

IN THE SUPREME COURT OF THE STATE OF NEVADA

AMERICAN CIVIL LIBERTIES
UNION OF NEVADA, a domestic non-
profit organization,

Appellant,

v.

CLARK COUNTY SCHOOL
DISTRICT, a public entity of the State
of Nevada,

Respondent/Cross-Appellant.

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CASE NO. 88680

**Appellant American Liberties Union of Nevada's Petition for En Banc
Reconsideration**

Appeal from Eighth Judicial District Court, Clark County
Case No. A-23-869216-W
Hon. Danielle Pieper, District Judge

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Introduction

This Court has said that when a law enforcement agency has cleared one of its own of all wrongdoing, “the public should not and, according to the NPRA does not, have to accept at face value [the agency’s] claims that its actions were lawful and legitimate.” *Las Vegas Review-Journal, Inc. v. Las Vegas Metro. Police Dep’t*, 139 Nev. 69, 85, 536 P.3d 724, 739 (2023). When a CCSD police officer attacked a juvenile in broad daylight outside a Las Vegas area high school and CCSD did nothing to discipline that officer, the ACLU sought records from CCSD’s investigation to determine whether CCSD completed a sham investigation. A Panel of this Court has now blocked that request, apparently requiring the public to accept at face value CCSD’s claims, because the Panel has inferred that NRS 289.080 exempts everything in CCSD’s “investigative file” from disclosure. *ACLU of Nev. v. Clark Cty. Sch. Dist.*, No. 88680, 2026 Nev. LEXIS 23, at * 8 (March 26, 2026).

This Court previously has stated in published opinions that it will only recognize a statutory exception to the NPRA “if the Legislature has expressly and unequivocally created an exemption or exception by statute [. . .]” *Reno Newspapers, Inc. v. Haley*, 126 Nev. Adv. Rep. 23, 234 P.3d 922, 924 (2010). The Court has also indicated that it will only determine the scope of an exception after it determines that a statute “clearly and unambiguously creates an exception to disclosure of a public record, and provides an affirmative grant of confidentiality [. . .]” *Clark Cty. Office*

of the Coroner/Medical Exam'r v. Las Vegas Review-Journal, 136 Nev. 44, 50, 458 P.3d 1048, 1054 (2020). (quotation excluded). Prior precedent also makes clear that an “affirmative grant of confidentiality” in one subsection does not extend to other provisions in the same statute. *Reno Newspapers, Inc. v. Haley*, 126 Nev. Adv. Rep. 23, 234 P.3d 922, 925 (2010) (finding an “affirmative grant of confidentiality” in only one subsection of the relevant statute and denying confidentiality to records referenced in the others).

NRS 289.080 describes the procedures a law enforcement agency must use if it investigates its officers for misconduct, and NRS 289.080(9) is the only section that talks about an investigative “file”. The Panel reads an exception to the NPRA in the final sentence of NRS 289.080(9), which says:

If the law enforcement agency recommends punitive action be imposed against the peace officer and the peace officer appeals the recommendation to impose punitive action, the peace officer or any representative of the peace officer may review and copy the entire file concerning the internal investigation, including, without limitation, any evidence, recordings, notes, transcripts of interviews and documents contained in the file.

This sentence says nothing about confidentiality, withholding documents, or public records. However, the Panel determined that this subsection exempts all records contained in an agency’s investigative file from disclosure under the NPRA if the agency does not seek punitive action. This determination was based not on the plain language of NRS 289.080 but rather the mistaken inference that an officer under

investigation may only access records in an investigative file if an agency seeks punitive action. As such, the Panel’s decision conflicts with this Court’s prior precedent in *Reno Newspaper, Inc.* and *Clark Cty. Office of the Coroner/Medical Exam’r* because it did not determine whether NRS 289.080(9) “clearly and unambiguously” created an exception and provided an “affirmative grant of confidentiality.” The Panel’s decision also ignored facts in the record showing that the officer under investigation, Jason Elfberg, could have or in fact had access to records in CCSD’s investigative file, including communications such as emails and warnings sent directly to him, recordings of his witness statement, and even his own personal statement. Finally, it raises substantial precedential and public policy concerns in that it blocks access to records this Court has previously stated the public has a significant interest in and creates an end run around the NPRA.

Relevant Factual and Procedural History

On February 9, 2024, a CCSD police officer, later identified as Officer Jason Elfberg, was recorded as he grabbed, threw down, and then pinned a student outside of Durango High School; the video went viral on social media. *ACLU of Nev. v. Clark Cty. Sch. Dist.*, No. 88680, 2026 Nev. LEXIS 23, at *2 (Mar. 26, 2026) ; see Joint Appendix, Vol. I, APP 019. The ACLU requested records related to the incident, and when CCSD refused to disclose those records, the ACLU filed a petition for writ

of mandamus. Joint Appendix, Vol. I, at APP 001–004, 016–030; Joint Appendix, Vol. II, at APP 005–008, 012–015. The district court granted the petition in part, ordering CCSD to disclose the body worn camera footage, incident report, citation, and dispatch log from the incident. Joint Appendix, Vol. II, APP 394–403. The district court, however, denied the petition as to all other outstanding records, finding that these documents were part of an investigative file exempted from disclosure pursuant to NRS 289.080(9). Joint Appendix, Vol. II, APP 402–403. The district court gave no other basis for denying the petition. *Id.* Among the documents that were not disclosed were emails sent from CCSD to Officer Elfberg, warnings issued to Officer Elfberg by CCSD, Elfberg’s recorded witness statement, and Elfberg’s personal statement. Joint Appendix, Vol. I, at APP 214, 219–221, 222, 227, 233 (CCSD Privilege Log).

The Panel’s decision affirmed the district court’s order in its entirety and on the same basis, finding that NRS 289.080(9) creates an exception to the NPRA for all records in CCSD’s investigative file. *ACLU of Nev. v. Clark Cty. Sch. Dist.*, No. 88680, 2026 Nev. LEXIS 23, at *6–7 (March 26, 2026) .

Argument

“En banc reconsideration of a decision of a Supreme Court panel is not favored and ordinarily will not be ordered except when: (1) reconsideration by the

full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the proceeding involves a substantial precedential, constitutional, or public policy issue.” NRAP 40A(a).

NRS 289.080 describes the procedures a law enforcement agency must use if it investigates its officers for misconduct. The Panel has determined that NRS 289.080 creates an exception to the NPRA “[b]ecause NRS 289.080 prevents the officer under investigation from accessing the investigative file unless the investigating agency recommends punitive action [. . .].” *ACLU of Nev. v. Clark Cty. Sch. Dist.*, No. 88680, 2026 Nev. LEXIS 23, at *4. The only section in NRS 289.080 that talks about a “file” is NRS 289.080(9). NRS 289.080(9), in its entirety, says:

After the conclusion of the investigation, if a law enforcement agency intends to recommend that punitive action be imposed against the peace officer who was the subject of the investigation, the law enforcement agency must notify the peace officer of such fact and give the peace officer or any representative of the peace officer a reasonable opportunity to inspect any evidence in the possession of the law enforcement agency and submit a response. The law enforcement agency must consider any such response before making a recommendation to impose punitive action against the peace officer. If the law enforcement agency recommends punitive action be imposed against the peace officer and the peace officer appeals the recommendation to impose punitive action, the peace officer or any representative of the peace officer may review and copy the entire file concerning the internal investigation, including, without limitation, any evidence, recordings, notes, transcripts of interviews and documents contained in the file.

En banc reconsideration is warranted here as the Panel’s decision deviates from this Court’s prior precedent requiring that statutory language must clearly and unambiguously created an exception to the NPRA, is unsupported by the relevant statutory text and factual record, and undermines the public’s interest in transparency previously recognized by this Court and established precedent related to the Nevada Public Records Act (NPR A).

I. The Panel’s decision conflicts with published precedent.

“A petition based on grounds that full court reconsideration is necessary to secure and maintain uniformity of the decisions of the Supreme Court or Court of Appeals must demonstrate that the panel’s decision is contrary to prior, published opinions of the Supreme Court or Court of Appeals and must include specific citations to those cases.” NRAP 40A(b).

The Panel’s decision that NRS 289.080(9) creates an exception to the NPR A is contrary to precedent set in *Reno Newspapers, Inc. v. Haley*, 126 Nev. Adv. Rep. 23, 234 P.3d 922 (2010) and *Clark Cty. Office of the Coroner/Medical Exam ’r v. Las Vegas Review-Journal*, 136 Nev. 44 (2020). *Reno Newspaper, Inc.*, held that “this court will presume that all public records are open to disclosure unless either (1) *the Legislature has expressly and unequivocally created an exemption* or exception by statute, or (2) balancing the private or law enforcement interests for nondisclosure

against the general policy in favor of an open and accessible government requires restricting public access to government records.” 234 P.3d at 924 (citations omitted) (emphasis added). The *Reno Newspaper, Inc.* Court interpreted this as requiring an “affirmative grant of confidentiality,” and found that an affirmative grant in one subsection of a statute did not necessarily extend to others. *See* 234 P.3d at 925 (determining that the “affirmative grant” was limited to one subsection). This Court confirmed this requirement in *Clark Cty. Office of the Coroner/Medical Exam’r*, stating that “[w]here, as here, a statute *clearly and unambiguously* creates an exception to disclosure of a public record, and provides an *affirmative grant of confidentiality*, the exception or grant of confidentiality must be interpreted narrowly.” 136 Nev. at 50, 458 P.3d at 1054 (emphasis added).

The Panel never acknowledges the prior precedents requiring a statutory exception to the NPRA be made “expressly and unequivocally,” “clear and unambiguously,” or provide an “affirmative grant of confidentiality”, and its interpretation of NRS 289.080(9) does not follow these precedents. Instead, it finds an exception to the NPRA in a provision that says nothing about confidentiality, exceptions from disclosure, or anything else about withholding records.

All statutory interpretation must begin with text, *see, e.g., Leigh-Pink v. Rio Props., LLC*, 138 Nev. 530, 536 (2022) (“This court first looks to the plain language of a statute when interpreting a statutory provision.”), but the Panel’s decision does

not. It does not identify any language in NRS 289.080(9) that clearly and unambiguously creates an exception to the NPRA or affirmatively grants confidentiality to any records in an investigative file. It does not identify any terms, such as “confidential” or “exempt from disclosure”, commonly associated with exceptions to the NPRA. Nothing in the text from NRS 289.080 directly cited in the decision supports the Panel’s contention that NRS 289.080(9) contains an exception to the NPRA. *See ACLU of Nev. v. Clark Cty. Sch. Dist.*, No. 88680, 2026 Nev. LEXIS 23, at *6 (the only quotations from NRS 289.080(9)).

Rather than following precedent, the Panel’s decision inverts the Court’s NPRA jurisprudence. Instead of citing language that “clearly and unambiguously” creates an exception, the Panel infers that an exception to the NPRA must exist because the Panel believes NRS 289.080(9) “prevents the officer under investigation from accessing the investigative file unless the investigating agency recommends punitive action [. . .]” *ACLU of Nev. v. Clark Cty. Sch. Dist.*, No. 88680, 2026 Nev. LEXIS 23, at *4. But there is no language in NRS 289.080(9) that bars anyone from accessing anything; rather, the language in the provision cited by the Panel only *mandates* disclosure if a particular condition is met. *See* NRS 289.080(9) (only stating that the accused officer or their representative “may review and copy the entire file” if an agency seeks punitive action).

The Panel claims that it has interpreted NRS 289.080(9) the same way that this Court interpreted NRS 432B.407 in *Clark Cty. Office of the Coroner/Medical Exam'r. ACLU of Nev. v. Clark Cty. Sch. Dist.*, No. 88680, 2026 Nev. LEXIS 23, at *4–5. But the Panel skips the first step where this Court determined that NRS 432B.407(6) affirmatively granted confidentiality, and indeed NRS 432B.407(6) expressly describes records at issue as “confidential”. *Clark Cty. Office of the Coroner/Medical Exam'r*, 136 Nev. at 50–51.) The Panel identifies no similar language in NRS 289.080(9) because no such language exists.

When the Court’s precedent is accurately applied, NRS 289.080(9) does not create an exception to the NPRA. First, only two provisions in NRS 289.080, NRS 289.080(6)¹ and NRS 289.080(7)² respectively, affirmatively grant confidentiality by stating that specific records are “confidential and must not be disclosed.” NRS 289.080(9) contains no comparable language. Relatedly, the use of the term “confidential” in NRS 289.080(6) and NRS 289.080(7) shows that there is a meaningful difference between those provisions and NRS 289.080(9), and if the

¹ “Any information that a representative obtains from the peace officer who is a witness concerning the investigation is confidential and must not be disclosed.” NRS 289.080(6).

² “Any information that a representative obtains from the peace officer who is the subject of the investigation is confidential and must not be disclosed except upon the: (a) Request of the peace officer; or (b) Lawful order of a court of competent jurisdiction.” NRS 289.080(7).

Legislature intended to exclude records from disclosure under NRS 289.080(9), it would have used similar language. Second, NRS 289.080(8)³ requires an investigating agency to disclose the investigated officer's witness statement upon request, establishing that the right to access found in NRS 289.080(9) is not exclusive. Finally, NRS 289.080(9)'s plain language is similar to statutes in criminal discovery that require the government to disclose records when specific conditions are met but do not limit other means to access records. *Compare* NRS 289.080(9) *with* NRS 171.1965(1) (providing the accused in a criminal case the right to access documents in a prosecutor's possession prior to preliminary hearing); NRS 174.235(1) (expanding the right to access of the accused in a criminal case when trial is pending); *see also* NRS 239.010 (excluding NRS 171.1965 or NRS 174.235 from the list of statutory exceptions). Notably, NRS 289.080(9) does not say that any alternative means to access the records in the file are foreclosed.

The ACLU offered this analysis in its briefing, *see* Appellant American Civil Liberties Union of Nevada's Opening Brief at 24–34, but the Panel deemed the interpretation unreasonable based entirely upon the Panel's belief that an officer

³ The peace officer, any representative of the peace officer or the law enforcement agency may make a stenographic, digital or magnetic record of the interview, interrogation or hearing. If the agency records the proceedings, the agency shall at the peace officer's request and expense provide a copy of the: (a) Stenographic transcript of the proceedings; or (b) Recording on the digital or magnetic tape."

cannot access the records in an investigative file rather than some error in the textual analysis. *ACLU of Nev. v. Clark Cty. Sch. Dist.*, No. 88680, 2026 Nev. LEXIS 23, at *6. However, the Panel's belief is contradicted by the plain language of NRS 289.080 and this matter's factual record.

First, as discussed above nothing in NRS 289.080(9) says that an officer is barred from accessing records in the investigative file before an agency makes its final decision. NRS 289.080(9) states: "If the law enforcement agency recommends punitive action be imposed against the peace officer and the peace officer appeals the recommendation to impose punitive action, the peace officer or any representative of the peace officer may review and copy the entire file concerning the internal investigation, including, without limitation, any evidence, recordings, notes, transcripts of interviews and documents contained in the file." Parsing this sentence, NRS 289.080(9) only *mandates* access if an agency seeks punitive action.

Second, officers can access a record contained in the investigative file even if no punitive action is taken through NRS 289.080(8). If the Panel's belief was correct, NRS 289.080(9) would prevent an officer under investigation from accessing his witness statement contained in the investigative file. NRS 289.080(8) requires an investigating agency to provide this record to the officer upon request. If NRS 289.080(8) is a viable alternative means to access the records, there is no reason to believe the NPRA is not a viable means as well.

Finally, the Panel's contention is contradicted by the factual record. The Panel's ruling is premised on the understanding that Officer Elfberg could not access the records contained in the investigative file since CCSD did not take punitive action. However, CCSD asserted privilege pursuant to NRS 289.080(9), which the district court upheld, over many records that Officer Elfberg either could have or in fact did have access to, including his witness statement, personal statement, and communications that CCSD sent directly to him. Joint Appendix, Vol. I, at APP 214, 219–221, 222, 227, 233 (CCSD Privilege Log). The Panel's decision does not address this contradiction and affirms the district court's order denying the public access to records that Elfberg did in fact have access to.

To comport with this Court's prior precedent, NRS 289.080(9) only creates an exception to the NPRA if it does so "clearly and unambiguously." Considering that nothing in the plain language expressly creates an exception or grants confidentiality and the Panel's reading is contradicted by the factual record, the Panel's determination that NRS 289.080(9) contains an exception conflicts with the precedent set in *Reno Newspaper, Inc.* and *Clark Cty. Office of the Coroner/Medical Exam'r*.

II. The Panel’s decision involves substantial precedential and public policy issues.

“A petition based on grounds that the proceeding involves a substantial precedential, constitutional, or public policy issue must concisely set forth the issue, must specify the nature of the issue, and must demonstrate the impact of the panel’s decision beyond the litigants involved.” NRAP 40A(b). The Panel’s decision raises two substantial precedential and public policy issues.

First, the Panel’s decision raises an issue of precedential and public policy by placing a novel significant restriction on access to records documenting the misconduct perpetrated by law enforcement officers. This Court has ruled on public records cases where the government refused to disclose records from internal investigations into misconduct on multiple occasions. *See, e.g., Las Vegas Review-Journal, Inc. v. Las Vegas Metro. Police Dep’t*, 139 Nev. 69, 85, 536 P.3d 724, 739 (2023) (police misconduct); *Clark Cty Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 704, 429 P.3d 313, 318 (2018) (trustee misconduct). The Court has another such case pending before it right now set for en banc consideration. *See City of Sparks, et al. v. Bluth*, No. 90244 (government appeal of court order directing disclosure of investigation records to a victim who had sensitive photographs stolen by a police officer during a traffic stop). Recently the Court recognized that “the public has a significant interest in determining whether [the law enforcement agency] handled the investigation [into police misconduct] appropriately or whether

it treated a fellow law-enforcement officer with more sympathy or leniency than any other offender.” *Las Vegas Review-Journal, Inc.*, 526 P.3d at 739 (Nev. 2023) . The Panel’s decision, authorizing agencies to withhold entire files of records documenting police misconduct, conflicts with the public’s established interest in transparency when an agency refuses to take punitive action against an officer who has publicly engaged in wrongdoing.

Second, the Panel’s decision raises a substantial precedential issue in that it rejects this Court’s previous warning against “creat[ing] an opportunity for government to make an end-run around the NPRA.” *Clark Cty Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 704, 429 P.3d 313, 318 (2018) (referencing this concern in the context of agency-promulgated regulations). In theory, the Legislature could pass a law giving an agency that power, but based on the Legislature’s express purpose in passing the NPRA to “foster democratic principles by providing members of the public with prompt access to inspect, copy or receive a copy of public books and records,” NRS 239.001(1), it is unlikely that it would implicitly grant that power through a provision that says nothing about confidentiality. The Panel’s decision is the first time this Court has authorized an agency to withhold an entire tranche of documents expressly related to government misconduct solely due to an internal, unreviewable decision by the agency.

Finally, as the Panel's decision contravenes established precedent in *Reno Newspaper, Inc.* that has been relied upon for over a decade in public records disputes, the decision would effectively overturn that precedent if allowed to stand. It would also effectively overturn precedent set forth in *Clark Cty. Office of the Coroner/Medical Exam'r* in that it finds an exception to the public records act that is not "clear and unambiguous" and does not "affirmatively grant confidentiality".

Conclusion

En banc reconsideration is warranted under NRAP 40A(a). The Panel's decision directly contradicts the precedent set forth in *Reno Newspaper, Inc.* and *Office of the Coroner/Medical Exam'r* to conclude that NRS 289.080(9) is an exception to the NPRA. If NRS 289.080 is analyzed under existing precedent, only NRS 289.080(6) and NRS 289.080(7) are exceptions to the NPRA, not NRS 289.080(9). The Panel's decision is entirely premised on the mistaken belief that NRS 289.080(9) bars an officer under investigation from accessing any records in an agency's investigative file unless the agency seeks punitive action, a belief belied by the plain language of NRS 289.080(9), other provisions in NRS 289.080, and the factual record. Finally, this Court should reconsider the Panel's decision en banc because the decision raises substantial public policy and precedential issues in that the decision (1) interferes with the public's substantial interest in ensuring that

agencies properly discipline officers that engage in misconduct, (2) rejects this Court's previous admonishment to empowering governments to conduct an "end run" around the NPRA, and (3) effectively overturns, or at least calls into question, precedent set in *Reno Newspaper, Inc.* and *Office of the Coroner/Medical Exam'r*.

DATED this 23rd day of April 2026.

Respectfully submitted,

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Certificate of Compliance

I certify that this Petition for Reconsideration En Banc complies with the typeface and type style requirements of Rule 32(a)(4)-(6) as this brief is in proportionally spaced Times New Roman, 14-point font and is double spaced.

I certify that this Petition complies with page or type-volume limitations of NRAP 40A(f) because it is proportionally space, has a typeface of 14 point, and contains 3620 words.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

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I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including rules that require every assertion in the brief 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. I understand that I may be subject to sanctions if the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: April 23, 2026

*/s/ Christopher Peterson*_____

Christopher M. Peterson
NV Bar: 13932
Legal Director
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Certificate of Service

I certify that on April 23, 2026, I electronically filed the foregoing Appellant American Liberties Union of Nevada’s Petition for En Banc Reconsideration by using the appellate electronic filing system and I served a true and correct copy of the same via the Court’s e-service system.

/s/ Christopher Peterson
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