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IN THE FOURTH JUDICIAL DISTRICT COURT, PROVO DEPARTMENT

IN AND FOR THE COUNTY OF UTAH, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. TYLER JAMES ROBINSON, Defendant.	**DEFENDANT TYLER JAMES ROBINSON'S MOTION TO STAY PENDING INTERLOCUTORY REVIEW** Case No. 251403576 Honorable Tony F. Graf, Jr.

Defendant, Tyler James Robinson ("Mr. Robinson"), by and through undersigned counsel, hereby files this motion to stay further proceedings in this case, including the preliminary hearing presently scheduled for the week of July 6, 2026, pending review of his *Petition for Permission to Appeal from an Interlocutory Order*, filed May 29, 2026. Mr. Robinson is seeking appellate review of this Court's *Ruling and Order Denying Motion to Exclude Still Photographs, TV Cameras and Microphones from the Courtroom (Dkt. 305) and Standing Order on Electronic Media Coverage Requests* ("*Camera Ruling*"). *See* Dkt. 535. This motion is brought pursuant to Utah Rule of Appellate Procedure 8 and grounded in the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, sections 7, 9, and 12 of the Utah Constitution.

FACTUAL GROUNDS

Due to the overwhelming negative publicity generated by the electronic media coverage ("EMC") of Mr. Robinson's case, he sought an order from this Court prohibiting further EMC of the hearings in this capital case. *See* Dkt. 305; *see also* Dkt 399 (*Reply in Support of Motion*). The State of Utah and the News Media objected to Mr. Robinson's request. *See* Dkts. 354-64, 350, 440. An evidentiary hearing was held on April 17, 2026. *See* Dkt. 512 (*Transcript **of:** Motion Hearing (4/17/26)*). The Court limited each party to two hours "to present argument, examine witnesses, cross-examination, and redirect and respond to inquiries from the Court as well as reserve time for rebuttal." *Id*. at 8.

In the time provided, Mr. Robinson introduced into evidence: truncated testimony and written reports and declarations by Dr. Ruva and trial consultant Dr. Brian Edelman; two lengthy PowerPoint presentations, one of which contained multiple examples of prejudicial electronic media coverage and of an instance where the State had violated the court's publicity order; all of

the studies cited in Dr. Ruva's declaration, supplemental report, and PowerPoint; over 6000 pages of transcripts of the electronic media coverage in this case; all of the electronic media clips referenced in the motion; the declaration of Mr. Robinson's lead counsel setting forth threats she had received as a result of the publicity; and the declarations of various witnesses who objected to having their images or testimony broadcast, or experienced adverse effects from pretrial publicity.

On May 8, 2026, the Court issued its *Camera Ruling* denying Mr. Robinson's requested relief. Dkt. 535. The denial relied on the Court's interpretation of Utah Rule of Judicial Administration 4-401.01 but failed to address Mr. Robinson's constitutional arguments. *Id*. The Court found only that a blanket ruling prohibiting EMC was not permissible under Rule 4-401.01, leaving open the possibility of either or both parties challenging EMC prior to every hearing. However, the Court outlined a procedure for doing so that deprives the parties of any meaningful opportunity to object, to be heard, and to seek review of an adverse order to a higher court before the damage is done.

Mr. Robinson filed a petition seeking interlocutory review of the Court's *Camera Ruling* on May 29, 2026. *See* Exhibit A (*Petition*). In his *Petition*, Mr. Robinson asks the Utah Supreme Court to grant interlocutory review for three reasons: (1) review is necessary to protect Mr. Robinson's fundamental federal and state constitutional rights to a fair and reliable trial by an impartial jury at both phases of his capital case; (2) it was error to deny Mr. Robinson's requested relief without reaching the constitutional issues; (3) this Court's imposition of severe procedural restrictions violates Mr. Robinson's state and federal constitutional rights to procedural due process.

With a lengthy preliminary hearing set to begin in five weeks and four justices of the Utah Supreme Court in transition, it is unlikely that Mr. Robinson's *Petition* will be resolved prior to the July 6-10, 2026 preliminary hearing. This leaves Mr. Robinson in the untenable position of proceeding with a preliminary hearing with EMC attendant[1] in violation of his constitutional rights while the *Petition* seeking to prevent this harm remains pending. It is for this reason that Mr. Robinson seeks to stay proceedings pending the outcome of his *Petition*.

POINTS AND AUTHORITIES

"It lies within the inherent powers of the courts to grant a stay of proceedings. It is a discretionary power, and the grounds therefor necessarily vary according to the requirements of each individual case." *Lewis v. Moultree*, 627 P.2d 94, 96 (Utah 1981). Here, the Court should exercise its discretion in granting a stay in order to prevent the prejudice to Mr. Robinson and the violation of his constitutional rights that will inevitably result from the continued EMC of these capital proceedings.

In granting interlocutory review of a motion to change venue, the Utah Supreme Court in *State v. James* noted the important purpose of interlocutory appeal as affording "the opportunity to review the denial before the error committed would be prejudicial to the defendant." *State v. James*, 767 P.2d 549, 555 (Utah 1989). And, in circumstances where prejudice may be prevented, like here, the Utah Supreme Court aligns with the United States Supreme Court "that 'reversals are but palliatives' and that 'the cure lies in those remedial measures that will prevent the prejudice at its inception.'" *Id*. at 555-56 (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966)). The same reasoning supporting the grant of interlocutory appeal supports staying these

[1] Notably, under the current order, Mr. Robinson will not know if the Court has limited EMC based on his objection until the day the preliminary hearing begins.

proceedings pending the outcome of Mr. Robinson's *Petition*—to prevent the errors committed from prejudicing Mr. Robinson.

The United States Supreme Court granted a stay request in the case *Hollingsworth v. Perry*, 558 U.S. 183 (2010) (per curiam). In *Hollingsworth*, the Court determined that an order permitting the broadcast of a federal trial should be stayed because the district court failed to follow the appropriate procedure to alter the rule prohibiting such broadcasting. *Id*. at 184-85. The Court emphasized that the harm from broadcasting could not be undone:

> Applicants also have shown that irreparable harm will likely result from the denial of the stay. Without a stay, the District Court will broadcast the trial. It would be difficult—if not impossible—to reverse the harm from those broadcasts… This Court has recognized that witness testimony may be chilled if broadcast. *See Estes v. Texas*, [381 U.S. 532, 547 (1965); *id*. at 591 (Harlan, J., concurring)]. Some of applicants' witnesses have already said that they will not testify if the trial is broadcast, and they have substantiated their concerns by citing incidents of past harassment…. These concerns are not diminished by the fact that some of applicants' witnesses are compensated expert witnesses. There are qualitative differences between making public appearances regarding an issue and having one's testimony broadcast throughout the country. *Applicants may not be able to obtain adequate relief through an appeal.* The trial will have already been broadcast. It is difficult to demonstrate or analyze whether a witness would have testified differently if his or her testimony had not been broadcast. And witnesses subject to harassment as a result of broadcast of their testimony might be less likely to cooperate in any future proceedings.

Id. at 195 (emphasis added).

As in *Hollingsworth*, if proceedings continue with EMC coverage through the pendency of his *Petition*, the prejudice to Mr. Robinson evidenced in his lengthy motion, reply, and witness materials, will continue and will be compounded. As expert witness Dr. Christine Ruva testified, this case is already "situated within a highly prejudicial pretrial environment that presents a substantial risk to juror impartiality." Dkt. 512, at 196. Now, this Court is poised to add to the prejudicial publicity flowing from the courtroom with the impending preliminary hearing where the State intends to proceed with a presentation almost exclusively comprised of

reliable hearsay, admissible for preliminary hearing purposes only, through the testimony of law enforcement witnesses. *See* Utah Rule of Evidence 1102; *see also* Dkt. 523 (*State's Preliminary Hearing Witness and Exhibit List*). Such evidence is, by definition, not admissible at trial and yet through EMC coverage of the preliminary hearing, the public**,** including potential jurors, will be flooded with evidence that cannot be used at trial but almost assuredly will be relied upon by jurors, even if unconsciously. As explained by Dr. Ruva:

> So when a juror is exposed to pretrial publicity, they have two sources of information. They have the pretrial publicity that they get prior to trial and then they have the trial evidence. They are – then have to differentiate between all of that information they got before trial from the evidence they got at trial.
>
> And this is a very difficult task…my research has found that jurors with a high amount of confidence believe that information that was only presented in the pretrial publicity was presented at trial. They then use that information to make decisions about guilt unknowingly.

Dkt. 512, at 173-74. A stay should be granted to avoid adding to the creation of unconscious bias in potential jurors from EMC coverage of a preliminary hearing full of hearsay that will be repeated over and over again in the coverage of this case.

Finally, a stay should be granted because the procedural framework ordered by this Court to challenge EMC requests, including with respect to the preliminary hearing, deprives Mr. Robinson of procedural due process. The Court has afforded the parties seven total pages of text, with no argument whatsoever, to raise practical and constitutional concerns specific to EMC of each hearing. Dkt. 535, at 8. Based upon the briefing schedule ordered, the parties will only learn of the Court's order within three days of the applicable hearing, leaving no time for a party to seek further review. *Id*.[2] Procedural due process, at a minimum, requires adequate notice and a

[2] Mr. Robinson notes that it is unclear in the *Camera Ruling* if a motion challenging EMC need be filed even where EMC has not been requested to ensure a timely objection to an untimely EMC request. As currently written, the Court may still consider an untimely EMC request but

meaningful opportunity to be heard. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972). The challenged order provides for neither and leaves Mr. Robinson without remedy.

Considering the consequences of proceeding with the preliminary hearing prior to appellate review, and the procedural due process concerns raised by the current order, a stay of this case pending the Utah Supreme Court's review of the Petition and the weighty constitutional concerns raised therein is both reasonable and appropriate.

CONCLUSION

The Court should grant a stay of all proceedings pending the outcome of Mr. Robinson's Petition.

RESPECTFULLY SUBMITTED this 31st day of May, 2026.

/s/ Kathryn N. Nester
Kathryn N. Nester

/s/ Michael N. Burt
Michael N. Burt

/s/ Richard G. Novak
Richard G. Novak

/s/ Staci Visser
Staci Visser
Attorneys for Defendant, Tyler James Robinson

Mr. Robinson may not be able to object if that request is filed less than ten days before the hearing.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served via the Court's electronic filing system on the 31st day of May, 2026, thereby serving all attorneys of record.

/s/ Staci Visser

Exhibit A

IN THE UTAH SUPREME COURT

TYLER JAMES ROBINSON, Defendant/Petitioner, vs. STATE OF UTAH, Plaintiff/Respondent.	**PUBLIC** Appeal No. 2025_____-SC District Court No. 251403576

PETITION FOR PERMISSION TO APPEAL FROM AN INTERLOCUTORY ORDER

On Appeal from Order Denying Motion to Exclude Still Photographers, TV Cameras and Microphones from the Courtroom, the Fourth District Court, Utah County, Honorable Tony F. Graf, Jr. Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

JURISDICTION 1

STATEMENT OF THE CASE 1

ISSUES PRESENTED 8

ARGUMENT 9

A. This Court Should Grant Interlocutory Review Because It Is Necessary to Protect Mr. Robinson's Fundamental State and Federal Constitutional Rights to a Fair and Reliable Trial by an Impartial Jury at Both Phases of His Capital Case. 11

B. It Was Error for the District Court to Rule, Without Reaching Mr. Robinson's Constitutional Claims, that Because He Has Not Shown that a Categorical Ban on Electronic Media Coverage for All Proceedings in this Case Is Allowed by Utah Law, His Motion Must Be Denied. 14

C. The District Court's Imposition of Severe Procedural Restrictions on the Bringing of Any Future Motion to Restrict Electronic Media Access Violates State and Federal Constitutional Rights to Procedural Due Process. 17

CONCLUSION 19

CERTIFICATE OF COMPLIANCE 20

CERTIFICATE OF SERVICE 20

ADDENDA

Addendum A: Ruling and Order on Defendant's Motion to Exclude Still Photographers, TV Cameras and Microphones from the Courtroom (Docket 305) (issued 5-8-26)

Addendum B: (Non-Public) Motion to Exclude Still Photographers, TV Cameras and Microphones from the Courtroom with Exhibits (Dkt. 305)

Addendum C: State's Memorandum Opposing Defendant's Motion to Classify Motion to Exclude Still Photographers, TV Cameras and Microphones from the Courtroom (Dkt. 354), Attachments A-H (Dkt. 355-64)

Addendum D: News Media's Provisional Memorandum Opposition Motion to Exclude Still Photographers, TV Cameras, and Microphones from the Courtroom (Dkt. 350)

Addendum E: Reply in Support of Motion to Exclude Still Photographers, TV Cameras and Microphones from the Courtroom (Dkt. 399)

Addendum F: News Media's Supplemental Memorandum Opposing Motion to Exclude Cameras (Dkt. 440).

Addendum G: Transcript of 4-17-2026 Hearing

Addendum H: Information (Dkt. 1)

Addendum I: Notice of Intention to Seek Death (Dkt. 10)

Addendum J: Decorum Orders (Dkt. 28, 138, 265, 414)

Addendum K: Exhibits from 4-17-2026 Hearing

Defense A01: Bryan Edelman CV
Defense A02: Bryan Edelman Survey
Defense A03: Bryan Edelman PowerPoint*
Defense A04: Dr. Christine Ruva CV
Defense A05: Dr. Christine Ruva Declaration
Defense A06: Dr. Christine Ruva Supplemental Report
Defense A07: Dr. Christine Ruva PowerPoint*
Defense A08: (Non-Public) Declaration of A.R.
Defense A09: (Non-Public) Declaration of M.R.
Defense A10: Declaration of Kathy Nester
Defense A11: Declaration of S.N.
Defense A12: Declaration of J.R.
Defense B: External Hard Drive*
Motion to Exclude Copies of Media References
PowerPoints with Embedded Video
Studies Referenced by Dr. Ruva
LexisNexis Transcripts
State's Ex. 1: Cole Christensen Report

Addendum L: Ruling and Order Granting Defendant's Motion to Strike and Granting in Part and Denying in Part Defendant's Motion to Appear in Civilian Clothing and Without Restraints (Dkt. 137)

*Due to the large file sizes of these exhibits admitted into evidence, a copy of these files on an external drive will be hand delivered to the Clerk of the Court upon the filing of the petition.

TABLE OF AUTHORITIES

Cases

Armstrong v. Manzo, 380 U.S. 545 (1965) 18

Chen v. Stewart, 2004 UT 82, 100 P.3d 1177 9

Coleman v. Alabama, 377 U.S. 129 (1964) 11, 17

Estes v. Texas, 381 U.S. 532 (1965) 3, 12

Gregg v. Georgia, 428 U.S. 153 (1976) 10

Heckstall v. McGrath, 15 A.D.3d 824 (N.Y. App. Div. 2005) 13

Hollingsworth v. Perry, 558 U.S. 183 (2010) 9, 12, 13

In re Atlantic Pipe Corp., 304 F.3d 135 (1st Cir. 2002) 13

In re Modification of Canon 3 A(7) of Utah Code of Jud. Conduct, 628 P.2d 1292 (1981) 15, 16

In re Ord. Promulgating Amends. to Minnesota Gen. Rules of Prac., 2015 WL 6467107 (Minn. Aug. 12, 2015) 3

In re Pearson, 990 F.2d 653 (1st Cir. 1993) 13

In re Prov. Journal Co., 293 F.3d 1 (1st Cir. 2002) 13

In re Sony BMG Music Ent., 564 F.3d 1 (1st Cir. 2009) 13

In re Sterling–Suarez, 306 F.3d 1170 (1st Cir. 2002) 13

Kearns-Tribune Corp. v. Lewis, 685 P.2d 515 (Utah 1984) 16, 17

KUTV, Inc. v. Conder, 668 P.2d 513 (Utah 1983) 15

Morrissey v. Brewer, 408 U.S. 471 (1972) 18

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 18

Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976) 12

Press-Enterprise Co. v. Super. Ct. of Calif. Riverside Cty., 464 U.S. 501 (1984) 3

Sampson v. United States, 724 F.3d 150 (1st Cir. 2013) 10

Schroeder v. Utah Atty. General's Office, 2015 UT 77, 358 P.3d 1075 9

Scott v. Majors, 1999 UT App 139, 980 P.2d 214 17

Sheppard v. Maxwell, 384 U.S. 333 (1966) 11, 12

State v. Archuleta, 857 P.2d 234 (Utah 1993) 15, 17

State v. Arguelles, 2003 UT 1, 63 P.3d 731 ..... 10, 15, 16, 17

State v. Holland, 921 P.2d 430 (Utah 1996) 9

State v. James, 767 P.2d 549 (Utah 1989) 9, 10, 11, 12, 14

State v. Neilsen, 2014 UT 10, 326 P.3d 645 9

State v. Palm Beach Newspapers, Inc., 395 So. 2d 544 (Fla. 1981) 3

State v. Rothlisberger, 2006 UT 49, 147 P.3d 1176 4

State v. Stubbs, 2005 UT 65, 123 P.3d 407 11

United States v. Tijerina, 412 F.2d 661 (10th Cir. 1969) 3

Westmoreland v. Columbia Broad. Sys., Inc., 752 F.2d 16 (2d Cir. 1984) 4

Statutes

Utah Code § 76-5-202 1

Utah Code § 78A-3-102(3)(h) 1

Utah Code § 78A-3-102(4)(a) 1

Rules

Utah Code Jud. Admin. R. 4-401.01 ..... 3, 5, 6, 8, 9, 10, 17

Utah Code Jud. Admin. R. 4-401.01(2) 4

Utah Code Jud. Admin. R. 4-401.01(2)(A) 5

Utah Code Jud. Admin. R. 4-401.02(2)(B) 2

Constitutional Provisions

U.S. Const. amend. I 3, 4

U.S. Const. amend. VI 15, 16

U.S. Const. amend. VIII 3

Utah Const. art. I, § 10..... 3

INTRODUCTION

Petitioner, Tyler James Robinson ("Mr. Robinson") seeks permission to appeal the interlocutory order issued by the Honorable Tony F. Graf, Jr., of the Fourth Judicial District Court denying Mr. Robinson's *Motion to Exclude Still Photographers, TV Cameras and Microphones from the Courtroom*. *See* Addendum A (*Ruling and Order on Defendant's Motion to Exclude Still Photographers, TV Cameras and Microphones from the Courtroom* (Docket 305)); Add. B (*Motion to Exclude*).

JURISDICTION

Mr. Robinson is charged with a capital felony offense, aggravated homicide. Add. H (*Information*). This Court has original appellate jurisdiction over "interlocutory appeals from any court of record involving a charge of a first degree or capital felony." Utah Code § 78A-3-102(3)(h). "[A]n appeal of an interlocutory order of a court of record involving a charge of a capital felony" is excluded from this Court's transfer authority. Utah Code § 78A-3-102(4)(a).

STATEMENT OF THE CASE

Mr. Robinson is charged, *inter alia*, by *Information* with the aggravated murder of Charlie Kirk on September 10, 2025, in violation of Utah Code § 76-5-202. Add. H.; *see* Utah Code § 76-5-202. Concurrent with the filing of the *Information*, the State filed notice of its intention to seek the death penalty against Mr. Robinson. Add. I.

Early in the case, it became apparent to both the parties and the district court that "[t]he media interest in Mr. Robinson's trial is arguably unprecedented in the State of Utah." *See* Add. L (Dkt. 137). The district court acknowledged that images of Mr.

Robinson from the courtroom "will likely be shared and disseminated in various public platforms" and "[t]he danger of prejudice is compounded by technological advancements that allow the images to be manipulated in ways that do not accurately reflect the truth of the court proceedings." *Id*. at 5. The case is so unique that all of Mr. Robinson's hearings are held as special settings. *Id*.

Despite multiple decorum orders intended to curb prejudicial media practices in the courtroom, the news media violated the orders on multiple occasions. *See* Add. J; *see, e.g.*, Add. B, at 31-35. As a result, in a lengthy motion that featured multiple examples of prejudicial electronic media coverage, showing both the violations of the decorum orders and how the media is using the courtroom recordings and livestream to prejudice Mr. Robinson's rights, Mr. Robinson sought to exclude still photography, cameras, and microphones from all of his hearings to ensure that he receives his constitutional guarantees of a fair trial and reliable penalty proceeding. *See generally*, Add. B. The motion was supported by the declaration of cognitive psychologist Dr. Christine Ruva, one of the country's leading researchers on the effects of prejudicial publicity, who reviewed the existing empirical research on multiple issues relevant to the motion, and by the declarations of two critical witnesses who indicated they had been harassed by the media and did not consent to have their testimony or images broadcast. *Id*. at Exhibit 2; *also* Add. K (*Exhibits from 4-17-2026 Hearing*).

The motion contained a detailed analysis of the various factors listed in Utah Rule of Judicial Administration 4-401.02(2)(B), but stressed that whatever the court's ruling was with regard to the Rule, the motion was also grounded in and must be governed by

state and federal constitutional rights to a fair trial by an impartial jury, and that these constitutional guarantees, as well as the Eighth Amendment, and Article I, section 9 of the Utah Constitution, required that the court give controlling weight to Mr. Robinson's fundamental right to a fair trial by an impartial jury in both phases of his capital case. Add. B, at 52-59. Add. E (*Reply in Support of Motion*), at 15-16.[1] The State, and the News Media, objected to Mr. Robinson's motion. *See* Add. C (*State Opposition*); Add. D (*News Media Opposition*); Add. F (*News Media Supplemental Opposition*). Mr. Robinson replied to these oppositions. Add E.

In response to the media's contention that the court had no authority to issue a categorical ban on electronic media coverage, and that it was relegated under Rule 4-401.01 to rule only on specific requests for electronic media access, Mr. Robinson argued in his *Reply*:

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[1] *See Press-Enterprise Co. v. Super. Ct. of Calif. Riverside Cty.*, 464 U.S. 501, 508 (1984) ("No right ranks higher than the right of the accused to a fair trial."); *Estes v. Texas*, 381 U.S. 532, 540 (1965) (plurality opinion) (noting that the Supreme Court has "always held that the atmosphere essential to the preservation of a fair trial—the most fundamental of all freedoms—must be maintained at all costs."); *United States v. Tijerina*, 412 F.2d 661, 667 (10th Cir. 1969) ("The [First Amendment] argument necessarily places freedom of speech in a preferred position above fair trial. Some decisions of the Supreme Court place First Amendment rights in a preferred position… This preferred position has never been approved in a case where a balance must be had between free speech and fair trial. Indeed, the Court has awarded the preference to fair trial." (citing *Estes*)); *In re Ord. Promulgating Amends. to Minnesota Gen. Rules of Prac.*, 2015 WL 6467107, at *6 (Minn. Aug. 12, 2015) ("To be sure, the fundamental right of a defendant to a fair trial takes precedence over the media's right to cover a public trial." (citing *Press-Enterprise*)); *State v. Palm Beach Newspapers, Inc.,* 395 So. 2d 544, 549 (Fla. 1981) ("[I]t remains essential for trial judges to err on the side of fair trial rights for both the state and the defense. The electronic media's presence in Florida's courtrooms is desirable but not indispensable.").

> In other words, in a case like this one where there will be dozens of court proceedings, the media would have the Court perform the balancing required by the Rule for each court appearance. Besides being incredibly burdensome and judicially inefficient, there is no support for this interpretation in Rule 4-401.01(2) itself, which clearly states that a judge "may prohibit or restrict electronic media coverage in …*cases*…" (emphasis added). *See State v. Rothlisberger*, 2006 UT 49, ¶ 15, 147 P.3d 1176 ("[W]e interpret a court rule in accordance with its plain meaning, and we construe the rule so that it is in harmony with related rules."). Certainly, if the Court acts under the related federal constitutional rule, as it is required to do, there is no ban on entering a blanket restriction on electronic media access. *See, e.g.*, *Westmoreland v. Columbia Broad. Sys., Inc.,* 752 F.2d 16, 24 (2d Cir. 1984) ("[W]e certainly cannot say that a given district court lacks the power to prohibit all televising of trials within the district, across the board, because the public interest in television access to the courtroom does not now lie within the First Amendment.").

Add. E, at 16-17.

At Mr. Robinson's request, an evidentiary hearing was held. Mr. Robinson called two expert witnesses to testify. However, the expert testimony was cut short by the district court's imposition of unworkable time constraints. *See* Add. G (*Transcript of: Motion Hearing*), at 8 ("Each side will be afforded up to two hours to present argument, examine witnesses, cross-examination, and redirect and respond to inquiring from the Court as well as reserve time for rebuttal.").

In what little time he had to present his case, Mr. Robinson introduced into evidence: truncated testimony and written reports and declarations by Dr. Ruva and trial consultant Dr. Brian Edelman; two lengthy PowerPoint presentations, one of which contained multiple examples of prejudicial electronic media coverage and of an instance where the State had violated the court's gag order; all of the studies cited in Dr. Ruva's declaration, supplemental report, and PowerPoint; over 6000 pages of transcripts of the

electronic media coverage in this case; all of the electronic media clips referenced in the motion; the declaration of Mr. Robinson's lead counsel setting forth threats she had received as a result of the publicity; and the declarations of various witnesses who objected to having their images or testimony broadcast, or experienced adverse effects from pretrial publicity. *See* Add. K.

As accurately summarized in the court's written ruling, "Defendant provided many examples of media outlets using footage of the court proceedings as background or a springboard to discuss out-of-court commentary by public figures, opine on the relevance or existence of evidence that has not been admitted or presented in court, and generally vilify the defendant." Add. A, at 6. In response, the State merely "referenced social media posts that have used media coverage of the case to promote conspiracy theories and to denigrate Charlie Kirk and his family." *Id*. "No evidence was presented by either side showing a media outlet using live media coverage to educate the public about the progress of the legal proceedings or the justice system as a whole." *Id*.

The trial court denied the motion in a nine-page ruling and order issued on May 8, 2026. Add. A. The ruling flatly rejected Mr. Robinson's contention that his motion must be governed by state and federal constitutional rights to a fair trial, ruling instead that "[b]ecause Defendant has not shown that a categorical ban on electronic media coverage for all proceedings in this case is allowed by Utah law, Defendant's motion is respectfully denied." *Id.* at 1. *See also id*. at 5 (Rule 4-401.01 "governs the court's determination of whether to grant or restrict electronic media coverage."); *id*. at 7 ("Because under rule 4-401.01(2)(A) the court must examine the motivations of the specific news reporter who

requests to photograph or record the proceeding, Defendant's request for a blanket finding by this court that there is no presumption of electronic media coverage is respectfully denied. The court must determine whether the presumption applies on a request-by-request basis, depending on the predominant purpose of the requesting news reporter."). The ruling also imposed severe procedural restrictions on the filing of any future motion to restrict electronic media coverage, including that any media request must be filed fourteen days before a scheduled hearing, that any motion to restrict media access must be filed ten days before a hearing and must not exceed four pages, and no oral argument on the motion will be held. *Id*. at 8.

As a result of these foundational rulings, the Court never engaged in the evaluation of relevant evidence and the weighing of competing interests that was required both by the state and federal constitution, and by Rule 4-401.01 itself.[2] Although the ruling very briefly summarized some but not all of the evidence presented at the evidentiary hearing, the ruling contains no analysis of the trial court's evaluation of the summarized evidence. For instance, the district court correctly noted:

> Dr[.] Edelman conducted a survey of 200 people in Utah County and prepared a report with his assessment of the local community's consumption of media coverage of this case. His base findings reveal that 99 percent of community members recognize the case and 64 percent believe Defendant is guilty based upon what they have heard, read, or seen in the media.

Add. A, at 1 (citing Add. G, at 122-23). The court also correctly summarized:

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[2] The closest the court ever came to any such evaluation was a speculative comment that "[t]his court is not so cynical as to conclude that just because the parties did not present evidence of responsible journalism, none exists." Add. A, at 6.

> [Dr. Edelman] examined press coverage of the hearings that have taken place since Defendant's initial appearance in court and discovered that only about 25 percent of viewers watch the live stream of court hearings. [Add. G, at 112, 126]. A majority of the remaining viewers consume media commentary of the live stream recordings over social media and local television news sources. *Id*. at 126. According to his research, the commentary from established news media does not provide a neutral summary of court proceedings. Rather, headlines and' "talking heads" typically focus on out-of-court statements made by attorneys and prominent members of the community and the country. As a result, viewers are led to believe that comments made *out of court*, such as comments about unadmitted evidence, are made during a court hearing and part of the criminal case. *Id*. at 103-04. According to Dr. Edelman, this commentary primarily supports the prosecution's narrative and is used as entertainment, sensationalism, and commercialization rather than to educate the public on what is occurring during the court proceedings. *Id*. at 103- 17.

Id. at 2 (emphasis in original). The court continued:

> Dr. Edelman also expressed concern that media coverage of the security measures used during court proceedings, combined with cameras in the courtroom, will be added pressure on the potential jury pool and contribute to potential jurors' reluctance to serve on a future jury. [Add. G, at 118].
>
> During cross-examination, Dr. Edelman testified that viewers who watch the live stream, usually on social media and streaming sites, are inundated with commentary from other viewers spreading misinformation. Although the commentary is being made by the public and is not generated by the live stream itself; in his view, the commentary would not exist without the live stream of the court proceedings. *Id*. at 154-56. In sum, Dr. Edelman' s opinion is that continued electronic media coverage of court proceedings will perpetuate prejudicial and misleading views of the Defendant and the evidence and affect Defendant's fair trial rights.

Id. at 2-3. The court also accurately summarized the testimony of Dr. Ruva:

> Dr. Ruva testified that she specializes in the study of juror decision-making, specifically how pre-trial publicity affects memory and the deliberative process. [Add. G, at 168]. Among other concepts, her studies focus on "source primacy" of pre-trial publicity, which indicates that if jurors are front-loaded with an extensive amount of negative pre-trial publicity toward a defendant, it is difficult to overcome their initial biases, even if presented with positive publicity about the defendant or negative

publicity about an alleged victim. *Id*. at 170. Dr. Ruva examined the pre-trial publicity referenced in Defendant's motion, which she summarized as provoking moral outrage and predominantly "anti-defendant," full of dehumanizing language and accusations of guilt. *Id*. at 171.

Id. at 3. The court continued:

> Dr. Ruva explained that jurors have "a high amount of confidence" that the information they use to reach a verdict is based on evidence that was presented at trial; however, research shows that jurors' memories cannot distinguish between what was heard at trial and what was heard from pre-trial publicity. [Add. G, at 174]. Jurors may even unconsciously distort evidence they hear during trial to align it with slanted information they heard pre-trial. *Id*. at 186. Because video and audio sources of pre-trial publicity result in more emotional responses, these sources are better remembered than other sources of information. *Id*. at 176. In sum, Dr. Ruva's expert opinion is that "live-streaming of all proceedings can lead to deep-seated bias" in juror deliberations. *Id*. at 183. And while juror questionnaires can help eliminate jurors with *explicit* biases, they are not effective at identifying *implicit* biases. *Id*. at 193-94.
>
> Dr. Ruva concluded with her expert opinion that "to a reasonable degree of psychological certainty[,] this case is situated within a highly prejudicial pretrial environment that presents a substantial risk to juror impartiality." *Id*. at 196.

Id. at 3-4 (emphasis in original).

ISSUES PRESENTED

A. Interlocutory review of the trial court's ruling denying Mr. Robinson's motion to exclude still photographers, TV cameras and microphones is necessary to protect his fundamental state and constitutional right to a fair and reliable trial by an impartial jury at both phases of his capital case.

B. It was error for the district court to rule, without reaching Mr. Robinson's constitutional claims, that because he has not shown that a categorical ban on electronic media coverage for all proceedings in this case is allowed by Rule 4-401.01, his motion should be denied.

C. The district court's imposition of severe procedural restrictions on the bringing of any future motion to restrict electronic media access violates Mr. Robinson's state and federal constitutional rights to procedural due process.

Preservation: The issues were presented to the district court in the motion filed by Mr. Robinson, his reply, and during oral argument on April 17, 2026. *See* Add. B, E, G.

Standard of Review: This Court reviews "for correctness" the question of law as to whether a trial court has strictly complied with constitutional requirements. *State v. Holland*, 921 P.2d 430, 433 (Utah 1996). Questions of constitutional interpretation are reviewed for correctness. *Schroeder v. Utah Atty. General's Office*, 2015 UT 77, ¶ 16, 358 P.3d 1075. "Constitutional issues, including questions regarding due process, are questions of law that we review for correctness." *Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177, *overruled on other grounds by State v. Neilsen*, 2014 UT 10, 326 P.3d 645.

ARGUMENT

This Court should accept Mr. Robinson's request for interlocutory appeal of the district court's decision denying his motion to prohibit further electronic media coverage of this capital case and imposing severe procedural restrictions on the bringing of any future motion for four interrelated reasons.

First, this case is indistinguishable from other cases in which this and other courts have held that interlocutory review is necessary in order to protect the accused's fundamental state and constitutional rights to a fair and reliable trial by an impartial jury. *See, e.g.*, *Hollingsworth v. Perry*, 558 U.S. 183 (2010) (per curiam); *State v. James*, 767 P.2d 549, 550 (Utah 1989).

Second, this case presents the first opportunity for this or any other Utah appellate court to examine Rule 4-401.01 and its interplay with state and federal constitutional guarantees. As this case illustrates, appellate guidance is urgently needed to guide district

courts in the proper application of Rule 4-401.01 in this and other cases. This opportunity to provide needed appellate guidance arises in a capital case, where the United States Supreme Court has held that "[w]hen a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed." *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (plurality opinion). Even more specifically, this Court held in *State v. James*, that the fact that the State is seeking the death penalty is an important factor in assessing the reasonable likelihood that media coverage will prejudice the right to a fair trial:

> This is a capital case. Not only will a jury be required to determine the guilt or innocence of defendant, but if guilt is found, the jury will probably be urged by the prosecution to impose the death penalty. In deciding whether to impose the death penalty, the jury must weigh aggravating circumstances against mitigating circumstances. This is the most momentous judgment a jury can be asked to make. The judgment should be made in an atmosphere as free from any taint of bias or prejudice as is reasonably possible.

767 P.2d at 555. *See also State v. Arguelles*, 2003 UT 1, ¶ 102, 63 P.3d 731 ("We… encourage trial judges… to continue to exercise caution in maintaining quiet and non-distracting courtroom environments in all cases, and particularly in capital proceedings."); *Sampson v. United States*, 724 F.3d 150, 163 (1st Cir. 2013) ("The right to an impartial jury is nowhere as precious as when a defendant is on trial for his life.").

Finally, if allowed to stand, the trial court's erroneous ruling creates a grave risk of planting a fundamental procedural error early in the case that could lead to a post-conviction reversal because the district court misconstrued Rule 4-401.01, refused to reach properly presented issues of state and federal constitutional law, and imposed severe and unreasonable limits on the bringing of any future motion. *See, e.g.*, *Coleman v.*

Alabama, 377 U.S. 129, 129-33 (1964) (denial of a full and fair opportunity to prove by evidence a claim that defendant was denied his right to trial by an impartial and representative jury renders a conviction constitutionally void).

A. This Court Should Grant Interlocutory Review Because It Is Necessary to Protect Mr. Robinson's Fundamental State and Federal Constitutional Rights to a Fair and Reliable Trial by an Impartial Jury at Both Phases of His Capital Case.

In *State v. James*, where the denial of a motion to change venue was brought to the Court as an interlocutory appeal, this Court ruled that the interlocutory appeal afforded

> …the opportunity to review the denial before any error committed would be prejudicial to defendant. We are in accord with a statement made by the Supreme Court of the United States in *Sheppard v. Maxwell*, [384 U.S. 333, 363 (1966)], that 'reversals are but palliatives' and that 'the cure lies in those remedial measures that will prevent the prejudice at its inception.'

767 P.2d at 555-66; *see also State v. Stubbs*, 2005 UT 65, ¶¶ 9-10, 123 P.3d 407 (noting that in *James*, this Court "welcomed the interlocutory review of a venue challenge because it presented us with 'the opportunity to review the denial before any error committed would be prejudicial to [the] defendant.'").

The Court's reliance on *Sheppard* is significant because in the portion of that opinion quoted by this Court in *James*, 767 P.2d at 556, the Supreme Court emphasized that both trial and appellate courts have a duty to take prompt remedial steps to protect a defendant's fundamental right to a fair trial by an impartial jury:

> Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. *And appellate tribunals have the duty to make an independent evaluation of the circumstances*… If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered.

> But we must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences.

Sheppard, 384 U.S. at 362-63 (emphasis added). *Accord Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 555 (1976) ("The costs of failure to afford a fair trial are high… The 'strong measures' outlined in *Sheppard v. Maxwell* are means by which a trial judge can try to avoid exacting these costs from society or from the accused.").

The reasoning of *James* in favor of interlocutory review of orders denying motions for change of venue has been extended to review of orders allowing cameras in the courtroom. Most notably, in *Hollingsworth v. Perry*, the Court took the unusual step of granting a stay of a district court order allowing the televising of the civil trial pending the timely filing and disposition of a petition for a writ of certiorari or the filing and disposition of a petition for a writ of mandamus. 558 U.S. at 184. Addressing the issue of irreparable harm, the Court concluded:

> Applicants also have shown that irreparable harm will likely result from the denial of the stay. Without a stay, the District Court will broadcast the trial. It would be difficult—if not impossible—to reverse the harm from those broadcasts… This Court has recognized that witness testimony may be chilled if broadcast. *See Estes v. Texas*, [381 U.S. 532, 547 (1965); *id*. at 591 (Harlan, J., concurring)]. Some of applicants' witnesses have already said that they will not testify if the trial is broadcast, and they have substantiated their concerns by citing incidents of past harassment…. These concerns are not diminished by the fact that some of applicants' witnesses are compensated expert witnesses. There are qualitative differences between making public appearances regarding an issue and having one's testimony broadcast throughout the country. Applicants may not be able to obtain adequate relief through an appeal. The trial will have already been broadcast. It is difficult to demonstrate or analyze whether a witness would have testified differently if his or her testimony had not been broadcast.

> And witnesses subject to harassment as a result of broadcast of their testimony might be less likely to cooperate in any future proceedings.

Id. at 195.

Hollingsworth cites with approval *In re Sony BMG Music Ent.*, 564 F.3d 1, 2 (1st Cir. 2009). *Id*. at 194, 198. In that case, the First Circuit addressed a question of first impression: "does a federal district judge have the authority to permit gavel-to-gavel webcasting of a hearing in a civil case?" 564 F.3d at 2. Before answering "no" to that question, the court first considered the issue of whether the case was an appropriate one for the court to exercise its advisory mandamus authority. *Id*. at 3. The court wrote:

> This case does not involve our general mandamus jurisdiction but, rather, fits within the contours of our advisory mandamus jurisdiction. Under that rubric, we may entertain a petition that "presents a systemically important issue as to which this court has not yet spoken." *In re Atlantic Pipe Corp*., 304 F.3d 135, 140 (1st Cir. 2002) (citing *In re Prov. Journal Co.*, 293 F.3d 1, 9 (1st Cir. 2002)). The power of a district court to order narrowcasting of a hearing in a civil case is such an issue: it is systemically important and rife with implications for the public interest. In the absence of definitive guidance from this court, the issue is increasingly likely to recur within the district courts of this circuit. These circumstances counsel in favor of an exercise of our advisory mandamus jurisdiction. *See, e.g.*, *In re Sterling–Suarez*, 306 F.3d 1170, 1172 (1st Cir. 2002).
>
> In making this determination, we are cognizant that prerogative writs are strong medicine and, as such, should be dispensed sparingly. *In re Pearson*, 990 F.2d 653, 656 (1st Cir. 1993). But even while subscribing to that tenet, we believe that this is an appropriate case in which to consider granting the writ. Both the rapidity of technological change and the widespread interest that this proceeding has attracted argue persuasively for a prompt and authoritative resolution of the systemically important issue that lies at the epicenter of this dispute.

Id. at 4. *See also Heckstall v. McGrath*, 15 A.D.3d 824, 826 (N.Y. App. Div. 2005) ("A criminal defendant cannot be expected to adequately show on appeal that he or she was

prejudiced by [the denial of a motion to exclude cameras]. Because respondent's actions implicate petitioner's fundamental right to a fair trial in a way which cannot be adequately addressed on appeal, this Court will exercise its discretion in this action and grant the petition.")

These cases persuasively demonstrate why, under the reasoning of *James,* interlocutory review is necessary to protect Mr. Robinson's fundamental state and constitutional rights to a fair and reliable trial by an impartial jury at both phases of his capital case.

B. It Was Error for the District Court to Rule, Without Reaching Mr. Robinson's Constitutional Claims, that Because He Has Not Shown that a Categorical Ban on Electronic Media Coverage for All Proceedings in this Case Is Allowed by Utah Law, His Motion Must Be Denied.

Mr. Robinson's exhaustive motion, supported by expert and other declarations, and his evidentiary showing, raised credible state and federal constitutional concerns. *See* Add B. Indeed, as Mr. Robinson argued in his reply, if the present capital case did not establish the need to restrict electronic media access, then it is hard to imagine any case where such restrictions would be appropriate. *See* Add. E. Among other prejudicial electronic postings, this case features extensive and repeated prejudicial commentary by President Trump, Vice President Vance, FBI Director Patel, and Governor Cox, as well as press conferences by County Attorney Gray and other law enforcement officials which discussed in some detail all the alleged evidence against Mr. Robinson. *See* Add. B, at 2-48. The electronic media has dutifully repeated these evidentiary allegations in virtually every story it has run. *Id*.

"There can be no doubt that pretrial or during-trial publicity that comes to the attention of prospective or sitting jurors can deprive a criminal defendant of a fair trial. Appellate courts have been obliged to reverse convictions on this ground where the publicity was pervasive and prejudicial." *KUTV, Inc. v. Conder,* 668 P.2d 513, 518 (Utah 1983) (collecting cases). Mr. Robinson's motion and evidence demonstrated that the electronic media coverage in this case has been and will continue to be both "pervasive and prejudicial."

This Court has only addressed cameras in the courtroom on two prior and now dated occasions. In 1981, in *In re Modification of Canon 3 A(7) of Utah Code of Jud. Conduct*, this Court indicated:

> The members of this Court are unanimously of the view that Canon 3 A(7)'s prohibition against televising, broadcasting or recording of judicial proceedings should be reaffirmed and that the petition for modification of those provisions should be denied. We are not satisfied that the balance between the interests of news reporting and the interests of a fair trial represented by Canon 3 A(7) would be improved by the proposed changes. Experiments under way in other states may yet suggest appropriate modifications to the Canon on this subject. But for the present, we remain unconvinced that change is warranted.

628 P.2d 1292, 1293 (1981) (per curiam).

In 2003, this Court held that in construing an older version of Utah Rule of Judicial Administration 4–401(4), which recognized a limited right of photographic access to court proceedings, any right of access granted by the Rule "'*must* be weighed against other considerations, including the accused's Sixth Amendment right to a fair trial.'" *Arguelles*, 2003 UT 1, ¶ 98 (quoting *State v. Archuleta*, 857 P.2d 234, 237 (Utah 1993)) (emphasis added).

The Court further held in *Arguelles* that "[a] court may restrict 'access altogether where necessary to assure that the defendant receives a fair trial….'" *Id.* (quoting *Kearns-Tribune Corp. v. Lewis*, 685 P.2d 515, 522 (Utah 1984)); *see also Kearns-Tribune*, 685 P.2d at 522 ("the court can restrict or deny access altogether where necessary to assure that the defendant receives a fair trial before an impartial jury."); *In re Modification of Canon 3 A(7)*, 628 P.2d at 1294 ("The court's authority to specify …restrictions on the taking of still photographs may be exercised by local court rule applicable to all cases *or by directions pertaining to individual cases or types of cases*, or both." (emphasis added)). And as Mr. Robinson informed the district court in the passage of the reply quoted above, federal courts have specifically ruled that under the federal constitution a trial court has the authority to issue a blanket ban on electronic media coverage. *See* Add. E, at 16-17.

The trial court therefore erred in refusing to even consider, much less give any weight to Mr. Robinson's Sixth Amendment right to a fair trial and concluded instead that "[b]ecause Defendant has not shown that a categorical ban on electronic media coverage for all proceedings in this case is allowed by Utah law, Defendant's motion is respectfully denied." Add. A, at 1. This foundational error caused the trial court to assess Mr. Robinson's motion under an incorrect view of the law, a quintessential example of a situation where pretrial appellate jurisdiction can and should be exercised, especially since, as here, if that error is allowed to carry forward, it will affect every subsequent ruling that the trial court makes with respect to all future motions to exclude cameras in the courtroom.

The trial court's myopic focus on "Utah law" was not only violative of the Supremacy Clause of the United States Constitution, but also of "Utah law" as expressed by this Court in *Kearns-Tribune, Archuleta,* and *Arguelles.* Moreover, the court's wooden interpretation of Rule 4-401.01 as somehow overriding federal constitutional law and as requiring that "the court must examine the motivations of the specific news reporter who requests to photograph or record the proceedings" finds no support in the language of the Rule, is unworkable, and is at odds with the fundamental purpose of the Rule, which is "[t]o permit electronic media coverage of proceedings *while protecting the right of parties to a fair trial, personal privacy and safety, the decorum and dignity of proceedings, and the fair administration of justice*." Rule 4-401.01 (emphasis added). *See also Scott v. Majors*, 1999 UT App 139, ¶ 12, 980 P.2d 214 ("The purpose of the Code of Judicial Administration is to bring order to the manner in which the courts operate. They are not intended to, nor do they, create or modify substantive rights of litigants, nor do they decrease the inherent power of the court to control matters pending before it.").

C. The District Court's Imposition of Severe Procedural Restrictions on the Bringing of Any Future Motion to Restrict Electronic Media Access Violates State and Federal Constitutional Rights to Procedural Due Process.

The court's imposition of severe procedural restrictions on the bringing of any future motion to restrict electronic media access violates the state and federal constitutional rights to procedural due process. *See Coleman*, 377 U.S. 129 (denial of a full and fair opportunity to prove by evidence a claim that defendant was denied his right to trial by an impartial and representative jury renders a conviction constitutionally void).

As noted, the district court imposed unwieldy constraints on Mr. Robinson's ability to object to electronic media coverage in the future. *See* Add. A, at 8. If the media requests permission for electronic media coverage, they are only required to do so fourteen days prior to the anticipated hearing and a party objecting to the coverage, is permitted ten days to object and only given four pages to elucidate the objection. *Id*. Further, during the ruling hearing on May 8, 2026,[3] the district court declined to require the media to provide direct notice of the requests to the parties when sent to the court. This is problematic where, as noted on the record by counsel, the parties do not receive notice through the court e-filing system or even on the docket when a request is received by the court. Rather, the parties are only notified when an electronic media request is *ruled upon* by the district court.

It is axiomatic. "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). The "opportunity to be heard" required by due process must likewise be meaningful. *See, e.g., Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972).

Allowing Mr. Robinson four days, if he receives appropriate notice, to lodge objections to electronic media coverage specific to an individual hearing and in no more

[3] Mr. Robinson has requested a transcript of the May 8, 2026 ruling hearing and will supplement the petition upon receipt.

than four pages does not afford Mr. Robinson (or the State, should they deem to object) procedural due process.

CONCLUSION

For the reasons set forth above, Mr. Robinson's petition for permission to pursue this interlocutory appeal should be granted.

RESPECTFULLY SUBMITTED THIS 29th day of May, 2026.

/s/ Kathryn N. Nester
Kathryn N. Nester

/s/Richard G. Novak
Richard G. Novak

/s/ Michael N. Burt
Michael N. Burt

/s/ Staci Visser
Staci Visser

Attorneys for Defendant, Tyler James Robinson

CERTIFICATE OF COMPLIANCE

I hereby certify that the public version of this petition complies with Utah Rule of Appellate Procedure 21(h), having removed or redacted all non-public information.

DATED this 29th day of May, 2026.

/s/ Staci Visser

CERTIFICATE OF SERVICE

I hereby certify that on 29th day of May, 2026, I e-filed and therefore served the following:

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