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FILED IN THE
20TH JUDICIAL DISTRICT

2020 FEB 21 A 11:14

DISTRICT COURT, COUNTY OF BOULDER,
COLORADO

Court Address: 1777 6th Street
Boulder, Colorado 80302

In re Preliminary Hearing Proceedings Pertaining to:

Plaintiff: PEOPLE OF THE STATE OF COLORADO

v.

Defendant: AIDAN ATKINSON

and

Interested Third Parties: Denver Post Corporation, d/b/a
The Denver Post, Colorado Press Association, and
The Colorado Freedom of Information Coalition

Attorneys for Interested Third Parties:

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▲ COURT USE ONLY ▲

Case No. **D72019-JD-309**

OBJECTION TO CLOSURE OF JUDICIAL PROCEEDING

The Denver Post Corporation, doing business as *The Denver Post* newspaper (“*The Post*”), Colorado Press Association, and the Colorado Freedom of Information Coalition (“CFOIC”),¹ by and through their undersigned counsel, hereby respectfully object to the

¹ The CFOIC was founded in 1987, as an organization of businesses, professionals, and other citizens who share a common interest in safeguarding and encouraging utilization of the public’s right to observe the operations of government. The animating principle is the basic

Defendant's request that the Court exclude the public from the courtroom during the preliminary hearing in this matter.

In this proceeding, the defendant, Aidan Atkinson has been charged with having committed a sexual assault on a juvenile female, on September 15, 2018 and the defendant's identity and the charges against him have been publicly revealed through an open jail log, public docket, and prior open proceedings in this Court. Moreover, in a somewhat related case, *People v. Marilyn Lori*, No. 2019M1955, the arrest warrant (Ex. A) has been publicly disclosed, which recounts in some detail the allegations against the Defendant.

On Monday February 3, 2020, the Court invited the People to file an objection to the Defendant's request to close the preliminary hearing in this case, set to commence on March 31, 2020 at 1:30 p.m., to the public.

truism that without timely and accurate information about governmental activity, a self-governing democracy cannot exist.

A strictly non-partisan organization, CFOIC's members represent both ends as well as the middle of the political spectrum. Current members include, in addition to all major organizations of media outlets in Colorado, ACLU of Colorado, Associated Press, BillTrack 50, Chalkbeat Colorado, Colorado Association of Libraries Intellectual Freedom Committee, Colorado Bar Association, Colorado Broadcasters Association, Colorado Common Cause, The Colorado Independent, Colorado Press Association, Colorado Press Women, Colorado Public Radio, Colorado Springs Independent, Colorado Springs Press Association, Colorado Student Media Association, Delta County Citizen Report, 5280 Magazine, the Independence Institute, KDNK Community Radio, Professional Private Investigators Association of Colorado, Rocky Mountain PBS, and Colorado Society of Professional Journalists. Members also include newspapers affiliated with the Colorado Press Association and broadcast stations affiliated with the Colorado Broadcasters Association. While many of CFOIC's active members are members of the media, its mission serves the interests of all citizens in an open government.

The appearance of CFOIC in this proceeding does not necessarily reflect the views or position of all of its members.

I. STANDING AND RIGHT TO BE HEARD

The press and the public have a presumptive right of access to these proceedings under the United States and Colorado Constitutions, and pursuant to the Juvenile Code, as will be demonstrated below. *The Post* and the CFOIC have standing and the right to be heard to assert such rights to the Court. *Star Journal Publ'g Corp. v. County Court*, 197 Colo. 234, 591 P.2d 1028 (1979); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982).

The press has a strong and legitimate interest in covering the instant proceeding for the benefit of its readers, viewers, and listeners. The First Amendment imposes a strict scrutiny analysis on any order closing a preliminary hearing to public access.

II. COLORADO'S CHILDREN'S CODE RECOGNIZES A QUALIFIED RIGHT TO ACCESS TO JUVENILE PROCEEDINGS

The Colorado's Children's Code states that the procedures for handling juvenile offenders are intended to "be liberally construed" to serve two sometimes conflicting interests: "the welfare of children *and the best interests of society*." C.R.S. § 19-1-102(2) (2019) (emphasis supplied).

Section 19-1-106(2) further provides that "[h]earings may be conducted in an informal manner. *The general public shall not be excused* unless the court determines that it is in the best interest of the child or of the community to exclude the general public . . ." First, it should be noted that this provision establishes a presumption that the public has a right to attend all juvenile court proceedings. Second, when read in conjunction with § 19-1-102(2)'s requirement that the Children's Code be construed to serve both "the welfare of the children and the best interests of society," it is clear that closure may only be ordered after a balancing of these two statutorily recognized interests. *See also* "Free Press and Fair Trial in Colorado/A Compact of

Understanding Between the Bar and the Press,” p. 9 (“[P]ursuant to the Colorado Children’s Code, a court may determine that it is in the best interests of the child to close a proceeding. The court should determine such closure questions solely on the basis of the best interest of the child, weighed against *the public interest in observing the operation of the juvenile court system. . . .*”) (emphasis added).

III. THE PUBLIC’S RIGHT OF ACCESS TO JUDICIAL PROCEEDINGS HAS NOT BEEN OVERCOME

In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), the United States Supreme Court recognized that under the First Amendment, the public enjoys a presumptive right to attend criminal trials. That court found that such open court proceedings were mandated by at least six societal interests. First, public access promotes informed discussions of governmental affairs by providing the public with a more complete understanding of the judicial system. *Id.* at 572 (plurality opinion); *id.* at 584, 595-96 (concurring opinions). Second, public access gives “the assurance that the proceedings were conducted fairly” and promotes the public “perception of fairness.” *Id.* at 569-70. Third, public access has a “significant community therapeutic value” because it provides an “outlet for community concern, hostility and emotion.” *Id.* at 570-71. Fourth, public access serves as a check on corrupt practices by exposing the judicial process to public scrutiny. *Id.* at 569. Fifth, public access enhances the performance of all those involved in a judicial proceeding. *Id.* at 569, n.7. Finally, public access to judicial proceedings discourages perjury. *Id.* at 596-97 (concurring opinion).

The public right to access applies to specifically to preliminary hearings in criminal cases. *Press-Enterprise v. Superior Court*, 478 U.S. 1 (1986); *Star Journal Publ’g Corp. v. County Court*, 591 P.2d 1028, 1029 (Colo. 1979) (pre-trial proceedings).

The same concerns – ensuring fairness and competency as well as promoting the public’s interest in and understanding of its judicial system – are equally applicable to proceedings involving juveniles, and especially when, as here, a juvenile is charged with an offense – sexual assault – that would constitute a felony if committed by an adult. This is not to suggest that public access is absolutely required but, instead, to urge that the best interests of the juvenile must be balanced against the public interest in access. In *Star Journal*, the Colorado Supreme Court held that “[t]his court has continually recognized the fundamental nature of First Amendment rights and ruled that these rights may only be abridged upon a showing of an overriding and compelling state interest.” 591 P.2d at 1029. In any question of access, whether it be access to a criminal trial or a juvenile hearing, the public interest in access remains a “fundamental” First Amendment right. While in the instant case, the “state interest” is shifted from protection of a criminal defendant’s Fifth Amendment rights to protection of a minor’s “best interests,” that shift provides no basis for denigrating the competing interest in public access. See also *Missouri ex rel. St. Louis Dispatch, LLC v. Garvey*, 179 S.W.3d 899 (Mo. 2005) (opening juvenile delinquency proceeding of 12-year old girl charged with what would have been first-degree murder, had she been tried as an adult). Indeed, it is for this same reason that other states have recognized a First Amendment right of the public to attend juvenile court proceedings. See, e.g., *Brian W. v. Superior Court*, 574 P.2d 788 (Cal. 1978); *Taylor v. Indiana*, 438 N.E.2d 275 (Ind. 1982); *In re Chase*, 446 N.Y.S.2d 100, 8 Media L. Rptr. 1496 (N.Y. Family Ct. 1982); *In re Shabaz*, 25 Media L. Rptr. 2144 (N.Y. Fam. Ct. 1997); *In re Christopher E.*, 417 S.E.2d 575 (1992); *Tennessee v. James*, 25 Media L. Rptr. 2537 (Tenn. App. 1995).

To the extent that it is argued by the Defendant that § 19-1-102(2), C.R.S., allows the Court to deny the public's presumptive right of access under any *lower* standard, that argument should not be countenanced. *See Globe Newspaper Co.*, 457 U.S. at 608-09 (holding unconstitutional a state statute that mandated automatic closure of criminal proceedings during the testimony of child sexual assault victims because a state statute cannot trump the First Amendment); *see also State ex rel. Oregonian Publ'g Co. v. Diez*, 613 P.2d 23 (Or. 1980) (state juvenile code, which excluded public from all juvenile hearings unless otherwise requested by child or parent, held violative of state constitutional provision guaranteeing open trials).

**IV. THE FIRST AMENDMENT RIGHT TO ATTEND JUDICIAL PROCEEDINGS
MAY BE CURTAILED ONLY UNDER THE MOST EXTRAORDINARY
OF CIRCUMSTANCES**

The Colorado Supreme Court has adopted the following test for the closure of a judicial proceeding:

A judge may close a pre-trial hearing only if (1) the dissemination of information would create a clear and present danger to the fairness of the trial; and (2) the prejudicial effect of such information on trial fairness cannot be avoided by any reasonable alternative means.

Star Journal at 1030. In line, therefore, with the holdings of the United States Supreme Court and the Colorado Supreme Court, these objectors submit that in order to close any proceedings in this matter the following criteria must be established:

1. The proponents of any closure order must demonstrate that this Court's recognition of the public's right to attend these proceedings would create a "substantial likelihood of prejudice" to the well-being of the child; and
2. The proponent of a closure order must also demonstrate that this danger to the well-being of the child cannot be avoided by any reasonable alternative means, including, most obviously, partial closure (and immediate post-hearing release of a redacted transcript).

This test imposes a significant procedural and evidentiary burden upon the proponent of any courtroom closure order. As stated by the Colorado Supreme Court in *Star Journal*, this test “contemplates that the presiding officer predicate an exclusion order on more than mere conjecture and allegations. . . .” *Id.* at 1030; *Accord Ohio ex rel. Plain Dealer Pub’g Co. v. Floyd*, 855 N.E.2d 35 (Ohio 2006) (holding that a judge may not close a juvenile delinquency proceeding without making formal evidentiary findings regarding closure).

Commenting further on the *Star Journal* test for closure, the Colorado Supreme Court in *P.R. v. District Court*, 637 P.2d 346 (Colo. 1981), held that:

[T]he burden is upon the party seeking closure to establish the factual basis for the application [for that closure order].

In *Lincoln v. Denver Post*, 501 P.2d 152 (Colo. App. 1972), the court held that the plaintiff’s statutory right of privacy did not supersede the “interest of both the accused and of the public in the manner in which justice is administered” in the courts. Citing the United States Supreme Court’s words in *State of Maryland v. Baltimore Radio Show*, 338 U.S. 912, the Colorado Court of Appeals noted that:

[O]ne of the demands of a democratic society is that the public should know what goes on in courts by being told by the press what happens there, to the end that the public may judge whether a system of criminal justice is fair and right.

Particularly in light of the fact that the allegations against the Defendant herein have already been publicly disclosed in a court record, *see* Ex. A at 2, which has itself been the subject of widespread press coverage, the claimed need to shield the Defendant (or the community) from exposure to those allegations cannot outweigh the public’s interest in monitoring the proceedings and work of this Court.

In *Taylor v. Indiana*, 438 N.E.2d 275 (Ind. 1982), the Indiana Supreme Court affirmed a juvenile court's decision to allow public access to a juvenile hearing. The court noted that this determination involved a balancing of:

significant public interests — the need to protect juveniles from dissemination of information regarding minor offenses . . . versus the extraordinary protections afforded by the constitutional guarantees of free speech and press. . . . [These First Amendment] guarantees reflect and perpetuate the nation's profound commitment to the proposition that the integrity of public proceedings is preserved by public access thereto; concomitantly, it has been reiterated that the educative aspects of public exposure to the judicial process serve only to enhance public confidence in the system.

Therefore, the Indiana Supreme Court held that the juvenile court did not abuse its discretion in ruling that, in light of the gravity of the offense and the age of the child, the public should be granted access to the hearings.

The National Council of Juvenile and Family Court Judges has stated:

Traditional notions of secrecy and confidentiality should be re-examined and relaxed to promote public confidence in the court's work. The public has a right to know how courts deal with children and families. The court should be open to the media, interested professionals and students, and, when appropriate, the public, in order to hold itself accountable, educate others, and encourage greater community participation.

Danielle R. Oddo, *Removing Confidentiality Protections and the "Get Tough" Rhetoric: What Has Gone Wrong with the Juvenile Justice System?*, 18 B.C. Third World L.J. 105, 120-21 (1998).

V. CONCLUSION

Any closure of any proceedings herein must be preceded by an evidentiary hearing in which the party seeking to close the hearing bears the burden of proving that open proceedings will present a clear and present danger to a state interest of the highest order and that there are no

less restrictive means of avoiding that danger. As noted by both the United States Supreme Court and the Colorado Supreme Court, the burden imposed by this balancing test is intended to be a significant one, thereby ensuring that judicial hearings are closed in only the most compelling circumstances – such circumstances are simply not present here.

Dated: February 21, 2020

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of February, 2020, a true and correct copy of the foregoing **OBJECTION TO CLOSURE OF JUDICIAL PROCEEDING** was filed with the Court and served on all counsel of record via U.S. Mail:

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Office of District Attorney for the 20th Judicial District
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Legal Administrative Assistant

EXHIBIT A

STATE OF COLORADO
COUNTY OF BOULDER

Walk-Through Authorized ☐
DA _____

COUNTY/DISTRICT COURT, BOULDER COUNTY, COLORADO

Criminal Action Number 0072019M0001955

DATE FILED: October 29, 2019
CSF MAY 27 19M1955

WARRANT FOR ARREST UPON AFFIDAVIT

BEFORE THE HONORABLE DAVID ARCHULETA

The People of the State of Colorado,
To: Any person authorized by law to execute arrest warrants.

You are hereby commanded to arrest the person of:

DOB:	03/16/1973	HAIR	Blonde
HEIGHT:	5'9"	EYES:	Blue
WEIGHT:	150	RACE/SEX:	White/Female
DL #:		SSN:	
ALIAS:		ALIAS D.O.B.:	

OFFENSE DATE: 10/29/18

And take the person above-named without unnecessary delay before the nearest judge of the Court of Record; to be advised that the person is being held for the alleged commission of the following crime(s), to-wit: In violation of C.R.S., 1973 revised:

Charge #	CRS #	Charge	Classification
1	19-3-304(1)	Failure to Report Child Abuse or Neglect	3M

That this warrant for arrest is issued upon affidavit sworn to and affirmed before this court and relating facts sufficient to establish probable cause that the above-named offense has been committed and probable cause that the person named in this warrant committed that offense.

BAIL IS SET AT \$ 2500 PR WITH CONDITION(S) _____

DATE: 10-29-19

[Signature]
Judge's Signature

Boulder Police Case # P19-12679

Detective Kara Wills 303-441-3482

RETURN OF SERVICE

I hereby certify that I have duly executed this warrant on this _____ day of _____, 20_____,
by _____ as I am herein commanded.

SHERIFF FEES:

Service \$ _____
Mileage \$ _____
Return \$ _____
Total \$ _____

By: _____
Deputy

AFFIDAVIT FOR ARREST WARRANT

The Affiant (hereafter referred to as "I"), Detective Kara Wills, is a duly commissioned Police Officer for the City of Boulder, located in the County of Boulder, State of Colorado, being duly sworn, deposes and states:

I am currently assigned to the Detective Section of the Boulder Police Department and investigate crimes occurring within the City of Boulder, County of Boulder, and State of Colorado. I have probable cause to believe the offense of Failure to Report Child Abuse or Neglect, as outlined in C.R.S. 19-3-304 (1) occurred on 10/29/18. Furthermore, I have probable cause to believe Marilyn Lori (DOB 03/16/1973) committed this offense. The associated Boulder Police Department case number is P19-12679.

On 08/30/19 a sexual assault was reported to Officer [REDACTED] Officer [REDACTED] is the School Resource Officer for [REDACTED] which is located at [REDACTED] in the City/County of Boulder, State of Colorado.

The assault was reported to her by the school's Interventionist, [REDACTED], and a school counselor, [REDACTED]. They informed Officer [REDACTED] that the assault occurred during Homecoming of last year on [REDACTED]. They further informed her the victim was reported to be [REDACTED] and the suspect was [REDACTED]. Both are students at [REDACTED]. The assault was ultimately documented under Boulder Police Case P19-10371 and was assigned to Detective Cantu and I, Detective Wills, to follow-up on.

During the course of our investigation, [REDACTED] shared she attempted to report the assault to a counselor the previous year. [REDACTED] was brought into [REDACTED]'s office on 09/03/19 after [REDACTED] learned about the assault. When asked about the assault, [REDACTED] told [REDACTED] "It was homecoming and we got a party bus. I was drinking and had a hard time standing up. I was sitting by [REDACTED] because we were friends. I trusted him. I couldn't stand up. He started touching me and I told him to stop because I didn't like it. He started to put his hand between my legs, and I tried to squeeze them together so he couldn't....I trusted him. I couldn't escape or leave, and no one was helping. There were people around who saw and didn't do anything. We got to the restaurant and I thought I would be ok. I wasn't. He sat down next to me and kept touching me all over. I told him to stop and that I didn't like it."

[REDACTED] further told [REDACTED], "I tried to report it after it happened but the counselor who worked here before you said I would have to sit down with [REDACTED] [REDACTED] told [REDACTED] she felt discouraged to come forward.

[REDACTED] had a Blue Sky Bridge interview on 09/18/19 and Detective Cantu watched the interview. In the interview, [REDACTED] told the interviewer she tried to report the incident to the school in 2018. She described being paired up with [REDACTED] for something called [REDACTED]. [REDACTED] is where two juniors, in this case [REDACTED] and [REDACTED] are paired up and mentor a group of incoming freshman students. [REDACTED] was upset because [REDACTED] was behaving as if nothing happened at Homecoming. She came into the office to speak to her counselor, [REDACTED] but

she was not there. She instead spoke with a, "tall blonde" who was the director. She did not provide the counselor with as much detail. The counselor told her that the best thing would be for [REDACTED] to sit down and tell [REDACTED] what happened. [REDACTED] was put off by this and was also upset because the counselor was making a big deal about [REDACTED] consuming alcohol the night of Homecoming. The counselor told [REDACTED] they would talk about it again soon and dismissed her back to class. [REDACTED] said she was never contacted by the counselor again.

[REDACTED] and [REDACTED] told Officer [REDACTED] that the previous counselor was Marilyn Lori. Detective Cantu found out that Lori was employed through Mental Health Partners and was working in the school in 2018. Detective Cantu was informed by [REDACTED] that Lori made an inquiry, but she would not be able to release it. She told Detective Cantu the appropriate forms would need to go to Mental Health Partners.

On 09/27/19 I sent [REDACTED] mother, an Authorization for Disclosure for Protected Health Information form. I specified that Mental Health Partners release the inquiry made by Marilyn Lori for [REDACTED]. Detective Cantu sent the form to Mental Health Partners on 09/30/19.

On 10/04/19 Mental Health Partners sent the inquiry details. I learned on 10/29/18 at 1350 hours Marilyn Lori created an inquiry in reference to a meeting she had with [REDACTED]. [REDACTED] was [REDACTED] old at the time she came to report the incident to Lori. The inquiry indicates the meeting was, "face to face" at "the school." [REDACTED] is listed as the client. In the notes portion it states, "Ct came to counseling office to discuss an incident with a male peer on Homecoming evening. Talked about him being inappropriate with her in the limo after the dance. This PI encouraged Ct to talk to her parents and/or the authorities. Ct said she would think about it and follow up at a later date. Reported feelings of sadness, anger, frustration, and disbelief. This PI used empathy and reflective listening to support Ct."

In the disposition of the inquiry Lori wrote, "Ct will follow up with this PI about reporting the incident to authorities. Ct was given crisis line and MHP intake information for additional support."

According to [REDACTED] she saw Lori in the hallway after she reported the incident, and she was never called back into Lori's office to discuss the incident further.

I checked our computer database and did not find any reports generated by Lori about the incident [REDACTED] reported. Additionally, the incident was not reported to Officer [REDACTED] after Lori created the inquiry.

Per state statute, Lori would be classified as a social worker or a mental health professional and in this capacity, she is required to report any abuse or neglect of a child to authorities. Lori failed to do so.

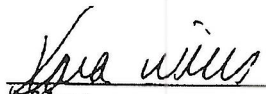
I utilized computer databases and found only one Marilyn Lori with a Colorado Driver License. The license describes Lori as a white female, having blonde hair, blue eyes, being 5'9" tall, and weighing 135 pounds. [REDACTED] described Lori as a tall blonde female. In her LinkedIn

profile, Lori lists she was a "Prevention Interventionist" with Mental Health Partners. It lists her employment being from November 2017 to June 2019 and below that it says, "[REDACTED]"


Lori has no previous criminal history.

I believe that sufficient probable cause exists to believe that **Marilyn Lori**, with a date of birth of **03/16/1973**, and is further described as a **White Female** who is **5'09"** tall, **135** pounds with **Blonde** hair and **Blue** eyes with a social security number of [REDACTED] committed the crime of **Failure to Report Child Abuse or Neglect** as outlined in C.R.S. 19-3-304(1) as amended.

I respectfully request that a warrant be issued for **Marilyn Lori**, with a date of birth of **03/16/1973**, and is further described as a **White Female** who is **5'9"** tall, **135** pounds with **Blonde** hair and **Blue** eyes with a social security number of [REDACTED] committed the crime of **Failure to Report Child Abuse or Neglect** a class 3 Misdemeanor.


Affiant

Sworn to before me and subscribed in my presence this 29th day of Oct, 2019
in the City of Boulder, County of Boulder, and the State of Colorado.


Judge