

**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY,
PENNSYLVANIA**

RICHARD SEAN PARNELL,	:	
Plaintiff,	:	
	:	No. 17-90403-C
v.	:	
	:	Senior Judge James G. Arner
LAURIE A. PARNELL	:	
Defendants	:	

MOTION TO INTERVENE

The Philadelphia Inquirer hereby moves for leave to intervene in the above-captioned case for the limited purpose of contesting any sealing of the record in its entirety or closure of custody trial(s) in this matter. This Motion is made on the following grounds:

1. *The Philadelphia Inquirer* (“Inquirer”), a for-profit public benefit corporation owned by the non-profit Lenfest Institute, produces Pulitzer Prize-winning journalism that changes lives and leads to lasting reforms. Its multiple brand platforms — including newspapers, Inquirer.com, e-Editions, apps, newsletters, and live events — reach a growing audience of more than 10 million people a month. The Inquirer’s mailing address is P.O. Box 8263 Philadelphia, PA 19101.
2. The *Inquirer*’s coverage includes the Philadelphia region, the state of Pennsylvania and beyond. *Inquirer* reporters work on stories impacting everyday Pennsylvanians and report from both within and beyond Pennsylvanian, including a Washington, D.C. bureau.
3. Reporters on the national politics and policy beat cover Congress and candidates for the body.

4. The *Inquirer* has been covering the highly-anticipated 2022 Senate race to replace retiring Sen. Pat Toomey. The news outlet's work has included coverage¹ of protection from abuse orders issued to candidate Sean Parnell, a litigant in the above-captioned action.
5. Parnell's personal conduct is of significant interest to the public as he campaigns for a six-year term in the U.S. Senate, and voters evaluate the candidates' backgrounds and qualifications.
6. *Inquirer* reporters routinely use records of civil and criminal proceedings throughout Pennsylvania and beyond to provide their readers with timely and important information about news impacting their communities.
7. Upon information and belief, Sean Parnell, a candidate for the Senate of Pennsylvania, seeks to seal the record, close the custody trial and issue a gag order. See Trib Total Media Petition to Intervene (Oct. 1, 2021), Paragraph 8.

¹ Jonathan Tamari, *Bombshell or backlash? The nasty turn in Pa. 's GOP Senate primary leaves questions for both Jeff Bartos and Sean Parnell*, The Philadelphia Inquirer (Oct. 1, 2021) (available at: <https://www.inquirer.com/news/parnell-protective-orders-bartos-attacks-pa-senate-race-20211001.html#loaded>)

Jonathan Tamari, *Sean Parnell's wife sought protective orders against him. Pa. Senate race rival Jeff Bartos says that makes him 'unelectable,'* The Philadelphia Inquirer (Sept. 7, 2021) (available at <https://www.inquirer.com/politics/election/sean-parnell-protection-from-abuse-orders-jeff-bartos-20210907.html>)

8. Third parties have standing to challenge the improper sealing of judicial documents. *See United States v. Antar*, 38 F.3d 1348 at 1350 (3d Cir. 1994) (granting third party news organization intervenors' request for access to a voir dire transcript).
9. Intervention for such challenges is proper even after the underlying case has been closed. *See Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161 n.5 (3d Cir. 1993).
10. The *Inquirer* thus has standing to intervene for the limited purpose of asserting the public's rights of access to documents filed with the court and ensuring that any denial of access is based upon the trial court's creation of a record that contains "an articulation of the factors taken in consideration" in determining whether there is a right of access and whether that right has been rebutted by countervailing interests. *Commonwealth v. Fenstermaker*, 530 A.2d 414, 421 (Pa. 1987); *see also Commonwealth v. Upshur, Com. v. Upshur*, 592 Pa. 273, 924 A.2d 642 at 651 (2007) ("[T]he trial court . . . must . . . place on the record its reasoning and the factors relied upon in reaching its decision.").
11. When assessing whether closure is necessary, "the court should issue individualized, specific, particularized findings on the record that closure is essential to preserve higher values and is narrowly tailored to that interest." *Commonwealth v. Curley*, 2018 PA Super 147, 189 A.3d 467 at 473 (June 4, 2018) (discussing constitutional right of access).
12. Courts are required to make "document-by-document findings" and not simply "issue[] a blanket conclusion." *Id.* In addition, the trial court must articulate on the record that "alternatives to closure" were considered and "explicitly state its reasons on the record for rejecting such alternatives." *Commonwealth v. Buehl*, 462 A.2d 1316, 1322 (Pa. Super. 1983) (quoting *United States v. Criden*, 675 F.2d 550, 560 (3d Cir. 1982)); *see*

also *Commonwealth v. Long*, 922 A.2d 892, 906 (Pa. 2007) (“[C]losure must be supported by specific findings demonstrating that there is a substantial probability that an important right will be prejudiced by publicity and that reasonable alternatives to closure cannot adequately protect the right.”).

13. The on-the-record articulation of reasons for closure must be done “*before* ordering closure” *Buehl*, 462 A.2d at 1323. “Only in that way will those who oppose closure be able to respond. Given a chance to respond, they may be able to persuade the court that it is mistaken, or they may be able to suggest an alternative not thought of by the court but that when thought of, is found to be satisfactory.” *Id.*

14. In considering whether to seal records, “the trial court must inspect the items in camera” before determining whether to restrict access to them. *Upshur*, 924 A.2d at 651 (citing *PG Publ’g Co. v. Commonwealth*, 614 A.2d 1106, 1110 (Pa. 1992)).

WHEREFORE, the *Inquirer* has a constitutional and common law right to access the judicial records in these matters. To the extent countervailing interests overcome the *Inquirer*’s constitutional and common law rights of access, any sealing must be no broader than necessary to serve those interests and must be supported by specific, on-the-record factual findings.

Dated: October 5, 2021

Respectfully submitted,

10/5/21



Paula Knudsen Burke
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	:	Senior Judge James G. Arner
LAURIE A. PARNELL	:	
Defendants	:	

ORDER

NOW, this ____ day of October 2021, upon consideration of the foregoing motion, it is hereby ORDERED that *The Philadelphia Inquirer's* Motion to Intervene is GRANTED.

IT IS FURTHER ORDERED that to the extent countervailing interests overcome the Inquirer's constitutional and common law rights of access, any sealing must be no broader than necessary to serve those interests and must be supported by specific, on-the-record factual findings.

BY THE COURT:

_____ J.

Senior Judge James G. Arner

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing, Motion to Intervene, on the following persons via email:

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Date: Oct. 5, 2021



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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

Signature:

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PA Attorney ID: 87607

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