IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. DONALD JOHN TRUMP, et al., Defendants.	**Case No. 23SC188947**

MOTION OF PROPOSED *AMICUS CURIAE* REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS TO FILE A BRIEF IN OPPOSITION TO THE STATE'S MOTION TO RESTRICT JURORS' IDENTITY

The Reporters Committee for Freedom of the Press ("Reporters Committee") respectfully seeks leave of the Court to appear as *amicus curiae* in opposition to the State's Motion to Restrict Jurors' Identity (Sept. 6, 2023). The proposed *amicus* brief is attached to this Motion as Exhibit A. In support of this Motion, the Reporters Committee states the following:

Interest of Proposed *Amicus Curiae*

The Reporters Committee is an unincorporated nonprofit association dedicated to defending the First Amendment and newsgathering rights of the press. It was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. As a representative of the news media, the Reporters Committee has a strong interest in ensuring that journalists and news organizations remain free from unconstitutional restrictions on their ability to gather and publish newsworthy information.

The Reporters Committee submits the attached *amicus* brief to assist the Court in deciding the weighty legal issues presented by the State's Motion to Restrict Jurors' Identity. The proposed *amicus* brief is narrowly tailored to address those questions directly implicated by the State's pending motion and is not submitted to cause, and will not cause, undue delay or prejudice to the parties or proceeding.

WHEREFORE, the Reporters Committee respectfully requests that the Court accept and consider the proposed *amicus curiae* brief attached hereto.

Respectfully submitted,

/s/ Samantha C. Hamilton
Samantha C. Hamilton
Georgia State Bar No. 326618
samantha.hamilton@uga.edu
FIRST AMENDMENT CLINIC
University of Georgia School of Law
P.O. Box 388
Athens, Georgia 30603
Tel.: (706) 542-9003
Counsel for Amicus

Bruce D. Brown*
Katie Townsend*
Mara Gassmann*
Grayson Clary*
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
Tel.: (202) 795-9300
**Of Counsel*

EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. DONALD JOHN TRUMP, et al., Defendants.	**Case No. 23SC188947**

BRIEF OF PROPOSED *AMICUS CURIAE* REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS IN OPPOSITION TO THE STATE'S MOTION TO RESTRICT JURORS' IDENTITY

The State of Georgia's Motion to Restrict Juror's Identity ("State's Motion") asks this Court to impose an unconstitutional prior restraint on speech—the "most serious and least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). For the reasons, herein, the Reporters Committee for Freedom of the Press ("Reporters Committee") respectfully urges the Court to deny the State's Motion.

ARGUMENT

A. The State's Motion asks the Court to impose a prior restraint on speech.

The State's Motion seeks an order restraining the publication of information—whether obtained in open court or elsewhere—by members of the press and public: a classic prior restraint. It has been said that the "chief purpose" of the First Amendment is to prevent such "previous restraints upon publication." *Near v. Minnesota*, 283 U.S. 697, 713 (1931); *see also Se. Promotions, Ltd. V. Conrad*, 420 U.S. 546, 553 (1975) ("Our distaste for censorship—reflecting the natural distaste of a free people—is deep-written in our law."). And, indeed, the Supreme Court has never identified a valid one.

An order that restrains the publication of lawfully acquired information strikes at the heart of the Constitution's protections for a free press and "bear[s] a heavy presumption against its constitutional validity." *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam); *see also United States v. Brown*, 250 F.3d 907, 915 (5th Cir. 2001) ("Prior restraints on publication by the press are constitutionally disfavored in this nation nearly to the point of extinction."). The heavy presumption against such restrictions is strongest "as applied to reporting of criminal proceedings," *Nebraska Press Ass'n*, 427 U.S. at 559, and it is not overcome here.

B. The prior restraint sought by the State is unconstitutional and if entered by the Court would undermine, not serve, the interests of justice.

Open courts foster public confidence in the integrity of the judicial system, and far from serving interests of fairness restrictions on reporting information disseminated in open court give rise to suspicion. The grave harms that a prior restraint can inflict are particularly stark on the facts of this exceptional case, where the State's proposed order restraining the press in its coverage of one of the most closely watched criminal trials in American history, if entered, would undermine "the appearance of fairness so essential to public confidence" in the administration of justice. *Press-Enter. Co. v. Superior Court* ("*Press-Enterprise I*"), 464 U.S. 501, 508 (1984).

To safeguard public confidence in the judicial system, the First Amendment affirmatively guarantees the press and public a presumptive right of access to the identities of jurors in criminal trials. "[P]ublic knowledge of jurors' names is a well-established part of American judicial tradition," *United States v. Wecht*, 537 F.3d 222, 236 (3d Cir. 2008), and for good reason: "[T]he risk of loss of confidence of the public in the judicial process is too great to permit a criminal defendant to be tried by a jury whose members may maintain anonymity," *In re Baltimore Sun Co.*, 841 F.2d 74, 76 (4th Cir. 1988). "Knowledge of juror identities allows the public to verify the impartiality of key participants in the administration of justice," to dispel concerns that "jurors

were selected from only a narrow social group, or from persons with certain political affiliations," and to guard against juror misconduct. *In re Globe Newspaper Co.*, 920 F.2d 88, 94 (1st Cir. 1990). Those values—forceful enough in an ordinary criminal case—take on extraordinary importance in the context of the trial of a former President of the United States.

The State's rationale for the restrictions it seeks cannot be reconciled with the aforementioned bedrock constitutional principles, including the First Amendment's virtually insurmountable bar on the issuance of a prior restraint. The State's proposed order should be rejected for that reason, alone, as well as for the following reasons:

First, the State's proposed order is patently overbroad. The visual-depiction ban prohibits the press from putting to paper what any individual lawfully present in the courtroom could observe for themselves, a plain violation of the "settled principle[]" that "once a public hearing ha[s] been held, what transpire[s] there could not be subject to prior restraint." *Neb. Press Ass'n*, 427 U.S. at 568; *see also, e.g.*, *KPNX Broadcasting v. Superior Court*, 678 P.2d 431, 437 (Az. 1984) (First Amendment protects courtroom sketches of "likenesses of jurors").

Second, as written, the proposed order asks this Court to exceed its inherent authority to control its courtroom and "interdict[] the press from *independent* investigation and reporting about the jury based on facts obtained from sources" outside the courtroom. *Brown*, 250 F.3d at 918 (emphasis added); *see also, e.g.*, *United States v Sherman*, 581 F.2d 1358, 1361 (9th Cir. 1978) (First Amendment protects gathering news about and from jurors outside courtroom).

Third, if those constitutional infirmities were not enough, the scope of the State's proposed order—"any information that would assist persons in determining the identity of any jurors or prospective jurors," State's Motion at 4—sets forth an unworkably vague standard in light of "the

various gradations of information that, if published, might conceivably reveal a juror's identity," *Brown*, 250 F.3d at 917.

Fourth, importantly, the State cannot show the efficacy of its proposed order, given that "[a]nyone bent upon intimidating jurors in this case could readily [ascertain] their identity by the simple expedient of being present in the courtroom." *United States v. Quattrone*, 402 F.3d 304, 312 (2d Cir. 2005) (citation omitted); *see also, e.g.*, *Des Moines Register & Tribune Co. v. Osmundson*, 248 N.W.2d 493, 501 (Iowa 1976) (rejecting restriction on publication of jurors' identities for the same reason). The argument that a prior restraint on speech by members of the press and public would meaningfully reduce juror harassment or disruption to the proceedings is, as one court confronting analogous facts put it, "dubious at best." *Quattrone*, 402 F.3d at 312.

Simply stated, the State has not justified and cannot justify requesting "one of the most extraordinary remedies known to our jurisprudence" in this case. *Nebraska Press Ass'n*, 402 F.3d at 312. It is a remedy that would come at an extraordinary cost—undercutting the role of the press in "guard[ing] against the miscarriage of justice," *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966), while working irreparable harm to public faith that one of the most momentous criminal trials in modern memory will be conducted "fairly to all concerned," *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980) (plurality opinion).

CONCLUSION

Members of the press are not insensitive to concerns that may arise with respect to juror safety and, in their editorial discretion, very well may take steps to shield the identities of jurors and prospective jurors in this matter. Indeed, it is not uncommon for news organizations to withhold the names of individuals, such as minors or crime victims, in certain circumstances as a matter of editorial policy. However, this Court cannot—consistent with the First Amendment—

enter an order prohibiting members of the press from publishing such lawfully obtained information. *See Oklahoma Publ'g Co. v. Dist. Ct.*, 430 U.S. 308, 311–12 (1977) (reversing order prohibiting newspaper from publishing the name of a juvenile defendant, which a journalist had learned by attending a court proceeding); *see also Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 257 (1974) (holding that the First Amendment forbids government intrusion into the editorial process).

For the reasons herein, the Reporters Committee respectfully urges that the State's motion be denied.

Respectfully submitted,

/s/ Samantha C. Hamilton
Samantha C. Hamilton
Georgia State Bar No. 326618
samantha.hamilton@uga.edu
FIRST AMENDMENT CLINIC
University of Georgia School of Law
P.O. Box 388
Athens, Georgia 30603
Tel.: (706) 542-9003
Counsel for Amicus

Bruce D. Brown*
Katie Townsend*
Mara Gassmann*
Grayson Clary*
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
Tel.: (202) 795-9300
**Of Counsel*