No. SCPW-17-0000927

IN THE SUPREME COURT OF THE STATE OF HAWAI`I

NICK GRUBE, Petitioner, vs. THE HONORABLE ROM A. TRADER, Circuit Court Judge of the Circuit Court of the First Circuit, Respondent.	ORIGINAL PROCEEDING CR. NO. 15-1-1338 CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAI`I  The Honorable Rom A. Trader, Circuit Court of the First Circuit, State of Hawai`i POSITION STATEMENT REGARDING MOTION TO SEAL CASE

POSITION STATEMENT REGARDING MOTION TO SEAL CASE

Hawai`i Revised Statute (HRS) § 831-3.2(f) does not require sealing this entire proceeding about a motion to unseal court records of Tiffany Masunaga, simply because there are passing references to Movant Alan Ahn's arrest and prosecution.[1] And construing the statute in a manner that requires the Judiciary to seal the whole action without any exercise of judicial discretion raises serious constitutional concerns.

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[1] HRS 831-3.2(f) provides:

> Any person for whom an expungement order has been entered may request in writing that the court seal or otherwise remove all judiciary files and other information pertaining to the applicable arrest or case from the judiciary's publicly accessible electronic databases. The court shall make good faith diligent efforts to seal or otherwise remove the applicable files and information within a reasonable time.

In the end, sealing this matter does a disservice to individuals using court records to research this critical case about sealing court records. Official records of the background and briefing that led to the Court's thorough analysis of the standards for sealing court records will be unavailable. But the same records will continue to be available through an unofficial source—the website of Petitioner's counsel. And sealing the records will not have any impact on the numerous news articles, and this Court's published decision, that describe Ahn's arrest and prosecution.[2]

Petitioner Nick Grube respectfully requests that the Court interpret HRS § 831-3.2(f) narrowly to avoid infringing on the public's constitutional right of access and the Judiciary's authority to administer its own records and procedures. Ahn has not satisfied the constitutional standards to seal this matter. But if the Court will take action, Petitioner suggests—consistent with HRS § 831-3.2(f)—disassociating Ahn from this proceeding in the Judiciary's publicly accessible database so that searching for his name does not identify this matter in a public search or take other action short of concealing the entire mandamus proceeding from public view.

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[2] An expungement statute does not erase all record of criminal proceedings from public consciousness. *E.g.*, *Eagle v. Morgan*, 88 F.3d 620, 626-27 (8th Cir. 1996) ("Just as the judiciary cannot 'suppress, edit, or censor events which transpire in proceedings before it,' neither does the legislature possess the Orwellian power to permanently erase from the public record those affairs that take place in open court. . . . In any event, no governmental body holds the power to nullify the historical fact that in 1987 Eagle pleaded guilty to a felony." (citation omitted)); *Nilson v. Layton City*, 45 F.3d 369, 372 (10th Cir. 1995) ("Mr. Brimhall, as an officer in the Layton police department in 1981, had first-hand knowledge of Mr. Nilson's arrest and conviction. The expungement order did not erase this knowledge. We hold that Mr. Nilson did not have a legitimate expectation of privacy in his expunged criminal records."); *G.D. v. Kenny*, 15 A.3d 300, 303 (N.J. 2011) ("No one has argued that a newspaper that has reported on the arrest or conviction of a person whose record is later expunged must excise from its archives a past story or, similarly, that the New Jersey Judiciary must razor from the bound volumes of its reporters a published case. Common sense tells us that an arrest or conviction may become general knowledge within a community and that people will not banish from their memories stored knowledge even if they become aware of an expungement order.").

I. STATEMENT OF FACTS

A. The Immutable Record of Ahn's Arrest and Prosecution

As summarized in this Court's decision in *Grube v. Trader*:

> Alan Ahn, a Honolulu police officer, and Tiffany Masunaga, his girlfriend, were charged by indictment in the Circuit Court of the First Circuit (circuit court) with multiple drug-related offenses on August 26, 2015. Ahn has since pleaded no contest and been sentenced to a sixty-day jail term as a condition of a four-year probationary term.

142 Hawai`i 412, 418, 420 P.3d 343, 349 (2018).

News articles provide more details. Ahn was arrested August 13, 2015, with Masunaga in an early morning raid. Lynn Kawano, *Exclusive: Honolulu Police Officer Arrested Again, This Time in SWAT, Narcotics Raid*, Hawai`i News Now (Aug. 13, 2015). He was indicted and initially pleaded not guilty to, among other charges, four counts of promoting a dangerous drug in the third degree and four counts of promoting a harmful drug in the second degree, related to promotion of cocaine, hydrocodone, fentanyl, and alprazolam. Gregg K. Kakesako, *Former Honolulu Police Officer, Girlfriend Plead Not Guilty to Drug Charges*, Honolulu Star-Advertiser (Sept. 3, 2015).

As described in testimony in a federal drug prosecution, the Honolulu Police Department (HPD) started investigating Ahn after Gerard Puana—uncle of former deputy prosecuting attorney Katherine Kealoha—reported to an HPD sergeant that Ahn's girlfriend (Masunaga) was supplying Kealoha's brother with cocaine. Eddie Dowd, *Prosecution Calls Law Enforcement Witnesses on Day 3 of Drug Trial for Big Island Doctor*, KITV4 (Apr. 19, 2022). Kealoha got involved in the investigation and coordinated the raid in an effort to limit her brother's criminal exposure. Nick Grube, *How an Accused Drug Dealer Became Key to the Biggest Corruption Case in Honolulu History*, Honolulu Civil Beat (Mar. 11, 2019). Confidential informants reported to HPD investigators that Ahn provided protection for Masunaga's drug dealing. *Id.*

In January 2017, Ahn changed his plea to no contest. Rosemarie Bernardo, *Ex-Officer Is Sentenced to 60 Days in Drug Case*, Honolulu Star-Advertiser (May 24, 2017). On May 23, 2017, despite the prosecution's request for up to 10 years in jail, Judge

Trader sentenced Ahn to 60 days in jail with four years probation under the HOPE program. *Id.*

> During sentencing, Ahn admitted wrongdoing and took responsibility for his actions. "I make no excuses for what I did," he said.
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> . . .
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> Trader acknowledged Ahn had turned his life around since the arrest, but said there had to be accountability for the serious crimes committed. As a police officer, Trader said, "You had an obligation, and with that obligation comes tremendous responsibility."

Id. Ahn had requested deferred acceptance of his no contest plea, but Judge Trader denied the motion: "'Clearly you (had) made some choices to allow some very serious crimes to continue,' Trader said, adding that Ahn's priorities were 'messed up' at the time of his arrest." *Id.*

B. Post-Sentencing Proceedings

After serving his jail term, Ahn moved to reconsider the denial of deferred acceptance. Case No. 1PC151001338 Dkt. 158 (filed July 28, 2017). Other than having served the 60 days, the motion did not recite any basis for reconsideration. *Id.* at 3.[3] A year later, Judge Kubo continued the motion for another year to further monitor Ahn's compliance with probation. *Id.* Dkt. 190. On July 16, 2019, Judge Kubo reconsidered Judge Trader's sentence and granted the motion for deferred acceptance. *Id.* Dkt. 189.[4]

On August 23, 2021, the circuit court dismissed the charges against Ahn. *Id.* Dkt. 254.[5] On July 19, 2023, the Department of the Attorney General issued an expungement certificate. *Id.* Dkt. 289 at 2. Ahn then moved to seal his criminal case on July 31. *Id.* Dkt. 289. Judge Remigio promptly entered an order to seal the case, but then noted that

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[3] Pinpoint citations to "Dkt." entries are to page of the corresponding PDF.

[4] Strangely—in light of this Court's decision regarding other records in the case—Judge Kubo filed the Order granting the deferred acceptance under seal without satisfying any of the procedural prerequisites to sealing. 142 Hawai`i at 423-24, 420 P.3d at 354-55.

[5] The dismissal erroneously stated that Judge Kubo granted the deferred acceptance at Ahn's original sentencing on May 23, 2017, not two years later.

Masunaga's pending charges in the same case required alternative action.[6] *Id.* Dkt. 293, 299. At an August 23 hearing, none of the parties objected to Judge Remigio's proposal to create a new case, so that Ahn's proceeding could be severed from Masunaga's and then sealed. *Id.* Dkt. 304.

On September 1, Ahn filed the instant motion to seal this proceeding. Dkt. 33.

II. CONSTRUING THE EXPUNGEMENT STATUTE

A. Principles of Statutory Construction

For statutory construction, "the fundamental starting point . . . is the language of the statute itself." *`Ōlelo v. Office of Information Practices*, 116 Hawai`i 337, 344, 173 P.3d 484, 491 (2007) (internal quotations omitted). The language must be read "in the context of the entire statute and interpreted in a manner consistent with the purposes of the statute." *Keaulii v. Simpson*, 74 Hawai`i 417, 421, 847 P.2d 663, 666 (1993). Also, the "doctrine of 'constitutional doubt,' a well-settled canon of statutory construction, counsels that 'where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is [to] adopt the latter.'" *Morita v. Gorak*, 145 Hawai`i 385, 391, 453 P.3d 205, 211 (2019).

B. The Public's Constitutional Right of Access

"America has a long history of distrust for secret proceedings." *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1084 (9th Cir. 2014). The tradition of public access to criminal proceedings, for example, "can be traced back beyond reliable historical records." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 564-68 (1980) (plurality opinion).

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[6] The records unsealed after *Grube v. Trader* were Masunaga's plea agreement and related records. Before her sentencing, the State charged Masunaga in a new case with theft and computer fraud. Case No. 1CPC-20-1483. On June 18, 2021, Masunaga moved to withdraw her no contest plea in the earlier case charged with Ahn. Case No. 1PC151001338 Dkt. 241. On October 24, 2022, Judge Remigio entered an order granting Masunaga's motion to withdraw her plea. *Id.* Dkt. 268. Trial is scheduled for the week of October 23. *Id.* Dkt. 302.

As a consequence, "[a] major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 604 (1982); *Richmond Newspapers*, 448 U.S. at 575 (plurality opinion) (the freedoms in the First Amendment "share a common core purpose of assuring freedom of communication on matters relating to the functioning of government"). Thus, to the extent that the constitution guarantees a qualified right of public access, "it is to ensure that this constitutionally protected 'discussion of governmental affairs' is an informed one." *Globe Newspaper*, 457 U.S. at 605; *Richmond Newspapers*, 448 U.S. at 587 (Brennan, J., concurring) ("Implicit in this structural role is not only the principle that debate on public issues should be uninhibited, robust, and wide-open, but also the antecedent assumption that valuable public debate—as well as other civic behavior—must be informed."). Without such public access, "important aspects of freedom of speech and 'of the press could be eviscerated.'" *Richmond Newspapers*, 448 U.S. at 580 (plurality opinion).

"By offering such protection, the First Amendment serves to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government." *Globe Newspaper*, 457 U.S. at 604. "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers*, 448 U.S. at 572 (plurality opinion).

This constitutional right of access attaches to proceedings, such as the mandamus proceeding here, on a motion to unseal. *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1096-97 (9th Cir. 2014). In *Index Newspapers*, the Ninth Circuit addressed a motion to unseal concerning traditionally inaccessible records—grand jury proceedings. Even though the grand jury proceedings remained sealed, the Court of Appeals held that the proceedings on the motion to unseal must be open to the public. *Id.* In addition to a history of public access to such proceedings, *Index Newspapers* held:

> Logic also dictates that the record of these types of proceedings should be open to the public because the very issue at hand is whether the public should be excluded or included in various types of judicial

> proceedings. The public should be permitted to observe, monitor, and participate in this type of dialogue, or at least review it after the fact.

Id. at 1096.

When the constitutional right of access attaches, the proponent of sealing has the burden to overcome the presumption of public access. *Oregonian Publ'g Co. v. U.S. Dist. Court*, 920 F.2d 1462, 1467 (9th Cir. 1990). As this Court has articulated—in this case—this constitutional right of public access can only be overcome by findings that "the closure is essential to preserve higher values" and that the closure is "narrowly tailored" to serve that interest. *Grube*, 142 Hawai`i at 424, 420 P.3d at 355; *Oahu Publc'ns Inc. v. Ahn*, 133 Hawai`i 482, 498, 331 P.3d 460, 476 (2014). The court must consider in its findings whether: "(1) the closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest." *Grube*, 142 Hawai'i at 424, 420 P.3d at 355.

"To qualify as compelling, the interest must be of such gravity as to overcome the strong presumption in favor of openness. . . . [T]he asserted interest must be of such consequence as to outweigh both the right of access of individual members of the public and the general benefits to public administration afforded by open trials." *Grube*, 142 Hawai`i 425-26, 420 P.3d at 356-57. If a compelling interest exists, "a court must find that disclosure is sufficiently likely to result in irreparable damage to the identified compelling interest." *Ahn*, 133 Hawai`i at 507, 331 P.3d at 485. "It is not enough that damage could possibly result from disclosure, nor even that there is a 'reasonable likelihood' that the compelling interest will be impeded; there must be a 'substantial probability' that disclosure will harm the asserted interest." *Grube*, 142 Hawai`i at 426, 420 P.3d at 357. The harm "must be <u>irreparable</u> in nature." *Id.* If there is a compelling interest that would be irreparably harmed by disclosure, the court must consider alternatives to sealing an entire document—or in this instance an entire case—from the public. *Id.* at 427, 420 P.3d at 358. "[W]here a feasible alternative exists that would protect the compelling interest while avoiding or minimizing impairment of the public's constitutional right of access, total sealing is inappropriate." *Id.*

States cannot enact statutes that infringe the public's constitutional right of access. *E.g.*, *Press-Enter. Co. v. Super. Ct.*, 478 U.S. 1, 14-15 (1986) (state statute sealing preliminary hearings unconstitutional for applying reasonable likelihood, not substantial probability standard, and for not considering alternatives); *Globe Newspaper*, 457 U.S. at 609, 610 n.27 (holding that "a mandatory rule [that barred public access to all court testimony by minor victims of sex crimes], requiring no particularized determinations in individual cases, is unconstitutional"). In the specific context of expungement statutes, courts have required an interpretation of statutes consistent with the public's right of access. *E.g.*, *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 509 (1st Cir. 1989) (state statute unconstitutional for sealing all criminal cases that end in "not guilty" or "no probable cause" finding); *State ex rel. Cincinnati Enquirer v. Winkler*, 777 N.E.2d 320, 326-27 (Ohio App. 2022), *aff'd*, 805 N.E.2d 1094 (Ohio 2004) (to avoid unconstitutionality, construing expungement statute to require a court to consider "the public's legitimate interest in a given case" before sealing); *State v. Waldon*, 202 P.3d 325, 333 (Wash. App. 2009) (rule and statute that provided for sealing of vacated convictions must be construed to harmonize with constitution).

C. The Judicial Records Provision of the Expungement Statute

HRS 831-3.2(f) provides:

> Any person for whom an expungement order has been entered may request in writing that the court seal or otherwise remove all judiciary files and other information pertaining to the applicable arrest or case from the judiciary's publicly accessible electronic databases. The court shall make good faith diligent efforts to seal or otherwise remove the applicable files and information within a reasonable time.

Added in 2016 as part of omnibus penal reform, the bill originated from recommendations by a Penal Code Review Committee. H. Stand. Comm. Rep. No. 660-16, in 2016 House Journal at 993. The Committee's Report only discussed the effect of the provision, not its underlying purpose, and the legislative committee reports and testimony did not discuss the judicial records provision. Report of the Committee to Review and Recommend Revisions to the Hawai`i Penal Code at 10 (Dec. 30, 2015), *at* https://www.courts.state.hi.us/docs/news_and_reports_docs/2015_PENAL_CODE_R

EVIEW_REPORT-FINAL-12-30-15.pdf; H.B. 2561 H.D. 1, S.D. 1, C.D. 1 Status Page *at* https://www.capitol.hawaii.gov/session/archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=2561&year=2016 (linking committee reports and testimony).

The Committee's Report does explain, however, that the Committee "attempted to see what current criminal justice research could teach us" and "looked at other states to stay abreast of current thinking and practices in coming up with its recommendations." Report of the Committee at 5. Criminal justice research reflects that:

> Having a criminal record can severely limit one's access to employment, education, housing, civic engagement, and public assistance. Nearly 9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges use background checks to screen for applicants' criminal records, and one study found that more than 45,000 federal and state statutes and regulations impose disqualifications or disadvantages on individuals with a conviction. Even when there isn't a conviction, an arrest record decreases a person's employment prospects more than other common employment-related stigmas. Moreover, the collateral damage of having a criminal record reaches across generations, as the socioeconomic barriers associated with a parent's criminal record can harm a child's long-term well-being and outcomes.

Kenny Lo, *Expunging and Sealing Criminal Records: How Jurisdictions Can Expand Access to Second Chances*, Center for American Progress (Apr. 15, 2020), *at* https://www.americanprogress.org/article/expunging-clearing-criminal-records/. Courts have recognized:

> [A] driving concern behind [expungement statutes] was that a member of the general public—such as an employer doing an informal background check—could access our computerized docket and potentially draw inappropriate inferences from the mere presence of a criminal file relating to an individual, even though the criminal charges were dismissed or the individual was acquitted.

Doe v. State, 903 N.W.2d 347, 354 (Iowa 2017).

D. Harmonizing HRS § 831-3.2(f) and the Constitution

Just as a judge, before sealing a case, must comply with the constitutional standards that protect public access to court records, legislation also must abide by the constitution when directing judges to seal court records. The Legislature cannot

accomplish by statute what a judge would be constitutionally prohibited from doing. Removing an entire criminal proceeding from the official public record thus requires an exercise of judicial review and discretion. *E.g.*, *Pokaski*, 868 F.2d at 509; *Winkler*, 777 N.E.2d at 326-27; *Waldon*, 202 P.3d at 333.

Exercising judicial discretion also preserves the Court's constitutional authority over its own records and procedures. *E.g.*, Haw. Const. art. VI, §§ 1, 7. This Court has recognized that separation of powers concerns can arise if the Legislature directly interferes with the Court's judicial authority.[7] *Goran Pleho, LLC v. Lacy*, 144 Hawai`i 224, 251, 439 P.3d 176, 203 (2019). And, in the context of expungement statutes, other jurisdictions have recognized that legislatures overstep in requiring the sealing of court records without judicial discretion. *Johnson v. State*, 336 So. 2d 93, 95 (Fla. 1976) (holding that statutory procedures for expungement of court records were "encroachment upon

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[7] This Court has held that its constitutional rule-making authority over judicial processes—if untethered from other constitutional authority—cannot modify the substantive rights of litigants. *E.g.*, *Cox v. Cox*, 138 Hawai`i 476, 482, 382 P.3d 288, 294 (2016) ("Where a court-made rule affecting litigants' substantive rights contravenes the dictates of a parallel statute, the rule must give way."). Here, the public's *constitutional* right of access provides the anchor that requires stricter separation of powers and adherence to the Judiciary's role in preserving its own records. Moreover, although not critical here, this Court's precedent that the Legislature may override court rules could be questioned in light of the constitutional history behind the Court's rule-making authority. The 1950 Constitutional Convention intended the language to provide "full rule-making power in the supreme court. Under this section, the court may by the promulgation of rules of court abolish archaic procedures relating to practice, procedure, process, appeals and general administration of the business of the courts." Stand. Comm. Rep. No. 37, *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 175. That language derived from a proposal designed by Arthur Vanderbilt. *Id.* at 174. Vanderbilt intended that "full rule-making power" meant not only "withdrawal of the legislature from the field of procedure and the authorization of rule-making by the courts, but also that the rules so made supersede previous legislative action." Arthur Vanderbilt, Minimum Standards of Judicial Administration at 92 (1949). Addressing potential conflicts, Vanderbilt explained that "court-made rules would prevail where rule-making by the courts is authorized by statute or constitution unless such enabling provision contained a reservation for legislative approval or action." *Id.* at 137. The 1950 Constitutional Convention included no such reservation for legislative approval or action.

the judicial function and, therefore, unconstitutional to that degree"); *accord Hynes v. Karassik*, 393 N.E.2d 1015, 1018 (N.Y. 1979) (acknowledging that, notwithstanding statutory language, courts reserved authority to unseal expunged records when appropriate); *see also Times-Call Publ'g Co. v. Wingfield*, 410 P.2d 511, 513 (Colo. 1966) (similar concerns in election contest proceedings).

When a defendant seeks to seal a criminal case, courts must exercise judicial discretion and confirm that the request meets the constitutional standard for sealing.

E. Applying the Expungement Statute to the Unusual Facts Presented in this Proceeding

Although Ahn's submission of the expungement certificate alone does not meet his burden to justify sealing, for purposes of this motion, Petitioner does not dispute that there is a compelling government interest—expressed by the expungement statute—in rehabilitating certain individuals who have been charged with crimes. Ahn, however, already will receive the key benefits of the expungement statute. His criminal history record will be clear; he can answer "no" on employment or other forms concerning prior felony convictions; and no amateur sleuthing of court records will flag a criminal proceeding. In the unusual circumstances here, there is little probability of harm from disclosure of these further court records regarding the mandamus petition. And a critical concern is the excessive overreach of sealing the entirety of this proceeding simply because there are stray references in the file to Ahn's criminal charges.

Sealing this entire matter does nothing to advance the apparent purpose of the expungement statute. Petitioner acknowledges, for present purposes, that in an ordinary criminal case, there would be a substantial probability that efforts to remove the stigma of criminal charges would be irreparably harmed if *criminal* proceedings about the charges were *readily* accessible to the public. But the situation here is different. If someone found this mandamus proceeding by searching the Judiciary's public databases for Ahn, that person would need to purchase documents to find references to Ahn's arrest and prosecution; on the docket, Ahn is identified only as a "respondent," not a criminal defendant. Moreover, the briefing in this proceeding only

recites information about Ahn that is easily accessible from many other sources in a simple Google search. Unlike a typical defendant seeking to expunge a criminal case, there is no substantive benefit to Ahn from sealing this mandamus matter at the significant cost of the public's right of access. In an exercise of judicial discretion, applying the constitutional standards, this Court should hold that sealing is not justified nor necessary under the unusual circumstances presented here.

If the Court believes further action is needed, however, a more narrowly tailored alternative that achieves the purposes of the expungement statute would be to remove the public's ability to use the Judiciary's electronic databases to locate this proceeding by searching for Ahn's name. If a member of the public cannot find this matter by searching for Ahn by name, the rehabilitation concerns about social stigma and the negative consequences of informal background checks are served. And consistent with the constitutional right of access, the public still retains access to all of the information underlying this proceeding for which there is no basis to seal, including the record of Masunaga's charges and the issues that led to this mandamus action.

That alternative also conforms to the plain text of the expungement statute. HRS § 831-3.2 does not require sealing as the only remedy. The statute provides as an alternative to sealing that a court may "otherwise remove" files "from the judiciary's publicly accessible electronic databases." By disassociating Ahn from this proceeding in the public database, a member of the public would only be able to associate the mandamus petition with Ahn if the person already knew about the matter and the charges against Ahn from one of many other public sources (*e.g.*, searching the case number based on the published decision). The ability to search court records by name is the key to any harm that the expungement statute would address.

CONCLUSION

Petitioner respectfully requests that the Court interpret HRS § 831-3.2(f) narrowly to avoid infringing on the public's constitutional right of access and the Judiciary's authority to administer its own records and procedures. Ahn has not satisfied the constitutional standards to seal this matter. But if the Court will take action, Petitioner suggests—consistent with HRS § 831-3.2(f)—disassociating Ahn from

this proceeding in the Judiciary's publicly accessible database so that searching for his name does not identify this matter in a public search or take other action short of concealing the entire mandamus proceeding from public view.

DATED: Honolulu, Hawai`i, September 11, 2023

Respectfully submitted,

/s/ Robert Brian Black
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