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May 4, 2016

Via E-Mail:
newsmax1@hotmail.com

NewsmaxTV Las Vegas
2585 S. Jones Blvd. Ste. 2C
Las Vegas, NV 89146

Re: Written response to public records request made by NewsmaxTV Las Vegas.

Dear NewsmaxTV Las Vegas:

On April 27, 2016, you sent Assemblyman Paul Anderson a written request for public records pursuant to Nevada's Public Records Law in NRS Chapter 239. In your request, you ask for certain information relating to the campaign contributions and expenses report (C&E report) filed by Assemblyman Anderson on January 15, 2016, with the Secretary of State pursuant to Nevada's Campaign Practices Act in NRS Chapter 294A. This letter, which has been prepared by the Legislative Counsel and the Legal Division of the Legislative Counsel Bureau (LCB), serves as the written response to your request.[1]

As explained in the legal discussion below, the Public Records Law does not apply to your request based on several well-established provisions and principles of constitutional, statutory and common law. However, in the spirit of responding to your request as promptly as possible, we have nevertheless provided this written response within the time set forth in the Public Records Law. In particular, under NRS 239.0107, the time for providing a response is "[n]ot later than the end of the fifth business day" after the date on which the request is received. NRS 239.0107(1).

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[1] The LCB and its Legal Division are part of the Legislative Department of the Nevada State Government under NRS Title 17. NRS 218F.100. The Legislative Counsel is the chief of the Legal Division, and the Legislative Counsel and the Legal Division are the legal counsel and legal advisers on all matters arising within the Legislative Department. NRS 218F.100 & 218F.700-218F.720.

As explained in the legal discussion below, the Public Records Law, by its plain language, does not impose any legal duties upon a candidate for public office who is required to file a C&E report under the Campaign Practices Act, regardless of whether the candidate is also an incumbent public officer. Instead, because the Legislature has invested the Secretary of State with primary agency jurisdiction to administer and enforce the Campaign Practices Act and investigate any candidate who is required to file a C&E report, any relief under the Campaign Practices Act first requires resort to and exhaustion of the administrative process in the Campaign Practices Act.

Because the Public Records Law does not impose any legal duties upon Assemblyman Anderson in his capacity as a candidate for public office, the Legislative Counsel and the LCB Legal Division are treating your request as being directed to Assemblyman Anderson in his capacity as an elected public officer of the Legislative Department, and we have received and accepted your request on behalf of Assemblyman Anderson in our representative capacity as legal counsel and legal advisers on all matters arising within the Legislative Department. Therefore, because Assemblyman Anderson is represented by legal counsel regarding your request, we ask that any future correspondence or communications regarding your request be directed to Brenda J. Erdoes, Legislative Counsel, and Kevin C. Powers, Chief Litigation Counsel, of the LCB Legal Division. We may be contacted by mail, telephone or e-mail as follows:

Brenda J. Erdoes, Legislative Counsel
Kevin C. Powers, Chief Litigation Counsel
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson Street
Carson City, NV 89701
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In your request, you ask for the following information relating to the C&E report filed by Assemblyman Anderson on January 15, 2016:

- All receipts for moneys paid directly to Paul Anderson totaling $5,147.77 for the following campaign expenses:

Category (NRS 294A.365)	**Date of Expense**	**Amount of Expense**
A [Office expenses]	02/12/2015	$710.96
C [Expenses related to travel]	04/23/2015	$1,557.89
H [Expenses related to special events]	04/23/2015	$145.26
A [Office expenses]	04/23/2015	$2,733.66

- Copies of all monthly credit card billing statements for the Visa Black Card with payments totaling $17,905.84 for the following campaign expenses:

Category (NRS 294A.365)	Date of Expense	Amount of Expense
H [Expenses related to special events]	01/05/2015	$507.36
C [Expenses related to travel]	02/03/2015	$553.07
C [Expenses related to travel]	04/02/2015	$1,022.46
C [Expenses related to travel]	07/01/2015	$1,562.25
C [Expenses related to travel]	07/31/2015	$1,680.29
H [Expenses related to special events]	08/20/2015	$1,680.29
C [Expenses related to travel]	09/18/2015	$2,630.75
C [Expenses related to travel]	10/07/2015	$2,347.40
C [Expenses related to travel]	11/17/2015	$2,664.91
A [Office expenses] C [Expenses related to travel]	12/22/2015	$3,257.06

- Copies of all monthly credit card billing statements for the Capital One Card with payments totaling $23,181.50 for the following campaign expenses:

Category (NRS 294A.365)	Date of Expense	Amount of Expense
C [Expenses related to travel] D [Expenses related to advertising] H [Expenses related to special events]	01/20/2015	$1,889.68
C [Expenses related to travel]	02/24/2015	$2,599.40
C [Expenses related to travel]	03/10/2015	$2,599.58
C [Expenses related to travel]	04/23/2015	$729.18
C [Expenses related to travel] H [Expenses related to special events]	05/15/2015	$1,250.55
C [Expenses related to travel]	06/22/2015	$1,544.81
H [Expenses related to special events]	07/31/2015	$1,730.38
C [Expenses related to travel] H [Expenses related to special events]	08/20/2015	$1,730.38
C [Expenses related to travel]	09/18/2015	$500.00
C [Expenses related to travel]	09/21/2015	$2,823.92
C [Expenses related to travel]	10/27/2015	$2,236.95
C [Expenses related to travel]	11/24/2015	$3,025.32
C [Expenses related to travel]	12/21/2015	$521.35

- A list of points rewards for both credit cards listed herein paid with campaign funds and records of what was purchased with the points acquired.

We have carefully reviewed your request for the foregoing information under well-established provisions and principles of constitutional, statutory and common law. As explained in the legal discussion below, we have concluded that the Public Records Law does not apply to the requested information based on those well-established provisions and principles of constitutional, statutory and common law. Even though the Public Records Law does not apply to the requested information, we have nevertheless included in the legal discussion below citations to the specific constitutional provisions, statutes and other legal authority that justifies nondisclosure of the requested information in the spirit of providing you with a detailed explanation of the reasons for denying your request. See NRS 239.0107(1)(d); Reno Newspapers v. Gibbons, 127 Nev. 873, 885 (2011) ("[I]f a state agency declines a public records request . . . it must provide the requesting party with notice and citation to legal authority that justifies nondisclosure.").

Finally, we respectfully direct you to NRS 218F.720, which precludes an award of court costs or attorney's fees against the Legislature or any agency, member, officer or employee of the Legislature in any action or proceeding. Generally speaking, if a governmental entity is subject to the Public Records Law and denies a public records request, the requester may seek relief from the district court in a civil action to enforce the Public Records Law, and if the requester prevails in the civil action, the requester may be awarded court costs and reasonable attorney's fees in the proceeding. NRS 239.011. However, NRS 218F.720, which is a more specific and more recently enacted statute, precludes an award of court costs or attorney's fees against the Legislature or any agency, member, officer or employee of the Legislature in any such action or proceeding.

In particular, the statute provides that in any action or proceeding before any court, agency or officer of this State, the Legislature may not be assessed or held liable for "[a]ny filing or other court or agency fees" or for "[t]he attorney's fees or any other fees, costs or expenses of any other parties." NRS 218F.720(1). In addition, the statute defines the term "Legislature" to include any "agency, member, officer or employee of the Legislature, the Legislative Counsel Bureau or the Legislative Department." NRS 218F.720(6)(c). The statute also defines the term "agency" to mean "any agency, office, department, division, bureau, unit, board, commission, authority, institution, committee, subcommittee or other similar body or entity, including, without limitation, any body or entity created by an interstate, cooperative, joint or interlocal agreement or compact." NRS 218F.720(6)(b).

Therefore, under the express provisions of this more specific and more recently enacted statute, in any action or proceeding before any court of this State, which includes, without limitation, any action or proceeding before the district court under the Public Records Law, neither the Legislature nor any agency, member, officer or employee of the Legislature, the Legislative Counsel Bureau or the Legislative Department may be assessed or held liable for: (1) any filing or other court or agency fees; or (2) the attorney's fees or any other fees, costs or expenses of any other parties.

DISCUSSION

A. Your request must be denied because the Public Records Law does not impose any legal duties upon a candidate for public office who is required to file a C&E report under the Campaign Practices Act, regardless of whether the candidate is also an incumbent public officer. Instead, because the Legislature has invested the Secretary of State with primary agency jurisdiction to administer and enforce the Campaign Practices Act and investigate any candidate who is required to file a C&E report, any relief under the Campaign Practices Act first requires resort to and exhaustion of the administrative process in the Campaign Practices Act.

You have submitted your request under the Public Records Law in NRS Chapter 239. However, you are asking for information that you contend qualifies as a public book or record under the Campaign Practices Act in NRS Chapter 294A. Because your request involves the interpretation and application of statutes in both the Public Records Law and the Campaign Practices Act, we must interpret and apply those statutes by considering several well-established rules of statutory construction followed by Nevada's courts.

As a general rule of statutory construction, it is presumed that the Legislature enacted each statute with full knowledge of all other statutes relating to the same subject. City of Boulder City v. Gen. Sales Drivers, 101 Nev. 117, 118-19 (1985). It also is presumed that the Legislature intended for each statute to be read as part of a larger statutory scheme. State Indus. Ins. Sys. v. Bokelman, 113 Nev. 1116, 1123 (1997). Therefore, when the Legislature enacts multiple statutes which relate to the same subject, those statutes are considered to be *in pari materia*, and courts will strive to interpret the statutes in harmony with each other so as to render the statutes compatible whenever possible. State v. State Farm Mut. Auto. Ins. Co., 116 Nev. 290, 294-95 (2000); State v. Rosenthal, 93 Nev. 36, 45 (1977).

When harmonizing statutes, the governing rule is that a statute which applies specifically to a given situation takes precedence over a statute which applies only generally. Nev. Power Co. v. Haggerty, 115 Nev. 353, 364 (1999); Sierra Life Ins. Co. v. Rottman, 95 Nev. 654, 656 (1979). If statutes cannot be harmonized because they are in irreconcilable conflict, the governing rule is that the statute enacted later in time prevails. State ex rel. Herr v. Laxalt, 84 Nev. 382, 385 (1968) ("[I]n construing irreconcilable statutes the later in time prevails."). The reason for this rule is that the more recently enacted statute "is the latest expression by the legislature on the subject, and has superseded any inconsistent provisions of prior legislative enactments." Lamb v. Mirin, 90 Nev. 329, 333 (1974).

Because statutes in both the Public Records Law and the Campaign Practices Act involve the disclosure of information to the public, those statutes relate to the same subject and must be read together as part of a larger statutory scheme, and they must be interpreted in harmony with each other so as to render the statutes compatible whenever possible. However, to the extent there is any conflict between the statutes that cannot be harmonized, the more

specific and more recently enacted provisions of the Campaign Practices Act take precedence and prevail over the general provisions of the Public Records Law.

The Campaign Practices Act imposes a legal duty to file a C&E report upon every "candidate" or "candidate for office." NRS 294A.120, 294A.125 & 294A.200. The term "candidate" is defined in the Campaign Practices Act, but the statutory definition does not include or refer to an incumbent public officer. NRS 294A.005. Therefore, by its plain language, the Campaign Practices Act applies to a person in his or her capacity as a "candidate" or "candidate for office" as specifically defined in the Campaign Practices Act. The Campaign Practices Act does not apply to a person in his or her capacity as an incumbent public officer, which is consistent with the fact that not all candidates for public office are also incumbent public officers. Thus, it must be presumed that by using the term "candidate" or "candidate for office" throughout the Campaign Practices Act, the Legislature intended to have the Campaign Practices Act apply to a person in his or her capacity as a candidate for public office, regardless of whether the person is also an incumbent public officer. Consequently, to the extent that the Campaign Practices Act requires a person to disclose information on a C&E report, the person files the C&E report in his or her capacity as a candidate for public office, regardless of whether the person is also an incumbent public officer.

Because the Campaign Practices Act applies to a person in his or her capacity as a candidate for public office, the next issue is whether the Public Records Law imposes any legal duties upon a candidate for public office who is required to file a C&E report under the Campaign Practices Act. The Public Records Law contains a general rule governing the disclosure of public books and records by a "governmental entity." NRS 239.010(1). The Public Records Law provides in relevant part that:

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

NRS 239.010(1) (emphasis added).

Under the Public Records Law, the legal duty to disclose a public book or record is imposed upon the "governmental entity" that has legal custody or control of the public book or record. NRS 239.010, 239.0107, 239.0113 & 239.0115. The term "governmental entity" is defined in the Public Records Law, but the statutory definition does not include or refer to a candidate for public office who is required to file a C&E report under the Campaign Practices Act. NRS 239.005(5). Therefore, because the statutory definition of the term "governmental entity" in the Public Records Law does not include or refer to a candidate for public office, the Public Records Law, by its plain language, does not impose any legal duties upon a

candidate for public office who is required to file a C&E report under the Campaign Practices Act, regardless of whether the candidate is also an incumbent public officer.

As discussed previously, the Campaign Practices Act imposes a legal duty to file a C&E report upon every "candidate" or "candidate for office." NRS 294A.120, 294A.125 & 294A.200. However, after the candidate files a C&E report, the candidate does not have legal custody or control of the C&E report, and the candidate does not have any legal duty under the Campaign Practices Act to disclose any information relating to the C&E report to the public. Instead, the Secretary of State has legal custody or control of the C&E report, and the Secretary of State has a legal duty under the Campaign Practices Act to disclose any information relating to the C&E report to the public. NRS 294A.380-294A.420.

Therefore, because the Secretary of State has legal custody or control of a candidate's C&E report, it is the Secretary of State who has a legal duty to disclose any information relating to the candidate's C&E report to the public, and it is the Secretary of State who has the legal authority to administer and enforce the Campaign Practices Act and investigate any candidate who is required to file a C&E report. Moreover, because the Legislature has invested the Secretary of State with primary agency jurisdiction to administer and enforce the Campaign Practices Act, any relief under the Campaign Practices Act first requires resort to and exhaustion of the administrative process in the Campaign Practices Act. NRS 293.124 & 294A.380-294A.420; NAC 293.025 & 294A.120.

Under the doctrine of primary agency jurisdiction, when the Legislature has given an administrative agency primary jurisdiction to administer and enforce a statutory scheme, courts generally refrain from exercising their jurisdiction "whenever enforcement of the claim requires the resolution of issues which, under [the] regulatory scheme, have been placed within the special competence of an administrative body." Nev. Power Co. v. Dist. Court, 120 Nev. 948, 962 (2004) (quoting United States v. W. Pac. R. Co., 352 U.S. 59, 63-64 (1956)). The doctrine of primary agency jurisdiction advances two important policies: "(1) the desire for uniformity of regulation and, (2) the need for an initial consideration by a tribunal with specialized knowledge." Sports Form, Inc. v. Leroy's Horse & Sports Place, 108 Nev. 37, 41 (1992) (quoting Kappelmann v. Delta Air Lines, 539 F.2d 165, 169 (1st Cir. 1976)). Thus, when the Legislature invests an administrative agency with primary jurisdiction to administer and enforce a statutory scheme, courts ordinarily "refrain from exercising jurisdiction so that technical issues can first be determined by [the] administrative agency." Sports Form, 108 Nev. at 41.

Similarly, under the doctrine of exhaustion of administrative remedies, when the Legislature establishes an administrative process for administering and enforcing a statutory scheme, a person ordinarily must first resort to that process and exhaust all administrative remedies under that process before the person may pursue any other type of relief. Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571-72 (2007). Like the doctrine of primary agency jurisdiction, the doctrine of exhaustion of administrative remedies assists an administrative

agency in achieving more efficient and effective statutory administration and enforcement because it prevents a person from bypassing the administrative process, which thereby allows the agency to use that process to ensure uniformity of regulation and utilize its specialized knowledge in administering and enforcing the statutory scheme. Id. at 572 ("We have previously stressed the importance of state agencies' exclusive original jurisdiction over legislatively created administrative and regulatory schemes."). In addition, "[t]he exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes without the need for judicial involvement." Id. at 571-72; State v. Glusman, 98 Nev. 412, 419 (1982) ("The exhaustion doctrine is a salutary one which often fully and finally resolves disputes without need for litigation.").

Because the Secretary of State is invested with primary agency jurisdiction to administer and enforce the Campaign Practices Act, any relief under the Campaign Practices Act first requires resort to and exhaustion of its administrative process. NRS 293.124 & 294A.380-294A.420; NAC 293.025 & 294A.120. Under the administrative process in the Campaign Practices Act, a candidate for public office has a legal duty to respond to certain inquiries and requests made by the Secretary of State regarding a C&E report filed by the candidate. Id. However, the candidate does not have any legal duty to respond to inquiries or requests made under the Public Records Law because, by its plain language, the Public Records Law does not impose any legal duties upon a candidate for public office who is required to file a C&E report under the Campaign Practices Act, regardless of whether the candidate is also an incumbent public officer.

Accordingly, based on the plain language of the Public Records Law and the Campaign Practices Act, your request must be denied because the Public Records Law does not impose any legal duties upon a candidate for public office who is required to file a C&E report under the Campaign Practices Act, regardless of whether the candidate is also an incumbent public officer. Instead, because the Legislature has invested the Secretary of State with primary agency jurisdiction to administer and enforce the Campaign Practices Act and investigate any candidate who is required to file a C&E report, any relief under the Campaign Practices Act first requires resort to and exhaustion of the administrative process in the Campaign Practices Act.

B. Even assuming, for the sake of argument, that the Public Records Law imposes legal duties upon an incumbent public officer who files a C&E report as a candidate under the Campaign Practices Act, your request still must be denied because the information you are requesting is not required by statute to be disclosed on a C&E report under the Campaign Practices Act and, therefore, the requested information is not a public book or record subject to the Public Records Law.

For the purposes of this legal discussion only, we will assume, for the sake of argument, that the Public Records Law imposes legal duties upon an incumbent public officer who files

a C&E report as a candidate under the Campaign Practices Act. However, even when indulging in such an assumption, your request still must be denied because the information you are requesting is not required to be disclosed on a candidate's C&E report under the Campaign Practices Act and, therefore, the requested information is not a public book or record subject to the Public Records Law.

The Public Records Law applies only to *public* books and records. NRS 239.010(1); City of Reno v. Reno-Gazette-Journal, 119 Nev. 55, 60 (2003) (stating that "[t]his statute plainly provides that *public* records must be available for inspection") (emphasis added)). When a document or other information is in the possession of a public official, it does not become a *public* book or record "simply because the individual is an elected official." Cowles Pub. Co. v. Murphy, 637 P.2d 966, 968 (Wash. 1981) (rejecting the theory that "every document either prepared or handled by someone in a governmental capacity is within the public domain. If the term public record is to mean anything it must be more than who handles it."). As explained by the Washington Supreme Court, "[f]irst, we reject the notion that documents are public or private simply because the person who handles them is or is not a public servant (or government employee) . . . Similarly, we reject the idea that just because these officials collectively act upon a document, it becomes public." Id. Thus, the mere fact that a document or other information is in the possession of a public official does not, by itself, make the document or other information a *public* book or record.

Nevada's Public Records Law does not define the terms "public books and public records." See NRS 239.005 (defining various terms for the Public Records Law). Because those terms are not statutorily defined, they must be given their "plain meaning unless the language is ambiguous." Rogers v. Heller, 117 Nev. 169, 176 (2001). To determine the plain meaning of statutory language, courts often look to dictionary definitions because those definitions reflect the ordinary meanings that are commonly ascribed to words and terms. See Kay v. Ehrler, 499 U.S. 432, 436 n.6 (1991); Cunningham v. State, 109 Nev. 569, 571 (1993).

As ordinarily defined, a "public book" means "any of the records (as the daybook, cashbook, salesbook, journal, ledger) in which a systematic record of business transactions may be kept." Webster's Third New International Dictionary 252 (1993). A "public book" is typically the government's equivalent of an "account book" or "shop book" that is maintained in the usual course of business in which business transactions are entered and recorded. Black's Law Dictionary 19 & 1384 (7th ed. 1999) (defining "account book" and "shop book").

As ordinarily defined, a "public record" means: (1) "a record required by law to be made and kept"; (2) "a record made by a public officer in the course of his legal duty to make it"; or (3) "a record filed in a public office and open to public inspection." Webster's Third New International Dictionary 1836 (1993). Similar definitions have been adopted by courts in other states. See, e.g., Keddie v. Rutgers; 689 A.2d 702, 709 (N.J. 1997) (discussing the common-law definition of a "public record" which is "one that is made by a public official in

the exercise of his or her public function, either because the record was required or directed by law to be made or kept, or because it was filed in a public office"); Carlson v. Pima County, 687 P.2d 1242, 1244 (Ariz. 1984); McMahan v. Bd. of Trustees, 499 S.W.2d 56, 58 (Ark. 1973). The Arkansas Supreme Court has explained how this ordinary dictionary definition works in the context of a public records law:

> It is at once apparent from even a cursory reading of [the Act] that the records which the General Assembly had in mind are those mentioned in the italicized phrase "which by law are required to be kept and maintained." The Freedom of Information Act *does not itself provide that any particular records shall be kept*; it only provides that records which are required by some statute (other than the Freedom of Information Act) to be made and kept, shall be open to public inspection. There is no semblance of ambiguity in this provision and whether the statute be construed narrowly or broadly, the italicized phrase can only mean one thing, viz., that the Freedom of Information Act, as far as inspection of records is concerned, applies only to those records which *by statute are required to be kept and maintained.*

McMahan, 499 S.W.2d at 58 (emphasis added).

Thus, as a general rule of law, a document or other information does not become a public book or record simply because it is in the possession of a public official. Rather, to qualify as a public book or record, there must be a statute which requires or directs, as a matter of law, that the document or other information must be made, kept or maintained by a public official or filed in a public office. Accordingly, to determine whether a document or other information qualifies as a public book or record, it is necessary to examine the relevant statutes to ascertain whether they require or direct, as a matter of law, that the document or other information must be made, kept or maintained by a public official or filed in a public office.

With regard to your request, you are asking for information that you contend qualifies as a public book or record under the Campaign Practices Act. Therefore, to determine whether the requested information is a public book or record subject to the Public Records Law, we must examine the relevant statutes in the Campaign Practices Act to ascertain whether they require or direct, as a matter of law, that the requested information must be made, kept or maintained by a public official or filed in a public office. In conducting this examination of the relevant statutes in the Campaign Practices Act, we must consider several well-established rules of statutory construction followed by Nevada's courts.

As a general rule of statutory construction, courts presume that the plain meaning of statutory language reflects a full and complete statement of the Legislature's intent. Villanueva v. State, 117 Nev. 664, 669 (2001). Therefore, when the plain meaning of statutory language is clear and unambiguous on its face, courts generally will apply the plain

meaning of the statutory language as written and will not search for any other meaning beyond the language of the statute itself. Erwin v. State, 111 Nev. 1535, 1538-39 (1995). This is especially true when the plain meaning of the statutory language is supported by the legislative history of the statute. See, e.g., Gaines v. State, 116 Nev. 359, 366-67 (2000). Under such circumstances, courts will be reluctant to interpret the statutory language in a manner that is contrary to its plain meaning and the legislative history of the statute. Id.

In addition, as a general rule of statutory construction, where one possible interpretation of a statute would raise serious constitutional concerns, courts will generally reject that interpretation if it is fairly possible for the courts to construe the statute in an alternative manner that avoids the constitutional issues. See Sheriff v. Wu, 101 Nev. 687, 689-90 (1985) ("Where a statute may be given conflicting interpretations, one rendering it constitutional, and the other unconstitutional, the constitutional interpretation is favored."); Bell v. Anderson, 109 Nev. 363, 366 (1993) ("Where a statute is susceptible to more than one interpretation, this court will interpret the statute so that it complies with constitutional standards."); Standard Oil Co. v. Pastorino, 94 Nev. 291, 293 (1978) ("We will not so broadly construe the statute to reach an unconstitutional result.").

The United States Supreme Court has recognized that statutes mandating compelled disclosures relating to campaign practices, including compelled disclosures of campaign contributions and expenditures, raise constitutional concerns because such "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Buckley v. Valeo, 424 U.S. 1, 64 (1976); McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 344-57 (1995); Buckley v. Am. Const. Law Found., 525 U.S. 182, 197-204 (1999). The protection against compelled disclosure is necessary to protect "the vital relationship between freedom to associate and privacy in one's associations." NAACP v. Alabama, 357 U.S. 449, 462 (1958); Shelton v. Tucker, 364 U.S. 479, 485-86 (1960) ("[T]o compel a teacher to disclose his every associational tie is to impair that teacher's right of free association, a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.").

In addition to being secured by the Federal Constitution, these constitutional rights to free speech and associational privacy are also guaranteed by Article 1, Sections 9 and 10 of the Nevada Constitution. See Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 722 (2004). Because Nevada's constitutional provisions provide free speech and associational privacy rights equivalent to the First Amendment, the same legal standards apply to the state and federal constitutional provisions. Id.

To protect a person's free speech and associational privacy rights, the United States Supreme Court generally has "refused to countenance compelled disclosure of a person's political associations." NAACP v. Button, 371 U.S. 415, 431 (1963); NAACP v. Alabama, 357 U.S. at 462-63. Because compelled disclosure can severely burden First Amendment

rights, the Court has subjected such disclosure requirements to "exacting scrutiny." Buckley v. Valeo, 424 U.S. at 64. As explained by the Court:

> We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since NAACP v. Alabama we have required that the subordinating interests of the State must survive exacting scrutiny. We also have insisted that there be a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed. . . . The strict test established by NAACP v. Alabama is necessary because compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights.

Id. at 64-66 (footnotes omitted); Citizens United v. FEC, 558 U.S. 310, 366-67 (2010); John Doe No. 1 v. Reed, 561 U.S. 186, 196 (2010).

Under the "exacting scrutiny" test, the Court has upheld narrowly crafted laws that expressly establish reporting requirements mandating certain compelled disclosures relating to campaign contributions, including compelled disclosure of the identity of certain contributors. See Buckley v. Valeo, 424 U.S. at 60-72. The Court also has upheld the use of Washington's public records law to compel the disclosure of the names and addresses of voters who signed a referendum petition that was submitted to a state officer for signature verification. John Doe No. 1, 561 U.S. at 194-202. The Court found that these laws were valid because they mandated only limited and carefully circumscribed disclosures that were substantially related to the important interest of preserving the integrity of the electoral process. Id.

By contrast, the Court has invalidated laws with broad disclosure requirements whose reach has the potential to chill, impede or violate an individual's free speech and associational privacy rights in the political process. See Buckley v. Am. Const. Law Found., 525 U.S. at 197-204; McIntyre, 514 U.S. at 344-57. Under such circumstances, the government's interest in disclosure is not strong enough to justify the severe burden on each individual's free speech and associational rights. Id.

Under Nevada law, the Legislature has enacted narrowly crafted statutes in the Campaign Practices Act that expressly establish reporting requirements mandating certain compelled disclosures of campaign contributions and expenses. By enacting narrowly crafted statutes that apply specifically to campaign contributions and expenses, it must be presumed that the Legislature did not intend for more general laws, such as the Public Records Law, to impose any broader disclosure requirements regarding campaign contributions and expenses than those imposed by the Campaign Practices Act. Furthermore, it must be presumed that the Legislature did not intend for the Public Records Law to be interpreted as having an unconstitutional reach with the potential to chill, impede or violate an individual's free speech and associational privacy rights in the political process. Accordingly, in order to avoid an

unconstitutional interpretation or result, the Public Records Law cannot be construed to reach information relating to campaign contributions and expenses that is not required to be disclosed by the Campaign Practices Act.

Under the Campaign Practices Act, the provisions of NRS 294A.365 require a candidate to disclose on a C&E report the following information relating to each campaign expense in excess of $100 incurred during the reporting period:

> 1. * * * Each [C&E] report required pursuant to NRS 294A.125 and 294A.200 must consist of a list of each campaign expense in excess of $100 that was incurred during the periods for reporting. *The list in each report must state the category and amount of the campaign expense or expenditure and the date on which the campaign expense was incurred or the expenditure was made.*
>
> 2. The categories of campaign expense or expenditure for use on the report of campaign expenses or expenditures are:
>
> (a) Office expenses;
> (b) Expenses related to volunteers;
> (c) Expenses related to travel;
> (d) Expenses related to advertising;
> (e) Expenses related to paid staff;
> (f) Expenses related to consultants;
> (g) Expenses related to polling;
> (h) Expenses related to special events;
> (i) Expenses related to a legal defense fund;
> (j) Except as otherwise provided in NRS 294A.362, goods and services provided in kind for which money would otherwise have been paid;
> (k) Contributions made to another candidate, a nonprofit corporation that is registered or required to be registered pursuant to NRS 294A.225, a committee for political action that is registered or required to be registered pursuant to NRS 294A.230 or a committee for the recall of a public officer that is registered or required to be registered pursuant to NRS 294A.250;
> (l) Fees for filing declarations of candidacy or acceptances of candidacy;
> (m) Repayments or forgiveness of loans;
> (n) The disposal of unspent contributions pursuant to NRS 294A.160; and
> (o) Other miscellaneous expenses.

NRS 294A.365 (emphasis added).[2]

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[2] Under the Campaign Practices Act, the Secretary of State cannot request or require a candidate to list on a C&E report campaign expenses of $100 or less incurred during the reporting period. NRS 294A.382. However, the Campaign Practices Act requires a candidate to disclose the aggregate total of all campaign expenses of $100 or less incurred during the reporting period. NRS 294A.200.

Thus, based upon the plain language of NRS 294A.365, for each campaign expense in excess of $100, the C&E report must state: (1) the category of the campaign expense; (2) the amount of the campaign expense; and (3) the date on which the campaign expense was incurred. The Campaign Practices Act does not require a candidate to disclose or provide to the Secretary of State or the public any other information, documentation or itemization relating to the campaign expense. Thus, the plain language of the Campaign Practices Act does not require a candidate to disclose or provide to the Secretary of State or the public any receipts, billing statements or other information, documentation or itemization relating to the campaign expense.

This interpretation of the plain language of the Campaign Practices Act is supported by the legislative history of NRS 294A.365, which was enacted during the 1999 Legislative Session in Assembly Bill No. 130 (A.B. 130), 1999 Nev. Stat., ch. 497, § 1, at 2552. When the Legislature enacted NRS 294A.365, it wanted a candidate to disclose only general information regarding the category, amount and date of the campaign expense, but it did not want the candidate to disclose specific details regarding the campaign expense out of respect for the constitutional rights of free speech and associational privacy protected by the First Amendment. See Hearing on A.B. 130 before Senate Comm. on Gov't Affairs, 70th Leg., at 49-57 (Nev. May 14, 1999); Hearing on A.B. 130 before Senate Comm. on Gov't Affairs, 70th Leg., at 35-39 (Nev. May 19, 1999). As explained during the legislative committee hearings on A.B. 130 in 1999:

> Senator Titus explained she and Senator O'Donnell were considering how to list expenditures. She elaborated "every single check" and "every single person's name" should not have to be listed. She suggested she and Senator O'Donnell were trying to figure out a way to simply list the amount spent, along with a general category for the expenditure.
>
> Senator O'Donnell added privacy should be respected during political campaigns. He asserted, "A lot of people fear getting involved in campaigns, and we don't want to chill the process by exposing names on checks and that sort of thing."
>
> Senator Titus offered the example of a person who is hired to work on a campaign. Senator Titus maintained the candidate might not want to list that person's salary by name, but might prefer to list the salary in a category such as "personnel costs." Senator Titus concluded, "We were trying to figure out how to write that so it's not a list of every expenditure, but a categorization of them."

Hearing on A.B. 130 before Senate Comm. on Gov't Affairs, 70th Leg., at 35-36 (Nev. May 19, 1999).

Thus, both the plain language and legislative history of NRS 294A.365 support the conclusion that the Campaign Practices Act requires a candidate to disclose the category, amount and date of the campaign expense but does not require a candidate to disclose any other information, documentation or itemization relating to the campaign expense. This conclusion is also supported by the plain language and legislative history of other statutory provisions in the Campaign Practices Act.

During the 2003 Legislative Session, the Legislature enacted NRS 294A.373 in Assembly Bill No. 529 (A.B. 529), 2003 Nev. Stat., ch. 476, § 1, at 2995. Under NRS 294A.373, each C&E report "must be completed on the form designed and made available by the Secretary of State pursuant to this section," and "[t]he forms designed by the Secretary of State pursuant to this section *must only request information specifically required by statute*." NRS 294A.373 (emphasis added). According to the legislative history of NRS 294A.373, the Legislature added the statute to the Campaign Practices Act so that when a candidate files a C&E report, "the Secretary of State may not ask for any additional information than what is laid down here" by statute in the Campaign Practices Act. Hearing on A.B. 529 before Assembly Comm. on Elections, Procedures & Ethics, 72d Leg., at 42 (Nev. Apr. 10, 2003) (statement of Assemblyman Beers).

During the legislative committee hearings on A.B. 529 in 2003, the Legislature acknowledged that the Campaign Practices Act does not require a candidate to disclose additional information, documentation or itemization relating to campaign expenses, even when campaign expenses are paid by credit card. Hearing on A.B. 529 before Senate Comm. on Gov't Affairs, 72d Leg., at 47 (Nev. May 7, 2003) (statement of Assemblyman Beers). As explained by Assemblyman Beers in his testimony:

> Although we did not incorporate it into this package, under the Federal Election Commission regulations for federal campaign reporting, for example, if you were to use a credit card for a campaign expense, you then turn around and write a check to American Express. Ordinarily, that does not tell anybody what you did with the money. The federal requirements have a line with American Express listing address, the date and amount of disbursement, and then below that, a memo entry to delineate what vendors American Express turned around and paid with your money. So, there is more complete disclosure, but it is also more onerous.
>
> I do not know how widely used credit cards are in our campaigns, it might be something we want to look over. Having been involved in the development and improvement of our forms, we are seeking to get to a walking pace here first, and then we can run.

Id.

Thus, based on the plain language and legislative history of the Campaign Practices Act, when a candidate files a C&E report, the candidate is required by statute to disclose the category, amount and date of each campaign expense in excess of $100. NRS 294A.365. However, the candidate is not required to disclose any other information, documentation or itemization relating to the campaign expense—such as receipts or billing statements—even if the campaign expense is paid by credit card because the C&E report "must only request information specifically required by statute." NRS 294A.373.

In your request, you ask for the following information: (1) all receipts for campaign expenses paid directly to Paul Anderson totaling $5,147.77; (2) copies of all monthly credit card billing statements for the Visa Black Card with payments totaling $17,905.84; (3) copies of all monthly credit card billing statements for the Capital One Card with payments totaling $23,181.50; and (4) a list of points rewards for both credit cards listed herein paid with campaign funds and records of what was purchased with the points acquired. However, under the Campaign Practices Act, a candidate is not required by statute to disclose the information you are requesting on the candidate's C&E report. Therefore, even assuming, for the sake of argument, that the Public Records Law imposes legal duties upon an incumbent public officer who is required to file a C&E report under the Campaign Practices Act, your request still must be denied because the information you are requesting is not required by statute to be disclosed on a C&E report under the Campaign Practices Act and, therefore, the requested information is not a public book or record subject to the Public Records Law.

C. The Public Records Law does not apply to the requested information under the common-law balancing of private and public interests given that the interests in privacy and nondisclosure clearly outweigh any countervailing interests in public access.

In applying the Public Records Law, the Nevada Supreme Court has recognized common-law limitations that justify nondisclosure of information based on a broad balancing of the private and public interests involved. Donrey of Nev. v. Bradshaw, 106 Nev. 630, 635 (1990); DR Partners v. Bd. of County Comm'rs; 116 Nev. 616, 622 (2000). Under the common-law balancing-of-interests test, the governmental entity bears the burden to prove that the interests in privacy and nondisclosure clearly outweigh the public's interests in access. Reno Newspapers v. Sheriff, 126 Nev. 211, 214-15 (2010).

As discussed previously, statutes compelling disclosure of campaign contributions and expenses implicate constitutional privacy interests because such "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Buckley v. Valeo, 424 U.S. 1, 64 (1976); McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 344-57 (1995); Buckley v. Am. Const. Law Found., 525 U.S. 182, 197-204 (1999). Therefore, as a matter of public policy, such compelled disclosure is disfavored under the First Amendment in order to protect "the vital relationship between freedom to associate and privacy in one's associations." NAACP v. Alabama, 357 U.S. 449, 462 (1958); Shelton v. Tucker, 364 U.S. 479, 485-86 (1960) ("[T]o compel a teacher to

disclose his every associational tie is to impair that teacher's right of free association, a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.").

In addition under Nevada law, the Legislature has enacted narrowly crafted statutes in the Campaign Practices Act that expressly establish reporting requirements mandating certain compelled disclosures of campaign contributions and expenses. By enacting narrowly crafted statutes that apply specifically to campaign contributions and expenses, it must be presumed that the Legislature did not intend for more general laws, such as the Public Records Law, to impose any broader disclosure requirements regarding campaign contributions and expenses than those imposed by the Campaign Practices Act. Furthermore, it must be presumed that the Legislature did not intend for the Public Records Law to be interpreted as having an unconstitutional reach with the potential to chill, impede or violate an individual's free speech and associational privacy rights in the political process. Accordingly, in order to avoid an unconstitutional interpretation or result, the Public Records Law cannot be construed to reach information relating to campaign contributions and expenses that is not required to be disclosed by the Campaign Practices Act.

In sum, because any compelled disclosures relating to campaign contributions and expenses implicate constitutional privacy interests and are disfavored under the First Amendment, an individual's constitutional interests in free speech and associational privacy and nondisclosure are so substantial that they clearly outweigh any countervailing interests in public access. Additionally, by enacting narrowly crafted statutes that apply specifically to campaign contributions and expenses, the Legislature established as the public policy of this State that general disclosure laws, such as the Public Records Law, do not impose any broader disclosure requirements regarding campaign contributions and expenses than those imposed by the Campaign Practices Act. Therefore, based on well-established constitutional privacy interests and the public policy of this State, your request must be denied under the common-law balancing of private and public interests because the interests in privacy and nondisclosure clearly outweigh the public's interests in access.

RESERVATION OF RIGHTS

The purpose of this written response is to provide you with an overview of the reasons why your request is being denied along with citations to the specific constitutional provisions, statutes and other legal authority that support those reasons. However, this written response is not a legal pleading, legal brief, motion or other document under the Nevada Rules of Civil Procedure or the Nevada Revised Statutes. Therefore, in providing you with this response, the LCB Legal Division: (1) is not required by rule or law to use this response to claim or raise every possible argument, objection or defense, in law or fact, to your request; (2) does not waive or abandon any argument, objection or defense, in law or fact, to your request, regardless of whether it is claimed or raised herein; and (3) reserves the right to claim or raise

any argument, objection or defense, in law or fact, to your request in any action or proceeding before any court, agency or officer of this State or any other jurisdiction.

CONCLUSION

Based on the well-established provisions and principles of constitutional, statutory and common law discussed in this letter, your request is respectfully denied to the extent explained herein.

Sincerely,

Brenda J. Erdoes
Legislative Counsel

By_____
Kevin C. Powers
Chief Litigation Counsel

KCP:dtm
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