IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

NATHAN J. WADE	)	
	)	
v.	)	Case No. 21-1-08166
	)	
JOYCELYN WADE	)	
	)	

MOTION TO UNSEAL

COMES NOW, The Atlanta Journal-Constitution; American Broadcasting Companies, Inc. (d/b/a ABC News); The Associated Press; Bloomberg L.P.; Cable News Network, Inc.; CBS Broadcasting Inc., (d/b/a/ CBS News); CMG Media Corporation and its television station WSB-TV; Dow Jones & Company, Inc., publisher of The Wall Street Journal; The E.W. Scripps Company on behalf of Scripps News, Court TV and its local media station group; Gray Media Group, Inc. and its television station WANF; Guardian News & Media Limited; The New York Times Company; Tegna Inc. and its television station WXIA-TV; and WP Company LLC d/b/a The Washington Post (collectively, "Media Intervenors") and hereby move to intervene and unseal the court records in this action.

A Non-Party Motion to Unseal was previously filed by Ashleigh Merchant on January 8, 2024, and is now scheduled for a hearing on January 31, 2024. Unless otherwise directed by the Court, counsel for Media Intervenors will appear for the hearing and request that this motion also be heard at that time.

INTRODUCTION

The instant action involves the divorce of Nathan Wade, and his wife Joycelyn. Mr. Wade is currently serving as a Fulton County Special Prosecutor in *State v. Donald J. Trump, et al.*, Case No. 23SC188947 (Fulton Co. Super. Ct.). A filing made by Ms. Merchant on behalf of

Defendant Michael Roman in *State v. Trump* alleges that records in this divorce are relevant to and support Ms. Merchant's allegation that Special Prosecutor Wade: (1) maintained a romantic relationship with Fulton County District Attorney Fani Willis; (2) cohabitated with D.A. Willis for a period of time; and (3) paid for personal travel and/or other expenses relating to D.A. Willis during time periods relevant to his appointment. Based on these and other allegations, Ms. Merchant contends that D.A. Willis and Special Prosecutor Wade should be disqualified from *State v. Trump* and the indictment should be dismissed.

The possible existence of a romantic relationship between Special Prosecutor Wade and D.A. Willis is now a matter of significant and legitimate public concern. The public interest in any court records in this action bearing in any way on a relationship between Special Prosecutor Wade and D.A. Willis overrides any privacy interests of the parties. The Georgia Supreme Court has expressly recognized that Georgia's sweeping presumption of access to court records applies with full force even in cases involving familial matters. *See In re Atlanta Journal-Constitution*, 271 Ga. 436, 438, 519 S.E.2d 909, 911 (1999) (reversing trial court order sealing probate case involving claim by an adult child seeking a portion of the estate of former owner of The Atlanta Falcons: "[C]ivil lawsuits quite often cause litigants to experience an invasion of privacy and resulting embarrassment, yet that fact alone does not permit trial courts to routinely seal court records").

Media Intervenors respectfully request that the Court vacate the February 10, 2022, Sealing Order entered in this case, and confine any sealing to "Protected Identifiers" governed by Superior Court Rule 21.6 and O.C.G.A. § 9-11-7.1(a). *See generally* O.C.G.A. § 9-11-7.1(a) (requiring redaction of certain information relating to an individual's "social security number, taxpayer identification number, financial account number, or birth date").

ARGUMENT

I. GEORGIA LAW IS CLEAR THAT THE MEDIA HAS A RIGHT TO INTERVENE WHERE ACCESS TO RECORDS ARE AT ISSUE.

The right of the media to intervene in legal actions where, as here, their newsgathering rights could be burdened by court orders is well-established. *See, e.g., WXIA-TV v. State*, 303 Ga. 428, 433, 811 S.E.2d 378, 383 (2018) (finding media has standing to intervene and challenge gag order entered in criminal proceeding); *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, 578, 292 S.E.2d 815, 819 (1982) (recognizing right of the press to challenge order excluding the public and press from criminal proceedings and instituting procedure where the news media must be provided notice and an opportunity to be heard prior to consideration of motions seeking restrictions on access to court proceedings); *Atlanta Journal-Constitution v. State*, No. A03A0695 (January 29, 2003) (Georgia Court of Appeals reversing its initial dismissal of an appeal by media intervenors challenging a gag order and finding that the media had standing to challenge a gag order entered against trial participants and witnesses in House of Prayer child abuse case: "they in fact have standing under both Georgia law and persuasive federal precedent") (citing *Page*, supra).

II. THE PUBLIC HAS A PRESUMPTIVE RIGHT TO ACCESS TO COURT RECORDS.

It is well-established that the First Amendment to the United States Constitution accords the press and public a right of access to court proceedings as well as the court records submitted in connection therewith. In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), the United States Supreme Court held that the right to attend state trials is protected by the First Amendment. *See also Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982) (mandatory closure rule for state trials involving specified sexual offenses where victim is less than eighteen years old violates the First Amendment). The Court subsequently recognized that the public and

press also enjoy a presumptive right of access that extends to records of judicial proceedings. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) ("*Press-Enterprise II*"); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) ("*Press-Enterprise I*").

The Georgia Supreme Court has expanded on these constitutional principles by emphasizing that access to court records is one of the hallmarks of our State's judicial system. The Court has reiterated time and again that open judicial records and proceedings are an integral part of our democratic form of government. In *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, 576 n.1, 292 S.E.2d 815, 817 (1982), the Court declared:

> This court has sought to open the doors of Georgia's courtrooms to the public and to attract public interest in all courtroom proceedings because it is believed that open courtrooms are a sine qua non of an effective and respected judicial system which, in turn, is one of the principal cornerstones of a free society.

Similarly, in *Atlanta Journal and Atlanta Constitution v. Long*, 258 Ga. 410, 411, 369 S.E.2d 755, 757 (1988), the Court specifically emphasized that access to court records is an essential component of meaningful public access to the courts:

> Public access protects litigants both present and future . . . Our system abhors star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose.

This right of access specifically includes civil legal proceedings arising in the context of "family law" matters. In *In re Atlanta Journal-Constitution*, 271 Ga. 436, 438, 519 S.E.2d 909, 911 (1999), the Georgia Supreme Court reversed a probate court that had entered a sweeping sealing order like the one apparently entered in this case notwithstanding the fact that the litigation involved deeply personal issues – an adult child asserting a right to the estate of the former owner of The Atlanta Falcons. Although the case involved private parties and did not implicate ethical issues arising out of government service (as this case does here), the Court did not hesitate to find that mere "embarrassment" was insufficient to overcome the overarching

presumption of access to court records. *See also Altman v. Altman*, 301 Ga. 211, 217-18, 800 S.E.2d 288, 293 (2017) (reversing and remanding sealing order in custody proceeding where court failed to hold the required hearing or make the necessary findings to support its order).

The burden of demonstrating that records should remain sealed is on the party seeking to maintain such sealing. As set forth above, in order to properly seal records in Georgia, "'the harm otherwise resulting to the privacy of a person in interest [must] clearly outweigh[ ] the public interest.'" *Long*, 258 Ga. at 414, 800 S.E.2d at 759 (quoting U.S.C.R. 21.2). And, to continue such sealing, the Court must make factual findings on the record supporting the sealing order, after holding the required hearing.[1] *See, e.g., In re Atlanta Journal-Constitution,* 271 Ga. at 438, 519 S.E.2d at 511 ("[I]t is not sufficient for the trial court to forego making findings of fact and simply state that the public's interest in access to court records is clearly outweighed by potential harm to the parties' privacy").

III. MEDIA INTERVENORS SHOULD BE GRANTED ACCESS TO THE RECORDS SEALED IN THIS CASE.

The public interest in this matter cannot be overstated. *State v. Trump* is a criminal proceeding of historic importance. The allegation that records in this action reveal a legally improper relationship between Special Prosecutor Wade and D.A. Willis must be answered in a transparent manner to preserve public confidence in our judicial system. Media Intervenors respectfully request that the Court vacate the February 10, 2022 Sealing Order entered in this

[1] Based on a review of the docket entries in this matter, it appears that no motion preceded the February 10, 2022 Sealing Order, and the Court did not hold the required hearing prior to its entry. U.S.C.R. 21.2 (allowing sealing orders to be entered only "after hearing"). The February 10, 2022 Sealing Order itself and all prior filings are under seal, so Media Intervenors assert that the sealing of this action is both procedurally and substantively improper.

case, and confine any sealing to "Protected Identifiers" governed by Superior Court Rule 21.6 and O.C.G.A. § 9-11-7.1(a).

CONCLUSION

For the reasons stated herein, Media Intervenors respectfully request that their Motion be granted.

Dated this the 16th day of January, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the within and foregoing MOTION TO UNSEAL by filing same with the Court's electronic filing system, which will deliver a copy by e-mail to the following counsel of record:

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DATED this 16th day of January, 2024