IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN MILWAUKEE DIVISION

ERIC O'KEEFE and WISCONSIN CLUB FOR GROWTH, INC., **Plaintiffs,** **v.** **FRANCIS SCHMITZ, in his official and personal capacities,** **JOHN CHISHOLM, in his official and personal capacities,** **BRUCE LANDGRAF, in his official and personal capacities,** **DEAN NICKEL, in his official and personal capacities, and** **GREGORY PETERSON, in his official capacity,** **Defendants.**	Civil Case No. 14-cv-00139

REPLY IN SUPPORT OF MOTION TO UNSEAL OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, AMERICAN SOCIETY OF NEWS EDITORS, WISCONSIN BROADCASTERS ASSOCIATION, WISCONSIN FREEDOM OF INFORMATION COUNCIL, AND WISCONSIN NEWSPAPER ASSOCIATION

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The Reporters Committee for Freedom of the Press, American Society of News Editors, Wisconsin Broadcasters Association, Wisconsin Freedom of Information Council, and Wisconsin Newspaper Association (collectively, the "Coalition") respectfully submit this Reply in Support of their Motion to Unseal.

INTRODUCTION

The Coalition's Motion to Unseal challenges this Court's sealing, in whole or in part, of more than 125 documents on the Court's docket in violation of the First Amendment and common law rights of access of the Coalition, the press, and the public. Agreeing with the Coalition that "the Court must make more specific findings in order to justify keeping the filings in this case under seal," this Court directed "any party [that] objects to unsealing any part of the record in this case" to respond. ECF No. 192. The parties have now responded and—with limited exceptions discussed below—are all in agreement that the record *should be unsealed*. *See* ECF Nos. 210, 211, 216, and 218. Notably, even Gregory Peterson, the state court judge that presided over the John Doe proceeding at issue, has stated that he does not oppose unsealing the record in this case (ECF No. 214), and three other Defendants—John Chisholm, Bruce Landgraf, and David Robles (collectively, the "Milwaukee County prosecutors")—have stated that they "fully support unsealing the record" (ECF No. 216, p. 1).

While Plaintiffs Eric O'Keefe and the Wisconsin Club for Growth largely support the Coalition's Motion to Unseal, they argue that certain documents "should remain under seal to protect Plaintiffs' rights and interests." *See* ECF. No. 218, p. 2 ("Pltfs' Resp."). Specifically, Plaintiffs urge this Court to seal "four documents, and limited portions of five party filings that extensively rely upon those documents or otherwise implicate Plaintiffs' First Amendment privilege." *Id*. As set forth in detail below, the public has a contemporaneous constitutional and common law right to access the documents identified by Plaintiffs and, in the event this Court

finds that a recognized privilege requires any portion of them to remain sealed, such sealing should be no broader than necessary to protect privileged information.

In addition to Plaintiffs' limited objections to unsealing the record in this case, two anonymous "Unnamed Intervenors" have sought to intervene and oppose the Motion to Unseal. *See* ECF Nos. 207–209, 212, 213, 219, 220. Based solely on the representations made in their filings, the Coalition understands these individuals to have been involved in the John Doe proceeding. *See* ECF Nos. 207, 208; *see also* ECF No. 209, p. 3. The Unnamed Intervenors assert "on information and belief," that documents filed with the Court under seal may disclose "private and personal information" pertaining to them, including, among other things, their "identities," "political opinions" and "possibly other very personal private information about them." ECF No. 209, p. 2.

Notwithstanding (1) that the parties to this action—including the John Doe judge who entered the Secrecy Order upon which this Court's sealing orders were based—do not oppose the Coalition's Motion to Unseal, and (2) that the asserted "interest" of the two Unnamed Intervenors in purportedly preventing public disclosure of "private and personal information" concerning them that may (or may not) be contained in the sealed documents is narrow (*see* ECF, No. 209, p. 4), the Unnamed Intervenors nevertheless ask this Court to deny the Coalition's Motion to Unseal in its entirety. Their broad, meritless request—which is based on an erroneous legal standard—must be rejected.[1]

[1] The Coalition does not oppose the Unnamed Intervenors' request to intervene *only if*, and *to the extent that*, material has been filed with this Court under seal that implicates their privacy or other personal interests. With respect to all sealed material in the record that does *not* implicate any such interest, not only are they precluded from intervening as a matter of right under Rule 24(a) to oppose its unsealing, but they also lack standing, and thus cannot be permitted to intervene under Rule 24(b). *See Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571–73 (7th Cir. 2009) (explaining that standing is a minimum requirement for intervention under Rule 24).

Contrary to the argument of the Unnamed Intervenors, and as set forth in detail in the Motion to Unseal, the public has a very "real stake" in the openness of its courts (Intervenors' Joint Mem., p. 10), particularly where, as here, the sealing of court documents impairs the public's ability to evaluate the actions not only of the judicial branch, but of the executive branch as well. *Smith v. U.S. Dist. Court for S. Dist*, 956 F.2d 647, 650 (7th Cir. 1992) ("in such circumstances, the public's right to know what the executive branch is about coalesces with the concomitant right of the citizenry to appraise the judicial branch"). For these reasons, the Court should permit the Coalition, press, and public to access the entirety of the filings in this case. In the event the Court determines that a compelling interest requires keeping a limited amount of the sealed information under seal for some period of time, it should enter a specific and narrowly tailored sealing order that is no broader than necessary to serve that interest, and release redacted portions of the sealed records as appropriate.[2]

ARGUMENT

I. The Press And The Public Have A Constitutional And Common Law Right To Access Documents Filed With This Court

A. The Sealed Documents *Must* Be Unsealed Absent A Compelling, Overriding Interest That Warrants Their Suppression

It is undisputed that the public has a First Amendment right of access to "any documents" upon which the Court may rely "in making its decisions." *Grove Fresh Distribs. v. Everfresh Juice Co.*, 24 F.3d 893, 895, 897–98 (7th Cir. 1994). Such documents include those filed in support of dispositive motions, and other motions to determine substantive legal claims. *See In re Continental Illinois Sec. Litigation*, 732 F.2d 1302, 1309–10 (7th Cir. 1984) (holding that First

[2] The Coalition does not seek to unseal information covered by Federal Rule of Civil Procedure 5.2(a), which permits redaction of "an individual's social security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number."

Amendment right of access attached to document filed in support of motion to terminate claims even though motion was withdrawn after the district court issued a tentative ruling); *see also Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 545 (7th Cir. 2002) (those documents "that influence or underpin the judicial decision are open to public inspection . . ."). In addition to the First Amendment right of access, the public *also* has a separate common law right of access that broadly applies to "*everything in the record*," including "items not admitted into evidence," "materials on which a court relies in determining the litigants' substantive rights," and "transcripts of proceedings." *Smith*, 956 F.2d at 648, 650 (italics added).

The documents and information that Plaintiffs ask this Court to keep under seal unquestionably implicate judicial decision-making. *In re Continental Illinois Sec. Litigation*, 732 F.2d at 1310. All the documents Plaintiffs have identified, save one, were submitted in support of or in opposition to Plaintiffs' Motion for Preliminary Injunction, which this Court granted. *See* ECF 218:2 (Table of Sealed Documents); *see also* ECF Nos. 181, 200. The remaining document was submitted in connection with Defendants' Motion to Dismiss. These documents, accordingly, fall within the scope of the public's First Amendment right of access. Nor is there any dispute that they fall within the public's broad common law right of access

As this Court has acknowledged, the documents at issue were sealed by the Court "out of deference to the secrecy order in the state-court John Doe proceedings," and "more specific findings" must be made "in order to justify keeping the filings in this case under seal." ECF No. 192. As set forth in the Coalition's Motion to Unseal, the constitutional right of access to court documents can *only* be overcome by a showing that sealing is both "essential to preserve higher values" and "narrowly tailored to serve that interest." *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984). And, to overcome the common law's "strong presumption" that

judicial records are open to the public, the Court must find that the values served by openness are outweighed by factors that militate against public access—such as that the "records would be used for 'improper purposes.'" *United States v. Edwards*, 672 F.2d 1289, 1293 (7th Cir. 1982).

B. The Unnamed Intervenors Urge This Court To Adopt An Erroneous Legal Standard

That the documents sealed on this Court's docket relate to a John Doe proceeding neither alters the legal standards this Court must apply, nor justifies sealing documents filed in this civil litigation. The Unnamed Intervenors, however, relying on their assertion that "the John Doe proceeding is a kissing cousin of the federal grand jury" (Inter. Joint Mem., p. 11), urge application of an erroneous legal standard that would turn the public's *presumptive* right to access material filed with this Court on its head. As the John Doe judge himself apparently has already acknowledged,[3] the Secrecy Order entered in the John Doe proceeding does not supplant this Court's independent obligation to make specific findings of a compelling interest that would justify sealing material on its docket.

The case law cited by the Unnamed Intervenors—*none* of which involves a motion to seal or unseal material filed with a district court, and *none* of which addresses the public's constitutional or common law rights to access court documents—does not support their contention that the documents at issue must remain sealed unless the Coalition satisfies the standard set forth in *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211 (1979). *Douglas*

[3] In their response to the Motion to Unseal, the Milwaukee county prosecutors state that the "Use and Dissemination orders signed by defendant Judge Gregory Peterson permit John Doe materials to be used in this federal lawsuit *and permit them to be made public upon the order of this Court*." ECF No. 216 (italics added). Likewise, in his response to the Motion to Unseal, Defendant Schmitz stated that "[t]here may be reason to maintain secrecy in order to protect non-party individuals identified in documents uncovered in the course of the investigation *but that decision, as contemplated by the John Doe judge [ECF 117-1], is now within the discretion of this Court* . . . ." ECF, No. 211 (italics added).

Oil's standard for determining when a district court may compel the production of federal grand jury transcripts under Federal Rule of Criminal Procedure 6(e) has no application here.

John Doe proceedings are not analogous to federal grand jury proceedings for purposes of the public's rights of access. Any such contention is belied by both the text and history of Wisconsin's John Doe statute—which make clear that John Doe proceedings, like other types of probable cause hearings, are presumptively open. *See* Mtn. to Intervene, pp. 4–17.[4] Indeed, the Wisconsin Supreme Court has *expressly acknowledged* that John Doe proceedings under section 968.26 are "presumptively open" to the public, concluding that while a John Doe judge "may" close a John Doe proceeding, he or she may do so only to the extent necessary to serve a "compelling interest." *State v. Unnamed Defendant*, 150 Wis. 2d 352, 359 (1989) (superseded by statute on other grounds as stated in *State ex rel. Williams v. Fiedler*, 282 Wis. 2d 486 (2005)); *see also State ex rel. Unnamed Person No. 1 v. State (In re Doe)*, 660 N.W.2d 260 (Wis. 2003) (stating that "secrecy *may* be vital to the very effectiveness of a John Doe proceeding," but that "any secrecy order 'should be drawn as narrowly as is reasonably commensurate with its purposes'") (citation omitted) (italics added). The Unnamed Intervenors' bald assertion that "John Doe proceedings in Wisconsin are, to [their] knowledge, invariably carried out in secret," is no response to this authority. Intervenors' Joint Mem., p. 10.

[4] The Unnamed Intervenors' argument that John Doe proceedings are not presumptively open to the public either because a John Doe judge does not function as "a court of record" (Inter. Joint Mem., p. 8) or because a John Doe proceeding occurs pre-indictment and, thus, any resulting complaint "must then be subjected to a preliminary examination" (*id*. at 10), ignores *State ex rel. Newspapers, Inc. v. Circuit Court for Milwaukee County*, 124 Wis. 2d 499 (1985). In that case, the Wisconsin Supreme Court held that a *pre-indictment* probable cause hearing—even though it was not a "sitting of the court"—was "subject to the same presumption of openness that applies to most judicial proceedings in Wisconsin." *Id.* at 505.

Moreover, the *Douglas Oil* standard is inapplicable here because the Coalition does not seek to *compel* the production of any material; rather it seeks access to material already filed by the parties in this case. *See Douglas Oil*, 441 U.S. 211. Indeed, *United States v. Crumble*, 331 F.2d 228 (7th Cir. 1964), which the Unnamed Intervenors incorrectly assert is "case law on point" (Intervenors' Joint Mem., p. 12), demonstrates precisely why the standard they urge does not apply here. In *Crumble*, the Seventh Circuit *did not address* the sealing of material filed on a district court's docket, nor the public's presumptive right to access such material. The language from *Crumble* relied on by the Unnamed Intervenors addressed whether the district court erred in declining to "direct *the magistrate who conducted the State [John Doe] proceeding* to testify concerning the testimony given by the defendant. . . and to turn over a transcript of the testimony given by the government witness and by the defendant for use by the defendant in the conduct of his defense." *Id*. at 229–30. The Seventh Circuit, "[a]ssuming, for the purpose of this case, that the District Court has power and authority to compel disclosure of testimony given" in a state court John Doe proceeding, concluded that, for purposes of determining whether "to compel disclosure of the testimony" of the state court judge and to "require" him or her to produce "a transcript," "a proper regard for the preservation of a delicate balance of state-federal relations" demanded that the court of appeals "here be governed by the doctrine which has been applied to protect the secrecy of federal grand jury testimony." *Id*. at 231. *Henderson v. Raemisch*, a district court order cited by the Unnamed Intervenors as "applying *Crumble*," similarly involved a request for the issuance of a subpoena to a John Doe judge to compel the production of testimony given in a John Doe proceeding. 2012 U.S. Dist. LEXIS 3009, 9–10 (W.D. Wis. Jan. 10, 2012).

This Court need not question whether it has the "authority" to determine whether material filed by the parties should be sealed or unsealed on its docket. *Cf. Crumble*, 331 F.2d at 231. To the contrary, this Court has an independent *obligation* to determine whether sealing the record is warranted. *Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999); *see also Dixon v. Starring*, 2011 U.S. Dist. LEXIS 123982, *2-4 (E.D. La. Oct. 26, 2011). And such a determination in no way threatens the "delicate balance of state-federal relations" implicated in *Crumble*. *Cf. Crumble*, 331 F.2d at 231. The Unnamed Intervenors' contention that the Coalition's Motion to Unseal must be evaluated using a framework reserved for requests to compel the production of unfiled grand jury material is without merit.[5]

Finally, the Unnamed Intervenors and Plaintiffs argue that the common law presumption of access should not apply to "materials properly submitted to the court under seal" (Intervenors' Joint Mem., p. 17 (quoting *United States v. Corbitt*, 879 F.2d 224, 238 (7th Cir. 1989)); Plaintiffs' Resp., p. 10 (same)), and, thus, that the Coalition was required to "make a substantial, and specific, showing of need for disclosure" to justify unsealing the documents at issue. *Corbitt*, 879 F.2d at 238. Yet, as set forth in the Motion to Unseal, the documents at issue here were *not* properly sealed. As the Seventh Circuit stated in *Corbitt*, immediately after the language quoted by both Plaintiffs and Unnamed Intervenors: "Of course, the public's right to

[5] That the Unnamed Intervenors confuse the issues before this Court, and have elected to ignore the posture of the Coalition's Motion to Unseal, is apparent from their erroneous contention that Seventh Circuit case law "mandate[d]" that the Coalition "first seek relief in state court" before seeking to unseal documents filed with this Court. Intervenors' Joint Mem., p. 14, fn. 5 (citing *Lucas v. Turner*, 725 F.2d 1095 (7th Cir. 1984), for the proposition that plaintiffs seeking "to compel production of the minutes of a state grand jury" were, for reasons of "comity" required to show "that the state supervisory court ha[d] considered his request and ruled on the continuing need for secrecy"). Not only is *Lucas* inapposite for the reasons set forth above, the Unnamed Intervenors ignore the fact that here, the John Doe judge is a party to this case, does not oppose the Coalition's Motion to Unseal, and appears to have acknowledged this Court's authority to determine whether documents filed with the Court should be sealed.

inspect judicial documents may not be evaded by the wholesale sealing of court papers. Instead, the district court must be sensitive to the rights of the public *in determining whether any particular document, or class of documents, is appropriately filed under seal*." 879 F.2d 224, 228 (italics added). Because the "question" before this Court is "*whether*" any of the sealed documents or information on its docket "are properly filed under seal," the standard applied in *Corbitt* is inapplicable. *Id*. (italics added).

C. Plaintiffs Wrongly Contend That The Public's First Amendment Right Of Access Is Not Immediate

The presumption of access afforded by the First Amendment is "a right of *contemporaneous* access." *In re Continental Illinois Sec. Litigation*, 732 F.2d at 1309–10 (italics added); *Grove Fresh*, 24 F.3d at 897 ("In light of the values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous.") Accordingly, Plaintiffs' assertion that the public does not have a First Amendment right of access to certain documents filed with the Court "at this time" because the Court has not yet "dispose[d] of one or more claims in this litigation" is erroneous. *In re Continental Illinois Sec. Litigation*, 732 F.2d at 1310 (stating that "disclosure of the contents of" a document filed in support of a motion "would have been proper *at the time the motion was still pending*") (italics added).

II. No Compelling Interest Justifies Sealing The Record In This Case

A. The Parties Concede That Sealing Is Not Warranted To Protect The "Effectiveness" Of The John Doe Proceeding

The prosecutors involved in the John Doe proceeding have acknowledged that sealing is *not* "vital to the very effectiveness of [the] John Doe proceeding." *State ex rel. Unnamed Person No. 1 v. State (In re Doe)*, 660 N.W.2d 260, 277 (Wis. 2003). They—along with the John Doe judge—do not oppose the Motion to Unseal, and do not seek to maintain the secrecy of that

proceeding. *See* ECF No. 210 at 2 (Def. Nickel's Resp. to Mtn. to Unseal) (conceding that "the John Doe investigation has become so widely publicized and involves matters of such high public importance that secrecy may no longer be justified"); ECF No. 211 at 3 (Def. Schmitz Resp. to Mtn. to Unseal) (conceding that "the John Doe investigations at issue in this litigation have become so widely known that maintaining the integrity of the investigation may no longer justify maintaining secrecy"); *see also* ECF No. 216 (Milwaukee County Prosecutors' Resp. to Mtn. to Unseal) (stating that they "fully support unsealing the record").[6]

Plaintiffs and the Unnamed Intervenors, however, argue that because there is no First Amendment or common law right of access to "search warrant affidavits before an indictment," such material must remain sealed in connection with this litigation. Pltfs' Resp., pp. 11–12; Intervenors' Joint Mem., p. 7, fn. 2. They are wrong. First, the public has a constitutional and common law right to access pre-indictment search warrant material. *See*, *e.g.*, *In re Application and Affidavit for a Search Warrant*, 923 F.2d 324, 326 (4th Cir. 1991) ("a newspaper has a common law right of access to affidavits supporting search warrants"); *In re Search Warrant for Secretarial Area-Gunn*, 855 F.2d 569, 573 (8th Cir. 1988) ("the first amendment right of public access does extend to the documents filed in support of search warrant applications"). Second, the public has First Amendment and common law rights to access the material *filed in this civil lawsuit*. Third, it is irrelevant here whether search warrant material may, generally speaking, be sealed pre-indictment, while a criminal investigation is ongoing, in order to protect the integrity

[6] The Unnamed Intervenors filed a heavily redacted Joint Memorandum that redacted *the entirety* of their argument as to why "maintaining the secrecy of the investigation" is purportedly "essential." *See* Intervenors' Joint Mem., pp. 19–22. This was improper. *See In re Krynicki*, 983 F.2d 74, 76 (7th Cir. 1992) (stating that "briefs themselves, including all of the legal argument**,** belong in the public domain"; "[p]ublic argument is the norm," and even the "occasional withholding of the name of a litigant [] does not shield the facts and arguments of the case. The parties present public argument leading to a public decision.").

of an investigation that "requires secrecy." *See Times Mirror Co. v. United States*, 873 F.2d 1210, 1214 (9th Cir. 1989)). As the Milwaukee county prosecutors argue: "all parties, including Judge Peterson, agree that the [secrecy] order need no longer apply. Therefore, there is no longer a basis for any search warrant affidavits to remain sealed." ECF No. 221, p. 6.

B. A Generalized "Privacy" Interest Does Not Warrant Sealing

Only narrow categories of information—such as trade secrets, information covered by a recognized privilege, and "information required by statute to be maintained in confidence (such as the name of a minor victim of a sexual assault)"—implicate a "compelling interest" that may justify sealing.[7] "[M]any litigants would like to keep confidential the salary they make, the injuries they suffered, or the price they agreed to pay under a contract, but when these things are vital to claims made in litigation they must be revealed." *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 547 (7th Cir. 2002).

The party seeking to seal material bears the burden of demonstrating, with specificity, that sealing is warranted. *Id.* (rejecting joint motion to seal premised on "a bald assertion that confidentiality promotes [the parties'] business interests"). In requesting that this Court seal certain documents in the record, Plaintiffs assert that "disclosure would compromise Plaintiffs' First Amendment privilege" (*see* Pltfs' Resp., pp. 5–7) and also contend that disclosure would

[7] Plaintiffs contend that sealing certain material is appropriate because "Wisconsin law generally prohibiting disclosure of materials obtained in Government Accountability Board investigations by that agency's officials and employees reflects a 'strong public policy favoring confidentiality'." Pltfs' Resp., p. 11. But as the Milwaukee county prosecutors argue, this nondisclosure rule, which applies to investigators, prosecutors, employees of an investigator or prosecutor, and members or employees of the board, and only "prior to presentation of information or record in a court of law," does not require that the material filed with this Court be maintained in confidence. ECF No. 221, p. 6 (citing Wis. Stat. § 12.13(5)).

injure their privacy interests, as well as the privacy interests of non-parties identified in the documents at issue (*id*., pp. 8, 10–11).[8]

Because the Coalition lacks access to the sealed material, it is unable to address whether these interests are actually implicated here. Generally speaking, "information covered by a recognized privilege (such as the attorney-client privilege)" or information protected by statute may implicate a compelling interest. *Baxter Int'l*, 297 F.3d at 547; *see also United States v. Foster*, 564 F.3d 852, 853 (7th Cir. 2009) ("Information that affects the disposition of litigation belongs in the public record unless a statute or privilege justifies nondisclosure.") Plaintiffs must, however, demonstrate with specificity how the privilege they rely upon precludes disclosure. *Baxter Int'l*, 297 F.3d at 547. Further, the Seventh Circuit has repeatedly "disapproved any general 'privacy' rationale for keeping documents confidential" whether or not the privacy interest asserted is that of a party or a non-party. *Foster*, 564 F.3d at 854 (rejecting motion of the U.S. Attorney to maintain documents under seal "in order to protect the privacy interests of the . . . witness involved"). As the Seventh Circuit has stated: "Statutes, yes; privileges, yes; trade secrets, yes; risk that disclosure would lead to retaliation against an informant, yes; a witness's or litigant's preference for secrecy, no. The law could not be clearer." *Id*. Accordingly, no general interest in the privacy of any party, or non-party, provides an adequate justification for sealing any material on this Court's docket.

[8] The Unnamed Intervenors likewise assert a First Amendment rationale, as well as a generalized privacy argument, for keeping documents filed with this Court under seal. *See* Intervenors' Joint. Mem. pp. 16–22. Like the Coalition, however, the Unnamed Intervenors "do not know what is in the record before this Court" as "they are not parties to this case, have no access to the unredacted briefs and other papers filed in this Court, and have been barred from accessing the sealed John Doe materials." *Id*., p. 9. Accordingly, it is not clear what—if any—specific documents in the record implicate any interest asserted by the Unnamed Intervenors.

C. To The Extent The Court Finds That A Recognized Privilege Requires Sealing, Any Sealing Order Should Be Narrowly Tailored

To the extent this Court finds that a recognized privilege requires that some documents, or portions thereof, be kept under seal, such sealing should be no broader than necessary to protect the information the Court deems privileged. Based on Defendant Nickel's Objection to Plaintiffs' Proposed Order, the Coalition understands that the documents and information that Plaintiffs ask this Court to maintain under seal consist of "hundreds of pages" of the record. ECF No. 222, p. 3. Thus, should the Court find that Plaintiffs have asserted a compelling interest that justifies sealing, its order should be limited *only* to those portions of those documents identified by Plaintiffs that *must* be sealed to protect that interest. Particularly in light of the public interest in (and the public importance of) this litigation, and the fact that Plaintiffs initiated this lawsuit (and themselves submitted some of the documents they seek to maintain under seal to the Court), the fact that "substantial redaction" may be required to "comply with Fed. R. Civ. P. 5.2 and other requirements" is no justification for sealing those documents in their entirety. Pltfs' Resp., p. 12, fn. 6. Likewise, to the extent the Court finds that a compelling interest requires sealing information concerning the Unnamed Intervenors, the Court should seal *only* those portions of the record necessary to protect that interest. Unnamed Intervenors' request that the Court keep *all* of the more than 125 sealed documents under seal merely to shield their "private and personal information" from public view is unjustifiably overbroad. ECF No. 209, p. 2.

CONCLUSION

The Coalition respectfully requests that this Court grant its Motion to Unseal and permit the press and the public to access the entirety of the filings in this case. In the event the Court determines that a compelling interest necessitates keeping a limited amount of information under

seal for some period of time, the Coalition respectfully requests that the Court enter a narrowly tailored sealing order that is no broader than necessary to serve that interest, and release redacted portions of the sealed records as appropriate.

Dated: May 21, 2014

Respectfully submitted,

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