IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	[redacted]
vs.	)	No. 17 CR 0428601
	)	
JASON VAN DYKE,	)	Hon. Vincent M. Gaughan
	)	
Defendant.	)	

INTERVENORS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR INTERVENTION AND FOR ACCESS TO COURT DOCUMENTS

INTRODUCTION

The Chicago Tribune Company, LLC; Sun-Times Media, LLC; the Associated Press; WLS Television, Inc.; WGN Continental Broadcasting Company, LLC; WFLD Fox 32 Chicago; Chicago Public Media, Inc.; and the Reporters Committee for Freedom of the Press (collectively, "Intervenors"), respectfully file this Memorandum of Law in Support of Their Motion for Intervention and for Access to Court Documents.

The media and the public have a significant interest in this important criminal matter in which a Chicago police officer allegedly murdered a teenager by shooting him 16 times in an incident recorded by a police video camera. Since the public release of the video more than two years ago, a Chicago police superintendent was fired, a Cook County State's Attorney lost her re-election bid, and the incident has become part of a national discussion about urban policing in America. In many ways, news coverage of this important case will provide the public with a window into the workings of its criminal justice system.

Reporters have attended every court hearing since Officer Van Dyke was charged more than two years ago, in November 2015. But, media coverage has been substantially impeded by

the entry of this Court's "Decorum Order" and "Supplement to Decorum Order" (hereafter collectively referred to as the "Decorum Order"). In effect, whether intended or not, the Decorum Order serves as an impoundment order, and the pleadings, briefs, exhibits, and other filings in this case—which are constitutionally presumed to be public documents—have been shielded from public view and scrutiny.

The Intervenors include seven news organizations that have provided their readers, subscribers, and viewing and listening audiences with coverage of this case:

- Chicago Tribune Company, LLC publishes the Chicago Tribune, one of the largest daily newspapers in the United States, and operates a popular news and information website, chicagotribune,com, which attracts a national audience.

- Sun-Times Media, LLC publishes the Chicago Sun-Times daily newspaper as well as weekly newspapers and internet news sites. The Chicago Sun-Times is circulated throughout the Chicago area and suburbs.

- The Associated Press is a not-for-profit news cooperative owned by some 1,500 U.S. newspaper members, and its members and subscribers include newspapers, magazines, broadcasters, cable news services and internet content providers across the country. The Associated Press's news content can reach more than half the world's population on any given day.

- WLS Television, Inc. operates WLS-TV, also known as ABC7 Chicago, which provides broadcast news to a large television audience in Chicago, along with online content available abc7chicago.com.

- WGN Continental Broadcasting Company, LLC operates WGN-TV, Chicago's channel 9, local cable news network CLTV, and WGN Radio. Together with their respective websites each of them is a leading source of local and regional news.

- WFLD Fox 32 Chicago ("WFLD Fox 32"), owned and operated by Fox Television Stations, LLC, is a local broadcast television station based in Chicago, Illinois, that is committed to reporting on significant matters in the public interest to the residents of the greater Chicagoland area. Today, WFLD FOX 32 produces approximately 52 hours of local news every week, provides around the clock coverage on its website, http://www.fox32chicago.com/, and, working with its affiliated entities, also provides news coverage of events across the country and worldwide.

- Chicago Public Media, Inc. is a not-for-profit public broadcasting company that operates WBEZ 91.5 FM Chicago, which provides local news coverage to its radio audience and to users of wbez.org.

- Intervenors also include the Reporters Committee for Freedom of the Press, a nonprofit association of reporters and editors dedicated to safeguarding the First Amendment rights and freedom-of-information interests of the news media and the public.

As the parties in the case get closer to trial, and as reporters have covered a series of open pre-trial hearings on motions that were never released to the public, Intervenors have become increasingly concerned about the impoundment of the Court file.

The Clerk's Office is required by law to maintain a docket sheet of all court proceedings, but—because the Decorum Order requires that all filings be made with the Clerk in Your Honor's chambers and not with the Clerk's Office—the available documents identifying filed materials in this case are woefully incomplete and inadequate. Without a readily available and comprehensive public docket sheet, Intervenors are unable to determine the full extent of the filings that are unavailable to the public. But in view of the withheld documents Intervenors have identified, and of the recent January 18, 2018 colloquy in which the defense pledged to file all documents going forward under the Decorum Order, Intervenors ask the Court to provide full access to the court file. As far as Intervenors are aware, the Court has not entered – and cannot properly enter – the specific judicial findings necessary under the law to justify impounding the entire file, or large portions of it, to protect a higher interest or value in this matter. *See Press-Enter. Co. v. Superior Court of California for Riverside Cty.*, 478 U.S. 1, 13 (1986) ("*Press-Enterprise II*"); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 505-13 (1984) ("*Press-Enterprise I*"); *People v. LaGrone*, 361 Ill. App. 3d 532, 533 (4th Dist. 2005). In the absence of such findings, which must be narrowly tailored and made on a document-by-document, redaction-by-redaction basis, well-established law under the First Amendment, the Illinois Constitution, and the common-law right

of access entitles Intervenors and the public to have access to judicial documents that historically have been open to the public, and whose disclosure furthers the interests of the judicial process.

In Part I of this Memorandum, we briefly set forth facts which we believe are uncontested. In Part II, we explain why intervention is the proper vehicle for the Intervenors' limited purpose of asserting their federal and state constitutional and common-law right of access to the full court file in this important criminal matter of high public interest. In Part III, Intervenors set forth why Intervenors and the public must receive access to the court file in this matter, in the absence of specific findings by the Court justifying each instance of any documents (or any portion thereof) being withheld from public access.

I. FACTS[1]

1. On January 20, 2016, the Court entered the first of two orders that have become known as "the Decorum Order." The first order barred extrajudicial statements relating to the case and the public release of "any documents, exhibits, photographs or any evidence, the admissibility of which may have to be determined by the Court." Ex. 1, 1/20/16 Order ("the Initial Decorum Order").

2. A year later, on February 3, 2017, the Court modified the Initial Decorum Order to require that "any documents or pleadings filed in this matter are to be filed in [court]room 500 of the George N. Leighton Criminal Courthouse only." Ex. 2, 2/3/17 Order ("Supplement to Decorum Order").

[1] The Court may take judicial notice of the proceedings in this case. *See In Interest of A.T.*, 197 Ill. App. 3d 821, 834 (4th Dist. 1990) ("a court may take judicial notice of matters of record in its own proceedings") (citing *People v. Davis*, 65 Ill. 2d 157 (1976)).

3. Still another year later, defense counsel stated on the record that "[w]e're going to file everything with a Decorum Order from now on," and the Court expressed its approval. Ex. 3, 1/18/18 Tr. at 61.

4. Because of the entry of the Decorum Order, many of the filed pleadings and motions in this case have been unavailable to the Intervenors and the public.

5. Intervenors have sought unsuccessfully to determine the full extent of court documents that are unavailable under the Decorum Order.

6. The court file in this matter is not available for public review at the Cook County Circuit Court Clerk's Office ("the Clerk's Office"). The file is maintained in courtroom 500 pursuant to the Decorum Order but is not available for public review in courtroom 500.

7. A select number of court documents and orders are available for public review at computer terminals accessible to the public at the 5th-floor Clerk's Office at the George N. Leighton Criminal Courthouse, but these documents do not represent anything close to the complete court file.

8. There is no publicly available "docket sheet" in this matter. Instead, selected documents are identified on publicly available computerized listings in the Clerk's Office, but they do not identify or provide access to all documents filed in the case.

9. Many filings are not available to the public pursuant to the Decorum Order and practices that have been developed by the parties and the Court in implementing the Decorum Order. These practices include affixing a stamp to the face of documents to indicate that they are inaccessible to the public pursuant to the Decorum Order. See Ex. 4, 12/20/17 Tr. at 4-5; Ex. 3, 1/18/18 Tr. at 4-5; Ex. 5, 2/1/18 Tr. at 4.

10. Most recently, the parties argued motions in open court on December 6 and 20, 2017, and January 18, 2018, referring during argument to motion papers as well as exhibits, some of which were displayed on a viewing screen in the courtroom (though in a fine print not necessarily readable by journalists or the public). Ex. 6, 12/6/17 Tr. at 19, 21, 46-65, 71-72; Ex. 4, 12/20/17 Tr. at 12, 18-28, 34; Ex. 3, 1/18/18 Tr. at 9-10.

11. Review of those recent transcripts and other court documents shows that by operation of the Decorum Order, the Intervenors and the public have not had access to court filings including those relating to the following:

(a) the Defendant's motion to dismiss the indictment on speedy trial grounds, denied on November 6, 2017;

(b) the Defendant's motion to dismiss the indictment for prosecutorial misconduct, denied on December 20, 2017;

(c) the State's response to Defendant's motion to dismiss for prosecutorial misconduct, filed on or about November 20, 2017;

(d) the Defendant's reply in support of his motion to dismiss for prosecutorial misconduct, filed on or about November 28, 2017;

(e) the State's motion to quash the subpoena upon Jamie Kalven, granted December 13, 2017;

(f) the Defendant's response in opposition to the motion to quash the Kalven subpoena, argued on December 6, 2017; and

(g) the Defendant's motion for admission of certain acts or allegations concerning Laquan McDonald pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984).[2]

[2] *See* Ex. 6, 12/6/2017 Tr. at 88 (reference to speedy trial motion and motion to dismiss, response, and reply concerning alleged prosecutorial misconduct); Ex. 7, 12/13/2017 Tr. at 3 (reference to motion to quash Kalven subpoena motion and response); Ex. 3, 1/18/18 Tr. at 11-58 (reference to Defendant's *Lynch* motion).

12. Other filed documents may exist that are unavailable to the public but that are not known to Intervenors, because a comprehensive list of filed documents for this matter is not available from the Clerk's Office or in courtroom 500.

II. THE MOTION TO INTERVENE SHOULD BE GRANTED.

Under well-established Illinois law, intervention is the correct vehicle for the limited purpose of allowing news organizations, with an interest in obtaining access to court file documents or closed public hearings, to obtain such access. *People v. Pelo*, 384 Ill. App. 3d 776, 779 (4th Dist. 2008) (concluding that Illinois is a jurisdiction that allows intervention when a party asserts a right of access); *LaGrone*, 361 Ill. App. 3d at 533 (reversing trial court's denial of access sought by media intervenors in criminal case); *A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 991 (1st Dist. 2004) (reversing denial of access sought by media intervenor in civil case); *see also People v. Kelly*, 397 Ill. App. 3d 232, 243-45 (1st Dist. 2009) (confirming the common-law right of media organizations to intervene in Illinois criminal cases to seek access to judicial documents and proceedings).

Here, Intervenors are news organizations that have provided news coverage in this matter and yet have been denied access to substantial portions of the court file. News organizations seeking to assert the right of public access to court proceedings and judicial records act as "surrogates for the public," *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980), and "must be given an opportunity to be heard." *Globe Newspaper Co. v. Super. Ct. for Norfolk County*, 457 U.S. 596, 609 n.25 (1982), quoting *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 401 (1979) (Powell, J., concurring). Intervention is the proper vehicle for the limited purpose of Intervenors' effort to assert their constitutional and common-law rights to obtain access to the court file.

III. INTERVENORS' MOTION FOR ACCESS TO THE COURT FILE MUST BE GRANTED.

Intervenors seek access to public, judicial documents that are subject to a presumption of access under the First Amendment, and they must be granted such access, in the absence of the specific findings required to justify withholding judicial documents under long-established U.S. Supreme Court precedent and controlling Illinois law. *Press Enterprise II*, 478 U.S. at 13-14; *Press Enterprise I*, 464 U.S. at 510; *LaGrone*, 361 Ill. App. 3d at 535. To the extent the Court considers making any such specific findings, Intervenors respectfully request an opportunity to be heard, so they may review, evaluate, and – if necessary – challenge such findings, as the hurdle for restricting access to public documents in criminal cases is high, and the parties and the Court have yet to clear it here.

A. Judicial Documents and Proceedings Are Presumptively Accessible Under the Constitutional and Common-Law Rights of Public Access.

Intervenors, as members and representatives of the public, have a presumptive federal constitutional right of access to judicial documents and proceedings under the First Amendment. *Press-Enterprise II*, 478 U.S. at 11-12; *Press-Enterprise I*, 464 U.S. at 508-10; *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 232 (2000). A "presumption of a right of public access" attaches when a document is filed in court. *Skolnick*, 191 Ill. 2d at 232. Illinois courts also recognize a right of access grounded in the Illinois Constitution, which provides that "[a]ll persons may speak, write, and publish freely." Ill. Const. art. I, § 4 (1970).[3] This constitutional, presumptive right of access applies to court records or proceedings of the kind that have been historically open to the public, and applies where public disclosure of such records would further

[3] In addition to Intervenors' federal and state constitutional right of access, Illinois and federal courts also recognize a common-law right of access to documents filed in court cases. *See Skolnick*, 191 Ill. 2d at 230, citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978).

the court proceeding at issue. *Skolnick*, 191 Ill. 2d at 232; *People v. Zimmerman*, 2017 IL App (4th) 170055, ¶ 10, *appeal allowed*, No. 1222261, 2017 WL 4359033 (Ill. Sept. 27, 2017).

Once the First Amendment presumption of access applies, a trial court may not deny access to a document unless the court makes specific findings demonstrating that the denial of access is essential to preserve higher values and is narrowly tailored to serve those values. *LaGrone*, 361 Ill. App. 3d at 535-36. When the value asserted is a defendant's right to a fair trial in a criminal case, "then the trial court's findings must demonstrate, first, that there is a substantial probability that defendant's trial will be prejudiced by publicity that closure will prevent; and second, that reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights." *Kelly*, 397 Ill. App. 3d at 261.

B. The Court File Is Subject to the Presumption of Access.

In this case, Intervenors request access to court file documents, as to which the presumption of access applies because the court file contains documents of the kind historically open to the public, and their disclosure furthers the court proceeding by keeping the public informed about the judicial process in this significant criminal case.

1. The Court File Documents Are of the Kind Historically Open to the Public.

Illinois courts have held that documents filed with the Court are subject to the presumption of public access. *In re Marriage of Johnson*, 232 Ill. App. 3d 1068, 1074 (4th Dist. 1992). An Illinois statute, the Clerks of Court Act, also recognizes the publicly accessible nature of court documents:

> All records, dockets and books required by law to be kept by such clerks shall be deemed public records, and shall at all times be open to inspection without fee or reward, and all persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks' offices and shall have the right to take memoranda and abstracts thereto.

705 ILCS 105/16(6).[4] Court documents are not the litigants' property, but rather, they belong to the public, which underwrites the judicial system that produces them. *See A.P.*, 354 Ill. App. 3d at 997, citing *Pepsico, Inc. v. Redmond*, 46 F.3d 29, 31 (7th Cir. 1995).

The public's broad right of access to court documents under Illinois and federal law is supported by the Illinois Appellate Court's holding in *People v. Kelly*, 397 Ill. App. 3d 232 (1st Dist. 2009). *Kelly*, which involved documents and related hearings containing salacious material about sex with children, held that the records at issue were "not ones that have historically been open to the public," 397 Ill. App. 3d at 259, and *Kelly* distinguished *Waller v. Georgia*, 467 U.S. 39 (1984). In *Waller*, a suppression hearing involving allegations of police misconduct was held to be presumptively accessible to the public because the subject matter of official misconduct carries "a 'particularly strong' need for public scrutiny." *Kelly*, 397 Ill. App. 3d at 259, quoting *Waller*, 467 U.S. at 47. Accordingly, *Kelly* supports the conclusion that, under the circumstances of this case, the court file documents are in the category of materials that historically have been open to the public. First, police misconduct allegations were not involved in *Kelly* but are at the core of the Van Dyke case, and the public interest in observing and understanding these judicial proceedings and the documents filed in this case is particularly keen. Second, unlike in *Kelly*, the Court on multiple occasions here has permitted counsel to disclose publicly the content of the motions and their exhibits in considerable detail, save only for the names of certain witnesses. Ex. 6, 12/6/17 Tr. at 19, 21, 46-65; Ex. 4, 12/20/17 Tr. at 12, 18-28, 34; Ex. 3, 1/18/18 Tr. at 7-8, 11-58. Third, *Kelly*'s reasoning in affirming the sealing of certain materials (four pretrial hearings, a

[4] The federal authorities are in accord. *See Smith v. United States Dist. Court for Southern Dist.*, 956 F.2d 647, 649–650 (7th Cir. 1992) (noting that the "well recognized" common law right of access "to judicial records and documents" applies "to civil as well as criminal cases"). The "policy behind" this longstanding common law presumption is "that what transpires in the courtroom is public property." *Id.* at 650 (citation omitted); *see also Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999) (noting that the public "has an interest in what goes on at all stages of a judicial proceeding").

prosecution motion to allow evidence of other crimes, a prosecution's supplemental discovery answer, and both parties' witness lists) recently was rejected by the Fourth District in *People v. Zimmerman*, 2017 IL App (4th) 170055, ¶ 10, *appeal allowed*, No. 1222261, 2017 WL 4359033 (Ill. Sept. 27, 2017), as to which the Supreme Court has granted a petition for leave to appeal. *See id.* ("we find *Kelly*'s reliance on our decision in *Pelo* to be misplaced, as that case addressed an evidence deposition, which had not yet been presented at trial, *and not a legal document filed with the court*") (emphasis added).

In this case, while Intervenors do not have available to them a complete "docket sheet" containing an inventory of all filed documents,[5] they know that the file includes at least the motions argued publicly in open court. These motion documents, and all other documents which are contained in the public court file, are historically open to the public and thus subject to the presumption of access.

2. Disclosure of the Court File Furthers the Judicial Process Here.

Intervenors' access to the court file furthers the interests of the judicial system in this important and widely followed criminal matter. "Public scrutiny over the court system promotes community respect for the rule of law, provides a check on the activities of judges and litigants, and fosters more accurate fact finding." *A.P.*, 354 Ill. App. 3d at 999, citing *Grove Fresh*

[5] Courts have recognized the critical importance of a public docket sheet. *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 95 (2d Cir. 2004) (recognizing a qualified First Amendment right of access to unsealed docket sheets in state courts); *see also In re State-Record Co.*, 917 F.2d 124, 129 (4th Cir. 1990) (per curiam) (reversing the sealing of docket sheets in certain criminal matters, holding that an order requiring such sealing was overbroad and violated plaintiffs' First Amendment rights). Indeed, "the ability of the public and press to attend civil and criminal cases would be merely theoretical if the information provided by docket sheets were inaccessible"; docket sheets serve as "a kind of index to judicial proceedings and documents, and endow the public and the press with the capacity to exercise their rights guaranteed by the First Amendment." *Hartford Courant Co.*, 380 F.3d at 93. As a "map of the proceedings," docket sheets not only enhance the appearance of fairness but also the ability of the public and the press to understand the legal system in general as well as what is happening in a particular case. *Id.* at 93.

Distributors, Inc. v. Everfresh Juice Co., 24 F.3d 893, 897 (7th Cir. 1994). This case is of high public interest, and unfettered press coverage of it enhances the public's confidence in the judicial process. *See also Richmond Newspapers*, 448 U.S. at 575 ("It would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted."); *Press-Enterprise I*, 464 U.S. at 508 ("Openness . . . enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system."); *Skolnick*, 191 Ill. 2d at 230 ("the availability of court files for public scrutiny is essential to the public's right to monitor the functioning of our courts, thereby insuring quality, honesty and respect for our legal system.") (citations and quotations omitted); *In re Marriage of Johnson*, 232 Ill. App. 3d at 1074 ("When courts are open, their work is observed and understood, and understanding leads to respect.").

Accordingly, because publicly filed court documents in this high-profile criminal matter are of the kind historically open to the public, and because their disclosure furthers the purpose of the judicial proceedings, the presumptive right of public access applies. Access to these documents may not be denied absent the requisite findings that denial of access is necessary to preserve a higher interest and is narrowly tailored to preserve that interest. *Zimmerman*, 2017 IL App (4th) 170055, ¶ 10. As explained below, the Court has yet to make those findings.

C. The Record Available to Intervenors Does Not Contain Findings Necessary To Support Denial of Access.

Intervenors are aware of no findings made in support of denying access to the file or any documents within it. The Decorum Order does not contain such findings. Ex. 1 and 2, Decorum Order. Intervenors appreciate that the Court at times has stated that certain information, such as the names of witnesses whose safety the Court fears might be jeopardized by public disclosure of their names, for example, should not be disclosed publicly. Ex. 3, 1/18/18 Tr. at 7-8. But,

respectfully, denying public access to the entirety of the documents containing witness names and to a large portion of the court file in this case, including every document the defense will file from now on, is an overbroad approach and violates federal and state law establishing that these documents are presumptively available to the public. *See Press-Enterprise II*, 478 U.S. at 8; *Skolnick*, 191 Ill. 2d at 232. Denial of public access can be made only with required and specific, narrowly tailored findings on a document-by-document basis. *See A.P.*, 354 Ill. App. 3d at 1001 (stating that confidentiality concerns "may warrant the sealing of particular documents, but they do not justify the extreme action of sealing entire court files where not every document therein implicates these concerns . . . . [t]he court should limit sealing orders to particular documents or portions thereof which are directly relevant to the legitimate interest in confidentiality"). As far as Intervenors are aware, such findings, including any that would satisfy *Kelly*'s requirement that in a criminal case, reasonable alternatives to withholding documents would fail to protect fair trial rights, have not been made.

In the event the Court considers entering any such findings, Intervenors respectfully request the opportunity to participate in that process, to review any proposed findings and, if necessary, to challenge them. In this case – a significant criminal proceeding involving substantial public interest and news coverage – Intervenors acknowledge that the Court has the important responsibility to protect values including the defendant's right to a fair trial, along with the public's constitutional right of access. But the way to protect fair trial rights is not presumptive denial of access, or presumptive denial of news coverage, where alternative measures are fully available to the parties to the case. The question of alternative measures, including voir dire and management of the jury venire and petit jury, would have to be considered carefully by the parties, the Court,

and Intervenors, if the Court were to consider the entry of any findings denying access to any public document or hearing.[6]

In addition, while Intervenors have filed the instant Motion in courtroom 500 in order to comply with the Decorum Order, Intervenors are respectfully requesting leave to file the Motion in the Clerk's Office for public review.[7] The Intervenors are unaware of any aspect of the Motion, or of this Memorandum, requiring filing under seal or in any other non-public manner. *See A.P.*, 354 Ill. App. 3d at 993 (holding that trial court abused its discretion in requiring intervenor Chicago Tribune to file under seal its briefs challenging the sealing of a court file).

[6] Additionally, the Court has conducted certain proceedings in chambers and later has disclosed summaries, prepared by the parties, of what occurred during the closed proceedings. According to Court staff, the closed proceedings were held without a court reporter present, so no transcripts exist or are available. Closed proceedings in this matter have occurred during the two most recent hearings, on January 18, 2018, and February 1, 2018. Ex. 3, 1/18/18 Tr. at 64; Ex. 5, 2/1/18 Tr. at 13-14. After the closed proceeding on January 18, the Court stated on the record that matters discussed in chambers included a possible defense change-of-venue motion. Ex. 3, 1/18/18 Tr. at 64. After the closed proceeding on February 1, the Court stated on the record that the matters discussed included "security" and "subpoenaed material." Ex. 5, 2/1/18 Tr. at 13-14. Intervenors respectfully submit that the analysis in this Motion as to court file documents applies equally to any future closed hearings, and that to the extent the Court seeks to close any future hearings, it may not do so without entering the required, specific findings, which would then be available for review, consideration, and possible challenge by the Intervenors. Intervenors also respectfully request that a court reporter be present for any such closed hearings, so that, if necessary, the nature of the hearing may be fully available to any reviewing court, should review become necessary.

[7] Intervenors, who object to the Decorum Order for reasons stated in their Motion and supporting Memorandum of Law, have filed these documents in chambers and have affixed the above header or legend in order to ensure full compliance with the Decorum Order. Nothing about Intervenors' efforts to comply with the Decorum Order in connection with the filing of the Motion or Memorandum of Law is intended to suggest that any part of those documents should not be made public.

CONCLUSION

For the foregoing reasons, Intervenors respectfully request that the Court grant the motion for intervention and grant Intervenors access to the entire court file.

Dated: March 6, 2018

Respectfully submitted,

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