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

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

INTERVENORS' RESPONSE TO STATE'S MOTION TO STRIKE

The State's Motion to Strike Intervenors' Supplemental Motion for Access to Court Filings ("Motion to Strike")[1] is baseless and should be denied for three reasons.

First, the Motion to Strike should be denied as frivolous, superfluous and moot. At a hearing on May 31, the Court announced that it did not want the February 3, 2017 Order to be described as a "decorum order," and Intervenors agreed not to call it that any more. (5/31/18 Tr. at 9.) At the May 31 hearing, the Court gave Intervenors a choice between dismissal of their Supplemental Motion without prejudice or agreeing to strike the term "decorum order" from the motion's description of the February 3, 2018 Order. (*Id.* at 8.) Intervenors agreed to strike the term and explicitly said so: "[W]e're fine with taking the word decorum out of the motion. That's fine." (*Id.* at 9.) The Court replied: "So thank you. I appreciate that. That's very professional." (*Id.* at 10.) Under these circumstances, Intervenors' reference to the now-vacated order as a "decorum order" in the Supplemental Motion filed on May 29, two days before the Court first

[1] Intervenors are 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.

expressed its concern about the nomenclature, was fully addressed and is not a ground for striking the motion.

In response to the Court's expressed concern, Intervenors filed their reply memorandum on June 11 and did *not* refer to the vacated order as a "decorum order." Intervenors' Reply Memorandum in Support of Supplemental Motion for Access to Court Filings. On June 14, three days later, the Court stated on the record that it had intended for Intervenors not to call the vacated order a "decorum order" in documents in which they *previously* had done so and had attached to the reply as exhibits. (6/14/18 Tr. at 6.) Intervenors do not expect there to be an issue going forward now that the Court has refined its view to include earlier-filed documents. In short, neither the May 29 Supplemental Motion nor the June 11 reply violated anything, and at this point, there is simply no basis for a Motion to Strike.

Second, striking the Supplemental Motion for referring to the vacated order as "the decorum order" would be fundamentally unfair and disingenuous, given that virtually everyone in the case had been calling it a "decorum order" for months. The vacated February 3, 2017 Order itself says that it is "[t]o be in compliance with *the decorum order* entered January 20, 2016." (February 3, 2017 Order (emphasis added).) When the Court discussed the filing of public documents in chambers pursuant to the vacated order, the Court called the order "the decorum order" or even "my decorum order" on multiple occasions. (*See, e.g.* 1/18/18 Tr. at 4-5, 7, 26, 27, 65; 4/18/18 Tr. at 10-11, 114, 116; 4/28/18 Tr. at 69-70, 81, 82.) When Intervenors filed four access-related briefs, reports or motions in this case in March and April calling the vacated order a "decorum order," the Court made no objection. When the Parties filed documents in chambers under the vacated order, they regularly affixed the words "filed under the protection of the Decorum Order" to those documents and described the vacated order as "the decorum order" in the body of those documents. (*See, e.g.,* State's Response to Intervenor's Motion for Access to

Court Documents at 1 ("On January 20, 2016, and February 3, 2017, this court entered Decorum Orders . . . ."); Jason Van Dyke's Response in Opposition to Media Intervenors' Motion for Access at 1, 3 (referring to "entry of this Court's 'Decorum Order' and 'Supplement to Decorum Order' (hereinafter 'Decorum Order')")). Neither the Court nor anyone else urged that those documents be stricken. When the Court entered its May 4 order refusing to modify or vacate the February 3, 2017 Order, it expressly called that order "the February 3, 2017 Decorum Order." (May 4, 2018 Order at 2.) And when Intervenors' counsel prepared that order and the Parties and the Court reviewed it prior to its being entered, no one indicated that the February 3, 2017 Order should not be called a "decorum order." Rather, only after the Supreme Court issued its May 23 Supervisory Order is the term now forbidden.

Third, the Motion to Strike should be denied because it imposes needless delay upon these proceedings. The Court has not ruled on the Supplemental Motion for nearly a month. The First Amendment is being violated every day this Court delays ruling on these fundamental access issues. Granting the Motion to Strike would only exacerbate this delay and further frustrate Intervenors' efforts to vindicate the May 23 Supervisory Order and the First Amendment right of access.[2]

CONCLUSION

To be clear, Intervenors have no problem complying with the Court's requirements about what to call the vacated order, but they have done nothing to warrant striking their Supplemental Motion, which raises important First Amendment rights. Accordingly, the Court should deny the Motion to Strike.

[2] At a hearing on June 14, the Court suggested that the Parties file such a motion to strike: "I'm also going to order the Defense and Special Prosecutor any filings that make a reference to the decorum of February 3, 2017 they can make a motion that the whole filing be stricken." (6/14/18 Tr. at 8-9.)

Dated: June 27, 2018

Respectfully submitted,

CHICAGO PUBLIC MEDIA, INC.

By: _____
One of Its Attorneys

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