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DISTRICT COURT**CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

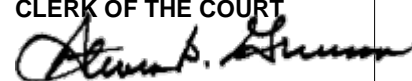
CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Respondent

Case No.: A-17-758501-W
Dept. No.: 24

NOTICE OF APPEAL

Electronically Filed
12/15/2020 4:51 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Dec 17 2020 10:18 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOTICE OF APPEAL

Respondent, Clark County Office of the Coroner/Medical Examiner, by and through its attorneys of record, Marquis Aurbach Coffing and the Clark County District Attorney, hereby appeals to the Supreme Court of Nevada from the Order on Remand, which was filed on November 20, 2020 and is attached as **Exhibit A**.

Dated this 15th day of December, 2020.

MARQUIS AURBACH COFFING

By /s/ Jackie V. Nichols
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Attorneys for Respondent, Clark County Office
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 15th day of December, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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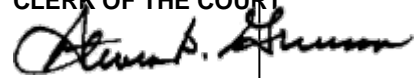
Attorney for Respondent Clark County Office of the Coroner/Medical Examiner

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

¹ 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



1 **NEOJ**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

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4 **MCLEATCHIE LAW**

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9 Attorneys for Petitioner Las Vegas Review-Journal

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

13 Petitioner,

Dept. No.: XXIV

14 vs.

15 **NOTICE OF ENTRY OF ORDER**
ON REMAND

16 CLARK COUNTY OFFICE OF THE
17 CORONER/MEDICAL EXAMINER,

18 Respondent.

19 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE that on the 20th day of November, 2020, an Order on
21 Remand was entered in the above-captioned action.

22 A copy of the Order on Remand is attached hereto as **Exhibit 1**.

23 DATED this 20th day of November, 2020.

24 /s/ Margaret A. McLetchie

25 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

26 ALINA M. SHELL, Nevada Bar No. 11711

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Attorneys for Petitioner Las Vegas Review-Journal

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CERTIFICATE OF SERVICE

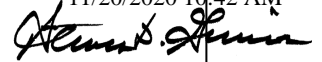
I hereby certify that on this 20th day of November, 2020, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER ON REMAND in *Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner*, Eight Judicial District Court Case No. A-17-758501-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

/s/ Lacey Ambro

An Employee of McLetchie Law

INDEX OF EXHIBITS	
Exhibit	Description
1	November 20, 2020 Order on Remand

EXHIBIT 1


CLERK OF THE COURT

ORDER

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

Case No.: A-17-758501-W

Dept. No.: XXIV

ORDER ON REMAND

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Respondent.

The Las Vegas Review-Journal's Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus ("Petition"), having come on for hearing on remand from the Nevada Supreme Court on October 29, 2020, the Honorable Jim Crockett presiding, Petitioner the Las Vegas Review-Journal (the "Review-Journal") appearing by and through its counsel, Margaret A. McLetchie and Alina M. Shell, and Respondent the Clark County Office of the Coroner/Medical Examiner (the "Coroner") appearing by and through its counsel, Jackie V. Nichols, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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I.**PROCEDURAL HISTORY AND FINDINGS OF FACT**

1. On April 13, 2017, the Review-Journal sent the Coroner a request (the “Request”) pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking all autopsy reports of all autopsies conducted on anyone under the age of 18 from 2012 through the date of the Request.

2. The Coroner responded to the Request on April 13, 2017, refusing to produce any of the requested autopsy reports, stating nothing more than it was “not able to provide autopsy reports.”

3. On April 14, 2017, the Coroner, while continuing to withhold the requested records, provided the Review-Journal a spreadsheet created by undisclosed persons, broken down by year, containing some information but missing critical information, such as opinions of the medical examiner, physical observations, and the identity of the medical examiner performing the autopsies.

4. On May 26, 2017, the Coroner also provided a list of child deaths where autopsy reports were generated. As with the spreadsheet, while the list included the cause and manner of death, it omitted information regarding the identity of the examiner, the observations of the examiner, and the identity of the person(s) who compiled the list.

5. The Coroner did not provide the actual autopsy reports that were responsive to the request.

6. On July 11, 2017, the Coroner informed the Review-Journal that it had begun compiling and redacting autopsy reports in response to the records request, and provided sample files of three redacted autopsy reports from child deaths that were not handled by a child death review team as an example of the redactions the Coroner intended to make to all the requested reports. The Coroner also provided the Review-Journal with a spreadsheet identifying juvenile deaths that occurred in Clark County from January 2012 to the date of the request which included each decedent's name, age, race, and gender, as well as the cause, manner, and location of death.

1 7. The sample files were heavily redacted, omitting pathological diagnoses
2 and opinions regarding cause of death.

3 8. The Review-Journal filed its Petition on July 17, 2017.

4 9. After full briefing by the parties, this Court conducted a hearing on the
5 Review-Journal's Petition on September 28, 2017, and granted the Review-Journal's Petition
6 in its entirety.

7 10. The Court entered a written order granting the Review-Journal's Petition
8 and ordering the Coroner to produce the requested autopsy reports on November 19, 2017.

9 11. The Coroner filed a notice of appeal challenging the Court's November 19,
10 2017, order on November 28, 2017.

11 12. On appeal, the Coroner argued that it may refuse to disclose a juvenile
12 autopsy report once it has provided the report to a Child Death Review ("CDR") team under
13 Nev. Rev. Stat. § 432B.407(6). The Coroner further argued that the Court erred in ordering
14 the Coroner to produce the reports in unredacted form.

15 13. The Supreme Court issued a decision on February 27, 2020. *See Clark Cty.*
16 *Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 136 Nev. 44, 458 P.3d 1048
17 (2020).

18 14. In its opinion, the Supreme Court rejected the Coroner's broad
19 interpretation of Nev. Rev. Stat. § 432B.407(6), holding that the statute "applies exclusively
20 to a CDR 'team,' not to the broad categories of individual public agencies that may be part
21 of a CDR team" such as the Coroner. *Coroner*, 136 Nev. at 51, 458 P.3d at 1055. Under a
22 narrow construction of this statute as mandated by Nev. Rev. Stat. § 239.001(3), the Court
23 found that "only a CDR team may invoke the confidentiality privilege to withhold
24 information in response to a public records request, and NRS 432B.407(6) makes
25 confidential only information or records 'acquired by' the CDR team." *Id.* at 50-51, 1055.

26 15. The Supreme Court further found that the statutory scheme of NRS Chapter
27 432B "reflects a clear legislative intent to make certain information concerning child
28 fatalities publicly available." *Id.* at 52, 1055; *see also id.* at 52-53, 1055-56 (discussing

1 legislative history of Chapter 432B).

2 16. After considering the statutory scheme and legislative history of Chapter
3 432B, the Supreme Court found that “the public policy interest in disseminating information
4 pertaining to child abuse and fatalities is significant.” *Id.* at 57, 1059.

5 17. However, the Supreme Court found that the Coroner had articulated a
6 nontrivial privacy interest that could be at stake for some information contained in the
7 records, and remanded the matter to this Court to apply the two-part balancing test adopted
8 in *Clark Cty. School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018)
9 (“CCSD”) to determine what information in the autopsy reports must be disclosed under the
10 NPRA and what information should be redacted. *Coroner*, 136 Nev. at 58, 458 P.3d at 1059.

11 18. The Review-Journal filed its Opening Brief on Remand on August 27,
12 2020.

13 19. The Coroner filed its Answering Brief on October 7, 2020. In its Answering
14 Brief, the Coroner asserted that, in addition to the three sample redacted autopsy reports it
15 previously produced to the Review-Journal, there are approximately 680 autopsy reports and
16 150 external examinations responsive to the Review-Journal’s request.

17 20. The Review-Journal filed its Reply in support of its Opening Brief on
18 Remand on October 22, 2020.

19 21. This Court conducted a hearing on the parties’ briefs on remand on October
20 29, 2020.

21 22. At the October 29, 2020, hearing on remand, the Coroner stated that it had
22 only redacted the three sample autopsy reports it provided to the Review-Journal pre-
23 litigation and had not reviewed or performed redactions to the balance of the approximately
24 680 autopsy reports and 150 external examinations. (Recorder’s Transcript of October 29,
25 2020, Hearing (“Transcript”), p. 23:8-14 (on file with this Court).)

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II.

CONCLUSIONS OF LAW

A. *The NPRA*

23. At its heart, this case is about the value of transparency in government and the value of public oversight. (Transcript, p. 13:15-16.) Governmental entities and their officers and employees exist to serve the public; thus, oversight of the actions and inactions of governmental entities is critical to ensuring that the public's interests are being served. (*Id.*, p. 13:16-23.)

24. Governmental entities have been entrusted with certain authorities under the color of law to conduct the public's business. (*Id.*, pp. 13:24 – 14:2.) The public entrusts governmental entities with that authority and has a right to expect and know that trust is not being abused. (*Id.*, p. 14:3-4.)

25. The NPRA recognizes that access to the records of governmental agencies is critical to fostering democracy. Nev. Rev. Stat. § 239.001(1) (2017) (“The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law”); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 876, 266 P.3d 623, 626 (2011) (holding that “the provisions of the NPRA are designed to promote government transparency and accountability”).

26. Given the central role access to public records plays in fostering democracy, the Legislature built certain presumptions into the NPRA. The NPRA starts from the presumption that all records of government must be open to inspection and copying. Nev. Rev. Stat. § 239.010(1); *see also Reno Newspapers, Inc. v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010) (“*Haley*”) (holding that the NPRA “considers all records to be public documents available for inspection and copying unless otherwise explicitly made confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure”).

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27. The NPRA also starts from the presumption that its provisions must be construed liberally in favor of access, Nev. Rev. Stat. § 239.001(2), and that “any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.” Nev. Rev. Stat. § 239.001(3).

28. Because the NPRA starts from the presumption that all records of governmental entities are public records and that its provisions must be interpreted liberally to increase access, if a governmental entity seeks to keep all or some part of public record secret, the NPRA places the burden of governmental entities to prove, by a preponderance of the evidence, that any information it seeks to keep secret is confidential. Nev. Rev. Stat. § 239.0113(2).

29. Further, a governmental entity seeking to withhold public records on the grounds that they are confidential must prove by a preponderance of the evidence that the interests in nondisclosure outweigh the strong presumption in favor of public access. *Reno Newspapers Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011); *see also Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147-48 (1990).

30. The Nevada Supreme Court has held that because of the mandates contained in the text of the NPRA and its overarching purpose of furthering access to public records, governmental entities cannot meet their burden under Nev. Rev. Stat. § 239.0113(2) by relying on conjecture, supposition, or “non-particularized hypothetical concerns.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 628, 6 P.3d 465, 472-73 (2000); *accord Haley*, 126 Nev. at 218, 234 P.3d at 927; *Reno Newspapers Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011).

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

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B. The CCSD Test

32. In *Clark County School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018) (“CCSD”), the Nevada Supreme Court adopted a two-part balancing test courts are to employ in cases in which the nontrivial personal privacy interest of a person named in an investigative report may warrant redaction.

33. Under the first prong of the CCSD test, the governmental entity seeking to withhold or redact public records must “establish a personal privacy interest stake to ensure that disclosure implicates a personal privacy interest that is nontrivial or ... more than [] de minimis.” CCSD, 134 Nev. at 707, 429 P.3d at 320 (internal quotations omitted).

34. If—and only if—the governmental entity succeeds in showing that the privacy interest at stake is nontrivial, the burden shifts to the requester to show that “the public interest sought to be advanced is a significant one and that the information [sought] is likely to advance that interest.” CCSD, 134 Nev. at 707-08, 429 P.3d at 320 (internal quotations omitted).

35. In adopting this two-part test, the Supreme Court was careful to note that its new test did not alter a governmental entity’s obligations under the NPRA or the Court’s interpreting case law:

This test coheres with both NRS 239.0113 and *Gibbons*, 127 Nev. at 877-78, 266 P.3d at 625-26. It is merely a balancing test—in the context of a government investigation—of individual nontrivial privacy rights against the public’s right to access public information. *Carlson v. U.S. Postal Serv.*, 2017 WL 3581136, at *28 (N.D. Cal. Aug. 18, 2017). We explained in *Gibbons* that NRS 239.0113 requires that the state bear the burden of proving that records are confidential. *Gibbons*, 127 Nev. at 878, 266 P.3d at 626. The *Cameranesi* test does that, but also gives the district courts a framework to weigh the public’s interest in disclosure, by shifting the burden onto the public record petitioner, once the government has met its burden. This ensures that the district courts are adequately weighing the competing interests of privacy and government accountability.

CCSD, 134 Nev. at 708–09, 429 P.3d at 321.

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1 ***C. Application of the CCSD Test to The Redacted Autopsy Reports***

2 36. The Review-Journal has requested the Coroner produce, in unredacted
3 form, autopsy reports for all decedents under the age of 18 who died between 2012 and the
4 date of the Review-Journal's request.

5 37. In remanding this matter back to this Court, the Nevada Supreme Court
6 found the Coroner had established the autopsy reports at issue here implicate a nontrivial
7 personal privacy interest. Relying on a declaration of Clark County Coroner John Fudenberg,
8 the Supreme Court found that the autopsy reports may contain medical or health-related
9 information that may be entitled to protection. *Coroner*, 136 Nev. at 56, 458 P.3d at 1058.

10 38. The Supreme Court further noted that while “the public policy in
11 disseminating information pertaining to child abuse and fatalities is significant,” the “nature
12 of the information contained in the juvenile autopsy reports that LVRJ seeks and how that
13 information will advance a significant public interest” was “unclear.” *Id.* at 57-58, 1059.
14 Accordingly, the Supreme Court remanded this matter to this Court “to determine, under the
15 [CCSD] test, what information should be redacted as private medical or health-related
16 information.” *Id.* at 58, 1059.

17 39. Having reviewed the post-remand briefings submitted by the parties, the
18 Court finds that there are multiple significant public interests that would be served by release
19 of the autopsy reports which outweigh the nontrivial privacy interests articulated by the
20 Coroner. (Transcript, p. 28:2-6; *id.*, p. 28:18-22.)

21 40. Access to public records is always presumed to be in the public interest. *See*
22 Nev. Rev. Stat. § 239.001.

23 41. In this case, access to autopsy reports generally furthers a number of
24 significant policy interests which the Review-Journal has sufficiently established overcome
25 the nontrivial privacy interests at stake.

26 42. For example, access to autopsy reports can provide the public with vital
27 health information and protect the public. Information gathered by coroners is often a vital
28 tool in tracking trends in causes of death, thereby increasing the public's understanding of

1 how trends like opioid deaths or deaths from the ongoing COVID-19 pandemic affect their
2 community.

3 43. Access to autopsy reports and reporting on autopsy reports can help the
4 public assess prosecutors' theories and charging decisions—and can help exonerate the
5 innocent.

6 44. Access to autopsy reports also promotes trust in law enforcement and
7 promotes law enforcement accountability. This is so because access to and reporting on
8 autopsy reports can both exonerate law enforcement officers accused of wrongdoing and
9 shed light on police wrongdoing.

10 45. Access to autopsy reports serves the important public function of providing
11 the public with information about crimes of significant public interest.

12 46. More fundamentally, access to autopsy reports, including the specific
13 juvenile autopsy reports at issue in this case, provides the public with access to information
14 about the Coroner's conduct. Given that the Coroner is a public servant and its work on
15 behalf of the public investigating suspicious deaths is a matter of vital public concern, access
16 to information about the Coroner's work furthers democracy. Nev. Rev. Stat. § 239.001(1).

17 47. Relatedly, access to autopsy reports ensures that coroners' offices do their
18 taxpayer-funded jobs correctly and do not engage in malfeasance. Access to autopsy reports,
19 including the juvenile autopsy reports at issue in this case, fosters public confidence in the
20 work of county coroners and medical examiners—and allows errors or wrongful behavior to
21 be revealed, assessed, and corrected.

22 48. Further, with respect to the juvenile autopsy reports at issue in this matter,
23 access to the reports as requested by the Review-Journal will serve a significant public
24 interest in assessing how well state and local child protective agencies are doing their job of
25 protecting children who have been the victims of abuse and/or neglect. Thus, not only will
26 access further the NPRA's central purposes of transparency and accountability regarding one
27 government agency, but it will also further transparency and accountability regarding
28 multiple government agencies which share information. (Transcript, p. 14:10-15.)

49. While the Coroner is not charged with the protection of vulnerable children, as the agency responsible for investigating suspicious deaths, the Coroner is necessarily the agency who receives and examines deceased juveniles, including juveniles who were (or had been) under the supervision of local child protective services. Thus, access to the information the Coroner gathers during the examination of a juvenile who died after having been under the supervision of child protective services can help the public understand and assess how well child protective service agencies are fulfilling their responsibilities to Clark County's vulnerable children. (*Id.*)

50. In its decision, the Supreme Court noted that in addition to the three heavily redacted reports, the Coroner had provided the Review-Journal a spreadsheet containing the names, genders, ages, race, and the cause and manner of death for juveniles, and also noted that the CDR Teams provide information that is used to compile a statewide annual report. *Coroner*, 136 Nev. at 58, 1059. The Court then expressed uncertainty as to what "additional information" the Review-Journal seeks to obtain from the autopsy reports that would advance the public's interest. *Id.*

51. In its Supplemental Opening Brief on Remand, the Review-Journal provided myriad examples of how and why access to autopsy reports would advance the public interest. With respect to the juvenile autopsy reports at issue here, the Review-Journal has demonstrated that access to information about the Coroner's observations—and not just the Coroner's conclusions regarding the cause and manner of death—is critical to assessing the efficacy of child protective services.

52. A coroner's ultimate conclusion about the cause and manner of death for a decedent does not occur in a vacuum. In reaching a conclusion regarding cause and manner of death, a coroner necessarily assesses a wide array of information about the decedent, including the decedent's personal history such as a history of past abuse, prior involvement with child protective services or law enforcement, external and internal observations of a decedent's body that may be indicative of prior abuse, toxicological information, and evidence of past injuries like broken bones or damaged organs.

53. This sort of information is critical to the important goals of providing the public with a greater understanding of how state and local agencies tasked with protecting vulnerable children operate, identifying any shortcomings in those agencies' operations, and identifying what changes those agencies can and should make to prevent future deaths of children whose lives have been marked by abuse or neglect.

54. The spreadsheet provided by the Coroner and the CDR annual statewide reports are not sufficient replacements for direct access to this information. First, the annual statewide reports do not contain the Coroner's external or internal observations. Access to all of this type of information that is included in an autopsy report—but was not included in the Coroner's spreadsheet and is not provided in CDR reports—would advance the public interest by ascertaining the efficacy of Clark County's abuse and neglect system, an issue of great public importance.

55. Second, even if the autopsy reports did not include additional categories of information from the Coroner's spreadsheets or the CDR reports, access to the source material would still provide additional information as it would allow the Review-Journal to assess the accuracy of the information contained in the Coroner's spreadsheets and the CDR reports.

56. The NPRA does not limit a requester's information to that information that the government chooses to filter, repackage, and provide. Instead, the NPRA is intended to provide the public with direct access to the government's records themselves. Limiting access to the direct source material would be antithetical to the central stated purpose of the NPRA: government accountability. Nev. Rev. Stat. § 239.001(1) provides that "[t]he purpose of [NPRA] is to foster democratic principles by providing members of the public with prompt access to inspect, copy or receive a copy of public books and records to the extent permitted by law." The NPRA further provides that all of its provisions "must be construed liberally to carry out this important purpose." Nev. Rev. Stat. § 239.001(2). In short, the NPRA reflects that the public is not required to trust the government. Instead, the public is entitled to public record so it can assess the conduct and effectiveness of government.

1 57. Accordingly, the Court hereby finds and concludes that the Review-Journal
2 has established that the public interests in access far outweigh the nontrivial personal privacy
3 interests advanced by the Coroner. (Transcript, p. 22:6-9.)

4 ***D. The Coroner Must Disclose the Juvenile Autopsy Reports in Unredacted Form***

5 58. As noted above, prior to litigation the Coroner provided the Review-Journal
6 with three sample autopsy reports as an example of the redactions the Coroner intended to
7 make to all the requested reports.

8 59. In its Answering Brief, the Coroner represents that there are many more
9 autopsy records responsive to the Review-Journal's request, including approximately 680
10 autopsy reports and 150 external examination. (*See* Coroner's October 7, 2020, Answering
11 Brief, p. 25:18-19.)

12 60. At the October 29, 2020, hearing on remand, the Coroner stated that it had
13 only redacted the three sample autopsy reports it provided to the Review-Journal pre-
14 litigation and had not performed redactions to the balance of the approximately 680 autopsy
15 reports and 150 external examinations. (Transcript, p. 23:8-14.)

16 61. The Coroner has never made redactions to the approximately 680 autopsy
17 reports and 150 external examinations or considered whether, record by record, there is
18 specific information that merits protection.

19 62. This is particularly troubling given that—as this matter was initiated in 2017
20 when the Review-Journal made its records request—the Coroner has had years to meet that
21 burden. (Transcript, pp. 27:23 - 28:1; *id.*, p. 28:12-17.)

22 63. While the Court is satisfied that the Review-Journal has met its burden of
23 establishing that there is a significant interest in access, it offered the opportunity to the
24 Coroner to conduct an *in camera* review of proposed redactions. However, at the hearing,
25 the Coroner remained steadfast that it would simply redact all information that the Coroner
26 deems is not related to the cause of death. Such an approach is not consistent with the need
27 for the information that the Review-Journal has demonstrated. First, one of the significant
28 interests access will advance is ensuring the proper functioning of the Coroner's Office. It is

1 not possible to ensure that the Coroner reached the correct conclusion regarding cause of
2 death if it refuses to produce any information it deems unrelated to the cause of death.
3 Second, another significant interest in access advanced by access is ensuring oversight and
4 accountability of the abuse and neglect system. There may be information that the Coroner
5 deems unrelated to the cause of death that is nonetheless relevant to that inquiry, such as
6 signs of historical abuse.

7 64. Moreover, the Court notes that the significant interests established by the
8 Review-Journal can only be met by direct access to the records sought; the reports and
9 spreadsheets otherwise available not only do not contain the information that is needed to
10 advance the significant interests in access, it would undermine accountability to limit the
11 Review-Journal to information filtered by the Coroner or other government employees and
12 officials.

13 65. For these reasons, the Court finds and concludes that the Coroner's planned
14 redactions would not satisfy the very significant public interests the Review-Journal has
15 demonstrated that overcome the nontrivial but generalized privacy interests articulated by
16 the Coroner.

17 66. Further, in light of the fact that the balancing test weighs heavily in favor of
18 disclosure and the Coroner has made no effort to meet its burden of establishing a specific
19 nontrivial privacy interest with respect to any of the specific information contained in those
20 approximately 680 autopsy reports and 150 external examinations, the Court finds and
21 concludes that the Coroner has waived its ability to redact any information contained within
22 those reports. *Thompson v. City of North Las Vegas*, 108 Nev. 435, 439, 833 P.2d 1132, 1134
23 (1992) ("A waiver is an intentional relinquishment of a known right.")

24 67. Thus, the Coroner must provide directly to the Review-Journal the
25 requested records in unredacted form and must do so within 30 days of the Court's October
26 29, 2020, hearing in this matter.

27 ///

28 ///

1 ***E. Reproduction Costs***

2 68. When the Review-Journal filed its Petition in 2017, the NPRA permitted
3 governmental entities to charge requesters a fee—not to exceed 50 cents per page—for the
4 “extraordinary use” of personnel and technological resources. Nev. Rev. Stat. § 239.055
5 (2017 version).

6 69. In its opinion, the Nevada Supreme Court rejected the Coroner’s argument
7 that it was entitled under Nev. Rev. Stat. § 239.055 to charge the Review-Journal a \$45.00
8 hourly fee for staff to review the requested autopsy reports, and held that the plain language
9 of the statute capped such fees at 50 cents per page. *Coroner*, 136 Nev. at 59, 458 P.3d at
10 1060.

11 70. Thus, to the extent the Coroner produces hard copies of the requested
12 juvenile autopsy reports in this matter, it may charge not more than the lesser of its actual
13 costs or the 50-cent cap set by Nev. Rev. Stat. § 239.055 (2017 version).

14 71. The Review-Journal has requested the Coroner produce the juvenile
15 autopsy reports in electronic format.

16 72. Unless it is technologically infeasible, the Coroner must produce the
17 juvenile autopsy reports if the format and medium requested by the Review-Journal. If the
18 Review-Journal’s chosen format and medium are infeasible, the Coroner must work with the
19 Review-Journal to produce the records in another format and medium of the Review-
20 Journal’s choice unless no such choice is feasible.

21 73. Pursuant to Nev. Rev. Stat. § 239.052(1), the Coroner may only charge a
22 requester for the actual costs it incurs in reproducing public records.

23 74. Thus, if the records are produced in an electronic format, the Coroner may
24 charge the Review-Journal for only the actual cost of the medium it uses to produce the
25 records.

26 ///

27 ///

28 ///

III.
ORDER

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

IT IS HEREBY ORDERED that the Coroner shall produce directly to the Review-Journal the requested juvenile autopsy reports in unredacted form by November 30, 2020. The Coroner should produce records on a rolling basis.

IT IS HEREBY FURTHER ORDERED that unless technologically infeasible, the Coroner is to produce the requested juvenile autopsy reports in the electronic format and medium requested by the Review-Journal or such alternate format and medium as requested by the Review-Journal.

IT IS HEREBY FURTHER ORDERED that the Coroner may charge the Review-Journal a fee for the cost of producing the requested juvenile autopsy reports in electronic format not to exceed the actual cost of the medium on which the juvenile autopsy reports are produced.

IT IS HEREBY FURTHER ORDERED that, to the extent the Coroner produces any of the requested records to the Review-Journal in a hard copy format, it may not charge more than the lesser of the actual costs of production or 50 cents per page for the reproduction of those records.

Dated this 20th day of November, 2020

Date


DISTRICT COURT JUDGE

Respectfully submitted,

/s/ Margaret A. McLetchie

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEITCHIE LAW

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

Counsel for Petitioner, Las Vegas Review-Journal, Inc.

70B 2FA DB77 008D

Jim Crockett

District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Las Vegas Review-Journal,
7 Plaintiff(s)

CASE NO: A-17-758501-W

8 vs.

DEPT. NO. Department 24

9 Clark County Office of the
10 Coroner/ Medical Examiner,
11 Defendant(s)

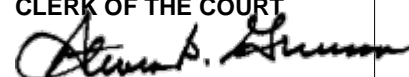
12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
15 recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 11/20/2020

17 Krista Busch	kbusch@maclaw.com
18 Alina Shell	alina@nvlitigation.com
19 Margaret McLetchie	maggie@nvlitigation.com
20 Jackie Nichols	jnichols@maclaw.com
21 Leah Dell	ldell@maclaw.com
22 Sherri Mong	smong@maclaw.com
23 Craig Anderson	canderson@maclaw.com
24 LAURA Rehfeldt	laura.rehfeldt@clarkcountyda.com
25 Shannon Fagin	shannon.fagin@clarkcountyda.com

26
27
28

**Marquis Aurbach Coffing**

Craig R. Anderson, Esq.
Nevada Bar No. 6882
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
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Telephone: (702) 382-0711
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canderson@maclaw.com
jnichols@maclaw.com

Steven B. Wolfson, Esq.
District Attorney
Laura C. Rehfeldt, Esq.
Deputy District Attorney
Nevada Bar No. 5101
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P.O. Box 552215
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Telephone: (702) 455-4761
Facsimile: (702) 382-5178
laura.rehfeldt@clarkcountynyda.com

Attorneys for Respondent, Clark County
Office of the Coroner/Medical Examiner

DISTRICT COURT**CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

Case No.: A-17-758501-W
Dept. No.: 24

vs.

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Respondent

CASE APPEAL STATEMENT

Respondent, Clark County Office of the Coroner/Medical Examiner ("Coroner"), by and through its attorneys of record, Marquis Aurbach Coffing and the Clark County District Attorney, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

Clark County Office of the Coroner/Medical Examiner.

- 1 2. Identify the Judge issuing the decision, judgment, or order appealed from:
- 2 Honorable Jim Crockett.
- 3 3. Identify each appellant and the name and address of counsel for each appellant:
- 4 Clark County Office of the Coroner/Medical Examiner
- 5 Marquis Aurbach Coffing
- 6 Craig R. Anderson, Esq.
- 7 Nevada Bar No. 6882
- 8 Jackie V. Nichols, Esq.
- 9 Nevada Bar No. 14246
- 10 10001 Park Run Drive
- 11 Las Vegas, Nevada 89145
- 12 and
- 13 Steven B. Wolfson, Esq.
- 14 District Attorney
- 15 Laura C. Rehfeldt, Esq.
- 16 Deputy District Attorney
- 17 Nevada Bar No. 5101
- 18 500 South Grand Central Pkwy, 5th Flr.
- 19 P.O. Box 552215
- 20 Las Vegas, Nevada 89155-2215
- 21 4. Identify each respondent and the name and address of appellate counsel, if known,
- 22 for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as
- 23 much and provide the name and address of that respondent's trial counsel):
- 24 Petitioner Las Vegas Review-Journal
- 25 McLetchie Law
- 26 Margaret A. McLetchie, Esq.
- 27 Alina M. Shell, Esq.
- 28 701 E. Bridger Avenue, Suite 520
- Las Vegas, Nevada 89101
5. Indicate whether any attorney identified above in response to question 3 or 4 is
- not licensed to practice law in Nevada and, if so, whether the district court granted that attorney
- permission to appear under SCR 42 (attach a copy of any district court order granting such
- permission):
- N/A.

1 6. Indicated whether appellant was represented by appointed or retained counsel in
2 the district court:

3 Retained.

4 7. Indicate whether appellant is represented by appointed or retained counsel on
5 appeal:

6 Retained.

7 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
8 the date of entry of the district court order granting such leave:

9 N/A.

10 9. Indicate the date the proceedings commenced in the district court (e.g., date
11 complaint indictment, information, or petition was filed):

12 The petition was filed on July 17, 2017.

13 10. Provide a brief description of the nature of the action and result in the district
14 court, including the type of judgment or order being appealed and the relief granted by the
15 district court:

16 This case involves a public records request for autopsy reports. In April 2017, the
17 Las Vegas Review-Journal ("LVRJ") made a public records request to the Coroner for
18 autopsy reports relating to juvenile deaths dating back to January 2012. The Coroner
19 denied the access to the records, and the LVRJ filed a Public Records Act Application
20 Pursuant to NRS § 239.001/Petition for Writ of Mandamus ("Petition"). The Court
21 ultimately ordered the Coroner to disclose the autopsy reports in unredacted format, and
22 the Coroner appealed.

23 On appeal, the Supreme Court ruled that the Coroner demonstrated that the
24 autopsy reports contain personal health and medical information that involve a nontrivial
25 privacy interest. As such, the Supreme Court remanded the matter back to the district
26 court for LVRJ to demonstrate that the information sought, i.e., the personal health and
27 medical information unrelated to the cause and manner of death, advances significant
28 public interest.

1 On remand, this Court determined that the Coroner waived its ability to assert any
2 privileges because the Coroner had not yet performed any redactions on the juvenile
3 autopsy reports and required the Coroner to produce the juvenile autopsy reports by
4 November 30, 2020. The Coroner filed a motion for stay, which was denied at the
5 December 10, 2020 hearing. At that hearing, the Court extended the deadline for the
6 Coroner to produce the juvenile autopsy reports to December 30, 2020.

7 The Coroner now appeals the November 20, 2020 Order on Remand.

8 11. Indicate whether the case has previously been the subject of an appeal to or
9 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
10 number of the prior proceeding:

11 This case has been on appeal twice:

12 Case 74604 – *Clark County Office of the Coroner/Medical Examiner v. Las Vegas*
13 *Review-Journal*; and

14 Case 75095 – *Clark County Office of the Coroner/Medical Examiner v. Las Vegas*
15 *Review-Journal*.

16 12. Indicate whether this appeal involves child custody or visitation:

17 N/A.

18 13. If this is a civil case, indicate whether this appeal involves the possibility of
19 settlement:

20 This case does not involve the possibility of settlement.

21 Dated this 15th day of December, 2020.

22 MARQUIS AURBACH COFFING

23 By Jackie V. Nichols

24 Craig R. Anderson, Esq.

25 Nevada Bar No. 6882

26 Jackie V. Nichols, Esq.

27 Nevada Bar No. 14246

28 10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Respondent, Clark County

Office of the Coroner/Medical Examiner

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 15th day of December, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Margaret A. McLetchie, Esq.

Alina M. Shell, Esq.

McLetchie Law

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Las Vegas, Nevada 89101

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alina@nvlitigation.com

Attorneys for Petitioner Las Vegas Review-Journal

Laura C. Rehfeldt, Esq.

Deputy District Attorney

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P.O. Box 552215

Las Vegas, Nevada 89155-2215

laura.rehfeldt@clarkcountyda.com

shannon.fagin@clarkcountyda.com

Attorney for Respondent Clark County Office of the Coroner/Medical Examiner

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

¹ 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).

CASE SUMMARY

CASE NO. A-17-758501-W

Las Vegas Review-Journal, Plaintiff(s)

vs.

Clark County Office of the Coroner/ Medical Examiner,
Defendant(s)§
§
§
§
§
§

Location: **Department 24**
 Judicial Officer: **Crockett, Jim**
 Filed on: **07/17/2017**
 Cross-Reference Case Number: **A758501**
 Supreme Court No.: **74604**
75095

CASE INFORMATION

Statistical Closures

11/09/2017 Stipulated Judgment

Case Type: **Writ of Mandamus**Case Status: **04/14/2020 Reactivated****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number A-17-758501-W
 Court Department 24
 Date Assigned 07/17/2017
 Judicial Officer Crockett, Jim

PARTY INFORMATION

Plaintiff**Las Vegas Review-Journal***Lead Attorneys*

McLetchie, Margaret A.
Retained
 702-728-5300(W)

Defendant**Clark County Office of the Coroner/ Medical Examiner**

Rehfeldt, Laura C
Retained
 702-455-4761(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

07/17/2017

**Petition**

Filed by: Plaintiff Las Vegas Review-Journal
Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus
Expedited Matter Pursuant to Nev. Rev. Stat. 239.011

07/17/2017

**Exhibits**

Filed By: Plaintiff Las Vegas Review-Journal
Appendix of Exhibits in Support of Public Records Act Application Pursuant to NRS 239.001/
Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011

07/17/2017

**Initial Appearance Fee Disclosure**

Filed By: Plaintiff Las Vegas Review-Journal
Initial Appearance Fee Disclosure (NRS Chapter 19)

07/18/2017

**Summons**

Filed by: Plaintiff Las Vegas Review-Journal
Summons - Civil

08/04/2017

**Stipulation and Order**

Filed by: Plaintiff Las Vegas Review-Journal

CASE SUMMARY
CASE NO. A-17-758501-W

Stipulation and Order Regarding Briefing Schedule

08/04/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
08/17/2017	 Memorandum Filed By: Plaintiff Las Vegas Review-Journal <i>Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
08/17/2017	 Declaration Filed By: Plaintiff Las Vegas Review-Journal <i>Attorney Margaret A. McLetchie's Declaration in Support of Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
08/30/2017	 Response Filed by: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Response to Petition and Memorandum Supporting Writ for Mandamus for Access to Autopsy Reports of Juvenile Deaths</i>
09/07/2017	 Reply Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to Response to Petition and Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
09/25/2017	 Supplement Filed by: Plaintiff Las Vegas Review-Journal <i>Supplement to Reply to Response to Petition and Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
11/09/2017	 Order Filed By: Plaintiff Las Vegas Review-Journal <i>Order Granting Petitioner LVRJ's Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus</i>
11/09/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
11/28/2017	 Notice of Appeal Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Notice of Appeal</i>
11/28/2017	 Case Appeal Statement Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Case Appeal Statement</i>
11/29/2017	 Motion for Attorney Fees and Costs Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
11/29/2017	

CASE SUMMARY
CASE NO. A-17-758501-W

	 Motion to Stay Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Defendant's Motion for Stay of District Court Order and Order Shortening Time</i>
12/06/2017	 Opposition to Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Opposition to Motion for Stay of District Court Order and Order Shortening Time</i>
12/08/2017	 Reply to Opposition Filed by: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Reply to Petitioner Las Vegas Review Journal s Opposition to Motion for Stay of District Court Order and Order Shortening Time</i>
12/14/2017	 Opposition to Motion Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Respondent's Opposition to Las Vegas Review-Journal's Motion for Attorneys' Fees and Costs</i>
01/04/2018	 Reply to Opposition Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to Respondent's Opposition to Motion for Attorney's Fees and Costs</i>
01/11/2018	 Order Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>[Order] Granting Defendant's Motion for Stay of District Court Order and Order Shortening Time</i>
01/12/2018	 Notice of Entry of Order Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Notice of Entry of Order</i>
01/29/2018	 Motion to Stay Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Respondent's Motion for Stay of District Court Order and Order Shortening Time</i>
02/01/2018	 Order Filed By: Plaintiff Las Vegas Review-Journal <i>Order Granting Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
02/01/2018	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
02/01/2018	 Request Filed by: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Request for Transcript of Proceedings</i>
02/05/2018	 Notice of Appeal Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Notice of Appeal</i>
02/05/2018	 Case Appeal Statement Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Case Appeal Statement</i>

CASE SUMMARY
CASE NO. A-17-758501-W

02/12/2018	 Motion to Stay Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Respondent's Renewed Motion for Order Shortening Time on Motion for Stay of District Court Order</i>
02/13/2018	 Opposition to Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Opposition to Renewed Motion for Order Shortening Time On Motion for Stay of District Court Order</i>
02/13/2018	 Supplement Filed by: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Supplement to Respondent's Renewed Motion for Order Shortening Time on Motion for Stay of District Court Order</i>
02/13/2018	 Notice of Appearance Party: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Notice of Appearance</i>
03/07/2018	 Order Denying Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Order Denying Respondent's Renewed Motion on Order Shortening Time for Stay of District Court Order</i>
03/07/2018	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
10/16/2018	 Notice of Change of Firm Name Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Change of Firm Name</i>
04/01/2020	 NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed in Part, Reversed in Part and Remand (Docket No. 74604); Vacated (Docket NO. 75095)</i>
04/17/2020	 Notice of Appearance Party: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Notice of Appearance and Change of Counsel</i>
06/01/2020	 Stipulation and Order Filed by: Plaintiff Las Vegas Review-Journal STIPULATION AND ORDER REGARDING BRIEFING SCHEDULE
06/02/2020	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Stipulation and Order Regarding Briefing Schedule</i>
07/20/2020	 Stipulation and Order Filed by: Plaintiff Las Vegas Review-Journal <i>Stipulation And Order Extending the Briefing Schedule</i>
07/20/2020	 Notice of Entry of Stipulation and Order

CASE SUMMARY
CASE NO. A-17-758501-W

	<p>Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Stipulation and Order Extending Briefing Schedule</i></p>
08/27/2020	<p> Petitioners Opening Brief Filed by: Plaintiff Las Vegas Review-Journal <i>Petitioner's Opening Brief on Remand</i></p>
09/27/2020	<p> Stipulation and Order Filed by: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Stipulation and Order Extending the Briefing Schedule</i></p>
09/28/2020	<p> Notice of Entry of Stipulation and Order Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Notice of Entry of Stipulation and Order</i></p>
10/07/2020	<p> Answering Brief Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Respondent Clark County Office of the Coroner/Medical Examiner s Answering Brief</i></p>
10/22/2020	<p> Petitioner's Reply Brief Filed by: Plaintiff Las Vegas Review-Journal <i>Petitioner's Reply in Support of Petitioner's Opening Brief on Remand</i></p>
11/04/2020	<p> Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re:</i></p>
11/20/2020	<p> Motion to Stay Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Respondent Clark County Office of the Coroner/Medical Examiner s Motion to Stay on an Order Shortening Time</i></p>
11/20/2020	<p> Order Filed By: Plaintiff Las Vegas Review-Journal <i>Order on Remand</i></p>
11/20/2020	<p> Order Shortening Time Filed By: Plaintiff Las Vegas Review-Journal <i>Respondent Clark County of the Oorner/ Medical Examiner's Motion to Stay on and Order Shortening Time</i></p>
11/20/2020	<p> Notice of Entry of Order Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Notice of Entry of Respondent Clark County Office of the Coroner/Medical Examiner s Motion to Stay on an Order Shortening Time</i></p>
11/20/2020	<p> Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order on Remand</i></p>
11/24/2020	<p> Clerk's Notice of Nonconforming Document <i>Clerk's Notice of Nonconforming Document</i></p>
11/30/2020	<p> Opposition Filed By: Plaintiff Las Vegas Review-Journal</p>

CASE SUMMARY
CASE NO. A-17-758501-W

Opposition to Motion to Stay on an Order Shortening Time

12/07/2020	 Reply in Support Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Respondent Clark County Office of the Coroner/Medical Examiner's Reply in Support of Motion to Stay on an Order Shortening Time</i>
12/08/2020	 Order Shortening Time Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review- Journal's Motion for Order to Show Cause on an Order Shortening Time</i>
12/08/2020	 Notice of Entry Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Motion for an Order to Show Cause on an Order Shortening Time</i>
12/09/2020	 Opposition to Motion Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Respondent Clark County Office of the Coroner/Medical Examiner's Opposition to Petitioner Las Vegas Review-Journal's Motion for Order to Show Cause on Order Shortening Time</i>
12/11/2020	 Memorandum of Costs and Disbursements Filed By: Plaintiff Las Vegas Review-Journal <i>Memorandum of Costs and Disbursements</i>
12/11/2020	 Motion for Attorney Fees and Costs Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Supplemental Motion for Attorney s Fees and Costs</i>
12/14/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/15/2020	 Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re: 12/10/20</i>
12/15/2020	 Notice of Appeal Filed By: Defendant Clark County Office of the Coroner/ Medical Examiner <i>Notice of Appeal</i>
12/15/2020	 Case Appeal Statement <i>Case Appeal Statement</i>

DISPOSITIONS


02/01/2018	Order (Judicial Officer: Crockett, Jim) Debtors: Clark County Office of the Coroner/ Medical Examiner (Defendant) Creditors: Las Vegas Review-Journal (Plaintiff) Judgment: 02/01/2018, Docketed: 02/01/2018 Total Judgment: 32,377.50
04/01/2020	Clerk's Certificate (Judicial Officer: Crockett, Jim) Debtors: Clark County Office of the Coroner/ Medical Examiner (Defendant) Creditors: Las Vegas Review-Journal (Plaintiff) Judgment: 04/01/2020, Docketed: 04/02/2020 Comment: Appeal Affirmed - Supreme Court No 74604 (In Part) Debtors: Las Vegas Review-Journal (Plaintiff) Creditors: Clark County Office of the Coroner/ Medical Examiner (Defendant)

CASE SUMMARY
CASE NO. A-17-758501-W

Judgment: 04/01/2020, Docketed: 04/02/2020
Comment: Appeal Reversed - Supreme Court No 75095 (In Part)

HEARINGS

09/28/2017

 **Petition for Writ of Mandamus (9:00 AM)** (Judicial Officer: Crockett, Jim)


Plaintiff's Petition for Writ of Mandamus

Matter Heard;

Journal Entry Details:

Laura Rehfeldt, Esq. present on behalf of Defendant. Court noted the arguments by Counsel and cited from applicable Attorney General's opinions as well as AB 57. Court noted arguments by Counsel, commented on the balance of interests, and FINDS it is clearly outweighed by public interest. Court noted its further inclinations. Arguments by Counsel. COURT ORDERED, motion GRANTED and Court DECLARES they are public records and must be provided to the requestor with statutory legal authority within 5 DAYS. As to attorneys fees for review, redaction fees, and fee per copy, COURT ORDERED, discs to be produced at \$15.00 per disc, production due as the discs are created, and complete production no later than 12/28/17. Court further noted any justifications for redactions need to be asserted. Court further stated its findings. Ms. Shell to prepare the order, circulate to opposing Counsel for approval as to form and content only, and submit it to the Court within TEN days after the transcript is received.;

12/12/2017

 **Motion For Stay (9:00 AM)** (Judicial Officer: Crockett, Jim)


Defendant's Motion for Stay of District Court Order and Order Shortening Time

Granted;

Journal Entry Details:

Court noted its prior ruling in declaring they were public records and today is Defendant's motion for stay. Court noted the arguments of Counsel and noted Defendant's should have properly moved to stay, however it would defeat the purpose if they let these out when there's a possibility it could be appealed, and as time is not of the essence, Court is inclined to grant the stay. Arguments by Ms. McLetchie in opposition. Court stated its findings and ORDERED, stay GRANTED. Court stated it doesn't think a bond is appropriate and Counsel agreed. Ms. McLetchie further requested a release of the documents with redactions and Court DENIED the request. Ms. Rehfeldt to prepare the order, circulate for approval as to form and content, and submit it within TEN days per EDCR 7.21.;

01/11/2018

 **Motion for Attorney Fees and Costs (9:00 AM)** (Judicial Officer: Crockett, Jim)


Plaintiff Las Vegas Review-Journal's Motion for Attorney's Fees and Costs

Granted;

Journal Entry Details:

Court noted the details of the Court's prior ruling, stated the arguments of Counsel and noted its comments and inclinations. Court agreed Plaintiff is entitled to reasonable fees of \$31,552.50 and costs of \$825.02. Arguments by Ms. Rehfeldt in opposition of Plaintiff's. Court stated its findings and ORDERED, motion GRANTED. Ms. McLetchie to submit the order within TEN days per EDCR 7.21.;

02/15/2018

 **Motion to Stay (9:00 AM)** (Judicial Officer: Crockett, Jim)


Respondent's Motion for Stay of District Court Order and Order Shortening Time

Denied;

Journal Entry Details:

Court stated it doesn't not think that the stay is warranted for the reasons stated in the opposition; the circumstances in this request are very different from the Court granting the stay of the case. Court further inquired whether the County is immune from a bond and Ms. Rehfeldt answered in the affirmative. Court further stated its findings. Arguments by Ms. Rehfeldt. COURT ORDERED, motion DENIED; Ms. McLetchie to prepare the order, circulate for approval as to form and content, and submit it within TEN days per EDCR 7.21. Colloquy regarding EDCR 2.20. COURT FURTHER ORDERED, automatic temporary stay of order granting attorney's fees will expire TEN days from entry of order. ;

04/15/2020

 **Status Check (3:00 AM)** (Judicial Officer: Crockett, Jim)

Supreme Court Appeal

CASE SUMMARY

CASE NO. A-17-758501-W

Minute Order - No Hearing Held;



Journal Entry Details:

A-17-758501-W Las Vegas Review-Journal, Plaintiff(s) vs. Clark County Office of the Coroner/ Medical Examiner, Defendant(s) Status Check Supreme Court Appeal On 2/27/20 the Supreme Court filed its Opinion in this matter. It affirmed the District Court's decision that the Coroner's Office was obliged to disclose unredacted autopsy reports: "The Coroner's Office argues that it may refuse to disclose a juvenile autopsy report once it has provided the report to a Child Death Review (CDR) team under NRS 432B.407(6). We disagree. Because NRS 432B.407(6) limits access to public information, particularly information that the Legislature has determined should be generally available to the public, we interpret NRS 432B.407(6)'s confidentiality provision narrowly and conclude that it applies strictly to the CDR team as a whole and may not be invoked by individual agencies within a CDR team to limit access to information the agency holds outside of its role on the team." It also held that the juvenile autopsy reports might include private information that needs to be protected and that hearings would need to be conducted in that regard: "We agree, however, with the Coroner's Office's argument that juvenile autopsy reports may include sensitive, private information and that such information may be properly redacted as privileged. In this regard, we conclude that the district court erred when it ordered the production of unredacted juvenile autopsy reports. We therefore remand for the district court to assess whether any such information that may be contained in the requested autopsy reports should be redacted under the test adopted in Clark County School District v. Las Vegas Review-Journal, 134 Nev. 700, 707-08, 429 P.3d 313, 320-21 (2018), and we explain the amount the Coroner's Office may collect for expending resources to provide any such redaction." The Supreme Court affirmed the District Court's decision that the County was not immune from an award of attorney fees to a prevailing party records requester but held the award was premature because it remains to be determined whether the Las Vegas Review-Journal is the prevailing party in the underlying action: "In addition, we reject the Coroner's Office's argument that NRS 239.012 immunizes a governmental entity from an award of attorney fees when the entity, in response to a records request, withholds public records in good faith. We conclude instead that NRS 239.012 s immunity provision applies explicitly to damages and should be interpreted independently from NRS 239.011, which entitles a prevailing records requester to recover attorney fees and costs regardless of whether the government entity withholds requested records in good faith. Thus, a governmental entity is not immune from an attorney fees award to which a prevailing records requester is entitled under NRS 239.011. We vacate the district court's award of attorney fees to LVRJ because it is premature to determine here whether the LVRJ is the prevailing party in the underlying NPRA action." The Supreme Court remanded for the District Court to assess what information should be disclosed and what should be permissibly redacted: "Accordingly, we remand for the district court to determine, under the Cameranesi test, what autopsy report information should be disclosed under the NPRA and what information should be redacted as private medical or health-related information." The Supreme Court also limited the fees the County could collect to 50 cents per page, declining the County's request for \$45 per hour for staff to review, etc. Regarding attorney fees and immunity, the Supreme Court said: Here, however, it is premature to conclude whether LVRJ will ultimately prevail in its NPRA action. The district court must decide the extent to which the juvenile autopsy reports contain private information that the Coroner's Office should redact. We conclude that NRS 239.012, as a matter of law, immunizes a governmental entity from "damages," and that the term does not encompass attorney fees and costs.6 fn 6. In light of our decision to reverse and remand for further proceedings, we leave to the sound discretion of the district court the determination of whether LVRJ is entitled to attorney fees as the prevailing party in this action. The Supreme Court Conclusion is excerpted below for the sake of completeness: We conclude that the Coroner's Office has not demonstrated that NRS 432B.407(6), or any other authority, authorizes it to withhold juvenile autopsy reports in their entirety in response to a public records request. To the extent that the requested reports may contain private information or confidential medical information, we remand for the district court to evaluate under Cameranesi the scope of information that should be redacted from the reports. While NRS 239.012 does not immunize the Coroner's Office from an award of attorney fees as a matter of law, we nonetheless vacate the district court's award of attorney fees because it cannot yet be determined whether LVRJ is a prevailing party in its underlying NPRA action. In light of the foregoing, we affirm the district court's conclusion that the Coroner's Office may not rely on NRS 432B.407(6) to withhold juvenile autopsy reports in their entirety in response to a public records request. We further affirm the district court's conclusion that NRS 239.012 does not immunize a governmental entity from an award of attorney fees to which a prevailing records requester in a public records action is entitled. We reverse the district court's order requiring production of unredacted juvenile autopsy reports, and we remand for the district court to assess the extent to which the reports may contain private information and medical or other health-related information that should be redacted. Finally, because it is not yet determined what information LVRJ will ultimately obtain as a result of its petition, we cannot yet conclude

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-17-758501-W

	<i>whether Las Vegas Review-Journal is a prevailing party, and we accordingly vacate the district court's order awarding attorney fees to Las Vegas Review-Journal. Court ORDERED, the Parties must now proceed forward to gather such information and conduct such discovery as is necessary to address the Supreme Court's decision and for future District Court proceedings. Parties to meet and confer regarding a Discovery Plan for the exchange of documents and/or additional Briefing Schedule on future Motions, and submit a Stipulation and Order to the Court. Proposed SAO due 14 days? Set a Status Check: Filing of SAO Hearing _____ 30 days out? _____ ;</i>
05/18/2020	 Status Check (3:00 AM) (Judicial Officer: Crockett, Jim) STATUS CHECK: FILING OF STIPULATION AND ORDER Matter Continued; ORDER FILED 6/1/20 Journal Entry Details: <i>COURT NOTES as of 5/18/20 when this matter was being reviewed in prep for hearing, no Stipulation and Order has been filed. COURT ORDERED, matter CONTINUED to 6/18/20 and if the Stipulation and Order has not been filed by then, all counsel will be subject to an Order to Show Cause to pay \$250 to the Legal Aid Center of Southern Nevada or the Clark County Law Library. CONTINUED TO: 6/18/2020 9:00 AM CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /rl 5/18/2020 ;</i>
09/24/2020	CANCELED Status Check (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - per Stipulation and Order</i> <i>Status of Case / Application (RE: SAO filed 6/1/20)</i>
10/29/2020	 Hearing (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Hearing re: Briefs on Remand</i> Matter Heard; Journal Entry Details: ;
12/10/2020	Motion to Stay (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Respondent Clark County Office of the Coroner/Medical Examiner's Motion to Stay on an Order Shortening Time</i>
12/10/2020	Motion for Order to Show Cause (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Petitioner Las Vegas Review Journal's Motion to Order to Show Cause on OST</i>
01/26/2021	Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Petitioner Las Vegas Review-Journal's Supplemental Motion for Attorney's Fees and Costs</i>

DATE

FINANCIAL INFORMATION

Defendant Clark County Office of the Coroner/ Medical Examiner	
Total Charges	75.50
Total Payments and Credits	75.50
Balance Due as of 12/16/2020	0.00
Plaintiff Las Vegas Review-Journal	
Total Charges	270.00
Total Payments and Credits	270.00
Balance Due as of 12/16/2020	0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
 Case No. **A-17-758501-W** Department 24
(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <div style="text-align: center;">The Las Vegas Review-Journal c/o McLetchie Shell LLC 701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101 (702) 728-5300</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Clark County Office of the Coroner/Medical Examiner 1704 Pinto Lane Las Vegas, Nevada 89106 (702) 455-3210</div>
Attorney (name/address/phone): <div style="text-align: center;">Margaret A. McLetchie and Alina M. Shell McLetchie Shell LLC 701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101 (702) 728-5300</div>	Attorney (name/address/phone): <div style="text-align: center;">Mary-Anne Miller and Laura Rehfeldt Clark County District Attorney's Office, Civil Division 500 S. Grand Central Parkway Las Vegas, Nevada 89106 (702) 671-2500</div>

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input checked="" type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

07/17/2017

Date

Signature of Initiating party or representative

See other side for family-related case filings.

Heather S. Smith

CLERK OF THE COURT

ORDR

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE LAW

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

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Email: maggie@nvlitigation.com

Counsel for Petitioner, Las Vegas Review-Journal

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

Case No.: A-17-758501-W

Dept. No.: XXIV

ORDER ON REMAND

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Respondent.

The Las Vegas Review-Journal's Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus ("Petition"), having come on for hearing on remand from the Nevada Supreme Court on October 29, 2020, the Honorable Jim Crockett presiding, Petitioner the Las Vegas Review-Journal (the "Review-Journal") appearing by and through its counsel, Margaret A. McLetchie and Alina M. Shell, and Respondent the Clark County Office of the Coroner/Medical Examiner (the "Coroner") appearing by and through its counsel, Jackie V. Nichols, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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I.**PROCEDURAL HISTORY AND FINDINGS OF FACT**

1. On April 13, 2017, the Review-Journal sent the Coroner a request (the “Request”) pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking all autopsy reports of all autopsies conducted on anyone under the age of 18 from 2012 through the date of the Request.

2. The Coroner responded to the Request on April 13, 2017, refusing to produce any of the requested autopsy reports, stating nothing more than it was “not able to provide autopsy reports.”

3. On April 14, 2017, the Coroner, while continuing to withhold the requested records, provided the Review-Journal a spreadsheet created by undisclosed persons, broken down by year, containing some information but missing critical information, such as opinions of the medical examiner, physical observations, and the identity of the medical examiner performing the autopsies.

4. On May 26, 2017, the Coroner also provided a list of child deaths where autopsy reports were generated. As with the spreadsheet, while the list included the cause and manner of death, it omitted information regarding the identity of the examiner, the observations of the examiner, and the identity of the person(s) who compiled the list.

5. The Coroner did not provide the actual autopsy reports that were responsive to the request.

6. On July 11, 2017, the Coroner informed the Review-Journal that it had begun compiling and redacting autopsy reports in response to the records request, and provided sample files of three redacted autopsy reports from child deaths that were not handled by a child death review team as an example of the redactions the Coroner intended to make to all the requested reports. The Coroner also provided the Review-Journal with a spreadsheet identifying juvenile deaths that occurred in Clark County from January 2012 to the date of the request which included each decedent's name, age, race, and gender, as well as the cause, manner, and location of death.

1 7. The sample files were heavily redacted, omitting pathological diagnoses
2 and opinions regarding cause of death.

3 8. The Review-Journal filed its Petition on July 17, 2017.

4 9. After full briefing by the parties, this Court conducted a hearing on the
5 Review-Journal's Petition on September 28, 2017, and granted the Review-Journal's Petition
6 in its entirety.

7 10. The Court entered a written order granting the Review-Journal's Petition
8 and ordering the Coroner to produce the requested autopsy reports on November 19, 2017.

9 11. The Coroner filed a notice of appeal challenging the Court's November 19,
10 2017, order on November 28, 2017.

11 12. On appeal, the Coroner argued that it may refuse to disclose a juvenile
12 autopsy report once it has provided the report to a Child Death Review ("CDR") team under
13 Nev. Rev. Stat. § 432B.407(6). The Coroner further argued that the Court erred in ordering
14 the Coroner to produce the reports in unredacted form.

15 13. The Supreme Court issued a decision on February 27, 2020. *See Clark Cty.*
16 *Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 136 Nev. 44, 458 P.3d 1048
17 (2020).

18 14. In its opinion, the Supreme Court rejected the Coroner's broad
19 interpretation of Nev. Rev. Stat. § 432B.407(6), holding that the statute "applies exclusively
20 to a CDR 'team,' not to the broad categories of individual public agencies that may be part
21 of a CDR team" such as the Coroner. *Coroner*, 136 Nev. at 51, 458 P.3d at 1055. Under a
22 narrow construction of this statute as mandated by Nev. Rev. Stat. § 239.001(3), the Court
23 found that "only a CDR team may invoke the confidentiality privilege to withhold
24 information in response to a public records request, and NRS 432B.407(6) makes
25 confidential only information or records 'acquired by' the CDR team." *Id.* at 50-51, 1055.

26 15. The Supreme Court further found that the statutory scheme of NRS Chapter
27 432B "reflects a clear legislative intent to make certain information concerning child
28 fatalities publicly available." *Id.* at 52, 1055; *see also id.* at 52-53, 1055-56 (discussing

1 legislative history of Chapter 432B).

2 16. After considering the statutory scheme and legislative history of Chapter
3 432B, the Supreme Court found that “the public policy interest in disseminating information
4 pertaining to child abuse and fatalities is significant.” *Id.* at 57, 1059.

5 17. However, the Supreme Court found that the Coroner had articulated a
6 nontrivial privacy interest that could be at stake for some information contained in the
7 records, and remanded the matter to this Court to apply the two-part balancing test adopted
8 in *Clark Cty. School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018)
9 (“CCSD”) to determine what information in the autopsy reports must be disclosed under the
10 NPRA and what information should be redacted. *Coroner*, 136 Nev. at 58, 458 P.3d at 1059.

11 18. The Review-Journal filed its Opening Brief on Remand on August 27,
12 2020.

13 19. The Coroner filed its Answering Brief on October 7, 2020. In its Answering
14 Brief, the Coroner asserted that, in addition to the three sample redacted autopsy reports it
15 previously produced to the Review-Journal, there are approximately 680 autopsy reports and
16 150 external examinations responsive to the Review-Journal’s request.

17 20. The Review-Journal filed its Reply in support of its Opening Brief on
18 Remand on October 22, 2020.

19 21. This Court conducted a hearing on the parties’ briefs on remand on October
20 29, 2020.

21 22. At the October 29, 2020, hearing on remand, the Coroner stated that it had
22 only redacted the three sample autopsy reports it provided to the Review-Journal pre-
23 litigation and had not reviewed or performed redactions to the balance of the approximately
24 680 autopsy reports and 150 external examinations. (Recorder’s Transcript of October 29,
25 2020, Hearing (“Transcript”), p. 23:8-14 (on file with this Court).)

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II.

CONCLUSIONS OF LAW

A. *The NPRA*

23. At its heart, this case is about the value of transparency in government and the value of public oversight. (Transcript, p. 13:15-16.) Governmental entities and their officers and employees exist to serve the public; thus, oversight of the actions and inactions of governmental entities is critical to ensuring that the public's interests are being served. (*Id.*, p. 13:16-23.)

24. Governmental entities have been entrusted with certain authorities under the color of law to conduct the public's business. (*Id.*, pp. 13:24 – 14:2.) The public entrusts governmental entities with that authority and has a right to expect and know that trust is not being abused. (*Id.*, p. 14:3-4.)

25. The NPRA recognizes that access to the records of governmental agencies is critical to fostering democracy. Nev. Rev. Stat. § 239.001(1) (2017) (“The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law”); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 876, 266 P.3d 623, 626 (2011) (holding that “the provisions of the NPRA are designed to promote government transparency and accountability”).

26. Given the central role access to public records plays in fostering democracy, the Legislature built certain presumptions into the NPRA. The NPRA starts from the presumption that all records of government must be open to inspection and copying. Nev. Rev. Stat. § 239.010(1); *see also Reno Newspapers, Inc. v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010) (“*Haley*”) (holding that the NPRA “considers all records to be public documents available for inspection and copying unless otherwise explicitly made confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure”).

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27. The NPRA also starts from the presumption that its provisions must be construed liberally in favor of access, Nev. Rev. Stat. § 239.001(2), and that “any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.” Nev. Rev. Stat. § 239.001(3).

28. Because the NPRA starts from the presumption that all records of governmental entities are public records and that its provisions must be interpreted liberally to increase access, if a governmental entity seeks to keep all or some part of public record secret, the NPRA places the burden of governmental entities to prove, by a preponderance of the evidence, that any information it seeks to keep secret is confidential. Nev. Rev. Stat. § 239.0113(2).

29. Further, a governmental entity seeking to withhold public records on the grounds that they are confidential must prove by a preponderance of the evidence that the interests in nondisclosure outweigh the strong presumption in favor of public access. *Reno Newspapers Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011); *see also Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147-48 (1990).

30. The Nevada Supreme Court has held that because of the mandates contained in the text of the NPRA and its overarching purpose of furthering access to public records, governmental entities cannot meet their burden under Nev. Rev. Stat. § 239.0113(2) by relying on conjecture, supposition, or “non-particularized hypothetical concerns.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 628, 6 P.3d 465, 472-73 (2000); *accord Haley*, 126 Nev. at 218, 234 P.3d at 927; *Reno Newspapers Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011).

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

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B. The CCSD Test

32. In *Clark County School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018) (“CCSD”), the Nevada Supreme Court adopted a two-part balancing test courts are to employ in cases in which the nontrivial personal privacy interest of a person named in an investigative report may warrant redaction.

33. Under the first prong of the CCSD test, the governmental entity seeking to withhold or redact public records must “establish a personal privacy interest stake to ensure that disclosure implicates a personal privacy interest that is nontrivial or ... more than [] de minimis.” CCSD, 134 Nev. at 707, 429 P.3d at 320 (internal quotations omitted).

34. If—and only if—the governmental entity succeeds in showing that the privacy interest at stake is nontrivial, the burden shifts to the requester to show that “the public interest sought to be advanced is a significant one and that the information [sought] is likely to advance that interest.” CCSD, 134 Nev. at 707-08, 429 P.3d at 320 (internal quotations omitted).

35. In adopting this two-part test, the Supreme Court was careful to note that its new test did not alter a governmental entity’s obligations under the NPRA or the Court’s interpreting case law:

This test coheres with both NRS 239.0113 and *Gibbons*, 127 Nev. at 877-78, 266 P.3d at 625-26. It is merely a balancing test—in the context of a government investigation—of individual nontrivial privacy rights against the public’s right to access public information. *Carlson v. U.S. Postal Serv.*, 2017 WL 3581136, at *28 (N.D. Cal. Aug. 18, 2017). We explained in *Gibbons* that NRS 239.0113 requires that the state bear the burden of proving that records are confidential. *Gibbons*, 127 Nev. at 878, 266 P.3d at 626. The *Cameranesi* test does that, but also gives the district courts a framework to weigh the public’s interest in disclosure, by shifting the burden onto the public record petitioner, once the government has met its burden. This ensures that the district courts are adequately weighing the competing interests of privacy and government accountability.

CCSD, 134 Nev. at 708–09, 429 P.3d at 321.

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1 ***C. Application of the CCSD Test to The Redacted Autopsy Reports***

2 36. The Review-Journal has requested the Coroner produce, in unredacted
3 form, autopsy reports for all decedents under the age of 18 who died between 2012 and the
4 date of the Review-Journal's request.

5 37. In remanding this matter back to this Court, the Nevada Supreme Court
6 found the Coroner had established the autopsy reports at issue here implicate a nontrivial
7 personal privacy interest. Relying on a declaration of Clark County Coroner John Fudenberg,
8 the Supreme Court found that the autopsy reports may contain medical or health-related
9 information that may be entitled to protection. *Coroner*, 136 Nev. at 56, 458 P.3d at 1058.

10 38. The Supreme Court further noted that while “the public policy in
11 disseminating information pertaining to child abuse and fatalities is significant,” the “nature
12 of the information contained in the juvenile autopsy reports that LVRJ seeks and how that
13 information will advance a significant public interest” was “unclear.” *Id.* at 57-58, 1059.
14 Accordingly, the Supreme Court remanded this matter to this Court “to determine, under the
15 [CCSD] test, what information should be redacted as private medical or health-related
16 information.” *Id.* at 58, 1059.

17 39. Having reviewed the post-remand briefings submitted by the parties, the
18 Court finds that there are multiple significant public interests that would be served by release
19 of the autopsy reports which outweigh the nontrivial privacy interests articulated by the
20 Coroner. (Transcript, p. 28:2-6; *id.*, p. 28:18-22.)

21 40. Access to public records is always presumed to be in the public interest. *See*
22 Nev. Rev. Stat. § 239.001.

23 41. In this case, access to autopsy reports generally furthers a number of
24 significant policy interests which the Review-Journal has sufficiently established overcome
25 the nontrivial privacy interests at stake.

26 42. For example, access to autopsy reports can provide the public with vital
27 health information and protect the public. Information gathered by coroners is often a vital
28 tool in tracking trends in causes of death, thereby increasing the public's understanding of

1 how trends like opioid deaths or deaths from the ongoing COVID-19 pandemic affect their
2 community.

3 43. Access to autopsy reports and reporting on autopsy reports can help the
4 public assess prosecutors' theories and charging decisions—and can help exonerate the
5 innocent.

6 44. Access to autopsy reports also promotes trust in law enforcement and
7 promotes law enforcement accountability. This is so because access to and reporting on
8 autopsy reports can both exonerate law enforcement officers accused of wrongdoing and
9 shed light on police wrongdoing.

10 45. Access to autopsy reports serves the important public function of providing
11 the public with information about crimes of significant public interest.

12 46. More fundamentally, access to autopsy reports, including the specific
13 juvenile autopsy reports at issue in this case, provides the public with access to information
14 about the Coroner's conduct. Given that the Coroner is a public servant and its work on
15 behalf of the public investigating suspicious deaths is a matter of vital public concern, access
16 to information about the Coroner's work furthers democracy. Nev. Rev. Stat. § 239.001(1).

17 47. Relatedly, access to autopsy reports ensures that coroners' offices do their
18 taxpayer-funded jobs correctly and do not engage in malfeasance. Access to autopsy reports,
19 including the juvenile autopsy reports at issue in this case, fosters public confidence in the
20 work of county coroners and medical examiners—and allows errors or wrongful behavior to
21 be revealed, assessed, and corrected.

22 48. Further, with respect to the juvenile autopsy reports at issue in this matter,
23 access to the reports as requested by the Review-Journal will serve a significant public
24 interest in assessing how well state and local child protective agencies are doing their job of
25 protecting children who have been the victims of abuse and/or neglect. Thus, not only will
26 access further the NPRA's central purposes of transparency and accountability regarding one
27 government agency, but it will also further transparency and accountability regarding
28 multiple government agencies which share information. (Transcript, p. 14:10-15.)

49. While the Coroner is not charged with the protection of vulnerable children, as the agency responsible for investigating suspicious deaths, the Coroner is necessarily the agency who receives and examines deceased juveniles, including juveniles who were (or had been) under the supervision of local child protective services. Thus, access to the information the Coroner gathers during the examination of a juvenile who died after having been under the supervision of child protective services can help the public understand and assess how well child protective service agencies are fulfilling their responsibilities to Clark County's vulnerable children. (*Id.*)

50. In its decision, the Supreme Court noted that in addition to the three heavily redacted reports, the Coroner had provided the Review-Journal a spreadsheet containing the names, genders, ages, race, and the cause and manner of death for juveniles, and also noted that the CDR Teams provide information that is used to compile a statewide annual report. *Coroner*, 136 Nev. at 58, 1059. The Court then expressed uncertainty as to what "additional information" the Review-Journal seeks to obtain from the autopsy reports that would advance the public's interest. *Id.*

51. In its Supplemental Opening Brief on Remand, the Review-Journal provided myriad examples of how and why access to autopsy reports would advance the public interest. With respect to the juvenile autopsy reports at issue here, the Review-Journal has demonstrated that access to information about the Coroner's observations—and not just the Coroner's conclusions regarding the cause and manner of death—is critical to assessing the efficacy of child protective services.

52. A coroner's ultimate conclusion about the cause and manner of death for a decedent does not occur in a vacuum. In reaching a conclusion regarding cause and manner of death, a coroner necessarily assesses a wide array of information about the decedent, including the decedent's personal history such as a history of past abuse, prior involvement with child protective services or law enforcement, external and internal observations of a decedent's body that may be indicative of prior abuse, toxicological information, and evidence of past injuries like broken bones or damaged organs.

53. This sort of information is critical to the important goals of providing the public with a greater understanding of how state and local agencies tasked with protecting vulnerable children operate, identifying any shortcomings in those agencies' operations, and identifying what changes those agencies can and should make to prevent future deaths of children whose lives have been marked by abuse or neglect.

54. The spreadsheet provided by the Coroner and the CDR annual statewide reports are not sufficient replacements for direct access to this information. First, the annual statewide reports do not contain the Coroner's external or internal observations. Access to all of this type of information that is included in an autopsy report—but was not included in the Coroner's spreadsheet and is not provided in CDR reports—would advance the public interest by ascertaining the efficacy of Clark County's abuse and neglect system, an issue of great public importance.

55. Second, even if the autopsy reports did not include additional categories of information from the Coroner's spreadsheets or the CDR reports, access to the source material would still provide additional information as it would allow the Review-Journal to assess the accuracy of the information contained in the Coroner's spreadsheets and the CDR reports.

56. The NPRA does not limit a requester's information to that information that the government chooses to filter, repackage, and provide. Instead, the NPRA is intended to provide the public with direct access to the government's records themselves. Limiting access to the direct source material would be antithetical to the central stated purpose of the NPRA: government accountability. Nev. Rev. Stat. § 239.001(1) provides that "[t]he purpose of [NPRA] is to foster democratic principles by providing members of the public with prompt access to inspect, copy or receive a copy of public books and records to the extent permitted by law." The NPRA further provides that all of its provisions "must be construed liberally to carry out this important purpose." Nev. Rev. Stat. § 239.001(2). In short, the NPRA reflects that the public is not required to trust the government. Instead, the public is entitled to public record so it can assess the conduct and effectiveness of government.

1 57. Accordingly, the Court hereby finds and concludes that the Review-Journal
2 has established that the public interests in access far outweigh the nontrivial personal privacy
3 interests advanced by the Coroner. (Transcript, p. 22:6-9.)

4 ***D. The Coroner Must Disclose the Juvenile Autopsy Reports in Unredacted Form***

5 58. As noted above, prior to litigation the Coroner provided the Review-Journal
6 with three sample autopsy reports as an example of the redactions the Coroner intended to
7 make to all the requested reports.

8 59. In its Answering Brief, the Coroner represents that there are many more
9 autopsy records responsive to the Review-Journal's request, including approximately 680
10 autopsy reports and 150 external examination. (*See* Coroner's October 7, 2020, Answering
11 Brief, p. 25:18-19.)

12 60. At the October 29, 2020, hearing on remand, the Coroner stated that it had
13 only redacted the three sample autopsy reports it provided to the Review-Journal pre-
14 litigation and had not performed redactions to the balance of the approximately 680 autopsy
15 reports and 150 external examinations. (Transcript, p. 23:8-14.)

16 61. The Coroner has never made redactions to the approximately 680 autopsy
17 reports and 150 external examinations or considered whether, record by record, there is
18 specific information that merits protection.

19 62. This is particularly troubling given that—as this matter was initiated in 2017
20 when the Review-Journal made its records request—the Coroner has had years to meet that
21 burden. (Transcript, pp. 27:23 - 28:1; *id.*, p. 28:12-17.)

22 63. While the Court is satisfied that the Review-Journal has met its burden of
23 establishing that there is a significant interest in access, it offered the opportunity to the
24 Coroner to conduct an *in camera* review of proposed redactions. However, at the hearing,
25 the Coroner remained steadfast that it would simply redact all information that the Coroner
26 deems is not related to the cause of death. Such an approach is not consistent with the need
27 for the information that the Review-Journal has demonstrated. First, one of the significant
28 interests access will advance is ensuring the proper functioning of the Coroner's Office. It is

not possible to ensure that the Coroner reached the correct conclusion regarding cause of death if it refuses to produce any information it deems unrelated to the cause of death. Second, another significant interest in access advanced by access is ensuring oversight and accountability of the abuse and neglect system. There may be information that the Coroner deems unrelated to the cause of death that is nonetheless relevant to that inquiry, such as signs of historical abuse.

64. Moreover, the Court notes that the significant interests established by the Review-Journal can only be met by direct access to the records sought; the reports and spreadsheets otherwise available not only do not contain the information that is needed to advance the significant interests in access, it would undermine accountability to limit the Review-Journal to information filtered by the Coroner or other government employees and officials.

65. For these reasons, the Court finds and concludes that the Coroner's planned redactions would not satisfy the very significant public interests the Review-Journal has demonstrated that overcome the nontrivial but generalized privacy interests articulated by the Coroner.

66. Further, in light of the fact that the balancing test weighs heavily in favor of disclosure and the Coroner has made no effort to meet its burden of establishing a specific nontrivial privacy interest with respect to any of the specific information contained in those approximately 680 autopsy reports and 150 external examinations, the Court finds and concludes that the Coroner has waived its ability to redact any information contained within those reports. *Thompson v. City of North Las Vegas*, 108 Nev. 435, 439, 833 P.2d 1132, 1134 (1992) ("A waiver is an intentional relinquishment of a known right.")

67. Thus, the Coroner must provide directly to the Review-Journal the requested records in unredacted form and must do so within 30 days of the Court's October 29, 2020, hearing in this matter.

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1 ***E. Reproduction Costs***

2 68. When the Review-Journal filed its Petition in 2017, the NPRA permitted
3 governmental entities to charge requesters a fee—not to exceed 50 cents per page—for the
4 “extraordinary use” of personnel and technological resources. Nev. Rev. Stat. § 239.055
5 (2017 version).

6 69. In its opinion, the Nevada Supreme Court rejected the Coroner’s argument
7 that it was entitled under Nev. Rev. Stat. § 239.055 to charge the Review-Journal a \$45.00
8 hourly fee for staff to review the requested autopsy reports, and held that the plain language
9 of the statute capped such fees at 50 cents per page. *Coroner*, 136 Nev. at 59, 458 P.3d at
10 1060.

11 70. Thus, to the extent the Coroner produces hard copies of the requested
12 juvenile autopsy reports in this matter, it may charge not more than the lesser of its actual
13 costs or the 50-cent cap set by Nev. Rev. Stat. § 239.055 (2017 version).

14 71. The Review-Journal has requested the Coroner produce the juvenile
15 autopsy reports in electronic format.

16 72. Unless it is technologically infeasible, the Coroner must produce the
17 juvenile autopsy reports if the format and medium requested by the Review-Journal. If the
18 Review-Journal’s chosen format and medium are infeasible, the Coroner must work with the
19 Review-Journal to produce the records in another format and medium of the Review-
20 Journal’s choice unless no such choice is feasible.

21 73. Pursuant to Nev. Rev. Stat. § 239.052(1), the Coroner may only charge a
22 requester for the actual costs it incurs in reproducing public records.

23 74. Thus, if the records are produced in an electronic format, the Coroner may
24 charge the Review-Journal for only the actual cost of the medium it uses to produce the
25 records.

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III.

ORDER

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

IT IS HEREBY ORDERED that the Coroner shall produce directly to the Review-Journal the requested juvenile autopsy reports in unredacted form by November 30, 2020. The Coroner should produce records on a rolling basis.

IT IS HEREBY FURTHER ORDERED that unless technologically infeasible, the Coroner is to produce the requested juvenile autopsy reports in the electronic format and medium requested by the Review-Journal or such alternate format and medium as requested by the Review-Journal.

IT IS HEREBY FURTHER ORDERED that the Coroner may charge the Review-Journal a fee for the cost of producing the requested juvenile autopsy reports in electronic format not to exceed the actual cost of the medium on which the juvenile autopsy reports are produced.

IT IS HEREBY FURTHER ORDERED that, to the extent the Coroner produces any of the requested records to the Review-Journal in a hard copy format, it may not charge more than the lesser of the actual costs of production or 50 cents per page for the reproduction of those records.

Dated this 20th day of November, 2020

Date

DISTRICT COURT JUDGE

Respectfully submitted,

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE LAW

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Las Vegas, NV 89101

Counsel for Petitioner, Las Vegas Review-Journal, Inc.

70B 2FA DB77 008D

Jim Crockett

District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Las Vegas Review-Journal,
Plaintiff(s)

CASE NO: A-17-758501-W

7 vs.

DEPT. NO. Department 24

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9 Clark County Office of the
Coroner/ Medical Examiner,
10 Defendant(s)

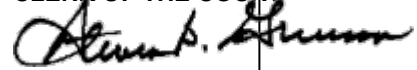
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12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
15 recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 11/20/2020

17 Krista Busch	kbusch@maclaw.com
18 Alina Shell	alina@nvlitigation.com
19 Margaret McLetchie	maggie@nvlitigation.com
20 Jackie Nichols	jnichols@maclaw.com
21 Leah Dell	ldell@maclaw.com
22 Sherri Mong	smong@maclaw.com
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1 **NEOJ**

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8 Email: maggie@nvlitigation.com

9 Attorneys for Petitioner Las Vegas Review-Journal

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

13 Petitioner,

Dept. No.: XXIV

14 vs.

15 **NOTICE OF ENTRY OF ORDER**
ON REMAND

16 CLARK COUNTY OFFICE OF THE
17 CORONER/MEDICAL EXAMINER,

18 Respondent.

19 **TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:**

20 PLEASE TAKE NOTICE that on the 20th day of November, 2020, an Order on
21 Remand was entered in the above-captioned action.

22 A copy of the Order on Remand is attached hereto as **Exhibit 1**.

23 DATED this 20th day of November, 2020.

24 /s/ Margaret A. McLetchie

25 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

26 ALINA M. SHELL, Nevada Bar No. 11711

27 **MCLEATCHIE LAW**

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Attorneys for Petitioner Las Vegas Review-Journal

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CERTIFICATE OF SERVICE

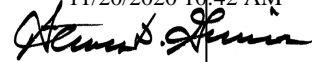
I hereby certify that on this 20th day of November, 2020, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER ON REMAND in *Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner*, Eight Judicial District Court Case No. A-17-758501-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

/s/ Lacey Ambro

An Employee of McLetchie Law

INDEX OF EXHIBITS	
Exhibit	Description
1	November 20, 2020 Order on Remand

EXHIBIT 1


CLERK OF THE COURT

ORDER

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Email: maggie@nvlitigation.com

Counsel for Petitioner, Las Vegas Review-Journal

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

Case No.: A-17-758501-W

Dept. No.: XXIV

ORDER ON REMAND

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Respondent.

The Las Vegas Review-Journal's Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus ("Petition"), having come on for hearing on remand from the Nevada Supreme Court on October 29, 2020, the Honorable Jim Crockett presiding, Petitioner the Las Vegas Review-Journal (the "Review-Journal") appearing by and through its counsel, Margaret A. McLetchie and Alina M. Shell, and Respondent the Clark County Office of the Coroner/Medical Examiner (the "Coroner") appearing by and through its counsel, Jackie V. Nichols, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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I.**PROCEDURAL HISTORY AND FINDINGS OF FACT**

1. On April 13, 2017, the Review-Journal sent the Coroner a request (the “Request”) pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking all autopsy reports of all autopsies conducted on anyone under the age of 18 from 2012 through the date of the Request.

2. The Coroner responded to the Request on April 13, 2017, refusing to produce any of the requested autopsy reports, stating nothing more than it was “not able to provide autopsy reports.”

3. On April 14, 2017, the Coroner, while continuing to withhold the requested records, provided the Review-Journal a spreadsheet created by undisclosed persons, broken down by year, containing some information but missing critical information, such as opinions of the medical examiner, physical observations, and the identity of the medical examiner performing the autopsies.

4. On May 26, 2017, the Coroner also provided a list of child deaths where autopsy reports were generated. As with the spreadsheet, while the list included the cause and manner of death, it omitted information regarding the identity of the examiner, the observations of the examiner, and the identity of the person(s) who compiled the list.

5. The Coroner did not provide the actual autopsy reports that were responsive to the request.

6. On July 11, 2017, the Coroner informed the Review-Journal that it had begun compiling and redacting autopsy reports in response to the records request, and provided sample files of three redacted autopsy reports from child deaths that were not handled by a child death review team as an example of the redactions the Coroner intended to make to all the requested reports. The Coroner also provided the Review-Journal with a spreadsheet identifying juvenile deaths that occurred in Clark County from January 2012 to the date of the request which included each decedent's name, age, race, and gender, as well as the cause, manner, and location of death.

1 7. The sample files were heavily redacted, omitting pathological diagnoses
2 and opinions regarding cause of death.

3 8. The Review-Journal filed its Petition on July 17, 2017.

4 9. After full briefing by the parties, this Court conducted a hearing on the
5 Review-Journal's Petition on September 28, 2017, and granted the Review-Journal's Petition
6 in its entirety.

7 10. The Court entered a written order granting the Review-Journal's Petition
8 and ordering the Coroner to produce the requested autopsy reports on November 19, 2017.

9 11. The Coroner filed a notice of appeal challenging the Court's November 19,
10 2017, order on November 28, 2017.

11 12. On appeal, the Coroner argued that it may refuse to disclose a juvenile
12 autopsy report once it has provided the report to a Child Death Review ("CDR") team under
13 Nev. Rev. Stat. § 432B.407(6). The Coroner further argued that the Court erred in ordering
14 the Coroner to produce the reports in unredacted form.

15 13. The Supreme Court issued a decision on February 27, 2020. *See Clark Cty.*
16 *Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 136 Nev. 44, 458 P.3d 1048
17 (2020).

18 14. In its opinion, the Supreme Court rejected the Coroner's broad
19 interpretation of Nev. Rev. Stat. § 432B.407(6), holding that the statute "applies exclusively
20 to a CDR 'team,' not to the broad categories of individual public agencies that may be part
21 of a CDR team" such as the Coroner. *Coroner*, 136 Nev. at 51, 458 P.3d at 1055. Under a
22 narrow construction of this statute as mandated by Nev. Rev. Stat. § 239.001(3), the Court
23 found that "only a CDR team may invoke the confidentiality privilege to withhold
24 information in response to a public records request, and NRS 432B.407(6) makes
25 confidential only information or records 'acquired by' the CDR team." *Id.* at 50-51, 1055.

26 15. The Supreme Court further found that the statutory scheme of NRS Chapter
27 432B "reflects a clear legislative intent to make certain information concerning child
28 fatalities publicly available." *Id.* at 52, 1055; *see also id.* at 52-53, 1055-56 (discussing

1 legislative history of Chapter 432B).

2 16. After considering the statutory scheme and legislative history of Chapter
3 432B, the Supreme Court found that “the public policy interest in disseminating information
4 pertaining to child abuse and fatalities is significant.” *Id.* at 57, 1059.

5 17. However, the Supreme Court found that the Coroner had articulated a
6 nontrivial privacy interest that could be at stake for some information contained in the
7 records, and remanded the matter to this Court to apply the two-part balancing test adopted
8 in *Clark Cty. School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018)
9 (“CCSD”) to determine what information in the autopsy reports must be disclosed under the
10 NPRA and what information should be redacted. *Coroner*, 136 Nev. at 58, 458 P.3d at 1059.

11 18. The Review-Journal filed its Opening Brief on Remand on August 27,
12 2020.

13 19. The Coroner filed its Answering Brief on October 7, 2020. In its Answering
14 Brief, the Coroner asserted that, in addition to the three sample redacted autopsy reports it
15 previously produced to the Review-Journal, there are approximately 680 autopsy reports and
16 150 external examinations responsive to the Review-Journal’s request.

17 20. The Review-Journal filed its Reply in support of its Opening Brief on
18 Remand on October 22, 2020.

19 21. This Court conducted a hearing on the parties’ briefs on remand on October
20 29, 2020.

21 22. At the October 29, 2020, hearing on remand, the Coroner stated that it had
22 only redacted the three sample autopsy reports it provided to the Review-Journal pre-
23 litigation and had not reviewed or performed redactions to the balance of the approximately
24 680 autopsy reports and 150 external examinations. (Recorder’s Transcript of October 29,
25 2020, Hearing (“Transcript”), p. 23:8-14 (on file with this Court).)

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II.

CONCLUSIONS OF LAW

A. *The NPRA*

23. At its heart, this case is about the value of transparency in government and the value of public oversight. (Transcript, p. 13:15-16.) Governmental entities and their officers and employees exist to serve the public; thus, oversight of the actions and inactions of governmental entities is critical to ensuring that the public's interests are being served. (*Id.*, p. 13:16-23.)

24. Governmental entities have been entrusted with certain authorities under the color of law to conduct the public's business. (*Id.*, pp. 13:24 – 14:2.) The public entrusts governmental entities with that authority and has a right to expect and know that trust is not being abused. (*Id.*, p. 14:3-4.)

25. The NPRA recognizes that access to the records of governmental agencies is critical to fostering democracy. Nev. Rev. Stat. § 239.001(1) (2017) (“The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law”); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 876, 266 P.3d 623, 626 (2011) (holding that “the provisions of the NPRA are designed to promote government transparency and accountability”).

26. Given the central role access to public records plays in fostering democracy, the Legislature built certain presumptions into the NPRA. The NPRA starts from the presumption that all records of government must be open to inspection and copying. Nev. Rev. Stat. § 239.010(1); *see also Reno Newspapers, Inc. v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010) (“*Haley*”) (holding that the NPRA “considers all records to be public documents available for inspection and copying unless otherwise explicitly made confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure”).

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27. The NPRA also starts from the presumption that its provisions must be construed liberally in favor of access, Nev. Rev. Stat. § 239.001(2), and that “any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.” Nev. Rev. Stat. § 239.001(3).

28. Because the NPRA starts from the presumption that all records of governmental entities are public records and that its provisions must be interpreted liberally to increase access, if a governmental entity seeks to keep all or some part of public record secret, the NPRA places the burden of governmental entities to prove, by a preponderance of the evidence, that any information it seeks to keep secret is confidential. Nev. Rev. Stat. § 239.0113(2).

29. Further, a governmental entity seeking to withhold public records on the grounds that they are confidential must prove by a preponderance of the evidence that the interests in nondisclosure outweigh the strong presumption in favor of public access. *Reno Newspapers Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011); *see also Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147-48 (1990).

30. The Nevada Supreme Court has held that because of the mandates contained in the text of the NPRA and its overarching purpose of furthering access to public records, governmental entities cannot meet their burden under Nev. Rev. Stat. § 239.0113(2) by relying on conjecture, supposition, or “non-particularized hypothetical concerns.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 628, 6 P.3d 465, 472-73 (2000); *accord Haley*, 126 Nev. at 218, 234 P.3d at 927; *Reno Newspapers Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011).

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

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B. The CCSD Test

32. In *Clark County School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018) (“CCSD”), the Nevada Supreme Court adopted a two-part balancing test courts are to employ in cases in which the nontrivial personal privacy interest of a person named in an investigative report may warrant redaction.

33. Under the first prong of the *CCSD* test, the governmental entity seeking to withhold or redact public records must “establish a personal privacy interest stake to ensure that disclosure implicates a personal privacy interest that is nontrivial or ... more than [] de minimis.” *CCSD*, 134 Nev. at 707, 429 P.3d at 320 (internal quotations omitted).

34. If—and only if—the governmental entity succeeds in showing that the privacy interest at stake is nontrivial, the burden shifts to the requester to show that “the public interest sought to be advanced is a significant one and that the information [sought] is likely to advance that interest.” *CCSD*, 134 Nev. at 707-08, 429 P.3d at 320 (internal quotations omitted).

35. In adopting this two-part test, the Supreme Court was careful to note that its new test did not alter a governmental entity’s obligations under the NPRA or the Court’s interpreting case law:

This test coheres with both NRS 239.0113 and *Gibbons*, 127 Nev. at 877-78, 266 P.3d at 625-26. It is merely a balancing test—in the context of a government investigation—of individual nontrivial privacy rights against the public’s right to access public information. *Carlson v. U.S. Postal Serv.*, 2017 WL 3581136, at *28 (N.D. Cal. Aug. 18, 2017). We explained in *Gibbons* that NRS 239.0113 requires that the state bear the burden of proving that records are confidential. *Gibbons*, 127 Nev. at 878, 266 P.3d at 626. The *Cameranesi* test does that, but also gives the district courts a framework to weigh the public’s interest in disclosure, by shifting the burden onto the public record petitioner, once the government has met its burden. This ensures that the district courts are adequately weighing the competing interests of privacy and government accountability.

CCSD, 134 Nev. at 708–09, 429 P.3d at 321.

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1 ***C. Application of the CCSD Test to The Redacted Autopsy Reports***

2 36. The Review-Journal has requested the Coroner produce, in unredacted
3 form, autopsy reports for all decedents under the age of 18 who died between 2012 and the
4 date of the Review-Journal's request.

5 37. In remanding this matter back to this Court, the Nevada Supreme Court
6 found the Coroner had established the autopsy reports at issue here implicate a nontrivial
7 personal privacy interest. Relying on a declaration of Clark County Coroner John Fudenberg,
8 the Supreme Court found that the autopsy reports may contain medical or health-related
9 information that may be entitled to protection. *Coroner*, 136 Nev. at 56, 458 P.3d at 1058.

10 38. The Supreme Court further noted that while "the public policy in
11 disseminating information pertaining to child abuse and fatalities is significant," the "nature
12 of the information contained in the juvenile autopsy reports that LVRJ seeks and how that
13 information will advance a significant public interest" was "unclear." *Id.* at 57-58, 1059.
14 Accordingly, the Supreme Court remanded this matter to this Court "to determine, under the
15 [CCSD] test, what information should be redacted as private medical or health-related
16 information." *Id.* at 58, 1059.

17 39. Having reviewed the post-remand briefings submitted by the parties, the
18 Court finds that there are multiple significant public interests that would be served by release
19 of the autopsy reports which outweigh the nontrivial privacy interests articulated by the
20 Coroner. (Transcript, p. 28:2-6; *id.*, p. 28:18-22.)

21 40. Access to public records is always presumed to be in the public interest. *See*
22 Nev. Rev. Stat. § 239.001.

23 41. In this case, access to autopsy reports generally furthers a number of
24 significant policy interests which the Review-Journal has sufficiently established overcome
25 the nontrivial privacy interests at stake.

26 42. For example, access to autopsy reports can provide the public with vital
27 health information and protect the public. Information gathered by coroners is often a vital
28 tool in tracking trends in causes of death, thereby increasing the public's understanding of

1 how trends like opioid deaths or deaths from the ongoing COVID-19 pandemic affect their
2 community.

3 43. Access to autopsy reports and reporting on autopsy reports can help the
4 public assess prosecutors' theories and charging decisions—and can help exonerate the
5 innocent.

6 44. Access to autopsy reports also promotes trust in law enforcement and
7 promotes law enforcement accountability. This is so because access to and reporting on
8 autopsy reports can both exonerate law enforcement officers accused of wrongdoing and
9 shed light on police wrongdoing.

10 45. Access to autopsy reports serves the important public function of providing
11 the public with information about crimes of significant public interest.

12 46. More fundamentally, access to autopsy reports, including the specific
13 juvenile autopsy reports at issue in this case, provides the public with access to information
14 about the Coroner's conduct. Given that the Coroner is a public servant and its work on
15 behalf of the public investigating suspicious deaths is a matter of vital public concern, access
16 to information about the Coroner's work furthers democracy. Nev. Rev. Stat. § 239.001(1).

17 47. Relatedly, access to autopsy reports ensures that coroners' offices do their
18 taxpayer-funded jobs correctly and do not engage in malfeasance. Access to autopsy reports,
19 including the juvenile autopsy reports at issue in this case, fosters public confidence in the
20 work of county coroners and medical examiners—and allows errors or wrongful behavior to
21 be revealed, assessed, and corrected.

22 48. Further, with respect to the juvenile autopsy reports at issue in this matter,
23 access to the reports as requested by the Review-Journal will serve a significant public
24 interest in assessing how well state and local child protective agencies are doing their job of
25 protecting children who have been the victims of abuse and/or neglect. Thus, not only will
26 access further the NPRA's central purposes of transparency and accountability regarding one
27 government agency, but it will also further transparency and accountability regarding
28 multiple government agencies which share information. (Transcript, p. 14:10-15.)

49. While the Coroner is not charged with the protection of vulnerable children, as the agency responsible for investigating suspicious deaths, the Coroner is necessarily the agency who receives and examines deceased juveniles, including juveniles who were (or had been) under the supervision of local child protective services. Thus, access to the information the Coroner gathers during the examination of a juvenile who died after having been under the supervision of child protective services can help the public understand and assess how well child protective service agencies are fulfilling their responsibilities to Clark County's vulnerable children. (*Id.*)

50. In its decision, the Supreme Court noted that in addition to the three heavily redacted reports, the Coroner had provided the Review-Journal a spreadsheet containing the names, genders, ages, race, and the cause and manner of death for juveniles, and also noted that the CDR Teams provide information that is used to compile a statewide annual report. *Coroner*, 136 Nev. at 58, 1059. The Court then expressed uncertainty as to what "additional information" the Review-Journal seeks to obtain from the autopsy reports that would advance the public's interest. *Id.*

51. In its Supplemental Opening Brief on Remand, the Review-Journal provided myriad examples of how and why access to autopsy reports would advance the public interest. With respect to the juvenile autopsy reports at issue here, the Review-Journal has demonstrated that access to information about the Coroner's observations—and not just the Coroner's conclusions regarding the cause and manner of death—is critical to assessing the efficacy of child protective services.

52. A coroner's ultimate conclusion about the cause and manner of death for a decedent does not occur in a vacuum. In reaching a conclusion regarding cause and manner of death, a coroner necessarily assesses a wide array of information about the decedent, including the decedent's personal history such as a history of past abuse, prior involvement with child protective services or law enforcement, external and internal observations of a decedent's body that may be indicative of prior abuse, toxicological information, and evidence of past injuries like broken bones or damaged organs.

53. This sort of information is critical to the important goals of providing the public with a greater understanding of how state and local agencies tasked with protecting vulnerable children operate, identifying any shortcomings in those agencies' operations, and identifying what changes those agencies can and should make to prevent future deaths of children whose lives have been marked by abuse or neglect.

54. The spreadsheet provided by the Coroner and the CDR annual statewide reports are not sufficient replacements for direct access to this information. First, the annual statewide reports do not contain the Coroner's external or internal observations. Access to all of this type of information that is included in an autopsy report—but was not included in the Coroner's spreadsheet and is not provided in CDR reports—would advance the public interest by ascertaining the efficacy of Clark County's abuse and neglect system, an issue of great public importance.

55. Second, even if the autopsy reports did not include additional categories of information from the Coroner's spreadsheets or the CDR reports, access to the source material would still provide additional information as it would allow the Review-Journal to assess the accuracy of the information contained in the Coroner's spreadsheets and the CDR reports.

56. The NPRA does not limit a requester's information to that information that the government chooses to filter, repackage, and provide. Instead, the NPRA is intended to provide the public with direct access to the government's records themselves. Limiting access to the direct source material would be antithetical to the central stated purpose of the NPRA: government accountability. Nev. Rev. Stat. § 239.001(1) provides that "[t]he purpose of [NPRA] is to foster democratic principles by providing members of the public with prompt access to inspect, copy or receive a copy of public books and records to the extent permitted by law." The NPRA further provides that all of its provisions "must be construed liberally to carry out this important purpose." Nev. Rev. Stat. § 239.001(2). In short, the NPRA reflects that the public is not required to trust the government. Instead, the public is entitled to public record so it can assess the conduct and effectiveness of government.

1 57. Accordingly, the Court hereby finds and concludes that the Review-Journal
2 has established that the public interests in access far outweigh the nontrivial personal privacy
3 interests advanced by the Coroner. (Transcript, p. 22:6-9.)

4 ***D. The Coroner Must Disclose the Juvenile Autopsy Reports in Unredacted Form***

5 58. As noted above, prior to litigation the Coroner provided the Review-Journal
6 with three sample autopsy reports as an example of the redactions the Coroner intended to
7 make to all the requested reports.

8 59. In its Answering Brief, the Coroner represents that there are many more
9 autopsy records responsive to the Review-Journal's request, including approximately 680
10 autopsy reports and 150 external examination. (*See* Coroner's October 7, 2020, Answering
11 Brief, p. 25:18-19.)

12 60. At the October 29, 2020, hearing on remand, the Coroner stated that it had
13 only redacted the three sample autopsy reports it provided to the Review-Journal pre-
14 litigation and had not performed redactions to the balance of the approximately 680 autopsy
15 reports and 150 external examinations. (Transcript, p. 23:8-14.)

16 61. The Coroner has never made redactions to the approximately 680 autopsy
17 reports and 150 external examinations or considered whether, record by record, there is
18 specific information that merits protection.

19 62. This is particularly troubling given that—as this matter was initiated in 2017
20 when the Review-Journal made its records request—the Coroner has had years to meet that
21 burden. (Transcript, pp. 27:23 - 28:1; *id.*, p. 28:12-17.)

22 63. While the Court is satisfied that the Review-Journal has met its burden of
23 establishing that there is a significant interest in access, it offered the opportunity to the
24 Coroner to conduct an *in camera* review of proposed redactions. However, at the hearing,
25 the Coroner remained steadfast that it would simply redact all information that the Coroner
26 deems is not related to the cause of death. Such an approach is not consistent with the need
27 for the information that the Review-Journal has demonstrated. First, one of the significant
28 interests access will advance is ensuring the proper functioning of the Coroner's Office. It is

1 not possible to ensure that the Coroner reached the correct conclusion regarding cause of
2 death if it refuses to produce any information it deems unrelated to the cause of death.
3 Second, another significant interest in access advanced by access is ensuring oversight and
4 accountability of the abuse and neglect system. There may be information that the Coroner
5 deems unrelated to the cause of death that is nonetheless relevant to that inquiry, such as
6 signs of historical abuse.

7 64. Moreover, the Court notes that the significant interests established by the
8 Review-Journal can only be met by direct access to the records sought; the reports and
9 spreadsheets otherwise available not only do not contain the information that is needed to
10 advance the significant interests in access, it would undermine accountability to limit the
11 Review-Journal to information filtered by the Coroner or other government employees and
12 officials.

13 65. For these reasons, the Court finds and concludes that the Coroner's planned
14 redactions would not satisfy the very significant public interests the Review-Journal has
15 demonstrated that overcome the nontrivial but generalized privacy interests articulated by
16 the Coroner.

17 66. Further, in light of the fact that the balancing test weighs heavily in favor of
18 disclosure and the Coroner has made no effort to meet its burden of establishing a specific
19 nontrivial privacy interest with respect to any of the specific information contained in those
20 approximately 680 autopsy reports and 150 external examinations, the Court finds and
21 concludes that the Coroner has waived its ability to redact any information contained within
22 those reports. *Thompson v. City of North Las Vegas*, 108 Nev. 435, 439, 833 P.2d 1132, 1134
23 (1992) ("A waiver is an intentional relinquishment of a known right.")

24 67. Thus, the Coroner must provide directly to the Review-Journal the
25 requested records in unredacted form and must do so within 30 days of the Court's October
26 29, 2020, hearing in this matter.

27 ///

28 ///

1 ***E. Reproduction Costs***

2 68. When the Review-Journal filed its Petition in 2017, the NPRA permitted
3 governmental entities to charge requesters a fee—not to exceed 50 cents per page—for the
4 “extraordinary use” of personnel and technological resources. Nev. Rev. Stat. § 239.055
5 (2017 version).

6 69. In its opinion, the Nevada Supreme Court rejected the Coroner’s argument
7 that it was entitled under Nev. Rev. Stat. § 239.055 to charge the Review-Journal a \$45.00
8 hourly fee for staff to review the requested autopsy reports, and held that the plain language
9 of the statute capped such fees at 50 cents per page. *Coroner*, 136 Nev. at 59, 458 P.3d at
10 1060.

11 70. Thus, to the extent the Coroner produces hard copies of the requested
12 juvenile autopsy reports in this matter, it may charge not more than the lesser of its actual
13 costs or the 50-cent cap set by Nev. Rev. Stat. § 239.055 (2017 version).

14 71. The Review-Journal has requested the Coroner produce the juvenile
15 autopsy reports in electronic format.

16 72. Unless it is technologically infeasible, the Coroner must produce the
17 juvenile autopsy reports if the format and medium requested by the Review-Journal. If the
18 Review-Journal’s chosen format and medium are infeasible, the Coroner must work with the
19 Review-Journal to produce the records in another format and medium of the Review-
20 Journal’s choice unless no such choice is feasible.

21 73. Pursuant to Nev. Rev. Stat. § 239.052(1), the Coroner may only charge a
22 requester for the actual costs it incurs in reproducing public records.

23 74. Thus, if the records are produced in an electronic format, the Coroner may
24 charge the Review-Journal for only the actual cost of the medium it uses to produce the
25 records.

26 ///

27 ///

28 ///

III.

ORDER

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

IT IS HEREBY ORDERED that the Coroner shall produce directly to the Review-Journal the requested juvenile autopsy reports in unredacted form by November 30, 2020. The Coroner should produce records on a rolling basis.

IT IS HEREBY FURTHER ORDERED that unless technologically infeasible, the Coroner is to produce the requested juvenile autopsy reports in the electronic format and medium requested by the Review-Journal or such alternate format and medium as requested by the Review-Journal.

IT IS HEREBY FURTHER ORDERED that the Coroner may charge the Review-Journal a fee for the cost of producing the requested juvenile autopsy reports in electronic format not to exceed the actual cost of the medium on which the juvenile autopsy reports are produced.

IT IS HEREBY FURTHER ORDERED that, to the extent the Coroner produces any of the requested records to the Review-Journal in a hard copy format, it may not charge more than the lesser of the actual costs of production or 50 cents per page for the reproduction of those records.

Dated this 20th day of November, 2020

Date

DISTRICT COURT JUDGE

Respectfully submitted,

/s/ Margaret A. McLetchie

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEITCHIE LAW

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

Counsel for Petitioner, Las Vegas Review-Journal, Inc.

70B 2FA DB77 008D

Jim Crockett

District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Las Vegas Review-Journal,
7 Plaintiff(s)

CASE NO: A-17-758501-W

8 vs.

DEPT. NO. Department 24

9 Clark County Office of the
10 Coroner/ Medical Examiner,
11 Defendant(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
15 recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 11/20/2020

17 Krista Busch	kbusch@maclaw.com
18 Alina Shell	alina@nvlitigation.com
19 Margaret McLetchie	maggie@nvlitigation.com
20 Jackie Nichols	jnichols@maclaw.com
21 Leah Dell	ldell@maclaw.com
22 Sherri Mong	smong@maclaw.com
23 Craig Anderson	canderson@maclaw.com
24 LAURA Rehfeldt	laura.rehfeldt@clarkcountyda.com
25 Shannon Fagin	shannon.fagin@clarkcountyda.com

26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

September 28, 2017

A-17-758501-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Clark County Office of the Coroner/ Medical Examiner, Defendant(s)

September 28, 2017 9:00 AM Petition for Writ of Mandamus

HEARD BY: Crockett, Jim

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

PARTIES

PRESENT: McLetchie, Margaret A. Attorney
Shell, Alina Attorney

JOURNAL ENTRIES

- Laura Rehfeldt, Esq. present on behalf of Defendant.

Court noted the arguments by Counsel and cited from applicable Attorney General's opinions as well as AB 57. Court noted arguments by Counsel, commented on the balance of interests, and FINDS it is clearly outweighed by public interest. Court noted its further inclinations. Arguments by Counsel. COURT ORDERED, motion GRANTED and Court DECLARES they are public records and must be provided to the requestor with statutory legal authority within 5 DAYS. As to attorneys fees for review, redaction fees, and fee per copy, COURT ORDERED, discs to be produced at \$15.00 per disc, production due as the discs are created, and complete production no later than 12/28/17. Court further noted any justifications for redactions need to be asserted. Court further stated its findings. Ms. Shell to prepare the order, circulate to opposing Counsel for approval as to form and content only, and submit it to the Court within TEN days after the transcript is received.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

December 12, 2017

A-17-758501-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Clark County Office of the Coroner/ Medical Examiner, Defendant(s)

December 12, 2017 9:00 AM Motion For Stay

HEARD BY: Crockett, Jim

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDED:

REPORTER:

PARTIES

PRESENT: McLetchie, Margaret A. Attorney
Rehfeldt, Laura C Attorney

JOURNAL ENTRIES

- Court noted its prior ruling in declaring they were public records and today is Defendant's motion for stay. Court noted the arguments of Counsel and noted Defendant's should have properly moved to stay, however it would defeat the purpose if they let these out when there's a possibility it could be appealed, and as time is not of the essence, Court is inclined to grant the stay. Arguments by Ms. McLetchie in opposition. Court stated its findings and ORDERED, stay GRANTED. Court stated it doesn't think a bond is appropriate and Counsel agreed. Ms. McLetchie further requested a release of the documents with redactions and Court DENIED the request. Ms. Rehfeldt to prepare the order, circulate for approval as to form and content, and submit it within TEN days per EDCR 7.21.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

January 11, 2018

A-17-758501-W	Las Vegas Review-Journal, Plaintiff(s)
	vs.
	Clark County Office of the Coroner/ Medical Examiner, Defendant(s)

**January 11, 2018 9:00 AM Motion for Attorney Fees
and Costs**

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building 11th Floor
116

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER: Bill Nelson

PARTIES

PRESENT: McLetchie, Margaret A. Attorney
 Rehfeldt, Laura C Attorney

JOURNAL ENTRIES

- Court noted the details of the Court's prior ruling, stated the arguments of Counsel and noted its comments and inclinations. Court agreed Plaintiff is entitled to reasonable fees of \$31,552.50 and costs of \$825.02. Arguments by Ms. Rehfeldt in opposition of Plaintiff's. Court stated its findings and ORDERED, motion GRANTED. Ms. McLetchie to submit the order within TEN days per EDCR 7.21.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

February 15, 2018

A-17-758501-W	Las Vegas Review-Journal, Plaintiff(s)
	vs.
	Clark County Office of the Coroner/ Medical Examiner, Defendant(s)

February 15, 2018 9:00 AM Motion to Stay

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building 11th Floor
116

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER: Dana J. Tavaglione

PARTIES

PRESENT:	Echols, Micah S.	Attorney
	McLetchie, Margaret A.	Attorney
	Rehfeldt, Laura C	Attorney

JOURNAL ENTRIES

- Court stated it doesn't not think that the stay is warranted for the reasons stated in the opposition; the circumstances in this request are very different from the Court granting the stay of the case. Court further inquired whether the County is immune from a bond and Ms. Rehfeldt answered in the affirmative. Court further stated its findings. Arguments by Ms. Rehfeldt. COURT ORDERED, motion DENIED; Ms. McLetchie to prepare the order, circulate for approval as to form and content, and submit it within TEN days per EDCR 7.21. Colloquy regarding EDCR 2.20. COURT FURTHER ORDERED, automatic temporary stay of order granting attorney's fees will expire TEN days from entry of order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

April 15, 2020

A-17-758501-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Clark County Office of the Coroner/ Medical Examiner, Defendant(s)

April 15, 2020 3:00 AM Status Check

HEARD BY: Crockett, Jim **COURTROOM:** No Location

COURT CLERK: Rem Lord

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- A-17-758501-W
Las Vegas Review-Journal, Plaintiff(s) vs. Clark County Office of the Coroner/ Medical Examiner,
Defendant(s)
Status Check
Supreme Court Appeal

On 2/27/20 the Supreme Court filed its Opinion in this matter. It affirmed the District Court's decision that the Coroner's Office was obliged to disclose unredacted autopsy reports:

"The Coroner's Office argues that it may refuse to disclose a juvenile autopsy report once it has provided the report to a Child Death Review (CDR) team under NRS 432B.407(6). We disagree. Because NRS 432B.407(6) limits access to public information, particularly information that the Legislature has determined should be generally available to the public, we interpret NRS 432B.407(6)'s confidentiality provision narrowly and conclude that it applies strictly to the CDR team as a whole and may not be invoked by individual agencies within a CDR team to limit access to information the agency holds outside of its role on the team."

It also held that the juvenile autopsy reports might include private information that needs to be

protected and that hearings would need to be conducted in that regard:

"We agree, however, with the Coroner's Office's argument that juvenile autopsy reports may include sensitive, private information and that such information may be properly redacted as privileged. In this regard, we conclude that the district court erred when it ordered the production of unredacted juvenile autopsy reports. We therefore remand for the district court to assess whether any such information that may be contained in the requested autopsy reports should be redacted under the test adopted in *Clark County School District v. Las Vegas Review-Journal*, 134 Nev. 700, 707-08, 429 P.3d 313, 320-21 (2018), and we explain the amount the Coroner's Office may collect for expending resources to provide any such redaction."

The Supreme Court affirmed the District Court's decision that the County was not immune from an award of attorney fees to a prevailing party records requester but held the award was premature because it remains to be determined whether the *Las Vegas Review-Journal* is the prevailing party in the underlying action:

"In addition, we reject the Coroner's Office's argument that NRS 239.012 immunizes a governmental entity from an award of attorney fees when the entity, in response to a records request, withholds public records in good faith. We conclude instead that NRS 239.012's immunity provision applies explicitly to damages and should be interpreted independently from NRS 239.011, which entitles a prevailing records requester to recover attorney fees and costs regardless of whether the government entity withholds requested records in good faith. Thus, a governmental entity is not immune from an attorney fees award to which a prevailing records requester is entitled under NRS 239.011. We vacate the district court's award of attorney fees to LVRJ because it is premature to determine here whether the LVRJ is the prevailing party in the underlying NPRA action."

The Supreme Court remanded for the District Court to assess what information should be disclosed and what should be permissibly redacted:

"Accordingly, we remand for the district court to determine, under the *Cameranesi* test, what autopsy report information should be disclosed under the NPRA and what information should be redacted as private medical or health-related information."

The Supreme Court also limited the fees the County could collect to 50 cents per page, declining the County's request for \$45 per hour for staff to review, etc.

Regarding attorney fees and immunity, the Supreme Court said:

Here, however, it is premature to conclude whether LVRJ will ultimately prevail in its NPRA action. The district court must decide the extent to which the juvenile autopsy reports contain private information that the Coroner's Office should redact. We conclude that NRS 239.012, as a matter of law, immunizes a governmental entity from "damages," and that the term does not encompass attorney fees and costs.⁶

fn 6. In light of our decision to reverse and remand for further proceedings, we leave to the sound discretion of the district court the determination of whether LVRJ is entitled to attorney fees as the prevailing party in this action.

The Supreme Court Conclusion is excerpted below for the sake of completeness:

We conclude that the Coroner's Office has not demonstrated that NRS 4328.407(6), or any other authority, authorizes it to withhold juvenile autopsy reports in their entirety in response to a public records request. To the extent that the requested reports may contain private information or confidential medical information, we remand for the district court to evaluate under Cameranesi the scope of information that should be redacted from the reports. While NRS 239.012 does not immunize the Coroner's Office from an award of attorney fees as a matter of law, we nonetheless vacate the district court's award of attorney fees because it cannot yet be determined whether LVRJ is a prevailing party in its underlying NPRA action. In light of the foregoing, we affirm the district court's conclusion that the Coroner's Office may not rely on NRS 4328.407(6) to withhold juvenile autopsy reports in their entirety in response to a public records request. We further affirm the district court's conclusion that NRS 239.012 does not immunize a governmental entity from an award of attorney fees to which a prevailing records requester in a public records action is entitled. We reverse the district court's order requiring production of unredacted juvenile autopsy reports, and we remand for the district court to assess the extent to which the reports may contain private information and medical or other health-related information that should be redacted. Finally, because it is not yet determined what information LVRJ will ultimately obtain as a result of its petition, we cannot yet conclude whether Las Vegas Review-Journal is a prevailing party, and we accordingly vacate the district court's order awarding attorney fees to Las Vegas Review-Journal.

Court ORDERED, the Parties must now proceed forward to gather such information and conduct such discovery as is necessary to address the Supreme Court's decision and for future District Court proceedings. Parties to meet and confer regarding a Discovery Plan for the exchange of documents and/or additional Briefing Schedule on future Motions, and submit a Stipulation and Order to the Court.

Proposed SAO due 14 days?

Set a Status Check: Filing of SAO Hearing _____ 30 days out? _____

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

May 18, 2020

A-17-758501-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Clark County Office of the Coroner/ Medical Examiner, Defendant(s)

May 18, 2020 **3:00 AM** **Status Check**

HEARD BY: Crockett, Jim

COURTROOM: Phoenix Building 11th Floor
116

COURT CLERK: Rem Lord

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT NOTES as of 5/18/20 when this matter was being reviewed in prep for hearing, no Stipulation and Order has been filed. COURT ORDERED, matter CONTINUED to 6/18/20 and if the Stipulation and Order has not been filed by then, all counsel will be subject to an Order to Show Cause to pay \$250 to the Legal Aid Center of Southern Nevada or the Clark County Law Library.

CONTINUED TO: 6/18/2020 9:00 AM

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /rl 5/18/2020

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; ORDER ON REMAND; NOTICE OF ENTRY OF
ORDER ON REMAND; DISTRICT COURT MINUTES

LAS VEGAS REVIEW-JOURNAL,

Plaintiff(s),

vs.

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Defendant(s),

Case No: A-17-758501-W

Dept No: XXIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 16 day of December 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

December 16, 2020

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: LAS VEGAS REVIEW-JOURNAL vs. CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER
D.C. CASE: A-17-758501-W

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed December 16, 2020. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

October 29, 2020

December 10, 2020

We do not currently have a time frame for when these minutes will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", with a long horizontal flourish extending to the right.

Heather Ungermann, Deputy Clerk