what would happen in the event BWC video contained confidential information that may not otherwise be redacted. In doing so, it chose to limit only the location of the public's access in that instance, not to preclude access in its entirety. RAGA respectfully asserts that these statutes are entirely compatible and that RAGA is entitled to access to the BWC video improperly denied by the district court.

Even if the Court finds the two statutes to be in conflict to the degree they cannot be read in harmony, then the more specific statute must be the one that controls. *See, e.g., Piroozi v. Eighth Jud. Dist. Ct.*, 131 Nev. 1004, 1009, 363 P.3d 1168, 1172 (2015). The more specific statute, by any reasonable review, is the BWC video statute codified as NRS 289.830, not the statute pertaining to cases before the juvenile court which may or may not involve BWC video. Regardless of which approach to statutory construction the Court takes, however, extraordinary relief in RAGA's favor is warranted.

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E. The District Court Abused Its Discretion By Not Holding Metro to Its Burden to Prove Confidentiality in the Withheld Records By a Preponderance of the Evidence.

As a final matter, to the extent the Court finds NRS 62H.025 may have any applicability to the instant case, the district court nevertheless abused its discretion in applying the statute when Metro failed entirely to meet its burden of proof.

NRS 239.0113 clearly establishes that:

Except as otherwise provided in NRS 239.0115, if:

1. The confidentiality of a public book or record, or a part thereof, is at issue in a judicial proceeding,; and
2. The governmental entity that legal custody or control of a public book or record asserts that the public book or record, or a part thereof, is confidential.

the governmental entity has the burden of proving by a preponderance of the evidence that the public book or record, or part thereof, is confidential.

(emphasis added). While preponderance of the evidence standard is not a high one, the district court was still required to base its findings on some quantum of evidence in the record that Metro's version of the facts is more likely than not the correct version. The district court deciding in Metro's favor despite its wholesale failure to meet its burden is a further abuse of its discretion.

By the plain language of NRS 62H.025, it pertains only to records in cases actually brought before the juvenile court. NRS 62H.025(6)(b). In this regard, Metro never attempted to assert a juvenile court connection to the November 13, 2017 incident, but only provided evidence that juveniles had been arrested. The

only sworn statement provided by Metro in its Response, that of Officer Sebastian Zarkowski, simply states that “juveniles were arrested for an alleged violation of law,” and “as a result of the arrest of juveniles, LVMPD provided its investigative file to relevant personnel within the juvenile justice system.” (App. Ex. 5 at Ex. A at 1:12-15.) No mention is made of the existence of any actual juvenile court case resulting from the incident, and no evidence of the juvenile court exercising jurisdiction over anyone arrested at the scene is ever offered, for *in camera* inspection or otherwise. In short, Metro provided no evidence the BWC video sought herein is a juvenile justice record protected from disclosure under NRS 62H.025.

The district courts acceptance of Officer Zarkowski’s statement that he turned over his investigative file to someone within the juvenile justice system, without more, did not meet the preponderance standard. Officer Zarkowski gave no indication whatsoever of what was in the file, and he certainly made no claim that any BWC video was included. As far as the person he turned the file over to, Officer Zarkowski provided no specifics as to a name or a title, and, of course, his reference to “relevant personnel within the juvenile justice system” in no way specifically connotes juvenile court personnel or anyone working on behalf of a juvenile court case.

In the end, Metro chose to argue and support nothing more than the assertion that juveniles were arrested on November 13, 2017. This is wholly insufficient to prove by a preponderance of the evidence that the confidentiality provisions of NRS 62H.025 apply in the instant case. Accordingly, the district court abused its discretion by holding in favor of Metro without requiring Metro to sustain its burden of proof.

VI.

CONCLUSION

For all of the foregoing reasons, RAGA respectfully requests this Honorable Court grant this emergency petition for writ of mandamus. The district court has manifestly abused its discretion in denying relief.

Dated this 19th day of October, 2018.

CLARK HILL PLLC

By: Colleen E. McCarty

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Attorneys for Petitioner Republican

Attorneys General Association

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Under penalty of perjury, the undersigned declares that she is the attorney for the Petitioner named in the foregoing Emergency Petition and knows the contents thereof, that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as to such matters she believes them to be true.

This verification is made by the undersigned attorney, pursuant to NRS 15.010, on the ground that matters stated and relied upon in the foregoing Emergency Petition are all contained in the prior pleadings and other records of the Court and district court, true and correct copies of which have been included in the appendix submitted with the petition.

Respectfully Submitted,

CLARK HILL PLLC

By: 

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Attorneys for Petitioner Republican
Attorneys General Association

NRAP 27(e) CERTIFICATE

Pursuant to NRAP 27(e), I hereby certify that I am counsel to Petitioner, Republican Attorneys General Association and further certify:

1. The contact information for the attorneys for the Real Party in Interest, Las Vegas Metropolitan Police Department, is:

Nick D. Crosby, Esq.
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Jackie V. Nichols, Esq.
jnichols@maclaw.com
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Las Vegas, Nevada 89145
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2. The facts showing the nature and cause of the emergency are set forth in the Points and Authorities herein. These facts include the following:

a. On October 5, 2018, Respondent denied Petitioner's Emergency Motion for Motion for Examination of Withheld Records on Order Shortening Time, requiring only that the records be provided for *in camera* review, in contravention of this Honorable Court's public records jurisprudence.

b. Thereafter, in a decision issued on October 17, 2018 and formally entered on October 19, 2018, Respondent denied Petitioner's Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus in its entirety, using a manifestly incorrect statutory construction analysis and making a

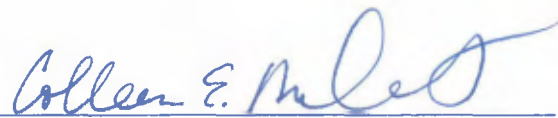
finding of confidentiality that was neither applicable nor demonstrated by a preponderance of the evidence, once again in in contravention of public records law and jurisprudence.

c. Early voting for the 2018 General Election begins on October 20, 2018, and Nevada voters are being denied access to public records highly relevant to their choice for Nevada's next Attorney General.

d. An email containing a copy the foregoing Emergency Petition is being sent to Respondent and Real Party in Interest contemporaneous with the filing of this Emergency Petition.

Dated this 19th day of October, 2018.

CLARK HILL PLLC

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CERTIFICATE OF SERVICE

I certify that on the 19th day of October, 2018, I served a copy of the foregoing **EMERGENCY PETITION FOR WRIT OF MANDAMUS PURSUANT TO NRAP 21(a) and NRAP 27(e)** upon all counsel of records:

X By personally serving it upon him/her to:

The Honorable Kerry Earley
District Court Judge, Dept. IV
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas. NV 89155

AND;

X By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attached a separate sheet with the addresses.)

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An Employee of Clark Hill PLLC

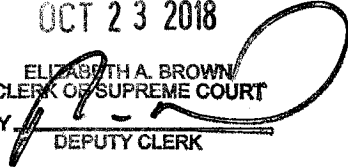
IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN ATTORNEYS GENERAL
ASSOCIATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KERRY LOUISE EARLEY, DISTRICT
JUDGE,
Respondents,
and
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Real Party in Interest.

No. 77219

FILED

OCT 23 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DIRECTING ANSWER

This emergency petition for a writ of mandamus challenges a district court order denying a Public Records Act application. Having reviewed the petition, it appears that an answer may assist this court in resolving this matter. Therefore, real party in interest, on behalf of respondents, shall have until 9:30 a.m. on Thursday, October 25, 2018, within which to file and serve an answer, including authorities, against issuance of the requested writ. NRAP 21(b)(1).

It is so ORDERED.

 _____, A.C.J.

cc: Clark Hill PLLC
Marquis Aurbach Coffing