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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

v.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR29-22-2805

**REPLY TO MR. KOHBERGER'S
OBJECTION DATED MAY 11, 2023**

THE ASSOCIATED PRESS; RADIO
TELEVISION DIGITAL NEWS
ASSOCIATION; SINCLAIR MEDIA OF
BOISE, LLC/KBOI-TV (BOISE); STATES
NEWSROOM DBA IDAHO CAPITAL SUN;
TEGNA INC./KREM (SPOKANE), KTVB
(BOISE) AND KING (SEATTLE);
EASTIDAHONEWS.COM; THE LEWISTON
TRIBUNE; WASHINGTON STATE
ASSOCIATION OF BROADCASTERS;
IDAHO PRESS CLUB; IDAHO EDUCATION
NEWS; KXLY-TV/4 NEWS NOW AND
KAPP/KVEW-TV—MORGAN MURPHY
MEDIA KXLY-TV/4 NEWS NOW; SCRIPPS
MEDIA, INC., DBA KIVI-TV, A DELAWARE

CORPORATION; THE SPOKESMAN-REVIEW/COWLES COMPANY; THE NEW YORK TIMES COMPANY; LAWNEWZ, INC.; ABC, INC.; WP COMPANY LLC, DBA THE WASHINGTON POST; SOCIETY OF PROFESSIONAL JOURNALISTS; THE MCCLATCHY COMPANY, LLC; and THE SEATTLE TIMES,

Intervenors.

Mr. Kohberger's objection to Intervenors' Motion to Reconsider Order dated May 4, 2023, highlights the exact problem here: he requested, and received, a gag order *without* submitting supporting evidence to the Court. He says he now has evidence to support his request for a gag order, but he needs time to put it together—even though a gag order has been in place for over four months. And he asks the Court to continue to enforce a gag order while he collects his evidence.

Mr. Kohberger's request turns the judicial process on its head. When a party requests a court order, he has the burden of submitting the evidence that supports that order *before* the Court issues the order. A party is not entitled to obtain relief first, and then take months to collect and present evidence that purportedly supports the request for relief.

While those principles apply generally to the judicial process, they are paramount when the unsupported court order restricts First Amendment rights. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Am. C.L. Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 918 (D. Idaho 2014) (quoting *Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012)).

Intervenors have suffered irreparable harm to their constitutional rights since January. The judicial process, including the expectation that a party submits evidence *before* obtaining relief (particularly relief that affects another party), is designed to prevent that irreparable harm. As Mr.

Kohberger now acknowledges, that process was not followed here as he still has not even collected the evidence he intends to submit.

As Intervenors have requested, the Court should stay enforcement of the Amended Nondissemination Order pending any further briefing or hearing on Intervenors' Motion to Intervene and Motion to Vacate the Amended Nondissemination Order to avoid any additional irreparable harm in the interim. If, indeed, an evidentiary hearing is the next step to determine whether a gag order is needed, no gag order should be enforced in advance of that hearing.

DATED: May 11, 2023.

STOEL RIVES LLP

/s/ Wendy J. Olson

Wendy J. Olson

Cory M. Carone

Attorneys for Intervenors

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of May 2023, I served a true and correct copy of the foregoing upon the following named parties by the method indicated below, and addressed to the following:

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/s/ Wendy J. Olson

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