

Nos. 16-55977, 16-56714

IN THE
**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

COURTHOUSE NEWS SERVICE,
Plaintiff-Appellee,

v.

MICHAEL D. PLANET, in his official capacity as
Court Executive Officer/Clerk of the Ventura County Superior Court,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California
Honorable S. James Otero, District Judge

**BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS AND 27 MEDIA ORGANIZATIONS
IN SUPPORT OF PLAINTIFF-APPELLEE URGING AFFIRMANCE**

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are The Reporters Committee for Freedom of the Press, American Society of News Editors, The Associated Press, Association of Alternative Newsmedia, The Center for Investigative Reporting, Dow Jones & Company, Inc., The E.W. Scripps Company, First Amendment Coalition, Gannett Co., Inc., Hearst Corporation, International Documentary Assn., Investigative Reporting Workshop at American University, Los Angeles Times Communications LLC, The McClatchy Company, MediaNews Group, Inc., Meredith Corp., National Press Photographers Association, New England First Amendment Coalition, New England Newspaper and Press Association, Inc., The New York Times Company, News Media Alliance, Online News Association, Radio Television Digital News Association, Reporters Without Borders, Society of Professional Journalists, Student Press Law Center, Tully Center for Free Speech, and The Washington Post. 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. As members of the news media or organizations who advocate on the news media's behalf, *amici* have a strong interest in the policies governing the right of access to court documents. Timely access to court documents, including complaints and their exhibits, 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 members of the news media and the public of timely access to civil complaints and their exhibits.

SOURCE OF AUTHORITY TO FILE

Counsel for Defendant-Appellant and Plaintiff-Appellee consented to the filing of this brief.

FED. R. APP. P. 29(a)(4)(E) STATEMENT

Amici state 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 support the argument made by Plaintiff-Appellee Courthouse News Service (“CNS”) that the First Amendment right of access requires timely access to civil complaints and their attached exhibits.¹ *Amici* write to emphasize the substantial public interest in timely access to civil complaints and to underscore that the public is constitutionally guaranteed a right of timely access to civil complaints that attaches upon filing.

The press and the public have a right to learn about the matters consuming judicial resources and occupying space on the dockets of the public court system. Civil complaints are the foundational documents in a case and reveal a wealth of information about how citizens use the judicial branch, how the law exposes citizens to suit or provides remedies, and how effectively the judiciary functions. Prompt access to civil complaints ensures that the public learns about important cases while they are still newsworthy, promotes accuracy in reporting, and leads to more meaningful public debate about those cases.

Not only does timely access to civil complaints benefit the public, but it is also constitutionally required. Every federal appellate court to consider the issue has held that the First Amendment right of access applies in the civil context. More specifically, the “experience and logic” test of *Press-Enterprise Co. v.*

¹ Hereinafter, references to “civil complaints” includes both civil complaints and their exhibits.

Superior Court, 478 U.S. 1, 8–10 (1986) (“*Press-Enterprise II*”) demonstrates that the First Amendment right of access applies to civil complaints and attaches upon filing. And, because any delay results in a complete denial of meaningful access, the First Amendment requires timely access to civil complaints.

Finally, CNS’s commercial interest in civil complaints is immaterial to the determination of its First Amendment rights. 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.

Therefore, *amici* urge this Court to affirm the district court’s order granting summary judgment and declaratory relief in favor of CNS and permanently enjoining the Ventura County Superior Court from delaying access to civil complaints.

ARGUMENT

I. Timely access to civil complaints before processing, judicial action, or judgment benefits the public and the press.

When news media organizations like CNS and others have contemporaneous access to civil complaints, it is the public that benefits. As this Court recognized in earlier proceedings in this case:

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.'

CNS v. Planet, 750 F.3d 776, 786 (9th Cir. 2014) ("*Planet I*") (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."). Timely access to civil complaints allows the press to report on new civil disputes at the moment they are most newsworthy, enhances the accuracy and completeness of news reports, and fosters public understanding and discussion of judicial affairs. These benefits of timely access to civil complaints flow, ultimately, to the public.

A. Newsworthiness depends on timeliness.

Timeliness is often a critical component of the editorial decision to publish or not publish a news story. 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 U.S. Supreme Court and federal courts of appeal have repeatedly recognized timeliness to be a fundamental feature of news. *See 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 the Seventh Circuit wrote of the right of access to judicial records, “The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.” *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 Elrod v. Burns*, 427 U.S. 347, 373–74 (1976) (recognizing that even a brief loss of First Amendment freedoms constitutes “irreparable injury”).

Immediacy has always been an essential component 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 the *Los Angeles Times* and *The New York Times*, 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 short, “[i]n the Internet age, a deadline passes every second.” *See Toni Locy, Covering America’s Courts* 13 (2013).

The importance of timeliness is reflected in recent reporting on activity in the California judicial system. Reporters routinely rely on newly filed civil complaints to disseminate information about topics of public concern while they are still timely—often the same day. *See, e.g., Richard Winton, L.A. City Attorney Accuses Home Healthcare Firm of Stealing Workers’ Wages*, *L.A. Times* (May 10, 2017), <https://perma.cc/4LGC-ZDA9> (reporting at 9:25 a.m. on a civil lawsuit filed by the city attorney that day); Kate Mather, *ACLU Sues LAPD Over ‘Systemic*

Violation' of Public Records Law, L.A. Times (Apr. 25, 2017),

<https://perma.cc/DFU7-CBGW> (reporting at 11:05 a.m. on a civil lawsuit filed against the police department 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” does not receive the same level of public attention as timely news, and thus may not be published at all. In contrast, timely access to civil complaints allows the news media to learn of new civil lawsuits as they are filed and to report them to the public when their newsworthiness is at its height.

B. Timely access to civil complaints facilitates accurate and complete news reporting.

Court records are among the most reliable sources of information for reporting on lawsuits. In the current news environment 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 complete, with as much information as possible derived from official, primary sources. Reporting on newly filed cases will be more authoritative and accurate if the complaints themselves, including their exhibits, are available for inspection, copying, and reference by members of the news media.

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

legal news reporting, professor and veteran journalist Toni Locy stresses this point. *See* Locy, *supra*, at 61–67 (2013) (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. Locy instructs reporters instead to “review[] court filings or other public records,” among other things, to determine whether and how a fact or allegation should be reported. *Id.* at 9. Thus, 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.

Timely access to civil complaints also facilitates thorough and complete reporting by the news media. Journalists rely on the information contained in civil complaints to report the “core dispute” underlying newly filed civil claims. *See* Beth Winegarner, *6 Tips for Reporters Tracking State Legal Cases*, Poynter (Sept. 27, 2013), <https://perma.cc/64DQ-5WWX> (recommending that reporters “skim through [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 complaint exhibits—which can include contracts that are the basis of dispute, records of prior related proceedings, and even news stories supporting factual allegations—allow reporters to shed light on

important facts underlying the civil causes of action. *See* Complaint, *Goldman v. Simpson*, No. 2:06-cv-08104-R-MAN (C.D. Cal Dec. 19, 2006), <https://perma.cc/E6PP-7LWB> (referencing exhibits showing the outcome of a prior related proceeding); Marc Hogan, *Fyre Festival Hit with Two More Lawsuits, One Alleging “Bloodstained Mattresses,”* Pitchfork (May 5, 2017), <https://perma.cc/8T2B-5RXX> (referencing a civil complaint exhibit consisting of a contract between plaintiff and defendant); Christine Powell, *Lyft Drivers Sue Uber Over Use of ‘Hell’ Tracking Software*, Law360 (Apr. 24, 2017), <https://perma.cc/DK6M-3BBP> (referencing an exhibit to a class action complaint, consisting of a news story that was “quoted extensively in the complaint”). Thus, timely access to newly filed civil complaints allows the press to provide the public with a full and complete understanding of the case, including the factual underpinnings of the claims.

C. Timely access to civil complaints benefits the public by promoting understanding and meaningful debate about 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 U.S. 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. Minnesota Comm’r of Revenue*, 460 U.S. 575,

585 (1983) (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.*, No. 4:06-cv-06110-SBA (JCPX), 2008 WL 1859067, at * 3 (N.D. Cal. Apr. 23, 2008) (“[W]hen 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.”). 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 Seattle Times Co. v. United States 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. v. Superior Court*, 457 U.S. 596, 604 (1982)).

Timely access to newly filed civil complaints also permits individuals, through news reports, to learn about pending suits, which may inform them about their own legal rights. By reading or hearing timely news reports about new civil suits, citizens may realize that they too have legal rights at issue, learn that they may pursue civil remedies, or discover that they may be able to join an existing civil lawsuit. *See, e.g.*, Jesse Paul, *Planned Parenthood Victims' Lawsuit Could Be in Limbo as Holding Pattern in Criminal Case Drags On*, *Denver Post* (Nov. 21, 2016), <https://perma.cc/57B4-UHHT> (noting that two plaintiffs in a civil case against a health care provider joined the filing after reading news reports of the civil case). Thus, timely reporting on new civil complaints could facilitate joinder or interpleader actions, which conserve judicial resources. In other cases, it is possible that members of the public may discover they have personal knowledge about a pending lawsuit, enabling them to come forward as a witness.

II. The First Amendment right of access applies to civil complaints at the time of filing.

In determining whether the First Amendment right of access applies, courts consider “whether the place and process have historically been open to the press and general public” and “whether public access plays a significant positive role in the functioning of the particular process in question”—commonly called the

“experience and logic” test. *Press-Enterprise II*, 478 U.S. at 8–10. Under this test, the First Amendment right of access applies to civil records, generally, and to civil complaints in particular, and attaches at the time of filing.

A. The First Amendment right of access extends to civil proceedings and records.

Civil proceedings, like criminal proceedings, have historically been open to the press and the public. Although the Supreme Court has not ruled on whether the public has a constitutional right of access to civil proceedings, a plurality has found that “historically both civil and criminal trials have been presumptively open.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n.17 (1980) (plurality opinion). Indeed, as the Supreme Court recognized in the context of evaluating the Sixth Amendment right to a public trial, “[a]s early as 1685, Sir John Hawles commented that open proceedings were necessary so ‘that truth may be discovered in civil *as well as* criminal matters.’” *Gannett Co. v. DePasquale*, 443 U.S. 368, 386 n.15 (1979) (quoting Remarks upon Mr. Cornish’s Trial, 11 How.St.Tr. 455, 460 (1685), and noting that public civil trials were “the norm” in colonial America); *see also* Comment, J.L. Nowaczewski, *The First Amendment Right of Access to Civil Trials After Globe Newspaper Co. v. Superior Court*, 51 U. Chi. L. Rev. 286, 294–96 (1984) (providing examples of the historical right of access to civil proceedings).

Similarly, this Circuit has applied the *Press-Enterprise II* framework to evaluate claims of access even in non-judicial contexts. *See Planet I*, 750 F.3d at 786 (citing *Cal-Almond, Inc. v. U.S. Dep’t of Agric.*, 960 F.2d 105, 109 (9th Cir. 1992)); *see also Leigh*, 677 F.3d at 899–900. Moreover, this Court has recognized that federal circuits are in widespread agreement that the First Amendment right of access applies to civil proceedings and related records. *Planet I*, 750 F.3d at 786; *see, e.g., Grove Fresh Distributors, Inc.*, 24 F.3d at 897 (applying First Amendment right of access to civil litigation documents); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988) (finding First Amendment right of access to summary judgment pleadings); *Westmoreland v. Columbia Broadcasting System, Inc.*, 752 F.2d 16, 23 (2d Cir. 1984) (“[T]he First Amendment does secure to the public and to the press a right of access to civil proceedings . . .”); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1061 (3d Cir. 1984) (“We hold that the First Amendment does secure a right of access to civil proceedings.”); *In re Iowa Freedom of Information Council*, 724 F.2d 658, 661 (8th Cir. 1983) (finding First Amendment right to attend contempt proceedings, which are “partly civil, partly criminal”); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983) (finding a First Amendment right of access to documents filed in civil litigation). The California Supreme Court has also recognized the constitutional right of access to civil proceedings. *NBC*

Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal.4th 1178, 1209–10 (1999) (finding “no reason to doubt that, in general, the First Amendment right of access applies to civil proceedings,” because “the public has an interest, in *all* civil cases, in observing and assessing the performance of its public judicial system”).

B. The First Amendment right of access applies to civil complaints.

Experience and logic also demonstrate that the First Amendment right of access applies to civil complaints. There is a widespread and lengthy tradition of reporters visiting courthouses to examine hard copies of civil records, including complaints. *See Planet I*, 750 F.3d at 779 (“In courthouses around the country—large and small, state and federal—CNS reporters review civil complaints on the same day they are filed.”); *see also* Locy, *supra*, at 52 (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*, NiemanReports (Mar. 15, 2005), <https://perma.cc/HU3Q-BNKG> (describing how reporter went to county courthouse and “por[ed] over hundreds of pages of court filings, documents and depositions in the public record” to investigate a tip); Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Court (2002) (the “Model Guidelines”), <https://perma.cc/3VBX-NU7J> (recognizing, in a report written on behalf of the

Conference of Chief Justices (*amicus* in support of Defendant-Appellant) and the Conference of State Court Administrators, that “[c]ourt records have historically been open to public access at the courthouse, with limited exceptions”).

For example, in 2010, the Maryland newspaper *The Daily Record* sent reporters to circuit and district courts in 12 Maryland counties to “find out whether regular citizens are able to gain access to public court records.” Danny Jacobs, Brandan Kearney, Steve Lash, and Caryn Tamber, *Access for all: A look at court record access in Maryland*, Daily Record (July 11, 2010), <https://perma.cc/47YS-ANV9>. Reporters requested case files for multiple cases at each courthouse and found that they “were able to examine most of the files [they] requested.” *Id.* In the modern age, this tradition 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 Winegarner, supra* (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,” which promotes “expanded transparency on court affairs”).

Access to civil complaints also plays a significant positive role in the functioning of the judicial process. *See Press-Enterprise II*, 478 U.S. at 8 (stating that the “logic” prong is satisfied where public access plays a “significant positive role” in the judicial process). Independent public scrutiny, made possible by the press, promotes the proper functioning of the judicial system by providing an outlet for “community concern, hostility, and emotions,” ensuring that proceedings are conducted fairly, and discouraging perjury and misconduct of participants. *Richmond Newspapers*, 448 U.S. at 569, 571. In addition, open access “promotes the accountability of the judiciary by readily allowing the public to monitor the performance of the judiciary,” and “further the goal of providing public education about the results of cases and the evidence supporting them.” *See Model Guidelines* at 5–6.

Each of these benefits is realized through prompt access to civil complaints, which allows the news media to provide the public with contemporaneous information about newsworthy judicial proceedings. In certain cases, knowledge that a lawsuit has been filed can provide an outlet for community concern and other emotions. *See, e.g.,* Michael Rezendes, *Civil Lawsuit Alleges 50-Year Coverup of Sex Abuse*, *Boston Globe* (Sept. 19, 2002), <http://bit.ly/2pPUp58> (reporting on civil lawsuit against Boston Archdiocese filed the previous day accusing church administrators of conspiring to cover up the activities of sexually

abusive priests for more than 50 years); *10 Years On, Clergy Abuse Scandal Still Reverberates*, NPR (Jan. 24, 2012), <https://n.pr/zo69r7> (interview with reporter Michael Rezendes discussing cathartic effect for victims of *Boston Globe's* reporting on sexual abuse of children by Catholic priests).

Moreover, access to civil complaints promotes public confidence in the judicial process by allowing the public to learn about, understand, and participate in public discourse regarding the functions of the judicial branch. *See* Section I, *supra*. Public access to civil complaints also exposes litigants' claims and underlying factual bases to public scrutiny, thereby promoting the filing of only meritorious claims and discouraging misconduct by litigants. *See id.* Furthermore, such public access encourages the potential joinder of related claims, preserving judicial resources. *See id.*

C. The First Amendment right of access attaches to civil complaints when they are filed.

A civil complaint becomes a judicial record at the moment it is filed, and judicial action regarding the record is in no way a prerequisite to the constitutional right of access. Immediately upon filing, the court manages the complaint, the case is assigned to a judge, and a mandatory appearance is scheduled. *See* Super. Ct. Ventura Cnty., Local Rules, rule 3.00, Civil Case Delay Reduction (stating that “it is the policy of the Ventura County Superior Court to manage all civil cases *from the time of filing* of the first document invoking court jurisdiction through

final disposition”) (emphasis added); *see also id.* at rule 3.03.1(A), Notice of Case Assignment and Mandatory Appearance. Even before any motion practice or hearing on the merits, a judge may review a complaint to become familiar with the case, to prepare for a conference with attorneys, to verify that the case is properly before the court, or to prepare some other order.

A right of access to civil complaints that attaches at the time of filing ensures that the public can learn about cases when they are newsworthy and thereby play a positive role in the judicial process by monitoring the filing and management of new civil complaints before any judgment is rendered. If the right of access did not apply until after processing, judicial action, or judgment, important civil cases could be left on the courts’ dockets indefinitely and the public would never learn about them. *See 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 makes the document critical 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)).

D. The First Amendment right of access requires timely access.

When the First Amendment right of access applies, “access should be immediate and contemporaneous.” *Grove Fresh*, 24 F.3d at 897. The Supreme

Court has stated that a loss of First Amendment rights, “even for minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (citation omitted). Indeed, the Ninth Circuit has held that even 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. *Associated Press v. District Court*, 705 F.2d 1143, 1147 (9th Cir. 1983).

A delay beyond timely access to newly filed civil complaints irreparably harms the public’s interest in learning about cases pending before the courts. *See 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”); *see also* Model Guidelines at 58 (recognizing the importance of “prompt and timely” access to court records). This is even more true in the modern news environment, where timeliness is critical to newsworthiness. *See* Section I, *supra*. 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, a delay amounts to a denial, and the First Amendment requires timely access.

E. Profit motive is irrelevant to the constitutional right of access.

Finally, CNS’s commercial interest in civil complaints is irrelevant to the

determination of its First Amendment rights, including its right of access to civil complaints. Defendant-Appellant and *amicus* in support of Defendant-Appellant emphasize that CNS may profit from access to civil complaints. *See* CCJ Brief at 3; Planet Brief at 6–7, 28. That argument misses the point. Courts do not examine the commercial or nonprofit status of a news organization when evaluating the right of access.

Courts have repeatedly determined 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”). The U.S. Supreme Court has thus 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, as Defendant-Appellant seems to acknowledge, the First

Amendment right of access is held broadly by the general public. *See Planet Brief* at 28–29 (quoting cases stating that the First Amendment right is held by the 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, and not just CNS’s paid subscribers, would benefit from access, and all members of the public, which include for-profit news media organizations, possess a First Amendment right of timely access to civil complaints. *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, then most news organizations would be stripped of their right of access, to the substantial detriment of the public. *See Leigh*, 677 F.3d at 897 (stating that “[t]he Supreme Court has recognized that newsgathering is an activity protected by the First Amendment”) (citation and alteration omitted). 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 its services 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 recognize the First Amendment right of access to civil complaints, which requires timely access upon filing, and affirm the district court’s order.

Respectfully submitted,

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Dated: July 7, 2017
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CERTIFICATE OF COMPLIANCE WITH RULE 32(g)

I hereby certify that the foregoing brief of *amici curiae*:

- 1) Complies with the type-volume limitation Fed. R. App. P. 29(a)(5) because it contains 5,084 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 2010 in 14-point Times New Roman.

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Dated: July 7, 2017
Washington, DC

Certificate of Service

I 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 Ninth Circuit using the appellate CM/ECF system on July 7, 2017.

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.

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THE REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

APPENDIX A

SUPPLEMENTAL STATEMENT OF IDENTITY OF *AMICI CURIAE*

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

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.

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.

The Center for Investigative Reporting (CIR) believes journalism that moves citizens to action is an essential pillar of democracy. Since 1977, CIR has relentlessly pursued and revealed injustices that otherwise would remain hidden from the public eye. Today, we're upholding this legacy and looking forward, working at the forefront of journalistic innovation to produce important stories that make a difference and engage you, our audience, across the aisle, coast to coast and worldwide.

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 34 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.

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.

Hearst is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include ownership in cable television networks such as A&E, HISTORY, Lifetime and ESPN; majority ownership of global ratings agency Fitch Group; Hearst Health, a group of medical information and services businesses; 30 television stations such as WCVB-TV in Boston and KCRA-TV in Sacramento, Calif., which reach a combined 19 percent of U.S. viewers; newspapers such as the Houston Chronicle, San Francisco Chronicle and Albany Times Union, more than 300 magazines around the world including Cosmopolitan, ELLE, Harper's BAZAAR and Car and Driver; digital services businesses such as iCrossing and KUBRA; and investments in emerging digital and video companies such as Complex, BuzzFeed, VICE and AwesomenessTV.

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 Workshop, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

Los Angeles Times Communications LLC and The San Diego Union-Tribune, LLC are two of the largest daily newspapers in the United States. Their popular news and information websites, www.latimes.com and www.sandiegouniontribune.com, attract audiences throughout California and across the nation.

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.

MediaNews Group's more than 800 multi-platform products reach 61 million Americans each month across 18 states.

Meredith Corporation (NYSE: MDP), an Iowa corporation, owns or operates seventeen television stations reaching approximately eleven percent of United States households, including television stations in Phoenix, Arizona, Portland, Oregon, and Las Vegas, Nevada. Meredith's stations produce nearly 700 hours of local news and entertainment content each week, and operate leading local digital destinations.

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.

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.

New England Newspaper and Press Association, Inc. ("NENPA") is the regional association for newspapers in the six New England States (including Massachusetts). NENPA's corporate office is in Dedham, Massachusetts. Its purpose is to promote the common interests of newspapers published in New England. Consistent with its purposes, NENPA is committed to preserving and ensuring the open and free publication of news and events in an open society.

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

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.

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.

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.

Student Press Law Center (“SPLC”) is a nonprofit, nonpartisan organization which, since 1974, has been the nation’s only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment to the Constitution of the United States. SPLC provides free legal assistance, information and educational materials for student journalists on a variety of legal topics.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

WP Company LLC (d/b/a The Washington Post) publishes one of the nation's most prominent daily newspapers, as well as a website, www.washingtonpost.com, that is read by an average of more than 20 million unique visitors per month.

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