

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 82229

Appeal from the Eighth Judicial District
Court, the Honorable Jim Crockett
Presiding

EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)
(Relief needed before December 30, 2020)

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. The Clark County Office of the Coroner/Medical Examiner (“Coroner”) is a governmental entity and has no corporate affiliation.

2. The Coroner is represented in the District Court and this Court by the Clark County District Attorney/Civil Division and Marquis Aurbach Coffing.

Dated this 17th day of December, 2020.

MARQUIS AURBACH COFFING

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Appellant, 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/Civil Division, hereby moves this Court for emergency relief of the District Court’s Order on Remand and Order Denying Stay pursuant to NRAP 27(e).¹

I. INTRODUCTION AND OVERVIEW OF RELIEF REQUESTED

In April 2017, the Las Vegas Review-Journal (“LVRJ”) made a records request to the Coroner for autopsy reports of juvenile deaths dating back to January 2012. The Coroner denied access to these reports. After filing a petition for access to the records, the Court ordered disclosure of the juvenile autopsy reports in unredacted format. The Coroner appealed this Court’s decision.

On appeal, the Supreme Court concluded that the CCSD balancing test pertaining to individuals’ privacy interests apply to the instant case. *See Clark Cty. Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*, 136 Nev. 44, 54, 458 P.3d 1048, 1056 (2020). In applying the balancing test, this Court ruled that the Coroner satisfied its obligation under the CCSD balancing test in demonstrating that the juvenile autopsy reports contain personal health and medical information that involves a nontrivial privacy interest. *Id.* The Court then remanded the matter

¹ The November 20, 2020 Order on Remand is attached as **Exhibit 1**. The District Court has not yet entered an Order denying the Coroner’s Motion for Stay, however, the minutes of the District Court’s decision are attached as **Exhibit 2**.

back to the district court for the LVRJ to prove that the information sought, i.e., the personal health and medical information unrelated to the cause and manner of death, advances significant public interest. *Id.*

On remand, the District Court failed to properly balance the interests at stake. The District Court further concluded that the Coroner had waived its ability to assert any privileges as to any reports not attached to the initial filing because redactions had not yet been made. Thus, the District Court ordered disclosure of the requested autopsy reports in unredacted form by November 30, 2020.

On November 20, 2020, the Coroner asked the District Court to stay its Order requiring production of the unredacted reports by November 30, 2020 pending appeal, including pending the Board of County Commissioners' approval of the appeal.² The District Court denied the Coroner's request.³ In response to LVRJ's motion for order to show cause, the District Court extended the deadline for the Coroner to produce the unredacted autopsy reports to December 30, 2020.⁴ The Board of County Commissioners approved the appeal on December 15, 2020, and the Coroner filed the instant appeal.⁵ Now, the Coroner seeks stay relief

² See Motion for Stay Pending Appeal attached as **Exhibit 3**; LVRJ's Opposition to Motion for Stay Pending Appeal attached as **Exhibit 4**; and the Coroner's Reply in Support of Motion for Stay Pending Appeal attached as **Exhibit 5**.

³ See **Exhibit 2**.

⁴ See **Exhibit 2**.

⁵ See Notice of Appeal attached as **Exhibit 6**.

pending appeal of the District Court's Order requiring production of the juvenile autopsy reports in unredacted form before the December 30, 2020 deadline.

II. FACTUAL BACKGROUND

LVRJ initiated this case in the District Court challenging the Coroner's position on the confidential nature of juvenile autopsy reports.⁶ After briefing and argument, the District Court determined that the requested autopsy reports were presumptively public records under NRS Chapter 239 and that the Coroner failed to meet its burden to demonstrate that the requested autopsy reports are confidential.⁷ The Coroner appealed the District Court's order on the public records determination.⁸

On appeal, the Supreme Court concluded that the *CCSD* balancing test⁹ pertaining to individuals' privacy interests apply to the instant case.¹⁰ In applying the balancing test, the Court ruled that the Coroner satisfied its obligation under the *CCSD* balancing test in demonstrating that the juvenile autopsy reports contain personal health and medical information that involves a nontrivial privacy

⁶ See **Exhibit 1**.

⁷ *Id.*

⁸ *Id.*

⁹ *Clark Cty. School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 707-08, 429 P.3d 313, 320-21 (2018).

¹⁰ See *Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 136 Nev. 44, 54, 458 P.3d 1048, 1056 (2020).

interest.¹¹ The Court then remanded the matter back to the District Court for the LVRJ to prove that the information sought, i.e., the personal health and medical information unrelated to the cause and manner of death, advances significant public interest.¹² In other words, this Court instructed the District Court to conduct a balancing test “to determine, under the [CCSD] test, what information should be redacted as private medical or health-related information.”¹³

Ultimately, the Court ordered disclosure of the juvenile autopsy reports in unredacted form because it found that the LVRJ demonstrated a public interest in access to autopsy reports in general.¹⁴ At the hearing, the Coroner further conveyed that it had not yet performed redactions on the outstanding 680 autopsy reports sought by LVRJ.¹⁵ The Court then concluded that the Coroner had waived its ability to assert any privileges as to those reports.¹⁶ As such, the Court ordered that the Coroner provide all the requested autopsy reports in unredacted format by November 30, 2020.¹⁷

On November 20, 2020, the Coroner sought a stay with the District Court pending approval of appeal by the Board of County Commissioners and/or

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 58, 1059.

¹⁴ *See Exhibit 1* at ¶ 67.

¹⁵ *Id.* at ¶ 22.

¹⁶ *Id.* at ¶ 66.

¹⁷ *Id.* at ¶ 67.

resolution of the appeal.¹⁸ Despite the fact that the Coroner moved to have the hearing expedited prior to the November 30, 2020 deadline, the District Court held a hearing on the motion on December 10, 2020.¹⁹ Ultimately, the District Court denied the Coroner's motion for stay pending appeal.²⁰ The District Court, however, extended the deadline for the Coroner to disclose the juvenile autopsy reports in unredacted form by no later than December 30, 2020, which is why the Coroner now seeks emergency stay relief from this Court.²¹

III. LEGAL ARGUMENT

A. STANDARDS FOR GRANTING A STAY PENDING APPEAL.

1. NRAP 8 Considerations.

NRAP 8(a) provides that before moving for a stay in this Court, a party must generally seek a stay in the District Court. The Coroner satisfied this rule by first applying to the District Court for a stay.²² In determining whether to issue a stay of a judgment or order, NRAP 8 outlines four factors for this Court to consider: (1) Whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) Whether the respondent/real

¹⁸ See **Exhibit 3**.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See **Exhibits 2, 3, 4, and 5**.

party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) Whether appellant/petitioner is likely to prevail on the merits of the appeal.²³

2. Stay Pending Appeal to Preserve the Status Quo.

The purpose of a stay of a district court judgment pending appeal is to preserve, not change, the status quo.²⁴ This Court recently confirmed this recognized purpose of a stay:

The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo . . .²⁵

B. THE CORONER SATISFIES THE NRAP 8(C) FACTORS FOR THIS COURT TO ENTER A STAY PENDING APPEAL.

1. The Object of the Coroner's Appeal Will Be Defeated and the Coroner Will Suffer Serious Injury if a Stay is Denied.

With respect to the first factor, the object of the appeal will be lost if a stay is not entered. The purpose of the appeal is to challenge the District Court's Order to the Coroner to disclose autopsy reports to the LVRJ. Without a stay, the Coroner must comply with the Court Order requiring disclosure of these reports by December 30, 2020. Disclosure of these reports would be contrary to the purpose of the

²³ See *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000); see also *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (2004) (holding that while no one factor is more important, "if one or two factors are especially strong, they may counterbalance other weak factors").

²⁴ See *U.S. v. State of Mich.*, 505 F. Supp. 467 (W.D. Mich. 1980).

²⁵ See *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252, 1254 (2005) (collecting cases).

Coroner's appeal, which is to request review by this Court of the District Court's Order finding that the LVRJ satisfied its burden under the balancing test. Furthermore, it is the Coroner's position that the District Court erred in concluding that the Coroner has waived its ability to assert any privilege because it has not performed the redactions. Thus, disclosure of the autopsy reports in unredacted form prior to the completion of the appeal process would undermine the Coroner's argument and render the appeal moot.

As to the second factor, without a stay, irreparable or serious injury will result because once the autopsy reports, and the information contained therein, are disclosed to the LVRJ, there is no way to retract that information. The information which the Coroner seeks to protect concerns personal health and medical information relating to children that is otherwise not related to the cause or manner of death. Without a stay, the information that will be argued on appeal as confidential will have been divulged to the media, and, consequently, to the public at large. Dissemination would result in an unwarranted invasion of privacy. Therefore, the public interest favors a stay.

2. The LVRJ Will Not Suffer Any Serious Injury if a Stay is Granted.

Notably, an appeal in and of itself does not constitute harm for purposes of entering a stay. *See Fritz Hansen*, 116 Nev. at 658, 6 P.3d at 986–87. Put simply, there is no corresponding prejudice to the LVRJ. The LVRJ requested in April

2017 autopsy reports of juveniles dating back to January 2012. Failure to request these one, two, three, four and five-year old documents at an earlier date demonstrates that this matter is not urgent. If accessing these reports was an urgency, the LVRJ would not have waited so long to make its requests. If it is determined by the Court that the LVRJ is entitled to these documents, the LVRJ can move forward with its news story relating to these records at that time. The fact that the LVRJ is still interested in these particular records demonstrates that its interest in the story continues to exist.

3. The Coroner Is Likely to Prevail on the Merits of this Appeal.

In explaining the fourth factor of NRAP 8(c), dealing with the likelihood of success on appeal, this Court has clarified that “a movant does not always have to show a probability of success on the merits, [but] the movant must ‘present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.’” *Fritz Hansen A/S*, 116 Nev. at 658, 6 P.3d at 987 (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981)).

The Coroner presents a substantial case on the merits with a serious legal question. As discussed above, the issue is whether autopsy reports may be produced in a redacted form. This Court previously concluded that the Coroner satisfied its obligation in demonstrating that a nontrivial privacy interest existed in

the decedent’s personal health and medical information unrelated to the cause and manner of death. The Court then remanded the matter back to the District Court for the LVRJ to show that the information sought—specifically the decedent’s personal health and medical information unrelated to the cause and manner of death—advanced a public interest. On remand, the District Court reached the conclusion that the Coroner waived its ability to assert any privileges because the Coroner had not yet performed any redactions. This conclusion directly contradicts this Court’s holding that the NPRA does not permit a waiver of any privileges.²⁶

Additionally, the District Court erred in applying the balancing test—to the extent a balancing test was applied. In doing so, the District Court, improperly performed the balancing test because it balanced the Coroner’s established non-trivial privacy interests against the public’s interest in access to autopsy reports, generally.²⁷ Instead, under the *CCSD* balancing test, the District Court was required to balance the public’s interest in the specific information sought (i.e., the decedent’s personal medical and health information unrelated to the cause and manner of death) against the competing privacy interests.

²⁶ *Republican Attorneys Gen. Ass’n v. Las Vegas Metro. Police Dep’t*, 136 Nev. 28, 32, 458 P.3d 328, 332 (2020) (“Waiving LVMPD’s assertion of confidentiality would lead to an absurd penalty resulting in the public disclosure of Nevadans’ private information [Waiver] undermines the NPRA’s expressly listed exceptions for confidential information.”).

²⁷ See **Exhibit 1** at ¶¶ 42-46.

This subject matter involves an unsettled and contentious area of Nevada Public Records Law. This factor, combined with the other factors, that the object of the appeal will be lost, and irreparable injury will be sustained if the reports are disclosed prior to completion of the appeal process with no corresponding prejudice to the LVRJ, demonstrate the necessity of the stay.

IV. CONCLUSION

In summary, the Coroner respectfully requests that this Court stay the District Court's Order directing the Coroner to produce the juvenile autopsy reports in unredacted form. The Coroner urges this Court to enter a stay pending the appeal of the disclosure order prior to the December 30, 2020 deadline.

Dated this 17th day of December, 2020.

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NRAP 27(e) CERTIFICATE

I hereby certify that this Emergency Motion for Relief Under NRAP 27(e) relies upon issues raised by the Coroner in the District Court, and otherwise complies with the provisions of NRAP 27(e).

As set forth in the body of this motion, emergency relief is needed on or before December 30, 2020 because the Coroner has been ordered to produce the juvenile autopsy records in unredacted form by no later than December 30, 2020 or may be faced with contempt sanctions.

The telephone numbers and office addresses of the attorneys for the parties are as follows:

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According to the attached certificate of service, all parties through their counsel of record have been served electronically through this Court's electronic filing system, or by regular mail as indicated.

Dated this 17th day of December, 2020.

MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)** was filed electronically with the Nevada Supreme Court on the 17th day of December, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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An employee of Marquis Aurbach Coffing

INDEX OF EXHIBITS TO
EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)

Exhibit No.	Description
1.	Order on Remand (filed 11/20/20)
2.	Court Minutes (dated 12/10/17)
3.	Respondent Clark County Office of the Coroner/Medical Examiner's Motion to Stay on an Order Shortening Time (filed 11/20/20)
4.	Petitioner LVRJ's Opposition to Motion to Stay on an Order Shortening Time (filed 11/30/20)
5.	Respondent Clark County Office of the Coroner/Medical Examiner's Reply in Support of Motion to Stay on an Order Shortening Time (filed 11/20/20)
6.	Notice of Appeal (filed 12/15/20)

EXHIBIT 1

Howard S. Shuman
CLERK OF THE COURT

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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 mad confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure").

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

5 28. Because the NPRA starts from the presumption that all records of
6 governmental entities are public records and that its provisions must be interpreted liberally
7 to increase access, if a governmental entity seeks to keep all or some part of public record
8 secret, the NPRA places the burden of governmental entities to prove, by a preponderance
9 of the evidence, that any information it seeks to keep secret is confidential. Nev. Rev. Stat.
10 § 239.0113(2).

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

16 30. The Nevada Supreme Court has held that because of the mandates contained
17 in the text of the NPRA and its overarching purpose of furthering access to public records,
18 governmental entities cannot meet their burden under Nev. Rev. Stat. § 239.0113(2) by
19 relying on conjecture, supposition, or “non-particularized hypothetical concerns.” *DR*
20 *Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 628, 6 P.3d 465, 472-73 (2000);
21 *accord Haley*, 126 Nev. at 218, 234 P.3d at 927; *Reno Newspapers Inc. v. Gibbons*, 127 Nev.
22 873, 880, 266 P.3d 623, 628 (2011).

23 31. In balancing those interests, “the scales must reflect the fundamental right
24 of a citizen to have access to the public records as contrasted with the incidental right of the
25 agency to be free from unreasonable interference.” *DR Partners*, 116 Nev. at 621, 6 P.3d at
26 468 (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421-22 (1961)).

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1 **B. The CCSD Test**

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

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

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

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

18 This test coheres with both NRS 239.0113 and *Gibbons*, 127 Nev. at 877-
19 78, 266 P.3d at 625-26. It is merely a balancing test—in the context of a
20 government investigation—of individual nontrivial privacy rights against
21 the public’s right to access public information. *Carlson v. U.S. Postal Serv.*,
22 2017 WL 3581136, at *28 (N.D. Cal. Aug. 18, 2017). We explained in
23 *Gibbons* that NRS 239.0113 requires that the state bear the burden of
24 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.

25 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.)

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

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

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

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

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

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

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

18 56. The NPRA does not limit a requester's information to that information that
19 the government chooses to filter, repackage, and provide. Instead, the NPRA is intended to
20 provide the public with direct access to the government's records themselves. Limiting
21 access to the direct source material would be antithetical to the central stated purpose of the
22 NPRA: government accountability. Nev. Rev. Stat. § 239.001(1) provides that "[t]he purpose
23 of [NPRA] is to foster democratic principles by providing members of the public with prompt
24 access to inspect, copy or receive a copy of public books and records to the extent permitted
25 by law." The NPRA further provides that all of its provisions "must be construed liberally to
26 carry out this important purpose." Nev. Rev. Stat. § 239.001(2). In short, the NPRA reflects
27 that the public is not required to trust the government. Instead, the public is entitled to public
28 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.

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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.

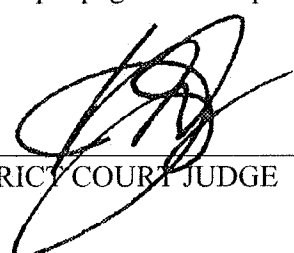
IT IS HEREBY FURTHER ORDERED that the Coroner may charge the Review-Journal a fee for the cost of producing the requested juvenile autopsy reports in electronic format not to exceed the actual cost of the medium on which the juvenile autopsy reports are produced.

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. MCLEITCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711

MCLEITCHIE LAW

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

70B 2FA DB77 008D
Jim Crockett
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
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

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18 Alina Shell

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28

EXHIBIT 2

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Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. A-17-758501-W

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

§
§
§
§
§
§
§

Case Type: **Writ of Mandamus**
Date Filed: **07/17/2017**
Location: **Department 24**
Cross-Reference Case **A758501**
Number:
Supreme Court No.: **74604**
75095

PARTY INFORMATION

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Medical Examiner

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702-455-4761(W)

Plaintiff Las Vegas Review-Journal

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

EVENTS & ORDERS OF THE COURT

12/10/2020 **All Pending Motions** (9:00 AM) (Judicial Officer Crockett, Jim)

Minutes

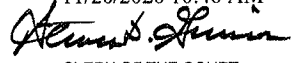
12/10/2020 9:00 AM

- RESPONDENT CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER'S MOTION TO STAY ON
AN ORDER SHORTENING TIME...PETITIONER LAS VEGAS
REVIEW JOURNAL'S MOTION TO ORDER SHOW CAUSE
ON ORDER SHORTENING TIME Court reviewed its notes
with counsel. Upon the Court's inquiry, Ms. Nichols stated she
had nothing to add. Ms. McLetchie argued. COURT
ORDERED, as to the Motion to Stay, DENIED, stated findings
and directed Ms. McLetchie to prepare the order. As to the
Motion to Order Show Cause, COURT ORDERED, DENIED
and extended the deadline to produce un-redacted autopsy
reports to no later than 12/30/20. Ms. Nichols to prepare the
order.

[Parties Present](#)

[Return to Register of Actions](#)

EXHIBIT 3


CLERK OF THE COURT

Marquis Aurbach Coffing

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

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

[OST HEARING REQUESTED]

**RESPONDENT CLARK COUNTY OFFICE OF THE CORONER/MEDICAL
EXAMINER'S MOTION TO STAY ON AN ORDER SHORTENING TIME**

Respondent, Clark County Office of the Coroner/Medical Examiner ("Coroner"), by and through their attorneys of record, Craig R. Anderson, Esq. and Jackie V. Nichols, Esq., of the law firm Marquis Aurbach Coffing and Laura C. Rehfeldt, Esq., Deputy District Attorney with the Clark County District Attorney/Civil Division, hereby submit their Motion to Stay on an Order Shortening Time.

1 This Motion is made and based upon all papers, pleadings, and records on file herein, the
2 attached Memorandum of Points and Authorities, the Declaration of Jackie V. Nichols and any
3 oral argument allowed at a hearing on this matter.

4 Dated this 20th day of November, 2020.

5
6 MARQUIS AURBACH COFFING

7
8 By /s/ Jackie V. Nichols
9 Craig R. Anderson, Esq.
10 Nevada Bar No. 6882
11 Jackie V. Nichols, Esq.
12 Nevada Bar No. 14246
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 Attorneys for Respondent, Clark County
16 Office of the Coroner/Medical Examiner
17
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21
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28

ORDER SHORTENING TIME

Upon the Declaration of Jackie V. Nichols, Esq., and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the time for hearing of the above-entitled matter will be shortened and will be heard on the 10th day of December, 2020, at the hour of 9:00 am. in Department 24 of the Eighth Judicial District Court, located at the Regional Justice Center, 330 S. 3rd Street, 11th floor, ~~200 Lewis Avenue~~, Las Vegas, Nevada 89155.

Plaintiff's Opposition, if any, must be filed by the 30th day of November 2020.

Dated this 20th day of November, 2020

Defendants' Reply in Support of Motion, if any, must be filed by the 7th day of December, 2020.


DISTRICT COURT JUDGE

Respectfully Submitted by:

MARQUIS AURBACH COFFING

B8A F0B 4187 BC30
Jim Crockett
District Court Judge

By: /s/ Jackie V. Nichols

Craig R. Anderson, Esq.

Nevada Bar No. 6882

Jackie V. Nichols, Esq.

Nevada Bar No. 14246

10001 Park Run Drive

Las Vegas, Nevada 89145

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

1 **DECLARATION OF JACKIE V. NICHOLS, ESQ. IN SUPPORT OF ORDER**
2 **SHORTENING TIME**

3 Jackie V. Nichols, Esq. declares as follows:

4 1. I am an associate with the law firm of Marquis Aurbach Coffing, duly licensed to
5 practice law in all courts of the State of Nevada. This declaration is made of my own personal
6 knowledge except where stated as being made upon information and belief, and as to those
7 statements, I believe them to be true. I am competent to testify as to the facts stated herein in a
8 court of law.

9 2. Marquis Aurbach Coffing represents Respondent, Clark County Office of the
10 Coroner/Medical Examiner ("Coroner") in the above referenced matter.

11 3. I am submitting this Declaration in support of Motion to Stay on an Order
12 Shortening Time.

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

19 5. On appeal, the Supreme Court ruled that the Coroner demonstrated that the
20 autopsy reports contain personal health and medical information that involved a nontrivial
21 privacy interest. As such, the Court remanded the matter back to the district court for LVRJ to
22 demonstrate that the information sought, i.e., the personal health and medical information
23 unrelated to the cause and manner of death, advances significant public interest.

24 6. On remand, this Court determined the Coroner waived its ability to assert any
25 privileges because the Coroner had not yet performed any redactions on the juvenile autopsy
26 reports and required the Coroner to produce the juvenile autopsy reports by November 30, 2020.

27 7. The Coroner intends to appeal the Court's decision and it will seek approval from
28 the Board of County Commissioners on December 1, 2020 for the appeal.

1 8. For purposes of ensuring ample opportunity for briefing and hearing this Motion
2 prior to the November 30, 2020 deadline, shortened time to hear this Motion is required.

3 9. Additionally, shortened time to hear this Motion is required so that, if denied, the
4 Coroner may file a Motion before the Nevada Supreme Court upon approval from the Board of
5 the County Commissioners.

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

8 Dated this 20th day of November, 2020.

9
10 
11 Jackie W. Nichols, Esq.

1 MEMORANDUM OF POINTS & AUTHORITIES

2 I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

3 In April 2017, the LVRJ made a records request to the Coroner for autopsy reports of
4 juvenile deaths dating back to January 2012. The Coroner denied access to these reports. On July
5 17, 2017, the LVRJ filed its Petition for access to autopsy reports of juvenile deaths dating back
6 to January 2012. Ultimately, the Court ordered disclosure of the juvenile autopsy reports in
7 unredacted format. *See* Order dated November 9, 2017 on file herein. The Coroner appealed
8 this Court's decision. *See* Notice of Appeal on file herein.

9 On appeal, the Supreme Court concluded that the *CCSD* balancing test¹ pertaining to
10 individuals' privacy interests apply to the instant case. *See Clark Cty. Office of Coroner/Med.*
11 *Exam'r v. Las Vegas Review-Journal*, 136 Nev. 44, 54, 458 P.3d 1048, 1056 (2020). In applying
12 the balancing test, the Court ruled that the Coroner satisfied its obligation under the *CCSD*
13 balancing test in demonstrating that the juvenile autopsy reports contain personal health and
14 medical information that involves a nontrivial privacy interest. *Id.* The Court then remanded the
15 matter back to the district court for the LVRJ to prove that the information sought, i.e., the
16 personal health and medical information unrelated to the cause and manner of death, advances
17 significant public interest. *Id.*

18 The Review-Journal filed its Opening Brief on Remand on August 27, 2020. The Coroner
19 filed its Answering Brief on October 7, 2020. The Review-Journal filed its Reply in support of
20 its Opening Brief on Remand on October 22, 2020. This Court conducted a hearing on the
21 parties' briefs on remand on October 29, 2020. At the hearing, the Coroner conveyed that it had
22 not performed redactions on the outstanding 680 autopsy reports sought by LVRJ. The Court
23 then concluded that the Coroner had waived its ability to assert any privileges as to those reports.
24 As such, the Court ordered that the Coroner provide all the requested autopsy reports in
25 unredacted format by November 30, 2020. The parties have submitted competing orders to the
26

27 ¹ *Clark Cty. School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 707-08, 429 P.3d 313, 320-21
28 (2018).

1 Court. However, the Court has not yet entered an Order. The Coroner intends to appeal the
2 Court's order upon approval from the Board of County Commissioners on December 1, 2020.

3 **II. LEGAL ARGUMENT**

4 Pending appeal to the Supreme Court, a party is entitled to request a stay of the
5 proceedings below, pending disposition of the appeal, and such a request must first be made in
6 the district court. NRAP 8(c) states:

7 In deciding whether to issue a stay or injunction, the Supreme Court or Court of
8 Appeals will generally consider the following factors: (1) whether the object of
9 the appeal or writ petition will be defeated if the stay or injunction is denied; (2)
10 whether appellant/petitioner will suffer irreparable or serious injury if the stay or
injunction is denied; (3) whether respondent/real party in interest will suffer
irreparable or serious injury if the stay or injunction is granted; and (4) whether
appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

11 With respect to the first factor, the object of the appeal will be lost if a stay is not entered. The
12 purpose of the appeal is to challenge the District Court's Order to the Coroner to disclose autopsy
13 reports to the LVRJ. Without a stay, the Coroner must comply with the Court Order requiring
14 disclosure of these reports by November 30, 2020. Disclosure of these reports would be contrary
15 to the purpose of the Coroner's appeal, which is to request review by the Nevada Supreme Court
16 of the District Court's Order finding that the LVRJ satisfied its burden in demonstrating that the
17 personal health and medical information within the reports of individuals advances a significant
18 public interest. Furthermore, it is the Coroner's position that this Court erred in concluding that
19 the Coroner has waived its ability to assert any privilege because it has not performed the
20 redactions. Thus, disclosure of the autopsy reports in unredacted form prior to the completion of
21 the appeal process would undermine the Coroner's argument and render the appeal moot.

22 As to the second factor, without a stay, irreparable or serious injury will result because
23 once the autopsy reports, and the information contained therein, are disclosed to the LVRJ, there
24 is no way to retract that information. The information which the Coroner seeks to protect
25 concerns personal health and medical information relating to children that is otherwise not
26 related to the cause or manner of death. The LVRJ is arguably the largest transmitter of
27 information in Nevada, and once it gets information there is nothing to keep it from
28 disseminating it. If released, information that the Coroner argues is confidential by law, will be

1 open to the public, thus breaching Nevada Public Records Law protections of confidential
2 information. Without a stay, the information that will be argued on appeal as confidential will
3 have been divulged to the media, and, consequently, to the public at large. Dissemination could
4 also result in an unwarranted invasion of privacy. Therefore, the public interest favors a stay.

5 With respect to the third factor, there is no corresponding prejudice to the LVRJ. The
6 LVRJ requested in April 2017 autopsy reports of juveniles dating back to January 2012.
7 Failure to request these one, two, three, four and five year old documents at an earlier date
8 demonstrates that this matter is not urgent. Additionally, the LVRJ has not stated that it
9 would be or is prejudiced or damaged by delay in the release of the reports. If accessing these
10 reports was an urgency, the LVRJ would not have waited so long to make its requests. If it is
11 determined by the Nevada Supreme Court that the LVRJ is entitled to these documents, the
12 LVRJ can move forward with its news story relating to these records at that time. The fact
13 that the LVRJ is still interested in these particular records demonstrates that its interest in the
14 story continues to exist.

15 The fourth factor for consideration is whether the Coroner is likely to prevail on the
16 merits of the appeal. While it is difficult to quantify the likelihood of prevailing on the
17 merits, it is worth noting the standard of review on appeal is de novo. Further, the Nevada
18 Supreme Court has held that a movant for a stay need not always have to show a probability
19 of success on the merits.

20 [W]hen moving for a stay pending an appeal or writ proceedings, a movant does
21 not always have to show a probability of success on the merits, the movant must
22 'present a substantial case on the merits when a serious legal question is involved
and show that the balance of equities weighs heavily in favor of granting of the
stay.'

23 *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 658, 6 P.3d 982, 987
24 (2000). The Coroner presents a substantial case on the merits with a serious legal question. As
25 discussed above, the issue is whether autopsy reports are confidential or subject to disclosure
26 under Nevada Public Records Law. The Supreme Court previously concluded that the Coroner
27 satisfied its obligation in demonstrating that a nontrivial privacy interest existed in the decedent's
28 personal health and medical information unrelated to the cause and manner of death. The Court

1 then remanded the matter back to the district court for the LVRJ to show that the information
2 sought—specifically the decedent’s personal health and medical information unrelated to the
3 cause and manner of death—advanced a public interest. On remand, this Court reached the
4 conclusion that the Coroner waived its ability to assert any privileges because the Coroner had
5 not yet performed any redactions. This conclusion directly contradicts the Nevada Supreme
6 Court’s holding that the NPRA does not permit a waiver of any privileges. *Republican Attorneys*
7 *Gen. Ass’n v. Las Vegas Metro. Police Dep’t*, 136 Nev. 28, 32, 458 P.3d 328, 332 (2020)
8 (“Waiving LVMPD’s assertion of confidentiality would lead to an absurd penalty resulting in the
9 public disclosure of Nevadans’ private information [Waiver] undermines the NPRA’s
10 expressly listed exceptions for confidential information.”).

11 This subject matter involves an unsettled and contentious area of Nevada Public Records
12 Law. This factor, combined with the other factors, that the object of the appeal will be lost, and
13 irreparable injury will be sustained if the reports are disclosed prior to completion of the appeal
14 process with no corresponding prejudice to the LVRJ, demonstrate the necessity of the stay.

15 **III. CONCLUSION**

16 For the foregoing reasons, a stay should be entered for the release of autopsy reports
17 dating back to January 2012 relating to children who have died in Clark County and whose
18 deaths were investigated by the Coroner, pending the disposition of the Coroner’s appeal. In the
19 event this Court determines that a stay is not warranted, then the Coroner respectfully requests
20 that the Order be stayed long enough to allow the Coroner to obtain approval from the BCC for
21 an appeal and seek this relief from the Nevada Supreme Court.

22 Dated this 20th day of November, 2020.

23 MARQUIS AURBACH COFFING

24 By: /s/ Jackie V. Nichols

25 Craig R. Anderson, Esq.
26 Nevada Bar No. 6882
27 Jackie V. Nichols, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT CLARK COUNTY OFFICE OF THE CORONER/MEDICAL EXAMINER'S MOTION TO STAY ON AN ORDER SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 20th day of November, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

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

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An employee of Marquis Aurbach Coffing

² 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).

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
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 Shortening Time was served via the court's electronic eFile
15 system to all recipients registered for e-Service on the above entitled case as listed below:

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EXHIBIT 4



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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 **OPPOSITION TO MOTION TO**
16 **STAY ON AN ORDER**
17 **SHORTENING TIME**

18 CLARK COUNTY OFFICE OF THE
19 CORONER/MEDICAL EXAMINER,

20 Respondent.

Hearing Date: December 10, 2020
Hearing Time: 9:00 A.M.

21 Pursuant to this Court's November 20, 2020, Order, the Las Vegas Review-Journal
22 (the "Review-Journal") hereby submits this Opposition to the Motion for a Stay filed by the
23 Clark County Office of the Coroner (the "Coroner"). This Opposition is supported by the
24 attached memorandum of points and authorities, any attached exhibits, and the pleadings and
25 papers on file with this Court.

26 DATED this 30th day of November, 2020.

27 /s/ Margaret A. McLetchie

28 MARGARET A. MCLETCHIE, Nevada Bar No. 10931

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1 **I. INTRODUCTION**

2 Throughout this matter, the Coroner has taken a heel-dragging approach entirely at
3 odds with its obligations under the NPRA. The Coroner has never engaged in any balancing
4 of the interests at stake, despite being required to do so, and has never provided this Court
5 with evidence or argument that would support such a balancing, even after the Nevada
6 Supreme Court remanded this case for that specific purpose. The Coroner's motion for a stay
7 of the order that would finally allow the Review-Journal to assess the autopsy reports and
8 investigate important matters of public policy is just another effort to delay and should be
9 rejected.

10 On April 13, 2017, well over three and a half years ago, the Review-Journal sent
11 the Coroner a request (the "Request") pursuant to the Nevada Public Records Act, Nev. Rev.
12 Stat. § 239.001, *et seq.* (the "NPRA") seeking all autopsy reports conducted on anyone under
13 the age of 18 from 2012 through the date of the Request. In response to the Request, the
14 Coroner refused to provide any records, simply asserting in violation of the NPRA that it was
15 "not able to provide autopsy reports." After the Review-Journal insisted on access, the
16 Coroner provided cursory information regarding the autopsies in spreadsheet form and three
17 heavily redacted sample autopsies. However, the Coroner continued to withhold the autopsy
18 reports in their entirety and did not provide any of the information the public needs to assess
19 the Coroner's performance of child death autopsies or to assess the performance of the abuse
20 and neglect system in Clark County.

21 After the Review-Journal filed suit on July 17, 2017, the Coroner asserted a number
22 of claims in an attempt to continue to thwart access, including that autopsy reports are entirely
23 exempted from the NPRA. This Court and the Nevada Supreme Court rejected the Coroner's
24 categorical approach. In the appeal, the Nevada Supreme Court then applied its newly
25 adopted *CCSD* test and found both that the Coroner had established a nontrivial privacy
26 interest and the Review-Journal had established a significant interest in access. The Nevada
27 Supreme Court remanded so that the parties and this Court could engage in a balancing test
28 with regard to the specific information on the various records the Coroner alleged it had

1 reviewed and determined implicated the nontrivial privacy interest it asserted.

2 Rather than engage in the process ordered by the Supreme Court, the Coroner
3 stubbornly refused to abandon the categorical approach it had taken since April of 2017, even
4 though the Nevada Supreme Court had already rejected it. At the recent hearing on this
5 matter, despite this Court's expressed willingness to examine the records and proposed
6 redactions *in camera*, the Coroner chose to simply rely on generalized privacy claims.
7 Specifically, the Coroner took the approach it was entitled to withhold anything it determined
8 in its discretion was "unrelated" to the cause and manner of death—even though the Review-
9 Journal met its burden of establishing that access to information unrelated to the cause of
10 death both to assess the performance of the Coroner and to assess the efficacy of the region's
11 abuse and neglect system.

12 At the hearing, this Court noted the Coroner's failure to provide evidence to counter
13 the Review-Journal's established interests (and that of the public) in the records. The Coroner
14 claims this Court improperly determined that the Coroner waived a right it had to present
15 evidence. However, the cases the Coroner relies on have nothing to do with this circumstance
16 as they address whether, under certain conditions, a governmental entity can make arguments
17 in litigation it failed to raise prior to litigation. Here, the Court did not bar the Coroner from
18 making arguments that were not raised prior to the litigation. Rather, the Court ruled the
19 Coroner had chosen not to timely provide legal arguments and the basis for them and could
20 not later provide them for *in camera* review (not requested by the Coroner), because the
21 Coroner had not engaged in any review of the vast majority of the reports at issue, and the
22 Coroner made clear it would not do anything other than make categorical redactions, despite
23 the Court's ruling. Now, despite its refusal to engage in the balancing process on remand, the
24 Coroner wants yet more delay in its duty to provide the autopsy reports, this time by a stay
25 of the Court's order.

26 As the Coroner largely concedes, the factors courts consider in determining whether
27 a stay should be granted do not favor a stay. As set forth in Nev. R. App. P. 8(c), in
28 determining whether a stay of an order or judgment is warranted, courts generally consider

“(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.”

The Coroner is not likely to prevail on appeal. The Coroner continues to rely on a wholly categorical approach to autopsy reports and ignore the strong public interests in access to autopsy reports, even though this approach has been rejected once by the Nevada Supreme Court and twice by this Court. Indeed, the Coroner does not even argue that it is likely to prevail and instead contends that it raises a significant legal issue on appeal, relying on the *Hansen* alternative formulation of the likelihood of success factor. (Motion, pp. 8:15-9:3 (citing *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 658, 6 P.3d 982, 987 (2000)). However, the Nevada Supreme Court has already addressed the Coroner’s asserted legal issue on appeal; the only question on appeal will be the rather unremarkable one of whether this Court abused its discretion in evaluating the facts and finding that the Review-Journal established that access to the information it seeks would advance the public interest. Even if the Coroner did establish that this case involves a serious legal question, it must also show that “the balance of equities weighs heavily in favor of granting the stay.” *Hansen*, 116 Nev. at 659, 6 P.3d at 987. In fact, the balance of the equities weighs heavily against granting the stay.

As for the harm to the Coroner, the Coroner implicitly concedes it faces no harm and instead speculatively argues that dissemination could lead to an unwarranted invasion of someone else’s privacy. However, as discussed above, the Supreme Court remanded this matter so *this Court* could determine whether—despite the privacy interests at stake—the Review-Journal’s need for access merited production of the records. Because the Review-Journal established that the need for access overcame the generalized privacy interests asserted by the Coroner, there is no unwarranted privacy invasion.

///

As for the harm to the Review-Journal, the Coroner pretends there is none, a glib argument that ignores the importance of expeditious access to records, the need to report on the news promptly, and the obvious urgency associated with ensuring accountability of the child abuse and neglect system. Thus, the Review-Journal faces irreparable harm, the public interest would be harmed by a stay, and the balance of equities weighs heavily against a stay.

With regard to the final factor—whether the object of the appeal will be defeated—this matter it is capable of repetition yet evading review and thus justiciable even if the Review-Journal has been provided the documents. Even if that were not the case, a stay is not automatic even where the object of an appeal will be defeated. *See, e.g. Las Vegas Metro. Police Dep't v. Am. Broad. Co., Inc.*, Nevada Supreme Court Case No. 75518. Doc. No 18-16064 (order denying motion for stay pending appeal of order directing Las Vegas Metropolitan Police Department to release public records pertaining to the 1 October mass shooting).) In this case, the other factors vastly favor denying a stay. The Nevada Supreme Court has already resolved the legal issues and the Court properly applied the *CCSD* test, and the very public interests that this Court found will be advanced by access will be gravely harmed by further delays. Thus, the Court should decline to stay its order.

II. PROCEDURAL HISTORY

The Review-Journal filed its Opening Brief on Remand on August 27, 2020. The Coroner filed its Answering Brief on October 7, 2020. In its Answering Brief, the Coroner asserted that, in addition to the three sample redacted autopsy reports it previously produced to the Review-Journal, there are approximately 680 autopsy reports and 150 external examinations responsive to the Review-Journal's request. The Review-Journal filed its Reply in support of its Opening Brief on Remand on October 22, 2020. This Court conducted a hearing on the parties' briefs on remand on October 29, 2020. At the October 29, 2020, hearing on remand, the Coroner stated that it had only redacted the three sample autopsy reports it provided to the Review-Journal pre-litigation and had not reviewed or performed redactions to the balance of the approximately 680 autopsy reports and 150 external examinations. (Recorder's Transcript of October 29, 2020, Hearing ("Transcript"), p. 23:8-

14 (on file with this Court).)

This Court found that the Review-Journal met its burden and that access to autopsy reports, including direct and full access the specific juvenile autopsy reports at issue in this case, advances multiple public interests. Of most note are two key public interests that access advances: providing the public with access to information about the Coroner's conduct and how well it performs autopsies and providing checks and balances regarding the abuse and neglect system.

Consistent with the Nevada Supreme Court's instructions on remand, the Review-Journal met its burden of establishing that access to the autopsy reports was necessary to advance the significant public interests in access. The Coroner failed to come forward with any specific evidence or analysis on remand as to how the information nonetheless merited protection, instead choosing to rely on the generalized arguments and declaration provided in the initial litigation. Nothing in that declaration or those arguments explained any specific privacy concern that attached to any particular autopsy report. Nor did the Coroner engage in any balancing, choosing instead to reply on the categorical position that autopsy reports should never be produced and to ignore the specific interests in access at issue here.

Nonetheless, over objection from the Review-Journal, the Court offered in an abundance of caution to perform an *in camera* review of the reports and specific information from the Coroner as to why protection of any particular information was necessary and still outweighed the interests in access. The Court offered this despite the fact that it was not required by the Supreme Court in its decision, and despite the fact that the Coroner had failed to come forward with any specific information or analysis in its Answering Brief on remand.

At the hearing, counsel for the Coroner effectively rejected this opportunity, and revealed in the process just how thoroughly it had neglected its duties under the NPRA. In response to the Court's offer to conduct an *in camera* review, the Coroner argued it would just redact whatever information it unilaterally deemed unrelated to the cause or manner of death. (Transcript, p. 15:6-11; *see also id.*, pp. 24:24-25:4.) Further, demonstrating just how little effort the Coroner put into meeting its burdens under the NPRA, the Coroner

1 acknowledged that although it had withheld 600 to 700 autopsy reports on the grounds that
2 they contained confidential medical or personal information, it had never actually reviewed
3 any of those reports for privilege. (Transcript, p. 23:4-14.)

4 In its November 20, 2020, Order on remand, the Court found the Review-Journal
5 established that there are “multiple significant public interests that would be served by release
6 of the autopsy reports which outweigh the nontrivial privacy interests articulated by the
7 Coroner.” (Order, ¶ 39; *see also id.* at ¶¶ 40-49 (outlining the public interests served by access
8 to the reports).) With regard to redactions to the reports, the Court found that—despite having
9 over three years to do so—the Coroner had never considered, record by record, whether there
10 is specific information contained within those reports that merits protection. (*Id.*, ¶ 61.) After
11 rejecting the Coroner’s argument that it should be permitted to redact information the
12 Coroner unilaterally determined was “unrelated” to the cause and manner of death, the Court
13 ordered the Coroner to produce the autopsy reports to the Review-Journal in unredacted
14 form. (*Id.* ¶¶ 63-67.) While the Review-Journal agrees with the Court’s determination that
15 the records must be produced without the redactions proposed by the Coroner, the Review-
16 Journal has maintained throughout this matter that it does not oppose redaction of personal
17 identifying information such as Social Security numbers, identification card or driver’s
18 license numbers, or other similar state-issued information. (*See, e.g.*, August 27, 2020,
19 Opening Brief on Remand, p. 21, n.46.) Thus, the Review-Journal does not oppose—and the
20 Order does not prohibit—limited redaction of this sort of personal identifying information.

21 As the Coroner admits, at the time it filed its motion requesting a stay pending
22 appeal, the Court had not entered the order the Coroner seeks to stay, and the Coroner had
23 not yet obtained approval from the Clark County Board of Commissioners (the “BCC”) to
24 appeal that order. (Mot., p. 7:1-2.) However, BCC approval is needed for yet another appeal
25 by the Coroner.

26 This Court made its decision clear at the hearing held on October 29, 2020
27 (Transcript, pp. 27:23-28:22), and this Court ordered the Coroner to produce the records by
28 November 30, 2020, within thirty days of the October 29, 2020, hearing. (*Id.*, p. 28:22-23)

1 (stating that the autopsy reports “must be produced in unredacted form within 30 days from
2 today’s date”); *see also* Order, p. 15:5-7 (ordering the Coroner to produce the requested
3 reports in unredacted form on November 30, 2020, with production to occur on a rolling
4 basis.) As the Coroner noted in its Motion to Stay filed an on order shortening time, the
5 written Order had not yet been entered when the Coroner sought relief. Thus, if it was
6 appropriate to seek a stay before the Order was entered and without actual authority to do so,
7 it is entirely unclear as to why the Coroner did not file its Motion to Stay earlier. Likewise,
8 it is unclear as to why the Coroner did not seek BCC approval earlier.¹

9 Perhaps more so than the Coroner’s counsel, the Review-Journal is cognizant of the
10 fact that the BCC is a governmental entity, and that formal, transparent processes must be
11 followed before the Coroner can file a notice of appeal. However, delays in doing so do not
12 justify forcing the Court to consider a stay on an emergency basis when that emergency is of
13 the Coroner’s own making. Nor do such delays give the Coroner a free pass to violate this
14 Court’s Order. Thus, the Coroner will be in contempt if it does not comply with the Order as
15 required on November 30, 2020.

16 **III. LEGAL ARGUMENT**

17 **A. Legal Standard for a Motion to Stay**

18 Even if it would defeat the purpose of an appeal, a stay is not automatic. Instead,
19 “[a] decision to grant a stay of an order pending appeal always involves an exercise of
20 judicial discretion and is dependent upon the circumstances of the particular case.” *See* 5 Am.
21 Jur. 2d Appellate Review § 397. (Applying the federal analogue to NRAP 8 (footnotes
22 omitted.) “A stay is an intrusion into the ordinary processes of administration and judicial
23 review, and accordingly is not a matter of right, even if irreparable injury might otherwise
24 result to the appellant.” *Id.* The Coroner has the burden, and it is not a light burden. Instead,
25 “[t]he party requesting a stay pending appeal bears the burden of showing that circumstances

26 ¹ For example, the Clark County Board of County Commissioners (“BCC”) met on
27 November 17, 2020. (*See*
28 https://www.clarkcountynv.gov/government/board_of_county_commissioners/commission_meeting_agendas.php.)

1 justify exercise of the court's discretion, and that the injury is not remote or speculative but
2 actual and imminent, and for which a monetary award cannot be adequate compensation.”²

3 As noted above, to evaluate whether the Coroner has met its burden in this case,
4 this Court must consider four factors: (1) “whether the object of the appeal will be defeated
5 if the stay is denied;” (2) “whether appellant will suffer irreparable or serious injury if the
6 stay is denied;” (3) “whether respondent will suffer irreparable or serious injury if the stay is
7 granted;” and (4) “whether appellant is likely to prevail on the merits in the appeal.” Nev. R.
8 App. P. 8(c); *accord Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev.
9 650, 657, 6 P.3d 982, 986 (2000); *accord Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248,
10 251, 89 P.3d 36, 38 (2004). In addition, as the United States Supreme Court has held, courts
11 must also consider “where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776
12 (1987) (citations omitted); *accord NML Capital, Ltd. v. Republic of Argentina*, No. 2:14-CV-
13 492-RFB-VCF, 2015 WL 3489684, at *4 (D. Nev. June 3, 2015). While it is true that “when
14 moving for a stay pending an appeal or writ proceedings, a movant does not always have to
15 show a probability of success on the merits, the movant must “present a substantial case on
16 the merits when a serious legal question is involved and show that the balance of equities
17 weighs heavily in favor of granting the stay.” *Hansen v. Eighth Judicial Dist. Court ex rel.*
18 *Cty. of Clark*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (citing *Ruiz v. Estelle*, 650 F.2d
19 555, 565 (5th Cir.1981). The Nevada Supreme Court has “not indicated that any one factor
20 carries more weight than the others”. *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38
21 (citing *Hansen*, 116 Nev. 650, 6 P.3d 982 (2000)).

22 Here, the four factors of Nev. R. App. P. 8(c) weigh against a stay. And even if
23 denying a stay would effectively render the Coroner’s appeal moot, the fact that the other
24 factors weigh so heavily against a stay requires this Court to nonetheless deny it. The

25
26 ² Recently, the Nevada Supreme Court made clear that, particularly where an appeal can be
27 expedited, a stay or injunction pending appeal will not be granted—even when some portions
28 of the appeal will be defeated—where the likelihood of success is low due to a failure to
come forward with evidentiary support. *Kraus v. Cegavske*, No. 82018, 2020 WL 6483971,
at *1 (Nev. Nov. 3, 2020)

1 Coroner's glib approach to this matter left it without much likelihood of success on appeal.
2 The Review-Journal would be irreparably harmed by the impingement on First Amendment
3 rights to report the news. And the very significant interests in access that the Review-Journal
4 established would be advanced by access—including transparency and government
5 accountability—would be effectively thwarted if the Court granted a stay. Relatedly, the
6 NPRA and the case law interpreting its provisions demonstrate that the public interest lies
7 with disclosure of the public records the Coroner has fought tooth and nail to withhold. While
8 the Review-Journal does not minimize the fact that the Supreme Court has recognized that
9 nontrivial privacy interests are implicated by the reports, as this Court has determined, the
10 interests advanced by the Review-Journal significantly outweigh the very generalized
11 interests that the Coroner asserted.

12 On those bases and stay in light of the unique nature of this case and its procedural
13 posture, the Court should decline to grant a stay.

14 **B. The Review-Journal and the Public Face Irreparable Harm if a Stay Is**
15 **Granted, and the Public Interest Weighs in Favor of a Stay.**

16 What the Coroner ignores—but this Court should not—is that the Coroner's
17 continued withholding of the requested autopsy reports will harm not just the Review-Journal
18 but, far more importantly, vulnerable children and families. And the Coroner also ignores or
19 perhaps just does not understand how reporting works.

20 **1. A Stay Will Harm the Public.**

21 In its Motion, the Coroner argues that a stay will not harm the Review-Journal
22 because of the nature of its long-delayed request. According to the Coroner, because the
23 Review-Journal in 2017 requested records dating back to 2012, "this matter is not urgent,"
24 specifically, the Coroner reasons that if access to the autopsy reports from the prior years
25 was urgent, "the [Review-Journal] would not have waited so long to make its request." (Mot.,
26 p. 8:6-10.) This of course ignores the nature of reporting generally and investigative reporting
27 in particular. The role of reporters is to follow issues in the news (such as the unnatural deaths
28 of children who were or had been under the supervision of child protective services), and to

1 investigate and report on the causes and possible solutions to those trends.

2 Here the Review-Journal is investigating issues that have significant importance to
3 the public: the functioning of the Coroner's office and, more importantly, the deaths of
4 vulnerable children. Perhaps what is most galling about the Coroner's delay and intractability
5 throughout the years of litigation in this case is that the Coroner's efforts to prevent the public
6 from accessing the requested records has also delayed the beneficial effects that transparency
7 and oversight can have on the lives of the State's vulnerable children. There is no better
8 example of the positive effects of access than the "Failed to Death" investigative series ran
9 by the Denver Post and Denver news station KUSA. As discussed in the Review-Journal's
10 Opening Brief on Remand, the reporting done by the Denver Post and KUSA on the deaths
11 of 72 children who were known to Colorado's child welfare system identified numerous
12 problems in that system, including overburdened caseworkers conducting incomplete or
13 inadequate investigations into allegations of abuse, or completing failure to conduct any
14 investigation whatsoever into abuse allegations. (OB on Remand, p. 19:6-18.) That reporting
15 in turn lead to substantial reforms to Colorado's child welfare system—reforms that saved
16 children from further abuse, neglect, or death.

17 Thus, although the Coroner asks the Court to focus on the putative lack of harm a
18 stay would have on the Review-Journal, what this Court should focus on is the harm a stay
19 would have on the public the Coroner is responsible to. Each day that goes by without access
20 to the requested records serves is another day where the actions of governmental entities like
21 the state and County's child protective services will be hidden from scrutiny, and is another
22 day where children will continue to suffer—and perhaps even die—in a system that may be
23 in dire need of reform.

24 **2. A Stay Will Harm the Review-Journal's Right of Access as**
25 **Guaranteed by the NPRA and the First Amendment.**

26 As to the Coroner's short-sighted arguments about the lack of harm to the Review-
27 Journal, every day the Coroner is permitted to continue withholding the autopsy reports
28 irreparably damages the Review-Journal's and the public's rights under the NPRA and the

1 First Amendment. The NPRA and the First Amendment guarantee the public swift access to
2 as much information as possible about the operation of government, and also guarantee the
3 Review-Journal's right to report on those topics. Moreover, the NPRA mandates that courts
4 expedite NPRA matters. A stay is unwarranted in light of this framework. Thus, the Court
5 must deny the Coroner's motion.

6 The NPRA is premised on the principle that access to the records of government
7 furthers democratic principles. Nev. Rev. Stat. § 239.001(1). To further the important goal
8 of fostering democracy, and to increase governmental transparency, the NPRA requires that
9 its terms be construed liberally, and that any restrictions limiting access be construed
10 narrowly. Nev. Rev. Stat. § 239.001(2) and (3); *Reno Newspapers, Inc. v. Gibbons*, 127 Nev.
11 873, 880, 266 P.3d 623, 628 (2011) (stating same). The NPRA also presumes that all
12 governmental records must be open to the public at all times for inspection and copying
13 unless specifically declared confidential by statute or law. Nev. Rev. Stat. § 239.010(1).

14 As another means to further the goal of fostering democracy, the NPRA requires
15 that access to public records be swift.³ As noted above, the presumption is that all records
16 must be open to inspection or copying at all times, thus reflecting a presumption of swift
17 access. Nev. Rev. Stat. § 239.010(1). Additionally, the presumption of swift access is
18 reflected by the NPRA's strict mandates about when and how a governmental entity must
19 respond to a records request, *see* Nev. Rev. Stat. § 239.0107(1)(a)-(d), as well as the
20 requirement that courts expedite consideration of any public records matters. Nev. Rev. Stat.
21 § 239.011(2). The NPRA's mandate to further prompt access to public records is also
22 consistent with the First Amendment right of prompt access to information that can shed

23 ³ Although not applicable to the instant matter, the importance of quick access to public
24 records was a central focus of the 2019 Legislature in amending the NPRA. For example, the
25 Legislature amended Nev. Rev. Stat. § 239.001(1) to state that the purpose of the NPRA ". .
26 . is to foster democratic principles by providing members of the public with *prompt* access
27 to inspect, copy or receive a copy of public books and records to the extent permitted by
28 law." Nev. Rev. Stat. § 239.001(1) (2019) (emphasis added). This provision was specifically
amended in 2019 by Senate Bill 287 ("SB 287") to make clear that providing prompt access
to public records is part of the NPRA's central purpose. (See Exh. 1 to Review-Journal
October 22, 2020, Reply at § 2.)

light on newsworthy events. Courts around the country have recognized that the First Amendment requires swift access to public records because “the public interest in obtaining news is an interest in obtaining *contemporaneous news*.” *Courthouse News Services v. Planet*, 947 F.3d 581, 594 (9th Cir. 2020) (emphasis added) (citing *In re Reporters Comm. for Freedom of the Press*, 773 F.2d 1325, 1352 (D.C. Cir. 1985) (Skelly Wright, J., concurring); see also *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (“The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.”); *Nebraska Press Ass’n v. Stuart*, 423 U.S. 1327, 1329 (1975) (holding that “each passing day may constitute a separate and cognizable infringement of the First Amendment” and that “any First Amendment infringement that occurs with each passing day is irreparable”); *Associated Press v. U.S. Dist. Court for Cent. Dist. of California*, 705 F.2d 1143, 1147 (9th Cir. 1983) (holding that a 48-hour delay in access constituted “a total restraint on the public’s first amendment right of access even though the restraint is limited in time”); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) (“even a one to two day delay impermissibly burdens the First Amendment”).

Here, the Court is not faced with a delay of one to two days, but a delay of over three years. This is a far cry from the prompt access mandated by the NPRA and the First Amendment. The harm caused to the Review-Journal and the public by this delay is incalculable. Accordingly, the balance of harms weighs strongly against a stay pending appeal.

C. The Coroner’s Harms Are Speculative, and Do Not Support a Stay.

In contrast the real harms that the Review-Journal and public will face, the harms articulated by the Coroner are largely speculative, and do not support a stay. As noted above, the Coroner bears the burden of demonstrating that it is entitled to a stay pursuant to NRAP 8(c). In its Motion, the only “irreparable harm” the Coroner articulates is that information it has unilaterally deemed “unrelated” to the cause or manner of death could be open to public inspection. As the United States Supreme Court has held, however, the *mere possibility* of

1 irreparable injury is not sufficient to warrant a stay. *Nken v. Holder*, 556 U.S. 418, 435 (2009)
2 (citing *Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7, 22 (2008)); accord *In re R & S*
3 *St. Rose Lenders, LLC*, No. 2:17-CV-01322-MMD, 2017 WL 2405368, at *3 (D. Nev. June
4 2, 2017).⁴

5 All the Coroner has articulated here is a mere possibility of harm premised entirely
6 on its own determinations of what is and is not relevant to the cause or manner of death for
7 a particular decedent. The Court has already found that the Review-Journal has met its burden
8 of overcoming the privacy interest that may generally attach to such information. What the
9 Coroner has never presented, however, is any concrete, identifiable harm that outweighs the
10 specific need for the information established by the Review-Journal and that will occur if the
11 reports are released unredacted—something it should have done in responding to the Review-
12 Journal’s Opening Brief on Remand. Nor, more fundamentally, has it presented any evidence
13 to explain or justify its determination of what information is “unrelated” to the cause and
14 manner of death—something again it had on opportunity to do in the pleadings on remand.
15 As addressed by the Court at the hearing and in its Order, the public is entitled to probe such
16 determinations, which it cannot do if the Coroner excludes such information.

17 In short, the Court has found that the countervailing significant interests likely to
18 be advanced by full access to the autopsy reports outweighs the nontrivial but generalized
19 harms the Coroner asserted in this case—and, as discussed above, further delays in access
20 will undermine those interests. When it comes to access, time is of the essence—and when
21 it comes to the Coroner’s delays and heel dragging, enough is enough.

22 **D. The Coroner Has Not Demonstrated a Likelihood of Success, or Even**
23 **a Substantial Legal Question on Appeal.**

24 While the Coroner contends that the legal issue at hand “is whether autopsy reports
25 are confidential or subject to disclosure under Nevada Public Records Law” (Motion, p.,

26 ⁴ This parallels the Nevada Supreme Court’s mandate that a governmental entity cannot rely
27 on conjecture or hypothetical concerns to justify nondisclosure of public records. *DR*
28 *Partners v. Bd. of County Comm’rs of Clark County*, 116 Nev. 616, 628, 6 P.3d 465, 472–
73 (2000) (County cannot meet its burden by voicing non-particularized hypothetical
concerns”) (citation omitted).

1 8:15-26), the Nevada Supreme Court has already resolved the overarching legal questions at
2 hand. It rejected the Coroner's arguments that the juvenile autopsy reports are always
3 confidential and exempt from the NPRA and established the legal framework applicable to
4 this case. This Court has now properly applied that framework based on the arguments and
5 evidence the parties presented on remand. The Review-Journal met its burden and the Coroner
6 effectively refused the Court's offer of a further opportunity to establish why the balancing
7 test might still favor secrecy. In light of this procedural posture, the Coroner cannot establish
8 a likelihood of success (as it appears to concede because it never argues it is likely to succeed
9 on the merits)⁵ or even the more forgiving standard of a substantial legal question where the
10 relative harms favor a stay.

11 **1. The Court's Decision Will Be Evaluated for Abuse of Discretion.**

12 Where a governmental entity succeeds in showing that the privacy interest at stake
13 is nontrivial, the burden shifts to the requester to show that "the public interest sought to be
14 advanced is a significant one and that the information [sought] is likely to advance that
15 interest." *CCSD*, 134 Nev. at 707-08, 429 P.3d at 320 (internal quotations omitted). The
16 Nevada Supreme Court remanded this matter to this Court "to determine, under the [*CCSD*]
17 test, what information should be redacted as private medical or health-related information."
18 *Id.* at 58, 1059. Thus, the Nevada Supreme Court left it to the sound discretion of this Court
19 to balance the interests at stake and evaluate the factual questions that remained after the
20 Supreme Court determined that the *CCSD* test applied to this case.

21 While the Nevada Supreme Court generally considers legal questions appeals of
22 district court decisions on petitions seeking enforcement of the NPRA *de novo*, factual
23 determinations are reviewed for an abuse of discretion. *See City of Reno v. Reno Gazette-*
24 *Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003) ("A district court's decision to grant or
25 deny a writ petition is reviewed by this court under an abuse of discretion standard. However,
26 questions of statutory construction, including the meaning and scope of a statute, are

27 ⁵ See Mot, p. 8:15-9:12 (arguing instead that the case presents a substantial legal question,
28 while ignoring the balance of equities, as it has consistently done throughout this matter).

1 questions of law, which this court reviews de novo.”) (internal quotation marks and citations
2 omitted). More broadly, a district court’s balancing of harms is reviewed for abuse of
3 discretion. *See, e.g., Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov’t*, 120
4 Nev. 712, 721, 100 P.3d 179, 187 (2004) (holding that a court’s decision to grant or deny a
5 preliminary injunction—which requires the balancing of harms—“will not be disturbed
6 absent an abuse of discretion”).

7 Here, the Court made factual determination that the Review-Journal met its burden
8 on remand pursuant to the test set forth by the Nevada Supreme Court. This is a factual
9 determination subject to abuse of discretion review. The Court considered exercising its
10 discretion to nonetheless consider any specific, further arguments the Coroner might wish to
11 make in connection with an *in camera* review. The Court abandoned that approach when the
12 Coroner made clear such an endeavor would be fruitless because the Coroner refused to do
13 anything other than assert that it was entitled to follow a black-and-white rule that all
14 information unrelated to the cause of death could be redacted, untethered to the specific
15 nature of the information in any specific report or the need for the information.⁶ In short, the
16 Court found the Review-Journal met its burden but gave the Coroner a second bite at the
17 apple to come forward with more specific bases to support withholding information in the
18 reports. The Coroner effectively declined the offer to do so.

19 **2. The Coroner Is Unlikely to Prevail, Regardless of the Standard**
20 **of Review.**

21 The Coroner has failed to establish a likelihood of success in this matter, largely
22 because the “error” it has identified for its potential (but not yet approved or noticed) appeal
23 is nonexistent. In its Motion, the Coroner asserts that “this Court reached the conclusion that
24 the Coroner waived its ability to assert any privileges because the Coroner had not yet
25

26
27 ⁶ For example, the Coroner could have made an argument in the alternative as to why
28 specific information merited protection even though the Court found that the Review-
Journal met its burden.

performed any redactions.” (Mot., p. 9:3-5.) This is a distortion of the Court’s Order⁷—and ignores that the Court found that the Review-Journal met its burden and that the Coroner essentially refused the opportunity to get a second bite at the apple.

The Review-Journal has now established multiple public interests that would be furthered by access to the requested records, and thus met its obligations under the *CCSD* test on remand. The Coroner hung its hat in its prior generalized assertions. The Court found that the Review-Journal’s articulated interests in access outweighed the Coroner’s generalized privacy assertions. Although the Court was satisfied that the Review-Journal had met its burden of establishing that there are significant interests in access, it considered letting the Coroner having another bite at the apple and offered to conduct an *in camera* review of proposed redactions.

The Coroner, however, remained steadfast on remand that it would simply redact all information the Coroner deemed “unrelated” to the cause and manner of death. At the October 29, 2020, hearing, the Coroner stated that it had only redacted the three sample autopsy reports it provided to the Review-Journal pre-litigation and had not reviewed or performed redactions to the balance of the approximately 680 autopsy reports and 150 external examinations. (Transcript, p. 23:8-14.) Because it had never reviewed or performed redactions to the withheld reports, the Coroner never made the required record-by-record determination of whether those reports contain specific information that merits protection.

Thus, the Court’s determination that the Coroner failed to present argument or evidence to support keeping the records secret was not premised on the Coroner’s extreme tardiness in making redactions; rather, it was premised on the Coroner’s decision to rely on its generalized privacy assertions and circular position that the Coroner can redact all information it believes is unrelated to the cause and manner of death. While the Court used the word “waiver” in its decision not to give the Coroner an opportunity the Coroner

⁷ It is hoped that outside counsel for Metro is being forthcoming with the BCC about what the Order actually says and regarding the Court’s observations regarding the Coroner’s conduct in this case.

1 indicated it would not take advantage of, the Court never found that any arguments the
2 Coroner actually came forward with had been waived. Accordingly, contrary to the
3 Coroner's assertions, this Court's finding does not conflict with the Supreme Court's
4 decision in *Republican Attorneys Gen. Ass'n v. Las Vegas Metro. Police Dep't*, 136 Nev. 28,
5 458 P.3d 328 (2020) ("*RAGA*").

6 In *RAGA*, the Republican Attorneys General Association petitioned the district court
7 for a writ of mandamus under the NPRA seeking body camera footage and other related
8 records regarding juveniles and then-State Senator Aaron Ford's interaction with Las Vegas
9 Metropolitan Police Department ("Metro") officers during an incident at a property which
10 resulted in the arrest of several juveniles. *RAGA*, 458 P.3d at 330. Metro refused to provide
11 the records on the grounds that they pertained to an active criminal investigation but failed
12 to identify any statutory or legal authority to justify its denial as required by Nev. Rev. Stat.
13 § 239.0107(1)(d). *Id.* In rejecting *RAGA*'s waiver argument, the Supreme Court held that
14 the body camera footage fell within one of the enumerated exceptions to the NPRA's
15 presumption of access, Nev. Rev. Stat. § 62H.025—a statute which renders juvenile justice
16 information confidential—and a waiver based on noncompliance with the NPRA's response
17 requirement could "undermine[] the NPRA's expressly listed exceptions for confidential
18 information." *RAGA*, 136 Nev. at 32, 458 P.3d at 332.

19 Unlike the records at issue in *RAGA*, there are no "expressly listed exceptions"
20 rendering the requested records confidential. On the contrary, the records here are
21 presumptively public. *Coroner*, 136 Nev. at 53, 458 P.3d at 1056 (holding that the legislative
22 history of statutes pertaining to Child Death Review Teams "demonstrates the Legislature's
23 intent to make reports about, and information pertaining to, child fatalities publicly accessible
24 as a matter of policy favoring transparency and as a matter of compliance with federal law
25 requiring disclosure as a condition for child services grant funds"). Thus, the Supreme
26 Court's holding in *RAGA* does not prohibit the Court from finding the Coroner waived its
27 ability to further assert privileges as to the records the Coroner never made a showing
28 contained information warranting redaction—and which the Review-Journal already

1 established the interests in access overcame the interests the Coroner asserted.

2 As noted above, nothing in *Coroner* required giving the Coroner another (third)
3 opportunity to overcome the showing that the Review-Journal made. Nonetheless this Court
4 considered doing so—and only determined not to when the Coroner made its intent to refuse
5 to make any specific showing as to why, even though the Review-Journal met its burden of
6 showing the need for full access to the autopsy reports, there might still be information that
7 was so sensitive that redaction was still needed. This matter is an adversarial proceeding, and
8 the Court was not required to do that work for the Coroner where it insists on taking a black-
9 and-white approach to the production of autopsy reports (an approach explicitly rejected by
10 the Nevada Supreme Court) and where it refuses to review and consider specific information
11 in reports instead.

12 **3. The Coroner Does Not Present a Substantial Case to Justify a**
13 **Stay.**

14 As noted above (III(A) (“Legal Standard for a Motion to Stay”)), the Nevada
15 Supreme Court has held that a stay may be issued without a showing of likelihood of success
16 if the proponent of a stay “present[s] a substantial case on the merits when a
17 serious legal question is involved and show[s] that the balance of equities weighs heavily in
18 favor of granting the stay.” *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650,
19 659, 6 P.3d 982. 987. Here, however, there is no serious legal question. Contrary to the
20 Coroner’s contention, the issue is not “whether autopsy reports are confidential or subject to
21 disclosure under Nevada Public Records Law” (Mot., p. 8:25-26). The Nevada Supreme
22 Court has already answered that question and determined autopsy reports are subject to the
23 NPRA. *See, e.g., Coroner*, 136 Nev. at 54, 458 P.3d. at 1056 (the Coroner “may not rely on
24 NRS 432B.407(6) to withhold juvenile autopsy reports or claim that such reports are
25 categorically exempt from disclosure by virtue of a confidentiality”); *id.* at 54, 1057 (neither
26 HIPAA nor Nev. Rev. Stat. § 629.031 NRS 629.031 “justify categorically withholding
27 juvenile autopsy reports in their entirety”). The Nevada Supreme Court has also determined
28 that a privacy balancing test applies that may justify redacting some information (136 Nev.

1 at 55, 458 P.3d at 1057⁸) and that the Coroner has asserted a nontrivial privacy interest and
2 the Review-Journal articulated a significant interest in access pursuant to that test (136 Nev.
3 44, 57–58, 458 P.3d 1048, 1058–59).

4 Thus, again, the only question left on remand was a factual one: whether the
5 balancing of the interests at stake favors disclosure; specifically, whether the Review-Journal
6 could meet its burden of establishing that its need for access outweighed the privacy interests
7 asserted. On remand, this Court applied the balancing test properly and its decision, which
8 will be reviewed for an abuse of discretion, cannot be said to raise any substantial legal
9 question.

10 Even if some significant legal question were at issue, the Coroner misapplies the
11 *Hansen* test, which—in addition to a significant legal question—requires that “the balance
12 of equities weighs heavily in favor of granting the stay.” *Hansen*, 116 Nev. at 659, 6 P.3d at
13 987. Here, though, the balance of equities weighs heavily *against* a stay. As detailed above,
14 the Coroner has not established irreparable harm and the equities cannot be said to favor the
15 Coroner where it expressly refused the opportunity to take a less categorical approach and
16 show how specific information might still need protection via an *in camera* review. In
17 contrast, the Review-Journal and the public both face irreparable harm from further delays—
18 and the public interest heavily weighs against a stay.

19 **E. Even If Denying a Stay Would Defeat a Possible Appeal, the Court**
20 **Should Still Reject Efforts to Delay.**

21 With respect to the whether the object of the appeal will be defeated absent a stay,
22 the Coroner asserts that disclosure of the reports as ordered by the Court prior to resolution
23 of the Coroner’s as-yet unapproved and unnoticed appeal would “undermine the Coroner’s
24 argument and render the appeal moot.” (Mot., p. 7:20-21.) Even assuming the Coroner is
25 correct that disclosure would moot its appeal, this factor does not weigh in the Coroner’s

26 _____
27 ⁸ Finding that “[t]he authorities the Coroner’s Office invokes do not authorize categorically
28 withholding juvenile autopsy reports, they do implicate a significant privacy interest in
medical information such that the reports may contain information that should be redacted.”

1 favor because the claims at issue in this matter fall within the “capable-of-repetition-yet-
2 evading-review” exception to the mootness doctrine, which applies when the duration of a
3 challenged action is “relatively short” and there is a “likelihood that a similar issue will arise
4 in the future.” *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010)
5 (quotation omitted); *see also Binegar v. Eighth Judicial Dist. Court In & For Cty. of Clark*,
6 112 Nev. 544, 548, 915 P.2d 889, 892 (1996) (providing that the matter must “present[] a
7 situation whereby an important question of law could not be decided because of its timing”).

8 The issues the Coroner tentatively intends to present to the Nevada Supreme Court
9 in its as-yet unapproved and unnoticed appeal are extremely likely to arise in the future. As
10 the Coroner points out (with some degree of unnecessary snark), the Review-Journal is the
11 largest news media entity in Nevada. As the paper of record for the state, the Review-Journal
12 routinely requests public records from governmental entities, including records pertaining to
13 unnatural deaths. Indeed, as the Coroner is aware, in addition to this matter, the Review-
14 Journal was required to seek judicial intervention pursuant to Nev. Rev. Stat. § 239.011(2)
15 in *Las Vegas Review-Journal v. Clark Country Office of the Coroner/Medical Examiner*,
16 Case No. A-17-764842-W, after the Coroner refused to disclose autopsy records for the
17 victims and suspect in the October 1, 2017 mass shooting at the Route 91 Harvest music
18 festival on some of the same rejected grounds it relied on in this matter.

19 Moreover, as evidenced at the October 29, 2020, Hearing before this Court, the
20 Coroner is deeply entrenched in its position regarding what information it believes it can
21 redact from the requested records, i.e., its categorical approach to withholding information
22 in autopsy reports. It is therefore highly likely that the Review-Journal or another requester
23 will request autopsy records in the future and be required to seek judicial intervention when
24 the Coroner once again refuses to disclose them or asserts that it can redact large swathes of
25 information it has unilaterally deemed as “unrelated” to the cause and manner of death. Thus,
26 even assuming that the object of the Coroner’s appeal would be mooted in the absence of a
27 stay, this matter still falls within the capable-of-repetition-yet-evading-review exception to
28 the mootness doctrine. Accordingly, this factor does not weigh in favor of a stay.

1 Even if it that were not the case, the mere fact that this factor may weigh in favor a
2 stay does not suffice to satisfy the Coroner's burden under NRAP 8(c) to prove that a stay is
3 warranted. In assessing the NRAP 8(c) stay factors, the Supreme Court has declined to
4 ascribe particular weight to any of the factors and has instead held that "if one or two factors
5 are especially strong, they may counterbalance weak factors." *Mikohn Gaming Corp. v.*
6 *McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citation omitted). In this case, however,
7 the appeal does not raise a substantial legal question, there is little support for the contention
8 that irreparable harm would occur if the records are disclosed, and—in contrast—irreparable
9 harm would result from a stay, which outweighs this factor even if this factor were especially
10 important. *Cf id.* at 251–52, 89 P.3d at 38 (in the arbitration context, noting that even where
11 the factor pertaining to defeating the purpose of the appeal "takes on added significance and
12 generally warrants a stay of trial court proceedings pending resolution of the appeal,"
13 because of the unique context of an appeal of a denial of a motion to compel arbitration,
14 "[t]he other stay factors remain relevant, but absent a strong showing that the appeal lacks
15 merit or that irreparable harm will result if a stay is granted, a stay should issue to avoid
16 defeating the object of the appeal.")

17 Indeed, if the Court did grant a stay here, it would entirely undermine the NPRA.
18 The Review-Journal requested the records at issue close to four years ago. The Coroner took
19 the categorical position that the reports were beyond the reach of the NPRA, an approach
20 that was soundly rejected by both this Court and the Nevada Supreme Court. On remand,
21 this Court and the Review-Journal engaged in the specific balancing of the interests at hand
22 as directed by the Nevada Supreme Court. The Coroner refused to do so, instead pretending
23 that there are no public interests in access and that it could continue to just take a categorical
24 approach and refuse to provide any information other than that which it determined was not
25 related to the cause and manner of death, despite the fact that the Court found that access to
26 the other information in the reports advances multiple public interests. It would defeat those
27 interests and the very purpose of the NPRA if, on these facts, a stay were issued just to avoid
28 defeating the purpose of the Coroner's appeal.

IV. CONCLUSION

The Court should reject the Coroner's motion for a stay pending appeal for what it is—an attempt to further delay production of the records it has withheld since April 2017 and a refusal to accept that the NPRA does not allow it to categorically withhold autopsy reports—or whole categories of information contained therein. The Coroner has failed to establish that it will suffer irreparable harm absent a stay pending appeal and has not established a likelihood of success on appeal. Indeed, it may not even actually appeal. In contrast, the continued withholding of the autopsy report has caused and will continue to cause irreparable harm to the Review-Journal and, more importantly, the public. Accordingly, this Court should deny the Coroner's request for a stay pending appeal.

DATED this 30th day of November, 2020.

/s/ Margaret A. McLetchie

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th 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 OPPOSITION TO MOTION TO STAY ON AN ORDER SHORTENING TIME 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/ Pharan Burchfield

An Employee of McLetchie Law

EXHIBIT 5

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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

Date of Hearing: December 10, 2020**Time of Hearing:** 9:00 A.M.

**RESPONDENT CLARK COUNTY OFFICE OF THE CORONER/MEDICAL
EXAMINER'S REPLY IN SUPPORT OF MOTION TO STAY ON AN ORDER
SHORTENING TIME**

Respondent, Clark County Office of the Coroner/Medical Examiner ("Coroner"), by and through their attorneys of record, Craig R. Anderson, Esq. and Jackie V. Nichols, Esq., of the law firm Marquis Aurbach Coffing and Laura C. Rehfeldt, Esq., Deputy District Attorney with the Clark County District Attorney/Civil Division, hereby submit their Reply in Support of Motion to Stay on an Order Shortening Time.

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

4 Dated this 7th day of December, 2020.

5 MARQUIS AURBACH COFFING

6
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16
17 **MEMORANDUM OF POINTS & AUTHORITIES**

18 **I. LEGAL ARGUMENT**

19 **A. THE COURT MAINTAINS BROAD DISCRETION TO STAY
20 PROCEEDINGS.**

21 The Court has broad discretion to stay proceedings. The Coroner's Motion for Stay
22 pending resolution of an appeal to the Nevada Supreme Court should be granted. The object of
23 the appeal would be defeated without a stay, the balance of the hardships strongly favors the
24 Coroner, and there is likelihood that the Coroner will prevail on the merits in the underlying
25 appeal. This matter involves confidentiality issues related to Autopsy Reports of juveniles, which
26 contain information pertaining to the decedents personal medical and health information that the
27 Supreme Court recognized involves a nontrivial privacy interest and could merit redaction.

28 As set forth in the Coroners Motion for Stay, a motion for stay is analyzed by applying
the factors listed in NRAP 8(c). *See* NRAP 8(c): *Fritz Hansen A/S v. Eighth Judicial District
Court*, 116 Nev. 650, 6 P.3d 982 (2000). One or two factors strongly in favor of appellant can be
sufficient to grant a stay. While no one factor is more important, if one or two factors are
especially strong, they may counterbalance other weak factors. *Mikohn Gaming Corp. v.*

1 *McCrea*, 120 Nev. 248, 251, 89 P.3d 36 (2004). The Nevada Supreme Court recognizes that
2 “[t]he power to stay proceedings is incidental to the power inherent in every court to control the
3 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and
4 for litigants.” *Maheu v. Eighth Judicial Dist. Court*, 89 Nev. 214, 216-17, 510 P.2d 627, 629
5 (1973) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936)): *see also Karuk*
6 *Tribe of California v. United States Forest Serv.*, 2006 U.S. Dist. LEXIS 5908, *4 (N.D. Cal.
7 2006) (the court “has broad discretion to stay proceedings as an incident to its power to control
8 its own docket”) (quoting *Clinton v. Jones*, 520 U.S. 681, 707-08 (1997)). This case involves an
9 unsettled and contentious area of Nevada Public Records Law, and in order for the Coroner to
10 pursue its right to appeal, a stay of the District Court Order requiring the release of the Autopsy
11 Reports in unredacted format requested by the LVRJ must be issued.

12 **B. THE CORONER HAS SATISFIED THE NRAP 8(C) FACTORS FOR**
13 **GRANTING A STAY.**

14 **1. The Object of the Appeal will be Defeated if a Stay is Denied.**

15 As the Coroner argued in its initial Motion, the purpose of the appeal will be undermined
16 lithe stay is not entered. This is because without the stay, the Coroner must comply with the
17 Court order requiring disclosure in unredacted format which means personal medical and health
18 information within the hundreds of Autopsy Reports of children will be disseminated to the
19 LVRJ, which in turn could be revealed to the public at large. The release of the Autopsy Reports
20 in unredacted format pending appeal results in intangible items, consisting of personal medical
21 and health information about children that the Supreme Court has expressly deemed involves
22 nontrivial privacy interests that merit a balancing of interests. Disclosure of this information in
23 unredacted form as ordered by this Court could result in the information transmitted to the
24 media, read or listened to by the public at large, and cannot be returned, or forgotten, or treated
25 as confidential once released. Once disseminated, this information cannot be collected and taken
26 back by the families of the decedent.

27 In other words, once the information is released, the object of the appeal is entirely
28 undermined. There is nothing to protect the information as confidential after it has been

1 disclosed. Release of the Autopsy Reports in unredacted format pending appeal renders the
2 Coroner's right to appeal moot as the information it seeks to protect under Nevada Public
3 Records Law will have been disseminated. There would be no purpose to the appeal as the
4 subject matter the Coroner argues as confidential would no longer be. Thus, a stay should issue
5 to avoid defeating the purpose of the appeal.

6 **2. Irreparable Injury will Result if the Stay is Denied**

7 Again, as the Coroner argued in its initial motion, without a stay irreparable or serious
8 injury will result because once the Autopsy Reports in unredacted format are released, that
9 information is exploited and dissemination cannot be reversed. And again, once this information
10 is disclosed, there is no way to repair the harm. The Coroner does not dispute that the Supreme
11 Court has deemed autopsy reports to be public records. The LVRJ's arguments, however, ignore
12 the Supreme Court's conclusion that the requested Autopsy Reports contain nontrivial privacy
13 interests, including personal medical and health information of the decedents. Here, it is the
14 Coroner's position that this Court erred and did not properly apply the balancing test. That is,
15 the LVRJ failed to articulate how the information it seeks, the confidential health and medical
16 information of the decedent unrelated to the cause or manner of death, advances a significant
17 public interest. While the LVRJ continues to misinterpret the Coroner's proposed redactions, it is
18 important that the Court recognizes that the only information the Coroner sought to protect via
19 redaction was the confidential health and medical information—not all information—unrelated
20 to the cause or manner of death. And, as the Coroner argued and articulated in its brief on
21 remand, any information pertaining to child welfare or Department of Family Services would not
22 be redacted as that information is not confidential medical or health information, even if it is
23 unrelated to the manner or cause of death. And, the if the Supreme Court agrees, and this Court
24 declines to enter a stay, the entire appeal is moot and any privacy interests the Supreme Court
25 may deem more significant than the public's interest in access is waived. If the Autopsy Reports
26 are released in unredacted format pending stay of the Coroners appeal to the Nevada Supreme
27 Court irreparable harm would be of paramount concern.

1 **3. There is no Harm to the Public and the RJ if a Stay is Granted.**

2 In support of its argument that it would be harmed should the Motion for Stay be granted,
3 the LVRJ accuses the Coroner of obstructionist tactics. It claims that by granting the stay it
4 would encourage governmental entities to essentially arbitrarily refuse access to records and
5 undermine the NPRA. The LVRJ continues to completely miss the point of the Coroner's
6 position with respect to these Autopsy Reports of juveniles. The Coroner takes this issue very
7 seriously and it seeks to protect only confidential health and medical information unrelated to the
8 cause or manner of death. And, the Supreme Court expressly recognized that Autopsy Reports
9 inherently contain private medical and health information unrelated to the cause and manner of
10 death. If the stay is not granted pending appeal, then the protections in place with respect to
11 information about children are undermined and breached. Second, this particular information
12 about a decedent—the confidential health and medical information—if disseminated, could
13 cause embarrassment to a family and an invasion of privacy. To suggest that the Coroner is
14 engaged in obstructionist tactics is absurd and offensive.

15 The RJ indicated that it desires to use the Autopsy Reports to disseminate information
16 affecting positive changes that might prevent juvenile deaths. As the Supreme Court point out,
17 while it is unclear how the unredacted Autopsy Reports will assist with that article, considering
18 the LVRJ already has the cause and manner of death of each decedent, such a topic would not
19 seemingly lose relevance overtime, and unsuccessful on appeal, presumably the LVRJ will have
20 the opportunity to report it. The same is true if the Board of County Commissioners does
21 approve of the appeal.¹ Moreover, the public has already been privy to reports on several deaths
22 that were identified within the spreadsheet, including those from the LVRJ.² If the RJ is not
23

24 ¹ The Board of County Commissioners is scheduled to hear and make a decision on this matter on
25 December 15, 2020 via an open meeting pursuant to Nevada's Open Meeting Law. The Notice of Entry
26 of Order in this case was filed on November 20, 2020. Under NRAP 4, the Coroner has until December
27 18, 2020 to file a Notice of Appeal. And, as LVRJ is aware, prior to filing a notice of appeal, the Coroner
28 must obtain approval by the Board of County Commissioners.

29 ² See [https://www.reviewjournal.com/crime/courts/litany-of-torture-abuse-preceded-death-of-henderson-](https://www.reviewjournal.com/crime/courts/litany-of-torture-abuse-preceded-death-of-henderson-mans-3-year-old-daughter-prosecutor-says/)
[mans-3-year-old-daughter-prosecutor-says/;](https://www.reviewjournal.com/crime/courts/las-vegas-police-investigate-death-of-baby/) [https://www.reviewjournal.com/crime/courts/las-vegas-](https://www.reviewjournal.com/crime/courts/las-vegas-police-investigate-death-of-baby/)
[police-investigate-death-of-baby/;](https://m.lasvegassun.com/news/2014/feb/20/nellis-staff-sergeant-now-) <https://m.lasvegassun.com/news/2014/feb/20/nellis-staff-sergeant-now->

1 successful on appeal, or sooner, it can find a way to report on that topic without the unredacted
2 Autopsy Reports, if it so desires, as, again, the Coroner provided the RJ with the cause and
3 manner of death of each decedent. Thus, the LVRJ and the public is not harmed should the stay
4 be granted.

5 4. **The Coroner Presents a Substantial Case on the Merits and Serious**
6 **Legal Questions.**

7 This Court specifically reached the conclusion that the Coroner had waive its ability to
8 make any privilege arguments because the Coroner had not yet performed the redactions. And,
9 the Nevada Supreme Court—on two separate occasions—has reiterated its position that the
10 NPRA does not permit waiver of a privilege. *See Rep. Atty's Gen. Assoc. v. Las Vegas Metro.*
11 *Police Dep't*, 136 Nev. Adv Op. 3 (February 20, 2020). There, the Supreme Court determined
12 that despite the fact that LVMPD failed to comply with the provisions set forth in NRS 239.0107
13 (the statutory five-day period), *waiver is not an enumerated remedy, and such a remedy cannot*
14 *be read into the NPRA statutes.* *Id.* (Emphasis added).

15 In doing so, the Court reasoned that NRS 239.011 unambiguously provides a remedy for
16 when a governmental entity fails to comply with response requirements in NRS 239.0107(1)(d)
17 and when a statute such as the NPRA “expressly provides a remedy, courts should be cautious in
18 reading other remedies into the statute.” *Id.* That remedy is to petition to the district court and
19 obtain costs and attorney fees upon prevailing. *Id.* As a result, while the five-business-day-
20 response requirement is mandatory, the remedy available to requesting parties is judicial
21 intervention and not waiver. *Id.*

22 In addition to expressly rejecting this waiver argument, the Court further explained that
23 the Legislature expressly rejected the idea of a waiver:

24 “Few principles of statutory construction are more compelling than the
25 proposition that Congress does not intend sub silentio to enact statutory language
26 that it has earlier discarded in favor of other language.” *INS v. Cardoza-Fonseca*,
480 U.S. 421, 442-43, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987) (quoting *Nachman*
Corp. v. Pension Benefit Guar. Corp., 446 U.S. 359, 392-93, 100 S.Ct. 1723, 64

27 charged-murder-after-3-m/; <https://lasvegassun.com/news/2012/mar/14/attorneys-ask-delay-hearing-dad->
28 charged-child-abus/

1 L.Ed.2d 354 (1980) (Stewart, J., dissenting)); *see also Russell v. United States*,
2 464 U.S. 16, 23-24, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) (“Where Congress
3 includes limiting language in an earlier version of a bill but deletes it prior to
4 enactment, it may be presumed that the limitation was not intended.”); *Univ. &*
5 *Cnty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 732-33, 100
6 P.3d 179, 194 (2004). The Legislature added NRS 239.0107 to the NPRA during
7 the 2007 legislative session. 2007 Nev. Stat., ch. 435, § 4, at 2061-62. Section
8 4(2) of the bill as introduced provided for an explicit waiver. S.B. 123, 74th Leg.
(Nev., Feb. 20, 2007). However, the waiver provision was later stricken by
Amendment No. 415. S.B. 123, Amendment no. 415, § 4, 74th Leg. (Nev., Feb.
20, 2007); *see also* Hearing on S.B. 123 Before the Subcommittee of the Senate
Comm. on Gov’t Affairs, 74th Leg. (Nev., Apr. 9, 2007) (expressing concern that
the Department of Corrections would not have time to address inmates’ requests
for confidential records). Accordingly, we hold that LVMPD did not waive its
assertion of confidentiality by failing to timely respond to RAGA’s requests.

9 *Id.* (Emphasis added). So, contrary to LVRJ’s improper analysis, the Supreme Court’s
10 conclusion that waiver does not apply is not limited in any fashion to statutory exemptions.
11 Second, in the very case before this Court, the Supreme Court reversed this Court’s prior ruling
12 that the Coroner waived its ability to assert a particular privilege because it was not raised in the
13 initial response to the LVRJ. *See Clark Cty. Office of Coroner/Med. Exam’r v. Las Vegas*
14 *Review-Journal*, 136 Nev. 44, 48-49, 458 P.3d 1048, 1053 (2020). Thus, there is a serious legal
15 question as to whether a government agency waives its ability to assert a privilege when it does
16 not perform redactions without ever disclosing the subject records.

17 Second, the Court did not properly perform the balancing test. The Supreme Court
18 concluded that the Coroner satisfied its obligation and demonstrated that the Autopsy Reports
19 contain personal medical and health information that pertain to nontrivial privacy interests. On
20 remand, the Supreme Court directed this Court to conduct a balancing test upon LVRJ’s showing
21 that the information sought—the medical and health information unrelated to the cause and
22 manner of death—would advance the public’s interest. *Id.* at 1059. Instead of focusing on the
23 redacted material, the LVRJ, and the Court, emphasized on access to Autopsy Reports in general.
24 LVRJ neglected to provide any basis for seeking medical and health information—including,
25 pre-existing medical conditions, diseases, and mental illness—that was unrelated to the cause
26 and manner of death. Accordingly, it is the Coroner’s position that the Court did not properly
27 balance the interests at stake.

For the foregoing reasons, a stay should be entered for the release of autopsy reports dating back to January 2012 relating to children who have died in Clark County and whose deaths were investigated by the Coroner, pending the disposition of the Coroner's appeal. In the event this Court determines that a stay is not warranted, then the Coroner respectfully requests that the Order be stayed long enough to allow the Coroner to obtain approval from the BCC for an appeal and seek this relief from the Nevada Supreme Court.

MARQUIS AURBACH COFFING

By /s/ Jackie V. Nichols
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Attorneys for Respondent, Clark County
Office of the Coroner/Medical Examiner

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT CLARK COUNTY OFFICE OF THE CORONER/MEDICAL EXAMINER'S REPLY IN SUPPORT OF MOTION TO STAY ON AN ORDER SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 7th day of December, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:³

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

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

N/A

/s/ Rosie Wesp
An employee of Marquis Aurbach Coffing

³ 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 6

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

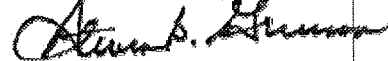
CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

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



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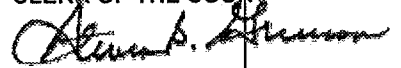
Attorney for Respondent Clark County Office of the Coroner/Medical Examiner

/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**
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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.

**NOTICE OF ENTRY OF ORDER
ON REMAND**

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

17 Respondent.

18 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
19 PLEASE TAKE NOTICE that on the 20th day of November, 2020, an Order on
20 Remand was entered in the above-captioned action.

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

22 DATED this 20th day of November, 2020.

23 /s/ Margaret A. McLetchie

24 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
25 ALINA M. SHELL, Nevada Bar No. 11711

26 **MCLEATCHIE LAW**

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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

Heather S. Smith
CLERK OF THE COURT

ORDR

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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:

///

///

///

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 mad confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure").

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

5 28. Because the NPRA starts from the presumption that all records of
6 governmental entities are public records and that its provisions must be interpreted liberally
7 to increase access, if a governmental entity seeks to keep all or some part of public record
8 secret, the NPRA places the burden of governmental entities to prove, by a preponderance
9 of the evidence, that any information it seeks to keep secret is confidential. Nev. Rev. Stat.
10 § 239.0113(2).

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

16 30. The Nevada Supreme Court has held that because of the mandates contained
17 in the text of the NPRA and its overarching purpose of furthering access to public records,
18 governmental entities cannot meet their burden under Nev. Rev. Stat. § 239.0113(2) by
19 relying on conjecture, supposition, or “non-particularized hypothetical concerns.” *DR*
20 *Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 628, 6 P.3d 465, 472-73 (2000);
21 *accord Haley*, 126 Nev. at 218, 234 P.3d at 927; *Reno Newspapers Inc. v. Gibbons*, 127 Nev.
22 873, 880, 266 P.3d 623, 628 (2011).

23 31. In balancing those interests, “the scales must reflect the fundamental right
24 of a citizen to have access to the public records as contrasted with the incidental right of the
25 agency to be free from unreasonable interference.” *DR Partners*, 116 Nev. at 621, 6 P.3d at
26 468 (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421-22 (1961)).

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1 **B. The CCSD Test**

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

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

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

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

18 This test coheres with both NRS 239.0113 and *Gibbons*, 127 Nev. at 877-
19 78, 266 P.3d at 625-26. It is merely a balancing test—in the context of a
20 government investigation—of individual nontrivial privacy rights against
21 the public’s right to access public information. *Carlson v. U.S. Postal Serv.*,
22 2017 WL 3581136, at *28 (N.D. Cal. Aug. 18, 2017). We explained in
23 *Gibbons* that NRS 239.0113 requires that the state bear the burden of
24 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.

25 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.)

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

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

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

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

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

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

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

18 56. The NPRA does not limit a requester's information to that information that
19 the government chooses to filter, repackage, and provide. Instead, the NPRA is intended to
20 provide the public with direct access to the government's records themselves. Limiting
21 access to the direct source material would be antithetical to the central stated purpose of the
22 NPRA: government accountability. Nev. Rev. Stat. § 239.001(1) provides that "[t]he purpose
23 of [NPRA] is to foster democratic principles by providing members of the public with prompt
24 access to inspect, copy or receive a copy of public books and records to the extent permitted
25 by law." The NPRA further provides that all of its provisions "must be construed liberally to
26 carry out this important purpose." Nev. Rev. Stat. § 239.001(2). In short, the NPRA reflects
27 that the public is not required to trust the government. Instead, the public is entitled to public
28 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.

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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.

Date


DISTRICT COURT JUDGE

Respectfully submitted,

/s/ Margaret A. McLetchie

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70B 2FA DB77 008D
Jim Crockett
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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

CASE NO: A-17-758501-W

7 vs.

DEPT. NO. Department 24

8
9 Clark County Office of the
Coroner/ Medical Examiner,
10 Defendant(s)

11
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

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