

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case Nos. 1:23-cr-61 (MN)
	)	1:23-mj-274 (MN)
ROBERT HUNTER BIDEN	)	
	)	
<i>Defendant.</i>	)	
	)	

**MOTION OF THE HERITAGE FOUNDATION AND MIKE HOWELL  
FOR LEAVE TO INTERVENE**

Movants The Heritage Foundation (“Heritage”) and Mike Howell (“Howell”) hereby move for leave to intervene in this matter for the limited purposes of opposing Defendant’s Motion for Leave to File Under Seal (No. 23-mj-274, ECF No. 17) and any subsequent related filings. In support of their Motion, Heritage and Howell state as follows:

- 1. Movants, the Heritage Foundation via the Daily Signal, and Howell, as an Investigative Columnist for *The Daily Signal*, are News Outlets and Thus Permitted to Intervene in This Action for the Limited Purpose of Obtaining Public Access to Records.**

The Heritage Foundation is a Washington, D.C.-based nonpartisan public-policy organization with a national and international reputation whose mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Foundation, *About Heritage*, found at <https://www.heritage.org/about-heritage/mission> (last visited July 31, 2023). Heritage is a not-for-profit IRC Section 501(c)(3) organization which engages in

substantial dissemination of information to the public. Heritage operates a national news outlet, *The Daily Signal*. Mike Howell leads the Heritage Foundation’s Oversight Project and is an investigative columnist for *The Daily Signal*. By function, the Oversight Project is primarily engaged in disseminating information to the public. Oversight Project, *found at* <https://www.heritage.org/oversight> (last visited July 31, 2023); Twitter, *found at* @OversightPR (last visited July 31, 2023). Staff members of the Oversight Project regularly appear in television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate. Movants have a strong interest in informing the public and Congress on the workings of government. Movants work to provide the transparency necessary to restore the public’s trust in the equal administration of justice in the United States.

Limited intervention is the appropriate procedural method in the Third Circuit for media seeking access to judicial records. *See, e.g., Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 778 (3d Cir. 1994); *United States v. Cianfrani*, 573 F.2d. 835, 845–46 (3d Cir. 1978). Media “have standing to challenge protective orders in an effort to obtain access to information or judicial proceedings. [Media] may have standing notwithstanding the fact that ‘they assert rights that may belong to a broad portion of the public at large.’” *Pansy*, 23 F.3d at 777 (citations omitted).

## **2. Movants Seek Leave to Intervene to Oppose Sealing of Court Records.**

Movants seek leave to intervene to oppose any sealing of records in either 23-mj-274 (MN) or 23-cr-61 (MN). Counsel for Defendant filed a Motion for Leave to File Under Seal (No. 23-mj-274, ECF No. 17) on July 26, 2023. On the afternoon of July 28, 2023, Counsel for Defendant contacted the undersigned requesting consent that certain portions of Movants’ proposed *Amicus* Brief be sealed pending resolution of the Motion for Leave to File Under Seal.

See Murray Decl. Ex. 1. Counsel for Defendant requested a response by 5:00 p.m. on July 28, 2023. *Id.* Counsel for Defendant further advised that should Movants not consent, Counsel intended to move for relief. Movants did not consent and explained at length moving to seal would be “absurd and frivolous.”<sup>1</sup> *Id.* at 2. Later that day, Counsel for *Amici* noted that the ECF system was down and requested to be copied on any filings made via email to the Clerk over the weekend. *Id.* On Monday at 10:59 a.m., Counsel for Defendant indicated that: “We disagree with the baseless assertions below, many of which are counterfactual and/or lacking a basis in law. *Id.* Nevertheless, as this identical issue is currently before the Court, we will await the Court’s ruling on the pending application and pursue further relief accordingly.” Murray Decl. Ex. 2, at 1. Thus, Defendant’s Counsel seek to *de facto* bind Movants to a ruling on a motion in which Movants did not litigate. Moreover, Defendant seeks *broader* putative relief as to Movants’ *Amicus* filing in that he seeks to seal a Congressional Quarterly Transcript of House Oversight and Accountability July 19, 2023 public hearing with the Internal Revenue Service Whistleblowers, the video of which is *publicly* available on the House’s website. It makes no sense to litigate these motions in a piecemeal manner as a matter of judicial economy. Such a procedure is also deeply unfair. Movants’ file herewith their Proposed Brief in Opposition as Exhibit 1.

Counsel for Movants contacted all counsel of record by email this morning seeking their position on this Motion. More than nine hours later no one has taken a position on this filing.

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<sup>1</sup> Even though Counsel for Defendant gave Movants some 2.75 hours to respond, Movants met the deadline of 5:00 p.m. with a detailed response as to why they would not consent to sealing and the basis for their opposition to any motion to seal that may be filed.

WHEREFORE, Movants respectfully request leave to intervene to move for access to the plea agreement and diversion agreement entered into by the United States and Defendant and to oppose Counsel for Defendant's Motion for Leave to File Under Seal and any subsequent related filings.

Dated: August 1, 2023

Respectfully submitted,

LAW OFFICES OF  
MURRAY, PHILLIPS & GAY

/s/ Julianne E. Murray  
Julianne E. Murray  
Bar ID 5649  
215 E. Market Street  
Georgetown, DE 19947  
Tel: (302) 855-9300  
julie@murrayphillipslaw.com

*Counsel for Amici The Heritage Foundation  
and Mike Howell*