

Andrew Kreig  
Director and Reporter  
*Justice Integrity Project*  
701 Pennsylvania Ave. NW, Suite No. 13-08, Washington, DC 20004  
(202) 638-0070

Bob Martin  
Editor and Publisher  
*Montgomery Independent and Millbrook Independent*  
Montgomery and Millbrook, Alabama  
(334) 265-7323

May 24, 2012

The Hon. Anita L. Kelly  
Judge, 15<sup>th</sup> Judicial Circuit, Circuit Court Domestic Relations Division  
1111 Air Base Blvd.  
Montgomery, Alabama 36108

Dear Judge Kelly:

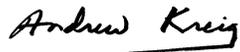
We write concerning the court's order to seal records *In re the Marriage of Lisa Boyd Fuller vs. Mark Everett Fuller*, Case No. DR-2012-900235, over the objection of the plaintiff. Pleadings indicate she concurred with sealing of only part of the file, not all.

The public's qualified common law right of access to judicial proceedings and records is well-established. Although the Supreme Court has not directly addressed whether the media and public have a constitutional right of access to *civil* proceedings, a plurality found that "historically both civil and criminal trials have been presumptively open." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n.17 (1980) (plurality opinion). And many federal and state courts subsequently have recognized a right of public access to proceedings and documents in civil cases, though they have differed on the origin and scope of the right. *See, e.g., Westmoreland v. CBS*, 752 F.2d 16, 23 (2d Cir. 1984) ("we agree ... that the First Amendment does secure to the public and to the press a right of access to civil proceedings in accordance with the dicta of the Justices in *Richmond Newspapers*"); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1061 (3d Cir. 1984) ("the First Amendment does secure a right of access to civil proceedings"); *In re Iowa Freedom of Info. Council*, 724 F.2d 658, 661 (8th Cir. 1984) (ruling that First Amendment access rights extend to contempt proceedings); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1177 (6th Cir. 1983) (holding that First Amendment and common law limit judicial discretion to seal documents in civil litigation); *Newman v. Graddick*, 696 F.2d 796, 801-03 (11th Cir. 1983) (finding constitutional right of access to proceedings and common-law right of access to documents in civil case involving prison conditions).

Whether the right of access at issue is anchored in the First Amendment or the common law, parties attempting to block public access must justify the closure or sealing. While we recognize that the Alabama Supreme Court has found that the media and public's right of access to the records of a divorce proceeding generally is not permitted, my understanding is that blanket sealing orders violate the right of public access. *Ex parte Balogun*, 516 So. 2d 606, 611 (Ala. 1987), *abrogated on other grounds by Ex parte Crawford*, 686 So. 2d 196 (Ala. 1996). In cases where a presumption of access applies, courts must make findings about the need for closure after balancing the interests of the parties and those of the media and public. Such a procedure is particularly important where one or more of the parties is a public entity or official and, as here, the proper performance of official conduct is implicated. Indeed, it is hard to fathom that *all* the documents in this case — and *all* portions of those documents — consist of information of such a private nature that no part of them can be publicly disclosed.

As such, we respectfully request that the court hold a hearing to determine whether the parties' interest in confidentiality outweighs the public's right to participate in and serve as a check upon its judicial and government processes. Please acknowledge this letter as notice that we request to be heard during such a proceeding.

Very truly yours,



Andrew Kreig, Reporter and Director, *Justice Integrity Project*

&

[s] Bob Martin, Editor and Publisher, *Montgomery Independent & Millbrook Independent*  
[s] Roger Shuler, Editor, *Legal Schnauzer*

CC: Ms. Florence Cauthen  
Court Clerk, 15<sup>th</sup> Judicial Circuit, Circuit Court Domestic Relations Division  
1111 Air Base Blvd.  
Montgomery, Alabama 36108

John A. Henig, Jr., Esq.  
PO Box 347  
Montgomery, Alabama 36101

Floyd Minor, Esq. and John Olszewski, Esq.  
Minor and Olszewski, LLC  
7004 Brockport Court  
Montgomery, Alabama 36117