ALEX B. GHIBAUDO, ESQ.
197 E. California Avenue, Ste. 250
Las Vegas, Nevada 89104
Telephone: (702) 462-5888
Facsimile: (702) 924-6553
Email: alex@glawvegas.com
Pro Se Respondent

IN THE SUPREME COURT OF THE STATE OF NEVADA

TARA KELLOGG, Appellant, v. ALEX GHIBAUDO, Respondent.	Docket No. 84778

RESPONDENT'S AMENDED ANSWERING BRIEF

DATED November 14, 2022.

Respectfully Submitted,

/s/ Alex Ghibaudo

Alex B. Ghibaudo, Esq.
Pro Se Respondent

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NRAP 26.1 Disclosure

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) Parent Corporation: None; 2) Publicly held company that owns 10% or more of the party's stock: None; 3) Law firms who have appeared or are expected to appear for Respondent: None.

DATED November 14, 2022.

Respectfully Submitted,

/s/ Alex Ghibaudo

Alex B. Ghibaudo, Esq.
Pro Se Respondent

Certificate of Compliance Pursuant to NRAP 28.2

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 6907 words.

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

4. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED Thursday August 26, 2021.

Respectfully Submitted,

/s/ Alex Ghibaudo

Alex B. Ghibaudo, Esq.
Pro Se Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This case commenced on February 7, 2022 when Respondent ("Alex") filed a motion in the district court supported by exhibits seeking to hold Tara in contempt of court for disseminating 13 videos publicly of proceedings in their divorce matter despite the fact that the case file was sealed pursuant to NRS 125.110. Respondent's Appendix (RA) 0001-0355. On March 4, 2022, Appellant ("Tara") filed her opposition and countermotion to Alex's motion arguing that she had a First Amendment Right to publish the videos of those proceedings because NRS 125.110 is unconstitutionally vague. RA0605-0621. Alex replied to that motion on March 7, 2022 disputing Tara's claims. RA0622-0644.

After a hearing on the matter, held March 21, 2022, the district court decided that Tara in fact disseminated the videos to third parties which were posted publicly, primarily on YouTube, and that violated the Alex's expectation of privacy because there was a confidentiality and protective order ("agreement") in place and NRS 125.110 invoked and the case file sealed. RA0685-0692. The district court ordered Tara to cease further publication of videos of the divorce proceedings and to make efforts to take the videos already published off of the

social media platforms on which they were published. RA0688. Tara subsequently appealed that decision.

II. SUMMARY OF THE ARGUMENT

Alex asserts that, contrary to Tara's argument, the agreement was valid and prohibited the dissemination of videos from proceedings because those videos discussed information obtained through the discovery process, in violation of the agreement. Furthermore, Alex asserts, contrary to Tara's contention, that the district court's decision was based on facts proffered by Alex in his exhibits, which included written discovery answered by Tara, a deposition taken of Tara in January of 2022, and Tara's admission contained in her opposition that she in fact disseminated the complained of videos to third parties. Finally, Alex argues, contrary to Tara's contention, that NRS 125.110 is not constitutionally vague and that there is good reason to uphold the challenged statute. As such, Alex asks this Court to affirm the district court's decision.

III. LEGAL ANAYSIS

a. The district court did not err in finding that Tara disseminated hearing videos before and after the entry of the protective order because she admitted to doing so in her opposition to Alex's motion, in response to written discovery and a deposition of Tara that Alex provided the district court as exhibits to his motion.

Tara first argues that the district court had no basis in finding that Tara disseminated videos of the divorce proceedings. See Tara's opening brief, page 18, lines 20-21. This argument is belied by the record that is the subject of this

litigation, a record Tara deliberately omits from her appendix of exhibits. Indeed, Tara even fails to provide a transcript of the proceedings, again to omit the truth from this Court.

The subject of this litigation began at the district court with Alex's motion for an order to show cause, filed February 7, 2022. See RA0001-0027. There, Alex alleged that since September 17, 2020 (RA0006; lines 22) videos of hearings from the parties' divorce matter in the district court, hearings which took place between November 13, 2017 and August 26, 2021, were disseminated by Tara. See RA0006-0008. Alex created a chart that showed the link where the video of those proceedings could be found, the number of views those videos garnered, which were primarily posted on Youtube, but also Rumble and Facebook (which Alex estimated was 38,078 views as of the date the motion was filed), the date the hearing took place, and the date it was posted. Id. The date those videos were posted spanned February 3, 2021 to September 10, 2021. Id. Before briefing was completed, Tara disseminated another two (2) videos of the district court divorce proceedings which Alex brought to the district court's attention in a supplemental reply. RA0676-0682. Alex provided the district court a detailed declaration made under penalty of perjury that the statements made in the motion were true and correct. RA0023-0025.

In her opposition to Alex's motion, Tara does not deny the conduct alleged. Rather, she states that "Defendant argues that Plaintiff is posting hearing videos to harm Defendant ***despite Plaintiff stating repeatedly that she does so as she believes videos of hearings are public interest and of public concern.***" (Emphasis added). RA0614; lines 21-24. Thus, in her own opposition to Alex's motion she admits the conduct alleged in no uncertain terms.

But that is not all. In written discovery propounded upon Tara, and attached to the exhibits to Alex's motion, Tara further admits to the dissemination of those videos to third parties. In written interrogatories propounded upon Tara, she is asked "[h]ave you ever disseminated any videos of proceedings related to case no. D-15-522043-D, whether filed or not, to anyone, including Steve Sanson?" RA0071; lines 20-22. Tara answers with an unequivocal "Yes." RA0072; lines 2-3. In the next interrogatory, Tara is asked to explain in detail what the purpose of disseminating that material is. RA0072; lines 5-8. Tara answers, in part, that "I have shared the material because I have a right to and I believe it is public knowledge and a matter of public concern." RA0072; lines 17-18.

Tara is again asked in an interrogatory: "Isn't it true that you personally obtained and disseminated videos of hearings and proceedings in your post-judgment divorce matter, case no. D-15-522043-D?" RA0079; lines 8-9. Tara answers: "Yes. It is my First Amendment Freedom of Speech right, and I am

permitted to do so pursuant to statute, as well as by virtue of the Supreme Court Rules…" RA0079; lines 18-23. In yet another interrogatory, Tara is asked to list all persons to whom she has disseminated a copy of the videos or proceedings she obtained of the district court divorce proceedings. RA0080; lines 13-15. Tara answers that she disseminated the videos referenced above to "Veterans in Politics, family and/or friends." RA0081; lines 2-3. Tara is further asked: "Isn't it true that you have, and/or continue to, share videos of hearings and proceedings in your post-judgment divorce matter on your personal Facebook page/account which have been posted publicly on Facebook?" RA0081; lines 4-7. Tara answers: "I have on occasion personally posted and/or shared such on my own Facebook page, which again, is my protected, inalienable first amendment freedom of speech right to do so…" Id. at lines 18-22. When asked what her purpose is in posting those videos (RA0081; lines 23-24), Tara responds: "Because I have a right to. It is my divorce case and I have the right, under the First Amendment to Freedom of Speech to share about it." RA0082; lines 11-14. Tara verified that the answers to those interrogatories were true, under penalty of perjury. RA0091.

The exhibits to Alex's motion for an order to show cause also contained a deposition taken of Tara by Alex on January 27, 2022. RA0094-0297. At the time, all that was available was an uncertified rough draft transcript so that was what was provided to the district court for consideration in Alex's exhibits to his motion.

RA0094; lines 5-19. An email was attached to that rough draft transcript confirming it was received from the service conducting the deposition, Worldwide Litigation Services. RA0297. That actual transcript of the videotaped deposition is contained in RA0356-0588 and is provided here to show the rough draft transcript is an actual representation of what actually was reported. In that deposition, Tara again admits that she obtained videos of the district court divorce proceedings and disseminated them to Steve Sanson, among others, as noted above. The colloquy regarding the dissemination of videos from the district court divorce proceedings goes as follows:

> Q. Okay. And did you -- have you obtained
> videos of the proceedings in our case? Yes or no?
> A. In the our case?
> MR. NELSON: Objection -- objection.
> Q. (By Mr. Ghibaudo) In the divorce case. Did
> you obtain videos of proceedings of hearings?
> A. Yes.
> Q. Okay. Did you disseminate those – those videos to third parties?
> A. I believe it is a public interest.
> Q. That's not the question. Did you disseminate those? Yes or no?
> A. I did.

RA0135; paragraphs 17-25 (line 25 is the first line on RA0136); RA0136; paragraphs 1-4. Later, the following colloquy takes place:

> Q: Well, let's back up. You testified – again, just to clarify – that you have obtained videos of our hearings, correct?
> A: Yes.
> Q: And you have disseminated those videos to Steve Sanson, correct?
> A: Yes. I've already said that.

RA0147; paragraphs 13-19. Tara also admits that the videos provided to Mr. Sanson end up on his Youtube page, as the following colloquy demonstrates:

> Q: Have you seen the videos [Mr. Sanson] posts on YouTube concerning [Alex]?
> A: Have I seen them?
> Q: Are you aware that he posts videos about me on Facebook? Or on – I'm sorry – on YouTube?
> A: Yes, yes.
> Q: On YouTube?
> A: Yes, yes.
> Q: Okay. Have you ever seen any of those videos?
> A: Yes. I was actually in the videos.
> Q: Ok. And what are those videos –
> A: They're not all about you. It's also about me and the whole court proceedings and the judge and everything else.

RA0148; paragraphs 10-24.

All of the above admissions that Tara in fact disseminated hearing videos of the divorce proceedings, including the date ranges when those videos were disseminated, and to who, were contained in Tara's opposition, in her responses to interrogatories made under penalty of perjury, and in her January 27, 2021 deposition, made under oath. For Tara to now claim that "[t]he [district court] erred in finding facts that Appellant disseminated videos before or after the protective order…" is disingenuous and blatantly false. The district court and Tara had all of the materials referenced above as exhibits to Alex's motion, which were filed and served. See RA0028-RA0355 Tara did not deny any of it in her opposition, rather she admitted to the obvious – that she disseminated the videos of hearings in this

matter. Thus, the district court did not err or abuse its discretion in finding that Tara in fact disseminated hearing videos before and after the entry of the protective order.

b. Alex in fact timely objected to the dissemination of hearing videos.

Tara next claims that Alex alleged that videos were being posted prior to and after March 26, 2020 but "waits, however, until 2022 to raise any issues about these postings." Opening Brief, page 19; lines 7-10. Tara argues that the objection to her conduct was, therefore, untimely and provides a number of cases in support of her contention. Id. at lines 10-19. Tara concludes that "[a]t a minimum, the [district court] erred in concluding that Respondent had filed a timely and appropriate objection." Opening Brief, page 20, lines 1-2. The agreement governs both issues raised by Tara: 1) timeliness; and 2) appropriateness of the objection.

The form of the objection was appropriate given the nature of the material Alex claimed as confidential. Section 2 of the "Definitions" portion of the agreement contemplates how to mark as confidential "machine readable media and other non-documentary material" **(i.e., videos)** and provides that such material "shall be designated as Confidential Material by some suitable and conspicuous means, given the form of the particular embodiment." RA0594. Here, on January 4, 2022, shortly after it was brought to Alex's attention that the offending videos were posted online, Alex sent Tara's then attorney, Yasmin Khayyami, Esq., of JK

Nelson Law, a cease and desist letter making it clear that Tara was posting videos that were prohibited by the order sealing file to the extent allowed by NRS 125.110. RA0033-0035. Indeed, the email communication provided a link to those videos. RA0034.

After explaining what her client was doing, Alex stated that "[a]s such, consider this a formal request that your client cease and desist from further posting videos of our proceedings and from further dissemination of those proceedings, to anyone, including Steve Sanson." RA0035. Ms. Khayyami's response was: "Our client is informed of your position regarding this matter." RA0033. The posts continued after that. RA0678-0682. Based on that, the district court was "persuaded that [Alex] has a basis to object to any and all videos of hearings in these divorce proceedings being posted by Plaintiff and disseminated to third parties and posted by third parties (RA0686; lines 23-26)…" and that Alex in fact "…objects to such conduct (RA0687; lines 6-7)."

As to timeliness, Paragraph 20 of the agreement addresses that issue. It provides that: "Neither the failure of any Party at any time to enforce any of the provisions of this Stipulated Protective Order nor the granting at any time of any other indulgence shall be construed as a waiver of that provision or of the right of either Party afterwards to enforce that or any other provision." RA0601; lines 15-20. Indeed, in Paragraph 23 the agreement extends its provisions and enforcement

of the same during and after the end of the litigation, extending it up to seven (7) years. RA0602; lines 4-17. Specifically, the agreement provides that: "The confidentiality of material produced in this action and designated as confidential hereunder is to be preserved both during and after the final disposition of this action…" for seven (7) years after termination of this action. Id. Furthermore, the offending posts started appearing on or about February 2021, as indicated above. The last offending post, again as indicated above, was made in September of 2021. About 90 days later the first cease and desist letter was sent to Tara's counsel. That is not an unreasonable amount of time to wait – Alex preferred that Tara stop of her own accord but she did not, leading to the underlying litigation that is the subject of this appeal.

It is important to note that, contrary to Tara's misrepresentation to this Court, the agreement extends to all "business ***or*** affairs of Alex B. Ghibaudo, Esq. and/or Alex B. Ghibaudo, P.C." RA0593; lines 22-23. Tara conveniently omits the word ***or*** because that word extends protections to Alex's personal affairs, not just his business affairs, making the agreement broad indeed. It is also important to note that the agreement extends to a party seeking discovery pursuant to post-judgment collection proceedings. RA0594; lines 16-19.

c. Disseminating videos of these divorce proceedings is a breach of the agreement because the videos contain information obtained through the discovery process and information about the personal and business affairs of Alex Ghibaudo and Alex B. Ghibaudo, P.C., which the agreement expressly prohibits.

Tara alleges that the agreement does not contemplate videos of proceedings and thus the agreement was not breached. The agreement defines "Confidential Material" broadly. Specifically, the agreement defines "Confidential Material" as:

> [A]ll non-public or proprietary documents, material, and ***information*** **[emphasis added]** potentially entitled to protection under N.R.C.P. Rule 16.2, and/or Rule 26(c) and shall apply to all documents and information received by a party in response to formal interrogatories, requests for production of documents, subpoena and/or as part of mandatory disclosures, **including all such documents and information received and/or issued in this matter prior to the entry of this agreement**.
>
> By way of example, but not limitation, ***Confidential Material includes the information, records, and data concerning a party's financial information, health care and records; business or affairs of Alex B. Ghibaudo, Esq. and/or Alex B. Ghibaudo, P.C.***, **[emphasis added]** including information concerning acquisition or business development opportunities, the identities of the current, former or prospective clients, suppliers and customers of that entity, development, transition and transformation plans, methodologies and methods of doing business, strategic, marketing and expansion plans, financial and business plans or analysis, financial data or statements, records from financial institutions, tax returns, bank statements, credit card statements, accounting records, communications by or to an Affiliate, agreements, contracts, corporate records, minutes of meetings, pricing information, employee lists and telephone numbers, locations of suppliers, customers or sales representatives, new and existing customer or

> supplier programs and services, customer or supplier terms, customer service and integration processes, requirements and costs of providing products, service, support or equipment.

RA0593; lines 11-28 and RA0594; lines 1-10.

The instant appeal stems from the agreement executed by the parties and their attorneys and adopted by the district court as an order in the prior litigation in this matter. That litigation commenced on May 30, 2019 on Alex's motion to modify spousal support and Tara's countermotion to determine family support arrears, if any. An evidentiary hearing on those issues was held on September 17, 2020. Given the nature of the action, NRCP 16.2 required mandatory financial disclosures concerning Alex's gross income and expenses and Alex B. Ghibaudo, P.C.'s gross income and legitimate business expenses.

Through the discovery process, Alex disclosed over 2,000 pages of financial documents and records related to his business and personal finances. Tara hired an expert to examine those records and render an opinion concerning Alex's gross income and expenses and Alex B. Ghibaudo, P.C.'s gross income and expenses. See RA0130; paragraphs 5-24 and RA0131-0132 (demonstrating that substantial financial documents were provided to Tara and that she hired a forensic accountant to scrutinize Alex's finances, both business and personal). Tara claimed unemployment due to disability and so her medical records and the nature of her disability were at issue. The documents produced by Alex included tax returns,

years of bank statements pertaining to both Alex and the business entity Alex B. Ghibaudo, P.C., payroll records, profit and loss statements, and other documents produced or answered through written discovery. Though Tara was required to disclose her medical records, she never did.

The agreement was prompted in large part by Tara's refusal to provide medical records absent a confidentiality agreement and protective order. In short, Alex was concerned that Tara would disclose his personal and business affairs to the public and Tara was concerned that Alex would disclose whatever disability she claimed to have, though she never produced any documents related to her alleged disability, publicly. The parties therefore agreed to keep their affairs from public scrutiny.

As such, the agreement encompassed a broad range of information, documents, and "material" from public scrutiny. At the time the agreement was made, the case file was already sealed pursuant to NRS 125.110. See RA0031-0032 (Order Sealing File). The agreement was therefore directed at dissemination of information, documents, and "materials" by Alex and Tara since the case file was already closed to public scrutiny "to the extent allowed by NRS 125.110" which the district court Judge hand wrote into the order. Id.

Throughout those proceedings, ranging from May 2019 to September 2020 there were numerous hearings where information adduced from the documents

disclosed by Alex were referenced and used in oral argument prior to the evidentiary hearing held in September of 2020. Subsequently, between April 2021 and March 2022 there were further proceedings and numerous hearings initiated by Tara in an effort to collect on the judgment she obtained for arrears the district court determined Alex owed. That decision was challenged on appeal in docket no. 82248 and 82248-COA by both Alex and Tara. It was during that period of time, February 3, 2021 to December 10, 2021, that Tara began posting videos from proceedings that were sealed from public inspection pursuant to NRS 125.110 and the confidentiality agreement. She also posted further hearings in March of 2022 as mentioned above.

Three of the videos disseminated by Tara in the period of time referenced above (February 2021-December 2021 and March 2022) were held during the May 2019 to September 2020 proceedings; specifically, hearings held on June 6, 2019, July 17, 2020, and August 12, 2020. RA007; lines 2, 7, and 9. Those hearings referenced and discussed Alex's personal and business affairs; information that was obtained from the disclosures made through the discovery process. Two of the hearings, those held on December 12, 2017 and November 13, 2017 (RA0007; lines 4 and 12) were hearings on Tara's motion for an order to show cause, which again concerned Alex's finances and whether or not he could meet his financial obligations given what he earned at the time. Those hearings also included

documents disclosed in the discovery process at that time, such as bank statements and profit and loss statements concerning the business.

The remaining videos referenced in RA0006-0008 were from hearings held in 2021 to 2022 concerning Tara's continued efforts to collect on her arrears judgment, despite the fact that the district court indicated it did not want to proceed with show cause hearings pending the resolution of the appellate matters referenced above. Each one of those hearings referenced information obtained through the discovery process during the prior litigation and further discovery allowed by the district court after another hearing initiated by Tara in February of 2022.

Ultimately, the district court decided that "the dissemination of videos of and proceedings in this case is a direct violation of the Confidentiality Agreement and Protective Order filed in this case on March 26, 2020." RA0686; lines 15-18. The district court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion. NRCP 52(a)(3). The court should, however, state on the record the reasons for granting or denying a motion. Id. Here, the district court stated the reasons for granting Alex's motion – because "the Stipulated Confidentiality Agreement and Protective Order filed March 26, 2020, which was signed by both parties and both parties' counsel, expressly provides that both parties have an expectation of

privacy in these divorce proceedings as it relates to materials (which encompasses videos of proceedings in this case) stemming from these divorce proceedings and the decree of divorce issued February 2, 2017." RA0686; lines 7-14.

When findings and conclusions are not necessary and when a hearing is held on a motion, it is incumbent on Appellant's counsel to provide a record of that hearing on appeal. *U.S. v. McLean*, 78 Nev. 60, 62 (Nev. 1962). This Court will never know how the district court reached its decision because Tara never provided a transcript of the proceedings below. When an appellant fails to include necessary documentation in the [appellate] record, this Court necessarily presumes that the missing portion supports the district court's decision *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). Here, this Court should presume that the failure to provide a transcript of the proceedings support the district court's decision.

As Tara correctly points out, questions of contract interpretation are questions of law, and are reviewed on appeal de novo. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). The purpose of contract interpretation, however, "is to discern the intent of the contracting parties." *Am. First Fed, Credit Union v. Soro*, 131 Nev. ___, ___, 359 P.3d 105, 106 (2015). Here, clearly, the agreement was entered into to protect the parties' privacy. In the preamble, for example, the agreement provides: "WHEREAS, to facilitate the disclosure of

information and **to protect the confidential nature of such information** is in the interests of both parties…" (Emphasis added). RA0593; lines 5-8. That is exactly what the district court determined – that the parties have an expectation of privacy in the post-judgment divorce proceedings and that dissemination of the videos of hearings violate Alex's expectation of privacy.

d. Tara fails to demonstrate that NRS 125.110 is unconstitutionally vague because she fails to undergo the necessary analysis.

Tara asserts that NRS 125.110 is unconstitutionally vague. "Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional." *Silvar v. Eighth Judicial Dist. Court,* 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). In reviewing the statute, "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010) (quoting *Hooper v. California*, 155 U.S. 648, 657, 15 S. Ct. 207, 39 L. Ed. 297 (1895)), and; *Virginia and Truckee R.R. Co. v. Henry*, 8 Nev. 165, 174 (1873) ("It requires neither argument nor reference to authorities to show that when the language of a statute admits of two constructions, one of which would render it constitutional and valid and the other unconstitutional and void, that construction should be adopted which will save the statute.").

A statute is unconstitutionally vague if it "(1) fails to provide a person of ordinary intelligence fair notice of what [conduct] is prohibited; or (2) if it is so

standardless that it authorizes or encourages seriously discriminatory enforcement." *Id.*, at 481-82, 245 P.3d at 553 (internal citations and quotation marks omitted). A facial vagueness challenge to a civil statute requires a showing "that the statute is impermissibly vague in all of its applications." *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 512, 217 P.3d 546, 553 (2009).

However, "[e]nough clarity to defeat a vagueness challenge may be supplied by judicial gloss on an otherwise uncertain statute, by giving a statute's words their well settled and ordinarily understood meaning, and by looking to the common law definitions of the related term or offense." *Castaneda*, 126 Nev. at 483, 245 P.3d at 553-54 (citations and internal quotation marks omitted).

Tara fails to undergo this analysis in her attack on NRS 125.110 as constitutionally vague. The challenged statute is in no way vague. First, Tara would have to show that the statute fails to provide a person of ordinary intelligence with fair notice of what [conduct] is prohibited. Here, the statute gives clear notice of what is not open to public inspection: everything but the pleadings, the findings of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment. Everything else is not open to inspection. To make it abundantly clear what is not open to inspection, the statute provides explicitly states it in NRS 125.110(2): All other papers, records, ***proceedings*** and evidence…etc. A proceeding is easily defined and can be revealed by a simple

google search. *Black's Law Dictionary,* 3808 (8th Ed. 2004), defines *proceeding* as, among other things, ***a hearing***. (Emphasis added).

Alternatively, Tara could demonstrate that the statute is so standardless that it authorizes or encourages seriously discriminatory enforcement. In this case, the statute applies uniformly to any and all divorce proceedings where a party makes a written request to the district court to seal the case file.[1] There is nothing else the district court or a litigant can do with this statute aside from invoke it to seal a case file. Therefore, it is not standardless and it does not encourage seriously discriminatory conduct. In any event, Tara failed to provide an analysis supporting her contention the statute is unconstitutionally vague.

Tara then argues that the First Amendment *on its face* invalidates the rules allowing sealing of a case file under NRS 125.110. Tara has not shown the "clear invalidity" of the contested court rules to challenge their constitutionality. The following is an analysis that negates Tara's argument and favors the upholding of the duly adopted court rules.

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[1] In *Johanson v. Eighth Judicial district Court*, 124 Nev. 245 (Nev. 2008) this Court held that NRS 125.110 must be strictly construed and, "[w]hen a statute is clear on its face, [the Nevada Supreme Court] will not look beyond the statute's plain language." The Court made a point to note that NRS 125.110 "plainly states that certain documents in divorce proceedings "shall" remain open to the public" and that the word "'shall'" is mandatory and does not denote judicial discretion in divorce cases to seal pleadings, court findings, [and] orders that resolve motions or judgment".

Sealed family court cases under NRS 125.110 allow the public access to the names of the parties and the nature of the action.

> NRS 125.110 What pleadings and papers open to public inspection; written request of party for sealing.
>
> 1. In any action for divorce, the following papers and pleadings in the action shall be open to public inspection in the clerk's office:
>
> (a) In case the complaint is not answered by the defendant, the summons, with the affidavit or proof of service; the complaint with memorandum endorsed thereon that the default of the defendant in not answering was entered, and the judgment; and in case where service is made by publication, the affidavit for publication of summons and the order directing the publication of summons.
>
> (b) In all other cases, the pleadings, the finding of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment.
>
> 2. All other papers, records, proceedings and evidence, including exhibits and transcript of the testimony, shall, upon the written request of either party to the action, filed with the clerk, be sealed and shall not be open to inspection except to the parties or their attorneys, or when required as evidence in another action or proceeding.

In allowing the very basic information concerning the parties' names, the nature of the action and final orders to be accessed by the public, the Court has made accommodations to adequately protect a compelling interest of privacy of the parties, while respecting the First Amendment. Indeed, the district court in fact balanced the parties' constitutional rights in reaching its decision. RA0687; lines 8-16. This satisfies the guiding principles set forth in *Press-Enterprise Co. v.*

Superior Court, 478 U.S. 1, 8-9, 92 L. Ed. 2d 1, 106 S. Ct. 2735 (1986) which proscribes the analysis known as the "experience and logic test."

False or incorrect allegations in motions, that have not been supported by evidence, should not be open to the public. Orders, however, made by a Court after hearing testimony, reviewing admissible evidence, etc. are open to the public. Judges are not shielded as to their findings of fact or analysis of the law because their orders are not sealed but the flinging of allegations, sensitive information in filings and hearings, and embarrassing emotions of the parties should otherwise not be made a public spectacle.

The Nevada Legislature authorized the establishment of a family court in Nevada in response to the needs of its citizens to present their most sensitive issues concerning child rearing and intimate relationships. The family court is a specialized court, consisting of trained jurists and support personnel specifically selected to handle the intimate nature of a person's most private matters.

Most family law matters involve the establishment of a parental relationship and the care, custody, and control of minor children. Parents have a fundamental liberty interest in child rearing, recognized by the Nevada Legislature in NRS 126.036 and the Fourteenth Amendment of the U.S. Constitution. There has always been a recognized right of privacy for the individual in matters of a personal nature. The list of personal, private matters of an individual are extensive. Just

within the family law realm, matters of child custody mediation, juvenile delinquency proceedings, adoption and determination of paternity are all private.

There has always been a recognized right of privacy for the individual in matters of a personal nature. The list of personal, private matters of an individual are extensive. Just within the family law realm, matters of child custody mediation, juvenile delinquency proceedings, adoption and determination of paternity are all private. In keeping with respecting an individual's right to privacy to his most personal matters, the Nevada Legislature and the Nevada Supreme Court have enacted and approved numerous rules to govern the exposure of such details. For example, under NRS 432B.430 in unfortunate circumstances of abuse or neglect, the best interests of the child determine whether a hearing may be closed to the public. See, NRS 432B.430. In another example, orders for the protection of a child as similarly sealed. See NRS 3.2201. Special immigration status orders for juveniles are sealed and only available to the court, the child or an involved party. See NRS 3.2202. In yet another example, NRS 127.007 restricts information on adoption orders to only certain persons and then upon permission of the court.

NRS 125.110 allows a party the choice to have his family law matter private. This freedom of individual choice is essential to protecting the privacy and freedom of persons over their personal matters; a right guaranteed by the Fourteenth Amendment to the U.S. Constitution.

"What is at stake here is the societal function of the First Amendment in preserving free public discussion of governmental affairs." *Press* at 517. In a family law case the parties are private citizens, not governmental actors. The choices of private individuals, made not for the public good or detriment, but for themselves or their children, are not of general interest to the public, nor should they be. Individuals have long had the right to make private choices which affect only their person or their children, so long as they do not intrude into the realm of criminal acts.

There is a compelling and significant interest in protecting the details of an individual's private family issues. Historically, Congress and the courts have protected an individual's right to privacy in "personal" matters and have barred governmental disclosure of such information. Information is of a personal nature if "…it reveals intimate or embarrassing details of an individual's private life." *Mager v. Dept. of State Police*, 595 N.W.2d 142, 146 (Mich. 1999) (FOIA request did not allow media access to gun ownership records or violate First Amendment). Nevada is in accord. For example, in *State v. Grimes*, 29 Nev. 50, 81, 84 P. 1061, 1071 (1906), this Court held that there are stronger reasons to deny public access to judicial records concerning private matters when public access "could only serve to satiate a thirst for scandal." Other jurisdictions are also in accord. See *Katz v. Katz*,

514 A.2d 1374, 1379 (Pa. Super. Ct. 1986) (no legitimate purpose can be served by broadcasting the intimate details of a soured marital relationship).

This whole exercise is an effort by Tara to essentially televise the divorce proceedings in she and Alex's private dispute. There is no First Amendment right to televise a trial. See, *Courtroom TV Network, LLC v. State*, 833 N.E.2d 1197 (NY Ct. App. 2005). Furthermore, televising a family court trial in today's social media environment often serves scandal.

> . . . [It] is clearly within the rule to hold that no one has a right to examine or obtain copies of public records from mere curiosity, or for the purpose of creating public scandal. To publish broadcast [sic] the painful, and sometimes disgusting, details of a divorce case, not only fails to serve any useful purpose in the community, but, on the other hand, directly tends to the demoralization and corruption thereof, by catering to a morbid craving for that which is sensational and impure. The judicial records of the state should always be accessible to the people for all proper purposes, under reasonable restrictions as to the time and mode of examining the same; but they should not be used to gratify private spite or promote public scandal. And, in the absence of any statute regulating this matter, there can be no doubt as to the power of the court to prevent such improper use of its records.

C v. C, 320 A.2d 717, 723 (Del. 1974).

Finally, it should be noted with particularity that Tara waived her first amendment right to publish to the world the details of her divorce proceedings when she signed the parties' agreement. As indicated above, the district court decided that the agreement was entered into to protect the parties' privacy interests.

Whether this Court determines that NRS 125.110 is unconstitutional, it has no bearing on the validity of the agreement. The United States Supreme Court held in *Cohen v. Cowles Media Co*., 501 U.S. 663 (1991) that private parties who voluntarily enter into an agreement to restrict their own speech thereby waive their first amendment rights. See id., 671. Nothing in Cowels suggests that such an agreement is enforceable only if it is narrowly tailored to advance a compelling state interest *Perricone v. Perricone*, 292 Conn. 187, 202 (Conn. 2009); citing *Cohen v. Cowles Media Co*., 501 U.S. 663, 667 (1991). In *Lind v. Grimmer*, 30 F.3d 1115, 1118 (9th Cir. 1994), the 9th Circuit Court of Appeals described the holding in *Cowels* as follows:

> In Cowles, the Supreme Court considered whether the First Amendment barred a plaintiff from recovering damages under Minnesota's promissory estoppel law when a newspaper breached its promise of confidentiality given to the plaintiff in exchange for information. The Court held that the First Amendment did not bar recovery, for two reasons. First, it noted that promissory estoppel is a law of general applicability, and its application to the press posed only an "incidental" and "constitutionally insignificant" burden on speech. [Internal citations omitted]. Second, the Court observed that the agreement between Cohen and the newspaper was in the nature of a contract, and that any legal obligations and restrictions on publication of truthful information therefore were "selfimposed."

Lind v. Grimmer, 30 F.3d 1115, 1118 (9th Cir. 1994); citing *Cohen v. Cowles Media Co.*, 501 U.S. 663, 670-72 (1991). Thus, in signing the stipulated confidentiality agreement, of which Tara's lawyer also signed and the district court

issued as an order, Tara waived her 1st Amendment Rights which she now asserts in an effort to publish her own dirty linen to the world.

IV. CONCLUSION

Tara's contention that the district court made its decision without a factual basis is entirely without merit. Similarly, Tara's assertion that the agreement does not prohibit her from the dissemination of videos of proceedings is without merit because those videos discuss information obtained through the discovery process and the agreement purpose and intent was to protect the parties' privacy. Finally, NRS 125.110 is not unconstitutionally vague nor does Tara conduct the necessary analysis to show that.

DATED November 14, 2022.

/s/ Alex Ghibaudo

Alex B. Ghibaudo
Pro Se Respondent

CERTIFICATE OF MAILING

I certify that on the November 15, 2022, I served a copy of this RESPONDENT'S AMENDED ANSWERING BRIEF upon Appellant through the Court's electronic service system to the following:

Evan Schwab, Esq.
evan@schwablawnv.com

Dated this 15th Day of November, 2022.

/s/ Alex Ghibaudo

Alex B. Ghibaudo