New England
First Amendment Coalition

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Vermont Judiciary
c/o Scott Griffith
Chief of Planning and Court Services
Court Administrator's Office

SENT VIA EMAIL TO SCOTT.GRIFFITH@VERMONT.GOV
CC: THOMAS.ZONAY@VERMONT.GOV

June 3, 2022

Dear Scott,

We're writing on behalf of the New England First Amendment Coalition, the Vermont Press Association and the Vermont Association of Broadcasters.

We're concerned about the way some county courts in the state have been using Vermont Supreme Court Administrative Order 49 to limit press access to judicial proceedings. Order 49 allows courts in the state to make temporary changes to their rules and operations in response to COVID-19 safety concerns. The order, first issued in 2020, was recently extended to August 31.

While we question the necessity of the order given that other branches of the government are no longer following similar safety protocols, our primary concern is how a small number of county court judges are using the order as justification to restrict the access of broadcast journalists to their court rooms. Here are two recent examples:

- In April, a reporter was denied access to a sentencing hearing in Addison County because the judge there set a limit of 14 people in the court room.

- A reporter covering an attempted murder arraignment in Orleans County last month was told that only four people would be allowed in the court room: the judge, two court staff and one pool photographer.

In both cases, no notice was given to the public that such restrictions would be imposed. The judges provided no reasoning for the restrictions other than citing Order 49 and the reporters shut out of the in-person proceedings were given no opportunity to object.

While remote access is provided to proceedings, the video and audio quality is not sufficient for broadcast journalists and severely limits their ability to effectively report the news. Put simply, cameras and microphones are the tools of their trade and they should be allowed to use them except only in the most rare of circumstances.

We respectfully request the Supreme Court clarify or amend its Order 49 to require the following:

> *If public and press access to a court proceeding will be limited under Order 49, the court imposing the restrictions shall give notice, including a written explanation for why such restrictions are necessary, no later than 48 hours prior to the proceeding. The court shall also provide an opportunity for any member of the public to object to the restrictions and shall limit access only upon a finding of good cause.*

This will allow newsrooms the opportunity to object to the restrictions and, if those restrictions are upheld, prepare their news coverage in a way that compensates for the lack of access. We believe this is a reasonable measure that respects the authority of the court under Order 49 but also helps protect the First Amendment right of journalists to access court proceedings.

We welcome the opportunity to discuss this request in further detail. Thank you for your time.

Sincerely,

Justin Silverman
NEFAC Executive Director

Michael Donoghue
VPA Executive Director

Wendy Mays
VAB Executive Director