IN THE CIRCUIT COURT OF
WASHINGTON COUNTY, MISSISSIPPI

KING YOUNG BROWN, Plaintiff, v. STATE OF MISSISSIPPI, Defendant.	)))))))))	Cause No. 2024-87-CI

THIRD PARTY MISSISSIPPI TODAY'S MOTION TO INTERVENE

Pursuant to Rule 24, prospective-Intervenor Deep South Today d/b/a Mississippi Today ("Mississippi Today") moves to intervene for the limited purpose of seeking to unseal the to-be filed *in camera* submissions this Court ordered to be filed under seal in its April 9, 2026 Order (DE 46), stating as follows:

BACKGROUND

Since 2016, Mississippi Today, a Jackson, Mississippi-headquartered non-profit news organization, has been the state's flagship source for independent news. Mississippi Today seeks to intervene in this matter to unseal records relating to Defendant King Brown, Jr.'s allegations that the Washington County Circuit Clerk lost DNA evidence that had been ordered tested to determine if it might exonerate him. Mississippi Today's Motion to Modify the Court's April 9, 2026 Order is attached as **Exhibit A**.

A six-year-old child is dead. A fifteen-year-old was convicted of rape and the lesser-included charge manslaughter at his third trial, after two mistrials resulted from hung juries. Now, twenty years after his sentencing and after this Court ordered

potentially exonerating DNA evidence to be tested, the Washington County Circuit Clerk's Office has said it is unable to locate the evidence subject to the Order. Pursuant to this Court's April 9, 2026 Order, the parties' submissions regarding what should happen next will be filed under seal. Mississippi Today moves to intervene to assert the public's right to know whether six-year-old Robernisha Webster, King Young Brown, Jr., and the community have received justice from the state, Washington County, and this Court.

The facts of this matter are well-known to this Court. On November 22, 2005, Brown was sentenced to serve thirty years for the rape and, to be served consecutively, twenty years for the manslaughter of Robernisha Webster. DE 15 at ¶ 3. According to defense counsel, Brown's conviction relied heavily on a microscopic hair comparison which may be unreliable. DE 15 at ¶ 5.

Following the Mississippi Supreme Court's granting of leave to seek to have DNA evidence tested (DE 4), this Court ordered the testing, (DE 9). After that Order, as this Court observed, the Washington County Clerk's Office was unable to produce the DNA evidence. DE 46 at ¶ 20. Ultimately, this Court ordered the parties to submit for *in camera* review offers of proof regarding the missing DNA evidence, how that evidence was lost, when that evidence was lost, whether that loss was caused by bad faith, and the appropriate remedy, if any, for the lost evidence; the Court also ordered that these additional offers of proof would be held under seal. DE 46 at ¶ 22; *see also* DE 47 (extending the time for the government's submissions).

The possible loss of DNA evidence in a rape and murder case has serious consequences, not just for Brown and Robernisha Webster's family, but for the public at large. It raises questions as to the propriety of the conviction of a then-fifteen-year-old for rape and manslaughter, potentially prevents the victim of the crime's family from achieving closure, and possibly allows a true perpetrator, whether acting alone or as an accomplice, to escape punishment and continue to live in the community. This loss also raises serious questions regarding the soundness of the operations of the Circuit Clerk's Office, and potentially other government bodies including state prosecutors and local law enforcement. In fact, the evidence to be submitted is not the DNA evidence necessary to resolve Brown's claim of innocence, but is instead evidence regarding the government's conduct in losing that substantive evidence.

Without access to the sealed documents the parties are submitting *in camera*, Mississippi Today cannot accurately report on these proceedings or the alleged loss of evidence. This prevents the public from learning of its government's handling of a matter that bears on fundamental issues of public safety. Further, to the extent that public officials were responsible for this loss, that alone is a matter of pressing public concern. The public is entitled to know how its government is handling these critical matters. Finally, this Court will be tasked with determining an appropriate remedy in the event the DNA evidence has indeed been lost. In a matter where a convicted rapist and killer is seeking to have his conviction vacated and his indictment dismissed, public understanding of all the facts considered in making such a decision

promotes confidence in the judiciary, while ensuring fairness to the criminal defendant, the victim's family, and the community.

Mississippi law, the First Amendment, and common law create a presumption that courtrooms and court files are to be open to the public, particularly in criminal cases. *United States v. Nix*, 976 F. Supp. 417, 419–20 (S.D. Miss. 1997) (citing *Press-Enter. Co. v. Superior Court* ("*Press-Enterprise I*"), 464 U.S. 501, 507–11 (1984); *Press-Enter. Co. v. Superior Court* ("*Press-Enterprise II*"), 478 U.S. 1, 13–15 (1986)); *see also generally* Ex. A. No finding has been made here that could possibly overcome that presumption and, for the reasons enumerated below, Mississippi Today should be granted intervention as a matter of right to protect its interest and the interest of the public in accessing these files.

ARGUMENT

I. Mississippi Today Is Entitled to Intervene as a Matter of Right.

Rule 24 of the Mississippi Rules of Civil Procedure requires a court to allow intervention as a matter of right when the non-party shows: (1) a timely request; (2) an interest in the subject matter of the action; (3) a practical impairment of its ability to protect that interest if the action is determined in its absence; and (4) an inadequate representation of its interest by the parties. *Hood ex rel. State Tobacco Litig.*, 958 So. 2d 790, 805 (Miss. 2007); Miss. R. Civ. P. 24(a)(2). When intervening as a matter of right, the intervenor should be given "the benefit of the doubt." *Kinney v. S. Miss. Plan. & Dev. Dist., Inc.*, 202 So. 3d 187, 196 (Miss. 2016) (citing *Guar. Nat'l Ins. Co. v. Pittman*, 501 So. 2d 377, 385 (Miss. 1987)).

A. Mississippi Today's motion is timely.

In determining whether a motion to intervene is timely, courts consider timeliness from "all the circumstances." *Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996) (quoting *Corley v. Jackson Police Dep't*, 755 F.2d 1207, 1209 (5th Cir. 1985)). In making such a determination, four considerations are generally at issue:

> (1) The length of time during which the would-be intervenor actually knew or should have known of his interest in the case before he petitioned for leave to intervene; (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case; (3) the extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied; and (4) the existence of unusual circumstances mitigating either for or against a determination that the application is timely.

Miss. R. Civ. P. 24, Advisory Comm. Notes (citations omitted); *City of Tupelo v. Martin*, 747 So. 2d 822, 826 (Miss. 1999) (citing *Pittman*, 501 So. 2d at 382); *see also Stallworth v. Monsanto Co.*, 558 F.2d 257, 264–66 (5th Cir. 1977) (the Mississippi Rules track the Federal Rules[1]). No one consideration is controlling. *See, e.g.*, *Skinner v. Weslaco Indep. Sch. Dist.*, No. 99-40541, 2000 WL 959531, at *2 (5th Cir. June 7, 2000). "A motion to intervene may still be timely even if all the factors do not weigh in favor of a finding of timeliness." *State Farm Fire & Cas. Co. v. Hood*, 266 F.R.D. 135, 139 (S.D. Miss. 2010) (citations omitted).

[1] *Hood*, 958 So. 2d at 803 n.13 (citing *Hartford Cas. Ins. Co. v. Halliburton Co.*, 826 So. 2d 1206, 1215 (Miss. 2001); Miss. R. Civ. P. 24; Fed. R. Civ. P. 24); *Pittman*, 501 So. 2d at 381–82.

Mississippi Today moves to intervene before the deadline for the parties' *in camera* submissions. *See* DEs 46 & 47.

When considering any prejudice to the parties, courts properly consider only the prejudice that is "created by the intervenor's delay in seeking to intervene after it has learned of its interest in the action, not prejudice to existing parties if intervention is allowed." *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1203 (5th Cir. 1992) (collecting cases); *see also Hood*, 958 So. 2d at 807 (citations omitted). The timing of Mississippi Today's intervention imposes no burden on any party. There simply is no delay to consider in this matter.

On the other hand, Mississippi Today will be prejudiced if it is not allowed to intervene. News agencies have a legal interest in challenging court confidentiality orders and denying a request to intervene inflicts a legally cognizable harm. *Ford v. City of Huntsville*, 242 F.3d 235, 240 (5th Cir. 2001) ("a news agency has a legal interest in challenging a confidentiality order"); *State Farm*, 266 F.R.D. at 142 ("[T]he sealing of the settlement agreement[] presents an obstacle to their attempt to obtain access [to public records], and has caused injury to a 'legally protected interest' that is 'concrete and particularized and actual or imminent.'" (citation omitted)).

B. Mississippi Today has an interest in the documents to be submitted *in camera* and held under seal.

To intervene as a matter of right, an applicant must "claim[] an interest relating to the property or transaction which is the subject of the action." Miss. R. Civ. P. 24(a)(2). "All that is necessary [to meet that standard] is that [the applicant] establish an interest in the rights that are at issue in the litigation." *Pittman*, 501 So.

2d at 384; *see also Acad. of Allergy & Asthma in Primary Care v. La. Health Serv. & Indem. Co.*, No. 18-399, 2023 WL 12117410, at *6 (E.D. La. May 3, 2023) (citing *Newby v. Enron Corp.*, 443 F.3d 416, 422 (5th Cir. 2006) (liberally construed standard meant sealed documents relating to independent investigation involving prospective intervenor sufficient to meet standard for intervention)); *State Farm*, 266 F.R.D. at 142. Consistent with that standard, the Fifth Circuit has found that news agencies have standing to challenge a confidentiality order, because the closure of presumptively open public records injures the media's interest in accessing those documents. *Ford*, 242 F.3d at 240 (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 780 (3d Cir. 1994)). Consistent with the Mississippi Supreme Court's adoption of the federal standard, this Court should apply that same reasoning here. *Gannett River States Publ'g Co. v. Hand*, 571 So. 2d 941, 944 (Miss. 1990) (citing *Press-Enterprise II*, 478 U.S. at 14) ("[I]t is well settled that representatives of the news media have the standing to contest a court order restricting public access to legal proceedings." (quoting *Miss. Publishers Corp. v. Coleman*, 515 So. 2d 1163, 1164 (Miss. 1987))).

If the instant Motion to Intervene is denied, Mississippi Today, its readers, and Mississippians generally will lose the ability to understand the facts underlying this matter of public safety and public concern. That is information to which the press and public have a guaranteed right pursuant to the First Amendment. *See, e.g.*, *Press-Enterprise II*, 478 U.S. at 10–14 (First Amendment right of access applies to preliminary hearings); *Press-Enterprise I*, 464 U.S. at 505–10 (First Amendment

right of access applies not only to accessing criminal trials, but also to certain preliminary matters, including *voir dire*); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603–06 (1982) (First Amendment right to access criminal trial may only be overcome by compelling governmental interest and any exclusion or sealing must be narrowly tailored to serve the compelling governmental interest); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575–80 (1980) (First Amendment right to access criminal trials); *see also United States v. Edwards*, 823 F.2d 111, 114–15 (5th Cir. 1987) (explaining U.S. Supreme Court history between *Richmond Newspapers* and *Press-Enterprise II*); *Gannett*, 571 So. 2d at 944–45. Such a guarantee is necessary for the operation of an orderly justice system, as "[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers*, 448 U.S. at 572.

Mississippi Today is a proper party to intervene and seek to have these judicial records unsealed. "[P]eople now acquire [information regarding judicial proceedings] chiefly through the print and electronic media." *Id*. at 573. "[T]his validates the media claim of functioning as surrogates for the public." *Id*. Thus, access for the media must be provided at least as broadly as access is available to the public. *Id*. at 577 n.12 (citing *Estes v. Texas*, 381 U.S. 532, 540 (1965)).

Without such a mechanism, "[t]he explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily." *Id*. at 576–77. As the

Fifth Circuit has explained, access to a court's ruling without the underlying data upon which that decision is based defeats the purpose of having open courts. *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 849–50 (5th Cir. 1993). Sealing records creates the appearance of a Star Chamber, while making records open to the public "serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness." *Id.* at 849 (quoting *Littlejohn v. Bic Corp.*, 851 F.2d 673, 682 (3d Cir. 1988)).

C. Intervention is the only way for Mississippi Today to assert its rights.

The only way for the public to gain access to the documents to be filed *in camera* is for a party to intervene and seek to have the submissions unsealed. "The public's right of access to judicial records is a fundamental element of the rule of law." *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417 (5th Cir. 2021) (quoting *In re Leopold to Unseal Certain Elec. Surveillance Applications & Orders*, 964 F.3d 1121, 1123 (D.C. Cir. 2020)). "Providing public access to judicial records is the duty and responsibility of the Judicial Branch." *Id.* (quoting *In re Leopold*, 964 F.3d at 1134). If Mississippi Today is not allowed to intervene in this action, both it (and the public) will be prevented from even petitioning for access to "[j]udicial records belong[ing] to the American people." *Id.*

D. Mississippi Today's interests are not adequately represented by the parties.

To intervene as a matter of right, an applicant must establish its interest is "not . . . 'adequately represented by existing parties.'" *Pittman*, 501 So. 2d at 381 (quoting Miss. R. Civ. P. 24(a)(2)). While no party affirmatively sought to have the documents sealed, neither party has opposed the order. That alone satisfies this prong. *See Stallworth*, 558 F.2d at 268 (finding prong satisfied where "neither [of the parties] have either voiced the appellants' concerns or expressed a desire to do so"); *see also Ford*, 242 F.3d at 241 (finding this prong satisfied where the parties moved for entry of the confidentiality order).

That is to be expected; the parties' counsel owe duties to their clients and must advance their clients' litigating interests, none of which align with Mississippi Today's interests in accessing the records. *See Binh Hoa Le*, 990 F.3d at 419 ("[M]ost litigants have no incentive to protect the public's right of access." (quoting *BP Expl. & Prod., Inc. v. Claimant ID 100246928*, 920 F.3d 209, 211 (5th Cir. 2019))); *Gannett*, 571 So. 2d at 944–45 (setting forth U.S. and Mississippi Supreme Court precedent and collecting cases from other state courts).

For all of these reasons, the Court should find that Mississippi Today is entitled to intervene as a matter of right.

II. Alternatively, Mississippi Today Should Be Granted Discretionary Permission to Intervene.

Even if the Court were to find Mississippi Today is not entitled to intervene as a matter of right, Mississippi Today's application also satisfies the standard for

permissive intervention. Under Rule 24(b)(2), Mississippi courts are empowered to allow permissive intervention, considering (1) whether the application was timely and (2) whether the applicant's claim or defense has a question of law or fact in common with the main action, but then (3) having the discretion to make their own determination of whether intervention should be allowed. *See Stallworth*, 558 F.2d at 269. When the threshold requirement is met, the court must exercise its discretion in deciding whether intervention should be allowed. *Id.*

As set forth in detail above, Mississippi Today's application was timely. Likewise, Mississippi Today has already set forth how its claim is not only inextricably intertwined with the instant case, but that intervention is the only way for Mississippi Today to assert its and the public's rights. Courts, including trial courts in the Fifth Circuit, have found that a party seeking to intervene is harmed by a sealing order, when a party could not otherwise challenge the order creating standing to challenge the sealing Order. *See, e.g.*, *Estate of Baker ex rel. Baker v. Castro*, No. H-15-3495, 2020 WL 2235179, at *2 (S.D. Tex. May 7, 2020) (citing *Doe v. Pub. Citizen*, 749 F.3d 246, 265 (4th Cir. 2014)). Furthermore, for permissive intervention, the 'interest' requirement of Rule 24(b)(2) must be "liberal[ly] construe[ed]" to allow for intervention. *Stallworth*, 558 F.2d at 269–70; *see also Richmond Newspapers*, 448 U.S. at 576 (First Amendment guarantees "must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow" (quoting *Bridges v. California*, 314 U.S. 252, 263 (1941))).

As the two threshold prongs have been met, this Court should exercise its discretion to allow Mississippi Today to intervene. A court should only refuse to allow intervention if there is actual harm to a party or intervention will interfere with the court's orderly process. In fact, the Fifth Circuit has reversed orders from trial courts disallowing intervention when there is no showing of harm to the parties or interference with the court's orderly process. *See McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970); *see also Skinner*, 2000 WL 959531, at *2 (reversing denial of motion to intervene for failure to consider all factors where request was untimely with instruction to allow intervention); *Stallworth*, 558 F.2d at 269 (reversing denial of motion to intervene based on an erroneous finding below that the intervenor did not have an interest in the case despite trial court's discretion under permissive intervention standard).

Ultimately, if Mississippi Today is not allowed to intervene and seek to have the to-be-filed *in camera* documents unsealed, the public will not gain access to these judicial records nor even be allowed to present an argument that the documents should be unsealed. As such, discretion requires allowing Mississippi Today to intervene.

CONCLUSION

Mississippi Today should be granted leave to intervene in this matter.

RESPECTFULLY SUBMITTED, this the 8th day of June, 2026.

BY: */s/Andrew W. Coffman*

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INTERVENOR DEEP SOUTH TODAY D/B/A
MISSISSIPPI TODAY

CERTIFICATE OF SERVICE

I, Andrew W. Coffman, do hereby certify that I have on this date served a true and correct copy of the above and foregoing document by filing the same via MEC providing notice to each of the counsel of record,

THIS the 8th day of June, 2026.

BY: */s/Andrew W. Coffman*
Andrew W. Coffman