

IN THE SUPREME COURT OF THE STATE OF IDAHO

SUPREME COURT DOCKET NO. 50482-2023

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 SPOKESMAN-REVIEW/COWLES COMPANY;
COEUR D'ALENE PRESS; THE NEW YOUR TIMES COMPANY; DAY365 dba
BOISEDEV; LAWNEWZ, INC.; SCRIPPS MEDIA, INC., a Delaware corporation; ABC,
INC.; WP COMPANY LLC, dba THE WASHINGTON POST; SOCIETY OF
PROFESSIONAL JOURNALISTS,

Petitioners,

vs.

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

Respondents.

**MEMORANDUM IN SUPPORT OF PETITION FOR LEAVE TO
INTERVENE BY STATE OF IDAHO, LATAH COUNTY PROSECUTOR**

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The State of Idaho, by and through the Latah County Prosecuting Attorney, William W. Thompson, Jr. and Bradley J. Rudley, Latah County Chief Civil Deputy Prosecuting Attorney, seeks to intervene in this action to defend the “Amended Nondissemination Order” entered on January 18, 2023 in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805. The State of Idaho/Latah County Prosecutor (“State”) seeks to intervene pursuant to Idaho Appellate Rule 7.1 as a real party in interest and as a party “whose interest would be affected by the outcome of” this proceeding. The State is subject to the restrictions of the “Amended Nondissemination Order” at issue in this appeal, and an attorney for one of the victim’s families in the underlying criminal case has filed a motion in that case to “Appeal, Amend and/or Clarify Amended Nondissemination Order.” Declaration of Wendy J. Olson (“Olson Decl.”), Ex. D. Finally, the State is in a unique position to assist this Court in assessing the importance of the “Amended Nondissemination Order.” Thus, the State could be subject to multiple orders if intervention is not granted in this case. The State is prepared to comply with any timeframes and deadlines set by the Court. Accordingly, granting leave to intervene will not cause any delay.

BACKGROUND

In criminal case number CR29-22-2805 the defendant, Bryan C. Kohberger, is charged by criminal complaint of the State of Idaho with four counts of murder in the first degree and one count of burglary. The case is still in the pretrial phase and is set for preliminary hearing on June 26, 2023.

This case and investigation have been the subject of great publicity. In light of such publicity, the parties in the underlying criminal case stipulated to the entry of the “Nondissemination Order” on January 3, 2023. Olson Decl., Ex. A. That Order was later Amended on January 18, 2023, to ensure “the balance between protecting the right to fair trial

for all parties involved.” Olson Decl., Ex. C. As a party to the underlying criminal case, the State of Idaho has an interest in preserving the right to a fair and impartial jury trial for both the State and Defendant. Additionally, the State is subject to the “Amended Nondissemination Order” and would be affected by the Court’s decision in this case. Thus, the State files this Petition to Intervene to defend the “Amended Nondissemination Order” and ensure the State is subject to any order, modifications, or changes this Court may make to such Order.

ARGUMENT

Idaho Appellate Rule 7.1 allows for intervention by a “real party in interest” or by a party “whose interest would be affected by the outcome of an appeal or proceeding . . .”. 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.

I.A.R. 7.1.

Regarding petitions to intervene in other proceedings, this Court has stated that they should “look with favor on intervention in a proper case, and . . . be liberal in permitting parties to intervene under the proper circumstances.” *City of Boise v. Ada County*, 147 Idaho 794, 803, 215 P.3d 514, 523 (2009) (internal quotations omitted). Intervention by the State and Defendant are also in line with a similar U.S. Supreme Court case where the media filed petitions to set aside orders entered to protect the constitutional right to a fair and impartial trial. *See Nebraska Press Ass’n v. Stuart*, 427

U.S. 539, 545 (1976) (Noting that the State of Nebraska and the defendant intervened in an action by the press in the Nebraska Supreme Court for a writ of mandamus, stay, and expedited order from an order of the lower court restricting press activities in a criminal case).

Further, this Court has generally defined a “real party in interest” as “one who has a real, actual, material, or substantial interest in the subject matter of the action . . . The main purpose of the real-party-in-interest rule is to ensure that the defendant will not be subjected to multiple obligations, and that the party bringing the action has the ability to protect the defendant from subsequent suits concerning the same obligation.” *Choice Feed, Inc. v. Montierth*, 168 Idaho 124, 137 (2020) (internal citations omitted).

In this case, the interests of the State would be affected by the outcome of the Petition for a Writ of Mandamus or a Writ of Prohibition. The State is bound by the “Amended Nondissemination Order” and has a duty as a public officer “to see that the accused has a fair and impartial trial.” *State v. Spencer*, 74 Idaho 173, 183 (1953). The State is further subject to the Idaho Rules of Professional Conduct, including rules on “trial publicity” and the “special responsibilities of a prosecutor” under Rules 3.6 and 3.8, which are implicated in regard to this matter and the parameters of the “Amended Nondissemination Order.”

The State is also a “real party in interest” because it has a “real, actual, material, or substantial interest” in this matter, and could be subjected to multiple orders if it were not made a party to this case. *Choice Feed*, 168 Idaho at 137. An attorney for one of the victim’s families filed a “Motion to Appeal, Amend and/or Clarify Amended Nondissemination Order” in the underlying criminal case, *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805, and the State could be subject to multiple orders if not made a party to any decision made by this Court on the constitutionality and limits of the “Amended Nondissemination Order.”

Finally, the State can demonstrate an interest in this matter which is not adequately represented and which may be impaired absent intervention. Upon request of the Court, and under appropriate circumstances, the State can provide the Court with specific information on witnesses and testimony which could be affected absent the imposition of the “Amended Nondissemination Order” in the underlying criminal case.

CONCLUSION

As the State of Idaho/Latah County Prosecutor is a “real party in interest” whose interests would be affected by the outcome of this appeal, the State requests that the Court grant the “Verified Petition for Leave to Intervene by State of Idaho/Latah County Prosecutor.” The State is in a unique position to assist this Court in assessing the importance of the “Amended Nondissemination Order” for protecting the parties’ rights to a fair and impartial jury trial in the underlying criminal case. Alternatively, the State/Latah County Prosecutor requests this Court grant leave for the State to file an *amici curiae* brief and participate in oral argument.

The State respectfully presents these requests to the Court.

DATED this 17th day of February, 2023.



Bradley J. Rudley
Chief Civil Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE** was served on the following in the manner indicated below:

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DATED this 17th day of February, 2023.


