IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC,
Publisher of *THE PALM BEACH POST*,

Plaintiff,

v.

DAVE ARONBERG, as State Attorney of Palm Beach County, Florida; SHARON R. BOCK, as Clerk and Comptroller of Palm Beach County, Florida,

Defendants.

CASE NO.: 50-2019-CA-014681-XXXX-MB

DIVISION: AG

MOTION OF PLAINTIFF CA FLORIDA HOLDINGS, LLC FOR SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

Plaintiff, CA Florida Holdings, LLC, publisher of *The Palm Beach Post*, moves pursuant to Fla. R. Civ. P. 1.510(a) for Summary Judgment and states:

I. INTRODUCTION

The material facts in this case are not in dispute. Jeffrey Epstein was an extraordinarily wealthy, influential, and serial pedophile. It is indisputable that the State failed or refused to use the tools available to charge and prosecute obvious serial child sexual abuse, emboldening Epstein to continue his exploitation of young women and girls, even after dozens of his victims bravely came forward with their tragic stories of abuse. It is further not in dispute that Epstein received favorable treatment by the Florida State Attorney's Office during the prosecution, extending to the minimal sentence he received for his well-documented crimes.

The only determination left to be made by this Court is whether, as a matter of law, the grand jury transcripts that allowed Epstein's crimes to remain out of the public eye and cloaked

the State Attorney's prosecution of those crimes in secrecy should be unsealed. The resounding answer to this question — which is not contested by either the Defendant Clerk or the former Defendant, the Palm Beach County Office of State Attorney[1] — is yes.

The Palm Beach Post seeks summary judgment on its claim for public access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury empaneled during the first Epstein sex abuse prosecution. Typically, access to such materials is limited, for example, in order to prevent the flight of those whose indictment may be contemplated and their ability to conceal or destroy evidence; to ensure jurors' candor in deliberations; and to protect an accused who is later exonerated. However, these factors are inapplicable here. Moreover, Florida law expressly authorizes the disclosure of grand jury proceedings under certain circumstances, including, as here, in the furtherance of justice. Fla. Stat. § 905.27(1)(c).

It can no longer credibly be maintained that continued blanket secrecy over the proceedings that led to the egregiously flawed 2006 Epstein indictment is warranted under the law. To the contrary, transparency is required to promote public understanding of the criminal justice system and public confidence in the fair administration of justice. As detailed below, Epstein was accused of sexually abusing and trafficking dozens of women and girls in south Florida (among other locations) over a period of several years while exploiting his wealth and political connections to derail his prosecution and obstruct the administration of justice at every turn. Public disclosure of the Epstein grand jury proceedings will shed light on the extent to which those in our government entrusted with the solemn responsibility of enforcing our criminal laws equally as to all citizens fulfilled their duties in this instance. Justice will be furthered where it is demonstrated either that

[1] As set forth *infra* at p. 19, ¶ 74, based upon his statement that he no longer contests the relief sought by *The Palm Beach Post*, the State Attorney has been dropped from the case pursuant to Fla. R. Civ. P. 1.250(b).

(1) Epstein was treated like others accused of similar heinous crimes, or (2) as appears more likely, those who chose to give Epstein favorable — "unusual," in the words of the Town of Palm Beach Police Chief — treatment, are exposed and held accountable. From the incomplete information now in the public domain, the State Attorney's choice to refer Epstein's case to the grand jury — which was extraordinary for this type of case — gives rise to a strong inference of favoritism and corresponding disregard for the rights of the minor victims of Epstein's habitual sex trafficking. Access to the grand jury materials will allow the public to determine whether the grand jury process, and the secrecy that comes with it, was used to further justice or, instead, operated to shield Epstein and his co-conspirators from the consequences of their criminal activities. Accordingly, Fla. Stat. Section 905.27 authorizes the disclosure of Epstein's 2006 grand jury proceedings.

Even in the absence of such a statutory basis, this Court is empowered to order public disclosure pursuant to its inherent authority and supervisory powers over the grand jury. Indeed, courts throughout the country in the past several decades, including in the case of the controversial Breonna Taylor shooting in 2020, have done exactly that where the public's interest in high–profile grand jury proceedings has outweighed the general need for secrecy. This is particularly so where, as here, many of the details of Epstein's criminal misdeeds have already been made available in the public domain through extensive news reporting by, among others, *The Palm Beach Post*; by the many civil suits brought against Epstein and his co-conspirators; and by the victims themselves.

II. FACTS NOT IN DISPUTE

As reflected in the respective Answers of the Defendants, as well as filings by the parties, the material facts underlying this action are uncontested. *See* Answer of State Attorney; Answer of Clerk.

A. The First Epstein Sex Crimes Investigation, Indictment, and Plea Agreement: 2005–2008.

1. The Police Investigation and Search of Epstein's Residence.

1. The investigation into Epstein's sex crimes began more than fifteen years ago, when a 14-year-old girl's stepmother reported to police in the Town of Palm Beach that Epstein and others who worked for him arranged for her to give Epstein a "massage." Epstein required the girl to strip, exposed himself, and masturbated while touching her. The girl was paid $300. Epstein was 52 years old at the time. Appendix at 1 (Recarey Depo. 31:15-37:12).

2. Following this initial report in 2005, the Palm Beach Police Department ("PBPD"), and later, in 2006, the FBI, investigated Epstein. Interviews under oath with additional victims and witnesses revealed that the events described by the 14-year-old girl occurred, with disturbingly similar details, including sexual contact, with each of the other victims. In addition, one of the girls admitted to having intercourse with Epstein, while others stated that they were instructed by Epstein to have sexual relations with an adult female in front of Epstein. Appendix at 1 (Recarey Depo. 106:19–24, 112:13–-17, 114:22–115:8, 157:25–158:18, 180:4-181:14, 187:9–24).

3. One of the victims stated that she was afraid to speak to the police because Epstein "was very wealthy…that he could pay someone to hurt her or her family." Appendix at 1 (Recarey Depo. 183:4–13).

4. Epstein told at least one victim that "bad things could happen" if she spoke of the "massages" to anyone. Appendix at 1 (Recarey Depo. 188:7–25).

5. Both the victim/witness interviews, as well as evidence retrieved following a search of Epstein's home, showed that many of the girls involved were under the age of 18. According to Detective Recarey, the lead detective on the case, one of the photos removed from the master

bedroom was of a naked girl who was "[y]ounger than ten." Appendix at 1 (Recarey Depo. 150:13–151:7).

6. The police search of Epstein's residence also found two hidden cameras and, throughout the house, large numbers of nude photos of girls, including victims whom the police had not interviewed in the course of their investigation. It appeared, however, that some evidence was removed and the house had been "sanitized." Appendix at 1 (Recarey Depo. 119:21–120:10). The PBPD believe that Epstein was tipped off about the search, likely through a leak in the State Attorney's office. Appendix at 3 (Department of Justice Office of Professional Responsibility Report ("OPR Report" p. 21).

7. Then-Palm Beach County State Attorney Barry Krischer, among other influential members of Palm Beach society, told the PBPD to "back off" the investigation of Epstein's crimes. Appendix at 4 (Reiter Depo. at 71:3–16).

8. Another member of the State Attorney's Office further gave Detective Recarey the feeling "that she was trying to brush this case under the carpet." Appendix at 2 (Recarey Depo. 491:17–492:5).

9. In March 2006, a State grand jury was scheduled at which all of Epstein's victims identified during the investigation by law enforcement authorities were expected to testify. The proceeding was postponed, however, due to meetings between the State Attorney's Office and Epstein's prominent criminal defense lawyer and personal friend, Alan Dershowitz. Appendix at 3; 2 (OPR Report, p. 15; Recarey Depo. 476:12–19).

2. Police Chief Reiter Chastises the State Attorney.

10. Another grand jury was convened in April 2006, but canceled the day before it was to begin receiving evidence. Appendix at 2 (Recarey Depo. 477:14–22).

11. On May 1, 2006, Town of Palm Beach Police Chief Michael Reiter wrote a "personal and confidential" letter to former State Attorney Krischer, stating:

> I must renew my prior observation to you that I continue to find your office's treatment of [the Epstein] cases highly unusual. It is regrettable that I am forced to communicate in this manner, but my most recent telephone calls to you and those of the lead detective to your assigned attorneys have been unanswered and messages remain unreturned. After giving this much thought and consideration, ***I must urge you to examine the unusual course that your office's handling of this matter has taken and consider if good and sufficient reason exists to require your disqualification from the prosecution of these cases.*** (Emphasis supplied)

Appendix at 5 ("Reiter Letter").

12. Chief Reiter wrote the letter because he "knew that Mr. Krischer was making decisions about this case" and "felt his objectivity was lacking." Appendix at 4 (Reiter Depo. 99:9–100:7).

13. Chief Reiter believed Krischer's objectivity was compromised because when the Chief first told him about the case, Krischer said "let's go for it, this is an adult male in his fifties who's had sexual contact with children of the ages of the victims. He said this is somebody who we have to stop." However, once Epstein became aware of the investigation and his attorneys contacted the State Attorney's Office, "the tone and tenor of the discussions of this case with Mr. Krischer changed completely. One point he suggested that we write [Epstein] a notice to appear which would be for a misdemeanor. He just completely changed from not only our first conversation about this and he didn't know the name Jeffrey Epstein, till when he had been informed of Mr. Epstein's reputation and his wealth, and I just thought that very unusual. I feel like I know him or knew him very well, the State Attorney, and I just felt like he could not objectively make decisions about this case . . . " Appendix at 4 (Reiter Depo. 100:23–102:20).

14. Chief Reiter was further motivated to write his letter because "it was pretty clear to me that Mr. Krischer did not want to prosecute this case… [t]he suggestion that multiple victims

and some of the crimes, felonies, that he should write a notice to appear for a misdemeanor and the scheduling of a grand jury on an issue like this is extremely rare. [And] [t]he fact that he and I had an excellent relationship…[a]nd [yet] he wouldn't return my phone calls, I mean it was clear to me by his actions that he could not objectively look at this case." Appendix at 4 (Reiter Depo. 104:13–105:25).

3. The State Attorney's Referral to the Grand Jury: A Single Victim Testifies.

15. Chief Reiter's letter to State Attorney Krischer enclosed the Town of Palm Beach Police Department's probable cause affidavits charging Epstein and two of his assistants with multiple counts of unlawful sex acts with a minor and one count of sexual abuse, and requested that either an arrest warrant be issued for Epstein or the State Attorney directly initiate the charges against him, which charges would be public. Appendix at 5 (Reiter Letter).

16. Instead, State Attorney Krischer elected to refer the case to a grand jury, which is mandatory for capital cases but rarely used for all other crimes. This was the first time that a sex crimes case was presented to a grand jury in Palm Beach County. Appendix at 4 (Reiter Depo. 301:10–12).

17. In April 2006, the Palm Beach Police Department learned that Assistant State Attorney Lanna Belohlavek, who was in charge of prosecuting sex crimes, had offered a plea deal to Epstein's attorneys Alan Dershowitz and Guy Fronstin, without first discussing the matter with the police. The plea deal allowed Epstein to plead to a single count of aggravated assault with intent to commit a felony and receive no more than five years' probation, upon the completion of which he would not have a criminal record. Epstein rejected the deal. Appendix at 3 (OPR Report, p. 14).

18. At the July 2006 grand jury proceedings, the State Attorney's Office presented testimony and evidence from just one victim, even though the State Attorney was "aware of the

[true number of victims because they had the] probable cause affidavit which indicated all the facts." Appendix at 1 (Recarey Depo. at 299:17–25).

19. After hearing from the single victim, the grand jury returned an indictment on a sole count of solicitation of prostitution. There is no mention in the indictment of the victim being a minor. *See* Appendix at 6 (Indictment at p. 42).

20. Chief Reiter did not "consider fifteen–year–olds, sixteen–year–olds who are paid money to engage in sexual contact [as] prostitution . . . " Appendix at 4 (Reiter Depo. 143:22–144:6). Detective Recarey had the same opinion because there was no "negotiation" between the parties. Appendix at 2 (Recarey Depo. at 401:3–402:9).

21. A second of Epstein's victims was supposed to testify before the grand jury, but was unable to attend because of a school exam. Appendix at 2 (Recarey Depo. 541:4–20).

22. With respect to why the numerous other young girls known to have been abused by Epstein were not presented as witnesses and crime victims to the grand jury convened in July 2006 or why State Attorney Krischer, who was initially eager to investigate and prosecute Epstein for his crimes, over time lost the desire to do so, Krischer recently explained to the U.S. Department of Justice that "under state law as it existed until changed in 2016, his office prosecuted minors as young as 14 for prostitution. The possibility that Epstein's victims themselves could have been prosecuted caused 'great consternation within the office,' and according to Krischer, resulted in the decision to put the case before the grand jury." But, "[t]he State Attorney's Office some years earlier even suggested that [the police] no longer do sting operations for prostitution because they didn't want to prosecute them." Appendix at 4 (Reiter Depo. 144:11–145:5). When Chief Reiter asked him about the "unusual" decisions to proceed with a grand jury and call only one witness, Krischer explained that "the victims weren't credible in his mind…[and] it was the policy of the

State Attorney's Office not to charge molestation type cases…when it was consensual." Appendix at 4 (Reiter Depo. 157:21–158:15). Krischer also told Chief Reiter that he chose a grand jury because it "was a noteworthy investigation, a noteworthy prosecution." Appendix at 4 (Reiter Depo. 152:19–153:2).

23. During the grand jury appearance of the single victim who testified, the State Attorney presented evidence that vilified the victim and attacked her credibility, including soliciting testimony regarding underage drinking and questionable personal behavior that was unrelated to the charges against Epstein. This information was initially brought to the attention of the State Attorney's Office by Epstein's defense counsel. Appendix at 3; 1 (OPR Report, pp. 14–15; Recarey Depo. 301:5–302:22).

24. The State Attorney who presented the case to the grand jury did not believe that some of the victims were "victims based on the [social media] materials that were supplied" by Epstein's defense team. Appendix at 2 (Recarey Depo. 484:24–486:5).

4. The Federal Investigation: the State Attorney "Intentionally Torpedoed" the Case Before the Grand Jury.

25. Following the deficient July 2006 indictment, and with Chief Reiter's encouragement, the FBI began its own investigation of Epstein, because Chief Reiter did not "feel as though justice had been sufficiently served" by the State. Appendix at 4 (Reiter Depo. 299:25–300:8). Detective Recarey shared the same view that "it wasn't any justice served." Appendix at 2 (Recarey Depo. 496:1–2).

26. Deputy Chief of the Criminal Division of the U.S. Attorney's Office, Andrew Lourie, in a transmittal letter with the prosecution memo of Assistant U.S. Attorney Ann Marie Villafaña, told Criminal Chief Matthew Menchel: "***The state intentionally torpedoed [the case] in the grand jury so it was brought to us.***" Appendix at 3 (OPR Report, p. 26 (emphasis supplied)).

27. When the FBI commenced its own investigation, then–U.S. Attorney for the Southern District of Florida, Alexander Acosta, asked First Assistant U.S. Attorney Jeffrey Sloman whether it was "appropriate to approach [State Attorney Krischer] and give him a heads up re where we might go?" Sloman replied, "No for fear that it will be leaked straight to Epstein." Appendix at 3 (OPR Report, p. 21).

5. The Infamous Non-Prosecution Agreement: "Please Tell Me You Are Joking."

28. Acosta was well aware that the PBPD brought the case to the FBI's attention because of a concern that the State Attorney's Office had succumbed to "pressure" from defense counsel. Villafaña informed both Acosta and Sloman of this when she met with them at the start of the federal investigation. Acosta confirmed that he was aware that the PBPD was dissatisfied with the State Attorney's Office's handling of the case. Appendix at 3 (OPR Report, p. 174).

29. Records unsealed in 2015 revealed that the FBI compiled reports on "34 confirmed minors" that were victims of Epstein's sexual predations. Based on evidence gathered by the FBI, a 53-page indictment was prepared by the U.S. Attorney's Office in June 2007. However, at the request of Epstein's lawyers, the indictment was never presented to a federal grand jury. Appendix at 3 (OPR Report, pp. 35, 75).

30. Instead, Acosta, negotiated a plea deal in the form of a Non-Prosecution Agreement ("NPA") with Epstein's team of lawyers that granted immunity to Epstein (along with four named co-conspirators and any unnamed potential co-conspirators) from all federal criminal charges. Appendix at 7 (NPA).

31. Shortly before the NPA was signed, additional information came to light that suggested the State Attorney's Office was predisposed to manipulating the process in Epstein's favor. Specifically, during a September 12, 2007 meeting, at the State prosecutor's suggestion, the

USAO team agreed, with Acosta's subsequent approval, to permit Epstein to plead guilty to one state charge of solicitation of minors to engage in prostitution, rather than the three charges the USAO had originally specified. The State prosecutor assured Lourie that the selected charge would require Epstein to register as a sexual offender. Shortly thereafter, the USAO was told by defense counsel that despite the assurances made to Lourie, the State prosecutor had advised Epstein — incorrectly, it turned out — that a plea to that particular offense would *not* require him to register as a sexual offender. Yet, despite this evidence, which at least suggested that the State Attorney should not have been considered to be a reliable partner in enforcing the NPA, Acosta did not alter his decision about proceeding with a process that depended completely on State authorities for its successful execution. Appendix at 3 (OPR Report, p. 174).

32. Throughout the remainder of 2007 and through the first half of 2008, Epstein's lawyers and the U.S. Attorney continued negotiating the plea arrangement. Epstein's lawyers insisted that (1) the victims not be notified; (2) the deal be kept confidential and under seal; and (3) all grand jury subpoenas (including one that had already been issued for Epstein's computers) be withdrawn. Appendix at 3; 4 (OPR Report, pp. 69, 176, 212–216; Reiter Depo. 97:2–20).

33. Upon learning of a plea deal offered by State Attorney Krischer that would result in a mere 90–day jail term for Epstein, Villafaña wrote to her immediate supervisor: "Please tell me that you are joking. Maybe we should throw him [Epstein] a party and tell him we are sorry to have bothered him." Villafaña and her immediate supervisor later had phone and email exchanges with Krischer and with Epstein's local counsel to insist that the State plea comply with the terms of the NPA, or "we will consider it a breach of the agreement and proceed accordingly." Villafaña further advised her superior: "Someone really needs to talk to Barry [Krischer]." Appendix at 3 (OPR Report, p. 109).

34. In a September 2007 email from State Attorney Krischer to Villafaña regarding the NPA, Krischer stated: "Glad we could get this worked out for reasons I won't put in writing." Appendix at 3 (OPR Report, p. 81, n.127).

35. According to Chief Reiter, the NPA was unsatisfactory, as the U.S. Attorney's Office had advised him that "typically these kinds of cases with [just] one victim would end up in a ten–year sentence." Appendix at 4 (Reiter Depo. 96:22–98:3).

36. On June 30, 2008, Epstein pled guilty to two State charges: one count of solicitation of prostitution and one count of solicitation of prostitution with a minor under the age of 18. He was sentenced to 18 months in jail, followed by a year of community control or house arrest, and was adjudicated as a convicted sex offender required to register twice a year in Florida. Appendix at 8 (Plea Deal).

37. The NPA allowed Epstein to receive immunity from federal sex–trafficking charges that could have sent him to prison for life. Former State Attorney Krischer communicated with Acosta concerning the NPA's negotiation with Epstein's lawyers. Appendix at 7; 3 (NPA; OPR Report, p. 81).

38. Epstein was not incarcerated in a Florida prison for the State crimes for which he was convicted. Instead, he was placed in a private wing of the Palm Beach County Stockade, where, after 3 1⁄2 months, he was allowed to leave the jail on "work release" for up to 12 hours a day, 6 days a week. His private driver provided his transportation to and from "work." Appendix at 3 (OPR Report, pp. 114–115).

39. Epstein was released five months early. Appendix at 3 (OPR Report, p. 117).

40. Epstein violated the terms of his probation, but was not prosecuted. Appendix at 2; 3 (Recarey Depo. 556:24–557:4; OPR Report, p. 118).

41. Epstein's victims only learned after the fact about his plea in State court and filed an emergency petition to force federal prosecutors to comply with the Crime Victims' Rights Act (18 U.S.C. § 3771, "CVRA"), which mandates certain rights for crime victims, including the right to be informed about plea agreements and the right to appear at sentencing. U.S. District Judge for the Southern District of Florida, Kenneth A. Marra, ruled in 2019 that federal prosecutors violated the CVRA by failing to notify Epstein's victims before allowing him to plead guilty to only the two State offenses. Appendix at 3 (OPR Report, p. 242–243).

42. Following publicity exposing the extraordinary leniency of Epstein's plea deal, public records reveal that dozens of civil suits were brought against Epstein, most of which Epstein's lawyers settled out–of–court.

43. In 2010, Epstein was registered as a "level three" (*i.e.*, high risk of repeat offense) sex offender in New York, a lifelong designation. In 2011, the New York County District Attorney's office unsuccessfully sought to lower his registration to low–risk "level one."

44. During the course of the Town of Palm Beach and FBI investigations, Epstein retained private investigators to follow, harass, and photograph his victims and their families, as well as Chief Reiter and the Town of Palm Beach detective who investigated the case against Epstein. Appendix at 4; 2 (Reiter Depo. 53:10–55:23; Recarey Depo. 627:18–629:23).

45. Epstein's victims were threatened against cooperating with law enforcement and told that they would be compensated only if they did not cooperate with law enforcement. Appendix at 2 (Recarey Depo. 537:14–24).

46. Detective Recarey died on May 25, 2018.

B. <u>The Second Epstein Sex Crimes Investigation, Indictment, Suicide: 2019.</u>

47. On July 6, 2019, Epstein was arrested on federal sex trafficking charges. Appendix at 3. (OPR Report, p. iv).

48. The United States government's investigation of new allegations and charges stemmed, in part, from continued press investigations into and reporting on the mishandling of the 2006 charges and the civil suits that followed. Appendix at 3 (OPR Report, pp. i, xii).

49. In a July 8, 2019, letter to the federal district court by the U.S. Attorney for the Southern District of New York, Epstein was described as "a serial sexual predator who preyed on dozens of minor girls over a period of years." The letter emphasized that "the Government has real concerns – grounded in past experience with this defendant — that if allowed to remain out on bail, the defendant could attempt to pressure and intimidate witnesses and potential witnesses in this case, including victims and their families, and otherwise attempt to obstruct justice." It also described the results of the FBI's search of Epstein's Manhattan townhouse: evidence of sex trafficking in the form of "hundreds — and perhaps thousands — of sexually suggestive photographs of fully– or partially–nude females," including underage females. In a locked safe, compact discs were found with handwritten labels including the descriptions: "Young [Name] + [Name]," "Misc nudes 1," and "Girl pics nude." Appendix at 9 (Berman Letter at pp. 1, 9).

50. On July 8, 2019, prosecutors with the Public Corruption Unit of the U.S. Attorney's office for the Southern District of New York charged Epstein with sex trafficking and conspiracy to traffic minors for sex. The grand jury indictment alleges that "dozens" of underage girls were brought into Epstein's mansions for sexual encounters. A few days later, owing to public outcry over the NPA with Epstein entered into by Acosta, who by then was serving as U.S. Secretary of Labor in the Trump administration, Acosta resigned from office. Appendix at 10; 3 (DOJ U.S. Attorney's Office S.D.N.Y. Press Release; OPR Report, p. iv).

51. Epstein was denied bail and was placed into pretrial detention at the federal Metropolitan Correction Center in lower Manhattan. Appendix at 3 (OPR Report, p. iv).

52. On or about August 6, 2019, Florida Gov. Ron DeSantis ordered a State criminal probe into the actions of the Palm Beach Sheriff and former State Attorney Krischer for their handling of the Epstein underage sex trafficking case. Appendix at 3 (OPR Report, p. vii).

53. On August 10, 2019, Epstein was found dead in his cell at the Metropolitan Correctional Center. His cause of death was determined to be suicide. Appendix at 3 (OPR Report, p. v).

C. The August 27, 2019, SDNY Hearing: Epstein's Victims Speak.

54. On account of his death, prosecutors sought to dismiss the indictment against Epstein, while maintaining that they would continue to investigate his co-conspirators.

55. United States Senior District Judge Richard M. Berman ordered a hearing on August 27, 2019, on the prosecutors' decision to dismiss the indictment and allowed victims to speak at the hearing. Appendix at 11 (August 27, 2019 Hearing Transcript before the Honorable Richard M. Berman ("Hearing Transcript")).

56. In the course of the hearing, more than two dozen victims delivered their personal stories of pain, frustration, and sexual abuse at the hands of Epstein. Several victims spoke of violent rape by Epstein. Many more victims were present in the courtroom but did not testify. Appendix at 11 (Hearing Transcript, 28:22–85:15).

57. While some questioned the reasoning behind the court's decision to give the victims voice after Epstein's death, District Judge Berman noted that "a public hearing is [the] preferred vehicle for its resolution," emphasizing that "public hearings are exactly what judges do. Hearings promote transparency and they provide the court with insights and information which the court may not otherwise be aware of." Indeed, even Epstein's defense lawyer noted at the hearing that the court "is the institution that most people have confidence in, in these very troubled times." Appendix at 11 (Hearing Transcript, 4:1–3, 5:14–17, 18:25-19:2).

58. At the August 27th hearing, Epstein's victims, now mature women, spoke about their "exploitation and coercion," and to the fact that many of them "were in very vulnerable situations and in extreme poverty, circumstances where [they] didn't have anyone on [their] side, to speak on [their] behalf . . . " One victim lamented that "as a victim, [she] never got to see what the agreement was or why the special treatment got approved" in the Florida case years earlier. Another noted how "completely different" the investigators who secured the 2019 federal indictment were from the prosecutors in the Florida case, both in their treatment of her and their investigation of her victimization by Epstein. Appendix at 11 (Hearing Transcript, 36:24, 38:19–22, 41:25–42:1, 48:4–5).

59. A former federal judge in attendance at the August 27th hearing emphasized that "transparency is one of the overriding objectives in our criminal justice system." Appendix at 11 (Hearing Transcript, 49:21–22).

60. Nearly all of the victims expressed the conviction that the secrecy that shielded Epstein has caused them "irreparable harm" and that an opportunity to address his criminal wrongdoings, and those of the individuals who enabled his sexual racketeering, would allow for at least some measure of justice to be served after his death. Indeed, one victim stated: "Any efforts made to protect Epstein's name and legacy send a message to the victims that he wins and that he is untouchable." Another victim expressed fear that this is a world "where there are predators in power, a world where people can avoid justice if their pockets run deep enough." In short, the "unusual" treatment Epstein received in Florida in 2006 based on his wealth, social status, and connections severely eroded the public's faith in the integrity and impartiality of the criminal justice system. Appendix at 11 (Hearing Transcript, 68:21–23, 74:16–19, 41:12).

D. *The Palm Beach Post's* Extensive 15-Year Reporting On Epstein's Crimes.

61. Plaintiff, *The Palm Beach Post*, is a community newspaper serving readers in Palm Beach County and the Treasure Coast vicinity.

62. *The Palm Beach Post* has been a Pulitzer Prize winner and nominated as a finalist three other times.

63. Beginning in 2004, *The Palm Beach Post* has extensively investigated and reported on the allegations against, the law enforcement investigation of, and the crimes committed by Epstein and his co-conspirators. A true and correct copy of a compilation of the *The Palm Beach Post*'s reportage, in either the computerized format in which the articles are maintained in *The Palm Beach Post*'s electronic archives or the news print edition in which originally published, is included in the Appendix at 12.

64. Since the filing of the initial Complaint in this matter, *The Palm Beach Post* — along with media worldwide — has continued to report on Epstein's crimes and the ongoing official proceedings resulting from those crimes.

E. Procedural History.

65. The initial Complaint in this action was filed on November 14, 2019. It alleged one count under Florida Statutes Section 905.27.

66. Both Defendants named in the Complaint, the Clerk of Palm Beach County and Dave Aronberg as the State Attorney, moved to dismiss the Complaint.

67. In response to the Defendants' motions, *The Palm Beach Post* filed an Amended Complaint on January 17, 2020, adding an additional count for declaratory relief.

68. On January 24, 2020, both Defendants, the Clerk and the State Attorney's Office, answered Count I of the Amended Complaint (declaratory relief) and moved to dismiss Count II of the Amended Complaint (Section 905.27).

69. In its Answer, the State Attorney's Office denied that it "is in possession and/or control of documents that are the subject of this action." State Attorney Answer ¶ 3.

70. By contrast, in its Answer, the Clerk admitted that she "is in possession and/or control of documents that are the subject of this action." Clerk Answer ¶ 3.

71. The Defendants' Motions to Dismiss were heard on June 3, 2020. While this "case is assigned to Division AG, which is currently presided over by the Honorable Donald Hafele . . . ", Chief Judge of the Fifteenth Judicial Circuit, [Hon. Krista Marx] presided over the June 3, 2020 hearing on the State Attorney and Clerk's Motions as the Motions implicate records of the Palm Beach County grand jury, over which the Chief Judge presides." June 8, 2020 Order granting motions to dismiss ("Order").

72. At the June 3 hearing, Chief Judge Marx stated: "I don't think anybody is saying that there isn't a cause of action [under Section 905.27] or that the press doesn't have standing." Appendix at 13 (June 3, 2020 Hearing Transcript before the Honorable Krista Marx ("June 3 Hearing Transcript"), at 8:2–4; *see also* 8:7–8 ("nowhere have I said there isn't a cause of action."); 15–16 ("So I'm not telling you, you don't have a cause of action.")). Attorneys for both the Clerk and the State Attorney's Office unequivocally stated that they did not seek to "block access" to the records sought by *The Palm Beach Post*. Appendix at 13 (June 3 Hearing Transcript at 18:23–19:5).

73. On June 8, 2020, Chief Judge Marx issued an order granting Defendants' motions to dismiss Count II of the Amended Complaint, leaving Count I — against which neither Defendant had filed a motion — in the action. The Court held that there was no private cause of action embodied in Section 905.27. Specifically, the Order stated that "the Court does not suggest The Post has no available mechanism to obtain a court order granting it access to the grand jury

proceedings. The Court also does not render any opinion as to whether releasing these records is appropriate for the purpose of 'furthering justice' within the meaning of section 905.27. Rather, the Court's dismissal of Count II is necessitated by precedent and the simple fact that a civil lawsuit against the State Attorney and Clerk under section 905.27 is not the proper mechanism for The Post to pursue its goal." Order at 6.

74. In its Amended Motion for Attorneys' Fees, filed on November 9, 2020, the State Attorney's Office stated that the "State Attorney has no objection to the Clerk producing and disclosing the Requested Materials should the Court grant an order to that effect…" Amended Motion for Attorneys' Fees, ¶ 20; *see also* ¶ 25 ("the State Attorney has no objection, and never has had any objection, to the Clerk releasing the records sought by Plaintiff . . . ").

75. In November 2020, the Office of Professional Responsibility at the Department of Justice released the results of its investigation into allegations that in 2007–2008 prosecutors in the U.S. Attorney's Office for the Southern District of Florida improperly resolved a federal investigation into the criminal conduct of Jeffrey Epstein by negotiating and executing the NPA referenced above. Appendix at 3 (OPR Report, p. i).

76. The OPR "collected and reviewed materials relating to the state investigation and prosecution of Epstein, including sealed pleadings, grand jury transcripts, and grand jury audio recordings . . . " Appendix at 3 (OPR Report, p. 283).

III. ARGUMENT

A. Legal Standard.

77. A party moving for summary judgment must show the absence of any genuine issue of material fact. *O'Donnell v. W.F. Taylor Co.*, 292 So.3d 785, 787–88 (Fla. Dist. Ct. App. 2020) (citing *Moore v. Morris*, 475 So.2d 666, 668 (Fla. 1985)). Inferences must be drawn in favor of the non–moving party; "[h]owever, '[t]he judgment sought must be rendered immediately if the

pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting Fla. R. Civ. P. 1.510(c)). This is such a case: there are no issues as to any material fact underlying *The Palm Beach Post's* request for summary judgment on its declaratory relief claim.

B. Relevant Legal Framework: Fla. Stat. § 905.27.

1. Grand Jury Secrecy Is Not Absolute.

78. Typically, grand jury proceedings are conducted and maintained in secret. Fla. Stat. § 905.24. But this secrecy has never been — and was never intended to be — absolute. First, grand jury proceedings are subject to public disclosure to the extent mandated by constitutional free speech principles, as a testifying grand jury witness is free to disclose her grand jury testimony. In *Butterworth v. Smith*, the United States Supreme Court, weighing the competing interests of grand jury secrecy and the First Amendment, held unconstitutional Section 905.27's prohibition on a witness revealing her own testimony. 494 U.S. 624, 626 (1990).[2] The "secrecy" of grand juries in Florida is thus qualified — not absolute — based on principles embodied in the First Amendment.

79. Second, Section 905.27(1) specifically provides exceptions to grand jury secrecy: "the testimony of a witness examined before the grand jury or other evidence received by it" may be disclosed "when required by a court . . . for the purpose of: (a) Ascertaining whether it is consistent with the testimony given by the witness before the court; (b) Determining whether the witness is guilty of perjury; or (c) Furthering justice." Fla. Stat. § 905.27(1)(a)–(c). The Florida

[2] The Florida Supreme Court has similarly confirmed that grand jury secrecy is not absolute and that any "harm to public officeholders [from disclosure] will be the product of their own conduct, and not the consequence of an unrestrained body of misguided citizens." *Miami Herald Pub. Co. v. Marko*, 352 So.2d 518, 523 (Fla. 1977). The decision in *Marko* emphasized that a grand jury's important role in "expos[ing] official misconduct" precludes restricting access to its activities for the purpose of protecting "public officeholders." *Id.* ("The benefits to be derived from this extraordinary exercise in citizen participation [in the grand jury] would be severely limited if the fruits of that activity were not available to the public on whose behalf it is undertaken. Implicit in the power of the grand jury to investigate and expose official misconduct is the right of the people to be informed of its findings.").

legislature therefore clearly intended to empower a court to order the disclosure of grand jury proceedings for, among other reasons, to further justice, as this Court should do here.

80. Subsequent to such disclosure, *The Palm Beach Post* is not, as the State Attorney has previously argued (State Attorney Motion to Dismiss at pp. 12-13), constrained by the statute from using the materials for public disclosure–nor could it be, under the First Amendment.[3]

2. *The Palm Beach Post* Has Standing Under Section 905.27.

81. *The Palm Beach Post* has the right to maintain this private right of action because the furtherance of justice, an express legislative exception to grand jury secrecy, is intended for the public benefit, and *The Palm Beach Post* seeks access on behalf of the public it serves. Fla. Stat. § 905.27(1)(c). It is further mandated in Fla. Stat. § 905.27 that the legislature intended for a *court* to be the party to make the determination of disclosure. Fla. Stat. § 905.27(1). In other words, the legislature granted *the judiciary* the power to consider and determine the propriety and scope of grand jury secrecy.

82. The United States Supreme Court has "recognized that the invocation of grand jury interests is not 'some talisman that dissolves all constitutional protections.'" *Butterworth*, 494 U.S. at 630–31 (quoting *U.S. v. Dionisio*, 410 U.S. 1, 11 (1973)); *see also Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838 (1978) (balancing state's interest in preserving confidentiality of judicial misconduct proceedings against rights of newspaper reporting on such proceedings).

83. The Supreme Court has further recognized that the press has a constitutional right of access to criminal proceedings, *see, e.g.*, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555,

[3] Indeed, such a limitation would render the statute a prior restraint, "the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) (noting a "deeply-seated American hostility to prior restraints"). To the extent redactions to the grand jury materials may be required to protect the privacy of unnamed victims or third parties, the Court of course may require such redactions prior to ordering disclosure of the records.

573 (1980), including pre–trial criminal proceedings. *Newman v. Graddick*, 696 F.2d 796 (11th Cir. 1983). Indeed, "the integrity of the judicial process, which public scrutiny is supposed to safeguard, is just as much at issue in proceedings of this kind [pre– and post–trial] as at trial." *Id.* at 801; *see also Miami Herald Publ. Co. v. Lewis*, 426 So.2d 1, 6–7 (Fla. 1982) (identifying the news media as a "public surrogate" in matters concerning the closure of judicial proceedings). The press also has a First Amendment interest in receiving information from willing speakers. *See Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.,* 425 U.S. 748, 756–57 (1976) ("Where a speaker exists . . . the protection afforded [by the First Amendment] is to the communication, to its source and to its recipients both."); *Pittman v. Cole*, 267 F.3d 1269, 1283 n.12 (11th Cir. 2001) ("The Supreme Court has recognized that the First Amendment offers protection to both speakers and those wishing to receive speech."); *see also Stephens v. Cnty. of Albemarle, VA*, 524 F.3d 485, 492 (4th Cir. 2008) (providing that a plaintiff has "standing to assert a right to receive speech" by "show[ing] that there exists a speaker willing to convey the information to her").

84. Because of the unique role performed by the press as a "public surrogate" (*Lewis*, 426 So.2d at 6-7) in protecting the right of access and its interest in reporting information about criminal proceedings, news organizations "presumptively have a right to access judicial records," *Comm'r, Ala. Dep't of Corr. v. Advance Local Media, LLC*, 918 F.3d 1161, 1166 (11th Cir. 2019), and "standing to question the validity of an order restricting publicity because its ability to gather news is directly impaired or curtailed." *Lewis*, 426 So.2d at 4; *see also Carlson v. United States*, 837 F.3d 753, 757-58 (7th Cir. 2016) ("[a]s a member of the public, [the Reporters Committee] has standing to assert [its] claim" to grand jury materials because such materials are "public records to which the public may seek access, even if that effort is ultimately unsuccessful").

85. Here, the continued denial of access to the information sought by *The Palm Beach Post* on behalf of its journalists and the public "unquestionably constitutes irreparable injury." *Gainesville Woman Care, LLC v. State of Florida*, 210 So.3d 1243, 1263 (Fla. 2017); *see also Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981) (noting that "the press's function as a vital source of information is weakened whenever the ability of journalists to gather news is impaired," as it is by Attorney General's refusal to disclose unredacted report and underlying grand jury materials).

86. *The Palm Beach Post* does not disagree that Section 905.27 makes no express provision for a civil suit or civil liability, but that is just the start of the inquiry. Where a statute, like 905.27, "forbids the doing of an act which may be to [the plaintiff's] injury, though no action be given in express terms by the statute for the omission or commission, the general rule of law is that the party injured should have an action; for where a statute gives a right, there, although in express terms it has not given a remedy, the remedy which by law is properly applicable to that right follows as an incident." *Smith v. Piezo Tech. and Prof'l Adm'rs*, 427 So.2d 182, 184 (Fla. 1983) (Supreme Court of Florida implied a statutory cause of action for the wrongful discharge of employees who sought workers' compensation benefits). Here, the forbidding of disclosure of grand jury proceedings injures *The Palm Beach Post.* The statute, in turn gives a "right" to disclosure of those proceedings, and *The Palm Beach Post* should have a cause of action to enforce that right.

87. In determining whether a private right of action lies in a statute, courts in Florida consider: (1) whether the plaintiff is one of the class for whose special benefit the statute was enacted; (2) whether there is any indication, either explicit or implicit, of a legislative intent to create or deny such a remedy; and (3) whether judicial implication is consistent with the underlying

purposes of the legislative scheme. *Fischer v. Metcalf*, 543 So.2d 785 (Fla. 3d DCA 1989) (adding the second and third factors; previously, courts considered solely the "class benefited" factor). "Courts must strike a balance; neither 'fashioning a per se rule of construction that implicit in every penal statute is a concomitant civil remedy,' nor relinquishing the task of judicial implication in the face of legislative faltering or uncertainty." *Fischer*, 543 So.2d at 789 (quoting *Roger Rankin Enters., Inc. v. Green*, 433 So.2d 1248, 1250 (Fla. 3d DCA 1983)).

88. Consideration of these three factors establishes a private right of action in Section 905.27. First, the statutory exception to grand jury secrecy embodied in Section 905.27 — "furthering justice" — is intended to benefit the public at large, not just those previously party to the grand jury proceeding at issue. Because, as set forth above, members of the press are "public surrogate[s]" (*Lewis*, 426 So.2d at 6-7) and play a vital role in gathering information and reporting on the criminal justice system, *The Palm Beach Post* is "one of the class for whose especial benefit the statute was enacted" — namely, the public itself. *See Moyant v. Beattie*, 561 So.2d 1319 (Fla. 4th DCA 1990) (finding plaintiffs "had the right to maintain a private cause of action as the persons the legislature intended to protect by the enactment of" the relevant statute).

89. Second, there is a dearth of legislative history surrounding Section 905.27, and *The Palm Beach Post* has been unable to identify any documents capturing the Legislature's intent regarding the existence of a private right of action. There is no explicit statement in favor of such a right, but to be clear, there is also no intent — express or otherwise — to prohibit a private right of action, in the absence of which disclosure of grand jury materials to "further justice" under the statute would be rendered a hollow vessel. *See Moyant*, 561 So.2d at 1320 ("The absence of express provision for civil liability in the case of violation of a statute does not negative the

existence of a legislative intent that the statute shall effect private rights.") (quoting Florida Statutes, Section 475.482 (1989)).

90. In such circumstances, consideration of the third factor — whether judicial implication is consistent with the underlying purposes of the legislative scheme — is particularly instructive. When scrutinizing the history of legislation to determine legislative intent, it is appropriate to consider acts passed at subsequent sessions. *Fischer*, 543 So.2d at 790. In 1994, at the same time Section 905.27 was reenacted to expressly provide the three exceptions to grand jury secrecy, including furthering justice, the Florida legislature also reenacted Fla. Stat. § 905.395, which concerns the secrecy of statewide grand juries. 1994 Fla. ALS 285, 1994 Fla. Laws ch. 285, 1994 Fla. SB 114; Fla. Stat. § 905.395. Like Section 905.27, Section 905.395 has a general prohibition on disclosure of grand jury proceedings, absent a court order. Fla. Stat. § 905.395. Tellingly, however, Section 905.395 does not provide any specific exceptions to nondisclosure. Through the intentional omission of these exceptions, including the fundamental "furthering justice" exception, it can be understood that the legislature did not intend for court–ordered disclosure of statewide grand jury records to further justice, and did not anticipate such disclosures would benefit the public. By contrast, the legislature's decision to include the catchall "furthering justice" exception in Section 905.27 reflects an intent to protect and inform the public — the ultimate benefactors of the criminal justice system — by providing a means of access in those rare situations where the integrity and legitimacy of the grand jury process have been called into serious question. Accordingly, implying a private right of action is consistent with the purposes underlying the legislative scheme in Chapter 900 of the Florida Statutes.

C. This Court Has Inherent Power to Release Grand Jury Records in Order to Further Justice and Promote Public Confidence in the Judicial Process.

91. Even in the absence of Section 905.27's statutory framework, disclosure is appropriate pursuant to this Court's inherent authority over grand jury proceedings because of the exceptional public interest in this case and the compelling circumstances supporting transparency rather than continued secrecy.

1. The Grand Jury is Under the Court's Supervision and Jurisdiction.

92. It is well–settled that the grand jury is "'a judicial proceeding in a court of justice . . . an appendage or adjunct to the circuit court.'" *In re Grand Jury Investigation*, 287 So.2d 43 (Fla. 1973) (quoting *Craft v. State*, 42 Fla. 567, 29 So. 418 (1900)). Indeed, it is the court that gives the grand jury its initial charge and advises the grand jury about its legal duties. Fla. Stat. § 905.18.

93. "It has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution,' powers 'which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). "There can be no question of the inherent power of a court 'to protect itself, and hence society, as an instrument of justice.'" *In re Osborn*, 376 F.2d 808, 810 (6th Cir. 1967).

94. Thus, in a variety of contexts, it has been held that "courts have the inherent power to protect the integrity of the judicial process from perversion and abuse." *Vitakis–Valchine v. Valchine*, 793 So.2d 1094, 1099–1100 (Fla. 4th DCA 2001); *Attwood v. Singletary*, 661 So.2d 1216 (Fla. 1995) (invoking court's inherent authority to prevent interference with orderly process of judicial administration); *Tramel v. Bass*, 672 So.2d 78 (Fla. 1st DCA 1996) (invoking court's inherent authority to strike pleadings to sanction fraud perpetrated on the court).

95. The Florida Supreme Court has noted that it is "of vital importance to maintain the dignity and the integrity of both the grand jury and the presiding judge." *State v. Clemmons*, 150 So.2d 231, 233–34 (Fla. 1963).[4] "[I]n states such as Florida, where the grand jury is preserved, it is an important appendage of the court which impanels it…[and] it should not be forgotten that the judge of that court is equally important and he is generally charged with the supervision of the grand jury's activities . . . ." *Id.* "The importance of public confidence in the integrity of judges stems from the place of the judiciary in the government." *Williams–Yulee v. Fla. Bar*, 575 U.S. 433, 445 (2015). Courts do not command armies and have "no influence over either the sword or the purse[.]" *Id.* (citing The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton)). "The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions." *Id.*; *see also Carlson v. United States*, 837 F.3d at 765 (recognizing the court's "wide discretion" to use its "inherent power" to fashion exceptions pertaining to the release of grand jury records). "The perception of a viable healthy judiciary is of critical importance to our system of justice." 1980 U.S.C.C.A.N. 4315, 4321. This "perception" is of equal importance with respect to state courts, which are invested with primary responsibility for overseeing the investigation and prosecution of crimes.

96. The Supreme Court of the United States, while acknowledging the value in grand jury secrecy, has long authorized the disclosure of grand jury records where the need for transparency outweighs any remaining interest in secrecy. *Douglas Oil Co. of California v. Petrol Stops Northwest*, 441 U.S. 211, 223 (1979). Courts around the country have followed suit. *See, e.g., In re Petition of Nat'l Sec. Archive*, No. 08 CIV. 6599, 2008 WL 8985358 (S.D.N.Y. Aug. 26, 2008) (release of grand jury records concerning the indictment of Julius and Ethel Rosenberg);

[4] *State v. Clemons* was superseded by statute. *See Kelly v. Sturgis*, 453 So.2d 1179 (Fla. 5th DCA 1984).

In re Petition of Nat'l Sec. Archive, 104 F. Supp. 3d 625 (S.D.N.Y. 2015) (same); *In re Petition of Kutler*, 800 F. Supp. 2d 42 (D.D.C. 2011) (release of President Nixon's grand jury deposition testimony in connection with third Watergate grand jury); *In re Unseal Dockets Related to the Indep. Counsel's 1998 Investigation of President Clinton*, 308 F. Supp. 3d 314 (D.D.C. 2018) (release of records related to independent counsel's investigation of President Clinton); *In Re: Application of the Committee on the Judiciary, U.S. House of Representatives, For an Order Authorizing the Release of Certain Grand Jury Materials, Committee on the Judiciary, United States House of Representatives v. U.S. Department of Justice*, No. 19–5288 (D.C. Cir. March 20, 2020) (ordering the Trump administration to provide the House Judiciary Committee redacted portions of grand jury materials from former special counsel Robert Mueller's probe into Russian election interference).

97. More recently, Kentucky's Jefferson County Circuit Court released audio of the grand jury proceedings in the Breonna Taylor case in which a young woman was tragically shot by police who were executing a search warrant. The grand jury returned only one wanton endangerment charge, which did not involve Ms. Taylor's death, against a single police officer.

98. Like Florida, Kentucky has a rule, punishable by contempt of court, maintaining the secrecy of grand jury proceedings. Kentucky Rules of Criminal Procedure (RCr) Rule 5.24. A court has authority to direct disclosure of those proceedings, though unlike Section 905.27, RCr 5.24 does not enumerate specific reasons allowing the Court to exercise its discretion in ordering disclosure.

99. After community outrage over the indictment, a member of the grand jury requested the court to release the grand jury transcripts. The Jefferson County Circuit Court "released redacted audio recordings of the grand jury proceeding and in the interest of public trust and

transparency, permitted grand jurors who desired to speak out to do so." *Estate of Jones v. City of Martinsburg*, Nos. 18–0927, 18–1045, 2020 W. Va. LEXIS 709, at *68 n.51 (Oct. 30, 2020) (citing *Commonwealth v. Hankison*, No. 20CR1473, Order of Arraignment and Discovery (Ky. Jefferson Cir. Ct. Div. 13 entered September 29, 2020)).

100. Following the court's order authorizing disclosure in the Taylor case, grand jurors informed the public that the prosecutor did not present the jury with any options other than first–degree wanton endangerment charges. One grand juror said the prosecutors did not walk the jury through Kentucky's homicide laws or explain why they decided that two other officers who shot at Breonna Taylor were justified. When the panel asked about additional charges, prosecutors told them there would not be any because they "didn't feel they could make them stick," the juror said. *Estate of Jones*, 2020 W. Va. LEXIS 709, at *68 n.51 (citing https://www.washingtonpost.com/national/2nd–breonna–taylor–grand–juror–criticizes–proceedings/2020/10/22/c26ee432–14bb–11eb–a258614acf2b906dstory.html). In all probability, the grand jury transcripts in the Epstein proceedings will similarly reveal what charges were presented, how they were presented, how questions from grand jurors were handled by the State Attorney, the testimony of witnesses, and whether the *post hoc* explanations provided by the State Attorney's Office align with what actually transpired.

101. There is no evidence that the disclosures resulting from the above cases have adversely affected the grand jury process. On the other hand, there is no doubt that the release of these materials has contributed greatly to the historical record and public understanding of significant events in our country's history, as well as exposing failures in our justice system. And, in the case of Breonna Taylor, as a result of the transparency surrounding the events that led to her

death, the practice of "no knock" warrants has largely been condemned and banned throughout the country.[5]

2. This Court Has Inherent Power to Release Grand Jury Records in Order to Further Justice and Vindicate Public Confidence in the Judicial Process.

102. Courts have identified nine "non-exhaustive" factors that may be considered in determining whether their inherent authority should be exercised to order the release of grand jury documents. These factors include:

> (i) the identity of the party seeking disclosure; (ii) whether the defendant to the grand jury proceeding or the government opposes the disclosure; (iii) why disclosure is being sought in the particular case; (iv) what specific information is being sought for disclosure; (v) how long ago the grand jury proceedings took place; (vi) the current status of the principals of the grand jury proceedings and that of their families; (vii) the extent to which the desired material–either permissibly or impermissibly–has been previously made public; (viii) whether witnesses to the grand jury proceedings who might be affected by disclosure are still alive; and (ix) the additional need for maintaining secrecy in the particular case in question.

Kutler, 800 F. Supp. 2d at 47–48 (quoting *In re Petition of Craig*, 131 F.3d 99, 106 (1997)).[6]

103. The vast majority of these factors support disclosure in this case. First, the party seeking disclosure does so in furtherance of its First Amendment right to report information informing the public about the operation of the criminal justice system. *See Va. Pharmacy Bd.*, 425 U.S. at 756–57; *Pittman*, 267 F.3d at 1283; *Richmond Newspapers*, 448 U.S. at 596 ("the

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5 No-knock warrants have been banned in Florida since 1994. *See State v. Bamber*, 630 So.2d 1048 (Fla. 1994).

6 While it is largely federal courts that have applied these nine factors, (1) there can be no dispute that Florida courts are endowed with inherent authority like their federal counterparts, *see supra* at 15-16; and (2) federal courts consider these factors when the enumerated exceptions to grand jury secrecy set forth in Federal Rule of Criminal Procedure 6(e)(3)(E) do not appear to apply. *See, e.g., Carlson v. United States*, 837 F.3d at 763 (7th Cir. 2016) ("As the Supreme Court put it, Rule 6(e) is 'but declaratory' of the long-standing 'principle' that 'disclosure' of grand jury materials is 'committed to the discretion of the trial court.'"); *United States v. John Doe, Inc. I*, 481 U.S. 102, 116 (1987) (the Court "stressed that wide discretion must be afforded to district court judges in evaluating whether disclosure is appropriate"); *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 223 (1979) ("[W]e emphasize that a court called upon to determine whether grand jury transcripts should be released necessarily is infused with substantial discretion."). Thus, to the extent the Court does not find that it is authorized by Fla. Stat. § 905.27 to order disclosure of the Epstein grand jury materials, its inherent authority provides "substantial" (*id.*) grounds for such disclosure.

conduct of the [criminal] trial is pre-eminently a matter of public interest . . . More importantly, public access to trials acts as an important check, akin in purpose to the other checks and balances that infuse our system of government."); *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 606 (1982) ("the right of access to criminal trials plays a particularly significant role in the functioning of the judicial process and the government as a whole.").

104. Second, the defendant to the grand jury proceeding is deceased, and the government has unequivocally stated that is not opposed to the disclosure requested by *The Palm Beach Post*.

105. Third, disclosure is being sought–based on information learned by *The Palm Beach Post* from (1) a series of Florida Public Records Law requests, (2) law enforcement sources with direct knowledge of the grand jury evidence and proceedings, (3) judicial documents obtained from independent but related court proceedings, and (4) documents otherwise available in the public record–to inform the public as to whether the then State Attorney for Palm Beach County presented truncated evidence of Epstein's criminal wrongdoing to the 2006 grand jury in a manner that precluded Epstein's indictment for the serious crimes he committed, including sex trafficking and sexual assault.

106. Fourth, the records being sought are the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury. The evidence known to date strongly supports the conclusion that the State Attorney willfully skewed and downplayed his case before the grand jury through a seriously under-charged indictment that ignored the true extent of Epstein's crimes and denigrated his victims as prostitutes unworthy of legal protection. Indeed, the State Attorney appears to have ignored the evidence of how Epstein had groomed the girls and how he had manipulated them into doing his bidding. Plainly, Epstein's payments to them were part of his scheme to attack the girls should he be charged with crimes, and to convince the State

Attorney that he had merely solicited prostitutes who were not "true" victims. The machination of buying their services was also intended to counter the fact that the girls were minors.

107. Fifth, the grand jury proceedings took place fifteen years ago.

108. Sixth, the current status of the principals of the grand jury proceedings are unknown.

109. Seventh, because much of the requested information has now entered the public domain through victims protesting their mistreatment by and misgivings concerning prosecutors (both state and federal), other lawsuits surrounding Epstein and his co-conspirators, and public records requests and extensive news reporting, this factor weighs in favor of full disclosure.

110. Eighth, the status of the witnesses who appeared is unknown — indeed, *The Palm Beach Post*'s request is made, in part, to learn who the witnesses were that the State Attorney did decide to call (as well as those he decided not to call).[7]

111. Finally, *The Palm Beach Post* submits that with the death of the defendant, the publicly-known and litigated acts of his co-conspirators, the length of time that has passed, and the widely reported nature of this miscarriage of justice, there is no additional need for maintaining secrecy. *See U.S. v. Socony–Vacuum Oil Co.*, 310 U.S. 150, 234 (1940) ("[A]fter the grand jury's functions are ended, disclosure is wholly proper where the ends of justice require it.").

112. Courts have long realized that a transparent criminal justice system affords "significant community therapeutic value." *Richmond Newspapers*, 448 U.S. at 570–71. "[T]he open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion." *Id.* at 571. "The crucial prophylactic aspects of the

[7] With respect to the sixth and eighth factors, an *in camera* review by this Court, followed by appropriate redactions, would remedy any potential harm to innocent parties.

administration of justice cannot function in the dark; no community catharsis can occur if justice is done in a corner [or] in any covert manner." *Id.*

113. *The Palm Beach Post* is accordingly entitled to disclosure of the Epstein grand jury materials maintained by the Clerk of Palm Beach County pursuant to this Court's inherent authority and supervisory powers, which allow the Court to take appropriate and necessary action to preserve, promote, and protect the integrity of the justice system. The citizens of Palm Beach County and throughout the State of Florida are entitled to nothing less in this case of paramount importance and public interest.

114. As a surrogate for the public it serves, *The Palm Beach Post* respectfully requests that the Court declare, pursuant to Fla. Stat. Section 905.27(1), that it is entitled to access the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury because such disclosure would be in the furtherance of justice. Fla. Stat. § 905.27(1)(c). Because *The Palm Beach Post* is not seeking these materials in connection with either a civil or criminal case, it also seeks a declaration that the scope of its use of the disclosed materials is not so limited. *See* Fla. Stat. § 905.27(2).

115. *The Palm Beach Post* further seeks a declaration that disclosure of the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury is appropriate pursuant to this Court's inherent authority over grand jury proceedings because of the exceptional public interest in this case and the compelling circumstances supporting transparency.

IV. CONCLUSION

116. *The Palm Beach Post* respectfully requests that this Court, pursuant to Fla. Stat. Section 905.27(1) and the Court's inherent authority, order the Clerk of the Court to file with this Court copies of the testimony, minutes, and other evidence presented in 2006 to the Palm Beach

County grand jury during the first Epstein sex abuse investigation so that, following an *in camera* inspection, it can be made available to *The Palm Beach Post* and the public on an expedited basis.

Dated: April 22, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 2021, a true and correct copy of the foregoing has been filed with the Clerk of the Court using the State of Florida e-filing system, which will send a notice of electronic service for all parties of record herein

/s/ Stephen A. Mendelsohn
STEPHEN A. MENDELSOHN