

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

THE STATE OF NEVADA,

Petitioner,

vs.

THE SECOND JUDICIAL  
DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND  
FOR THE COUNTY OF WASHOE;  
and THE HONORABLE  
KATHLEEN M. DRAKULICH,  
DISTRICT JUDGE,

Respondents.

Electronically Filed  
Feb 25 2020 04:10 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 79792  
(Consolidated with 80008  
and 80009)

**RESPONDENTS' OPPOSITION TO MOTIONS FOR ORDER FOR  
TRANSMISSION OF SEALED TRANSCRIPT**

Respondents, the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; and the Honorable Kathleen M. Drakulich, District Judge (hereafter "Respondents"), by and through counsel, Nevada Attorney General Aaron D. Ford and Deputy Attorney General Peter P. Handy, hereby submit their Opposition to Petitioners' Motions for Order for Transmission of Sealed Transcript ("Petitioner's Motions"), Document Numbers 20-06708, 20-06709, and 20-06710, pursuant to NRAP 27(a)(3).

NRAP 30(d) requires that original exhibits, such as an original transcript, are not permitted “except upon a showing that the exhibits are relevant to the issues raised on appeal, and that the court’s review of the original exhibits is necessary to the determination of the issues.” To be included with the Reply, the documents must be “necessary to reply to respondent’s position on appeal.” NRAP 30(b)(5).

**A. The Requested Sealed Transcripts are Duplicative of Documents in the Record.**

Petitioner avers that “the transcripts are necessary to illustrate that the judges of the Second Judicial District Court vary in their interpretation of prosecutorial obligations.” Petitioner’s Motion (Document 20-06710) at 1–2. However, the requested transcripts would be redundant of documents already included in Petitioner’s Reply Appendix. Petitioner has submitted a variety of orders from different departments of the Second Judicial District Court, providing sufficient evidence to evaluate Petitioner’s contention “that the judges of the Second Judicial District Court vary in their interpretation of prosecutorial obligations.” Petitioner’s Reply Appendix (“PRA”) at 27–39.

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**B. The Requested Sealed Transcripts are Not Relevant to the**

### **Question before the Court.**

Additionally, whether and how interpretations of prosecutorial obligations by the judges of the Second Judicial District Court may vary is wholly irrelevant to this Court's ability to render a decision regarding the questions presented by the Petition for Writ at bar; which, as stated by Petitioner, are whether "a district court exceeds its jurisdiction by 1) mandating that a prosecuting agency respond to a petition to seal records; and 2) requiring a prosecuting agency to serve a fact-checking function by ordering a prosecuting agency to compare a verified criminal history submitted by a petitioner with the agency's records." Petition for Writ of Mandamus or Prohibition at 1–2.

Any demonstration that judges in the Second Judicial District vary in their procedural orders regarding these cases has no bearing on the purely legal question at issue, which is whether the specific judicial mandates made in the cases below exceed the Court's jurisdiction. Even if, *arguendo*, the variance of rulings among judges in the Second Judicial District were relevant, sealed transcripts from other cases, in which a petition for writ has not been sought, would not be any more informative than the orders and other documents already provided by Petitioner and

Respondents in their respective Appendices. Petitioner’s assertion that the sealed transcripts are necessary to show differing expectations of judges fails to meet the high bar of NRAP 30(b)(5) requiring that they be “necessary to reply to respondent’s position on appeal.”

Furthermore, the cases from which sealed transcripts are now sought are not even raised by Respondents in their Answer or Appendix—the documents sought to be included by Petitioners are from entirely different record-sealing cases than those referenced by Respondents. As such, these entirely unrelated transcripts are not “necessary to respond to respondent’s position on appeal.” NRAP 30(b)(5).

Regardless, any variation in court orders or expectations is irrelevant to whether a court has the authority to compel a response from a prosecuting agency in a criminal record-sealing case and any transcripts from other unrelated cases are, consequently, also irrelevant and their inclusion should be prohibited pursuant to NRAP 30(d).

Because the sealed transcripts requested by Petitioner are duplicative of documents in the record, unnecessary to support a relevant fact and are irrelevant to this Court’s determination of the case at bar, Respondents respectfully request that Petitioner’s Motions for Order for

Transmission of Sealed Transcript be denied.

RESPECTFULLY SUBMITTED this 25th day of February, 2020.

AARON D. FORD  
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## CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 25th day of February, 2020, I served a copy of the foregoing RESPONDENTS' OPPOSITION TO MOTION TO FILE SUPPLEMENTAL APPENDIX UNDER SEAL, by the Nevada Supreme Court's EFlex Electronic Filing System to:

JENNIFER P. NOBLE  
Chief Appellate Deputy  
Washoe County District Attorney's Office

/s/ Sandra Geyer\_\_\_\_\_