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IN THE SUPREME COURT OF THE STATE OF IDAHO

**THE ASSOCIATED PRESS; RADIO
TELEVISION DIGITAL NEWS
ASSOCIATION;
SINCLAIR MEDIA OF BOISE,
LLC/KBOI-TV (BOISE); THE
MCCLATCHY
COMPANY, LLC; STATES NEWSROOM
dba IDAHO CAPITAL SUN; THE
SEATTLE TIMES; TEGNA INC./KREM
(SPOKANE), KTVB (BOISE) AND KING
(SEATTLE); EASTIDAHONEWS.COM;
THE LEWISTON TRIBUNE;
WASHINGTON
STATE ASSOCIATION OF
BROADCASTERS; ADAMS
PUBLISHING GROUP dba
POST REGISTER; 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; BOISE
STATE PUBLIC RADIO; THE TIMES-
NEWS; THE SPOKESMANREVIEW/
COWLES COMPANY; COEUR D'ALENE
PRESS; THE NEW YORK TIMES
COMPANY; DAY365 dba BOISEDEV;**

**MEMORANDUM IN SUPPORT OF PETITION TO
INTERVENE AS REAL PARTY IN INTEREST**

LAWNEWZ, INC.; SCRIPPS MEDIA, INC., a Delaware corporation; ABC, INC.; WP COMPANY LLC, dba THE WASHINGTON POST; SOCIETY OF PROFESSIONAL JOURNALISTS,

Petitioners,

V.

SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, COUNTY OF LATAH; HONORABLE MEGAN E. MARSHALL, MAGISTRATE JUDGE,

Respondents.

Supreme Court Docket No. 50482-2023

MEMORANDUM IN SUPPORT OF PETITION TO INTERVENE AS REAL PARTY IN INTEREST

COMES NOW, Bryan C. Kohberger, by and through their attorney, Jay Weston Logsdon, Chief Deputy Litigation, and hereby submits the following Memorandum in support of his contemporaneously filed petition to intervene as a respondent in this action pursuant to I.A.R. 7.1 and as permitted by I.A.R. 5(a).

BACKGROUND

On November 13, 2022, media began reporting about the murders of four college students in Moscow, Idaho. Since those initial reports, the coverage has gone “viral”, leading to not only worldwide press coverage, but multiple citizen investigators creating videos and online groups discussing the murders.

This was known to Mr. Kohberger’s attorneys the moment he was arrested. Thus, one of the first things those attorneys did was prepare a Motion for a Nondissemination Order. Counsel for Mr. Kohberger contacted counsel for the prosecution and the parties stipulated to the granting of such an order. In the short time before the Order was entered Mr. Kohberger’s attorneys became known to the press and their office was immediately besieged by reporters. Press

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members took pictures of employees through windows, entered the office and refused to leave without meeting with attorneys, and regularly called the office on the same line necessary for its clients to reach their attorneys.

After the order was entered- this behavior slowed drastically.

The media now seeks to dissolve the order via a petition for a writ of mandamus from this Court directed at the Magistrate Court in Latah County. The media claims it needs access to attorneys and their agents in Mr. Kohberger's criminal matter to provide the public with all the facts- implying that a courtroom fails to do so.

The media's Petition directly implicates Mr. Kohberger's right to a fair trial. Although the Magistrate Court has a duty to protect Mr. Kohberger's rights, it must necessarily balance his rights against the rights of the public and media. Thus, the Magistrate Court is a conflicted party in this matter, and Mr. Kohberger seeks to protect his rights through intervention.

ARGUMENT

- I. Mr. Kohberger should be permitted to intervene pursuant to Idaho Appellate Rule 7.1 because he is a Real Party in Interest and is affected by the outcome of the petition.

Idaho Appellate Rule 7.1 allows for intervention by a "real party in interest." The rule provides:

Any person or entity who is a real party in interest to an appeal or proceeding governed by these rules or whose interest would be affected by the outcome of an appeal or proceeding under these rules may file a verified petition with the Supreme Court asking for leave to intervene as a party to the appeal or proceeding and serve a copy thereof upon all parties to the appeal or proceeding. The petition shall be processed as a motion in accordance with Rule 32 of these rules, and if the Supreme Court finds that such petitioning person or entity is a real party in interest or would be affected by the outcome of the appeal or proceeding, the Court may, in its discretion, grant leave to the petitioning party to intervene as a party appellant or respondent; and if leave is so granted such petitioning party

shall thereafter be a party to the appeal or proceedings for all purposes under these rules.

See I.A.R. 7.1. A real party in interest is “one who has a real, actual, material or substantial interest in the subject matter of the action...” *Caughey v. George Jensen Sons*, 74 Idaho 132, 134–35, 258 P.2d 357, 359 (1953).

I.A.R. 7.1 is similar to the statute that was at issue in *Kerly v. Wetherell*, 61 Idaho 31, 96 P.3d 503, 507 (1939), which this Court held was to be construed liberally. Since 1939, this Court has held that courts have “inherent power to grant intervention to persons who may be adversely affected by the outcome of a proceeding or when equitable principles otherwise require.” *City of Boise v. Ada County*, 147 Idaho 794, 803 (2009) (citing 67A C.J.S. *Parties* 93 (2009)).

The Sixth guarantees to the criminal defendant “the right to a speedy and public trial, by an impartial jury.” U.S. CONST. amend. IV. What the media seeks with its petition is to upend the “theory of our system”-

The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.

Patterson v. State of Colorado ex rel. Attorney General, 205 U.S. 454, 462 (1907). An outcome in this case like that in *Cowles Pub. Co. v. Magistrate Court of the First Judicial Dist. Of State, County of Kootenai*, 118 Idaho 753 (1990), would necessarily set out a new test for this state as to how courts should implement nondissemination orders. While the Magistrate Court and this Court both undoubtedly desire to protect that system- it is Mr. Kohberger’s right to a fair trial that is at stake here- a trial for four counts of first degree murder with the possibility of the death penalty. As the United States Supreme Court has held:

With his life at stake, it is not requiring too much that [the defendant] be tried in an atmosphere undisturbed by so huge a wave of public passion.”

Irvin v. Dowd, 266 U.S. 717, 728 (1961). Mr. Kohberger’s life depends on this system remaining intact. He must be permitted to fight for it if this Court decides to consider the media’s petition.

CONCLUSION

Mr. Kohberger is on trial for his life. This Court should not relegate him to seeking redress for prejudicial media coverage in other forums. If this Court wishes to consider the proper standards for necessary orders such as the nondissemination order in this case, it can only benefit the Court to hear from the person most uniquely affected by its decision.

Mr. Kohberger is both the real party in interest and a party who would be affected by the outcome of the proceeding and is properly allowed to intervene in this matter. Alternatively, if this Court rules otherwise, this Court should grant Mr. Kohberger leave to file an *amici curiae* brief and participate in oral argument.

DATED this 15 day of February, 2023.

ANNE C. TAYLOR, PUBLIC DEFENDER
KOOTENAI COUNTY PUBLIC DEFENDER

BY:



JAY WESTON LOGSDON
CHIEF DEPUTY LITIGATION
ASSIGNED ATTORNEY

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 17 day of February, 2023 addressed to:

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