

ORIGINAL

FILED

03/24/2026

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 26-0075

MAR 24 2026

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 26-0075

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MONTANA NEWSPAPER ASSOCIATION,  
MONTANA FREE PRESS, MONTANA  
BROADCASTERS' ASSOCIATION, LEE  
ENTERPRISES, INC., STATES NEWSROOM  
d/b/a DAILY MONTANAN, and MONTANA  
FOI COALITION,

Petitioners,

ORDER

v.

MONTANA THIRD JUDICIAL DISTRICT  
COURT, ANACONDA-DEER LODGE  
COUNTY, HON. JEFFREY W. DAHOOD,  
Presiding,

Respondent.

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Petitioners Montana Newspaper Association, Montana Free Press, Montana Broadcasters' Association, Lee Enterprises, Inc., States Newsroom d/b/a Daily Montanan, and Montana FOI Coalition, seek a writ of supervisory control over the Montana Third Judicial District Court in Cause No. DC-25-50 to vacate a modified order sealing certain pretrial records in a pending criminal matter and to permit the press to participate in proceedings concerning closure of court records. Alternatively, Petitioners request that the Court reverse the District Court's order denying them leave to file a motion to vacate the sealing order.

We accept supervisory control. We conclude the District Court proceeded under a mistake of law by denying Petitioners the opportunity to be heard and by failing to comply with the requirements of § 46-11-701, MCA, as interpreted by this Court. We reverse the order denying Petitioners leave to file and remand for further proceedings consistent with this Order. We decline, however, to vacate the modified sealing order at this stage.

## **Procedural Background**

On August 4, 2025, in a criminal proceeding charging Michael Brown with multiple offenses, the State moved to seal pretrial proceedings and records pursuant to § 46-11-701, MCA. The District Court granted the motion and entered an order sealing the record.

On August 29, 2025, the State—joined by the defendant—moved to modify the sealing order. The District Court entered a modified order that unsealed portions of the record but continued to seal certain filings, including affidavits supporting charging documents and discovery-related materials. The record reflects that the press was not afforded notice or an opportunity to be heard prior to entry of either the original or modified sealing orders.

On January 20, 2026, Petitioners submitted to the clerk of court a motion seeking leave to appear for the limited purpose of filing a motion to vacate the modified sealing order. The clerk did not docket the motion but instead transmitted it to the District Court.

On January 28, 2026, the District Court denied Petitioners' motion, reasoning that Petitioners were not parties and had not established standing to participate in the criminal case.

Petitioners filed the present Petition for writ of supervisory control.

### **Issue**

*Whether the District Court proceeded under a mistake of law by (1) denying Petitioners leave to participate in proceedings concerning sealed court records and (2) failing to comply with § 46-11-701, MCA, in maintaining the sealing order.*

### **Standard for Supervisory Control**

This Court has general supervisory control over all other courts. Mont. Const. art. VII, § 2(2). Supervisory control is an extraordinary remedy exercised on a case-by-case basis. M. R. App. P. 14(3). We exercise supervisory control when:

- (1) urgency or emergency factors render the normal appeal process inadequate;
- (2) the case presents purely legal questions; and
- (3) the lower court is proceeding under a mistake of law causing a gross injustice

or raising constitutional issues of statewide importance. *Tipton v. Mont. Thirteenth Jud. Dist. Ct.*, 2018 MT 164, ¶¶ 9-10, 392 Mont. 59, 421 P.3d 780.

This Court has repeatedly exercised supervisory control in cases involving media access to criminal proceedings and records. *State ex rel. The Missoulian v. Mont. Twenty-First Jud. Dist. Ct.*, 281 Mont. 285, 291, 933 P.2d 829, 833 (1997).

### **Discussion**

The Montana Constitution guarantees: “No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government . . . except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.” Mont. Const. art. II, § 9. This right applies to criminal proceedings and records. *State v. Hatfield*, 2018 MT 229, ¶ 57, 392 Mont. 509, 426 P.3d 569.

Section 46-11-701, MCA, governs the closure of pretrial proceedings and sealing of records in criminal cases. It permits closure only when: (1) dissemination would create a “clear and present danger” to trial fairness; and (2) the prejudicial effect cannot be avoided by reasonable alternative means. Section 46-11-701(3), MCA. This Court has made clear that the statute codifies the constitutional balancing required between the public’s right to know and a defendant’s right to a fair trial. *Missoulian*, 281 Mont. at 293, 933 P.2d at 834.

Here, besides the issue related to the sealed records, the clerk refused to file Petitioners’ motion and simply gave it to the District Judge who ruled on it. The failure to docket Petitioners’ motion—despite its submission with the required filing fee—resulted in a judicial ruling on a matter not entered into the public record. This procedure is inconsistent with Montana law governing the filing of papers, which requires that submitted filings be docketed and made part of the record, and it undermines the transparency principles inherent in Article II, Section 9.

This Court has established the following mandatory procedures that must be followed before records may be sealed: (1) the district court must seek voluntary cooperation of the media where feasible; (2) if closure is still sought, the court must conduct

an evidentiary hearing as to whether there is any reasonable alternative means available to sealing the records; (3) the media must be afforded an opportunity to be heard; and (4) the court must enter specific findings demonstrating that statutory requirements are met. *Missoulian*, 281 Mont. at 293-95, 933 P.2d at 834-35; *State ex rel. Smith v. Dist. Ct.*, 201 Mont. 376, 385-87, 654 P.2d 982, 987-88 (1982).

These requirements are not discretionary. Consent of the parties cannot substitute for the required process. *Missoulian*, 281 Mont. at 294, 933 P.2d at 834-35. These procedural requirements are essential to ensure that the constitutional balance between public access and fair trial rights is properly evaluated.

The District Court denied Petitioners' motion on the ground that they were not parties and had not established standing to participate in the criminal case. This reasoning reflects a fundamental misunderstanding of governing law. As this Court determined in *Missoulian*, "[t]he media [must] be allowed to participate in the decision making process" even though it is not a party in the usual sense. *Missoulian*, 281 Mont. at 294, 933 P.2d at 834-35. The District Court's refusal to allow Petitioners to be heard directly conflicts with this controlling precedent.

Further, the record reflects that the District Court entered the modified sealing order without participation by the media; without an evidentiary hearing; and without specific findings addressing the statutory requirements. These deficiencies mirror those identified in *Missoulian*, where this Court exercised supervisory control and reversed the district court's sealing order. We conclude the District Court proceeded under a mistake of law.

This case satisfies the criteria for supervisory control. First, the issues are purely legal—whether the district court complied with constitutional and statutory requirements. Second, the normal appeal process is inadequate. Petitioners are not parties to the underlying criminal case and would have no direct avenue for appeal. Third, the case raises constitutional issues of statewide importance involving the public's right to know and access to criminal proceedings. Accordingly, supervisory control is warranted.

Petitioners request that this Court vacate the modified sealing order. The State agrees that the District Court erred but urges a more limited remedy, noting that certain

sealed materials may implicate the defendant's right to a fair trial. The materials contained in the appendices underscore that portions of the sealed record include sensitive evidentiary information, witness identifications, and mental health evaluations bearing directly on the defendant's competency and potential defenses. These materials illustrate the very concerns § 46-11-701, MCA, is designed to address and confirm that a fact-specific balancing is required before disclosure. The more consequential the potential prejudice from disclosure, the more critical strict adherence to § 46-11-701, MCA, becomes.

Accordingly, we agree that the proper course is to require compliance with § 46-11-701, MCA, rather than to vacate the sealing order outright. The statutory framework requires a fact-specific determination, supported by evidence and findings, balancing competing constitutional interests. That determination must be made in the first instance by the District Court.

### **Conclusion**

Based on these reasons, we conclude that the District Court erred by denying Petitioners the opportunity to be heard and by failing to comply with the procedural requirements governing the sealing of criminal records.

IT IS ORDERED that Petitioners' Petition for Writ of Supervisory Control is GRANTED.

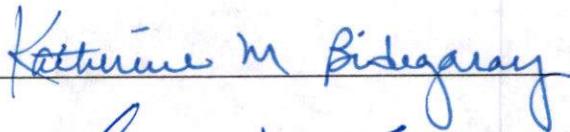
IT IS FURTHER ORDERED the District Court's order denying Petitioners leave to file is REVERSED. This matter is remanded to the Third Judicial District Court for further proceedings consistent with § 47-11-701, MCA, and this Order, including an evidentiary hearing and entry of appropriate findings.

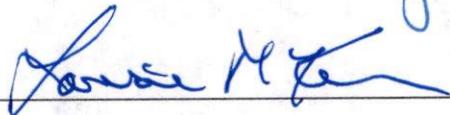
IT IS FURTHER ORDERED that, on remand, the District Court shall grant leave to file Petitioners' motion and permit Petitioners to participate for the limited purpose of addressing the sealing of records.

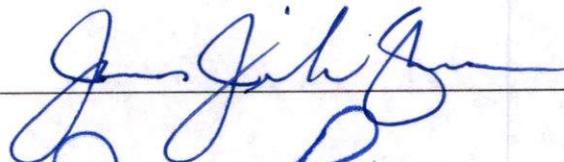
IT IS FURTHER ORDERED that the Clerk of this Court serve a copy of this Order upon all counsel of record and the Hon. Jeffrey Dahood, District Court Judge presiding under Cause No. DC 25-50.

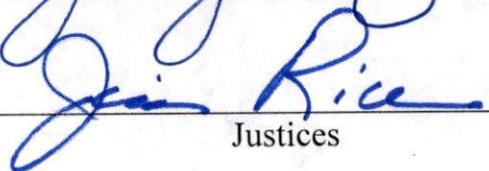
DATED this 24<sup>th</sup> day of March, 2026.

  
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Chief Justice

  
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Katherine M. Bidegway

  
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Louise M. Chen

  
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James J. Han

  
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Jan Rice

Justices