IN THE SUPREME COURT OF IOWA

Iowa Freedom of Information Council, *Plaintiff*, v. **Iowa District Court for Jefferson County,** *Defendant.*	Supreme Court No. _____ Jefferson County District Court Case No. CVEQ004708

Petition for Writ of Certiorari

No Impending Proceedings per Iowa R. App. P. 6.107(1)(e)(2)

Plaintiff Iowa Freedom of Information Council ("IFOIC" or "Plaintiff") requests that this Court issue a writ of certiorari as outlined below to remedy the unlawful conduct of Defendant Iowa District Court for Jefferson County. Iowa Rule of Appellate Procedure 6.107(1)(a) authorizes and supports this Petition.

On January 23, 2025, the district court issued an oral order from the bench closing an evidentiary proceeding and bench trial. It ordered all members of the public and the press to leave the public courtroom. The transcript of the evidentiary part of the trial now stays under seal, as do trial exhibits received and admitted as evidence.

The courtroom closure occurred despite IFOIC's contemporaneous objection through counsel present in the courtroom on January 23, 2025. The objection fully apprised the district court of applicable state and federal constitutional provisions, controlling case law, and the history and tradition at common law and in Iowa of open courts and a fully accountable judiciary.

The exclusion of the public and press from the courtroom, the conduct of a secret bench trial, and the resultant unavailability of the complete transcript are unlawful; therefore, this Court should issue and sustain the requested writ.

INTRODUCTION

In the summer of 2024, Jefferson County Attorney Chauncey T. Moulding (the "County Attorney") placed Jefferson County Sheriff Bart Richmond (the "Sheriff") on a *Brady-Giglio* list, after deciding that the Sheriff did not cooperate with a use of force investigation relating to another officer. The Sheriff sued for judicial review of that determination and sought a court order requiring removal of his name from that list. *See Richmond v. Jefferson Cnty. Att'y*, No. CVEQ004708, Dkt. D0001 (Iowa Dist. Ct. Aug. 21, 2024).

On January 23, 2025, the Sheriff's case came for trial at the courthouse in Fairfield. Plaintiff IFOIC, through its Executive Director Randy Evans, and other members of the press travelled to Fairfield and were present in the courtroom when the proceeding began.

Rather than adhere to custom and practice of Iowa courts, the presiding judge ordered the courtroom closed and required Evans, IFOIC's lawyer, news reporters, and members of the public (including members of the Sheriff's family) to leave so the trial could occur behind closed doors.

Prior to the clearing of the courtroom, IFOIC entered a contemporaneous oral objection on the record, urging the district court to conduct its proceedings in open court. The district court judge acknowledged the constitutional provisions and precedential authority cited by IFOIC's lawyer but said a statute giving law

enforcement officers the unilateral right to demand that judicial proceedings occur in closed court tied his hands.

In reliance on and citing only to Iowa Code § 80F.1(25), the district court overruled IFOIC's objection, cleared the courtroom, and conducted an evidentiary bench trial in secret.

The January 23, 2025 bench ruling that closed the courtroom violated fundamental free speech and freedom of the press rights under the First Amendment and Iowa Constitution Art. I, § 7, just as it contravened Iowa's long history and tradition of open courts. By issuing and enforcing the January 23, 2025 closure order, the district court "acted illegally." *See* Iowa R. App. P. 6.107(1)(a). The order the courtroom deprived the public and the news media of their rights to attend the bench trial, to hear the testimony of their public officials, and to review and assess the evidence in an important matter involving the character and competence of an elected official.

To the extent Iowa Code § 80F.1(25)—facially or as-applied—mandated that court proceedings occur in secret, the statute itself is unconstitutional and unenforceable. Any inflexible requirement that a judge close evidentiary proceedings to the public and seal its records would elevate statutory law over constitutional law. It would displace a judge's discretion and duty to analyze the

constitutionality of a courtroom closure request and the strict scrutiny the constitutions require to close a proceeding.

Further, as Iowa and federal appellate cases hold, a mandated closure of a trial and a presumption of secrecy do not comport with requirements of the U.S. Constitution or the Iowa Constitution. Thus, to any extent that the statute's language compelled the district court to close the January 25, 2025 bench trial simply because the plaintiff objected to openness, the statute itself is unconstitutional, and the district court's closure order thereunder is illegal.

Therefore, IFOIC brings this Petition for Writ of Certiorari so this Court may remedy this illegality. *See* Iowa R. App. P. 6.107; *Des Moines Reg. & Trib. Co. v. Iowa Dist. Ct. for Story Cnty.*, 426 N.W.2d 142, 143 (Iowa 1988).

BACKGROUND

Legislative Context

In legislation effective July 2024, the General Assembly amended Iowa Code § 80F.1, a section titled "Peace officer, public safety, and emergency personnel bill of rights," to add subsection (25), which concerns law enforcement officers placed on *Brady-Giglio* lists. *See* Iowa Code § 80F.1(25).

Brady-Giglio lists include "the names and details of officers who have sustained incidents of untruthfulness, criminal convictions, candor issues, or some other type of issue which places the officer's credibility into question." *Id.* § 80F.1(1)(a). They are named after two U.S. Supreme Court cases requiring mandatory prosecutorial disclosures in criminal cases. *See generally Giglio v. United States,* 405 U.S. 150, 154 (1972) (holding prosecutor had the duty to tell the defense about a promise of leniency given to a key witness); *Brady v. Maryland,* 373 U.S. 83, 87 (1963) (holding suppressing evidence favorable to the defense violates due process). Maintenance of such lists is in service of the constitutional duty imposed on prosecutors to disclose the existence of exculpatory evidence to criminal defendants. Once a law enforcement officer's credibility is in question and that officer will testify against a criminal defendant, the defendant is entitled to receive information detailing the circumstances that tend to undermine the credibility of that officer's testimony.

Central to the July 2024 revisions to Iowa Code § 80F.1, the Legislature provided for a new court process by which a law enforcement officer placed on a *Brady-Giglio* list may seek judicial review to challenge the listing. Iowa Code § 80F.1(25). The provision states:

> An officer shall have the right to petition the district court, appeal, or intervene in an action regarding a prosecuting agency's decision to place an officer on a Brady-Giglio list. The district court shall have jurisdiction over the review of the prosecuting agency's decision. *The district court shall perform an in camera review of the evidence and may hold a closed hearing upon the request of the officer or prosecuting agency, or upon the court's own motion.* The district court may affirm, modify, or reverse a prosecuting agency's decision, and issue orders or provide relief, including removal of the officer from a Brady-Giglio list, as justice may require. *Evidence presented to the district court shall be provided under seal and kept confidential unless otherwise provided by law and ordered by the district court.*

Id. (emphases added).

The powers that Iowa Code § 80F.1(25) ostensibly gives plaintiffs include (1) the unilateral ability to demand confidentiality over and the sealing of judicial records and (2) a veto power to prevent open court hearings and trials. Those statutorily created powers rest at the heart of this Petition for Writ of Certiorari; they not only implicate how a court manages evidence admitted in an underlying *Brady-Giglio* challenge, but they also command the judiciary to conduct the *Brady-Giglio* review proceedings and trials in violation of federal and state constitutional guarantees.

First, with respect to the evidence, the statute includes a presumptive sealing requirement without judicial discretion, directing that all evidence "shall be provided under seal and kept confidential unless otherwise provided by law and ordered by the district court." *Id.*

And second, with respect to a hearing or proceeding under § 80F.1(25), the provision *requires* the district court to "perform an in camera review of the evidence" and then to "hold a closed hearing upon the request of the officer or prosecuting agency, or upon the court's own motion." *Id.* Thus, a plaintiff appears to hold an absolute power to decide if a public proceeding or trial will occur, and the district court here interpreted and applied the statute exactly in that way.

Procedural History

Publicly accessible court documents describe the critical events precipitating the judicial review action before the district court.

Around June 25, 2024, the County Attorney placed the Sheriff's name on a *Brady-Giglio* list. The County Attorney said he based this determination on a claim that the Sheriff did not cooperate in an investigation of an incident involving the use of force by a deputy against a handcuffed defendant in the custody of another agency.

According to a filing by the County Attorney, the Sheriff's "actions relating to the inquiries into the April 20, 2024 use of force incident generated good cause

for concern over the [Sheriff's] truthfulness, candor and credibility, which are specified reasons for placing an officer on a list pursuant to statute." *See Richmond*, No. CVEQ004708, Dkt. D0100.[1]

The Sheriff filed his lawsuit on August 21, 2024, citing Iowa Code § 80F.1(25) as grounds for judicial review of the County Attorney's decision to add him to the *Brady-Giglio* list. *See id.* at Dkt. D0001. The lawsuit's requested relief included a court order compelling the County Attorney to remove the Sheriff's name from the *Brady-Giglio* list. *Id.* On September 12, 2024, the County Attorney moved to dismiss the Sheriff's lawsuit. *See id.* at Dkt. D0006.

On September 17, 2024, journalist Kyle Ocker of the *Ottumwa Courier*, in his role as an IFOIC media coordinator, filed a Notice of Request for Expanded Media Coverage ("EMC") under Chapter 25 of the Iowa Court Rules. *See id.* at Dkt. D0008. That chapter allows news organizations to request expanded media coverage, which the rules define as "broadcasting, recording, photographing, and live electronic reporting of judicial proceedings" for the purpose of "gathering and disseminating news in any medium." *See* Iowa Ct. R. 25.1(1). Ocker's EMC

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[1] The County Attorney's summary of the facts appears in his publicly accessible post-trial brief, filed on February 7, 2025, which itself references the "evidence developed at the January 23 hearing." *See Richmond*, No. CVEQ004708, Dkt. 0100. Further, the County Attorney fully summarized the operative facts and allegations underlying the placement decision in his response to the Sheriff's resistance to the motion to dismiss. *See id.* at Dkt. D0022.

request indicated that members of the news media sought to use electronic sound, photo, video equipment, and other electronic devices to report on the trial. *See Richmond*, No. CVEQ004708, Dkt. D0008.

On September 27, 2024, the Sheriff filed a Motion for Extension of Deadline for his Resistance to the Motion to Dismiss and requested leave to file his upcoming resistance and its supporting documents under seal. *Id.* at Dkt. D0009. While his motion lacked any substantive argument supporting the request to seal the complete resistance filings, he cited to Iowa Code § 80F.1(25), which facially requires confidentiality of evidence unless "otherwise provided by law and ordered by the district court." *Id.*

The district court, through the Honorable Judge Jeffrey Farrell (sitting by designation for the case, including the bench trial), granted the Sheriff's first motion to seal on October 18, 2024, holding that the clerk should file the motion to dismiss resistance papers under seal. *Id.* at Dkt. D0018.

The County Attorney filed his response to the Sheriff's resistance on November 12, 2024. *Id.* at Dkt. D0022. The response included specific factual allegations to substantiate the County Attorney's placement decision. *Id.*

Subsequently, on November 13, 2024, the Sheriff filed a second motion to seal, now asking the district court to seal "all pleadings" and "all documents" filed in the case. *Id.* at Dkt. D0024. This motion came nearly three months after he

initiated the action and weeks after multiple public court filings had already disclosed facts regarding his placement on the *Brady-Giglio* list.

The County Attorney resisted the second sealing motion to the limited extent it requested closure of the courtroom to any hearing on the underlying subject matter to the action, specifically considering the EMC request. *Id.* at Dkt. D0025.

The district court entered an order granting in part and denying in part the second sealing motion on December 3, 2024. *Id.* at Dkt. D0027. The district court reasoned that because the statute requires *in camera* review of the exhibits, sealing all evidence should occur. *Id.* Further, the district court concluded that because the statute requires an *in-camera* review and sealing of evidence, the court needed to bifurcate the trial of the *Brady-Giglio* issue. *Id.* The court held that witness testimony and the presentation of the evidence would take place outside the presence of the public and the press, while closing arguments would occur in open court. *Id.*

The district court held a bench trial on the action on January 23, 2025 at the Jefferson County Courthouse. *See id.* at Dkt. D0095.[2] IFOIC's Executive Director

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[2] The Court Reporter Memorandum filed at D0095 reflects the reporter's attendance at the bench trial. As of the date of this Petition, IFOIC has ordered a copy of the public portion of the transcript, but it has not been finalized at this time. IFOIC anticipates it will be completed by the time of the filing of the combined certificate should the writ of certiorari be issued.

and outside counsel were in attendance. When the district court ordered closure of the courtroom, IFOIC's lawyer objected on the record, noting the constitutional strict scrutiny analysis that the district court should perform before closing the trial to the public and the news media.

Notwithstanding the issues raised by IFOIC, the district court ruled from the bench, denying IFOIC's objection to closure of the courtroom, declining to stay the proceeding as the IFOIC lawyer requested so the organization could seek immediate appellate review, and ordering the courtroom closed. *See id.*

The district court cleared the courtroom and conducted a closed trial in which it received testimony and exhibits on the record in a transcribed proceeding. Upon the conclusion of the presentation of evidence, the district court reopened the courtroom so the public and the press could hear and see closing arguments. *Id.*

This courtroom closure violated constitutional and common law rights of the public and the press to attend judicial proceedings, including trials. Not only that, but the district court's sealing of records and transcripts likewise continues to deprive the press of the ability to report on the presentation of evidence relevant to the case. And the district court's denial of IFOIC's request for a stay deprived it of meaningful and prompt appellate consideration of the important constitutional issues presented.

Therefore, this Court's granting of this Petition, issuance of a writ of certiorari, and acceptance of this case for briefing and oral argument will serve the public interest and allow fulsome and independent determination of important issues of constitutional proportion that are likely to recur yet evade further review.

INTEREST OF IOWA FREEDOM OF INFORMATION COUNCIL

IFOIC is a forty-five-year-old nonprofit, nonpartisan organization that works to preserve and promote openness and transparency in state and local governments in Iowa. IFOIC is "made up of journalists, lawyers, educators and other Iowans devoted to open government and government accountability." *See What the Iowa FOIC Means to You*, IOWA FREEDOM OF INFO. COUNCIL, http://ifoic.org (last visited February 24, 2025).

Evans joined the IFOIC as its Executive Director after forty years as a news reporter and editor at *The Des Moines Register*. He also serves as the central media coordinator appointed by the Iowa Supreme Court to administer EMC requests under Chapter 25 of the Iowa Court Rules.

Kyle Ocker, one of the journalists excluded from the Fairfield trial, works for *The Ottumwa Courier*, which is itself an affiliate of IFOIC Sustaining Member CNHI LLC.

Members of IFOIC have a substantial interest in obtaining details about and

attending court proceedings, furthering the ability of the news media and the public to gather information on the function and operation of our state's justice system and the vital societal role played by an independent judiciary accountable only to the Constitution and the people who adopted it.

IFOIC has a distinct interest in "openness in government and First Amendment rights." *See About the FOI Council*, Iowa Freedom of INFO. Council, https://www.ifoic.org/about (last visited Feb. 24, 2025). It has been a plaintiff, served as an intervenor, applicant, petitioner, or amicus in Iowa courtroom access and judicial records cases, including *In re Iowa Freedom of Info. Council,* 724 F.2d 658 (8th Cir. 1983) (courtroom closure of contempt hearing); *Iowa Freedom of Info. Council v. Wifvat*, 328 N.W.2d 920 (Iowa 1983) (courtroom closure of suppression hearing); and *Steele v. City of Burlington*, 334 F. Supp. 3d 972, 976 (S.D. Iowa 2018) (unsealing of judicial records filed under seal).

The deeply rooted constitutional underpinnings of *Brady* and *Giglio* further heighten the interests of the press, the public, and IFOIC in ensuring open access to the proceedings of the quasi-criminal nature presented here.

ARGUMENT

Standard of Review

Iowa Rule of Appellate Procedure 6.107 governs original certiorari proceedings, including claims that a district court exceeded its jurisdiction or

otherwise acted illegally. Iowa R. App. P. 6.107(1)(a). "Illegality" for purposes of certiorari petitions exists "when the findings on which the tribunal based its conclusions of law do not have substantial evidentiary support" and "when the tribunal does not apply the proper law." *Dist. Ct. for Story Cnty.*, 426 N.W.2d at 143.

While this Court ordinarily reviews an application for a writ of certiorari for correction of errors at law, "where violations of basic constitutional safeguards are involved," as here, "review is *de novo*." *Id*. In that review, this Court makes its "own evaluation of the record from the totality of the circumstances." *Id.* (citing *Wifvat,* 328 N.W.2d at 922).

Analysis

THE DISTRICT COURT ACTED ILLEGALLY BY CLOSING THE EVIDENTIARY PORTION OF THE JANUARY 23, 2025 HEARING AND BY RETAINING ITS TRANSCRIPT UNDER SEAL.

As a matter of federal law, the public and press hold fundamental First Amendment rights to open courts and access to judicial proceedings. *Richmond Newspapers*, *Inc. v. Virginia*, 448 U.S. 555, 580 (1980). Supreme Court precedents afford constitutional access rights to evidentiary hearings and trials. *See Press-Enter. Co. v. Super. Ct. of California for Riverside Cnty.*, 478 U.S. 1, 13 (1986) ("*Press-Enterprise II*"); *Press-Enter. Co. v. Super. Ct. of Cal., Riverside Cnty.*, 464 U.S. 501, 510 (1984) ("*Press-Enterprise I*"); *Globe Newspaper Co. v. Super. Ct.*

for Norfolk Cnty., 457 U.S. 596, 610 (1982); *Richmond Newspapers*, 448 U.S. at 579–80.

Iowa courts not only embrace this U.S. Supreme Court authority, as they must, but the Iowa Supreme Court also recognizes independent state grounds for preserving public trial, court access, and open courtroom rights. *See Dist. Ct. of Story Cnty.*, 426 N.W.2d at 147–48; *Wifvat*, 328 N.W.2d at 925; *see also generally State v. Knox*, 464 N.W.2d 445, 447 (Iowa 1990); *State v. Lawrence,* 167 N.W.2d 912, 914 (Iowa 1969); *State v. Rasmus*, 90 N.W.2d 429, 430 (Iowa 1958)); *see also* Michael A. Giudicessi, *Independent State Grounds for Freedom of Speech and of the Press: Article 1, Section 7 of the Iowa Constitution*, 38 DRAKE L. REV. 9 (1988). The right of access under Iowa law extends to all stages of court proceedings. *Wifvat*, 328 N.W.2d at 923–25; *Dist. Ct. of Story Cnty.*, 426 N.W.2d at 147.

Pursuant to this well-established jurisprudence, the district court could only have lawfully closed the courtroom on January 23, 2025, if at all, upon expressly finding that the Sheriff carried his substantial burden to prove by competent and admissible evidence (not conjecture, surmise or argument) that: (1) a compelling governmental interest (not simply his personal or private interest) supported the courtroom closure; (2) that no less restrictive alternatives to closure were available; and (3) that closure in fact would secure the interests sought to be preserved by a

closed proceeding. *See Wifvat*, 328 N.W.2d at 925; *see also United States v. Edwards*, 672 F.2d 1289, 1294 (7th Cir. 1982) ("[A] court may deny access, but only on the basis of articulable facts known to the court, not on the basis of unsupported hypothesis or conjecture.").

In other words, the Sheriff, as the movant seeking a closed trial, needed to present evidence that new substantive disclosures would occur during the evidentiary hearing, that this protection elevated to the level of a compelling state interest rather than his personal interest in privacy, and that a closed courtroom would keep that information out of the public knowledge.

But the Sheriff did not offer *any* evidence as to *any* of his burdens and the district court did not consider the applicable standards in deciding that closure was permitted and necessary.

On the third element in particular, the Sheriff needed to demonstrate that the court closure would in fact achieve the purported goals such that a closed proceeding would not be futile. Absent that showing, courts will not restrict the public's rights for a futile reason. *See Press-Enterprise II*, 478 U.S. at 14.

Here, the futility was manifest considering the previously available information of record in the open court file. The primary pleadings in this case were publicly available and accessed by the press *prior to* the district court's first and second sealing orders. Those pleadings discuss the central facts the district

court presumably admitted into evidence during the *Brady-Giglio* proceeding. Notably, the post-trial briefing, also publicly available, does the same.

Because at least one news reporter lawfully accessed the court pleadings and filings setting forth those facts before the Sheriff requested a sealing order and prior to the entry of one by the district court, unsurprisingly, the allegations against the Sheriff became publicized and known in the community before the closed-door trial occurred.

For example, extensive September and November 2024 news coverage about the Sheriff's lawsuit detailed his claims in the case and the underlying allegations of misconduct. *See, e.g.*, Kyle Ocker, *Jefferson Sheriff Seeks Removal from Brady-Giglio List*, OTTUMWA COURIER (Sept. 16, 2024)[3]; Andy Hallman, *Motions Filed in Jefferson County Sheriff's Brady-Giglio Case*, SE. IOWA UNION (Sep. 13, 2024, 1:59 PM CST)[4]; Kyle Ocker, *Prosecutor Says Jefferson Sheriff Bart Richmond Obstructed Use of Force Investigation*, OTTUMWA COURIER (Nov.

[3] https://www.ottumwacourier.com/news/jefferson-sheriff-seeks-removal-from-brady-giglio-list/article_2bc5507c-744b-11ef-8260-93a50f4f788f.html

[4] https://www.southeastiowaunion.com/news/motions-filed-in-jefferson-county-sheriffs-brady-giglio-case

18, 2024).[5] As the press coverage shows, the closure of the court during the *Brady-Giglio* proceeding was futile under the circumstances of this particular action.

So, rather than introduce any evidence to support his constitutional burden, the Sheriff's closure request merely cited to Iowa Code § 80F.1(25) generally. Relying on that rote citation alone, the district court deferred to the face of the statute without making specific findings on the constitutional considerations at issue.

The district court's courtroom closure order therefore lacked sufficient evidence, rested on incomplete findings, and contravened applicable law. No strict scrutiny analysis occurred. The district court make no express findings of fact.

Each of these aspects—and their totality—show that the district court acted illegally by conducting the January 23, 2025 bench trial in closed court.

The important public issues, and their attendant constitutional underpinnings, that are underlying the Sheriff's lawsuit only magnify the adverse impact of the district court's closure rulings. The *Brady-Giglio* proceeding was about the county's chief law enforcement officer and placed this elected official's

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[5] https://www.ottumwacourier.com/news/local_news/prosecutor-says-jefferson-sheriff-bart-richmond-obstructed-use-of-force-investigation/article_a5217498-a5d6-11ef-b015-57ddb4c35050.html

competency and character in issue on matters involving the public trust and voter confidence.

These factors reinforce that the January 23 courtroom closure was an illegal act justifying issuance of the presently requested writ of certiorari.

THE FEDERAL AND STATE CONSTITUTIONS COMMAND AN OPEN AND ACCOUNTABLE INDEPENDENT JUDICIAL BRANCH AND CONFIRM THE POLICY BEHIND IOWA'S TRADITION AND HISTORY OF OPEN COURTS AND PUBLIC TRIALS.

Beyond the constitutional requirements infringed by the district court's order to conduct a closed trial, Iowa's history and tradition of openness and public trials—as well as the circumstances in this particular action—show why the district court committed an error of law by excluding the public and the news media.

A. Iowa's History and Tradition of Open Courts Favors Open Court Proceedings.

Iowa has a long and proud history and tradition of conducting court business in public. *State v. Jones*, 817 N.W.2d 11, 18–19 (Iowa 2012) ("[T]rials in this country are not to be held in secret."); *see Craig v. Harney*, 331 U.S 367, 374 ("A trial is a public event. What transpires in the court room is public property.").

Judicial accountability rests at the core of the public-trial right afforded to the members of the public and the press. "Our society has less difficulty accepting that which it observes than that which it is not permitted to observe." *Wifvat*, 328 N.W.2d at 923.

The importance of this principle has only intensified in the forty-two years since this Court issued its ruling in *Wifvat*. In *Wifvat*, the Iowa Supreme Court relied on the following statement by the U.S. Supreme Court to find that Article I, § 7 of the Iowa Constitution affords an independent right to attend court proceedings:

> There can be no blinking the fact that there is a strong societal interest in public trials. Openness in court proceedings may improve the quality of testimony, induce unknown witnesses to come forward with relevant testimony, cause all trial participants to perform their duties more conscientiously, and generally give the public an opportunity to observe the judicial system.

Id. (quoting *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 382 (1979)).

Public attendance at court hearings and trials, secured by independent rights under the state and federal constitutions, is the rule and norm in Iowa. Iowa courts reflect these principles of openness in many ways throughout history, including through "present practice of streaming . . . proceedings live on the internet and holding oral arguments in various parts of the state in order for the public to view the work of the court." *Jones*, 817 N.W.2d at 19.

The Iowa Supreme Court's mission statement provides, "The Iowa Judicial Branch dedicates itself to providing *independent and accessible* forums for fair and prompt resolution of disputes, administering justice under law equally to all persons." *See Our Mission*, IOWA JUD. BRANCH, https://www.iowacourts.gov (last accessed Feb. 24, 2025) (emphasis added). It further states that "[c]ourt

proceedings in Iowa are open to the public." *See Newsroom*, IOWA JUD. BRANCH, https://www.iowacourts.gov/newsroom (last accessed Feb. 24, 2025). "Many people rely on the news media to keep them informed of the work of the courts. Therefore, it is imperative that courts collaborate with the media to enable coverage of court proceedings to the fullest extent possible without impinging the rights of litigants to a fair trial." *Id.*

This history and tradition of openness and public proceedings serves more than just the interests of the press: "The more the public sees our courts operate, the more they will like and the more they will respect our court system." The Hon. Mark Cady, *Opening Remarks of Chief Justice Mark Cady, Senate Judiciary Subcommittee on Administrative Oversight and the Courts*, Dec. 6, 2011.[6] This interest is so fundamental and significant to the role and success of the judicial branch, this Court has even gone so far as to remove a judge for her refusal to honor the public's right to attend court proceedings. *See In re Inquiry Concerning Holien*, 612 N.W.2d 789, 792 (Iowa 2000).

The equal and independent administration of justice is not possible if some court proceedings, like the trials of indigent criminal defendants, are public, while

[6] https://www.congress.gov/112/chrg/CHRG-112shrg72396/CHRG-112shrg72396.pdf

others of persons with means—particularly those of county sheriffs entrusted with great public powers—occur behind closed doors.

B. The Sheriff's Conduct and His Defense Against the Decision to Place Him on a Brady-Giglio *List Are Matters of Public Concern.*

Considering the facts, the public undoubtedly has an interest, if not a responsibility, to stay apprised of the activities and conduct of their elected officials. *Brady-Giglio* proceedings involving the Sheriff—an official elected by the people of Jefferson County—do not present such a rare and extreme case where law, tradition, history, and public policy should be set aside in favor of a public official's claimed personal interest in confidentiality.

Rather, a public proceeding relating to official conduct is *more* important under these circumstances. The Sheriff's actions and trustworthiness directly relate to the County Attorney's decision to place him on a *Brady-Giglio* list, as does any evidence supporting or refuting the allegations and defenses related to that decision. Either way, the evidence concerns official conduct and pertains to matters of utmost public concern to voters, taxpayers, residents, and the public.

Finally, public understanding and acceptance of the basis for any ruling on whether the County Attorney must remove the Sheriff's name from the *Giglio-Brady* list are critical. Such understanding and acceptance are unattainable when a court closes its proceedings and keeps evidence and transcripts under seal. "Even though most community members do not attend trials, the knowledge that they

could and that others do fortifies the public's confidence in the trials' results." *United States v. Thunder*, 438 F.3d 866, 867 (8th Cir. 2006).

The district court's acts here not only denied the public of its right to attend the bench trial but also prevented the news media from informing residents and voters about matters of public concern. Long standing public policy, common law, and custom and practice considerations militate strongly against the closure of the Sheriff's *Brady-Giglio* proceeding to the public and the news media.

TO THE EXTENT IOWA CODE § 80F.1(25) REQUIRES CLOSURE *PER SE* WITHOUT NECESSARY CONSTITUTIONAL FINDINGS, THE STATUTE ITSELF IS UNCONSTITUTIONAL.

It is axiomatic that the legislature cannot write a law that supersedes the U.S. Constitution or the Iowa Constitution. Therefore, if Iowa Code § 80F.1(25) dictated the district court's courtroom closure in this case, as the presiding judge determined it did, the new statute cannot pass constitutional muster. Therefore, the Court should grant this Petition and issue the requested writ.

From the onset, despite the language of Iowa Code § 80F.1(25), as a matter of constitutional law, the district court in this case needed to meet prerequisites of cases such a *Richmond Newspapers* or *Wifvat* before it could close the courtroom to the public and press.

But to whatever extent Iowa Code § 80F.1(25) purports to require *per se* a secret trial for the presentation of evidence—and thereby negate the district court's

obligation to adhere to and satisfy constitutional procedural and substantive safeguards—the statute is itself unconstitutional. On its face, Iowa Code § 80F.1(25) purports to displace legal requirements and judicial discretion regarding whether a *Brady-Giglio* proceeding will occur in open court.

Even though the statute intimates a district court judge may have some discretion to decide whether to keep a courtroom open, the statute purports to give the parties absolute veto power such that closure must occur if they merely ask.

Further, the statute reverses the presumption of openness attendant to all Iowa court proceedings by mandating that a court *shall* receive evidence in a *Brady-Giglio* review case under seal and keep such evidence confidential "unless otherwise provided by law *and* ordered by the district court." Iowa Code § 80F.1(25) (emphasis added).

This mandate for an express *openness* order in every *Brady-Giglio* case, taken literally, turns the public's access right on its head. The statute does not allow district courts to do anything other than close the presentation of evidence, even if no evidence implicates a compelling, legitimate confidentiality concerns.

By strictly *disallowing* district courts from opening a public hearing under all circumstances and instead requiring judges to enter an order to *open* the courtroom, the new law strips presiding judges of any meaningful opportunity or

duty to make the specific required constitutional findings on the record in support of a closure order.

Iowa district courts and judges have been here before, and this Court took little time to dispel the notion that a statute could displace the courtroom access mandates of the state and federal constitutions or Iowa's long history and tradition of conducting the public's business in public.

The case of *District Court of Story County* squares with the facts and analysis applicable here. *See* 426 N.W.2d at 142. In that case, a Rule of Criminal Procedure, codified by legislative approval, required that a court close a preliminary hearing in a criminal case at the request of the defendant. *Id*. at 143 (allowing a "private" preliminary hearing "upon request of the defendant").

The District Court for Story County adhered to the letter of Rule 2(4)(d)—much like the presiding judge here followed Iowa Code § 80F.1(25)—without sufficient supporting evidence compelling secrecy; and it instead conducted a closed preliminary hearing, ostensibly because the defendant "had a statutory right to a private preliminary hearing under the Iowa Rules of Criminal Procedure." *Id*. The district court also granted the defendant's "motion to seal the transcript and documents relating to the preliminary hearing." *Id*.

This Court granted an application for a writ of certiorari from an excluded news organization and thereafter sustained the writ, finding the courtroom closure

and sealing of evidence were illegal acts. *Id*. at 148. This Court held, "Iowa Rule of Criminal Procedure 2(4)(d) requires the preliminary hearing to be closed upon request of the defendant. This violates the implicit first amendment rights of the public and press. It is therefore unconstitutional." *Id*.

The same result obtains here.

Because Iowa Code § 80F.1(25) requires a closed trial and sealed evidence in a *Brady-Giglio* judicial review action upon the mere request of any party, such as the Sheriff here, the statute violates the rights of the public and press found in the First Amendment and Iowa Constitution Art. I, § 7. It is therefore unconstitutional.

As such, the district court's act of closing the January 23, 2025 bench trial to the public and the press and its sealing of evidence and transcripts in reliance only on that statutory authority constitute illegal acts.

Accordingly, this Court should (1) issue the requested writ of certiorari; (2) upon submission of the case, rule that Iowa Code § 80F.1(25) is unconstitutional and that the district court acted illegally in reliance on it; and (3) direct the district court to unseal all remaining sealed materials and transcripts.

CONCLUSION

For the above stated reasons, Plaintiff Iowa Freedom of Information Council respectfully asks that the Court grant this Petition for Writ of Certiorari, set the case for timely submission, and issue and sustain the requested writ.

Date: February 24, 2025.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This application meets the typeface requirements and type- volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because it was prepared in a 14-point proportionally spaced typeface using Times New Roman and contains 5,713 words.

Dated: February 24, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this **Petition for Writ of Certiorari** was filed through the Court's EDMS electronic filing system on February 24, 2025, with copies thereof provided by electronic mail to the below listed counsel.

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