

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

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

**MEDIA INTERVENORS’ RENEWED MOTION TO INTERVENE
AND MOTION TO GRANT PUBLIC ACCESS TO
THE STATE’S VERIFIED REQUEST TO PROHIBIT PUBLIC ACCESS**

The Media Intervenors,¹ by counsel, respectfully submit this Renewed Motion to Intervene and Motion to Grant Public Access to the State’s Verified Request to Prohibit Public Access. In support, the Media Intervenors state the following:

A. RENEWED MOTION TO INTERVENE

1. On October 28, 2022, the State filed its Verified Request asking the Court to prohibit public access to the Affidavit of Probable Cause and Criminal Information pertaining to the Defendant’s arrest and criminal charges (the “Request”). The Request was filed as a confidential document and still remains confidential.

2. On November 2, 2022, the Court entered its *Order Acknowledging Public Hearing* (“Public Hearing Order”) on the Request. The Public Hearing Order stated that the hearing would

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.

“be conducted pursuant to Ind. Code § 5-14-3-5.5 and Indiana Rules of Court, Rules on Access to Court Records, Rule 6” and 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.”

3. The hearing on the Request occurred on November 22, 2022. At the hearing, the Court stated that Access to Court Records Rule 6 rather than Ind. Code § 5-14-3-5.5(d), part of the Indiana Access to Public Records Act (“APRA”), governed. The Media Intervenors therefore were not permitted to present argument at the hearing. Accordingly, following the hearing, the Media Intervenors filed their Motion for Leave to Intervene with a Post-Hearing Brief attached.

4. On November 28, 2022, the Court issued its Order denying the Request, in part, and denied the Motion for Leave to Intervene as moot.

5. The Media Intervenors now renew that Motion for Leave to Intervene with respect to the public release of the Request. *See Richmond Newsp., Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (explaining that the media acts as “surrogates for the public” in seeking public access).

B. MOTION TO RELEASE THE REQUEST TO THE PUBLIC

6. In the November 28, 2022 Order, the Court found that “the State has failed to prove by clear and convincing evidence that the Affidavit of Probable Cause and the Charging Information should be excluded from public access” and that “the public interest is not served by prohibiting access[.]” The Court, however, found that “the protection and safety of witnesses can be ensured by redacting their names from the Affidavit, and that the defendant’s personal information can be removed from the Charging Informations.”

7. The Court therefore ordered public release of a redacted Affidavit for Probable Cause and Charging Information, submitted by the State at the hearing, with witness names and the Defendant’s personal information redacted.

8. Shortly after, the redacted Affidavit for Probable Cause and Charging Information were released publicly. The Request itself, however, still has not been released publicly and remains confidential on the docket.

9. Access to Court Records Rule 6(A) permits the filing of “verified written request[s] to prohibit Public Access to a Court Record,” as the State did here in filing its Request.

10. Rule 6(A) contemplates that requests to prohibit public access should not remain excluded from public view forever. Such requests are only to be excluded *temporarily* until the Court rules on the request: “When this request is made, the request and the Court Record will be rendered confidential for a reasonable period of time **until the Court rules on the request.**” Rule 6(A) (emphasis added).

11. Because the Court has already ruled on the Request and denied the Request in-part (with the exception of witness names and Defendant’s personal information), the Request itself now should be released. There is no longer any legal basis or reason to exclude the Request—a quintessential court record—from the public eye.² *See, e.g., Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978) (“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents”).

WHEREFORE, the Media Intervenors respectfully request that the Court grant them permission to intervene in this matter for the purpose of seeking release of the State’s Verified Request to Prohibit Public Access to the public and order the clerk to release the Request to the public.

² The Media Intervenors acknowledge that the Request may contain witness names and the Defendant’s personal information. If that is the case, consistent with the Court’s November 28, 2022 Order, the Media Intervenors would not object to a public version of the Request that has witness names and personal information redacted only.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2023, 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