

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

HENRY HODGES,

Plaintiff,

v.

LISA HELTON, in her official capacity as Tennessee's Interim Commissioner of Correction

and

DR. KENNETH WILLIAMS, in his official capacity as Assistant Commissioner of Clinical Services, Chief Medical Officer Tennessee Department of Correction,

Defendants.

No. 22-1440-III

**MOTION OF THE ASSOCIATED PRESS TO INTERVENE  
FOR THE LIMITED PURPOSE OF  
OPPOSING DEFENDANTS' MOTION FOR PROTECTIVE ORDER**

Non-party the Associated Press ("AP"), a non-profit news cooperative with offices in Nashville and Memphis, by and through undersigned counsel, seeks leave to intervene in the above-captioned case for the limited purpose of opposing Defendants' Motion for Protective Order, which was filed on December 5, 2022 ("Defendants' Motion"). As set forth in more detail in the accompanying Memorandum of Law, AP should be permitted to intervene for the limited purpose

of opposing the requested protective order and Defendants' Motion should be denied.<sup>1</sup>

The Tennessee Supreme Court has held that “[i]nterested members of the public and the media may intervene and be heard in opposition to [a closure] motion.” *State v. Drake*, 701 S.W.2d 604, 608 (Tenn. 1985); *see also Ballard v. Herzke*, 924 S.W.2d 652, 657 (Tenn. 1996) (“[T]hird parties, including media entities, should be allowed to intervene to seek modification of protective orders to obtain access to judicial proceedings or records.”). As such, AP should be permitted to intervene in this case for the limited purpose of opposing Defendants’ proposed protective order, which seeks to limit the public’s access to broad swaths both of unfiled discovery and judicial records filed with the Court. Plaintiff does not object to AP’s proposed intervention. Defendants oppose AP’s intervention.

As detailed in AP’s concurrently filed Memorandum of Law, Defendants’ Motion falls short in two respects. First, Defendants fail to meet their burden to establish good cause for entry of the proposed protective order. Defendants offer only conclusory allegations regarding the necessity for treating broad categories of materials exchanged with Plaintiff in discovery as confidential and the harms Defendants claim would result from their public disclosure. *Ballard*, 924 S.W.2d at 658 (“[m]ere conclusory allegations are insufficient” to support a finding of good

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<sup>1</sup> AP is concurrently filing a Motion for Expedited Hearing seeking to have the instant Motion to Intervene heard as part of the hearing the Court has scheduled on Defendants’ Motion on Monday, December 12, 2022 at 10:00 a.m. CT. Plaintiff does not object to this consolidation of hearings. Defendants object to having the two hearings consolidated.

cause). Further, Defendants fail to address the significant public interest in the records, which militates against granting the broad confidentiality Defendants seek. *Id.* (explaining that “[f]actors in the balance weighing against a finding of good cause include: (1) the party benefiting from the protective order is a public entity or official [and] (2) the information sought to be sealed relates to a matter of public concern....”) (citation omitted). In short, Defendants have not met their “burden of justifying the confidentiality of each and every document to be covered by a protective order,” and their Motion should be denied. *Id.* (citations omitted).

Second, even if Defendants can show good cause to prohibit public disclosure of the identified categories of discovery materials, Defendants’ proposed protective order improperly seeks to divest this Court of its authority and responsibility to independently assess any request to seal specific court records by preemptively requesting authorization to seal any document within the categories Defendants want designated as confidential should a party seek to file it with the Court. Defs.’ Mot. at 4. This request for the Court to effectively delegate its authority to evaluate and rule upon requests to seal particular court documents to the parties is irreconcilable with the Court’s obligation to safeguard the public’s presumptive right of access to judicial records. *See generally Drake*, 701 S.W.2d at 607 (discussing presumption of openness). Defendants’ Motion fails to carry their heavy burden to overcome the presumption of access to judicial records, which requires a showing of “an overriding interest” in closure “based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.”

*Drake*, 701 S.W.2d at 607 (citation omitted). Defendants have not—and, indeed, cannot at this stage—carry that heavy burden.

WHEREFORE, for the reasons stated above and discussed in more detail in the accompanying Memorandum of Law, AP respectfully requests that the Court grant its motion to intervene for the limited purpose of opposing Defendants' Motion, deny the request to prohibit public disclosure of the identified records, deny Defendants' request to preemptively seal any records that the parties are prohibited from disclosing publicly, and grant such other relief as the Court deems just and proper.

Dated: December 8, 2022

Respectfully submitted,

/s/ Paul R. McAdoo  
Paul R. McAdoo (BPR No. 034066)  
REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS  
6688 Nolensville Rd., Suite 108-20  
Brentwood, TN 37027  
Phone: 615.823.3633  
Facsimile: 202.795.9310  
[pmcadoo@rcfp.org](mailto:pmcadoo@rcfp.org)

*Counsel for Proposed Intervenor*

**THIS MATTER IS ANTICIPATED TO BE HEARD ON THE 12TH DAY OF DECEMBER, 2022 AT 10:00 A.M. FAILURE TO FILE AND SERVE A TIMELY WRITTEN RESPONSE TO THIS MOTION MAY RESULT IN THE MOTION BEING GRANTED WITHOUT FURTHER HEARING.**

## CERTIFICATE OF SERVICE

The undersigned certifies that on December 8, 2022, a true and correct copy of the foregoing was served by email, as agreed by the parties:

Dean S. Atyia,  
John R. Glover,  
Steven J. Griffin,  
Office of the Tennessee Attorney General  
P.O. Box 20207  
Nashville, TN 37202  
Tel: (615) 741-8726  
[dean.atyia@ag.tn.gov](mailto:dean.atyia@ag.tn.gov)  
[john.glover@ag.tn.gov](mailto:john.glover@ag.tn.gov)  
[steven.griffin@ag.tn.gov](mailto:steven.griffin@ag.tn.gov)

Robin Nunn  
Justin Weitz  
Michelle Arra  
Emily Ahdieh  
Morgan Lewis & Bockius, LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004-2541  
Tel: 202-739-3000  
[robin.nunn@morganlewis.com](mailto:robin.nunn@morganlewis.com)  
[justin.weitz@morganlewis.com](mailto:justin.weitz@morganlewis.com)  
[michelle.arr@morganlewis.com](mailto:michelle arra@morganlewis.com)  
[emily.ahdieh@morganlewis.com](mailto:emily.ahdieh@morganlewis.com)

Kelly J. Henry  
Richard L. Tennent  
Amy D. Harwell  
Federal Public Defender for the  
Middle District of Tennessee  
810 Broadway, Suite 200  
Nashville, TN 37203  
Tel: (615) 736-5047  
[Kelley\\_Henry@fd.org](mailto:Kelley_Henry@fd.org)  
[Richard\\_Tennent@fd.org](mailto:Richard_Tennent@fd.org)  
[Amy\\_Harwell@fd.org](mailto:Amy_Harwell@fd.org)

s/ Paul R. McAdoo  
*Counsel for Proposed Intervenor*