

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally  
Known as HULK HOGAN,

Plaintiff,

Case No. 12012447 CI-011

vs.

GAWKER MEDIA, LLC aka GAWKER MEDIA;  
NICK DENTON; A.J. DAULERIO,

Defendants.

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TIMES PUBLISHING COMPANY,  
FIRST LOOK MEDIA, INC.,  
WFTS-TV and WPTV-TV,  
SCRIPPS MEDIA, INC., WFTX-TV,  
and THE ASSOCIATED PRESS,

Intervenors.

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**INTERVENORS' OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION TO  
STRIKE AND REMOVE MATERIALS FROM THE COURT RECORD, AND  
MOTION TO MODIFY, SUPPLEMENT AND/OR AMEND SEALING ORDERS**

Intervenors, Times Publishing Company, First Look Media, Inc., WFTS-TV, WPTV-TV, Scripps Media, Inc., WFTX-TV and The Associated Press, through undersigned counsel, submit this opposition to (i) Plaintiff's Emergency Motion To Strike And Remove All Materials From The Record That Disclose Or Are Derived From Illegally Recorded Audio, and (ii) Plaintiff's Motion To Modify, Supplement And/Or Amend Orders Sealing Surreptitious Audio And Evidence Derived Therefrom.

Bollea seeks to strike from the court record video footage which sits at the center of this lawsuit, and any documents derived therefrom, including the *entire* FBI investigation file obtained in a separate federal court action brought under the Freedom of Information Act, 5 U.S.C. § 552

(“FOIA”). Although Bollea argues that such records will not be admissible at trial and invade his personal privacy, it appears that these records were placed at issue by Bollea in this case generally, as well as with respect to his request for a “leak” investigation. The bulk of these records appear to have already been placed under seal. Those sealing orders are the subject of a Petition for Writ of Certiorari (“Petition”) pending before the Second District Court of Appeal.

As explained in more detail below, Bollea's motions should be denied as:

1. The physical removal of judicial records from the Court file would violate federal Constitutional and Florida law, and would result in the unwarranted removal from the court file of judicial records with respect to a broad range of issues which underpin numerous significant rulings in this case, and likely many rulings to come; and

2. Bollea appears to be attempting to make an end run around the Petition pending before the Second District which this Court should not allow.

**I. THE REMOVAL, OR SEALING, OF THE COURT RECORDS BOLLEA SEEKS WOULD VIOLATE FLORIDA LAW AND THE FIRST AMENDMENT.**

As this Court is aware, in Florida courts "a strong presumption of openness exists . . . A trial is a public event, and the filed records of court proceedings are public records available for public examination." Barron v. Florida Freedom Newspapers, 531 So. 2d 113, 118 (Fla. 1988). *See also* Miami Herald Pub. Co. v. Lewis, 426 So. 2d 1 (Fla. 1982) (Florida Supreme Court holds that before closing a proceeding, court must make specific findings that closure essential to prevent specific harm, and tailor remedy no broader than necessary); Carnegie v. Tedder, 698 So. 2d 1310, 1312 (Fla. 2nd DCA 1997) ("Historically, litigants have had no reasonable expectation of privacy with regard to trial proceedings and court files."); Florida Freedom Newspapers, Inc. v. Sirmons, 508 So.2d 462, at 463 (Fla. 1st DCA 1987) ("There is no private litigation in the courts of Florida.);

Goldberg v. Johnson, 485 So. 2d 1386, 1388 (Fla. 4th DCA 1986) ("[T]he public and press have a right to know what goes on in a courtroom whether the proceeding be civil or criminal.").

This tradition of openness is embodied in article I, section 24, of the Florida Constitution, which mandates that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of public body, officer, or employee of the state," including the judicial branch. Florida law "strongly disfavors court records that are hidden from public scrutiny." In re Amendments to Fla. Rule 2.420, 954 So. 2d 16, 17 (Fla. 2007).

The First Amendment also requires open courts and court records to ensure the "appearance of fairness [that is] so essential to public confidence in the system." Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 508 (1984). The media's access to judicial proceedings and records keeps the public informed and helps instill public confidence in both the process and the results of trials. Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559-60 (1976); Nixon v. Warner Communications, Inc., 435 U.S. 589, 609 (1978); Landmark Commc'ns, Inc. v. Virginia, 435 U.S. 829, 838-39 (1978).

These traditions of openness are reflected in Florida Rule of Judicial Administration 2.420. Smithwick v. Television 12 of Jacksonville, Inc., 730 So.2d 795, 798 (Fla. 1st DCA 1999)(addressing the predecessor to Fla. R. Jud. Admin. 2.420, among others). In Smithwick, the Court affirmed the trial court's requirement that the plaintiff return to the court file judicial records which had been improvidently removed, and further affirmed the trial court's denial of the plaintiff's motion to either seal or redact certain information in the records claimed to be subject to a right of privacy, among other things. The relief requested by Bollea is strikingly similar to that requested by the plaintiff in the Smithwick case which the Court rejected. Furthermore, Bollea's Motion to Strike makes no mention of Rule 2.420, to which strict adherence is required.

Instead, Bollea contends that the records should either be removed from the court record, or sealed, because: (1) the video footage that forms the basis for his lawsuit was made in violation of Florida law, and thus that footage, and any documents related to it, including the FBI investigation initiated at his request, will be inadmissible at trial; and (2) the video footage, and any materials referring to the recordings, violate his personal privacy. Neither of these assertions provide a basis under Rule 2.420 to remove court records from the file or to seal them. Indeed, the alleged violation of Florida's Wiretap Act is not a basis under the applicable standard set forth in Miami Herald Pub. Co. v. Lewis, 426 So. 2d 1 (Fla. 1982), and Fla. R. Jud. Admin. 2.420, for determining the public access issue. Nor is any other exclusionary rule of evidence for that matter.

The argument that court records would not be admissible at trial was made and rejected in the Smithwick case. Regardless of whether judicial records may be admissible or not, the public's right to know what happens in its courts, and the basis for judicial rulings, including motions to admit or exclude evidence, is fundamental under the First Amendment and Florida law. See, Lewis, 426 So.2d at 8 (emphasizing that proceedings on motions to suppress must be open, whether allegations of wrongdoing are founded or unfounded, "so that all who care to see or read about the case may evaluate for themselves the propriety of" evidence exclusion).

Moreover, the video footage and any documents related thereto are central to Bollea's claims in this litigation. Whatever the outcome, Bollea has no reasonable expectation of privacy in any of these materials. Smithwick, supra; Carnegie, 698 So. 2d at 1312 (Closure is appropriate only for information that is both private and "peripheral to the litigation."); Baker v. Batmasian, 42 Med. L. Rptr. 2554 (Fla. Cir. Ct., Palm Beach County 2014) (rejecting request to seal exhibits that "directly bear on matters inherent in this proceeding"); Fla. R. Jud. Admin. 2.420(c)(9)(A)(vi) (information is protected as private only if it is "not generally inherent in the specific type of

proceeding sought to be closed”). Those materials have already been relevant in numerous rulings by this Court, with more to come.

The FBI’s investigation, which Bollea initiated and which he actively participated in, has been the subject of widespread public discussion in the media, in open court, and has been ordered disclosed by a federal judge interpreting the FOIA. Gawker Media, LLC v. FBI, 2015 WL 6736800, at \*7 (ordering disclosure based on “the public interest in understanding how its government makes decisions”). Indeed, Bollea himself publicly filed papers discussing the investigation.

## **II. THE COURT SHOULD NOT ALLOW BOLLEA TO ATTEMPT TO AVOID THE SECOND DISTRICT'S REVIEW OF THE PETITION.**

Bollea recognizes in his motions that the Second District Court of Appeal is currently reviewing the Court's orders placing under seal many of the judicial records that he now seeks to have stricken from the record. He argues that the Court may grant his motion to remove these records because the Court retains jurisdiction to modify or amend its sealing orders. Modifying existing sealing orders, and granting a new motion to permanently remove court records from the file are not the same thing. Removing records from a file that the Second District Court of Appeal may find should now, or at some future time, be open to public inspection would be wholly contrary to the public access guaranteed in the federal Constitution, Florida's Constitution, Florida's common law, and the Rules of Judicial Administration. Furthermore, Bollea has staked out the position from the beginning of this case that the video footage at issue violates Florida’s Wiretap Act. To now, at this late point in the case, raise the alleged violation of Florida’s Wiretap Act as a basis for preventing access to matters which appear to be at the core of the case is improper. The Court should, therefore, deny Bollea's motions, or stay any decision on them, pending the Second District Court of Appeal's disposition of Intervenor's Petition.

## CONCLUSION

For the foregoing reasons, Intervenor respectfully request the Court deny Plaintiff's Emergency Motion To Strike And Remove All Materials From The Record That Disclose Or Are Derived From Illegally Recorded Audio, and Plaintiff's Motion To Modify, Supplement And/Or Amend Orders Sealing Surreptitious Audio And Evidence Derived Therefrom, or, in the alternative, stay decision on these motions pending the Second District Court of Appeal's disposition of Intervenor's Petition.

Respectfully submitted this 16th day of February, 2016.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of February, 2016 a true and correct copy of the foregoing has been served via the Florida Courts' E-Filing Portal on the following:

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