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CASE NO: A-21-841916-W
Department 19

6 **EIGHTH JUDICIAL DISTRICT COURT**

7 **STATE OF NEVADA, COUNTY OF CLARK**

8 360 NEWS LAS VEGAS, a Colorado
9 Corporation; and ROBERT LAUER, an
10 individual,

11 Petitioners,

12 v.

13 STATE OF NEVADA,

14 Respondent.

CASE NO:

DEPT NO:

**PUBLIC RECORDS ACT APPLICATION
PURSUANT TO NRS § 239.001/
PETITION FOR WRIT OF MANDAMUS**

**EXPEDITED MATTER PURSUANT TO
NEV. REV. STAT. § 239.011**

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16 Petitioners, 360 NEWS LAS VEGAS and ROBERT LAUER by and through their counsel,
17 Adam J. Breeden, Esq. of BREEDEN & ASSOCIATES, PLLC, hereby bring this Public Records
18 Act Application/Petition for Writ of Mandamus for declaratory and injunctive relief and seek an
19 order requiring the State of Nevada by and through the Nevada Secretary of State to provide
20 Petitioners access to public records pursuant to Nevada’s Public Records Act (the “NPR,” Nev.
21 Rev. Stat. § 239.001 *et seq.*), specifically Nev. Rev. Stat. § 239.011. Petitioners also request an
22 award for all fees and costs associated with their efforts to obtain withheld public records as provided
23 for by Nev. Rev. Stat. § 239.011(2). Further, Petitioners respectfully request that this matter be
24 expedited pursuant to Nev. Rev. Stat § 239.011(2).

25 **PARTIES AND VENUE**

26 1. Petitioner, 360 NEWS LAS VEGAS (hereinafter referred to as “Petitioner”) is a
27 Colorado corporation and was at all times relevant to this Complaint.

28 2. Petitioner, ROBERT LAUER is a resident of the State of Nevada, and was at all

1 times relevant to this Complaint.

2 3. 360 NEWS LAS VEGAS is a political news organization. LAUER is a political
3 reporter and operator of 360 NEWS LAS VEGAS.

4 4. Defendant, STATE OF NEVADA is subject to the Nevada State Public Records Act
5 pursuant to Nev. Rev. Stat. § 239.005(5)(b). It is the custodian of certain public records at issue in
6 this Petition, by and through the NEVADA SECRETARY OF STATE and her office.

7 5. Venue is proper in the Fourth Judicial District Court of Nevada as the State may be
8 sued in any District and the records at issue are not held in any particular county.

9 6. Subject matter jurisdiction on this public records act application is proper under NRS
10 § 239.011, specifically authorizing the District Courts to hear said applications.

11 7. Personal jurisdiction exists as the Respondent is a government actor of the state of
12 Nevada or its political subdivisions.

13 **NATURE OF ACTION**

14 8. Petitioners bring this application for relief pursuant to NRS § 239.011. *See also Reno*
15 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, 266 P.3d 623, 630, n.4 (2011).

16 9. Prior to July of 2021, Petitioners—a political news organization and reporter—
17 learned of efforts of various states to remove, review, flag or censor certain social media posts
18 concerning elections via Facebook and Twitter as disinformation or untrue.

19 10. The State of Nevada, through the office of the Secretary of State which is the office
20 tasked to conduct elections in the state, has an Office of Election Cybersecurity or similar office or
21 staff which, on information and belief, has the capability to request that Facebook and Twitter
22 remove, review, flag or censor certain posts concerning elections or other topics.

23 11. On or about July 7, 2021, Petitioners submitted a formal Nevada Open Records Act
24 request (attached as Exhibit 1) to the public information officer of the Nevada Secretary of State,
25 seeking the following public records:

26 a) a list of each social media post you flagged and or requested Facebook and
27 or Twitter to remove or review since using either your staff and or the election
28 cyber security office and or agency;

- 1 b) a screen shot and date of each post;
- 2 c) any and internal and external communications related to such posts your
- 3 office and or the election cyber security office and or agency flagged and or
- 4 requested Facebook and or Twitter to remove or review.
- 5 d) a list of staff operating the Nevada Office of Election Cybersecurity since its
- 6 conception.

7 12. The Nevada Public Records Act contains no exception or exemption for the

8 requested public records.

9 13. The Nevada Public Records Act at NRS § 239.0107 states that the government

10 agency, in this case the Nevada Secretary of State, must respond to the request by the end of the *fifth*

11 *business day* after receipt of any written or oral request for records.

12 14. The State did not respond to the valid request at all, even to confirm receipt.

13 15. Thereafter, Petitioners wrote again on July 12, 2021, asking the State to

14 “acknowledge receipt and provide a date for compliance” to which the State again completely failed

15 to respond.

16 16. Petitioners have made further inquires since, and again the State fails to respond.

17 17. Petitioners’ application to this court is the proper means to secure the State of Nevada

18 and Nevada Secretary of State’s compliance with the Nevada Public Records Act. *Reno*

19 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, 266 P.3d 623, 630, n.4 (2011).; *see also DR*

20 *Partners v. Bd. Of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing

21 *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)) (a writ of mandamus is the

22 appropriate procedural remedy to compel compliance with the NPRA).

23 18. Petitioners are entitled to an expedited hearing on this matter pursuant to Nev. Rev.

24 Stat. § 239.011(2), which mandates that “the court shall give this matter priority over other civil

25 matters to which priority is not given by other statutes.”

26 **CLAIM FOR RELIEF**

27 19. Petitioners reallege and incorporate by reference each and every allegation contained

28 in Paragraphs 1-18 as if fully set forth herein.

1 20. The Nevada Public Records Act (NPRA) reflects those records of governmental
2 entities belong to the public in Nevada. NRS § 239.010(1) mandates that, unless a record is
3 confidential, “all public books and public records of a governmental entity must be open at all times
4 during office hours to inspection by any person, and may be fully copied...” The NPRA reflects
5 specific legislative findings and declarations that “[its] purpose is to foster democratic principles by
6 providing members of the public with access to inspect and copy public books and records to the
7 extent permitted by law” and that its provisions “must be construed liberally to carry out this
8 important purpose.: Nev. Rev. Stat. § 239.001(1) and (2).

9 21. Petitioner is entitled to and should be provided with the unredacted, complete records
10 he has requested pursuant to the NPRA. There is no compelling state interest to redact or keep
11 private these records. In fact, any censorship or violations of the First Amendment and Nevada Bill
12 of Rights by the State would be highly newsworthy and should be subject to inspection and scrutiny.

13 22. Despite repeated requests, full disclosure of the records has been denied to the
14 Petitioners.

15 23. The records sought are subject to disclosure to the Petitioners and the public and
16 Respondents have not met their burden of establishing otherwise.

17 24. A writ of mandamus and order directing disclosure of said records is necessary to
18 compel Respondents’ compliance with the NPRA.

19 **WHEREFORE**, Petitioners pray for the following relief:

20 1. That the District Court issue an order and/or writ of mandamus directing the Nevada
21 Secretary of State to release all documents as listed above.

22 2. That the Court handle this matter in an expedited basis as mandated by NRS §
23 239.011;

24 3. Injunctive relief ordering the Nevada Secretary of State to immediately make
25 available complete copies of all records requested;

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- 4. Declaratory relief;
- 5. Reasonable costs and attorney's fees as allowed by NRS § 239.011; and
- 6. Any further relief the Court deems appropriate.

DATED this 30th day of September, 2021

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