

15<sup>th</sup> JUDICIAL DISTRICT COURT

PARISH OF LAFAYETTE

STATE OF LOUISIANA

IN RE: MATTER UNDER INVESTIGATION : DOCKET NO. C-20204381

LSP 20-010001 AND  
LPD 20-19

\*\*\*\*\*

**PETITION OF INTERVENTION ON BEHALF OF KATC-TV, THE GANNETT COMPANY,  
INC. D/B/A THE DAILY ADVERTISER AND CAPITAL CITY PRESS LLC, d/b/a  
THE ADVOCATE;  
EX PARTE MOTION TO VACATE TEMPORARY RESTRAINING ORDER  
AND DISMISS THE SUIT WITH PREJUDICE**

NOW INTO COURT, through their undersigned counsel, come KATC-TV, THE GANNETT COMPANY, INC. D/B/A THE DAILY ADVERTISER and CAPITAL CITY PRESS, L.L.C. D/B/A THE ADVOCATE, hereinafter "INTERVENORS," whose Petition of Intervention opposed to both plaintiffs and defendants under La. C.C.P. Art. 1091, respectfully represents the following:

I.

Intervenors are media corporations and representatives who have a First Amendment right under the United States Constitution to participate in, and report on, matters of interest to the public at large occurring on the public stage, and have standing to enforce that right in this proceeding. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 102 S. Ct. 2613, 73 L.Ed.2d 248 (1982); *Press Enterprise Co. v. Superior Court of California*, 478 U.S. 1, 106 S.Ct. 1, 92 L.Ed.2d 1 (1996); La. Constitution Art. 1, Section 7; La. Constitution Art. 1, Section 22; *Chicago Tribune v. Mauffrey*, 995 So.2d 1273 (La. App. 3 Cir. 2008); *State v. Widenhouse*, 556 So.2d 187 (La. App. 2 Cir. 1990);

II.

Courts and Court records are open in Louisiana. This presumption can only be overcome by specific allegations citing specific harm occurring to an individual, not merely conclusory allegations that disclosure "might" deprive a current or potential criminal defendant of a right to a fair trial. For this reason, so-called "gag orders" violate the free speech rights of participants and the right of the press to report on public proceedings. La. Constitution Art. 1, Section 22; La. Public Records Act, La. R.S. 44:1 *et seq.*; La. C.C.P. Art. 251; *City of Baton Rouge v. Capital City Press, LLC*, 4 So.3d 807 (La. App. 1 Cir. 2008); *State v. Lee*, 787 So.2d (La. App. 4. Cir.2001). This applies specifically to claims of privacy by police officers and unions seeking to close records and protect their privacy during investigations into

their conduct as public officials, *Capital City Press, supra*; La. Public Records Act, La. R.S. 44:1, *et seq.*; La. C.C.P. Art. 251.

### III.

This Honorable Court entered an order on September 8, 2020, at 3:07 p.m. prohibiting the Louisiana State Police, the Lafayette Police Department, and the City-Parish Consolidated Government of Lafayette from releasing the identities of three John Doe police officers and any aspect of any investigation performed into their conduct in the Pellerin killing and its aftermath, and specifically preventing any release to the news media. That Order also purports to order that the Record of this case be “judicially sealed” in specific violation of the Constitutional and statutory provisions listed in the cases cited hereinabove. This action also grants standing to these media plaintiffs specifically, and to the public generally, to intervene in this proceeding for the purpose of enforcing their rights of free speech and freedom of the press.

### IV.

On information and belief and after reasonable inquiry, Intervenors believe, and therefore allege, that the Order was granted improperly and in violation of the filing and pleading requirements of La. C.C.P. Art. 3603, because:

1. It was granted without notice to parties affected by the order it seeks, including Intervenors;
2. It was not based on a verified petition;
3. There was no proof of immediate and irreparable injury, loss, or damage;
4. There were no supporting affidavits attached;
5. The so-called “Joint Motion” contained only conclusory allegations, and those only over “concern and privacy” issues, without even an allegation of irreparable and immediate injury;
6. There was no certification in writing by which the Applicants' attorneys detailed any effort at all to give notice or the reasons that notice should not be required, especially to interested parties who would be affected by such an order, including Intervenors.

### V.

Because of the total failure of the so-called “Joint Motion” to comply with the pleading requirements of La. C.C.P. Art. 3603; because, as demonstrated above, any Order placing the records under seal is in violation of provisions of the U.S. Constitution, specifically the First Amendment; the Louisiana Constitution, specifically Art. 1, Sections 7 and 22; and the applicable and universal law as

cited above, including both U.S. Supreme Court and Louisiana jurisprudence directly on point; Intervenor has standing to move to intervene in these proceedings, and a right and standing to intervene and assert their positions as set forth hereinabove, and therefore so Move this Honorable Court.

VI.

The Order of This Honorable Court signed on September 8, 2020 by Judge Michelle Breaux on behalf of and at the direction of Judge David Smith, was improvidently granted because it is in violation of Louisiana procedural law; and is unconstitutional on its face under Federal law and Louisiana law, as interpreted universally by Louisiana Courts and by the United States Supreme Court; and should, therefore be, immediately recalled and vacated, and any hearing scheduled on the basis of the so-called "Joint Motion" should be immediately cancelled and the "Joint Motion" dismissed, and Intervenor so move.

**WHEREFORE, INTERVENORS PRAY:**

1. That this Honorable Court **GRANT** their Motion to Intervene;
2. That this Honorable Court **GRANT** their *ex parte* **MOTION TO VACATE, RECALL** the **TEMPORARY RESTRAINING ORDER OF SEPTEMBER 8, 2020, and DISMISS THESE PROCEEDINGS WITH PREJUDICE AT PLAINTIFFS' COST.**

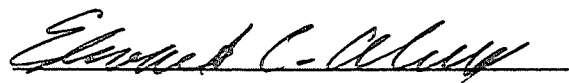
By Attorneys for Intervenor,



**JAMES B. DOYLE (05061)**  
**JAMES B. DOYLE LAW OFFICE**  
**2104 CONSTANCE LANE**  
**LAKE CHARLES, LA 70605**

**(337) 794-5406**  
**jbdoyle@mac.com**

**ONEBANE LAW FIRM**



**EDWARD C. ABELL, JR. (#2284)**  
**1200 Camellia Boulevard, Suite 300 (70508)**  
**Post Office Box 3507**  
**Lafayette, LA 70502-3507**  
**(337) 237-2660**

**PLEASE SERVE:**

Capt. Heath Guillotte  
Louisiana State Police  
437 West Mills Avenue  
Breaux Bridge, LA 70517

Lafayette Police Department  
Through Chief Scott Morgan  
900 E. University Avenue  
Lafayette, LA 70503

Lafayette Consolidated Government  
Through Mayor-President Josh Guillory  
705 W. University Avenue  
Lafayette, LA 70506

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing has this date been forwarded to all counsel of record by depositing a copy of the enclosed in the U. S. Mail, postage prepaid and properly addressed.

Lafayette, Louisiana this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
EDWARD C. ABELL, JR.

**15<sup>th</sup> JUDICIAL DISTRICT COURT**

**PARISH OF LAFAYETTE**

**STATE OF LOUISIANA**

**IN RE: MATTER UNDER INVESTIGATION : DOCKET NO. C-20204381**

**LSP 20-010001 AND  
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**ORDER**

In consideration of the foregoing **MOTION TO INTERVENE** and **EX PARTE MOTION TO VACATE AND DISMISS WITH PREJUDICE**,

**IT IS ORDERED** that the Motion to Intervene on behalf of **KATC-TV, THE GANNET COMPANIES D/B/A THE DAILY ADVERTISER, and CAPITAL CITY PRESS LLC, D/B/A THE ADVOCATE** is **GRANTED**;

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the **EX PARTE MOTION TO VACATE AND DISMISS WITH PREJUDICE** filed by **INTERVENORS** is **GRANTED**;

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this suit is **DISMISSED**, costs taxed to the Plaintiffs.

Lafayette, Louisiana, this the \_\_\_\_ day of September, 2020.

**DISTRICT JUDGE**