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Attorneys for Intervenors

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

Memorandum in Support of Motion to Intervene

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.

Intervenors are a coalition of media companies that but for the Amended Nondissemination Order dated January 18, 2023 (“Gag Order”) would gather more information about Mr. Kohberger’s arrest and prosecution and then make editorial decisions about whether and when to publish that information. The State and Mr. Kohberger (the “Parties”) stipulated to what ultimately became the Gag Order, and Intervenors were not given an opportunity to submit any written or oral objections in the approximately one hour between the Parties submitting their stipulation and the Court issuing the original gag order in this case.

Because the Gag Order violates Intervenors’ rights under the U.S. and Idaho Constitutions, they petitioned the Idaho Supreme Court to vacate the Gag Order. Last week, the Idaho Supreme Court held that a “vague, overbroad, unduly restrictive, or not narrowly drawn” gag order is “an unconstitutional obstacle to [Intervenors] gathering” information about this case. *In re Petition for Writ of Mandamus or Writ of Prohibition*, No. 50482, 2023 WL 3050829, at *5 (Idaho Apr. 24, 2023). But on procedural grounds, the Idaho Supreme Court decided that this Court should have a chance, in the first instance, to vacate the Gag Order.

That is, the Idaho Supreme Court declined to exercise its original jurisdiction because Intervenors have an available remedy. The Idaho Supreme Court acknowledged that “Idaho’s Rules of Criminal Procedure do not provide a specific mechanism for third parties to intervene in a criminal case,” but they observed that “both state and federal courts often permit the media to

intervene in criminal cases on a limited basis—or at least file a motion as interested parties—in the defense of public access and free speech, including in Idaho.” *Id.* at *8.

Following the Idaho Supreme Court’s direction to first seek relief before this Court, Intervenor now move to intervene for the limited purpose of contemporaneously filing their Motion to Vacate the Amended Nondissemination Order.

DATED: May 1, 2023.

STOEL RIVES LLP

/s/ Wendy J. Olson

Wendy J. Olson

Cory M. Carone

Attorneys for Intervenor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of May 2023, I served a true and correct copy of the within and foregoing **MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE** upon the following named parties by the method indicated below, and addressed to the following:

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