

STATE OF INDIANA) IN THE CARROLL COUNTY CIRCUIT COURT
) SS:
COUNTY OF MARION) CAUSE NO. 08C01-2210-MR-000001

STATE OF INDIANA)
)
 Plaintiff,)
)
v.)
)
RICHARD M. ALLEN)
)
 Defendant.)

MEDIA INTERVENORS’ MOTION FOR LEAVE TO INTERVENE

The Media Intervenors,¹ by counsel, respectfully submit this Motion for Leave to Intervene in the above-captioned cause. In support, the Media Intervenors state the following:

1. On November 2, 2022, the Court entered its *Order Acknowledging Public Hearing* (“Public Hearing Order”) on the State’s Verified Request to Prohibit Public Access to the Probable Cause Affidavit and Charging Information.
2. That Public Hearing Order stated that the hearing would take place on November 22, 2022 (the “Public Hearing”) and would “be conducted pursuant to Ind. Code § 5-14-3-5.5 and Indiana Rules of Court, Rules on Access to Court Records, Rule 6.”²

¹ The “Media Intervenors” refer to the following entities collectively: Indiana Broadcasters Association, Inc.; Hoosier State Press Association, Inc.; The Associated Press; Circle City Broadcasting I, LLC d/b/a WISH-TV; E.W. Scripps Company d/b/a WRTV; Nexstar Media Inc. d/b/a WXIN/WTTV; Neuhoff Media Lafayette, LLC; Woof Boom Radio LLC; TEGNA Inc. d/b/a WTHR; Gannett Satellite Information Network, LLC d/b/a The Indianapolis Star; and American Broadcasting Companies, Inc. d/b/a ABC News.

² Rule 6 applies in “extraordinary circumstances” where a court record “that otherwise would be publicly accessible” is requested to be excluded from public access. *See* Rule 6(A). Ind. Code § 5-14-3-5.5 applies when the court receives a request to seal a public record that is “not declared confidential under [Ind. Code § 5-14-3-4(a)]” (i.e. public records that are mandatorily excepted from disclosure).

3. The Public Hearing Order further stated that “[p]arties or members of the general public will be permitted to testify and submit written briefs, subject to reasonable time constraints imposed by the Court.”

4. Consistent with the Public Hearing Order, the Media Intervenors filed a Prehearing Brief and their counsel’s Appearances on November 21, 2022, in anticipation of being heard at the Public Hearing based on (1) the permissive language of the Public Hearing Order and (2) Ind. Code § 5-14-3-5.5(d), part of the Indiana Access to Public Records Act (“APRA”), which gives “members of the general public” the right to “testify and submit written briefs” upon a request to seal public records not mandatorily excepted from disclosure.

5. At the beginning of the Public Hearing, however, the Court stated that the Public Hearing would be conducted pursuant to Rule 6 and not pursuant to APRA,³ therefore not permitting the Media Intervenors to present argument.

6. Accordingly, the Media Intervenors now formally request leave to intervene in this action for the limited purpose of challenging the State’s Verified Request to Prohibit Public Access filed on October 28, 2022 and the provisional exclusion of the Probable Cause Affidavit and Charging Information. *See Richmond Newspaper, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (explaining that the media acts as “surrogates for the public” in seeking public access); *see also Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978) (“It is clear that the courts of this

³ Media Intervenors now understand that the Defendant and his counsel have indeed reviewed the State’s Verified Request to Prohibit Public Access and Probable Cause Affidavit. Access by the Defendant and his counsel indicates that the State’s Request was simply to exclude the documents from public access rather than to seal the documents. *See Access to Court Records Handbook* at p. 53, Q1 (2020), available at: <https://www.in.gov/courts/iocs/files/PublicAccessHandbook.pdf> (explaining the difference between records “not accessible for public access” and those “sealed under statutory authority”).

country recognize a general right to inspect and copy public records and documents, including judicial records and documents”).

7. The Media Intervenors also respectfully request that the Court, in recognition of the media’s unique access interests, consider (1) its Prehearing Brief filed on November 21, 2022;⁴ and (2) their tendered Post-Hearing Brief (attached to this Motion as Exhibit 1). The tendered Post-Hearing Brief is succinct and does not repeat the points made in the Pre-Hearing Brief. The purpose of the Post-Hearing Brief is to respond to certain arguments made by the State during the Public Hearing.

WHEREFORE, the Media Intervenors respectfully request that the Court:

- (i) Grant them leave to intervene in the above-captioned cause for the limited purpose of challenging the State’s Verified Request to Prohibit Public Access filed on October 28, 2022 and the provisional exclusion of the Probable Cause Affidavit and Charging Information;
- (ii) Consider the Media Intervenors’ Prehearing Brief filed on November 21, 2022 and tendered Post-Hearing Brief (attached to this Motion) in ruling on the State’s Verified Request to Prohibit Public Access filed on October 28, 2022; and
- (iii) All other just and appropriate relief.

⁴ On November 22, 2022 following the Public Hearing, the Court entered its *Order or Judgment of the Court* which “note[d] filing of a Limited Appearance by Attorneys” and the Pre-Hearing Brief, further stating that the Court has taken this matter under advisement.

Respectfully submitted,

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Neuhoff Media Lafayette, LLC; Woof Boom
Radio LLC; TEGNA Inc. d/b/a WTHR;
Gannett Satellite Information Network, LLC
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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2022, the foregoing was filed with the Clerk of the Carroll County Circuit Court and served to all counsel of record via IEFS.

/s/ Margaret M. Christensen