

JOHN PRIOR
ATTORNEY AT LAW
ISB#5344
429 S.W. 5th Avenue #110
Meridian, Idaho 83642
Phone: (208) 465-9839
Email john@jpriorlaw.com
Attorney for Defendant

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

STATE OF IDAHO,)	Case No.: CR22-21-1623
)	
Plaintiff,)	
)	
v.)	REPLY AND OBJECTION TO THE
)	STATE'S MOTIONS TO SEAL FILINGS
CHAD DAYBELL,)	REGARDING THE PROSECUTORIAL
)	AUTHORITY OF MS. SMITH AND MR.
Defendant.)	WOOD IN THIS CASE
)	

COMES NOW the Defendant, Chad Daybell, and through undersigned counsel, submits this Reply and Objection to the State's motions to seal the prosecution's filings that address the prosecutorial *authority* of Ms. Smith and Mr. Wood. On May 12, 2022, the prosecution moved to seal the State's Objection and Motion to Strike, filed in response to three of Mr. Daybell's motions that were themselves filed under seal. In support of the May 12 motion to seal, the prosecution asserted that "[t]he State's Objection and Defendant Daybell's Motions contain information that is highly personal in nature and outweighs the preference of public disclosure and is in response to sealed motions." On May 18, 2022, the prosecution moved to seal State's Objections and Brief in Response to Defendant Chad Daybell's Two Motions on APA Smith: Motion for Discovery and

to Dismiss and Objection.¹ The prosecution explained that it was doing so pursuant to the Court's previous order sealing Mr. Daybell's related motions. No further reasons were cited.

Mr. Daybell objects to sealing the two filings. Pursuant to Idaho Court Administrative Rule 32, Mr. Daybell's right to fair and open trial proceedings and his fundamental due process rights guaranteed by both the U.S. and Idaho Constitutions, *see* U.S. Const. amend. I, VI, XIV; Idaho Const. Art. 1, §§ 9, 13, as well as the authorities cited below, Mr. Daybell requests that the Court deny the State's Motion to Seal. Because the two filings at issue discuss only information that is already available to the public, there is no reason for these filings to be sealed. Therefore, Mr. Daybell respectfully requests that the Court deny the prosecution's motions to seal.

ARGUMENT

I. The Filings at Issue Do Not Discuss or Disclose Information that Justifies an Order to Seal.

Motions to seal are evaluated under Idaho Court Administrative Rule 32. When a motion to seal has been filed, the "court shall hold a hearing on the motion," and may also "order that the record immediately be redacted or sealed pending the hearing if the court finds that doing so may be necessary to prevent harm to any person or persons." *See* ICAR 32(i)(1). Following a hearing on the matter, "the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates." *Id.* Given the public's "right to access the judicial department's declarations of law and public policy, and to access the records of all proceedings open to the public," ICAR 32(a), if a court finds that it is necessary to redact or seal a filing, the

¹ As part of the same May 18 motion, the prosecution also moved to seal Brief in Response to Defendant's Motion to Disqualify Prosecutor. Because that responsive filing discloses information that was not discussed in Mr. Daybell's motions, he does not address that motion here. Mr. Daybell does not hereby waive his objection to that separation motion to seal. But in this Reply and Objection, Mr. Daybell focuses only on the prosecution's filings regarding the Ms. Smith and Mr. Wood's prosecutorial *authority*.

court “must fashion the least restrictive exception from disclosure consistent with privacy interests,” ICAR 32(i)(1).

Rule 32 goes on to mandate that a court may only enter an order redacting or sealing records after the court makes one or more of the following determinations in writing:

- (A) That the documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person, or
- (B) That the documents or materials contain facts or statements that the court finds might be libelous, or
- (C) That the documents or materials contain facts or statements, the dissemination or publication of which may compromise the financial security of, or could result in economic or financial loss or harm to a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or
- (D) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals, or
- (E) That it is necessary to temporarily seal or redact the documents or materials to preserve the right to a fair trial, or
- (F) That the documents contain personal data identifiers that should have been redacted pursuant to Idaho Rule of Electronic Filing and Service 15, Idaho Rule of Civil Procedure 2.6, or Idaho Rule of Family Law Procedure 218 in which case the court shall order that the documents be redacted in a manner consistent with the provisions of that rule.

ICAR 32(i)(2).

Nothing in the relevant motions and replies would support any of these determinations. The prosecution has only asserted that the motions contain some “highly personal” information, but the prosecution has not identified what this material is or why it would justify sealing the motions in their entirety. The closest determination that would be supported by the prosecution’s assertion would be under Rule 32(i)(2)(A), that “the documents or materials contain highly

intimate facts or statements, the publication of which would be highly objectionable to a reasonable person.” But filings at issue do not disclose “highly intimate materials.” All information discussed in the motions is already available to the public. While the prosecution has referenced allegedly confidential communications, the prosecution has not shared anything about those communications. Therefore, the filings at issue do not disclose or discuss any information or material that could possibly be labeled “highly personal.” The prosecution does not like or agree with Mr. Daybell’s arguments, but all of the arguments contained in Mr. Daybell’s motions and the prosecution’s responsive filings were developed on the basis of publicly available records.

II. The Public’s Right to Fair and Open Proceedings Requires that the Prosecution’s Filings Not Be Sealed.

Even if the filings at issue were to disclose personal information, which they do not, the public’s substantial interests in fair and open proceedings far outweighs whatever privacy interests may be implicated by the publicly available information discussed in the prosecution’s filings. Members of the public and the media have a First Amendment right to access court proceedings. *See, e.g., Richmond Newspapers*, 448 U.S. at 557 (“[T]he First Amendment—of itself and as applied to the States through the Fourteenth Amendment—secures the public a right of access to trial proceedings.”); *Co. v. Superior Court of California, Riverside City*, 464 U.S. 501 (1984) (holding that this First Amendment guarantee applies to *voir dire*). Article 1, § 13 of the Idaho Constitution ensures the same protections. *See Cowles Pub. Co. v. Magistrate Court of the First Judicial Dist. of State, City of Kootenai*, 118 Idaho 753, 755 (1990) (“The right to an open public preliminary hearing and trial is a shared right of the accused and the public, with the common element and concern being the assurance of fairness.”).

The public’s right to access court proceedings can be qualified—but **only if** doing so is **necessary to effectuate the defendant’s constitutional rights**. *See Richmond Newspapers*, 448

U.S. at 557 (closing proceedings to the public upon unopposed request by defendant was unconstitutional because the judge did not make any inquiry into whether alternative solutions existed to ensure fairness to the defendant while still permitting public access); *Cowles*, 118 Idaho at 760 (“The presumption remains that [criminal trials] in Idaho will remain open absent the defendant’s request and an overriding interest in a fair trial.”).

Mr. Daybell’s motions draw together publicly available records to demonstrate that Fremont County’s Prosecutor has improperly delegated the powers associated with her office. The public has the right to know about an elected official’s delegation of prosecutorial authority, as well as her response that the courts lack the authority to review her delegations of authority in this death penalty case. Because Ms. Blake and Mr. Wood are elected officials, the public has a heightened right to access filings about improper uses of their official powers. Additionally, because every argument at issue stems from publicly available records, there is no reason that the public should not have access to these filings.

III. Mr. Daybell’s Right to Fair and Open Proceedings Requires that the Prosecutor’s Filings Not Be Sealed.

A criminal defendant’s right to a public trial is expressly guaranteed by both the U.S. and Idaho Constitutions. *See* U.S. Const. amend. XIV; Idaho Const. Art. 1, § 13; *see also In re Oliver*, 333 U.S. 257, 271 (1948) (recognizing fundamental due process right to public court proceedings, in addition to express Sixth Amendment right to public trial); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) (discussing history of public trials). The constitutional right to a public trial extends to pre-trial proceedings. *See, e.g., Waller v. Georgia*, 467 U.S. 39, 47 (1984) (holding that the right to public trial includes right to public suppression hearings). Prejudice is presumed whenever a violation of this right occurs. *Waller*, 467 U.S. at 49.

As the Supreme Court has explained, throughout the historical evolution of the criminal jury trial, the proceedings have been open “to all who care to observe.” *Richmond Newspapers*, 448 U.S. at 564. This “has been long recognized as an indispensable attribute of an Anglo-American trial,” *id.* at 569, and serves several purposes “for the benefit of the accused,” *Waller*, 467 U.S. at 46. First, it gives assurance that the proceedings are conducted fairly. *Richmond Newspapers*, 448 U.S. at 564. Second, it discourages perjury, misconduct by any participants, and decisions based on bias or partiality. *Id.*; *see also Waller*, 467 U.S. at 46 (explaining that a public trial “ensure[s] that judge and prosecutor carry out their duties responsibly” and “discourages perjury.”). The presence of spectators also keeps the “triers keenly alive to a sense of their responsibility and to the importance of their functions.” *Waller*, 467 U.S. at 46.

CONCLUSION

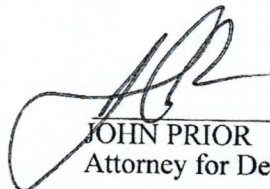
To preserve his constitutional rights, Mr. Daybell respectfully requests that the Court deny the prosecution’s motions to seal two of its filings: (1) the State’s Objection and Motion to Strike, filed on May 12, 2022; and (2) State’s Objections and Brief in Response to Defendant Chad Daybell’s Two Motions on APA Smith: Motion for Discovery and to Dismiss and Objection, and Brief in Response to Defendant’s Motion to Disqualify Prosecutor, filed on May 18, 2022.

These two filings do not disclose or discuss highly intimate information and do not contain any other information that would justify sealing them. Even if they touched upon sensitive or confidential information, the privacy concerns would be outweighed by the substantial interests in open proceedings that is shared by both the public and Mr. Daybell. Furthermore, even if some privacy concerns outweighed the countervailing interests in public proceedings, ICAR 32(i)(1) mandates that courts “must fashion the least restrictive exception from disclosure consistent with privacy interests.” There is absolutely no reason that the “least restrictive exception from

disclosure” is a sealing of the prosecution’s entire filings, particularly since they discuss information already available to the public.

Given the unprecedented nature of the prosecution in this case, requests to seal filings demand heightened analysis. The prosecution has attempted to *forever* prevent appellate review of the issues raised in Mr. Daybell’s motions by moving to strike them from the record. By moving to seal that request, the prosecution is attempting to completely prevent oversight and accountability. Given that one of the primary purposes of public proceedings is to ensure that proceedings are conducted fairly, *Richmond Newspapers*, 448 U.S. at 564, and to ensure that the “prosecutor carr[ies] out their duties responsibly,” *Waller*, 467 U.S. at 46, Mr. Daybell respectfully requests that the Court protect the right to fair and open proceedings that is shared by the public and by Mr. Daybell. Accordingly, Mr. Daybell respectfully requests that the Court deny the prosecution’s motions to seal.

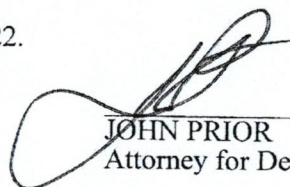
DATED this 23rd day of May 2022.


JOHN PRIOR
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the FREMONT COUNTY PROSECUTING ATTORNEY’S OFFICE, by efileing and service to prosecutor@co.fremont.id.us on this date.

DATED this 23rd day of May 2022.


JOHN PRIOR
Attorney for Defendant