

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES)	
)	
v.)	No. 08 CR 888
)	
ROD BLAGOJEVICH and)	Hon. James B. Zagel
ROBERT BLAGOJEVICH,)	
)	
Defendants.)	

**CHICAGO TRIBUNE’S MOTION TO INTERVENE AND
CHALLENGE THE WHOLESALE FILING OF PLEADINGS UNDER SEAL**

NOW COMES Chicago Tribune Company (“Tribune”), by its undersigned attorneys, pursuant to Federal Rule of Civil Procedure 24(b)(2), and moves this Honorable Court to allow Tribune to intervene in this matter for the limited purpose of objecting to the wholesale sealing of pleadings filed in this case. In support of this Motion, Tribune states as follows:

1. Tribune publishes the daily *Chicago Tribune*, which, for more than a century, has reported on newsworthy events and matters of public concern in the Chicago metropolitan area and beyond. The news media’s First Amendment and common law rights to obtain access to judicial proceedings and records, and to report to the fullest extent possible on what transpires in the courtroom, is long-standing and especially critical in criminal proceedings. *See Richmond Newsp., Inc. v. Virginia*, 448 U.S. 555, 575 (1980). Those rights, and the public’s interest in their vindication, are of paramount importance in this case, alleging public corruption at the highest levels of State government. As the Supreme Court and Seventh Circuit have recognized, those who seek to assert the right of public access to court proceedings and judicial records “must be given an opportunity to be heard.” *Globe Newspaper. Co. v. Super. Ct. for Norfolk*, 457 U.S. 596, 609 n.25 (1982) (citation omitted); *In re Associated Press*, 162 F.3d 503, 507 (7th Cir. 1998) (recognizing right of newspapers to intervene).

2. Tribune seeks to intervene in these ongoing proceedings to present arguments and case law challenging the parties' increasing practice of filing motions and supporting documents wholly under seal, without even making a redacted version of the sealed document available to the public. Since February 22 of this year, no less than 16 such sealed filings have been made, as shown in the following excerpt from the Court's docket:

02/22/2011	619	SEALED MOTION by Rod Blagojevich (Sorosky, Sheldon) (Entered: 02/22/2011)
02/22/2011	620	SEALED MOTION by Rod Blagojevich (Attachments: # 1 Exhibit Exhibit 1, Letter of Dr. M. J. Lesca, M.D.)(Sorosky, Sheldon) (Entered: 02/22/2011)
02/22/2011	621	SEALED MOTION by Rod Blagojevich <i>MOTION TO SUPPRESS BECAUSE THE AFFIDAVITS SEEKING WIRETAPS FAILED TO RECITE PROBABLE CAUSE AND CONTAINED MISREPRESENTATIONS AND OMISSIONS OF FACT</i> (Sorosky, Sheldon) (Entered: 02/22/2011)
03/08/2011	633	SEALED RESPONSE by USA to SEALED MOTION by Rod Blagojevich <i>MOTION TO SUPPRESS BECAUSE THE AFFIDAVITS SEEKING WIRETAPS FAILED TO RECITE PROBABLE CAUSE AND CONTAINED MISREPRESENTATIONS AND OMISSIONS OF FACT</i> 621 (Attachments: # 1 Exhibit)(Hamilton, Carrie) (Entered: 03/08/2011)
03/09/2011	635	SEALED RESPONSE by USA to SEALED MOTION by Rod Blagojevich 619 (Schar, Reid) (Entered: 03/09/2011)
03/18/2011	637	SEALED RESPONSE by USA to SEALED MOTION by Rod Blagojevich 620 (Bonamici, Debra) (Entered: 03/18/2011)
03/18/2011	639	SEALED MOTION by Rod Blagojevich <i>Motion to Reconsider Defendant's Motion for Discovery to Obtain Contents of Missing Telephone Calls and Response to Government's Oral Arguments</i> (Attachments: # 1 Exhibit Attachment 1 - Email, # 2 Attachment 2 - Letter)(Sorosky, Sheldon) (Entered: 03/18/2011)
03/18/2011	640	SEALED MOTION by Rod Blagojevich <i>Reply to Sealed Response</i> (Sorosky, Sheldon) (Entered: 03/18/2011)
03/22/2011	645	SEALED RESPONSE by USA to MOTION by Rod Blagojevich to suppress <i>BASED ON THE GOVERNMENTS IMPROPER MINIMIZATION OF PRIVILEGED AND PERTINENT CALLS IN VIOLATION OF TITLE III OR, IN THE ALTERNATIVE, REQUEST FOR AN EVIDENTIARY HEARING</i> 617 (Bonamici, Debra) (Entered: 03/22/2011)

		03/22/2011)
03/25/2011	646	SEALED MOTION by Rod Blagojevich (Sorosky, Sheldon) (Entered: 03/25/2011)
03/29/2011	648	SEALED RESPONSE by USA to SEALED MOTION by Rod Blagojevich 646 (Bonamici, Debra) (Entered: 03/29/2011)
04/04/2011	650	SEALED REPLY (Attachments: # 1 Exhibit Attachment 1)(Sorosky, Sheldon) (Entered: 04/04/2011)
04/04/2011	651	SEALED MOTION by Rod Blagojevich (Sorosky, Sheldon) (Entered: 04/04/2011)
04/06/2011	652	SEALED REPLY (Sorosky, Sheldon) (Entered: 04/06/2011)
04/07/2011	654	SEALED REPLY by USA to SEALED MOTION by Rod Blagojevich 646 (Bonamici, Debra) (Entered: 04/07/2011)
04/08/2011	655	SEALED REPLY (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)(Sorosky, Sheldon) (Entered: 04/08/2011)

3. A long line of Supreme Court decisions recognize a *presumptive* right of public access to the criminal justice system – including specifically pretrial pleadings and hearings, which often are as important as the trial itself. *Press-Enterprise Co. v. Super. Ct. of California*, 464 U.S. 501, 508-10 (1984) (“*Press-Enterprise I*”); *Waller v. Georgia*, 467 U.S. 39, 46 (1984); *Presley v. Georgia*, 130 S. Ct. 721, 725 (2010); *Richmond Newsp.*, 448 U.S. at 564-69; *Globe Newsp.*, 457 U.S. at 605-06. In addition to the First Amendment right of access, the public also has a common law right of access to court files. *Nixon v. Warner Comm’cns, Inc.*, 435 U.S. 589, 597 (1978); *In re Continental Ill. Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984); *United States v. Blagojevich*, 612 F.3d 558, 563 (7th Cir. 2010).

4. The First Amendment-based presumption of access can be overcome *only* by a showing that closure “is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enterprise I*, 464 U.S. at 510. To justify secrecy, a trial court must:

- (1) identify an overriding interest requiring denial of access;

- (2) narrowly tailor the order to protect that interest (and, in doing so, specifically consider alternatives to denying access); and
- (3) make specific findings adequate to support the decision that denying access is the only alternative that can serve that interest.

Id.

5. The common law presumption is equally as strong, and only can be overcome by a showing that the party seeking access to judicial records is doing so to use those records for “improper purposes”; “[a]ny doubts must be resolved in favor of disclosure.” *Grove Fresh Distrib., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897; *see also Nixon*, 435 U.S. at 598.

6. Certainly, wholesale sealing of pleadings is entirely inappropriate. The Seventh Circuit has reiterated, time and again, that parties are not entitled to file entire documents under seal without simultaneously filing either a public document with an accompanying sealed supplement or a sealed document with an accompanying public redacted version of that document. *United States v. Andreas*, 150 F.3d 766, 768 (7th Cir. 1998); *In re Krynicki*, 983 F.2d 74, 75 (7th Cir. 1992). The reason for this practice is clear: if documents are completely shrouded in secrecy, the press cannot even take a position as to whether there was any basis for the sealing. As “the primary representative of the public interest in the judicial process,” *Citizens First Nat’l Bank v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999), the Court must carefully scrutinize the Government’s and the Defendant’s assertions regarding the need for secrecy here.

7. In sum, Defendant and the Government appear to have indiscriminately filed documents wholly under seal, without overcoming the strong presumption of public access. Even if, upon a proper showing, overriding compelling interests are genuinely present here and warrant sealing of some or all parts of certain documents, the public’s rights of access may be limited **only** to the extent necessary to vindicate those interests, and the Court is required to

employ the least restrictive alternatives to sealing, such as, e.g., redactions, consistent with the First Amendment. And even putatively confidential materials, once submitted and relied upon by the Court in making pretrial rulings, become presumptively accessible, absent a showing that continued confidentiality is necessary and is the least restrictive alternative. *Krynicky*, 983 F.2d at 75 (citing *In re Continental Ill. Sec. Litig.*, 732 F.2d at 1308-16).

WHEREFORE, Tribune respectfully seeks to exercise its First Amendment and common law rights to intervene and requests that the Court grant Tribune access to the Sealed Pleadings, or at the very least redacted versions of those documents, and allow them to be copied.

Respectfully submitted,

By: /s/ Natalie J. Spears
One of the attorneys
for Chicago Tribune Company

James A. Klenk (#1482599)
Natalie J. Spears (#6230320)
Gregory R. Naron (#6207440)
Kristen C. Rodriguez (#6300697)
SNR Denton US LLP
233 South Wacker Drive - Suite 7800
Chicago, IL 60606
(312) 876-8000

Of Counsel:
Karen H. Flax
Tribune Company
435 North Michigan Avenue
Chicago, IL 60611

April 12, 2011

CERTIFICATE OF SERVICE

I, Natalie J. Spears, an attorney, hereby certify that I electronically filed the foregoing CHICAGO TRIBUNE'S MOTION TO INTERVENE AND CHALLENGE THE WHOLESale FILING OF PLEADINGS UNDER SEAL and served all ECF filers, pursuant to the district court's ECF system, on this 12th day of April, 2011.

/s/ Natalie J. Spears