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CIRCUIT COURT
STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

ALBERT IAN SCHWEITZER,

Petitioner,

v.

STATE OF HAWAII,

Respondent.

Case No. 3CSP-23-0000003

MOTION TO UNSEAL and
MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO UNSEAL

MOTION TO UNSEAL

Pursuant to the constitutional right of access provided by the First Amendment of the U.S. Constitution, article I, section 4 of the Hawai'i Constitution, and Hawai'i Court Records Rules 10.10, the Public First Law Center (Public First) requests access to sealed documents (Dkt. Nos. 131 and 152) filed in connection with the Joint Petition for Relief Pursuant to HRS § 661B (Dkt. 127), requesting an evidentiary finding that Petitioner Albert Ian Schweitzer is innocent of the crimes against Dana Ireland.

Petitioner was found guilty of the crimes in a public trial. The process and evidence by which he may be found innocent should be no less public.

Public First respectfully requests that the Court unseal Dkt. Nos. 131 and 152.¹

DATED: Honolulu, Hawai'i, July 30, 2024



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¹ Public First conventionally filed this motion because, if added as an electronic filer to the case, Public First would gain electronic access to the documents that it is seeking to unseal.

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MEMORANDUM OF LAW IN
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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO UNSEAL

Public First Law Center (Public First) respectfully requests public access to two exhibits filed in connection with the Joint Petition for Relief Pursuant to HRS § 661B (Dkt. 127), requesting an evidentiary finding that Petitioner Albert Ian Schweitzer (Schweitzer) is innocent of the crimes against Dana Ireland. Contrary to constitutional standards, the parties filed documents under seal without prior notice to the public, and there is no order with specific findings to explain any purported need for sealing.

Dkt. Nos. 131 and 152 should be unsealed.

1. The Constitutional Standard for Sealing Court Records

The Hawai`i Supreme Court has recognized that the public has a constitutional right of access to judicial proceedings, including court records. *Grube v. Trader*, 142 Hawai`i 412, 422, 420 P.3d 343, 353 (2018); *accord Oahu Publ'ns, Inc. v. Ahn*, 133 Hawai`i 482, 507, 331 P.3d 460, 485 (2014).² "[T]here is a strong presumption that court proceedings and the records thereof shall be open to the public." *Grube*, 142 Hawai`i at 428, 420 P.3d at 359.

² *Grube* and *Ahn* concerned criminal proceedings, but the same principles apply to civil cases. *Ahn*, 133 Hawai`i at 493 n.14, 496 n.18, 508 n.36, 331 P.3d at 471 n.14, 474 n.18, 486 n.36; *accord Roy v. GEICO*, 152 Hawai`i 225, 233, 524 P.3d 1249, 1257 (App. 2023).

Hawai'i has a long tradition of open access to judicial proceedings. In *Gannett Pacific Corp. v. Richardson*, the Hawai'i Supreme Court explained that "[b]ecause of our natural suspicion and traditional aversion as a people to secret proceedings, suggestions of unfairness, discrimination, undue leniency, favoritism, and incompetence are more easily entertained when access by the public to judicial proceedings are unduly restricted." 59 Haw. 224, 230, 580 P.2d 49, 55 (1978); accord *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 571 (1980) (plurality opinion) ("A result considered untoward may undermine public confidence, and where the trial has been concealed from public view an unexpected outcome can cause a reaction that the system at best has failed and at worst has been corrupted.").

In dispelling such suggestions of unfairness, "openness . . . serves to enhance public trust and confidence in the integrity of the judicial process." *Gannett*, 59 Haw. at 230, 580 P.2d at 55; accord *Grube*, 142 Hawai'i at 422, 420 P.3d at 353 ("The right of access thus functions not only to protect the public's ability to gain information—a requisite to the enjoyment of other First Amendment rights—but also as a safeguard of the integrity of the courts."); see also *Richmond Newspapers*, 448 U.S. at 572 (plurality opinion) ("People 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."). "The efficiency, competence, and fairness of our judicial system are matters of legitimate interest and concern to our citizenry, and free access to our courtrooms is essential to their proper understanding of the nature and quality of the judicial process." *Gannett*, 59 Haw. at 230, 580 P.2d at 55.

To protect the public's constitutional rights,

"the procedural prerequisites to entry of an order closing a criminal proceeding to the public are (1) those excluded from the proceeding must be afforded a reasonable opportunity to state their objections; and (2) the reasons supporting closure must be articulated in findings." These "requirements are not mere punctilios, to be observed when convenient." As the responses to the petition in this case demonstrate, often "parties to the litigation are either indifferent or antipathetic to disclosure requests." Thus, these procedures "provide the essential, indeed only, means by which the public's voice can be heard." Further, the procedures ensure that the trial judge is apprised of the relevant

interests at stake in order to render an informed decision, and they provide a basis for the public and reviewing courts to fairly assess the judge's reasoning, thus protecting trust in the judicial process.

Grube, 142 Hawai'i at 423, 420 P.3d at 354 (citations omitted).

"[M]otions requesting closure must be docketed a reasonable time before they are acted upon. What constitutes a reasonable time is 'dictated by circumstances,' but it must generally be sufficient to afford the public an opportunity to intervene prior to the sealing." *Id.* (citations and footnote omitted). Thus, a party must file a motion to seal before a court orders a document sealed. *Id.* at 424, 420 P.3d at 355 ("It does not appear that the court provided notice to the public of the in-court motion to seal the entire legal file, nor did it permit the public an opportunity to be heard before it ordered that the records of the September 9 proceeding be sealed.").

Moreover, to protect the public's constitutional rights, a court order sealing records must meet substantive standards with findings sufficient to overcome the presumption of public access. "The right of access protected by the First Amendment and article I, section 4 of the Hawai'i Constitution can only be overcome by findings that 'the closure is essential to preserve higher values' and that the closure is 'narrowly tailored' to serve that interest." *Grube*, 142 Hawai'i at 424, 420 P.3d at 355 (citing *Ahn*, 133 Hawai'i at 498, 331 P.3d at 476). To justify keeping a court record sealed, a court must "make specific findings demonstrating a compelling interest, a substantial probability that the compelling interest would be harmed, and there is no alternative to [sealing the record] that would adequately protect the compelling interest." *Ahn*, 133 Hawai'i at 507, 331 P.3d at 485; *accord Grube*, 142 Hawai'i at 424, 420 P.3d at 355.

"To qualify as compelling, the interest must be of such gravity as to overcome the strong presumption in favor of openness. . . . [T]he asserted interest must be of such consequence as to outweigh both the right of access of individual members of the public and the general benefits to public administration afforded by open trials." *Grube*, 142 Hawai'i 425-26, 420 P.3d at 356-57. "Although privacy rights may in some instances rise to the level of compelling, simply preserving the comfort or official reputations of the parties is not a sufficient justification." *Id.* at 425, 420 P.3d at 356.

If a compelling interest exists, “a court must find that disclosure is sufficiently likely to result in irreparable damage to the identified compelling interest.” *Ahn*, 133 Hawai`i at 507, 331 P.3d at 485. “It is not enough that damage could possibly result from disclosure, nor even that there is a ‘reasonable likelihood’ that the compelling interest will be impeded; there must be a ‘substantial probability’ that disclosure will harm the asserted interest.” *Grube*, 142 Hawai`i at 426, 420 P.3d at 357. The harm “must be irreparable in nature.” *Id.*

If there is a compelling interest that would be irreparably harmed by disclosure, redaction is an adequate alternative to concealing an entire document from the public. *Ahn*, 133 Hawai`i at 507-08, 331 P.3d at 485-86 (“redacting personal identifiers or replacing any identifying information with a juror-number generally strikes the quintessential balance between preserving juror privacy and allowing public access to review trial proceedings for fairness and impartiality”); accord *Oahu Public’s Inc. v. Takase*, 139 Hawai`i 236, 246-47, 386 P.3d 873, 883-84 (2016). Any denial of public access must be narrowly tailored so that it is “no greater than necessary to protect the interest justifying it.” *Grube*, 142 Hawai`i at 427, 420 P.3d at 358.

2. The public record lacks sufficient information about the proceedings and the need for sealing.

The public record offers no explanation for why these exhibits (Dkt. Nos. 131 and 152) are sealed. There is no motion to seal, nor any indication that the parties submitted facts or that the Court made specific findings sufficient to justify closure. Without any information about what happened, Public First does not have “a *meaningful* opportunity to address sealing the [documents] on the merits, or to discuss with the court viable alternatives.” *Ahn*, 133 Hawai`i at 507, 331 P.3d at 485 (emphasis added).

Respondent State of Hawai`i describes Dkt. 131 as a March 23, 2000 interview report of Shawn Schweitzer by the police detective on the case. Dkt. 130 at 10.³ Then-prosecutor Lincoln Ashida played a copy of that interview for reporters in 2000, and a verbatim transcript of the interview was published in 2003. Chris Loos & Rick

³ Pinpoint citations refer to the page of the corresponding PDF.

Castberg, *Murder in Paradise: A Christmas in Hawaii Turns to Tragedy* at 331-48 (2003). There is no apparent basis for sealing an interview report submitted to the Court in an effort to prove that Petitioner is not innocent.

With respect to Dkt. 152, the only information redacted from that filing is the identity of the deceased DNA suspect. See Dkt. 151 (redacted version of exhibit). On July 29, 2024, the Hawai'i County Police Department identified that individual. *Media Release: 7-29-24 Police Identify Suspect in Dana Ireland Murder Investigation*, Hawai'i Police Dep't, at <https://www.hawaiipolice.com/7-29-24-police-identify-suspect-in-dana-ireland-murder-investigation>. There is no basis to withhold this information in court records.

Dkt. Nos. 131 and 152 should be unsealed.

3. Redaction is a more narrowly tailored solution to any concerns.

In *Grube*, *Ahn*, and *Takase*, the Hawai'i Supreme Court emphasized that sealing court proceedings from public view must be "narrowly tailored to serve [a compelling government interest]." *Ahn*, 133 Hawai'i at 497, 331 P.3d at 475; accord *Grube*, 142 Hawai'i at 427, 420 P.3d at 358 ("The court should therefore make findings regarding specific alternatives and set forth its reasons for rejecting each."); *Takase*, 139 Hawai'i at 246-47, 386 P.3d at 883-84. In each case, the supreme court emphasized redactions as an appropriate alternative to sealing an entire document.

For Dkt. 131, the State filed the entire document under seal. That is not a solution narrowly tailored to any purported compelling reason.

CONCLUSION

The Law Center respectfully requests that this Court unseal Dkt. Nos. 131 and 152.

DATED: Honolulu, Hawai'i, July 30, 2024



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