

No. 18-1230

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

COURTHOUSE NEWS SERVICE,
Plaintiff-Appellee,

v.

DOROTHY BROWN, in her official capacity
as Clerk of the Circuit Court of Cook County,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
The Honorable Matthew F. Kennelly
Case No. 17 C 7933

**BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS AND 40 MEDIA ORGANIZATIONS IN
SUPPORT OF PLAINTIFF-APPELLEE URGING AFFIRMANCE**

Katie Townsend, Esq.

Counsel of Record

Caitlin V. Vogus, Esq.*

Josh R. Moore, Esq.*

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1250

Washington, D.C. 20005

Telephone: (202) 795-9300

Facsimile: (202) 795-9310

**Of counsel*

Additional amici counsel listed in Appendix B

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AND CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

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Sinclair Broadcast Group, Inc. is a Maryland corporation which is publicly traded on NASDAQ under the symbol SBGI.

Society of Professional Journalists is a non-stock corporation with no parent company.

Amici curiae have not appeared earlier in this case. Counsel of record for *amici curiae* is Katie Townsend of the Reporters Committee for Freedom of the Press. Additional counsel for *amici curiae* are listed in Appendix B.

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are The Reporters Committee for Freedom of the Press, ABC, Inc., ALM Media, LLC, American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, Boston Globe Media Partners, LLC, Cable News Network, Inc., The Center for Investigative Reporting, Chicago Tribune Company LLC, Dow Jones & Company, Inc., The E.W. Scripps Company, First Amendment Coalition, First Look Media Works, Inc., Fox Television Stations, LLC, Gannett Co., Inc., GateHouse Media, LLC, Gizmodo Media Group, LLC, International Documentary Assn., Investigative Reporting Program, The McClatchy Company, The Media Institute, MediaNews Group Inc., dba Digital First Media, LLC, Meredith Corporation d/b/a KMOV-TV, MPA – The Association of Magazine Media, National Press Photographers Association, NBCUniversal Media, LLC, New England First Amendment Coalition, The New York Times Company, News Corp, News Media Alliance, Online News Association, POLITICO LLC, ProPublica, Pulitzer Center on Crisis Reporting, Radio Television Digital News Association, Reporters Without Borders, The Seattle Times Company, Sinclair Broadcast Group, Inc., and Society of Professional Journalists. A supplemental statement of identity and interest of *amici curiae* is included below as Appendix A.

Amici file this brief in support of Plaintiff-Appellee Courthouse News Service (“CNS”). As members and representatives of the news media, *amici* have a strong interest in ensuring that the public’s rights of access to court proceedings and documents are not curtailed. Contemporaneous access to court documents, including complaints, is essential to reporting on the legal system and the judicial branch. *Amici* write to emphasize the public interests at stake in this case and the importance to journalists and the public of contemporaneous access to newly filed civil complaints.

SOURCE OF AUTHORITY TO FILE

Counsel for Plaintiff-Appellee and Defendant-Appellant consented to the filing of this *amicus* brief. *See* Fed. R. App. P. 29(a)(2).

FED. R. APP. 29(A)(4)(E) STATEMENT

Amici declare that:

1. no party's counsel authored the brief in whole or in part;
2. no party or party's counsel contributed money intended to fund preparing or submitting the brief; and
3. no person, other than *amici*, their members or their counsel, contributed money intended to fund preparing or submitting the brief.

SUMMARY OF THE ARGUMENT

Amici write to emphasize the importance of the contemporaneous nature of the public's First Amendment right of access to newly filed civil complaints.¹ Not only does the Constitution create a right of access to civil complaints that attaches upon the court's receipt for filing, as Plaintiff-Appellee CNS argues, but there is a substantial public interest in contemporaneous access to newly filed civil complaints.

Public access to civil complaints is constitutionally required. Every federal appellate court to consider the issue, including this Court, has held that the First Amendment right of access applies in the civil context. More specifically, application of the experience and logic test of *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8–10 (1986) (“*Press-Enterprise II*”) demonstrates that the First Amendment right of access applies to civil complaints upon filing.² And, because delay can result in the denial of meaningful access, the First Amendment requires

¹ *Amici* agree with Plaintiff-Appellee Courthouse News Service (“CNS”) that the abstention doctrines enunciated in *Younger v. Harris*, 401 U.S. 37 (1971) and *O’Shea v. Littleton*, 414 U.S. 488 (1974), should not apply to federal court actions for injunctive relief directed at a state court’s systemic delay of media access to court proceedings and records. *Amici* do not address this argument, which is addressed at length in CNS’s brief.

² As CNS states in its brief, a complaint is “filed” upon receipt by the clerk. *See* Br. of Courthouse News Service, Pl.-Appellee at 8, Apr. 12, 2018, ECF No. 19. Hereinafter, any reference to the “filing” of a complaint refers to the document at the time the clerk receives it.

that the public be afforded access to civil complaints contemporaneously to their filing.

Not only is contemporaneous access to civil complaints constitutionally required, but it also greatly benefits the public. The press and the public have a right to learn about the matters consuming judicial resources and occupying space on the dockets of courts. Civil complaints are the foundational documents of lawsuits; they can provide a wealth of information about how litigants use the judicial system, how the law exposes citizens to suit or provides remedies for alleged harm, and how the judiciary functions. Contemporaneous access to civil complaints ensures that the public learns about cases while they are newsworthy. Prompt access also promotes accuracy in reporting, and leads to more informed, meaningful public debate and discussion about newly filed cases that spur heightened public interest.

Finally, CNS's commercial interest in access to civil complaints is immaterial. All members of the public, including for-profit news organizations, have a presumptive right of access to judicial records and proceedings under the First Amendment. The fact that CNS seeks to profit by disseminating information derived from civil complaints is irrelevant, as is any potential commercial interest of CNS's readership.

For these reasons, *amici* urge this Court to affirm the order of the U.S. District Court for the Northern District of Illinois granting a preliminary injunction, and hold that the First Amendment creates a qualified right of contemporaneous access to civil complaints that attaches upon their filing.

ARGUMENT

I. The First Amendment affords the public a contemporaneous right of access to newly filed civil complaints.

The freedoms of speech and of the press and of the right to peaceably assemble and to petition the government that are guaranteed by the First Amendment “share a common core purpose of assuring freedom of communication on matters relating to the functioning of government.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (plurality opinion). This cornerstone of our constitutional system “would lose much meaning” without the implied right of access to judicial proceedings. *Id.* at 576–77.

The Supreme Court has recognized a First Amendment right of access to criminal proceedings. *Id.* at 573; *see also Globe Newspaper Co. v. Superior Court for Norfolk Cty.*, 457 U.S. 596, 603 (1982). While the Supreme Court has not yet addressed the question in the civil context, this Court and other federal appellate courts have recognized a First Amendment right of access to civil proceedings and judicial documents. *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d

893, 897 (7th Cir. 1994), *superseded on other grounds as recognized by Bond v. Utreras*, 585 F.3d 1061, 1068 n.4 (7th Cir. 2009); *see also Courthouse News Service v. Planet*, 750 F.3d 776, 785 (9th Cir. 2014) (stating that “the federal courts of appeals have widely agreed that [the right of access] extends to civil proceedings and associated records and documents”).

The First Amendment right of access to court proceedings and documents allows the public to scrutinize the judiciary, which “(1) promote[s] community respect for the rule of law, (2) provide[s] a check on the activities of judges and litigants, and (3) foster[s] more accurate fact finding.” *Grove Fresh*, 24 F.3d at 897. This Court has held that the right of access is particularly valuable in civil cases, where mistakes “may be more likely to inflict costs upon third parties.” *Id.*

When determining whether a court document is subject to the First Amendment right of access, “the court must consider whether the document has historically been available to the public, and whether public access would promote the proper functioning of the government agency producing or considering the document.” *United States v. Corbitt*, 879 F.2d 224, 237 (7th Cir. 1989); *see also Press-Enterprise II*, 478 U.S. at 8–10 (setting forth the experience and logic test to determine when the First Amendment right of access applies). The First Amendment right of access “may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values.” *Press-Enterprise*

Co. v. Superior Court, 464 U.S. 501, 510 (1984) (“*Press-Enterprise I*”) (internal quotations omitted).

A. The First Amendment right of access attaches to civil complaints at the time of filing.

Civil complaints have historically been available to the public at the time they are filed. There is a widespread and lengthy tradition of reporters visiting courthouses to examine hard copies of civil records, including recently filed complaints. *See Planet*, 750 F.3d at 779 (“In courthouses around the country—large and small, state and federal—CNS reporters review civil complaints on the day they are filed.”); *see also* Toni Locy, *Covering America’s Courts* 52 (2013) (describing how civil clerks at the federal trial court in Washington kept a “wooden box on a counter where they placed the paper versions of the day’s lawsuits” that Locy would check several times a day); Scott Streater, *Finding Necessary Evidence to Back Up a Tip*, Nieman Reports (Mar. 15, 2005), <https://perma.cc/HU3Q-BNKG> (describing how a reporter went to the county courthouse and “por[ed] over hundreds of pages of court filings, documents and depositions in the public record” to investigate a tip). Starting in 1997 and until recently, CNS had same-day access to hard copies of all civil complaints in the Circuit Court of Cook County. *See* Memorandum Opinion and Order, *Courthouse News Service v. Brown*, No. 17-C-7933 (ND. Ill. Jan. 8, 2018).

In the modern age, this tradition of access to civil complaints at the time of filing is reflected in the practice of federal courts and many state courts of electronic docketing, which permits the public and the press to access most filings as soon as they are filed. *See* Beth Winegarner, *6 Tips for Reporters Tracking State Legal Cases*, Poynter (Sept. 27, 2013), <https://perma.cc/64DQ-5WWX> (noting that many state courts “have websites where you can look through the titles of cases that have been filed recently” and that “[s]ome courts post these documents online”); *25 Years Later, PACER, Electronic Filing Continue to Change Courts*, U.S. Courts (Dec. 9, 2013), <https://perma.cc/A5X5-U6YQ> (noting that PACER, the federal court electronic filing system, allows for “track[ing] cases and case documents in nearly real time”).³ Indeed, reporters routinely access and report on civil complaints filed in federal courts the same day they are filed. *See*,

³ *Amicus curiae* Judicial Conference of California points to this Court’s Electronic Case Filing system procedures, which state that *briefs* are not considered filed until the Clerk completes “a review for compliance with applicable rules,” to argue that delays in public access to electronically filed complaints should be permitted. Br. of *Amicus Curiae* Judicial Council of California in Supp. of Appellant and Urging Reversal at 18, March 30, 2018, ECF No. 10-2 (citing Electronic Case Filing Procedures (“ECF Procedures”) § (h)(1), U.S. Court of Appeals for the Seventh Circuit, (May 24, 2011), <http://www.ca7.uscourts.gov/ecf/ECFprocedures.htm>). Those procedures make clear, however, that the Clerk does not review *pleadings* for compliance with redaction rules, ECF Procedures § (l)(4), which is what Defendant-Appellant argues is the reason for unnecessary delay in public access to civil complaints. *See* Br. and Circuit Rule 30(a) App. of Defs.-Appellants (“Appellant’s Brief”) at 5–6, March 13, 2018, ECF No. 9.

e.g., Jon Seidel et al., *Lawsuit, Citing 'Thin Blue Line,' Seeks Federal Court Oversight of CPD*, Chi. Sun-Times (June 14, 2017), <https://perma.cc/M6FN-DZM9> (reporting at 5:43 p.m. about a lawsuit filed earlier that day in federal civil court).

Access to civil complaints, from the moment they are filed, also promotes the proper functioning of the judicial process. The complaint is a significant document in the life of a lawsuit; its filing sets the civil justice process in motion. The complaint identifies the parties involved, the claims asserted, and the alleged factual basis for those claims. Thus, access to civil complaints allows the public to understand who is filing suit and consuming judicial resources and the alleged basis for the claims brought before the court. *See In re Nvidia Corp. Derivative Litig.*, No. C 06-06110 SBA, 2008 WL 1859067, at *3 (N.D. Cal. Apr. 23, 2008) (“When a plaintiff invokes the Court’s authority by filing a complaint, the public has a right to know who is invoking it, and towards what purpose, and in what manner.”); *see also McCrary v. Elations Co., LLC*, No. EDCV 13-00242 JGB, 2014 WL 1779243, at *6 (C.D. Cal. Jan. 13, 2014) (suggesting that the centrality of the complaint to the lawsuit also makes the document central to “the public’s understanding of the judicial process and of significant public events”) (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)).

Public scrutiny of civil complaints also serves as a check upon the activities of litigants and the judiciary. *See Grove Fresh*, 24 F.3d at 897. Prospective plaintiffs who know that the public can access civil complaints will be encouraged to file only meritorious claims, since false or frivolous claims could be exposed by public attention. In addition, public access to civil complaints at the time they are filed allows the public to know if civil cases are being efficiently handled by court administrators and resolved by the judiciary. If the right of access did not apply until after processing, judicial action, or judgment, civil cases could be left on the courts' dockets indefinitely and the public would never learn about them. In this way, transparency from the moment a complaint is filed promotes public trust in the judicial process.

B. The First Amendment requires contemporaneous access to newly filed civil complaints.

When the First Amendment right of access applies, “access ought to be ‘immediate and contemporaneous.’” *In re Associated Press*, 162 F.3d 503, 506–07 (7th Cir. 1998) (quoting *Grove Fresh*, 24 F.3d at 897)); *see also Associated Press v. Dist. Court*, 705 F.2d 1143, 1147 (9th Cir. 1983) (holding that a 48-hour delay in unsealing judicial records is improper, because the effect of the delay acts as a “total restraint on the public’s first amendment right of access” during that time). As the Supreme Court has stated, a loss of First Amendment rights, “for even

minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). Accordingly, the First Amendment requires access to a civil complaint in real time upon its filing.

Delayed access to newly filed civil complaints irreparably harms the public’s interest in monitoring cases pending before the courts. *See Grove Fresh*, 24 F.3d at 897 (“To delay or postpone disclosure undermines the benefit of public scrutiny”); *see also Co. Doe v. Pub. Citizen*, 749 F.3d 246, 272 (4th Cir. 2014) (recognizing that “the public benefits attendant with open proceedings are compromised by delayed disclosure”). Indeed, “each passing day may constitute a separate and cognizable infringement of the First Amendment.” *Neb. Press Ass’n v. Stuart*, 423 U.S. 1327, 1329 (1975) (Blackmun, Circuit Justice). This is even more true in the modern news environment, where timeliness is critical to newsworthiness. *See* Section II, *infra*. Thus, both the principles of the First Amendment and the realities of the news cycle lead to the conclusion that, in the context of civil complaints, delayed access amounts to a denial.

Amici recognize that the First Amendment right of access to civil complaints is a qualified right; it may be overcome only when “denial of access is essential to preserve higher values and is narrowly tailored to serve those interests.” *In re Associated Press*, 162 F.3d at 511. Defendant-Appellant refers generally to privacy concerns to purportedly justify the delay in public access to civil

complaints filed in the Circuit Court of Cook County. *See* Appellant’s Brief at 5–6. Defendant-Appellant, however, fails to acknowledge that her office currently provides contemporaneous access to non-electronically filed complaints, and, until 2015, provided contemporaneous access to all complaints by printing hard copies of any electronically filed complaints as they were filed. Hypothetical concerns about privacy, which have never been concerns previously, and which have no justification, are not a “higher value” that overcomes the First Amendment right of timely access. *See Press-Enterprise II*, 478 U.S. at 15 (explaining that the First Amendment right of access is not overcome by “conclusory assertion[s]”). In addition, as many courts, including this Court, have recognized, private information contained in civil complaints can be protected by requiring the parties to redact this information prior to filing. *See, e.g.*, ECF Procedures § (I)(4). Accordingly, there is no higher value that justifies the delay in access to civil complaints that Defendant-Appellant seeks to impose.

II. Contemporaneous access to civil complaints benefits the public and the press, and even brief delays can be detrimental.

Contemporaneous access to civil complaints is not only constitutionally required, it is also essential to journalists’ ability to keep the public informed about newsworthy litigation and the functioning of the judicial system. When news

media organizations like CNS and others have contemporaneous access to civil complaints, it is the public that benefits. As the Ninth Circuit recognized:

The news media's right of access to judicial proceedings is essential not only to its own free expression, but also to the public's. . . . We have observed that the news media, when asserting the right of access, 'are surrogates for the public. . . . The free press is the guardian of the public interest, and the independent judiciary is the guardian of the free press.'

Planet, 750 F.3d at 786 (quoting *Leigh v. Salazar*, 677 F.3d 892, 900 (9th Cir.

2012)); *see also Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 490–91 (1975) (“[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations.”).

Contemporaneous access to civil complaints fosters public understanding and the timely discussion of judicial affairs, allows the press to report on new civil disputes at the moment when they are newsworthy, and enhances the accuracy and completeness of news reports. These benefits flow, ultimately, to the public.

A. Contemporaneous access promotes greater public understanding of judicial processes and matters occupying the courts' dockets.

The American people rely on the news media for information about the workings of government, including the judicial system. As the Supreme Court has stated: “[An] untrammelled press [is] a vital source of public information,’ . . . and

an informed public is the essence of working democracy.” *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 585 (1983) (alterations in original) (quoting *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936)); *see also N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring) (writing that “the Founding Fathers gave the free press the protection . . . so that it could bare the secrets of government and inform the people”).

The public has a right to be informed about matters that are now pending before state courts and that may demand court resources for years to come. *See In re NVIDIA Corp. Derivative Litig.*, 2008 WL 1859067, at *3. Indeed, the public can engage in meaningful discussion and debate about pending lawsuits, and can observe the operation of the judicial system, only when it knows those lawsuits are happening and can access prejudgment records. *See Matter of Cont’l Illinois Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984) (noting that the right of access “insur[es] quality, honesty and respect for our legal system”); *see also Seattle Times Co. v. U.S. Dist. Court*, 845 F.2d 1513, 1517 (9th Cir. 1988) (stating that access to pretrial documents is “important to a full understanding of the way in which the judicial process and the government as a whole are functioning” (citation omitted)). For that reason, timely access to civil complaints is “an essential part of the First Amendment’s purpose to ‘ensure that the individual citizen can effectively participate in and contribute to our republican system of

self-government.” *Planet I*, 750 F.3d at 785 (quoting *Globe Newspaper Co.* 457 U.S. at 604). Even a brief delay in access to newly filed civil complaints undermines the public’s powerful interest in timely information about cases pending before the courts. *See Grove Fresh*, 24 F.3d at 897; *Pub. Citizen*, 749 F.3d at 272 (recognizing that “the public benefits attendant with open proceedings are compromised by delayed disclosure”).

B. Contemporaneous access permits the news media to report on civil lawsuits when they are newsworthy.

Immediacy is often an essential component of newsworthiness, affecting both how a story is covered and whether it is covered at all. As one journalism scholar explained, “[I]f a man is shot at a drugstore in the morning and police are searching for a suspect, then that’s news in the morning. But if by late afternoon, police have arrested a woman suspected in the shooting, then the arrest is more timely than the shooting in the 6:00 p.m. newscast.” Janet Kolodzy, *Convergence Journalism: Writing and Reporting Across the News Media* 59 (2006) (noting also that “[i]t is, after all, called the ‘news’ business and not the ‘olds’ business”); *see also* Fred Fedler et al., *Reporting for the Media* 123 (8th ed. 2005) (describing timeliness as one of the key characteristics of news).

The Supreme Court and federal courts of appeals have repeatedly recognized timeliness as a basic feature of news. *See, e.g., Neb. Press Ass’n v. Stuart*, 427

U.S. 539, 561 (1976) (“As a practical matter . . . the element of time is not unimportant if press coverage is to fulfill its traditional function of bringing news to the public promptly.”). As this Court has stated regarding the right of access to judicial records, “The newsworthiness of a particular story is often fleeting. To delay . . . disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.” *Grove Fresh*, 24 F.3d at 897.

Immediacy has always been a fundamental element of newsworthiness. “The peculiar value of news is in the spreading of it while it is fresh” *Int’l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918). This immediacy is even more vital in the digital era, because, as technology advances, the definition of “fresh” continues to evolve. The websites of the *Chicago Tribune* and *The Indianapolis Star*, for example, measure the timeliness of news updates in minutes. Other news services, such as Dow Jones Newswires, and social media platforms like Twitter, mark new posts by the second. In such a fast-paced world, what may be relevant and informative to the public this afternoon may not be as much so by tonight or tomorrow. In short, “In the Internet age, a deadline passes every second.” *See Locy, supra*, at 13.

Moreover, with the advent of electronic filing, immediate reporting on litigation has become even more achievable. Courts that use modern electronic filing methods are capable of generating digital copies of complaints and other

judicial documents automatically, allowing them to be shared with the public immediately. Courts have recognized that the potential for real-time access provided by electronic filing increases judicial transparency. *See, e.g., 25 Years Later, PACER, Electronic Filing Continue to Change Courts*, U.S. Courts (Dec. 9, 2013), <https://perma.cc/A5X5-U6YQ> (noting that PACER’s ability to “track cases and case documents in nearly real time” promotes “expanded transparency on court affairs”).

Reporters routinely rely on newly filed civil complaints to disseminate information about matters of public interest and concern—often the same day. *See, e.g., Jason Grotto & Hal Dardick, Lawsuit Targets Berrios Over Biased Residential Assessments in Cook County*, Chi. Tribune (Dec. 14, 2017), <https://trib.in/2GKgIlc> (reporting at 2:52 p.m. on a civil suit filed that day in Cook County Circuit Court against the county tax assessor); Fatima Hussein, *Indiana Secretary of State Accused of Violating Federal Election Laws*, Indianapolis Star (Oct. 27, 2017), <https://perma.cc/8C87-Q3R4> (reporting at 6:31 p.m. on a civil suit filed that day against the secretary of state); Meg Jones, *Civil War Group Files a Lawsuit to Get Wisconsin City to Mow Grass Around Graves*, Milwaukee Journal Sentinel (Apr. 11, 2017), <https://perma.cc/P92M-GGKP> (reporting at 4:18 p.m. on a civil suit filed against the city that day).

In the modern news environment, court policies that delay access to judicial records can amount to a complete denial of meaningful access, because “old news” may not receive the same level of public attention as timely news, and thus may not be published at all. In contrast, contemporaneous access to civil complaints allows the news media to learn of new civil lawsuits as they are filed and to report on them when their newsworthiness is at a height.

C. Contemporaneous access fosters more accurate and complete news reporting.

Court records are among the most reliable sources of information for reporting on lawsuits. In today’s news cycle, where stories build upon each other and are updated by the minute online, it is important that the first news stories about a lawsuit be accurate and contain as much information as possible derived from primary sources. Reporting on newly filed cases will be more authoritative and accurate if the complaints themselves are available for inspection, copying, and reference by members of the news media immediately after the complaint is filed.⁴

Reporters and their readers benefit tremendously when news reports can reference, quote from, and even hyperlink to court documents. In her textbook on

⁴ While Defendant-Appellant notes that complaints may on occasion have technical deficiencies after filing, Appellant’s Brief at 37, this would not affect the substance of the allegations, which is what is relevant to the public.

legal news reporting, professor and veteran journalist Toni Locy stresses this point. *See* Locy, *supra*, at 61–67 (focusing on the theme that, when reporting on courts, “reading is fundamental”). Locy advises reporters not to rely solely on press releases and statements given by attorneys and to be aware of the potential for ulterior motives that lawyer-advocates may have when speaking with the press. *Id.* at 3–4. Rather, immediate access to primary source documents is important for reporters writing the first news stories about a lawsuit to make their reporting more accurate and fair.

Defendant-Appellant suggests that CNS seek civil complaints from the parties to the case, calling it a “business decision” by CNS to request the court-filed document instead. Appellant’s Brief at 32. As a matter of solid, ethical reporting, however, it is often critical that reporters “review[] court filings or other public records,” among other things, to determine whether and how a fact or allegation should be reported. Locy, *supra*, at 9. Parties or their attorneys may not always be willing or available to share copies of court-filed civil complaints with reporters, and CNS and the public’s First Amendment right to obtain judicial records should not be left to the whims of the parties. Further, in a fast-paced, breaking news environment, a single, accessible source for complaints—the court—promotes accuracy much more than a system in which reporters must track down individual parties or their attorneys.

Contemporaneous access to civil complaints also facilitates thorough and complete reporting by the news media. Journalists rely on the information in civil complaints to report the “core dispute” underlying newly filed civil claims. *See Winegarner, supra* (recommending that reporters read court documents in newly filed cases “to find out what the core dispute is about—and what kind of legal remedies, including money, the plaintiffs are asking for”). Moreover, timely access to civil complaints allow reporters to shed light on important facts underlying the causes of action. *See, e.g., Andy Grimm, Lawsuit Alleges Clemente HS Coach Kept Job Despite Complaints*, Chi. Sun-Times (Dec. 18, 2017), <https://perma.cc/QHD8-5GCP> (relying on the complaint filed that day to report details of alleged “inappropriate behavior” by a high school coach in a suit that alleged the school failed to act on allegations). Those facts, however, may be missing from the public debate if access to a complaint is delayed until after a reporter’s story is published. In short, contemporaneous access to newly filed civil complaints allows the press to provide the public with a full and complete understanding of a case, including the factual underpinnings of the claims.

III. Profit motive of a publisher and its readership are irrelevant to the constitutional right of access.

Defendant-Appellant repeatedly and erroneously attempts to make an issue of the fact that CNS is a commercial entity, arguing that “the First Amendment

does not require the Circuit Clerk to give CNS immediate access to e-filed civil complaints requested for its own commercial gain.” Appellant’s Brief at 28.

Defendant-Appellant makes note of CNS’s “business model,” its efforts to “beat[] out its competitors,” and the effect of delayed access on “its profits.” *Id.* at 32–33.

The First Amendment right of timely access to court records, however, is not conditioned on the motivation of the entity or individual seeking access. Rather, in determining whether the First Amendment right of access applies, courts look solely to the nature of the proceeding or document itself. *See Press-Enterprise II*, 478 U.S. at 8–10.

Courts have repeatedly concluded that commercial interest is irrelevant to a constitutional inquiry concerning First Amendment rights. *See Harte-Hanks Commc’ns v. Connaughton*, 491 U.S. 657, 667 (1989) (“If a profit motive could somehow strip communications of the otherwise available constitutional protection, our cases from *New York Times* to *Hustler Magazine* would be little more than empty vessels.”); *Pittsburgh Press Co. v. Pittsburgh Com. on Human Relations*, 413 U.S. 376, 385 (1973) (“If a newspaper [or website]’s profit motive were determinative, all aspects of its operations . . . would be subject to regulation if it could be established that they were conducted with a view toward increased sales,” and “[s]uch a basis for regulation clearly would be incompatible with the First Amendment”); *Nieman v. VersusLaw, Inc.*, 512 F. App’x 635, 638 (7th Cir.

2013) (“The for-profit nature . . . does not change the analysis; speech is protected even when ‘carried in a form that is “sold” for profit.’” (quoting *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 761 (1976))). The Supreme Court and this Court have made it clear that any applicable First Amendment rights operate with full force regardless of whether a news organization seeks to earn a profit or to provide information free of charge.

In addition, the First Amendment right of access is held broadly by the general public. A single news organization’s commercial model does not affect, let alone extinguish, a constitutional right of access held by the public. All members of the public, not just CNS and its paid subscribers, would benefit from access, and all possess a First Amendment right of timely access to civil complaints, including for-profit news media organizations. *See Richmond Newspapers*, 448 U.S. at 586 n.2 (stating that “the media’s right of access is at least equal to that of the general public”). If profit motive were relevant to determining whether the constitutional right of access to judicial records applies—as Defendant-Appellant’s discussion of CNS’s business model implies—then most news organizations would be stripped of their right of access, to the substantial detriment of the public. Countless newspapers, including *The New York Times*, *The Washington Post*, and *The Wall Street Journal*, for example, require paid subscriptions to access full online content, and articles in the print editions appear

alongside paid advertisements. Such for-profit activity helps to sustain the news industry. Any argument “that the constitutional guarantees of freedom of speech and of the press are inapplicable” where speech is commercially motivated would “shackle the First Amendment in its attempt to secure the widest possible dissemination of information from diverse and antagonistic sources.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964) (internal quotations omitted). In short, that CNS might sell news content to the public after exercising its right of access to civil complaints “is as immaterial in this connection as is the fact that newspapers and books are sold.” *Id.*

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court affirm the decision below.

Respectfully submitted,

/s/ Katie Townsend

Katie Townsend, Esq.

Counsel of Record

Caitlin V. Vogus, Esq.*

Josh R. Moore, Esq.*

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1250

Washington, D.C. 20005

Phone: (202) 795-9300

Fax: (202) 795-9310

ktownsend@rcfp.org

*Of counsel

**Additional counsel for *amici* are listed in Appendix B.

Dated: April 19, 2018
Washington, D.C.

**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF
APPELLATE PROCEDURE 32(G) AND CIR. RULE 29**

I, Katie Townsend, do hereby certify that the foregoing brief of *amici curiae*:

- 1) Complies with the type-volume limitation of Cir. R. 29 because it contains 5315 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as calculated by the word-processing system used to prepare the brief; and
- 2) Complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point, Times New Roman font.

/s/ Katie Townsend
Katie Townsend, Esq.
Counsel of Record
THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

Dated: April 19, 2018
Washington, D.C.

APPENDIX A

SUPPLEMENTAL STATEMENT OF IDENTITY OF *AMICI CURIAE*

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

ABC, Inc. is a broad-based communications company. Alone or through its subsidiaries, it owns ABC News, abcnews.com, and local broadcast television stations including WLS-TV, Chicago, Ill., that regularly gather and report news to the public. ABC News produces the television programs *World News with David Muir*, *Good Morning America*, *Nightline*, *20/20*, and *This Week*, among others.

ALM Media, LLC publishes over 30 national and regional magazines and newspapers, including *The American Lawyer*, *The National Law Journal*, *New York Law Journal* and *Corporate Counsel*, as well as the website Law.com. Many of ALM's publications have long histories reporting on legal issues and serving their local legal communities. ALM's *The Recorder*, for example, has been published in northern California since 1877; *New York Law Journal* was begun a

few years later, in 1888. ALM's publications have won numerous awards for their coverage of critical national and local legal stories, including many stories that have been later picked up by other national media.

With some 500 members, **American Society of News Editors** ("ASNE") is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

The Associated Press Media Editors is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the

principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information.

Association of Alternative Newsmedia (“AAN”) is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

Boston Globe Media Partners, LLC publishes The Boston Globe, the largest daily newspaper in New England.

Cable News Network, Inc. (“CNN”), a division of Turner Broadcasting System, Inc., a Time Warner Company, is the most trusted source for news and information. Its reach extends to the following: nine cable and satellite television networks; one private place-based network; two radio networks; wireless devices around the world; CNN Digital Network, the No. 1 network of news websites in the United States; CNN Newsource, the world’s most extensively syndicated news service; and strategic international partnerships within both television and the digital media.

The **Center for Investigative Reporting (CIR)**, founded in 1977, is the nation's first nonprofit investigative journalism organization. CIR produces investigative journalism for its <https://www.revealnews.org/> website, the Reveal national public radio show and podcast, and various documentary projects - often in collaboration with other newsrooms across the country.

Chicago Tribune Company, LLC, published the Chicago Tribune, one of the largest daily newspapers in the United States. Its popular news and information website, www.chicagotribune.com, attracts a national audience.

Dow Jones & Company, Inc., is a global provider of news and business information, delivering content to consumers and organizations around the world across multiple formats, including print, digital, mobile and live events. Dow Jones has produced unrivaled quality content for more than 130 years and today has one of the world's largest newsgathering operations globally. It produces leading publications and products including the flagship Wall Street Journal; Factiva; Barron's; MarketWatch; Financial News; Dow Jones Risk & Compliance; Dow Jones Newswires; and Dow Jones VentureSource.

The E.W. Scripps Company serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24 markets. Scripps also owns 33 radio stations in eight markets, as well as local and national digital journalism and information businesses, including mobile video

news service Newsy and weather app developer WeatherSphere. Scripps owns and operates an award-winning investigative reporting newsroom in Washington, D.C. and serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

First Look Media Works, Inc. is a new non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting.

Directly and through affiliated companies, **Fox Television Stations, LLC**, owns and operates 28 local television stations throughout the United States. The 28 stations have a collective market reach of 37 percent of U.S. households. Each of the 28 stations also operates Internet websites offering news and information for its local market.

Gannett Co., Inc. is an international news and information company that publishes 109 daily newspapers in the United States and Guam, including USA TODAY. Each weekday, Gannett's newspapers are distributed to an audience of more than 8 million readers and the digital and mobile products associated with the company's publications serve online content to more than 100 million unique visitors each month.

GateHouse Media is a preeminent provider of print and digital local content and advertising in small and midsize markets. Our portfolio of products, which includes 404 community publications and more than 350 related websites and six yellow page directories, serves over 128,000 business advertising accounts and reaches approximately 10 million people on a weekly basis.

Gizmodo Media Group, LLC is the publisher of some of the web's best-loved digital media brands and communities, including Gizmodo, Jezebel and Deadspin. Collectively, the sites reach over 50 million readers in the United States a month.

The International Documentary Association (IDA) is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

The **Investigative Reporting Program (IRP)** at UC Berkeley's Graduate School of Journalism is dedicated to promoting and protecting the practice of investigative reporting. Evolving from a single seminar, the IRP now encompasses a nonprofit newsroom, a seminar for undergraduate reporters and a post-graduate fellowship program, among other initiatives. Through its various projects, students have opportunities to gain mentorship and practical experience in breaking major stories for some of the nation's foremost print and broadcast outlets. The IRP also works closely with students to develop and publish their own investigative pieces. The IRP's work has appeared on PBS Frontline, Univision, Frontline/WORLD, NPR and PBS NewsHour and in publications such as Mother Jones, The New York Times, Los Angeles Times, Time magazine and the San Francisco Chronicle, among others.

The McClatchy Company is a 21st century news and information leader, publisher of iconic brands such as the Miami Herald, The Kansas City Star, The Sacramento Bee, The Charlotte Observer, The (Raleigh) News and Observer, and the (Fort Worth) Star-Telegram. McClatchy operates media companies in 28 U.S. markets in 14 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, Calif., and listed on the New York Stock Exchange under the symbol MNI.

The Media Institute is a nonprofit research foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

MediaNews Group Inc., dba Digital First Media, publishes the San Jose Mercury News, the East Bay Times, St. Paul Pioneer Press, The Denver Post and the Detroit News and other community papers throughout the United States, as well as numerous related online news sites.

Meredith Corporation owns and operates KMOV-TV in the St. Louis, Missouri market area.

MPA – The Association of Magazine Media (“MPA”) is the largest industry association for magazine publishers. The MPA, established in 1919, represents over 175 domestic magazine media companies with more than 900 magazine titles. The MPA represents the interests of weekly, monthly and quarterly publications that produce titles on topics that cover politics, religion, sports, industry, and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

The **National Press Photographers Association** (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its

creation, editing and distribution. NPPA's approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

NBCUniversal Media, LLC is one of the world's leading media and entertainment companies in the development, production and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal Media, LLC owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks, including MSNBC and CNBC, and a television-stations group consisting of owned-and-operated television stations that produce substantial amounts of local news, sports and public affairs programming. NBC News produces the "Today" show, "NBC Nightly News with Lester Holt," "Dateline NBC" and "Meet the Press."

New England First Amendment Coalition is a non-profit organization working in the six New England states to defend, promote and expand public access to government and the work it does. The coalition is a broad-based

organization of people who believe in the power of transparency in a democratic society. Its members include lawyers, journalists, historians and academicians, as well as private citizens and organizations whose core beliefs include the principles of the First Amendment. The coalition aspires to advance and protect the five freedoms of the First Amendment, and the principle of the public's right to know in our region. In collaboration with other like-minded advocacy organizations, NEFAC also seeks to advance understanding of the First Amendment across the nation and freedom of speech and press issues around the world.

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

News Corp is a global, diversified media and information services company focused on creating and distributing authoritative and engaging content to consumers throughout the world. The company comprises leading businesses across a range of media, including: news and information services, digital real estate services, book publishing, digital education, and sports programming and pay-TV distribution.

The News Media Alliance is a nonprofit organization representing the interests of online, mobile and print news publishers in the United States and Canada. Alliance members account for nearly 90% of the daily newspaper circulation in the United States, as well as a wide range of online, mobile and non-

daily print publications. The Alliance focuses on the major issues that affect today's news publishing industry, including protecting the ability of a free and independent media to provide the public with news and information on matters of public concern.

Online News Association ("ONA") is the world's largest association of online journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. ONA's more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to more than 350 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day, publishes POLITICO Magazine, with a circulation of 33,000 six times a year, and maintains a U.S. website with an average of 26 million unique visitors per month.

ProPublica is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won four Pulitzer Prizes, most recently the 2017 Pulitzer gold medal for public service. ProPublica is supported primarily by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica's first regional operation, ProPublica Illinois, began publishing in late 2017, and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting.

Pulitzer Center on Crisis Reporting, based in Washington, DC, was founded in 2006 as a non-profit journalism center dedicated to supporting in-depth engagement with underreported global affairs through sponsorship of quality international journalism across all media platforms and a unique program of outreach and education to schools and universities. The Center supports over 150 international reporting projects each year, working in tandem with major international news outlets.

Radio Television Digital News Association ("RTDNA") is the world's largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries.

RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

Reporters Without Borders has been fighting censorship and supporting and protecting journalists since 1985. Activities are carried out on five continents through its network of over 150 correspondents, its national sections, and its close collaboration with local and regional press freedom groups. Reporters Without Borders currently has 10 offices and sections worldwide.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with *The Issaquah Press*, *Yakima Herald-Republic*, *Walla Walla Union-Bulletin*, *Sammamish Review* and *Newcastle-News*, all in Washington state.

Sinclair is one of the largest and most diversified television broadcasting companies in the country. Pro forma for all pending and previously announced transactions (before any related divestitures), the Company will own, operate and/or provide services to 233 television stations in 108 markets. The Company has multiple emerging networks as well as being affiliated with all the major networks. Sinclair is a leading local news provider in the country and a producer of live sports content. Sinclair's content is delivered via multiple-platforms, including over-the-air, multi-channel video program distributors, and digital platforms.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

APPENDIX B**ADDITIONAL COUNSEL FOR *AMICI CURIAE***

John Zucker
Indira Satyendra
ABC, Inc.
77 W. 66th Street
New York, NY 10023

Dana Rosen
Senior Vice President and General
Counsel
ALM Media, LLC
120 Broadway, 5th Floor
New York, NY 10271

Kevin M. Goldberg
Fletcher, Heald & Hildreth, PLC
1300 N. 17th St., 11th Floor
Arlington, VA 22209
*Counsel for American Society of News
Editors*
*Counsel for Association of Alternative
Newsmedia*

Karen Kaiser
General Counsel
The Associated Press
450 W. 33rd Street
New York, NY 10001

Dan Krockmalnic
Boston Globe Media Partners, LLC
1 Exchange Place
Boston, MA 02109
617-929-7157

David C. Vigilante
Johnita P. Due
Cable News Network, Inc.
1 CNN Center
Atlanta, GA 30303

D. Victoria Baranetsky
General Counsel
The Center for Investigative
Reporting
1400 65th Street, Suite 200
Emeryville, California 94608

Karen H. Flax
VP/Legal
Chicago Tribune
435 North Michigan Ave.
Chicago, IL 60611
kflax@tronc.com

Jason P. Conti
Jacob P. Goldstein
Dow Jones & Company, Inc.
1211 Avenue of the Americas
New York, NY 10036
*Counsel for Dow Jones & Company,
Inc.*

David M. Giles
Vice President/
Deputy General Counsel
The E.W. Scripps Company
312 Walnut St., Suite 2800
Cincinnati, OH 45202

David Snyder
First Amendment Coalition
534 Fourth St., Suite B
San Rafael, CA 94901

David Bralow
First Look Media Works, Inc.
18th Floor
114 Fifth Avenue
New York, NY 10011

David M. Keneipp
FOX TELEVISION STATIONS,
LLC
1999 S. Bundy Drive
Los Angeles, CA 90025
310-584-3341
david.keneipp@foxtv.com

Barbara W. Wall
Senior Vice President & Chief Legal
Officer
Gannett Co., Inc.
7950 Jones Branch Drive
McLean, VA 22107
(703)854-6951

Polly Grunfeld Sack
SVP, General Counsel and Secretary
GateHouse Media, LLC
175 Sully's Trail, 3rd Floor
Pittsford, New York 14534

Lynn Oberlander
*Executive Vice President and General
Counsel*
Gizmodo Media Group, LLC
114 Fifth Avenue, Second Floor
New York, NY 10011
646-214-7898
(347)453-8111
lynn.oberlander@gizmodomedia.com

Juan Cornejo
The McClatchy Company
2100 Q Street
Sacramento, CA 95816

Kurt Wimmer
Covington & Burling LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
Counsel for The Media Institute

Marshall W. Anstandig
Senior Vice President, General
Counsel and Secretary
Digital First Media
4 North 2nd Street, Suite 800
San Jose, CA 95113
manstandig@bayareanewsgroup.com
1-408-920-5784

James Chadwick
*Counsel for MediaNews Group Inc.
dba Digital First Media LLC*
Sheppard Mullin Richter & Hampton
LLP
379 Lytton Avenue
Palo Alto, CA 94301-1479
jchadwick@sheppardmullin.com
1-650-815-2600

Joshua N. Pila
Meredith Corporation
425 14th Street NW
Atlanta, GA 30318

James Cregan
Executive Vice President
MPA – The Association of Magazine
Media
1211 Connecticut Ave. NW Suite
610
Washington, DC 20036

Mickey H. Osterreicher
1100 M&T Center, 3 Fountain Plaza,
Buffalo, NY 14203
*Counsel for National Press
Photographers Association*

Beth R. Lobel, Esq.
Senior Vice President, NBCUniversal
News Group
NBCUniversal Media, LLC
30 Rockefeller Plaza
New York, NY 10112

Robert A. Bertsche (BBO #554333)
Prince Lobel Tye LLP
100 Cambridge Street
Boston, MA 02114
*Counsel for the New England First
Amendment Coalition*

David McCraw
V.P./Assistant General Counsel
The New York Times Company
620 Eighth Avenue
New York, NY 10018

Genie Gavenchak
News Corporation
1211 Avenue of the Americas
New York, NY 10036
Counsel for News Corporation

Kurt Wimmer
Covington & Burling LLP
850 10th Street NW
Washington, DC 20001
Counsel for the News Media Alliance

Laura R. Handman
Alison Schary
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006
Thomas R. Burke
Davis Wright Tremaine LLP
Suite 800
500 Montgomery Street
San Francisco, CA 94111
Counsel for Online News Association

Elizabeth C. Koch
Ballard Spahr LLP
1909 K Street, NW
12th Floor
Washington, DC 20006-1157
Counsel for POLITICO LLC

Kathleen A. Kirby
Wiley Rein LLP
1776 K St., NW
Washington, DC 20006
*Counsel for Radio Television Digital
News Association*

Bruce E. H. Johnson
Davis Wright Tremaine LLP
1201 Third Ave., Suite 2200
Seattle, WA 98101
Counsel for The Seattle Times Co.

Barry Faber
Exec. V.P./General Counsel
Sinclair Broadcast Group, Inc.
10706 Beaver Dam Rd,
Hunt Valley, MD 21030

Bruce W. Sanford
Mark I. Bailen
Baker & Hostetler LLP
1050 Connecticut Ave., NW
Suite 1100
Washington, DC 20036
*Counsel for Society of Professional
Journalists*

CERTIFICATE OF SERVICE

I, Katie Townsend, do hereby certify that I have filed the foregoing Brief of *Amici Curiae* electronically with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit using the appellate CM/ECF system on April 19, 2018.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Katie Townsend
Katie Townsend, Esq.
Counsel of Record
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