

August 2025

Lunchtime Learning CLE Webcasts

Free for CCBA members on August 21, 28, and September 16, 2025

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THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

COMMUNIQUE

**The First Amendment /
Constitutional Law Issue**

Defending Judicial Independence and the Rule of Law

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Keeping the Public Trust: Falconi Protects Public Access to Probate Proceedings

See page 24

The Nevada Anti-SLAPP Act and Its Role in Preserving First Amendment Rights in Nevada

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First Steps on How to Uphold the First Amendment

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A Republic, If You Can Keep It

By Joel D. Henriod

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Clark County Bar Association COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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Photo of US Capitol
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COMMUNIQUÉ


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Communiqué Editorial Calendar

Cover Date	Topic	Closing Date
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January 2025	Five Things	12/1/2024
February 2025	ADR	1/2/2025
March 2025	Family Law	2/1/2025
April 2025	Civil Procedure	3/1/2025
May 2025	Estate Planning & Probate	4/1/2025
June/July 2025	Membership Matters	5/1/2025
August 2025	First Amendment	7/1/2025
September 2025	Legislative Wrap-Up	8/1/2025
October 2025	Pro Bono	9/2/2025
November 2025	Mental Health	10/1/2025
December 2025	Science & Technology	11/1/2025

*The combined June/July issue will be released in June. The editorial calendars, schedules, editorial policies, and writer's guidelines for the *Communiqué* are subject to change without notice.

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Bar Activities

Event Calendar

Please join us for these upcoming CCBA activities:

- Aug. 1 Community Service Committee Meeting
- Aug. 7 Clark County Bar Luncheon - **Page 10**
- Aug. 7 After Bar Exam Mixer - **Page 10**
- Aug. 8 Publications Committee Meeting
- Aug. 13 CLE Committee Meeting
- Aug. 14 New Lawyers Committee Meeting
- Aug. 15 DICE Meeting
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- Oct. 2 Lunchtime Learning CLE
- Oct. 9 Lunchtime Learning CLE
- Oct. 31 Mark's Blanket the Homeless Donation Deadline

Learn more / RSVP: <https://clarkcountybar.org/events/>, 702-387-6011

Bar Services

Contact the CCBA

Reach out for information and updates about CCBA activities:

- ☎ 702-387-6011
- 📧 clarkcountybar.org
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A Republic, If You Can Keep It

By Joel D. Henriod

At a recent bar event, I shared a meal and good conversation with two members I admire. They hold opposing political views—they would hate each other's yard signs in election years. But that evening, we talked, laughed, and listened.

There's plenty to be pessimistic about. The civic goodwill needed to sustain a republic—enough trust to pass laws, enough respect to protect minority rights—feels fragile. But that dinner gave me hope.

When asked what kind of government the Constitutional Convention had created, Benjamin Franklin famously replied: "A republic, if you can keep it."

That remains the challenge.

A republic isn't just a structure of government. It's a way of living with disagreement. It depends on conversations—some patient, some loud, some awkward or even rude. But they must continue. Not just among lawmakers or judges, but among neighbors, colleagues, and citizens.

That habit is fading. Media silos narrow our perspective. Outrage travels faster than nuance. We're tempted to stop talking across lines—convinced the other side isn't worth hearing.

But we have no better alternative. Unless one honestly envisions revolution and something else, we are still aboard this ship. And it's worth keeping.

This republic has never stood still. It isn't only the Founders' republic. It's also Lincoln's and Frederick Douglass'—and the generation that passed the 13th and 14th Amendments. It's Susan B. Anthony's and Ida B. Wells'—and those who secured the 19th. It's the republic of workers and reformers who fought for safety and preserved our wild lands. Of those who elected FDR four times and built the public works we still use. Of Thurgood Marshall, Dr. King, and the generation that passed the Civil Rights and Voting Rights Acts. Of Ronald Reagan and the generation that restored national confidence, renewed the sense of American possibility, and helped

end the Cold War. On and on, *the People* made choices they deemed right for their time. That's the freedom a republic allows.

In every age, someone disagreed—and lost the argument, at least for a time. That's the cost of democracy. But the gain is continuity without collapse, and change—for the most part—without bloodshed.

The People can steer this vessel left or right. In the last hundred years, Americans have chosen eight Democratic presidents and seven Republicans—many in land-slides on both sides. That's no weakness. That's agility.

Civic bonds alone don't preserve a republic. But without them, no constitution will. Every respectful relationship is a thread in the national fabric. Every conversation—especially across differences—is an act of preservation.

Bar associations are one of the last places where this still happens. Here, lawyers of all views serve, argue, collaborate, and listen. That's not incidental. That's essential.

When the ship of state is a republic, its fuel is collective engagement. It keeps moving only when enough citizens are willing to participate, to argue respectfully, to compromise when needed. The danger comes when we stop—and look longingly for a different kind of ship. One that may be faster, but far less agile and responsive to the People.

So, let's keep propelling this one forward. Grateful for where it's taken us. Mindful of how much we'll need that agility and responsiveness to the People as we enter uncharted waters.

We move it forward, one conversation at a time. **G**

Joel Henriod is a litigator specializing in appeals at Henriod Stern, practicing in substantive areas ranging from personal injury and product liability to commercial and public-sector disputes involving election law, breach of contract, taxation, eminent domain, and governmental regulation, etc. He serves as CCBA president through 2025.



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34th Annual

MEET YOUR JUDGES MIXER

Worldview atop the World Market Center

Thursday

September 4, 2025

5:30 p.m. to 9:00 p.m.

*All members of Nevada's legal community are invited!
Space will be limited.*

**RSVP to the CCBA
required by 8/20/2025**

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Bar Luncheon

CCBA members are invited to attend the bar luncheon on August 7, 2025.

- **Guest speaker:** Ike Lawrence Epstein, SEVP & COO, Ultimate Fighting Championship® (UFC)
- **Sponsors:**
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- **When:** Thursday, August 7, 2025, 11:30 a.m.-1:00 p.m.
- **Where:** Fogo de Chão Las Vegas, 360 E. Flamingo Rd., Las Vegas
- **Buffet luncheon:** Enjoy the Market Table and Feijoada Bar with seasonal salads, exotic vegetables, imported cheeses, smoked salmon, cured meats, Fogo feijoada (traditional black bean stew with sausage), seasonal soup, and more. Also, choose from a selection of fire-roasted meats!
- **Price:** \$60/CCBA member, \$85/Non-member.
- **RSVP** with payment to the Clark County Bar Association required by Friday, August 1, 2025. See clarkcountybar.org or call 702-387-6011.



After Bar Mixer

CCBA members are invited to attend the After Bar Mixer on August 7, 2025. This special event is for people who sat for the Nevada Bar Exam in February and July of 2025. Featuring complimentary attendance for Nevada's spring 2025 New Admittees, July Nevada Bar Exam takers, and current CCBA members. No minors allowed.

- **Sponsors:**
 - Bank of Nevada
 - Legalyze.ai
 - Lexitas
 - Morgan & Morgan
- **When:** Thursday, August 7, 2025, 5:30 p.m.-7 p.m.
- **Where:** Nevada Brew Works, 1327 S. Main St., Ste. 160, Las Vegas
- **RSVP** to the CCBA by August 1, 2025. See clarkcountybar.org or call 702-387-6011.



Bar Services

Sponsorship Opportunities

Opportunities are available to select businesses to sponsor bar activities, including:

- CCBA's Anniversary Party
- 40 Year Club Luncheon
- Bar Luncheons
- CLE Programming
- Meet Your Judges Mixer
- New Admittees Reception
- CCBA eNews

For more information, contact: Donna at the Clark County Bar Association, (702) 387-6011, donnaw@clarkcountybar.org.



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Lunchtime Learning CLE

Alternative Estate Planning Techniques

*Live webcast free for CCBA members
August 21, 2025*

Speakers:

- Whitney Short and Amanda Stevens of Short & Stevens Law, LLC

Topics:

- Beneficiary Designations
- Joint Ownership
- No Ownership



Offers: 1.0 CLE credit for Nevada lawyers

When: Thursday, August 21, 2025, 12:00 to 1:15 p.m.

Where: Online via Zoom

Attendance fee:

- **Live presentation (via Zoom) on August 21, 2025:** FREE for CCBA Members (2025) only.
- **Recorded materials rental:** \$25/CCBA Member or \$50/non-CCBA member

RSVP to CCBA:
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Produced by CCBA's CLE Committee.

Lunchtime Learning CLE

2025 Legislative Recap of Initiatives and Bills Related to DEI

*Live webcast free for CCBA members
August 28, 2025*

Speakers:

- Leo Benavides, Director of State Government Affairs and Community Engagement, University of Nevada, Las Vegas
- Athar Haseebullah, Executive Director, ACLU of Nevada
- Jennifer Lanahan, Co-Founder & Vice President, Western Public Affairs



Offers: 1.0 CLE credit for Nevada lawyers

When: Thursday, August 28, 2025, 12:00 to 1:15 p.m.

Where: Online via Zoom

Attendance fee:

- **Live presentation (via Zoom) on August 28, 2025:** FREE for CCBA Members (2025) only.
- **Recorded materials rental:** \$25/CCBA Member or \$50/non-CCBA member

RSVP to CCBA:
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Produced by CCBA's Diversity and Inclusion Committee for Equity (DICE).



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Lunchtime Learning CLE

Mastering Practice Before the Probate Commissioners

Live webcast free for CCBA members September 16, 2025



Speakers: Hon. Russel Geist and Hon. James Fontano, Probate Commissioners, Eighth Judicial District Court

When: Tuesday, September 16, 2025, 12 to 1:15 p.m.

Where: Online via Zoom

Offers: 1.0 general CLE credit for Nevada lawyers

Recorded materials rental: \$25/CCBA Member or \$50/non-member.

RSVP to CCBA:
clarkcountybar.org
(702) 387-6011

Sponsors:



Produced by CCBA's CLE Committee.

34th Annual Meet Your Judges Mixer

All members of the Nevada Bar and Clark County Bar are invited to attend our special event on September 4, 2025.

The CCBA's 34th Annual Meet Your Judges Mixer is the premier networking event for members of the Nevada legal community, including Nevada's judges, attorneys, legal support staff, law students, merchants, and candidates. This is a private cocktail reception; no minors allowed. Business casual attire acceptable. Sponsorship opportunities available. All proceeds to benefit the CCBA.

- **Featuring:** Appetizers, refreshments, networking, and silent auction
- **When:** September 4, 2025, 5:30 p.m. to 9:00 p.m.
- **Where:** Worldview atop the World Market Center
- **Admission fee:**
 - \$94/CCBA Member
 - \$139/Non-member
 - FREE/Nevada local, state, and federal judges
- **RSVP deadline:** August 20, 2025
- **RSVP:** <https://clarkcountybar.org/meet-your-judges-mixer/>, (702) 387-6011

For more information, see pages 8-9.

Civil Bench-Bar Meeting

- **Host:** Eighth Judicial District Court - Civil Department
- **When:** September 9, 2025, 12-1:00 p.m.
- **Where:** Regional Justice Center, Courtroom 10D and Zoom
- **Note:** Meetings go dark June, July, and August, resuming September 9, October 14, and December 9
- **Contact:** EJDCBenchBar@gmail.com

Annual Attorney Memorial Service

Members of the bench and bar are invited to attend a special event to honor Nevada attorneys who have passed on during the last year.

- **When:** Friday, September 12, 2025, 3:00-4:00 p.m. Service starts at 3 p.m. sharp with reception immediately following.
- **Where:** Supreme Court of Nevada, 408 E. Clark Avenue, Las Vegas
- **About:** The annual attorney memorial services are produced by the Clark County Law Foundation in conjunction with the Clark County Bar Association, State Bar of Nevada, Eighth Judicial District Court, U.S. District Court, and the Federal Bar Association-Las Vegas Chapter.

For more information, contact Patrick at the Clark County Law Foundation, (702) 333- 8277.



Book Cleaning Activity

Bar members and their friends and family are invited to help clean children's books.

- **When:** Saturday, September 13, 2025, 11:00 a.m. to 1:00 p.m.
- **Where:** Spread the Word Nevada, 5373 Arville Street, Las Vegas, NV 89118
- **About:** Group activity to benefit Spread the Word Nevada, a nonprofit organization dedicated to advancing childhood literacy within low-income communities by changing lives one book at a time.

RSVP to StephanieAbbott@clarkcountybar.org, (702) 387-6011.

Firms Sought to Host a Donuts with DICE Event

The CCBA's Diversity and Inclusion Committee for Equity (DICE) is launching Donuts with DICE, a mentorship program for law school students and pre-law students to meet with CCBA attorneys over donuts and coffee and receive advice about navigating their careers and insights about the legal profession.

We are looking for CCBA members that would be interested in hosting a few students at their firm, at the CCBA's office, or a coffee shop, for a donut and coffee talk mentorship session. CCBA attorneys can pair up and host a few students as well.

For more information, please reach out to DICE Chair Michael Nunez at mnunez@murchisonlaw.com or the CCBA office at (702) 387-6011.

Health Care Power of Attorney Mobile Workshop

Bar members: This is your chance to complete your own Health Care Power of Attorney (HCPOA)

- **About:** CCBA members are invited to visit the CCBA office, execute an HCPOA, grab a sandwich, and return to work. We will have attorneys from Southern Nevada Senior Law Program/SLP on site with all the forms and notaries. The SLP will subsequently scan their documents into the Secretary of State's Lock Box. Also, participants can grab a sandwich courtesy of Daily Dose Café & Bakery and Litigation Discovery Group!
- **When:** Thursday, September 25, 2025, 11:00 a.m.-2:00 p.m. Schedule an appointment time (11 a.m., 12 p.m., or 1 p.m.). Walk-ins welcome too!
- **Where:** Clark County Bar Association, 717 S. 8th St, Las Vegas, NV 89101.

For more information and to schedule an appointment, contact Cesar at chernandez@snsnp.org or call (702) 329-2201.

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¡Ándale! 5K Run/Walk

Bar members are invited to join the CCBA's team—Clark County Bar Blenders—at this special event hosted by the Nevada Latino Bar Association.

- **When:** Saturday, September 27, 2025, 8:00 a.m. to 12:00 p.m.
- **Where:** Kellogg Zaher Sports Complex, 7901 W. Washington Ave., Las Vegas
- **About:** The ¡Ándale! Foundation, in collaboration with the Nevada Latino Bar Association, is proud to present its sixth annual scholarship fundraising event—¡Ándale! 5K Run/Walk!
- Sign up online at <https://www.andale5k.com/>.

Professional Portrait Session

All members of the Nevada bar, bench, law students, and supporting legal staff are invited to sit for a professional portrait at the Clark County Bar Association office on Tuesday, September 30, 2025. Drop-ins are welcome; appointments preferred.

- **Date:** Tuesday, September 30, 2025
- **Time:** 9:30 a.m. to 2 p.m.
- **Location:** CCBA, 717 S. 8th Street, Las Vegas
- **RSVP:** StephanieAbbott@clarkcountybar.org, (702) 387-6011
- **Special offers:**
 - 20% off purchases of professional portraits for CCBA members!
 - No sitting fees (\$49 value) for this and graduation/family portrait session
- **Note:** Digital portraits taken by the professional photographer during this professional portrait session will be available to purchase directly from Portraits to You. CCBA members will be offered special pricing options on products and/or services provided by Portraits to You. Portraits to You will provide the CCBA with an editorial copy of the portraits to publish in the *Communi qué*, on the bar's official website, online via social media accounts, and as needed by the association. **©**



**CCBA Past President ('13)
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Defending Judicial Independence and the Rule of Law

By Hon. Philip M. Pro (Ret.)

Exactly ten years ago, I published an article in the *Communiqué* titled *Judicial Independence and the Rule of Law at Home and Abroad* (*Communiqué* – August 2015). That commentary discussed my participation, over the prior 20 years, in international judicial conferences; in more than twenty countries, promoting the importance of an independent judiciary to the viability of the rule of law in a democracy. Little could I imagine, then, that a decade later I would be called upon to author another commentary on the serious threats we are witnessing today to the independence of our own federal judiciary, and the foundational principle of the rule of law which is the cornerstone of our constitutional republic.

On December 31, 2024, Chief Justice John Roberts dedicated his Year End Report on the Federal Judiciary to a discussion of the growing dangers to the independence of the Judicial Branch, posed by the alarming increase in hostile communications, intimidating threats, and acts of violence directed at federal judges in recent years. Noting that “violence, intimidation, and defiance directed at judges undermines our Republic,” he encouraged the three branches to work cooperatively and respectfully to preserve the independence of the judiciary and the rule of law. Based upon recent events, it does not appear that the Chief Justice’s message has been heeded.

For the past six months, the federal judiciary has faced an unprecedented barrage of inflammatory attacks—from public officials at the highest levels of the executive branch—in response to judicial decisions enjoining presidential executive orders, issued by the new administration, pending full litigation on the merits. These attacks range from disparaging personal criticisms of the judges presiding over the cases, to calls for retribution—including impeachment and threats to refuse compliance with court orders. Such attacks, by the executive branch, pose a serious threat to the independence of the federal judiciary and the rule of law. As a retired Article III judge, I consider it my duty

to speak out on behalf of my active and senior judicial colleagues who cannot respond themselves.

Why? Because under Canon 3(A)(6) of the Code of Conduct for United States Judges, they must confine their public comments about the cases they adjudicate to matters addressed in open court and in the rulings they issue. While responsible criticism is not objectionable, judges do not, in my view, deserve the lamentable treatment from high-level elected and appointed officials they have recently been subjected to, simply for fulfilling their constitutional responsibilities.

Every day, judges are called upon to ensure that their courtrooms provide a forum in which cases are adjudicated

Every day, judges are called upon to ensure that their courtrooms provide a forum in which cases are adjudicated fairly, guided by the “rule of law” principle: everyone, including those who govern, are subject to the impartial application of the laws derived from a democratic process.

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cated fairly, guided by the “rule of law” principle: everyone, including those who govern, are subject to the impartial application of the laws derived from a democratic process. As with any human endeavor, our justice system is imperfect, and judges make mistakes. History has shown, however, that those mistakes can generally be corrected on appeal, and the judicial branch has most often functioned well in accord with its constitutional mandate for over 235 years.

Experience teaches that the rule of law cannot exist in a lawless society, or for that matter in one rife with corruption, or dependent on personal power or loyalty to an authoritarian figure. The marvel of the constitutional structure of our three branches of government is that they are co-equal and independent of each other, yet also dependent on each other through a mutual respect for the separation of powers and the checks and balances engrained in the Constitution.

To fulfill its mission—to render decisions in accord with the rule of law—judges must have decisional independence to adjudicate cases “without fear or favor,” and be free of undue influences, including those posed by external pressure, harassment, threats of retribution, and violence. Recent conduct by some in the executive branch threatens to upset that equilibrium.

According to the Federal Register, 163 presidential executive orders were issued between January 20, 2025, and June 16, 2025, many involving complex constitutional and policy issues. Several have been challenged in lawsuits seeking injunctive relief on a range of issues including the constitutionality of birthright citizenship; the application of the Alien Enemies Act of 1798; and the imposition of penalties on lawyers and law firms representing interests adverse to policies of the executive branch, among others.

I recognize that many hold strong and divergent views on the merits of many of the policies addressed by these executive orders. These disagreements have spawned dozens of lawsuits that will be determined in the federal

courts after all parties have the opportunity to exhaust their due process and appellate rights through the justice system. I offer no opinion on any of those policies and trust we can all agree that our independent judicial system provides the appropriate forum in which to resolve constitutional and legal disputes, according to the law and without inappropriate external pressure to influence the outcome.

Criticism of judicial rulings by the public, the press, or governmental officials is not unusual and does not, of its own, upset that historical balance between the branches. However, the nature of recent illegitimate criticisms and threats of retaliation directed at the federal judiciary has changed.

Whether by design, ignorance, or both, inflammatory rhetoric from high-level executive branch officials,

denigrating the rulings of federal judges, and often accompanied by disparaging personal attacks against the character of the individual judges who issued them, threatens to erode the public’s confidence in the judicial branch and the rule of law it serves to protect.

Let me be clear—judicial independence does not mean that judges should be immune or even shielded from criticism. Indeed, criticism of judges, just as criticism of any public official, is protected under the Constitution and is

essential to a healthy political debate in any democracy. However, criticism and threats of the kind we are witnessing today from the top levels of the executive branch have the potential to harass and intimidate judges, and they raise legitimate concerns for the safety of judges and their families. This should be firmly rebuked.

Acrimonious attacks shouted continually from the “Bully Pulpit” of high political office—in which individual judges are characterized as: “radical left lunatics”; “monsters who want our country to go to hell”; “illegitimate obstacles to safety and democracy”; a “handful of communist, radical-left judges”; “enemies of democracy”; “out of control judges”; and also calling for their impeachment—serve no legitimate governmental purpose. Instead, they tend to erode public confidence in the judicial branch and weaken public faith in the rule of law.

To fulfill its mission—to render decisions in accord with the rule of law—judges must have decisional independence to adjudicate cases “without fear or favor,” and be free of undue influences; including those posed by external pressure, harassment, threats of retribution, and violence.

Such criticisms are amplified significantly when spread via social media platforms to an audience which sometimes includes individuals ill-equipped to distinguish between political rhetoric versus a call to action. Combined with growing incidents of “doxing” and “swatting,” and anonymous threats of violence, they rise to the level of attempts to intimidate judges and pose a potential danger to the operation of the judicial branch.

Most reading this commentary are familiar with the well-publicized rash of over 100 pizzas sent anonymously to the residences of judges who have enjoined some of the executive branch orders. Reportedly, at least 20 such pizzas were ordered under the name of “Daniel Anderl,” the 20-year-old son of U.S District Judge Esther Salas. Daniel was murdered, when he answered the door of the family home, by a disgruntled lawyer posing as a delivery driver, who also shot Judge Salas’ husband before killing himself. What purpose is served by sending pizzas to the homes of judges, other than to intimidate them by showing that “we know where you and your family members live?” It is unclear whether those anonymously sending pizzas actually intended to do violence to the

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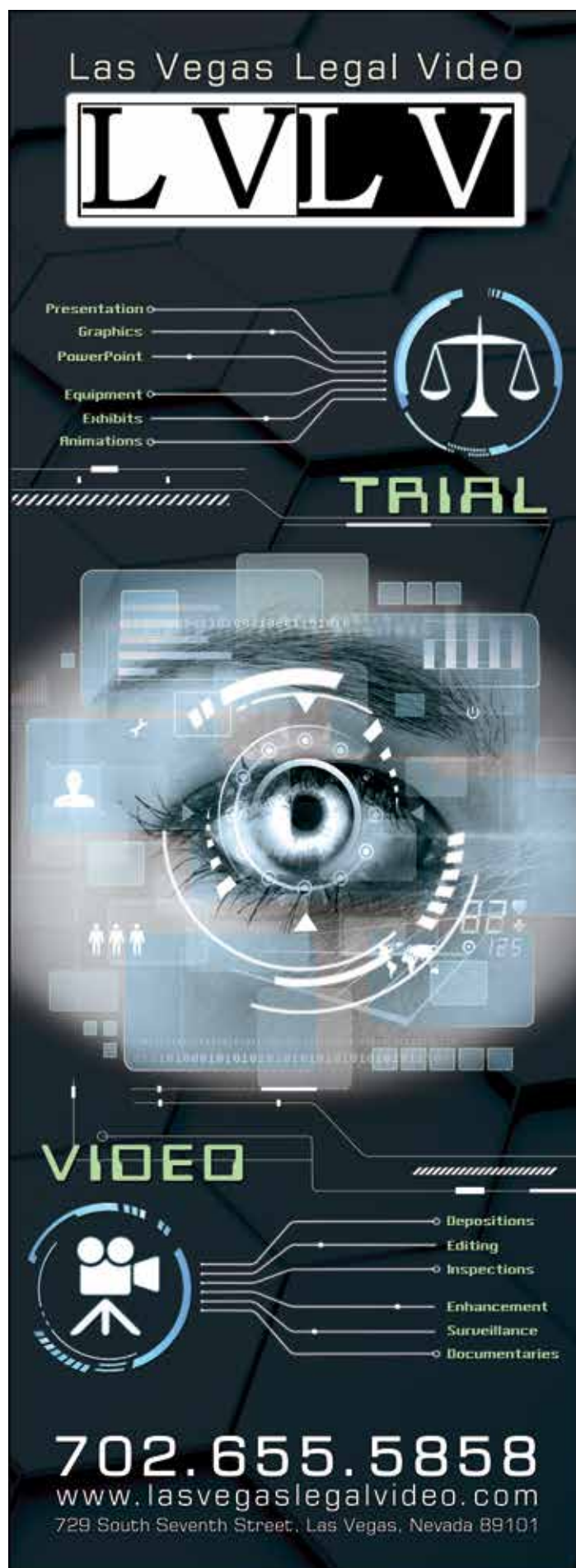
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judges receiving them, but I submit that the criticisms of the judiciary coming from high officials in the executive branch give license to motivate some to engage in such irresponsible action.

As the Chief Justice concluded in his report, “Our political system and economic strength depend on the rule of law. The rule of law depends, in turn, on Article III of the Constitution and judges and justices appointed and confirmed under it.” Thoughtful criticism serves a useful purpose, but threats, intimidation, defiance, and violent acts directed at judges for doing their job, are never justified and undermine our republic.

I offer no easy solution to the problems outlined in this commentary—I wish I could. But as lawyers, we can all do something. And if we can do something about this disturbing threat to the independence of the federal ju-

diiciary and the rule of law, we should. I encourage all members of the bar to reflect on how they can contribute to this effort and offer the following for your consideration.

Clearly, our society needs a refresher in civic education. As lawyers, we are well equipped to contribute to that effort. I urge you to become involved in civic education opportunities offered through the Nevada Bar Association, Clark County Bar, local school districts, and non-profit organizations. Since 1987, I have participated in the “We the People” program founded by the Center for Civic Education. We the People, and other civic education programs, currently operate under the auspices of the Nevada Center for Civic

Engagement (NVCCE). The NVCCE offers a wonderful example of what Civic Education programs can accomplish. <https://nvcce.org/>.

Thoughtful criticism serves a useful purpose, but threats, intimidation, defiance, and violent acts directed at judges for doing their job, are never justified and undermine our republic.



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As lawyers, you are often considered leaders in your own community or mini communities. When you speak out in your professional or social organizations, or even among non-lawyer friends, what you say about the importance of judicial independence and the rule of law makes a difference. I urge you all to speak out and call upon public officials and others to discourage criticisms and threats of the type described in this commentary. Among the many resources which you might find helpful is Duke Law School's Bolch Judicial Institute's Guide to Defending the Judiciary, <https://judicialstudies.duke.edu/defending-the-judiciary/>. The Bolch Guide contains links to several resources for lawyers and bar organizations which you may find useful.

I also recommend the new and evolving website of the recently formed Article III Judges Coalition, <https://keepourrepublic.org/article-III-coalition/>. The Article III Coalition is a non-partisan organization, comprised of more than forty retired United States district and circuit judges, including me, who have come together to "support, preserve and defend judicial independence as the foundation of the rule of law and of our democracy." I encourage you to consult the coalition's website, as it de-

velops, for links to additional resources you also may find helpful.

I close this commentary with a reminder that you, as members of the bar, play an integral role in ensuring the rule of law under our Constitution. We share the obligation to defend it. **C**

A member of the Nevada Bar since 1973, Judge Philip M. Pro served nearly 35 years on the bench: as United States Magistrate Judge, from October 1980 through July 1987; and as United States District Judge, from 1987 until his retirement in 2015. He currently serves as an arbitrator with JAMS.

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Keeping the Public Trust: *Falconi* Protects Public Access to Probate Proceedings

By Lauren Wigginton

Public access to courts ensures judicial accountability and fair proceedings. Both the federal and Nevada constitutions protect that access, establishing a presumption in favor of open proceedings under the First Amendment unless experience and logic dictate otherwise. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 567-68.

Where he has no personal stake, Rupert Murdoch, the founder of Fox News, seems to recognize the benefit of open courts. Under Murdoch's vision of around-the-clock news coverage, almost no case can escape the public eye. Except, perhaps, Murdoch's own.

Murdoch has long held his massive estate and media empire in irrevocable trust for his four children, equally. In 2024, Murdoch sought to change the terms of that trust, handing control to his eldest son, alone. The probate proceedings that followed have sparked national interest. Small wonder: the outcome of the Murdoch family's dispute may change the future of American news. Murdoch's three younger children are considered more politically moderate than their brother or father. But if Murdoch has his way, the proceedings will be completely sealed in Nevada's Second Judicial District.

Background

Murdoch initiated probate proceedings in Nevada. But neither Murdoch, nor his estate, nor the companies it controls, have ties here. He selected Nevada as a forum to take advantage of NRS 164.041, which turns the *Richmond Newspapers'* presumption on its head, allowing probate filings under seal without court order. When news of Murdoch's sealed Nevada proceeding came to light, multiple national news companies filed a petition to open access, with support from the ACLU of Nevada as amicus. See Dkt. No. 84379 (Nev. September 19, 2024) (*Doe I Trust*).

The Supreme Court of Nevada recently heard argument. Petitioners focused on the district court's improper understanding of NRS 164.041, but some justices seemed primed to go further, questioning how a statute that reverses the constitutional presumption of openness could be constitutionally applied under any circumstances. Oral Argument ("OA") at 5:35, *Doe I Trust* (Nev. May 7, 2025).

The Court's decision is now pending.

Richmond Newspapers and *Falconi*

Since *Richmond Newspapers* in 1980, "both civil and criminal trials have been presumptively open[.]" *Id.* at 580, n. 17; *Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 249 (1996). In *Falconi v. Eighth Judicial Dist. Court*, the Supreme Court of Nevada clarified that family court proceedings are likewise presumptively open under *Richmond Newspapers*, striking down a Nevada statute similar to that at hand and related local rules, which allowed parties to close family court proceedings on request and without court order. 543 P.3d 92 (Nev. 2024).

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For more information, contact: Stephanie at (702) 387-6011, StephanieAbbott@clarkcountybar.org.

Falconi Applies to Trust Cases

Murdoch insists that *Richmond Newspapers* and *Falconi* are inapplicable because probate is founded in equity, such that “experience and equity” counsel against the presumption here. But, as one justice noted at oral argument, the family law proceeding in *Falconi* was also historically equitable, and still presumptively open. OA at 23:45.

In response, Murdoch attempted a distinction, arguing that *Falconi* discussed family law cases, not the sensitive questions of “legacy, death, [and] inheritance” at play here. Because of these concerns, Murdoch says, probate proceedings were historically conducted on a “secrecy-oriented” basis, favoring out-of-court proceedings that rendered public oversight a moot point. Opp. to Emergency Mot. 15. Several justices pushed back, though, suggesting that the proceedings at issue in this case, in fact, resembled ordinary legal proceedings in any civil case (taking of evidence, formal proceedings, witnesses examined and cross-examined in court), and exactly the sort for which public oversight is desirable. OA at 24:28.

Murdoch also argued, in his briefing and oral argument, that if *Richmond Newspapers* applied, his family’s

notoriety warranted sealing of proceedings in this case to protect a compelling public interest. OA at 19:00. But, as one justice explained, the Murdoch family’s notoriety—and the wealth and power that undergirds it—means the public’s interest is exactly to the contrary, favoring open proceedings. OA at 28:00. Secret proceedings determining the outcome of a vast political news empire would erode the public trust, disrespect American history, and permit the wealthiest among us to manipulate the justice system (and forum shop) to avoid public accountability.

If it is unclear what the Court will do, what it should do is crystalline. Well-established constitutional precedent demands that trust proceedings—even for the wealthy and powerful—be presumptively open to the public. If NRS 164.041 is to stand, it cannot be understood to allow for the presumptive closure of probate proceedings without court order. **C**

Lauren Wigginton is Of Counsel at Holland and Hart, LLP. She represents clients in a range of complex, high-profile litigation and appeals. Lauren was honored to represent the ACLU in its amicus participation in the Doe I Trust appeal, alongside Holland and Hart partner Abraham G. Smith.

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The Nevada Anti-SLAPP Act and Its Role in Preserving First Amendment Rights in Nevada

By Marc J. Randazza

Introduction

Strategic Lawsuits Against Public Participation (SLAPP) aim to silence critics through the burden of litigation. Nevada's Anti-SLAPP Act, NRS 41.635 *et seq.*, provides a shield against such lawsuits, providing substantive immunity from claims targeting protected speech.

Framework and Purpose

Nevada's Anti-SLAPP law deters weak lawsuits that punish or discourage free expression. The law provides defendants with substantive immunity from meritless lawsuits filed to chill defendants' First Amendment rights. *Shapiro v. Welt*, 389 P.3d 262, 267 (Nev. 2017). NRS 41.660 provides that if a lawsuit is filed against a defendant for "good faith" communications about a matter of public concern (which is defined broadly), then the defendant may invoke the Anti-SLAPP law's protections. See *e.g. Smith v. Zilverberg*, 481 P.3d 1222, 1227–28 (Nev. 2021) (the public has an interest in a businessman's behavior because it "inform[ed] the public's decision on whether to do business with him.>").

Protected Communication

The first prong requires defendants to show the claim arises from protected speech directed at speech or petition rights. NRS 41.637. Nevada courts interpret these categories broadly, and to all possible claims. *Panik v. TMM, Inc.* clarified that no claim is categorically exempt from Anti-SLAPP protections. 538 P.3d 1149, 1152 (Nev. 2023). The Supreme Court of Nevada held that the law applies to trade libel and abuse of process claims. This focus on the underlying conduct, not the claim's label, ensures broad First Amendment safeguards. *Id.*

Public Interest and Public Forum

Nevada courts define "public interest" broadly. In *Wynn v. AP*, an article about sexual misconduct allegations was connected to the public interest. 555 P.3d 272, 277 (Nev. 2024). Likewise, *Abrams v. Sanson* held that criticisms of an attorney's courtroom conduct were an issue of public interest. 136 Nev. 83, 87–88 (2020). And in *Williams v. Lazer* the Supreme Court of Nevada held that statements to the Nevada Real Estate Division (NRED) that a real estate agent was racist and sexist were protected as petitioning activity. 137 Nev. 437, 440 (2021).

The public forum requirement is similarly flexible. In *Kosor v. Olympia*, HOA meetings, newsletters, and online platforms like nextdoor.com were public forums because they facilitated civic engagement. 136 Nev. 705, 709–14 (2020). However, *Keenan v. Claggett*, distinguished private email listservs, as a restricted attorney listserv lacked the accessibility of a public forum. 2024 Nev. LEXIS 396, at *4–5 (2024).

Good Faith

Prong one requires "good faith," and that term is defined in the statute as true or made without knowledge of its falsity. However, ill-informed lawyers will try to argue that if the statement is allegedly defamatory, it cannot be in good faith. See *Daley v. Shields*, No. 85144, 2024 LEXIS 163, at *7 (Nev. 2024) (finding that plaintiff providing evidence that defendant's statements were false did not defeat a defendant's showing of good faith based on declaration he did not know statements were false). Showing good faith is easy. A defendant's declaration is sufficient. *Lazer v. Williams*, 137 Nev. 437, 440–42 (2021). The "good faith" discussion also overlaps with the law of defamation in that a statement of opinion cannot be made with knowing falsity, as an opinion cannot be false.

There is a wrinkle in Nevada law that makes very little sense, and I call on the Supreme Court of Nevada to re-examine it. In *Spirtos v. Yemenidjian*, the defendant denied making defamatory statements. 137 Nev. 711, 713 (Nev. 2021). The Court then held that since the defendant denied making the statements, he could not show good faith, as he “cannot deny accusing [plaintiff] of corruption in his conversation . . . while simultaneously contending that this (non)accusation was truthful or made without [defendant’s] knowledge of its falsehood.” *Id.* at 715. The reasoning here is counter to the language and purpose of the statute, if a defendant did not make a statement at all, then it only stands to reason they did not make the statement with knowledge of falsity.

Plaintiff’s Burden and First Amendment Protections

Under prong two, plaintiffs must demonstrate “minimal merit.” *Abrams v. Sanson*, 136 Nev. 83, 91 (2020). This stage filters out weak claims that chill speech. The plaintiff must make a *prima facie* showing supporting their claims; simply showing there is a genuine dispute of material fact is not sufficient. *Panik v. TMM, Inc.*, 538 P.3d 1149, 1155–56 (Nev. 2023). Courts consider defenses like privileges at prong two, reinforcing free speech protections. See *Williams v. Lazer*, 137 Nev. 437, 443–44 (2021) (discussing statements protected by the litigation privilege).

Fee Awards

NRS 41.670 deters SLAPP suits by imposing financial consequences. In *Smith v. Zilverberg*, the court ruled that prevailing defendants may recover all fees incurred in defending dismissed claims, not just motion-related costs. 137 Nev. 65, 72–73.

Challenges and Judicial Refinements

Despite its strengths, the Act faces some problems. The *Spirtos* decision risks weakening protections by allowing vague allegations to survive motions. And in a unique twist to Nevada practice, in contrast with every other state that has an Anti-SLAPP law, state and federal courts in Nevada have allowed plaintiffs to “cut and run” once the defendant files an anti-SLAPP motion. The court in *Padda v. Hendrick* found that the statute only allows a defendant to recover fees if the motion is granted. Thus, voluntarily dismissing any time prior to an adverse ruling on an Anti-SLAPP motion can evade the law’s consequences. *Padda v. Hendrick*, No. 78534,

2020 LEXIS 409, at *2 (Nev. 2020).

Danger

Anti-SLAPP motions are similar to summary judgment motions; you need to provide factual support and documentary evidence. This means a defendant can incur a lot of attorneys’ fees by the time a motion is granted. A SLAPP plaintiff could be on the hook for a fee award they are incapable of paying. And a bankruptcy estate will seek funds from whatever sources it can, including by malpractice claims against plaintiff’s attorneys who file an ill-advised SLAPP.

Conclusion

Nevada’s Anti-SLAPP Act offers a robust mechanism to dismiss meritless lawsuits targeting free speech. Cases like *Wynn* and *Smith* demonstrate its effectiveness. **G**

Marc J. Randazza is a First Amendment attorney with offices in Las Vegas, Boston, Miami, Tampa, and Hartford. Randazza Legal Group handles First Amendment matters nationwide.



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First Steps on How to Uphold the First Amendment

By Marcus J. Brouwers

The First Amendment of the United States Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” U.S. Const. amend. I. This First Amendment right to peaceably assemble and to voice grievances against the government can be exercised in numerous ways, but the most obvious form is through protest and marches.

While constitutional rights are the bedrock of a democratic society, they should not be taken for granted, and they still need to be protected. The front line of this protection is legal observing. Legal observers are legal workers, law students, and lawyers who attend protests and civil disobedience actions to document these events which can later be used in defense cases, public statements, and litigation in order to hold law enforcement agencies accountable for the actions of their officers. (<https://www.nlg.org/massdefenseprogram/los/>)

Legal observers are organized and trained through the National Lawyers Guild (“NLG”). The NLG was founded in 1937 by an association of progressive lawyers focused on human rights and was the first integrated bar association in the United States. *Id.* The NLG has helped throughout the years with the blue-collar United Auto Workers, civil rights and anti-war movements, international interests, and many other exercises of civil liberties.

The right to peacefully assemble and voice grievances is a liberty that applies regardless of political affiliation, class, race, or orientation. It applies to all of us, whether we agree with the protest or not. In a time when civil liberties are being debated and fought over in the streets, consider volunteering as a legal observer with the NLG

and help protect this constitutional right: <https://www.nlgv.org/>.

Marcus J. Brouwers is an attorney with the Legal Aid Center of Southern Nevada, Inc. representing children in minor guardianship cases, and mentoring pro bono attorneys representing minors. Marcus is also a member of the Las Vegas Chapter of the National Lawyer's Guild.

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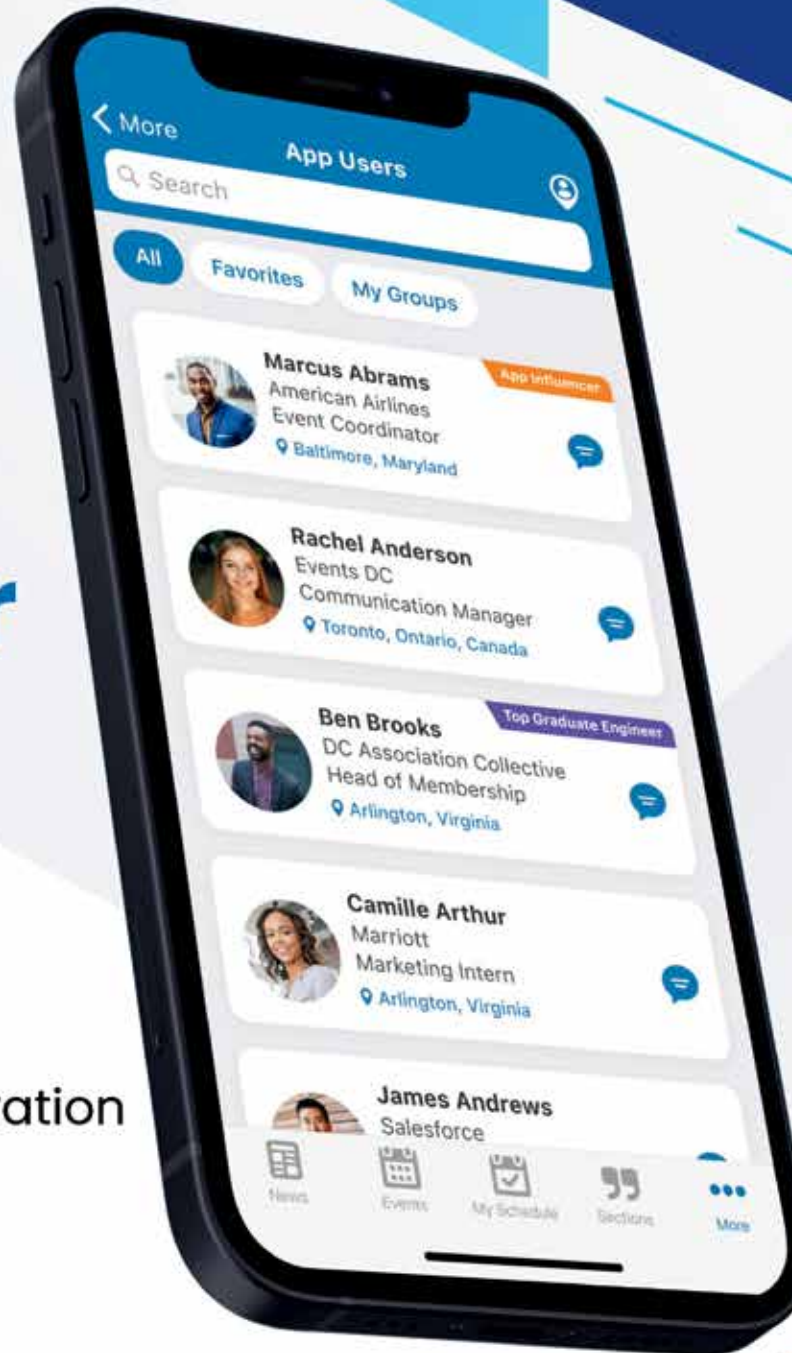


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