SUPREME COURT OF ARKANSAS

No. CR-25-66

AARON SPENCER PETITIONER V. STATE OF ARKANSAS RESPONDENT	Opinion Delivered: May 29, 2025 PETITION FOR WRIT OF CERTIORARI TO THE LONOKE COUNTY CIRCUIT COURT [NO. 43CR-24-551] HONORABLE BARBARA ELMORE, JUDGE PETITION FOR WRIT OF CERTIORARI GRANTED; WRIT ISSUED; CIRCUIT COURT'S GAG ORDER VACATED.

COURTNEY RAE HUDSON, Associate Justice

Aaron Spencer has filed a petition for writ of certiorari requesting that a gag order entered in his Lonoke County Circuit Court criminal case be vacated. He argues that entry of the gag order was a plain, manifest, clear, and gross abuse of discretion and that there is no other adequate remedy but for the writ. We agree, and we grant the petition for writ of certiorari and vacate the circuit court's gag order.

I. *Background*

On November 27, 2024, Spencer was charged by felony information with second-degree murder, along with a firearm enhancement under Arkansas Code Annotated section 16-90-120, for the shooting death of sixty-seven-year-old Michael Fosler. The State alleged that on October 8, 2024, Spencer knowingly caused Fosler's death under circumstances manifesting extreme indifference to the value of human life, a Class A felony under Arkansas

Code Annotated section 5-10-103 (Repl. 2024). The circumstances of the shooting were as follows. In July 2024, Fosler had been charged with numerous sexual offenses against Spencer's teenage daughter, and he was released on bond. On the night of the shooting, Spencer awoke to his dog barking and realized that his daughter was gone. Spencer found a "hoodie" on a stuffed animal placed in her bed. As a result, he left in his truck to search for her. Spencer located Fosler's truck—with his daughter inside—and he forced Fosler's truck off the highway. After an altercation, Spencer called 911 to report that he had shot Fosler. Fosler died at the scene.

On December 4, 2024, the State filed a motion for gag order alleging that Spencer's arrest had garnered media coverage throughout the state and the nation. Attached to the motion was a press release from Spencer's attorneys, Erin Cassinelli and Michael Kaiser, criticizing the decision to charge Spencer criminally as "targeting [a] heroic father." The State also pointed to a television interview in which defense counsel allegedly stated that they felt confident that the community would side with Spencer "because every one of them would have done the same thing for their child or their neighbor's child or member of their family." The State argued that a gag order was necessary to preserve the integrity of the jury pool and to ensure the right of a fair trial for both the State and the defendant. The State proposed eight content-based limitations on the speech of any party; any attorney or agency connected with this case, directly or indirectly; any judicial employee or officer of the court; any public official now holding office, including but not limited to law enforcement officials, their agents, deputies, or employees; and any person subpoenaed to testify in the trial of the case.

On December 9, 2024, Spencer filed a detailed response in opposition to the motion for gag order. He argued that granting the motion for gag order would violate his due-process rights to a fair and public trial pursuant to the Sixth and Fourteenth Amendments, as well as his First Amendment right to speak pursuant to both the Arkansas and the United States Constitutions. Spencer requested that a hearing on the State's motion be held in open court.

On December 10, 2024, without holding a hearing, the circuit court entered the order at issue. Noting the "apparent public interest in this case and the [resulting] extensive news media coverage," the court granted the State's motion with some modifications. As grounds for the entry of the order, the court stated: "[I]t appears to the Court that the dissemination by any means of public communication of any out-of-court statements relating to this case may interfere with the rights of the Defendant and the State of Arkansas to receive a fair and impartial trial[.]" The court further noted it was "seek[ing] a fair balance between the constitutional guarantees of a free press." The order implemented the eight prohibitions requested by the State:

> It is the Order of this Court that no party to this action, nor any attorney or agency connected with this case, directly or indirectly, nor any judicial employee or officer of this Court, nor any public official now holding office, including but not limited to law enforcement officials, nor any agent, deputy or employee of any such persons, nor any person subpoenaed to testify at the trial of the case[,] [n]either shall the defendant nor his family shall do any of the following[1]:
>
> > (1)[R]elease or authorize the release for public dissemination of any purported extrajudicial statement of the Defendant relating to this case;

[1]The order included several notations handwritten and initialed by the judge, including the addition of Spencer's family.

(2) Release or authorize the release of any documents or exhibits or any evidence, the admissibility of which may have to be determined by the Court;

(3) Make any statement for public dissemination as to the existence or possible existence of any document, exhibit, or any other evidence;

(4) Express outside of the Court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish the guilt or innocence of the Defendant;

(5) Make any statement outside of Court for public dissemination as to the weight, value, or effect of any testimony that has been given;

(6) Issue any statement for public dissemination as to the identity of any prospective witnesses, or their probable testimony or the effect thereof;

(7) Make any out of court statement for public dissemination as to the weight, value, source, or effect of purported evidence alleged to have been accumulated as a result of the investigation of this matter;

(8) Make any statement for public dissemination as to the content, nature, substance, or effect of any testimony which may be given at any proceeding related to this matter with any attorney of record or any agent thereof.

This Order does not include:

(1) Factual statements of the Defendant's name, age, residence, occupation, or family status;

(2) The circumstances of the arrest, namely the time and place of arrest, the identity of the arresting and investigating officers and agencies, and length of the investigation;

(3) The nature, substance, and text of the charges, including a brief description of the offense(s) charged;

(4) Quotations from, or any reference without comment to, public records of the Court in this case, or to other public records or communications heretofore disseminated to the public;

> (5) The scheduling and result of any stage of the judicial proceeding held in open court or in an open public session;
>
> (6) Any request for assistance in obtaining evidence;
>
> (7) Discussion by any witness or prospective witness of any matter in connection with the case with any of the attorneys representing the Defendant or the State.
>
> All parties and the defendant [are] under a Gag Order.

The order goes on to require (1) that a copy of the order be attached to any subpoena served on any witness in this matter and (2) redaction of any information violating the gag order from any paperwork related to the case that might be disseminated to the public. The order further states that it will "be in force until this case has been disposed of, or until this Court orders otherwise. This Order will help ensure all parties get a fair trial." Finally, the order provides that "[t]he entire case is now sealed." Thus, the circuit court adopted the requested prohibitions contained in the State's motion for gag order, with the qualifications listed in provisions (1)–(7) and the sua sponte sealing of "the entire case."[2]

On February 2, 2025, Spencer filed in this court a petition for writ of certiorari and for other relief. The State filed a response on February 12, and Spencer later filed a motion to stay proceedings in the circuit court, take the petition as a case, and set a briefing schedule pursuant to Arkansas Supreme Court Rule 6-1(f) (filing briefs in petitions for extraordinary

[2]We note that this order is nearly identical to the orders we vacated without written opinion in *Arkansas Democrat-Gazette, Inc. v. State of Arkansas*, CV-20-517 (petition for writ of certiorari granted). Although the present order does not expressly apply to media outlets, the eight prohibitions on speech and the seven provisions for information not prohibited by the order use the same language as in the *Arkansas Democrat-Gazette* gag orders (styled "orders regarding publicity"). Arkansas courts shall no longer use this apparent form order.

writs). Spencer also requested oral argument. We granted Spencer's motion to stay proceedings in the circuit court, took the petition for writ of certiorari as a case, set a briefing schedule, and granted Spencer's request for oral argument. The petition is now ripe for decision.

II. *Standard for Issuing a Writ of Certiorari*

A writ of certiorari is extraordinary relief. *S. Farm Bureau Cas. Ins. Co. v. Parsons*, 2013 Ark. 322, at 5, 429 S.W.3d 215, 218. Two requirements must be satisfied in order for this court to grant a writ of certiorari. *Id.* First, a writ of certiorari lies only when (1) it is apparent on the face of the record that there has been a plain, manifest, clear, and gross abuse of discretion, or (2) there is a lack of jurisdiction, an act in excess of jurisdiction on the face of the record, or the proceedings are erroneous on the face of the record. *Id.* Second, there can be no other adequate remedy but for the writ of certiorari. *Id.* This court has held that a writ of certiorari is the appropriate remedy when a prior restraint on speech is a plain, manifest, clear, and gross abuse of discretion. *See Ark. Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 779, 20 S.W.3d 301, 305 (2000).

III. *Analysis*

Spencer argues that the gag order violates the First Amendment because it is an unjustified prior restriction on certain content-based categories of speech. He further argues that the circuit court exceeded its jurisdiction when it placed overbroad restrictions on the speech of nonparties without due process. The State responds that the circuit court's order was within constitutional limits, protects the integrity of this case, and ensures a fair trial for both Spencer and the State. For the reasons that follow, we hold that the circuit court's

action in entering the challenged gag order was on its face a plain, manifest, clear, and gross abuse of discretion and in excess of its authority. Further, there is no other adequate remedy except for a writ of certiorari.

A. Standing

As an initial matter, we must address the State's argument in its response brief that Spencer lacks standing to challenge the order based on the constitutional rights of others. Indeed, as a general matter, constitutional rights are personal rights and may not be raised by a third party. *See Toland v. Robinson*, 2019 Ark. 368, at 6, 590 S.W.3d 146, 150. However, the issues raised in this petition for an extraordinary writ require us to consider restrictions not directed toward Spencer personally, and we decline to uphold any part of the order in light of the order's clear lack of an evidentiary basis as a whole.

Here, the circuit court's order is extremely broad as to the persons restrained from speaking. It restrains the parties; their attorneys; "any public official now holding office," along with their staff; witnesses; court staff; and the defendant's family. The order is also extremely restrictive as to what information is being shielded from public view. It restricts filings and perhaps courtroom proceedings from public view. The order implicates Spencer's right to a public trial as well as the public's right to know how its officials are conducting these criminal proceedings. The State points out that Spencer raises arguments regarding the gag order's application to public officials and to his family, the restriction on public and press access to the court file, and the due-process rights of nonparties as to entry of the order without notice. However, Spencer clearly has standing to bring this petition requesting that

this court vacate the gag order in his criminal case, and we will address Spencer's arguments to the extent necessary to resolve the issues raised in the petition.

B. Freedom of Speech

The First Amendment to the United States Constitution provides in part, "Congress shall make no law . . . abridging the freedom of speech[.]" The First Amendment is made applicable to the states by the Fourteenth Amendment. Similarly, article 2, section 6 of the Arkansas Constitution provides, "The free communication of thoughts and opinions, is one of the invaluable rights of man; and all persons may freely write and publish their sentiments on all subjects[.]" Spencer relies on both the United States Constitution and the Arkansas Constitution in arguing that the gag order in this case violates his and others' free-speech rights. However, free-speech rights are not absolute and, in rare cases, must yield to the Sixth Amendment's guarantee of a fair trial by an impartial jury. *See Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 551 (1976) (discussing the Sixth Amendment's guarantee of a fair trial by an impartial jury as a basic requirement of due process).

A "gag order" is defined as a "judge's order directing parties, attorneys, witnesses, or journalists to refrain from publicly discussing the facts of a case." *Black's Law Dictionary* 816 (12th ed. 2024). Thus, a gag order is, by definition, a prior restraint on speech. "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n*, 427 U.S. at 559. As such, a prior restraint on speech "bears a heavy presumption against its constitutional validity." *Helena Daily World v. Simes*, 365 Ark. 305, 308, 229 S.W.3d 1, 3 (2006). In fact, the Supreme Court has recognized that criticisms of the state lie at the very center of the First Amendment; this

could include speech critical of judges, prosecutors, public defenders, and law enforcement. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1034 (1991). "[I]t would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted." *Id.* at 1035 (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980)).

The Supreme Court of the United States has only directly addressed the constitutionality of gag orders as they apply to the press—not as to attorneys, parties, witnesses, or the public. Nor has the Supreme Court articulated a legal standard for when, if at all, such prior restraints would be permissible. In *Nebraska Press*, the Court considered gag orders on the press and strongly disapproved of such prior restraints except in extraordinary circumstances. The Court noted that "pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial." 427 U.S. at 565. The Court stated that it was required to determine whether "the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." *Id.* at 562. To do so, the Court examined the evidence before the trial judge when the order was entered to determine the nature and extent of pretrial news coverage; whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity; how effectively a restraining order would operate to prevent the threatened danger; and whether the precise terms of the restraining order were too broad or too vague. *Id.* In *Gentile v. State Bar of Nevada*, the Court considered the circumstances under which attorneys may be punished *after* speaking. The Court upheld a prohibition on speech that presents a "substantial likelihood of materially prejudicing an

adjudicatory proceeding," as provided for in Nevada's professional-conduct rules. *Gentile*, 501 U.S. at 1033. Importantly, the Supreme Court held that "the speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press in [*Nebraska Press*]." *Id.* at 1074. *Nebraska Press* and *Gentile* provide guidance but do not answer the question whether or when gag orders may be placed on attorneys, parties, witnesses, or the public in pending cases.

Here, the gag order was intended to address "the need to protect the integrity of the jury pool" to ensure that "all parties get a fair trial" in light of pretrial publicity. When considering pretrial publicity, a trial court has the difficult job of balancing constitutional interests while upholding its affirmative duty to protect the integrity of the criminal-justice process. The Supreme Court made this clear in *Sheppard v. Maxwell*, 384 U.S. 333 (1966), when it granted habeas relief to a petitioner who had been deprived a fair trial in his state murder conviction because of the trial judge's failure to protect him from "massive, pervasive, and prejudicial" publicity and from the "carnival atmosphere" at the trial itself. The *Sheppard* Court noted that "the trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters." *Sheppard*, 384 U.S. at 361. We recognize that *Sheppard* was an extreme case in which there was no doubt that the "deluge of publicity reached at least some of the jury." *Id.* at 357. The Court ultimately concluded that Sheppard had not received a fair trial consistent with the Due Process Clause of the Fourteenth Amendment and reversed his conviction. While intense publicity can prejudice a trial, we note that "[a]n impartial jury . . . need not be wholly unaware of information—including potentially

prejudicial information—outside the record." *In re Murphy-Brown, LLC*, 907 F.3d 788, 798 (4th Cir. 2018).

We now turn to the arguments regarding which standard should apply to a prior restraint on speech in the context of this case. To justify a prior restraint on free speech, there must first be a factual showing of necessity. In other words, this court must determine whether the circuit court's order is justified by a sufficient risk of material prejudice to an ongoing judicial proceeding. This court has explained: "[T]he question becomes whether the justifications for the restraining order . . . are of sufficient weight to eclipse the substantial weight of the interests protected by the First Amendment, which dictate the heavy presumption against the constitutional validity of prior restraints." *Helena Daily World*, 365 Ark. at 309, 229 S.W.3d at 4; *see also Nebraska Press*, *supra* (discussing test for justification of invasion of free-speech rights). What, then, is the necessary showing? Spencer argues that a gag order is permissible only under the highest level of scrutiny, that is, if there is a serious and imminent threat to the administration of criminal justice. In contrast, the State relies on *Gentile* and argues in favor of a heightened standard that is less rigorous than strict scrutiny.

In the absence of Supreme Court precedent, the federal circuits and the states have taken different approaches to gag orders. Some courts have adopted the "clear and present danger" or "serious and imminent threat" standard. *See United States v. Ford*, 830 F.2d 596, 598 (6th Cir. 1987) (requiring a serious and imminent threat to restrain the speech of a criminal defendant); *Levine v. United States District Court*, 764 F.2d 590, 595 (9th Cir. 1985) (requiring either a clear and present danger or a serious and imminent threat for a prior restraint on attorney speech); *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242,

249 (7th Cir. 1975) (applying serious and imminent threat standard); *United States v. Trump*, 88 F.4th 990, 1027 (D.C. Cir. 2023) ("[W]e hold that some aspects of the defendant's speech pose a significant and imminent risk to the fair and orderly adjudication of this criminal proceeding, which justified protective action by the district court."); *Breiner v. Takao*, 835 P.2d 637, 641 (Haw. 1992) ("[E]xtrajudicial statements of attorneys may be subject to prior restraint by a trial court upon a demonstration that the activity restrained poses a *serious and imminent threat* to a defendant's right to a fair trial and to the fair administration of justice."(emphasis added)); *Johanson v. Eighth Jud. Dist. Ct. of Nev. ex rel. Cnty. of Clark*, 182 P.3d 94, 98 (Nev. 2008) (adopting clear and present danger or serious and imminent threat standard for issuing a gag order in a civil case). Other courts have adopted the "substantial likelihood of material prejudice" standard. *See United States v. Scarfo*, 263 F.3d 80, 94 (3d Cir. 2001); *United States v. Brown*, 218 F.3d 415, 427 (5th Cir. 2000). Still other courts have adopted a "reasonable likelihood" of prejudice standard. *See In re Russell*, 726 F.2d 1007, 1010 (4th Cir.1984); *United States v. Tijerina*, 412 F.2d 661, 666 (10th Cir. 1969); *James v. Hines*, 63 S.W.3d 602, 607 (Ky. Ct. App. 1998) (before entering a gag order restraining trial participants, the court must first determine whether there is a reasonable likelihood that pretrial publicity will prejudice the defendant's right to a fair trial).

When determining which standard to apply, we must initially recognize whose speech is being restricted. We can identify three categories of persons potentially subject to gag orders: (1) attorneys of record; (2) non-attorney trial participants (such as criminal defendants, witnesses, and court staff); and (3) the public at large (*i.e.*, those who are not

participating in the trial).[3] Because the gag order entered here included members of all three categories, we review each to establish the appropriate standards.

First, we address attorney speech. The Supreme Court has recognized that speech by an attorney is subject to greater regulation than speech by others. *See Gentile*, *supra*. The Court recognized that states have historically regulated admission to the bar and exercised authority to discipline attorneys; attorneys have access to non-public information and are viewed as authoritative, both of which pose a greater potential risk to the fairness of a trial; and attorneys are officers of the court. *Id.* at 1066. For these same reasons, we find it appropriate to allow greater regulation of attorney speech in the context of a criminal trial than would be permissible for the speech of non-attorney trial participants or members of the public. Thus, we hold that attorneys in Arkansas may be restrained from extrajudicial speech that poses a substantial likelihood of material prejudice to an ongoing criminal proceeding. This is consistent with attorneys' existing obligation under Rule 3.6 of the Arkansas Rules of Professional Conduct regarding trial publicity.

Next, we consider the free-speech rights of non-attorney trial participants. These persons are not subject to the same rules and restrictions as attorneys. But, as participants in the trial, their speech has the potential to have a greater impact than the speech of non-trial participants. *See Sheppard*, 384 U.S. at 363 ("Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the

[3]We do not address gag orders on the press in this opinion because the order before us does not impose restrictions on the press, nor does any member of the press challenge it. We note that this court has previously addressed gag orders placing prohibitions on the press. *E.g.*, *Ark. Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000).

court should be permitted to frustrate its function.") Thus, we conclude that free-speech protections for non-attorney trial participants are greater than those of attorneys of record but less than those of the public at large. Therefore, we hold that the speech of non-attorney trial participants may be restrained only to the extent that it poses a serious and imminent threat of material prejudice to an ongoing criminal proceeding.

Finally, we address prior restraints on the public, whose speech is afforded the most protection in the context of gag orders. Restraining the speech of the public raises obvious issues regarding lack of due process. We cannot fathom why the circuit court believed it could prohibit the speech of "any public official now holding office." In fact, it is difficult to foresee any circumstance in which a prior restraint on the speech of a member of the public, which would include a public official, could be constitutional.

Having established the legal standards to be applied, we turn to the additional findings a circuit court must make in every case to justify the entry of a gag order restricting the speech of any individual. First, the circuit court must determine whether alternative measures would protect the parties' right to a fair trial. *See Nebraska Press*, *supra*. Here, Spencer suggests that extensive voir dire of prospective jurors, using an expanded jury pool, giving cautionary instructions, changing venue, or postponing the trial are alternatives that should be considered before restraining speech, but the circuit court heard no evidence and made no findings in this regard. In addition, the circuit court must find that a gag order would be likely to accomplish the goal of preventing prejudice to the proceedings. *See Nebraska Press*, *supra*. Again, there was no such finding in this case. Finally, a gag order must be narrowly tailored to prohibit only what is necessary to protect the integrity of the

ongoing judicial proceedings. *E.g.*, *Gentile*, 501 U.S. at 1075. In other words, the restrictions imposed must not be overly broad. Here, many of the prohibitions on speech listed in the gag order were overly broad. For example, prohibiting the public expression of an opinion as to "the weight, value, or effect of any evidence as tending to establish the guilt or innocence of the [d]efendant" by any public official is clearly overbroad.

In sum, before entering a gag order, a circuit court must specifically find, based on evidence in the record, that (1) the prospectively limited speech would pose a sufficient threat of material prejudice to an ongoing criminal proceeding, depending on whether the limitation applies to attorneys of record, non-attorney trial participants, or members of the public; (2) after consideration of alternative less restrictive measures, none would sufficiently protect the parties' right to a fair trial; (3) the prohibitions would be likely to prevent material prejudice to the proceedings; and (4) the prohibitions are narrowly tailored to prohibit only what is necessary to prevent material prejudice to the ongoing proceedings.

C. Due Process – Vagueness and Overbreadth

Spencer also argues that the order is impermissibly vague and that it is impossible to know what is covered by some of its provisions. He states that it is unclear, for example, whether statements on social media are restricted or must be removed; whether previously public filings now removed from public access may be shared; what "for public dissemination" means; and precisely who this gag order restrains. Spencer also argues that it is unclear what, exactly, prohibition number 8 seeks to restrict. According to that provision, the named individuals cannot "[m]ake any statement for public dissemination as to the content, nature, substance, or effect of any testimony which may be given at any proceeding

related to this matter with any attorney of record or any agent thereof." The State, of course, maintains that the gag order is not unconstitutionally vague.

The void-for-vagueness doctrine addresses at least two connected but discrete due-process concerns: Regulated parties should know what is required of them so they may act accordingly; and precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012). Stated differently, the prohibition against vague regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement. *Gentile*, 501 U.S. at 1051. Vague prohibitions also create a chilling effect on speech because one does not know precisely what speech is prohibited. Here, we agree that the gag order is unconstitutionally vague and must be vacated. For example, who is included as part of Spencer's "family"? Does the order purport to restrain the speech of his second cousin or only that of his parents, spouse, and children? Due process requires more specificity.

In his petition for writ of certiorari, Spencer does not develop his due-process argument regarding overbreadth, but in briefing, he clarifies his assertion that the circuit court exceeded its jurisdiction when it placed overbroad restrictions on the speech of nonparties without due process. It is unnecessary to address overbreadth as a due-process violation in this case. Our decision is governed by the free-speech and void-for-vagueness analysis above.

D. Sealing the Case

Finally, we address the circuit court's decision to seal the case. Spencer contends that the community has a right to know what its government does in public court proceedings.

He cites Arkansas Code Annotated section 16-10-105 (Repl. 2010), which provides: "The sittings of every court shall be public, and every person may freely attend the sittings of every court."[4] Here, after the court's order was entered, the case filings were removed from public view. The inherent authority to seal parts of court files is tempered by the requirements that a request to seal part of a file must be particularized, that there must be some good cause for sealing part of a file, such as a trade secret, and that it should be in effect for only so long as is necessary to protect the specified interest. *Ark. Dep't of Hum. Servs. v. Hardy*, 316 Ark. 119, 124, 871 S.W.2d 352, 355–56 (1994).

Not only are the written records inaccessible to the public, but also, the briefs and statements from counsel at oral argument indicate that the Lonoke County Circuit Court's courtroom was at least partially closed to the public during Spencer's arraignment. Although it appears the circuit court intends to close further proceedings to the public, we caution the court from doing so without an evidentiary basis and adherence to the required constitutional analysis set out in *Waller v. Georgia*, 467 U.S. 39 (1984). *See Mitchell v. State*, 2019 Ark. 67, at 5, 567 S.W.3d 838, 841. As we stated in *Schnarr v. State*, 2017 Ark. 10, "[t]he right to a public trial is one of the most important safeguards in the prosecution of persons accused of crime." *Schnarr v. State*, 2017 Ark. 10, at 11–12 (quoting *Sirratt v. State*, 240 Ark. 47, 53, 398 S.W.2d 63, 66 (1966)).

[4]This court has recognized that an accused may assert his constitutional right to a public trial by arguing that exclusion of the news media and the public violates that right. *See Taylor v. State*, 284 Ark. 103, 679 S.W.2d 797 (1984).

IV. *Conclusion*

The circuit court's gag order is far too broad and too restrictive of speech protected by the First Amendment and article 2, section 6 of the Arkansas Constitution. It is also impermissibly vague. Further, the order was entered without the requisite findings discussed above and wholly without a factual basis. Therefore, we hold that the circuit court's order constitutes a plain, manifest, clear, and gross abuse of discretion for which there is no other adequate remedy; accordingly, we issue a writ of certiorari and vacate the order. By this ruling, we do not foreclose the possibility that, after an evidentiary hearing, the circuit court may issue a subsequent gag order narrowly tailored to specific factual findings supported by the record. However, we emphasize that a gag order "should be a last resort, not a first impulse." *In re Murphy-Brown, LLC*, 907 F.3d at 800.

Petition for writ of certiorari granted; writ issued; circuit court's gag order vacated.

WOOD, WOMACK, HILAND, and BRONNI, JJ., concur.