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9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF WASHOE**

11 JEFFREY CHURCH,

12 Petitioner,

Case No.

13 vs.

14 Dept. No.

15 WASHOE COUNTY SCHOOL DISTRICT,
16 a political subdivision of the State of Nevada,

17 Respondents /

18 **EX-PARTE PETITION FOR WRIT OF MANDAMUS/APPLICATION**

19 **FOR ORDER PER NRS 239.011**

20 **(ENTITLED TO PRIORITY UNDER NRS 239.011)**

21 COMES NOW, Petitioner JEFFREY CHURCH (hereinafter “Church”), by and through the
22 undersigned counsel, hereby petitions this Court for relief pursuant to NRS 239.011, commonly
23 known as the Nevada Public Records Act (“NPRO”) to compel Respondent WASHOE COUNTY
24 SCHOOL DISTRICT (“WCSD”), a political subdivision of the State of Nevada, to comply with the
25 NPRO. See, *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884 n.4, 266 P.3d 623. 630 n.4
26
27 (2011). A writ of mandamus is the appropriate procedural remedy to compel compliance with the
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1 NPRA. See also, *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.* 116 Nev. 616, 621 6 P.3d 465,
2 468 (2000) (citing, *Donrey of Nev. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)). Petitioner is
3 entitled to an expedited hearing on this matter pursuant to NRS 239.011(2), which mandates that
4 “[t]he court shall give this matter priority over other civil matters to which priority is not given by
5 other statutes.”
6

7 **a. Parties**

8
9 1. Petitioner Church is a resident of Washoe County, State of Nevada, and is a member of
10 the WCSD Board of Trustees, which is the governing body of the WCSD.

11 2. WCSD is a political subdivision of the State of Nevada located in Washoe County.

12 3. This Court has jurisdiction to issue writs of mandamus. Nevada Constitution Article VI,
13 6; NRS 34.160. This Court has jurisdiction pursuant to NRS 239.011, as the court of Washoe
14 County is the Court of the County where all relevant public records sought are held. Venue is proper
15 in the Second Judicial District Court of Nevada pursuant to NRS 239.011. WCSD and all relevant
16 actions to this matter were and are in Washoe County, Nevada. Venue is proper in this Court
17 pursuant to NRS 239.011 because the requested public records are located in Washoe County.
18

19 4. WCSD is required by law to adhere to the provisions of the NPRA, codified in NRS
20 Chapter 239, and specifically NRS 239.010.
21

22 **b. Facts**

23
24 5. In July of 2023, WCSD was considering appointing a member to Safe and Healthy
25 Schools Commission. Also in July, the WCSD Trustees appointed Annie Zucker to the position,
26 after Ms. Zucker was recommended for the position by the “Responsible Office,” represented by the
27 District’s Chief Strategies Officer Dr. Paul LaMarca. Church expressed concerns at the July 2023
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1 meeting about the process of appointing Ms. Zucker for the position, and wanted to see the other
2 applicants for the position, especially after Mr. LaMarca indicated at the meeting that all of the
3 applicants were “outstanding.”
4

5 6. WCSD has had a rash of violence of in the past few years, and the Safe and Healthy
6 Schools Commission makes recommendations on preventing violence in schools. Church believes
7 that is one of the more important committees that advises the WCSD Board of Trustees.
8

9 7. On July 20, 2023, Church sent an email to the WCSD Superintendent Susan Enfield and
10 Board President Beth Smith requested the applications for the other three applicants to the Safe and
11 Healthy Schools Commission.
12

13 8. The application filled out by applicants for the Safe and Healthy Schools Commission
14 expressly states that the application is a public document. “Applications for committees of the
15 District are public documents. Any personal information (address, phone, email) will be redacted.”
16 See Exhibit 1. However, Zucker’s application that was submitted to the Board of Trustees for
17 review omitted the page, page 3 of 3, which indicated that the application was a public document.
18

19 9. On August 4, 2023, Church submitted a public records request to WCSD and requested
20 the following records related to the selection process for the appointment of Zucker to the Safe and
21 Healthy Schools Commission:
22

- 23 1) emails from June 1, 2023 to July 25, 2023 from the District’s Chief
24 Strategies Officer Dr. Paul LaMarca to any persons concerning the applicants
25 for the recently filled Safe and Healthy Schools Commission at-large position
26 including, but not limited to, any emails from Dr. LaMarca that contain the
word or name Zucker; and 2) the three applications that were not forwarded to
the Board of Trustees.

27 See Exhibit 2.
28

1 10. On August 11, 2023, WCSD provided a response to Church, refusing to provide any
2 responsive records, and citing a laundry list of boilerplate reasons for refusing to disclose the
3 records Church requested as follows:
4

5 To protect the privacy interests of the applicants, the District is not releasing
6 the requested information. See NRS 239.010(1). See also *Donrey of Nevada, Inc. v. Bradshaw*,
7 106 Nev. 630, 798 P.2d 144 (1990); *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873,
8 266 P.3d 623 (2011); *Las Vegas Rev.-J., Inc. v. Las Vegas Metro. Police Dep't*, 139 Nev. Adv. Op. 8,
9 526 P.3d 724, 736 (2023) (citing *Clark Cnty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 708,
10 429 P.3d 313, 320 (2018); *Las Vegas Metro. Police Dep't v. Las Vegas Rev.-J.*, 136 Nev. 733,
11 739, 478 P.3d 383, 389 (2020); *Cameranesi v. United States Dep't of Def.*, 856 F.3d 626,
12 638 (9th Cir. 2017)). Given the personal nature of the requested information, the release of
13 said information is likely to result in harassment, endangerment, risk of mistreatment or
14 similar harm, especially given the current political climate surrounding said positions. Further,
15 the District's process seeks to prevent such harassment, endangerment, risk of mistreatment
16 or similar harm in order to recruit qualified applicants for volunteer positions on public
17 bodies. Releasing said information and treatment of such applicants would negatively impact
18 the District's ability to recruit and receive applications from qualified volunteers.

19 Further, to the extent the requested records are protected by the deliberative
20 process privilege, those records will not be provided as the District's interests in
21 preventing the disclosure of such predecisional and deliberative records, which fostered
22 frank and candid exchanges of opinions and recommendations, are not outweighed by the
23 public's right to inspect or copy them. See NRS 239.010(1). See also *Donrey v. Bradshaw*,
24 106 Nev. 630 (1990); *DR Partners v. Board of County Com'rs of Clark County*, 116 Nev. 616,
25 6 P.3d 465 (2000); *Reno Newspapers, Inc. v. Haley*, 126 Nev. 211, 234 P.3d 922 (2010);
26 and *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011).

27 See Exhibit 3.

28 11. Neither reason, undefined "privacy interests" or the deliberative process privilege, applies
to the records sought by Church in his request.

c. Analysis

12. To date, Church has not been provided with the requested public records from WCSD.

1 13. NRS 239.010 provides in pertinent part that “unless otherwise declared by law to be
2 confidential, all public books and records of a governmental entity must be open at all times during
3 office hours to inspection by any person, and may be fully copied...”.

4
5 14. NRS 239.0107 sets an outer limit of five business days in which to respond to a public
6 records request. In this regard, the entity must either provide the records requested or, if the entity is
7 unable to provide the records by the end of the fifth business day, the entity must give written notice
8 of such to the requester along with a date and time when the record “will be available”. Subsection
9 1(d) holds that if the record, or a part thereof, must be denied on the basis of confidentiality, the
10 entity shall give written notice of such to the requester along with a “citation to the specific statute
11 or other legal authority that makes the public book or record, or a part thereof, confidential.”
12 Subsection 2 holds that if the record “is readily available”, the entity shall provide it to the requester
13 “as expeditiously as practicable.”
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16 **a. Claim of a “Privacy Interest”**

17 15. At the outset, the form used by WCSD in Exhibit 3 expressly states that the applications
18 are public. For WCSD to now claim otherwise is absurd. Undefined “Privacy Interests” do not
19 provide grounds for failing to disclose the communication of public officials and records of
20 applications for government employment. In *Clark County School District v. Las Vegas Review-*
21 *Journal*, 134 Nev. 700, 429 P.3d 313 (2018) (hereinafter “CCSD”), the Nevada Supreme Court
22 adopted a “burden shifting test to determine the scope of redaction of names of persons identified in
23 an investigative report with nontrivial privacy claims, and remand for further proceedings.” In *Las*
24 *Vegas Metro. Police Dep't v. Las Vegas Review-Journal*, 478 P.3d 383 (Nev. 2020) (hereinafter
25 “LVMPD”), the Court clarified that Courts should apply the test adopted in CCSD, “whenever the
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1 government asserts a nontrivial privacy interest.” Under prong two of the CCSD test, as modified in
2 LVMPD, whenever the government asserts a nontrivial privacy interest, the burden shifts to the
3 requester of the public record to “show that disclosure is likely to advance a significant public
4 interest.” *Id.* 387. Even if the Court finds that WCSD has met its burden to show that the records at
5 issue are confidential, it should conduct in camera review of the withheld records to determine
6 whether the claim of confidentiality is valid, and whether some of the records may be disclosed with
7 redactions. *Conrad v. Reno Police Dep't*, 530 P.3d 851, 853 (Nev. 2023). Here, WCSD does not
8 define the specific privacy interest at issue.
9

10
11 16. Disclosure of the records requested by Church hinges on the public's right to
12 transparency and accountability in governmental operations. The Safe and Healthy Schools
13 Commission plays a vital role in shaping policies that directly affect the community. Understanding
14 WCSD’s selection process, including communications regarding applicants and the rationale behind
15 the choices made, is crucial for public oversight. This transparency ensures that the process is fair,
16 unbiased, and aligned with the community's best interests. Emails and applications for a public
17 commission are fundamentally different from personal, sensitive data. While personal details like
18 home addresses or personal phone numbers may be redacted, the professional qualifications and
19 viewpoints of applicants to a public body are a matter of public interest. The fact that these are
20 applications for a public volunteer position diminishes the expectation of privacy compared to
21 private employment or personal matters. WCSD's argument about harassment and endangerment is
22 groundless. If there's no specific, credible threat of harm, the claim is based on groundless
23 speculation, hindering the public's right to information. The fear of hypothetical harassment does not
24 outweigh the public's interest. Moreover, measures can be taken to redact sensitive personal
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1 information that could lead to direct harm while still releasing the substantive content of the
2 communications and applications. The WCSD's concern about the potential negative impact on
3 recruitment should be weighed against the positive impact of transparency and the requirements
4 under the NPRA that exceptions to disclosure be construed narrowly. The NPRA is to "be construed
5 liberally" to carry out its purpose of fostering open government and democratic principles, and any
6 exemption or exception to disclosure is to be "construed narrowly." NRS 239.001(3). See also *Reno*
7 *Newspapers, Inc. v. Haley*, 234 P.3d 922, 927 (Nev. 2010).

8
9
10 17. Transparency in the selection process bolster public trust and encourage more qualified
11 individuals to apply, knowing that the process is transparent, fair, and merit based. Given the nature
12 of the information and the role of the commission, the public's interest in understanding how public
13 servants are selected for a significant advisory role outweighs the unsubstantiated concerns about
14 potential harms. Further, even if parts of the requested records include confidential or deliberative
15 information, the whole document should not be classified as confidential as long as redactions can
16 be made to preserve confidentiality. See NRS 239.0107(d) and *Reno Newspapers, Inc. v. Gibbons*,
17 127 Nev. at 880 (2011). WCSD's blanket denial is plainly inconsistent with the requirements of the
18 NPRA.
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21 18. Further, and similarly, in Attorney General File No. 09-026, OMLO 2009-02, in
22 analyzing whether the City of Fernley violated the Open Meeting Law ("Open Meeting Law") by
23 failing to allow access to all candidates' resumes and applications, the AG opined that the OML
24 applies to an appointment process conducted by a public body, citing, *City Council of the City of*
25 *Reno v. Reno Newspapers, Inc.*, 105 Nev. 886 891, 784 P.2d 97 4 977 (1989), and "supporting
26 materials including a candidate's resume in support of an application for appointed public office
27
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1 must be provided to the public in accordance with NRS 241.020(5) and (6) whenever a public body
2 conducts the appointment.” OMLO 2009-02. Here, the applications requested by Church in his
3 public records request were from “finalists” for the appointment to the Safe and Healthy Schools
4 Commission.
5

6 **b. Deliberative Process**

7 19. To establish that withheld records are "predecisional," WCSD must identify an agency
8 decision or policy to which the documents contributed. *DR Partners v. Bd. of Cty. Comm'rs*, 116
9 Nev. 616, 623, 6 P.3d 465, 469 (2000). To qualify as part of a deliberative process, the records
10 “must consist of opinions, recommendations, or advice about agency policies.” *Id. at 623*, citing *In*
11 *Paisley v. C.I.A.*, 229 U.S. App. D.C. 372, 712 F.2d 686, 698 (D.C. Cir. 1983), vacated in part on
12 other grounds, 233 U.S. App. D.C. 69, 724 F.2d 201 (D.C. Cir. 1984).
13
14

15 20. The deliberative process privilege *only* protects documents that are predecisional and
16 deliberative – meaning they must be both created before the final decision or policy is adopted and
17 directly related to the decision-making process, *consisting of opinions, recommendations, or*
18 *advice* about agency policies. The records sought by Church do not consist of opinions,
19 recommendations, or advice about agency policies. Even if they did, WCSD does not identify the
20 specific decision or policy to which the requested records contributed. WCSD cannot demonstrate
21 that the emails and applications directly pertain to a decision or policy formulation process, and the
22 privilege does not apply. The burden is on WCSD to prove the direct connection between the
23 documents and the decision-making process, and it made no effort to do so. See NRS 239.0113:
24 “....the governmental entity has the burden of proving by a preponderance of the evidence that the
25 public book or record, or a part thereof, is confidential.”
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1 21. Emails and applications are factual in nature, rather than deliberative. Unless the emails
2 from Dr. LaMarca and the applications contain explicit recommendations, opinions, or advice about
3 agency policies, they cannot be considered part of a deliberative process. Discussing applicants or
4 documents containing the name of an applicant does not make a document deliberative.
5

6 22. Further, the selection of members for a public commission like the Safe and Healthy
7 Schools Commission is inherently a matter of public interest. According to WCSD's website, "As a
8 committee to the Board of Trustees, the function of the Safe and Healthy Schools Commission is to
9 assist the Trustees on issues relating to the safety and security of schools, which may include
10 prevention/intervention, mitigation, preparedness, emergency response, and recovery." See
11 <https://www.washoeschools.net/site/default.aspx?PageID=6120>.
12

13 23. The public has a right to understand how decisions are made about who is considered for
14 these positions. If the documents are merely procedural or administrative, discussing qualifications
15 of candidates without policy recommendations, they fall outside the scope of the deliberative
16 process privilege. Even if parts of the documents contain deliberative material, WCSD is obliged to
17 separate and release the factual content. Only those portions of the records that are truly deliberative
18 and tied to policy-making should be withheld. See NRS 239.0107(d) and *Reno Newspapers, Inc. v.*
19 *Gibbons*, 127 Nev. at 880 (2011). Even if some of the records could be deemed deliberative, the
20 public interest in disclosure outweighs the need to protect the deliberative process. Given the public
21 nature of the commission and the importance of transparency in its formation, the interest in
22 disclosure outweighs WCSD's blanket claim of confidentiality.
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26 24. Furthermore, Church, as an elected Trustee of WCSD, and as such is one of the **holders**
27 of any deliberative process privilege held by WCSD, and asserted by WCSD's counsel against their
28

1 *own client* in this matter. Such an assertion of privilege is absurd. A person upon whom a rule
2 confers a privilege against disclosure of a confidential matter is the holder of the privilege. See *Diaz*
3 *v. Eighth Judicial Dist. Court*, 116 Nev. 88, 94, 993 P.2d 50, 54 (2000).
4

5 25. NRS 239.011 states that the requester may apply for an Order compelling the
6 governmental entity to provide the records requested. The Application is made to the District Court
7 in the county where the records are located. Subsection 2 states: “The court shall give this matter
8 priority over other civil matters to which priority is not given by other statutes. If the requester
9 prevails, the requester is entitled to recover from the governmental entity that has legal custody or
10 control of the record his or her costs and reasonable attorney’s fees in the proceeding.”
11

12 26. The purpose of NRS Chapter 239 is to foster democratic principles by providing
13 members of the public with access to inspect and copy public books and records. “The provisions of
14 this chapter must be construed liberally to carry out this important purpose” and any exemption
15 which may limit or restrict access to public books or records “must be construed narrowly”. NRS
16 239.001.
17

18 27. “Mandamus is the appropriate procedural remedy to compel production of the public
19 records sought.” *DR Partners v. Board of County Commissioners of Clark County*, 116 Nev. 616,
20 621, 6 P.3d 465, 468 (2000).
21

22 28. NRS 34.170 requires that a writ of mandamus shall issue in all cases where there is no
23 plain, speedy and adequate remedy in the ordinary course of law. This Court is authorized to issue a
24 Writ to compel a performance legally required. NRS 34.160. An application for Writ may be made
25 without notice to the adverse party and a hearing on the Writ may be had at any time. NRS 34.180
26 and NRS 34.200. When the Writ is applied for without notice and the Writ is allowed by the Court,
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1 an Alternative Writ shall be first issued. NRS 34.200. In this regard, NRS 34.190(2) provides: “The
2 alternative writ shall state generally the allegation against the party to whom it is directed, and
3 command such party, immediately after receipt of the writ, or at some other specified time, to do the
4 act required to be performed, or to show cause before the court, at a specified time and place, why
5 the party has not done so.”
6

7 WHEREFORE, Petitioner requests relief as follows:

- 8 1. For a Writ commanding Respondent to immediately provide Petitioner with the requested
9 records or, alternatively, to show cause why they have not done so;
- 10 2. For an award of Petitioner’s costs and attorney fees under NRS 239.011; and
- 11 3. For such other relief as this Court deems proper.

12 *Pursuant to NRS 239B.030, the undersigned certifies that no Social Security numbers are*
13 *contained in this document.*

14 Dated: Tuesday, December 5, 2023

15
16 By: /s/ Luke Busby
17 Luke Busby, Esq.
18 Nevada State Bar #10319
19 316 California Avenue
20 Reno, Nevada 89509
21 Phone (775) 453-0112
22 luke@lukeandrewbusbyltd.com
23 *Attorney for Petitioner*
24
25
26
27
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1
2 **DECLARATION OF JEFF CHURCH**

3 I, Jeff Church, pursuant to NRS 53.045, declare and state as follows:

- 4 1. I am the Petitioner to this action.
- 5 2. I have read the Ex-Parte Petition for Writ of Mandamus/Application for Order and
6 know the contents thereof, that the same is true to my knowledge, except for those matters
7 stated on information and belief, and as to those matters, I believe them to be true.
- 8 3. The Petition is being filed in good faith and not interposed for undue delay.
- 9 4. I made the public records requests as described in the Petition above. To date, I have
10 not received any of the requested records.
11
12

13 I declare under penalty of perjury by the laws of the State of Nevada that the foregoing is
14 true and correct.
15

16 Dated this: 12/05/2023

17 
Jeffrey Church (Dec 5, 2023 15:47 PST)

18 Jeff Church
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EXHIBIT LIST

- 1. WCSD Committee Applications Public Doc**
- 2. August 4, 2023 Records Request**
- 3. August 11, 2023 Response from WCSD**

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2 **CERTIFICATE OF SERVICE**

3 I certify that on the date shown below, I caused service to be completed of a true and correct
4 copy of the foregoing by:

5 _____ personally delivering;

6 _____ delivery via Reno/Carson Messenger Service;

7 _____ sending via Federal Express (or other overnight delivery service);

8 depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,

9 _____ delivery via electronic means (fax, eflex, NEF, etc.) to:
10
11

12 Neil Rombardo
13 General Counsel
14 Washoe County School District
15 P.O. Box 30425
16 Reno, NV 89520-3425

17 Tuesday, December 5, 2023

18 By: /s/ Luke Busby, Esq. _____
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