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Attorneys for Interested Persons

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT
MAGISTRATE DIVISION**

STATE OF IDAHO,)	
)	
Plaintiff,)	Case No. CR22-20-0838
)	
vs.)	OBJECTION TO THE
)	STATE OF IDAHO'S MOTION TO
LORI NORENE VALLOW, AKA LORI)	RECONSIDER
NORENE DAYBELL,)	
)	
Defendant.)	
)	
_____)	
EAST IDAHO NEWS.COM, LLC;)	
COURT TV MEDIA, LLC; ADAMS)	
PUBLISHING GROUP DBA THE POST)	
REGISTER; BONNEVILLE)	
INTERNATIONAL)	
CORPORATION/KSL-TV; IDAHO)	
STATESMAN PUBLISHING, LLC DBA)	
THE IDAHO STATESMAN; NBC NEWS,)	
A DIVISION OF NBCUNIVERSAL)	
MEDIA, LLC; NPG OF IDAHO, INC.)	
DBA AS KIFI LOCAL NEWS 8; IDAHO)	
BROADCAST PARTNERS, LLC DBA)	
KPVI-TV; SCRIPPS MEDIA, INC., D/B/A)	
KIVI-TV)	
)	
Interested Persons.)	
)	
_____)	

The above Interested Persons, by and through counsel, file this Objection to the State of Idaho's Motion to Reconsider, and in support thereof shows as follows:

Although framed as a simple application of Idaho Court Administrative Rule (ICAR) 45, the relief sought by the State of Idaho is vastly disproportionate to the assumption it makes. In the climate of COVID-19, video access to criminal proceedings is much more than a convenience. It is an important means to ensure the Constitutional interests described by our United States Supreme Court are protected. See *Press-Enter. Co, v. Superior Court of California for Riverside Cty*, 106 S Ct. 2735 (1986) (holding that preliminary hearing include a qualified First Amendment right of access).

That video technology is presently critical to the proper administration of the judicial process cannot reasonably be disputed. Indeed, the very hearing addressing the State's Motion to Reconsider, itself occurs by video technology.

A criminal defendant's right to a fair judicial process is unquestionably of great importance. Transparency and open proceedings facilitate this fundamental right. "The right to an open public trial is a shared right of the accused and the public, a common concern being the assurance of fairness." *Press-Enterprise*, 106 S. Ct. at 2739.

The State argues that the relief it seeks is not for a closed hearing, but "simply that the preliminary hearing in this case be treated the same as nearly every other preliminary hearing where there are no other video cameras in the court room." See Memorandum in Support of Motion to Reconsider ("Memorandum") at page 1. The commitment to the Constitutional rights of the Defendant and the public is measured, not by the existence (or not) of video cameras in "nearly every other preliminary hearing," but by the commitment to transparency when "[c]riminal acts, especially certain violent crimes, provoke public concern, outrage, and hostility. 'When the public is aware that the law is being enforced and the criminal justice system is functioning, an outlet is provided for these understandable reactions and emotions.'" See *Press-Enterprise*. 106 S. Ct at 2742-2743. (citation omitted). The unique and remarkable allegations of this case are the very reason that video coverage of the proceedings is vital.

Significantly, although the State notes it is not seeking to close the hearing, the State presents no basis why disallowing video coverage will properly balance the Constitutional rights involved. Instead, the State simply invites the Court to its own speculation. "The First Amendment right of access cannot be overcome by the conclusory assertion that publicity might deprive the

defendant of that right [to a fair trial].” *Id.* at 2743.

Further, “[p]ublicity by itself does not require a change of venue,” or other preemptive measures. See *State v. Hadden*, 152 Idaho 371, 376, 271 P.3d 1227, 1232 (Ct. App. 2012). While inaccurate pretrial publicity would understandably be an important issue to consider, in this case the State is seeking to remove one of the most important means available to ensure the public receives accurate information.¹

The State of Idaho’s requested remedy is also drastically disproportionate to the Constitutional burdens it imposes. The State would have the entire country, and world, deprived of a critical instrument to facilitate transparency in order to ensure it is more difficult for the residents of Fremont County to witness the judicial process. However, to close access to these judicial proceedings, requires several findings, among them that the remedy is “narrowly tailored.” *Id.* at 2741. Instead, the State of Idaho seeks to use a sledge hammer where the Constitution requires a scalpel.

The specific claim of the State is that, if video is permitted, *voir dire* will become more difficult and potential jurors will more likely be struck for cause. See Memorandum at page 2. These are not burdens to be avoided; they are solutions to protect Constitutional interests. “Through *voir dire*, cumbersome as it is in some circumstances, a court can identify those jurors whose prior knowledge of the case would disable them from rendering an impartial verdict.” *Press-Enter. Co.*, 106 S. Ct. at 2743. Additionally, proper jury instructions can address the State’s concern, without depriving the public and press of their right of access.

“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Id.* at 2742 (citation omitted). The *Vallow* and *Daybell* matters are exactly those which require openness and transparency. With all the justified coverage about the tragic disappearance and deaths of the young victims, the public is entitled to know – and be reassured by – the serious and deliberate proceedings that will occur in this Court. Whether this preliminary hearing (and subsequent proceedings) are actually closed, or effectively closed due to current societal circumstances and enforcement of the remedy sought by the State, the Constitutional interests recognized by United States Supreme Court will be lost.

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Indeed, it appears that the State opposes the use of video exactly because it is an effective method to allow the exercise of First Amendment rights.

Therefore, Interested Persons respectfully request that the State's Motion for Reconsideration be denied.

DATED this 24th day of July 2020.

WRIGHT LAW OFFICES, PLLC

/s/ Steven J Wright
Steven J Wright
Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a licensed attorney in the State of Idaho, with my office in Idaho Falls, and that on the 24th day of July, 2020, I served a true and correct copy of the following described document on the persons listed below by the method indicated below:

DOCUMENT SERVED: OBJECTION TO THE STATE OF IDAHO'S MOTION TO RECONSIDER

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