IN THE CIRCUIT COURT OF
WASHINGTON COUNTY, MISSISSIPPI

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

THIRD PARTY INTERVENOR MISSISSIPPI TODAY'S MOTION TO MODIFY THE COURT'S APRIL 9, 2026 ORDER

Intervenor Deep South Today d/b/a Mississippi Today ("Mississippi Today") moves to modify this Court's April 9, 2026 Order (DE 46) stating as follows:

INTRODUCTION

Has the government incarcerated an innocent man for more than twenty years? Has the government made such an error that a guilty person might be set free? How has the government kept track of crucial evidence? What evidence will the Court consider in making important decisions about the loss of evidence, the conviction, and the sentence in this matter? This Court's April 9, 2026 Order (the "Order") prevents Mississippians from learning the answers to these questions. Mississippi Today seeks to modify that Order to allow the public to access the forthcoming filings.

As then-Chief Justice Sydney M. Smith wrote, "Star Chamber proceedings or secrecy in the administration of justice is provocative of injustice and tyranny." *Sullens v. State*, 4 So. 2d 356, 363 (Miss. 1941) (Smith, C.J., specially concurring) (citation omitted). Preventing that *appearance* of injustice,

> [s]ince the adoption of our constitutional guaranties of freedom of speech and of the press, American newspapers . . . have assumed the duty of giving the people full information of the conduct of public officials, including the judges of all courts. Such information is necessary in a Democracy in order to insure the observance of its processes.

Id.

In its April 9, 2026 Order, this Court ordered Defendant King Brown, Jr. and prosecutors to submit for *in camera* review additional materials relating to Brown's contention the government lost the DNA evidence from his criminal trial, either during the process of Brown's seeking leave to have the evidence tested, or perhaps even after the Court had ordered that testing. DE 46 at ¶ 22. The Court *sua sponte* ordered that those forthcoming submissions be filed under seal, making the facts explaining the loss a secret. *Id.*

"Excessive secrecy . . . undercuts the public's right of access and thus undermines the public's faith in our justice system." *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 421 (5th Cir. 2021). The public has a right to know how its elected officials and government employees maintain public safety and how its courts administer justice. Here, there are serious questions regarding the propriety of the Washington County Clerk's Office's actions, Brown's conviction, and a final sense of closure – to the extent there can be any – for a deceased child's family. In a government of the people, by the people, and for the people, the people must be able to answer these questions.

Mississippi espouses a strong public policy that requires courts and court records to remain open. *Miles v. Bd. of Sup'rs of Scott Cnty.*, 33 So. 2d 810, 813 (Miss.

1948); *Walters v. Bd. on L. Enf't Officer Standards & Training*, 369 So. 3d 99, 109 (Miss. Ct. App. 2023); *see also* Miss. Const. art. 3, § 24 (Constitution's open courts provision); Miss. Const. art. 6, § 177A ("All proceedings before the Supreme Court under this section and any final decisions made by the Supreme Court shall be made public as in other cases at law."). The Public Records Act makes court records public, but even before the adoption of the Public Records Act, Mississippi common law required documents filed with both circuit and chancery courts to be presumed public. *Estate of Cole v. Ferrell*, 163 So. 3d 921, 930 (Miss. 2012) (Kitchens, J., concurring) (citing *Pollard v. State*, 205 So. 2d 286, 288 (Miss. 1967)). Mississippi courts interpret the Public Records Act as allowing for sealing only after balancing the public's right of access versus any need for confidentiality. *Fulgham v. Morgan & Morgan, PLLC*, 363 So. 3d 980, 988 (Miss. Ct. App. 2019) (vacating sealing order and remanding case, where trial court failed to articulate balancing of interests). Additionally, the First Amendment creates a qualified guarantee that both criminal trials (and most related hearings) and civil trials be open to the public. *See, e.g.*, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575–80 (1980). Finally, the common law grants a broad public access right to judicial records – especially when those records relate to matters of public interest.

As such, the First Amendment, Mississippi state law, and the common law create a presumption that courtrooms are open to the public and court files are public records. *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)). No finding has been made here that could possibly overcome that presumption.

The Court's April 9, 2026 Order should therefore be modified to require regular order, with all evidence and argument the Court considers filed on the docket in a manner that is open to the public.

BACKGROUND

On August 2, 2002, then-fifteen-year-old King Young Brown, Jr. was indicted for six-year-old Robernisha Webster's rape and murder. DE 15 at ¶¶ 1 & 2. Brown's first two trials resulted in hung juries. DE 15 at ¶ 3. In 2005, Brown was convicted and sentenced to serve thirty years for the rape and, to be served consecutively, twenty years for the lesser-included charge of manslaughter. *Id.*

According to his counsel, Brown's conviction was based entirely on circumstantial evidence, relying heavily on a microscopic hair comparison. DE 15 at ¶ 5. Ten years after Brown's conviction, the United States Department of Justice, Federal Bureau of Investigation, the Innocence Project, and the National Association of Criminal Defense Lawyers reported that an FBI review showed ninety percent of reviewed microscopic hair analysis testimony contained erroneous statements. Press Release, Fed. Bureau of Investigation, FBI Testimony on Microscopic Hair Analysis Contained Errors in at Least 90 Percent of Cases in Ongoing Review (Apr. 20, 2015), https://www.fbi.gov/news/press-releases/fbi-testimony-on-microscopic-hair-analysis-contained-errors-in-at-least-90-percent-of-cases-in-ongoing-review.

On August 29, 2023, the Washington County Circuit Clerk's Office confirmed that it maintained DNA evidence related to Brown's conviction, including over 100

trial exhibits. DE 15 at ¶ 11. On June 17, 2024, the Mississippi Supreme Court granted leave for Brown to seek to have this DNA evidence tested. DE 15 at ¶ 15. On May 16, 2025, this Court ordered the DNA evidence tested. DE 15 at ¶ 17; *see also* DE 9. After the entry of that testing order, the Washington County Clerk was unable to locate the DNA evidence. *See* DE 15 at ¶ 18.

Brown filed a Motion for an Order to Show Cause as to why the DNA evidence could not be tested as ordered, or in the alternative, seeking a remedy for the failure to preserve evidence, up to and including vacatur of his conviction and dismissal of his indictment. DE 15. A hearing on that Motion was set for April 10, 2026. DE 24. In advance of that hearing, eight subpoenas were executed to compel live witness testimony. DEs 25, 26, 27, 28, 29, 30, 31, and 44. Among those subpoenaed to testify was the Honorable Barbara Esters-Parker, the Washington County Circuit Clerk. DEs 35, 36, 42, & 44; *see also* DE 45 (Notice of Appearance on behalf of Parker). Parker is the public official responsible for the operation of the governmental entity that allegedly lost the DNA evidence.

The government did not respond to Brown's Motion on the public docket. On April 3, 2026, Brown supplemented his Motion, making additional arguments based on affidavits obtained from the Washington County Circuit Clerk's Office and the response to those affidavits by the District Attorney's Office, ultimately concluding that Brown's conviction should be vacated and his indictment dismissed. DE 41. In part, that argument relied on reporting by Mississippi Today relating to the District

Attorney's statements around the apparent loss of the DNA evidence. *See* DE 41 at 1, 1 n.1, 4 at ¶ 11, & 12 at ¶ 42; *see also* DE 41-2.

On the eve of the scheduled hearing, April 9, 2026, this Court entered an Order stating the evidence submitted to this point, "certainly establish[es] the [DNA] evidence sought is not within the Circuit Clerk's office." DE 46 at ¶ 20. However, the Court found it lacked sufficient information to decide the appropriate remedy, if any, and ordered "[b]oth parties, within forty five (45) days . . . [to] supplement and submit directly to the court further offers of proof which the court will hold under seal." DE 46 at ¶ 22(C). The Court also ordered the parties to brief the potential remedies, "if the [C]ourt finds the evidence sought is not available (both with and without a finding of bad faith respectively)." DE 46 at ¶ 22(D).

The Court did not articulate any specific reason for taking the further offers of proof under seal beyond a general statement that the protocols outlined were intended to "proceed in this matter without needlessly wasting time, undue embarrassment or harassment to any witnesses, and to more effectively focus on the issues [in the case]." DE 46 at ¶ 22. Having explained how it would take evidence in this matter, the Court canceled the April 10, 2026 evidentiary hearing. DE 46 at ¶ 22(A). The Court then extended the time for the government to make its submissions by ten days to June 1, 2026 and June 26, 2026. DE 47.

ARGUMENT

The further offers of proof the parties are submitting in this case are public records, to which a right of public access applies under Mississippi law, the First Amendment and the common law. Each of these rights is driven by the basic principle

that "American judicial proceedings are public." *Binh Hoa Le*, 990 F.3d at 418 (citing *In re Krynicki*, 983 F.2d 74, 75 (7th Cir. 1992)). "The public's right of access to judicial records is a fundamental element of the rule of law." *Id.* at 417 (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). All judicial "processes should facilitate public scrutiny rather than frustrate it." *Id.* at 421. There are three self-reinforcing reasons judges must protect access to judicial records:

> (1) the public has a right to monitor the exercise of judicial authority; (2) judges are "the primary representative[s] of the public interest in the judicial process"; and (3) the judiciary's institutional legitimacy depends on public trust.

Id. at 418 (quoting *Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999)).

Because courts should avoid constitutional questions when a matter can be decided without reaching those questions, *see, e.g.*, *Clark v. Martinez*, 543 U.S. 371, 380 (2005) (superseded by statute on other grounds), Mississippi Today *first* sets forth why it is entitled to access the submissions made in this matter under Mississippi law. *Second*, alternatively, Mississippi Today sets forth why the First Amendment guarantees its right to access these public records, even if Mississippi law would not allow access. *Third*, and again alternatively, Mississippi Today briefs how it is entitled to access these judicial records pursuant to the common law.

I. Mississippi law requires public access to the filings in this case, because the right of access outweighs any need for confidentiality.

The First Amendment requires public access to the filings in this case; but before even reaching that issue, the Court should rule that access is required under longstanding Mississippi state law.

Under Mississippi law, the presumption is that judicial records, including court filings, are public records, and submissions may only be sealed after the trial court "'balanc[es] the parties' competing interests – the public's right of access versus confidentiality." *Butler Snow LLP v. Estate of Mayfield*, 281 So. 3d 1214, 1220 (Miss. Ct. App. 2019) (quoting *Estate of Cole*, 163 So. 3d at 924). Here, there is no evidence that the Court engaged in any such balancing, and no party ever articulated any need for confidentiality.

Not only must a court engage in balancing those interests, it also must articulate the results of that balancing on the record. *Fulgham*, 363 So. 3d at 988–89 (Wilson, J., for the majority) (reversing and rendering sealing); *see also id.* at 993 ("Because the chancellor did not address this issue, made no findings of fact on this issue, and never articulated a legal conclusion based on the correct legal standard, I would find that this issue should be remanded instead of rendered." (Lawrence, J., concurring in part and dissenting in part)); *cf. S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 849 (5th Cir. 1993) (applying federal common law to reach the same result). Again, there is no record articulating any balancing of these interests.

In *Smith v. Doe*, 268 So. 3d 457 (Miss. 2018), the Supreme Court remanded a matter because the trial court failed to articulate its findings regarding the balancing

test. *See Butler Snow*, 281 So. 3d at 1220 ("It 'therefore remand[ed] the chancellor's order sealing the court file for the trial court to conduct the balancing test[.]'" (quoting *Smith*, 268 So. 3d at 464)). Furthermore, even though it was a case between private parties, the Supreme Court found that allegations regarding the sexual abuse of children raised "significant public health and safety concerns," which strengthened the public interest in knowing the basis of the allegations in the case. *Id.* (quoting *Smith*, 268 So. 3d at 464). Based on the public's right to access records relating to public health and safety concerns, the Supreme Court sent the case back to the trial court to engage in the required balancing. *Id.*; *see also Smith*, 268 So. 3d at 464 ("Given the allegations [of sexual abuse] raised and evidence presented in this appeal, this Court has significant public health and safety concerns. . . . We . . . remand the chancellor's order sealing the court file, for the chancellor to conduct the *Estate of Cole* balancing test[.]"). *Smith* ensured that the public did not lose access to important information regarding the government's ability to keep citizens safe and that any limitations on the right of access were supported by findings of fact and conclusions of law establishing that no reasonable alternative to the limitations existed. Other Mississippi decisions are squarely in accord. *See Walters*, 369 So. 3d at 109 (applying the balancing test to find public right of access to filings in appeal of administrative decision to revoke plaintiff's professional law enforcement certification); *Colbert v. Colbert*, 403 So. 3d 729, 737 (Miss. Ct. App. 2025) (Mississippi Court of Appeals "sua sponte rais[ing] the issue of the seal over this case" and remanding the matter for the court below to conduct the appropriate balancing test); *Fulgham*, 363 So. 3d at 988.

No less is at stake here than in those cases. While all judicial submissions are presumed public, some records, like those at issue here, are of particular importance. Citizens rely on the government for their safety, and public safety is a matter of the gravest public concern. As the cases detailed above show, when issues of public safety (or other matters of serious public concern) are involved, courts find transparency to be of greater importance. *See also Bradley ex rel. AJW v. Ackal*, 954 F.3d 216, 233 (5th Cir. 2020) ("public's interest . . . is particularly legitimate and important" because openness allows public to know how taxpayer money was spent). Further, the public interest is even stronger where evidence regarding "[t]he disclosure of misbehavior by public officials" is potentially at issue. *Branton v. City of Dallas*, 272 F.3d 730, 739–40 (5th Cir. 2001) (collecting cases holding that speech on conduct of public employees is of great public concern); *see also Ewing v. Neese*, 199 So. 3d 681, 684 & n.5 (Miss. 2016) ("Public interests favoring access include cases with at least one party that is a public entity or public official, or cases involving matters of public concern."); *Brawner v. City of Richardson*, 855 F.2d 187, 191 (5th Cir. 1988). No matter the facts underlying the conduct, the Mississippi Supreme Court has found special protections for publicly debating the actions of a county clerk, as a public official, *J. Publ'g Co. v. McCullough*, 743 So. 2d 352, 365 (Miss. 1999); a prosecutor, as a public official, *Parrish v. Gannett River States Publ'g Corp.*, No. 2:93-cv-238, 1994 WL 159533, at *3 (S.D. Miss. Feb. 9, 1994); and individuals accused of crimes which are matters of public concern.

No party has raised any need for confidentiality. The Court does not appear to have engaged in any balancing of the public's right to know about these matters of public safety and government administration against any purported need for confidentiality. Likewise, there has been no apparent weighing of the public's right to know about the actions of the Washington County Circuit Clerk, state prosecutors, or Brown, neither his actions related to his conviction nor his subsequent collateral challenge to that conviction. Finally, there is no indication the Court considered the presumption that evidence submitted to the judiciary is public.

Instead, the Court's decision to have the parties' filings submitted under seal appears to be based on a generic interest in preventing "undue embarrassment" or "protect[ing] witnesses from harassment."[1] But there is no discussion of how maintaining the parties' further filings under seal would accomplish those goals. *State Farm Fire & Cas. Co. v. Hood*, No. 2:07-cv-188, 2010 WL 3522445, at *3 (S.D. Miss. Sept. 2, 2010) (sealing must support "a particularized showing of a need for confidentiality" (citation omitted)). Further, the Order reflects no consideration of whether those broad interests are appropriately considered in sealing each individual document or even if those broad interests could ever outweigh the strong presumption of public access. Mississippi courts have squarely rejected the notion that mere embarrassment of public officials is a strong enough interest to outweigh the

[1] Mississippi Today acknowledges that these concerns are articulated in Mississippi Rule of Evidence 611 as the purposes to be achieved through a court's "exercise [of] reasonable control over the mode and order of examining witnesses and presenting evidence" at trial, and that the Court may have cited those concerns as the reason for canceling the evidentiary hearing originally scheduled for April 10. Out of an abundance of caution, however, Mississippi Today assumes this logic is also the basis of the Court's decision to seal further offers of proof.

presumption of openness. *See, e.g.*, *Walters*, 369 So. 3d at 109. Indeed, courts have observed that "[c]reating an 'embarrassment exception' to the First Amendment would swallow the general rule of public access to public records." *Doe v. Crawford*, 702 F. Supp. 3d 509, 512 (S.D. Miss. 2023) (noting that "every case, civil and criminal, presents a risk of embarrassment to one or all involved").

As such, under Mississippi law requiring open judicial proceedings in all but the most exceptional circumstances, the Court's April 9, 2026 Order must be modified to require the ordered filings into the record and accessible to the public.

II. These records should be unsealed pursuant to the First Amendment right of access.

"[T]he right to attend criminal trials is implicit in the guarantees of the First Amendment[.]" *Richmond Newspapers*, 448 U.S. at 580. "[W]ithout the freedom to attend [criminal] trials, which people have exercised for centuries, important aspects of freedom of speech and 'of the press could be eviscerated.'" *Id.* (quoting *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)).

After lower courts initially limited that principle of access to criminal trials themselves, the Supreme Court issued its decision in *Press-Enterprise II*, rejecting the use of labels to determine when proceedings are open pursuant to the First Amendment guarantee related to accessing trials and explicitly expanded the right to certain pre-trial proceedings in criminal matters. 478 U.S. at 10 ("The considerations that led the Court to apply the First Amendment right of access to criminal trials in *Richmond Newspapers* and *Globe* [*Newspaper Co. v. Superior Court*,

457 U.S. 596 (1982)] and the selection of jurors in *Press-Enterprise I* lead us to conclude that the right of access applies to preliminary hearings[.]").

"In determining whether a particular proceeding falls under the First Amendment's protections, courts are instructed to employ a two-factor test referred to as the 'experience and logic test.'" *Tex. Trib. v. Caldwell Cnty.*, 121 F.4th 520, 528 (5th Cir. 2024) (quoting *Press-Enterprise II*, 478 U.S. at 8). "The experience prong asks 'whether the place and process have historically been open to the press and general public.'" *Id.* (quoting *Press-Enterprise II*, 478 U.S. at 8). "Logic, in turn, considers 'whether public access plays a significant positive role in the functioning of the particular process in question.'" *Id.* (quoting *Press-Enterprise II*, 478 U.S. at 8).

Where, as here, the experience and logic test establishes a First Amendment right of access, a strong presumption of openness applies; and, that "presumption may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest"—an extremely rigorous test that is seldom met. *Press-Enterprise II*, 478 U.S. at 9 (citation omitted). To the extent a court determines that the presumption has been overcome, "[t]he interest [in closure] is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered." *Id.* at 9–10 (citation omitted).

No such findings have been made here, and there is no indication that any interests exist that could outweigh the presumption of openness. Thus, even if

Mississippi law did not require the filings be made open, the First Amendment would compel such a result.

A. As a matter of experience and logic, the First Amendment right of access to criminal trials applies to the filings in this post-conviction proceeding.

Although the Supreme Court jurisprudence on the First Amendment right of access has focused in particular on criminal trials, the Supreme Court has made clear that "label[s]" are not determinative of when the First Amendment requires access to judicial proceedings. *See Press-Enterprise II*, 478 U.S. at 7. And courts—including the Fifth Circuit—have applied the experience and logic test to find a right of access in a wide variety of proceedings, including post-conviction proceedings and filings in criminal cases. *See In re Hearst Newspapers, LLC*, 641 F.3d 168, 176–77 (5th Cir. 2011) (adopting reasoning from Second, Fourth, Seventh and Ninth Circuit precedent holding that First Amendment right of access applied to post-conviction sentencing proceedings).

Although the matter before this Court is civil in nature, Brown is seeking to have his criminal conviction and sentence vacated. In this regard, this matter is analogous to a sentencing hearing where the Court is making a post-conviction determination of whether a conviction can stand and, if so, what consequences should follow. Given the long line of precedent applying the First Amendment right of access in analogous post-conviction proceedings, the Court should find that the First Amendment right applies to the filings the parties will make pursuant to the April 9 Order.

1. Post-conviction proceedings, like the matter before the Court, have historically been open to the public.

There is uniform agreement that post-conviction sentencing hearings "have historically been open to the press and public," which satisfies the "experience" prong of the test for First Amendment access. *Hearst Newspapers*, 641 F.3d at 175–77. Further, although the Fifth Circuit has not considered if public access was historically available to a post-conviction collateral attack on a conviction, other courts considering this question have found a historical record strongly supporting the public's right to access collateral attacks on convictions, including post-conviction habeas petitions. *See In re Guantanamo Bay Detainee Litig.*, 624 F. Supp. 2d 27, 35–36 (D.D.C. 2009) (finding habeas action was civil in nature, historically open to the public, and subject to press access); *see also Dhiab v. Obama*, 70 F. Supp. 3d 465, 466–68 (D.D.C. 2014) (denying government request to close preliminary injunction hearing seeking to bar "the Government from subjecting [detainee] to forcible cell extractions and from placing him in a Five-Point Restraint Chair"). Even in the case of habeas proceedings, "[w]ith such a long-standing and ongoing public interest at stake [related to the prosecution of the war on terror and the care provided for detainees], it would be particularly egregious to bar the public from observing the credibility of live witnesses, the substance of their testimony, whether proper procedures are being followed, and whether the Court is treating all participants fairly." *Dhiab*, 70 F. Supp. 3d at 468.

That, of course, is the only result that can be consistent with the strong history of allowing public attendance at sentencing hearings, which courts have had no

trouble finding must be extended to proceedings involving reduction of a sentence after an initial sentencing hearing. *See, e.g.*, *State v. Price*, 895 S.E.2d 633, 641–42 (S.C. 2023) (holding that First Amendment required that in-chambers discussion of potential reduction of sentence must be held in public (citing *Hearst Newspapers*, 641 F.3d at 175–76)).

A decision which might negate a fifty-year prison sentence falls within this same tradition and must be open to the press and the public.

2. The public plays a significant positive role in ensuring post-conviction proceedings are conducted fairly, that justice is done, and the government administration is acceptable.

The "logic" prong also weighs in favor of applying the First Amendment access standard to proceedings regarding the validity of a criminal conviction or the appropriate sentence for a felony conviction. The Fifth Circuit has found that the public plays a "significant positive role" by having access to post-conviction sentencing hearings. *Hearst Newspapers*, 641 F.3d at 179 (citing *Press-Enterprise II*, 478 U.S. at 8–9). In making that finding, the court explained that virtually every benefit of the public being able to access criminal trials is also provided by requiring post-conviction sentencing hearings be open. *Id*.

"To begin with, '[t]he knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power.'" *Id*. (quoting *Richmond Newspapers*, 448 U.S. at 596). That same principle applies to sentencing, and, by extension, proceedings to alter a sentence. *Id*. ("The presence of the public operates to check any temptation that might be felt by either the prosecutor or the court . . . to seek or impose an

arbitrary or disproportionate sentence." (quoting *In re Wash. Post Co.*, 807 F.2d 383, 389 (4th Cir. 1986))). Openness builds public confidence in the justice system, allows the public to have confidence that a defendant is being sentenced justly, and promotes accuracy "because witnesses are more hesitant to commit perjury in a proceeding open to the public." *Id.* at 180. There is also a "'community therapeutic value'" to having an open proceeding that goes directly to "the concerns and emotions of members of the public who have been affected by a crime." *Id.* (quoting *Richmond Newspapers*, 448 U.S. at 570). These "rationale[s] also appl[y] in the sentencing context." *Id.*

On a fundamental level, the public has a right to ensure that those who enforce the law do so in a procedurally and substantively reasonable manner. Secrecy promotes distrust, without regard to whether justice was done. The public simply cannot understand the basis of any argument or decision without access to the underlying facts. Thus, openness promotes justice as "a check upon the judicial process – an essential component in our structure of self-government." *Globe Newspaper Co.*, 457 U.S. at 606. Accordingly, the "logic" prong also weighs in favor of a First Amendment right to access the filings concerning the propriety of Brown's conviction and sentence.

B. Even if the Court determines that the proceeding is civil, the same First Amendment standard requires that the pre-sealed documents be made public.

The First Amendment right of access should attach to the filings at issue, whether or not the proceedings are technically "civil" or "criminal." While neither the United States Supreme Court nor the Fifth Circuit has determined if the same First

Amendment protection applies to civil matters, other courts have determined it does. *See*, *e.g.*, *Green v. Winona Montgomery Consol. Sch. Dist.*, No. 4:21-cv-32, 2021 WL 1723226, at *2 (N.D. Miss. Apr. 30, 2021) (citing *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1074 (3d Cir. 1984); *Senderra Rx Partners, LLC v. Blue Cross Blue Shield of N.C.*, No. 1:18-cv-871, 2019 WL 9633640, at *2 (M.D.N.C. July 26, 2019) (collecting cases)) ("The First Amendment right of access applies to documents related to motions seeking [civil] preliminary injunctive relief."); *see also Republic of Philippines v. Westinghouse Elec. Corp.*, 139 F.R.D. 50, 56–57 (D.N.J. 1991) (collecting cases). While civil trials rarely affect an individual's freedom, they still raise important issues of public concern which the First Amendment explicitly guarantees the right to debate. *Publicker Indus., Inc.*, 733 F.2d at 1068. Thus, "[p]ublic access to civil trials, no less than criminal trials, plays an important role in the participation and the free discussion of governmental affairs." *Id*. at 1070.

There is a long history of civil trials being open. *See Richmond Newspapers*, 448 U.S. at 590 (Brennan, J., concurring) ("[I]t appears that 'there is little record, if any, of secret proceedings, criminal or civil, having occurred at any time in known English history.'" (quoting *Gannett Co. v. DePasquale*, 443 U.S. 368, 420 (1979))); *see also Binh Hoa Le*, 990 F.3d at 418 (tracing open trials back to the Roman Empire); *Publicker Indus., Inc.*, 733 F.2d at 1068. This history is not mere accident, as open access to trials, including civil trials, is a "bulwark[] of our free and democratic government." *Richmond Newspapers*, 448 U.S. at 592 (citing *In re Oliver*, 333 U.S. 257, 270 (1948)).

Under this authority, even if this were a garden-variety civil action, the First Amendment right of access should apply to the proceedings and filings. Of course, this is far more than an ordinary civil case. At stake is the propriety of a conviction for the most serious of crimes, as well as the manner in which public officials have handled evidence at the very center of the case. The need for public monitoring of these proceedings is at least as compelling as in any criminal trial. Accordingly, the First Amendment requires public access be granted to each submission in this matter.

C. Any interests in closure cannot overcome the strong presumption of public access to the filings under the First Amendment.

Where the First Amendment right of access applies, there is "a presumption that [proceedings] should remain open, absent specific, substantive findings made by the [trial] court that closure is necessary to protect higher values and is narrowly tailored to serve such goals." *Hearst Newspapers*, 641 F.3d at 181 (citing *Press-Enterprise II*, 478 U.S. at 9–10). Here, the Court cited to a generic interest in not "wasting time" or causing "undue embarrassment" or "harassment" to any witnesses, *see* Miss. R. Evid. 611(a), but made no determination that sealing of the parties' filings is necessary to accomplish those ends. Not only are the bases stated by the Court insufficient to ever support sealing, *see Walters*, 369 So. 3d at 109, the Order contains no explanation of how sealing is the most narrowly tailored protocol sufficient to protect those interests, *see United States v. Ahsani*, 76 F.4th 441, 453 (5th Cir. 2023) (even when ordering redaction a court must determine whether redaction is the most narrowly tailored method capable of supporting the basis for sealing, as redaction is often, but not always, "practicable and appropriate as the least restrictive means of

safeguarding sensitive information"); *see also Sealed Appellant v. Sealed Appellee*, No. 22-50707, 2024 WL 980494, at *2–3 (5th Cir. Mar. 7, 2024). As such, the Court's Order must be set aside.

III. Even under the common law standard applicable to civil trials, the pre-sealed documents must be made public.

In addition to the First Amendment right to access judicial proceedings, the common law protects the public's right to access civil judicial proceedings. *Binh Hoa Le*, 990 F.3d at 418.

> The public's right of access to judicial proceedings is fundamental. The principle traces back to Roman law, where trials were *res publica*—public affairs. Public access was similarly fundamental to English common law. Seventeenth-century English jurist Sir Edward Coke explained that "all Causes ought to be heard, ordered, and determined before the Judges of the King's Courts openly in the King's Courts, *wither all persons may resort*." A century or so later, English philosopher and judge Jeremy Bentham observed, "Publicity is the very soul of justice."
>
> In this tradition, American judicial proceedings are public.

Id. (first quoting *Richmond Newspapers*, 448 U.S. at 565 n.6; then quoting Jeremy Bentham, *Draught For the Organization of Judicial Establishments*, *in* 4 The Works of Jeremy Bentham (John Bowring ed., 1843), https://oll.libertyfund.org/title/bowring-the-works-of-jeremy-bentham-vol-4#lf0872-04_head_164).

Courts have likewise long recognized a common law right to "inspect and copy public records and documents, including judicial records and documents." *United States v. Sealed Search Warrants*, 868 F.3d 385, 391 (5th Cir. 2017) (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597–99 (1978)). This common law doctrine is even broader than the First Amendment's protection of access to criminal trials. *See*

id. (access to pre-indictment search warrant affidavits not accessible under First Amendment, but accessible, on a case-by-case basis, pursuant to common law); *see also United States v. Doe*, 962 F.3d 139, 145 (4th Cir. 2020).[2]

Pursuant to this common law right, "at the *adjudicative* stage, when materials enter the court record, the standard for shielding records from public view is far more arduous" than entering a protective order during discovery. *June Med. Servs., L.L.C. v. Phillips*, 22 F.4th 512, 521 (5th Cir. 2022) (quoting *Binh Hoa Le*, 990 F.3d at 420). The law "heavily disfavor[s] sealing information placed in the judicial record." *Id.* at 519–20. "To decide whether something should be sealed, the court must undertake a 'document-by-document,' 'line-by-line' balancing of 'the public's common law right of access against the interests favoring nondisclosure.'" *Id.* at 521 (quoting *Binh Hoa Le*, 990 F.3d at 419); *see also id.* ("The district court also erred by failing to evaluate all of the documents individually."). "[T]he working presumption is that judicial records should not be sealed." *Id.* (quoting *Binh Hoa Le*, 990 F.3d at 419). "'[C]ourts should be ungenerous with their discretion to seal judicial records[.]' And, to the extent that any sealing is necessary, it must be 'congruent to the need.'" *Id.* (quoting *Binh Hoa Le*, 990 F.3d at 418, 420); *Fed. Sav. & Loan Ins. Corp. v. Blain*, 808 F.2d 395, 399 (5th Cir. 1987) ("The district court's discretion to seal the record of judicial proceedings is to be exercised charily[.]").

[2] As these cases make clear, while the common law allows for access to a broader array of proceedings and documents than the First Amendment allows, the standard applicable to sealing is more stringently applied under the First Amendment, as opposed to the common law. *See Green*, 2021 WL 1723226, at *1.

The common law demands that courts be diligent in ensuring access to court proceedings and filings, even when the parties do not oppose (or affirmatively seek) sealing. While sealing documents to protect "trade secrets or the identities of confidential informants" may be proper, "'[m]ost litigants have no incentive to protect the public's right of access.'" *Binh Hoa Le*, 990 F.3d at 419 (quoting *BP Expl. & Prod., Inc. v. Claimant ID 100246928*, 920 F.3d 209, 211 (5th Cir. 2019)). "That's why 'judges, not litigants' must undertake a. . . balancing of 'the public's common law right of access against the interests favoring nondisclosure.'" *Id*. (first quoting *BP Expl.*, 920 F.3d at 212; then quoting *Sealed Search Warrants*, 868 F.3d at 393). "[A] court abuses its discretion if it 'ma[kes] no mention of the presumption in favor of the public's access to judicial records' and fails to 'articulate any reasons that would support sealing.'" *Id*. (quoting *Van Waeyenberghe*, 990 F.2d at 849).

This principle is not limited to briefs, opinions, orders, or other argument, but includes the underlying facts and exhibits considered. As explained by *Van Waeyenberghe*, access to a court's ruling without the underlying data upon which that decision is based defeats the purpose of having open courts. 990 F.2d at 849–50.

To date, no basis for sealing all the filings the parties will make pursuant to the Court's April 9 Order has been articulated. At most, the Court cited to vague interests in avoiding "undue embarrassment" and "protect[ing] witnesses from harassment." DE 46 at ¶ 17. But, it is well settled that "speculative [future] privacy interests are not a 'compelling countervailing interest[] favoring nondisclosure.'" *In re Four Applications for Search Warrants Seeking Info. Associated with Particular*

Cellular Towers, No. 3:25-cr-38, 2025 WL 2394033, at *2 (S.D. Miss. Aug. 18, 2025) (quoting *Binh Hoa Le*, 990 F.3d at 421) (*sua sponte* unsealing case and requiring government to seek to seal each individual document it seeks to withhold from press and public). There is no indication that filing the offers of proof in this case would actually result in harassment of witnesses or even increase the risk of such an occurrence. Even if information about what happened to the evidence in this case would cause "embarrassment," that would not be sufficient to justify sealing these filings in whole (or even in part). As a general matter, "a record may not be sealed 'merely because it could lead to a litigant's embarrassment.'" *8fig, Inc. v. Stepup Funny, L.L.C.*, 135 F.4th 285, 294 (5th Cir. 2025) (quoting *Sealed Appellant*, 2024 WL 980494, at *2); *see also United States v. Apothetech RX Specialty Pharmacy Corp.*, No. 3:15-cv-588, 2017 WL 1100818, at *1 (S.D. Miss. Mar. 20, 2017) (holding that even if concerns of "damaging [parties'] hard earned reputations" and "protect[ing] themselves and their families from retaliatory action" were "well founded," those concerns "alone … are insufficient to overcome the public right to access judicial records"); *United States v. Langston*, No. 1:08-cr-3, 2008 WL 5156625, at *2 (N.D. Miss. Dec. 8, 2008) (holding that interests in having "open and transparent" proceedings compelled keeping presentence letters on public docket, even where court was "concerned that the release of the letters may cause pain or embarrassment to the writers"). And, as noted above, the interest in preventing "embarrassment" to public employees regarding the performance of their official duties is particularly thin and has been rejected as a proper basis for sealing.

Mississippi Today has set forth the importance of the information at issue. Making public the true facts of how the government has acted is the only way to "promote trustworthiness of the judicial process, to curb [potential] judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness." *Van Waeyenberghe*, 990 F.2d at 849 (quoting *Littlejohn v. Bic Corp.*, 851 F.2d 673, 682 (3d Cir. 1988)); *see also Rovinsky v. McKaskle*, 722 F.2d 197, 199 (5th Cir. 1984).

The common law presumption of openness applies to this matter, and all judicial matters. As such, this matter and all accompanying documents must be open to Mississippi Today and the public.

CONCLUSION

The Court's April 9, 2026 Order should be modified to require all submissions made pursuant to that Order be filed on the record and with public access guaranteed.

RESPECTFULLY SUBMITTED, this the ___ day of June, 2026.

BY: */s/* _____

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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 ___ day of June, 2026.

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