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IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, v. TYLER JAMES ROBINSON, Defendant.	**NEWS MEDIA'S PROVISIONAL MEMORANDUM OPPOSING MOTION TO EXCLUDE STILL PHOTOGRAPHERS, TV CAMERAS, AND MICROPHONES FROM THE COURTROOM** Case No. 251403576 Hon. Tony F. Graf, Jr.

Preferred Disposition of Motion to Exclude Cameras

On January 16, 2026, Defendant Tyler Robinson filed a lengthy motion styled "Motion to Exclude Still Photographers, TV Cameras, and Microphones from the Courtroom" ("Motion to Exclude Cameras") [Doc. 305]. Defendant has asked the Court to seal that Motion to Exclude Cameras to ensure the public cannot see it. *See* Mot. to Classify [Doc. 310]. Defendant has also filed that *Motion to Classify* under seal. The News Media have opposed that Motion to Classify. *See* News Media Opp'n to Mot. to Classify Motion to Exclude Cameras [Doc. 323].[1]

Defendant's request to seal that motion—and his request to seal his request to seal—creates an obvious challenge: the News Media is left to guess at what arguments appear in Defendant's Motion to Exclude Cameras. In an effort to best serve the Court as it weighs Defendant's request to bar all still cameras, all video cameras, and all microphones from the courtroom, presumably for the life of this case, the News Media offers the principle-driven response below, while reserving the right to respond to the specific arguments contained in the Motion to Exclude Cameras if and when counsel for the News Media is provided access to a copy of that motion.

As detailed below, Defendant "[p]lainly . . . has the right to a fair trial." *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 7 (1986). But as the U.S. Supreme Court has "repeatedly recognized, one of the important means of assuring a fair trial is that the process be open to neutral observers." *Id.* Preserving media access to these proceedings while imposing safeguards through a decorum order is the best mechanism for protecting *all* of the constitutional rights in play here. The Court has already worked diligently to strike that balance, and that work should not be upended now. The News Media asks that the Court deny Defendant's Motion to Exclude Cameras accordingly.

[1] The News Media has also filed a Motion for Attorneys' Eyes Only Access to Closure Motions [Doc. 335] in an attempt to address this practical problem and keep it from reoccurring.

Argument

Utah's governing rules begin with a presumption: "electronic media coverage by a news reporter *shall* be permitted." *See* UCJA 4-401.01(2)(A) (emphasis added). As the News Media has explained in prior filings, that presumption favoring electronic media coverage has constitutional roots, even if the specific protections for such coverage are now rules-based. Simply put, an "unbroken, uncontradicted history" of public access to criminal proceedings reflects a broad "presumption of openness." *See Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980). When news media attend criminal proceedings, they act as "surrogates for the public," *see id.*, and electronic media coverage provides the surest route to conveying "what people in attendance have seen and heard," *see id.* Defendant's Motion to Exclude Cameras should be seen for what it is: a request that the Court set those important constitutional interests aside altogether.

Again, because Defendant won't allow the public—or even the News Media's counsel—to view the motion through which he asks the Court to wholly discard that presumption, the world is left to guess at what arguments Defendant believes justify his extraordinary request. In a recent public filing on a separate issue, however, Defendant offered the following sharply worded hints:

> As the highly biased traditional local and national media and *nouveau* international social media coverage of this case demonstrates, every in-court statement by attorneys representing the State, whether under oath or not, every statement by counsel for Mr. Robinson, and every observation and ruling by this Court are under a microscope and subject to micro-surgery by journalists, bloggers, media "experts," and others. . . .
>
> . . . .
>
> Widespread publication of [images of Mr. Robinson] has served no legitimate purpose and merely fuels rampant unfounded speculation about Mr. Robinson's state of mind during these proceedings. In the absence of judicial intervention to bring an end to this highly prejudicial pre-trial imagery and the resulting discourse in the media, Mr. Robinson is faced with choosing between his constitutional right to a fair trial and his constitutional right to be personally present at all critical stages of these proceedings.

Def.'s Notice of Objection to Proposed Ex. 4.1, at 3–4, 7 n.2 [Doc. 330].

In short, Defendant's objections appear to center on the suggestion that statements made in open court—and even facial expressions or other nonverbal cues—"are under a microscope." *See id.* No one questions the public interest in this case, and media outlets like the News Media have covered (and will continue to cover) this proceeding. But the public interest counsels *in favor* of allowing meaningful electronic media coverage. *See* UCJA 4-201.01(2)(B)(vii). As detailed below, with respect to any competing factors, including preserving fair-trial rights, the unique features of this criminal proceeding make electronic media coverage unusually *important*, and Defendant's Motion to Exclude Cameras should be denied accordingly.

I. Rule 4-401.01 Governs Defendant's Request to Cut Off All Electronic Media Coverage.

Because Defendant has asked the Court to restrict electronic media coverage, Rule 4-401.01 of the Utah Code of Judicial Administration governs. That rule begins with a presumption:

> There is a presumption that electronic media coverage by a news reporter shall be permitted in public proceedings where the predominant purpose of the electronic media coverage request is journalism or dissemination of news to the public.

See UCJA 4-401.01(2)(A). In applying that presumption, a court may consider a number of enumerated factors, as well as "any other factors affecting the fair administration of justice." *See id.* R. 4-401.01(2)(B). Because it's unclear whether Defendant has addressed these factors in his briefing, the News Media identifies them here.

Factors that may favor restriction. The first four factors invite the Court to consider whether there is a "reasonable likelihood" of certain types of harm that could stem from electronic media coverage: (i) prejudice to the parties' fair-trial rights, (ii) risks to an individual's safety or well-being, (iii) risks to a minor, or (iv) unwarranted invasions of an individual's personal privacy. *See id.* R. 4-401.01(2)(B)(i)–(iv).

Factors that may favor access. Two other enumerated factors invite the Court to weigh benefits of electronic media coverage: (vii) public interest in the proceeding (that is, its

newsworthiness) and (viii) beneficial effects of allowing public observation through electronic media coverage. *See id.* R. 4-401.01(2)(B)(vii)–(vii).

Other factors. The remaining factors are neutral. One invites the Court to consider whether it has "physical facilities" needed to accommodate electronic media coverage, and the other asks the Court to consider whether electronic media coverage will "create adverse affects" that are worse than other types of coverage—coverage "without recording or transmitting images or sound." *See id.* R. 4-401.01(2)(B)(v)–(vi).

To justify departing from the presumption favoring electronic media coverage, a court must find that "the reasons for doing so are sufficiently compelling to outweigh [that] presumption." *See id.* R. 4-401.01(2)(A). *Any* prohibition or restriction on electronic media coverage must be supported by "particularized findings," and those findings must "relate to the specific circumstances of the proceeding," rather than "generalized views or preferences." *Id.* R. 4-401.01(2)(C), (D). As detailed below, any factors favoring coverage restrictions in this case do not outweigh those favoring access, particularly when accounting for the presumption of access.

II. Defendant's Request for a Blanket Ban on Media Coverage Cannot Be Squared with Rule 4-401.01's Expectation that Coverage Decisions Be Made on a Request-by-Request Basis.

As a threshold matter, Defendant appears to seek a blanket ban on media coverage that would apply at *all* future hearings. As the News Media understands Defendant's request, the ban would apply no matter the subject of the hearing and no matter the nature of the coverage request. Put differently, Defendant is asking the Court *not* to engage in a hearing-by-hearing, request-by-request evaluation of coverage requests.

Such an approach would directly violate Rule 4-401.01. Coverage requests are made on a hearing-by-hearing and request-by-request basis. That is by design. *See* UCJA R. 4-401.01(2). That setup allows the Court to fulfill its duty of making particularized findings relating to the

"specific circumstances of the proceeding" in evaluating each coverage request. *Id.* R. 4-401.01(2)(D). And such findings can support prohibition or restriction of electronic media coverage only where "the reasons for doing so are sufficiently compelling to outweigh the presumption" favoring access. *Id.* R.4-401.01(2)(A).

Though Defendant has so far demanded that his coverage-ban arguments be kept secret, Defendant's argument appears to center on the volume of news coverage, *see* Mot. to Classify [Doc. 310], and the fact that members of the public—that is, those who *consume* accurate news coverage and then offer their own commentary on it—have engaged in "rampant unfounded speculation about Mr. Robinson's state of mind during these proceedings," *see* Obj. to Proposed Ex. 4.1, at 7 n.2 [Doc. 330]. While the public's interest in this proceeding may frustrate Defendant, and while the defense may view public commentary on media coverage as speculative or inaccurate, generalized grievances about misinformed commentators cannot overcome the presumption favoring coverage. That's particularly true because the very thing Defendants appears to complain about—the public's intense interest in this proceeding—enjoys substantial Constitutional protection. *See Craig v. Harney*, 331 U.S. 367, 374 (1947) ("What transpires in the court room is public property."); *Richmond Newspapers*, 448 U.S. at 580 (1980) (holding "that the right to attend criminal trials is implicit in the guarantees of the First Amendment" (footnote omitted)).

It is impossible for the Court—or for anyone else—to know now the circumstances underlying every future hearing in this case, much less at trial. As a result, the Court cannot make the particularized determinations the rule requires for *future* hearings. Indeed, doing so would be akin to issuing a standing advisory opinion on unripe requests for media coverage that may never happen, or if they do, may be subject to different considerations and parameters. If Defendant intends to object to coverage requests at every hearing—in writing or by oral motion—that is his right.

But Utah's rules do not allow Defendant to short-circuit that process by asking the Court to issue an improper standing order for hypothetical future events.[2]

III. Defendant's Fair-Trial and Amplified-Harm Arguments Do Not Come Close to Justifying a Blanket Coverage Ban.

A. With Respect to Defendant's Arguments Regarding Fair-Trial Rights, Even Intense Pretrial Publicity Is Not Inherently Prejudicial.

From what the News Media can glean from materials that Defendant has allowed the News Media to access, Defendant's central concern is that public interest in this case is sharpened when photographs, video clips, and audio clips of this proceeding are made available. And even when those photographs, video clips, and audio clips are *accurately reported*, some bad actors may distort and twist those images or clips and, by doing so, misinform the public. Defendant therefore believes that the only way to throttle *bad* information is by capping cameras and muting microphones altogether.

However unusual Defendant contends this case is, the harm that Defendant seems to focus on is present in virtually *any* high-profile criminal matter, and cutting off media coverage would do little—if anything—to address that concern. *See, e.g.*, *In re Tsarnaev*, 780 F.3d 14, 15 (1st Cir.

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[2] There's no question that evolving technologies require courts to be flexible—and at times innovative—as they strike the balances required by court-access rules. Live streaming and the near-instant ability to view and comment on an ongoing legal proceeding represents that type of evolution.

In ruling on prior requests for electronic media coverage, the Court has granted requests for still photography, for video recording, and for live streaming. In doing so, the Court has implemented and, when necessary, reformed a standing decorum order.

Utah's rules do allow for reasonable restrictions. And there is no reason such restrictions cannot continue to be used to mitigate concerns about fair-trial interests (or any other concern raised by Defendant in his sealed brief). In the event the Court believes that some or all of the concerns raised in that brief are appropriately addressed by restricting media coverage in some way, the News Media asks that the Court continue to opt for tailored restrictions that address those concerns directly. *See* UCJA 4-401.01(2)(C), (D) (requiring "particularized findings" to support any restriction on electronic media coverage and requiring that restrictions be tied to "specific circumstances of [a] proceeding").

2015) ("[A]ny high-profile case will receive significant media attention. It is no surprise that people in general, and especially the well-informed, will be aware of it. Knowledge, however, does not equate to disqualifying prejudice. Distinguishing between the two is at the heart of the jury selection process."). It's no doubt true that courts may fashion appropriate restrictions to pretrial media coverage to protect fair-trial rights. *See Soc'y of Pro. Journalists, Utah Chapter v. Bullock*, 743 P.2d 1166, 1178 (Utah 1987). In fact, this Court has already done so. But such restrictions must be tailored to the facts of a case and narrowed enough that they go no further than needed to protect those rights. *See id.*

This case is a prominent one. But "[p]rominence does not necessarily produce prejudice, and juror *impartiality* . . . does not require *ignorance*." *Skilling v. U.S.*, 561 U.S. 358, 381 (2010) (emphasis in original). Instances of public misunderstanding, or even bad actors peddling disinformation, do not alter that principle. *Nebraska Free Press Ass'n v. Stuart*, 427 U.S. 539, 554 (1976) ("Pre-trial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial."); *State v. Houston,* 2015 UT 40, ¶ 97, 353 P.3d 55, 84, *as amended* (Mar. 13, 2015) (same). Simply put, the concerns Defendant appears to raise in his Motion to Exclude Coverage do not warrant a court-imposed image-and-audio blackout, because—as the Court well knows—there are far more tailored ways to protect Defendant's fair-trial rights.[3]

B. Arguments About "Amplified Harm" Disregard Constitutional Guarantees and Ignore the News Media's Role in Acting as a Surrogate for the Public.

Defendant may also be making an argument that relates to "amplified harm"—the idea that the "adverse effects" of media coverage will be greater if that coverage is accompanied by

[3] Defendant will not, of course, be tried by the public—he will be tried by a jury. Fair-trial rights are therefore most effectively safeguarded through measures designed to ensure the impartiality of jurors, including sizable jury panels, careful *voir dire*, and jury sequestration. *See, e.g.*, *State v. Millerberg*, 2018 UT App 32, ¶ 7, 414 P.3d 1106; *State v. Aase*, 762 P.2d 1113, 1115–16 (Utah Ct. App. 1988); *see also, e.g.*, *Gardner v. Galetka*, 568 F.3d 862, 890 (10th Cir. 2009).

photographs or video of the proceeding. *See* UCJA 4-401.01(2)(B)(v). In other words, Defendant may be contending that the media should only be allowed to cover this proceeding without cameras or microphones—and that by adding still images, video clips, or audio clips to its coverage, the News Media somehow exacerbates or intensifies public perceptions of Defendant.

That reasoning is backwards. News media attend criminal proceedings as "surrogates for the public." *See Richmond Newspapers*, 448 U.S. at 573. The fact that the public may feel inclined to comment on coverage of criminal trials is not a justification for stifling such coverage—even if some members of the public make comments that Defendant believes are misplaced. After all, "attendance at court [has been] a common mode of 'passing the time'" for centuries. *See id.* at 572. What's critical—and what court caselaw has long recognized—is that no matter what desire prompts the public to engage with criminal proceedings, our society and our communities are enriched by the public's decision to do so in a number of ways, including civic engagement, a shared understanding of the rule of law, and a communal engagement with tragedy, grief, and catharsis. *See id.* at 570–73.[4] When news media attend public trials, their first-order responsibility is to convey "what people in attendance have seen and heard." *Id.* at 573. Electronic media coverage makes that possible,[5] and to the extent it creates competing concerns, the proper course—as Utah's rules recognize—is to carefully tailor safeguards that reduce potential harm, rather than cutting off coverage entirely.

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[4] "[A]t the time when our organic laws were adopted, criminal trials both here and in England had long been presumptively open. This is no quirk of history; rather, it has long been recognized as an indispensable attribute of an Anglo-American trial." *Richmond Newspapers*, 448 U.S. at 569.

[5] In-person attendance is not an option for many given the timing and location of hearings, and the limited capacity of courtrooms. *See United States v. Antar*, 38 F.3d 1348, 1360 (3d Cir. 1994) ("[F]or what exists of the right of access if it extends only to those who can squeeze through the door?"). Electronic media coverage provides a technological solution for those who cannot attend in person.

Public interest in these proceedings will continue until this case is resolved, and the public will continue to discuss—and speculate about—the subject matter of these proceedings. A bar on *reporting* about this proceeding would be plainly unconstitutional. *See Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 568 (1976) ("To the extent that this order prohibited the reporting of evidence adduced at the open preliminary hearing, it plainly violated settled principles: '[T]here is nothing that proscribes the press from reporting events that transpire in the courtroom.'" (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 362–63 (1966))). And contrary to what Defendant appears to be arguing in seeking a blanket ban, electronic media coverage of criminal proceedings is at least as likely to *increase* the accuracy of the public's understanding. As Judge Winder observed decades ago:

> [T]he full flavor of the hearing cannot be sensed from the sterile sheets of a transcript. Emotions, gestures, facial expressions, and pregnant pauses do not appear on the reported transcript. Much of what makes good news is lost in the difference between a one-dimensional transcript and an opportunity to see and hear testimony as it unfolds.

Soc'y of Pro. Journalists v. Sec'y of Labor, 616 F. Supp. 569, 578 (D. Utah 1985) (cleaned up). Although Judge Winder was writing about the shortcomings of a transcript, the same principle applies here—second-hand descriptions lack the contextual nuance and detail captured by cameras and microphones. *See ABC, Inc. v. Stewart*, 360 F.3d 90, 99 (2d Cir. 2004) ("[O]ne cannot describe an anguished look or a nervous tic."). That is why Utah's rules presumptively allow electronic media coverage for public hearings. At the very least, there is not a sufficient difference between electronic media coverage and written coverage to raise any real risk of material prejudice that overcomes that access-favoring presumption.

Simply put, Defendant's desires to minimize disruptions or safeguard against potential prejudice may be understandable. But those concerns exist in *every* criminal proceeding—even if here they exist on a larger scale. And despite those near-universal considerations, Utah has imposed a

presumption *favoring* the type of media coverage that Defendant now asks the Court to cut off. As a result, there is no good cause to issue a blanket ban on media coverage for all future proceedings.

IV. Electronic Media Coverage Will Promote Public Interest and Is Consistent with the Constitutional Rights that Utah's Media-Coverage Rules Are Meant to Safeguard.

The News Media expects that Defendant's motion devotes little attention to the interests that *favor* media access, to the extent he mentions them at all. But those interests are critical, and they are grounded in fundamental constitutional rights. The presumption of openness associated with criminal proceedings is not controversial. *See Richmond Newspapers*, 448 U.S. at 555 ("From this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice.").[6]

That presumption of openness exists because open courts foster and protect important societal values. Access enhances the quality and safeguards the integrity of the fact-finding process, *Globe Newspaper Co.*, 457 U.S. at 604, enhances basic fairness and the appearance of fairness in the proceedings, *Press-Enterprise*, 478 U.S. at 13, fosters public confidence in the judicial process and acceptance of its results, *Press-Enterprise*, 464 U.S. at 506, acts as a check on the judiciary, *Richmond Newspapers*, 448 U.S. at 568, and allows the public to participate in government, *id.* at 587 (Brennan, J., concurring). All of those interests are enhanced by allowing the public to more fully "attend" court proceedings. In our modern era, that "attendance" is best facilitated by

[6] *See also, e.g.*, *State v. Archuleta*, 857 P.2d 234 (Utah 1993) (recognizing First Amendment right of access to court records such as search warrants, subpoenas and documents filed in connection with preliminary hearing); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (access to preliminary hearings); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) (access to criminal voir dire proceedings and related records); *Waller v. Georgia,* 467 U.S. 39 (1984) (access to pretrial suppression hearing); *Soc'y of Prof'l Journalists v. Bullock*, 743 P.2d 1166 (Utah 1987) (access to competency hearing); *Kearns-Tribune v. Lewis*, 685 P.2d 515 (Utah 1984) (access to preliminary hearing).

allowing written or oral coverage to be supplemented by still photography, video recording, and appropriately tailored streaming of legal proceedings.

Conversely, denying public access to criminal judicial proceedings or documents precludes public scrutiny of the judicial process, creating an impression of unfairness and secrecy, even though the proceedings may in fact be fair. *See Soc'y of Prof'l Journalists v. Sec'y of Labor*, 616 F. Supp. 569, 576 (D. Utah 1985) ("Openness safeguards our democratic institutions. Secrecy breeds mistrust and abuse."), *appeal dismissed and remanded on other grounds*, 832 F.2d 1180 (10th Cir. 1987). Notably, the Supreme Court has rejected the false dichotomy, often asserted by those seeking to cut off access, that placing the judicial process in the public's view necessarily comes at the expense of other values such as a fair-trial right. Again, "[p]lainly, the defendant has the right to a fair trial but . . . one of the important means of assuring a fair trial is that the process be open to neutral observers." *Press-Enterprise*, 478 U.S. at 7.

With those principles in mind, and given that existing coverage demonstrates the newsworthiness of this proceeding, the seventh and eighth factors—public interest and public benefits stemming from access—weigh strongly in favor of denying Defendant's Motion to Exclude Cameras, regardless of what arguments appear in Defendant's filing.

Conclusion

The First Amendment provides a right of meaningful access, so courts are "obligated to take every reasonable measure to accommodate public attendance at criminal [proceedings]." *Presley v. Georgia*, 558 U.S. 209, 215 (2010). Utah's rules contain a presumption favoring media access—including still photos and video and sound recording—because that presumption is consistent with the general, well-established presumption of openness that inheres in any criminal proceeding. To the extent restrictions on media coverage are needed in this case, those restrictions can—and

should—be applied through specific coverage requirements imposed on media organizations that submit coverage requests, not by imposing a blanket ban on electronic media coverage.

Through this provisional opposition,[7] the News Media asks the Court to deny Defendant's Motion to Exclude Cameras accordingly.

Respectfully submitted: January 30, 2026.

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[7] Again, because Defendant's increasing reliance on sealed filings has prevented the public, the News Media, and the News Media's counsel from even viewing the motion through which Defendant asks the Court to implement a blanket ban on media coverage, the News Media reserves the right to respond to the specific arguments contained in the Motion to Exclude Cameras if and when they are provided access to a copy of that motion.

Certificate of Service

I hereby certify that on January 30, 2026, I electronically filed the foregoing with the Court using the electronic filing system, which sent notification of such filing to all attorneys of record.

/s/ C. Michael Judd